

**LAW ON BUSINESS ORGANIZATION INSOLVENCY**  
(Official gazette of the Republic of Montenegro, numbers 06/02, 01/06)

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1: Scope of the Law.**

This law on business organization insolvency sets forth the grounds and procedure for the liquidation, orderly self-liquidation of reorganization of commercial organizations, institutions and entrepreneurs, and the rights and obligations of all participants and affected parties.

**Article 2: Types of proceedings**

- 1) The following categories of proceedings are governed by the this Law:
  - 1) Liquidation
  - 2) Reorganization
  - 3) Orderly self-liquidation
- 2) Self-conducted liquidations must be conducted pursuant to a plan of orderly self-liquidation submitted and approved in accordance with and governed by the same provisions of law applicable to a plan of reorganization.

**Article 3: Debtor**

- (1) The following may be debtors under this Law:
  - 1) Legal persons;
  - 2) Commercial enterprises not having the status of legal persons;
  - 3) Individuals engaged in commercial activity (entrepreneurs).
- (2) The following entities may not be debtors under this Law:
  - 1) Bodies of public administration and local self-government, budgetary organs, organizations, institutions, funded by the Republic of Montenegro (hereinafter: the Republic) or local government bodies and state funds;
  - 2) The Central Bank of the Republic of Montenegro or independent government regulatory agencies;
  - 3) Banks and insurance companies registered in the Republic of Montenegro that are subject to separate bankruptcy legislation;
  - 4) Individual wage earners not otherwise carrying on commercial activity.

**Article 4: Supremacy**

This Law shall supersede those laws to the extent that they are in conflict with the application of this Law, unless otherwise stated, and where the application of this

Law does not conflict with other laws, the other laws shall remain in full force and effect.

**Article 5: Jurisdiction over insolvency cases.**

Cases commenced under this Law shall be heard by the Commercial Court having jurisdiction in the region covering registered office, where applicable, otherwise, the headquarters or principal place of business of the debtor.

**CHAPTER II**

**INITIAL PROCEDURES**

**Article 6: Grounds for initiation of an insolvency case.**

- (1) A case under this Law is initiated by the submission of a written Petition in Insolvency with the appropriate commercial Court.
- (2) The filing of the petition invokes the jurisdiction of the Court and commences the procedures of this law.
- (3) A petition may be submitted by—
  - 1) the debtor;
  - 2) a creditor or group of creditors;
- (4) The date upon which the petition is filed is know as the “ petition submission date.”
- (5) The debtor may file a petition at any time with proper authority to do so without any need to prove insolvency.
- (6) Authority to submit and withdraw a petition is held by the following:
  - 1) On behalf of a legal person, by the decision of the competent body in accordance with the legal person’ s charter, founding documents as allowed under applicable law;
  - 2) On behalf of a partnership, by any one of the partners, or by means of a resolution of the partnership in accordance with the partnership agreement or its charter documents;
  - 3) On behalf on an individual entrepreneur, by the individual entrepreneur him or herself or by a person legally entitled to act on the entrepreneur’ s behalf in the case of incapacity;
  - 4) On behalf of state joint stock companies and state enterprises, on the basis of a decision to do so adopted by the authorized governmental authority or person designated with authority to do so;
  - 5) On behalf of any entity not named in this section, by the person or body authorized by law to act on its behalf.

- (7) A creditor, or group of creditors, may submit a petition to commence a case when all of the following conditions are met:
- 1) The debtor has failed to satisfy on a debt due to the petitioning creditor (or creditors) that is at least 30 days overdue;
  - 2) The total amount of debt overdue exceeds 500 Euros in amount for entrepreneurs and 2,500 Euros in amount for business organizations and institutions;
  - 3) The debt is not contingent, nor subject to a bonafide dispute; and,
  - 4) The debtor is generally not paying its debts as they become due.
- (8) The Court may presume that the debtor is not paying its debts as they come due when a creditor demonstrates competent evidence that its particular debt has not been paid when due. However, this presumption may be rebutted by the debtor with a showing of evidence that it is indeed generally paying its debts as they become due.
- (9) A petition submitted by more than one creditor may not be recalled unless all the petitioning creditors give consent. The petition may be withdrawn only before case acceptance and only under circumstances where the debtor is not harmed.

**Article 7: The form and content of a petition.**

The petition shall be a writing submitted to the Court containing the following information:

- 1) The name of the Court where the petition has been submitted;
- 2) The petitioner' s name and address, or the address of the legal person authorized in this matter to accept official notices and act on the petitioner' s behalf;
- 3) The debtor' s name, address and contact information;
- 4) The claim amount and the date due, where the petitioner is a creditor;
- 5) Supporting documents evidencing the nature and existence of the unpaid claim if petitioner is a creditor;
- 6) A list of the documents attached to the petition;
- 7) A statement stating that the debt is not subject to a bona-fide dispute and that the debtor appears not to be paying the its debts as they become due, where the petitioner is a creditor.

**Article 8: Documents.**

Where a petition is submitted by the debtor, the following documents must be submitted with the petition:

- 1) The most recent financial statements of the debtor for the last accounting period and of the preceding year;
- 2) The list of all assets owned by the debtor, where ever located, including the results of the most recent tabulation of physical inventory, all property, tangible and intangible, claims against others, investments, and all property in the custody of a third party. If the list submitted is preliminary, the debtor is obliged to so state, and to update the list when more information becomes available;

- 3) A list of property owned by third parties but held in the debtor' s custody, if not already indicated on the list provided in subsection above;
- 4) The list of creditors, including their names, addresses, place of location and the nature and amount of the obligations, whether listed or unlisted in the debtor' s balance sheet, including obligations not currently due, any guarantees provided by the debtor and any conditional obligations;
- 5) A schedule indicating the ownership interest and capital structure, in full or in summary form, sufficient to identify ownership interests;
- 6) If the debtor is a partnership the names and addresses all partnership members;
- 7) A Statement of Intention for reorganization or orderly self liquidation, if applicable, in accordance with this law.

### **Article 9: Debtor' s Petition.**

- (1) The petition of the debtor is registered the moment that it is submitted to and received by the Court. This is known as the "petition submission date." The Court shall register the petition irrespective of any defect and shall indicate the time and date of registration on its face.
- (2) The petition is *accepted* for purposes of further proceedings if the petition complies with all the requirements of this law, or where the debtor remedies all legal defects and submits all required documents in within the designated time period. In such case, the Court shall accept the insolvency case for further proceedings. This is known as the "case acceptance date."
- (3) Where the debtor has failed to provide documents required under Article 7 of this Law the Court shall issue an order within 2 days of the petition submission date specifying the defect and requiring the debtor to cure within 10 days of the petition submission date.
- (4) Where the debtor has failed to comply with the requirements this Law or other relevant laws, the Court shall issue an order within 2 days of the petition submission specifying the defect and requiring the debtor to cure within 10 days of the petition submission date.
- (5) The debtor must cure all defects within ten days of the petition submission date. The Court may reject the petition for failure to cure such defects in a timely manner.
- (6) The Court may reject the debtor' s petition where the petition was filed for an improper purpose or in a manner intended to deceive, defraud or subvert the Court or creditors.
- (7) Where all defects are cured within the time limits specified the date of acceptance relates back to the date the petition was submitted.

- (8) The Court determines what constitutes substantial compliance with document submission requirements of Article 7, and its own orders requiring compliance.

**Article 10: Creditor' s Petition.**

- (1) The petition submitted by a creditor or creditors is registered the moment that it is received in the Court. This is known as the "petition submission date." The Court shall register the petition irrespective of any defect and shall indicate the time and date of registration on its face.
- (2) The petition is *accepted* for purposes of case initiation when—
  - 1) the time limit for the debtor to oppose the petition has expired and no objection is received; or
  - 2) the Court has issued an order overruling the debtor's objection.
- (3) The Court shall issue an order indicating that the petition has been accepted and the date of the Court order shall be know as the "case acceptance date."
- (4) The Court may allow the creditor or creditors a time period of no greater than 3 days to cure minor procedural defects in the petition submission. Upon timely cure of such defects, the petition shall be accepted and the original petition submission date shall be maintained.

**Article 11: Notice of non-debtor petition.**

The Court shall send a notification to the debtor, with the copy of the petition within 24 hours of the registration of the petition. The court may require the petitioning creditor to make this notification and require proof that notification was duly made.

**Article 12: Opposition to non-debtor petition.**

- (1) The debtor may submit a written Notice of Opposition to the acceptance of the petition within 8 days of the issuance of the notification of the registration of a petition. If the debtor chooses not to oppose the petition, and proposes either to reorganize or to perform an orderly self-liquidation, the debtor must submit a Statement of Intention to the Court in accordance with Article 16 of this law.
- (2) If the debtor does not submit a Notice of Opposition within the time limit, the Court shall issue an order accepting the petition and accepting the case for further proceeding and shall immediately appoint an initial administrator in accordance with Article 15 of this law. In such case, the date of the order is the "case acceptance date."
- (3) If the debtor submits a timely written Notice of Opposition to the petition, the Court must call a hearing to examine the evidence presented by the parties within 15 days of the submission of the Notice of Opposition. The Court shall notify the debtor and the petitioning creditor or creditors of the day, hour, and place of the hearing, at

least 2 days prior to the hearing date. Notice may be given by fax, telephone, telegram or e-mail.

- (4) The Court shall reject the petition where—
- 1) the case is not properly under the jurisdiction of the Court under Article 5 of this Law;
  - 2) the grounds stated in the petition do not satisfy the requirements stipulated by Article 3 of this Law;
  - 3) the grounds brought in the petition do not satisfy the requirements stipulated by Article 6 paragraph 7 of this Law;
  - 4) the case is in the nature of an ordinary commercial dispute between a debtor and a creditor and not an insolvency;
  - 5) the petition does not satisfy the requirements of Article 7 of this Law and has not or cannot be cured within a reasonable period of time;
  - 6) the Court is already conducting insolvency proceedings with respect to the debtor named in the petition;
  - 7) the petitioning creditor's claim or claims are completely satisfied prior to or as of the day of the a Court hearing and sufficient proof of satisfactions exists;
  - 8) the person or entity submitting the petition did not have appropriate authority to submit it under Article 6 paragraph 6 of this Law;
  - 9) the petition was submitted by a person recognized as lacking capacity;
  - 10) the person having submitted the petition did not pay the duty defined by law, and the Court did not make a decision on exempting him from paying the duty.

(5) A decision shall be made within 3 days of the hearing. The judge rejecting the petition shall render a written decision thereon and shall indicate the grounds of the rejection by noting relevant Articles of this Law. Notice of the decision rejecting the petition shall be sent to the petitioner and to the debtor.

(6) Where the Court finds no grounds for rejecting the petition, the Court shall issue an order accepting the case for further proceedings in accordance with Article 15 of this law. The date of the order shall be the "case acceptance date."

### **Article 13: Bank deposit.**

- (1) Where appropriate circumstances exist, the Court, in its discretion, may require the non-debtor petitioning party to place a deposit with the Court in an amount not exceeding the limitation set forth in Article 14 paragraph 2 of this law for compensation of court costs and damages to the debtor in case of rejection of the petition.
- (2) If the Court issues a decision accepting the case the bank deposit shall be turned to the creditor, within 2 banking days following the Court decision.
- (3) If the Court rejects the petition and where the Court deems that the petition was not adequately justified or presented for improper purpose under Article 14 of this Law, the Court may order that court costs and, where appropriate, damages be paid

to the debtor from the bank deposit. Any remaining portion of the bank deposit shall be returned to the creditor within 2 banking days following the Court order.

(4) If the petitioning creditor, creditors or other petitioning party do not submit documents sufficiently confirming the required deposit to the Court, the petition shall be rejected.

**Article 14: Sanctions for improper petition.**

(1) Where the Court finds that a non-debtor petition was submitted for an improper purpose, the Court may, in its discretion, in the interest of justice, order the petitioning party to pay damages to the debtor in an amount equal to the estimated harm caused to the debtor by the submission of the improper petition.

(2) The amount of damages shall not exceed two times the average monthly revenue of the debtor, based upon the past 12 months starting with the month immediately preceding month that the petition was submitted, and in addition, shall include any court costs and fees incurred in opposing the petition.

**Article 15: Consequences of case acceptance.**

(1) Upon case acceptance the Court shall—

- 1) appoint an administrator, pursuant to the procedure stated in Article 19 of this Law,
- 2) set the time, date and place of the first meeting of creditors no later than 30 days after the case acceptance date,
- 3) issue a notice of the acceptance of the case, the appointment of an interim administrator the time, date and place of the first meeting of the creditors, within 5 days of case acceptance to:
  - the debtor,
  - All the creditors known to the Court,
  - the Commercial Court company registry,
  - government body responsible for registration of real estate, pledges, of movable or immovable property, or any other property subject to registration,
  - the applicable tax authorities of the Republic,
- 4) publish in the next issue of the Official Gazette of Montenegro a notice containing the following information:
  - information regarding the acceptance of the case;
  - appointment of the administrator;
  - the time, date and place of the first meeting of the creditors;
  - the time limit for the filing of claims.
- 5) affix a notice containing the same information specified in paragraph 4 of this article at the appropriate designated place the Commercial Court building,

(2) The Court may, in its discretion, set a preliminary court hearing 10 days after the scheduled creditor's meeting to determine the case status and the results of the meeting of creditors. The debtor, or the debtor's authorized representative, may be compelled to attend.

**Article 16: Intention to reorganize or self-liquidate.**

- (1) Where the debtor intends to attempt a financial recovery by means of a plan of reorganization under the terms of this Law, the debtor must submit a Statement of Intention to reorganize with the Court where the petition was registered within 20 days of petition submission.
- (2) A debtor wishing to perform an orderly self-managed liquidation must also file a Statement of Intention to conduct an orderly self-liquidation with the Court where the petition was registered within 20 days of petition submission.
- (3) A debtor filing a Statement of Intention pursuant to paragraph (1) or (2) above is required to submit a plan of reorganization or a plan of orderly self-liquidation drawn up according to the requirements of Chapter VIII of this law.
- (4) A debtor filing a Statement of Intention pursuant to paragraph (1) or (2) above is required to perform the duties required of the administrator pursuant to this Law and may exercise all stated powers of the administrator, except the right to receive compensation.
- (5) An administrator duly appointed under this Law shall remain in place irrespective of the debtor's stated intention to reorganize or conduct an orderly self-liquidation. However, the administrator's responsibilities may, in the judgment of the Court, be diminished to a supervisory role, the scope of which shall be set by the Court.
- (6) The Statement of Intention may be submitted along with the petition where filed by the debtor or subsequently within the stated time limit.
- (7) Failure by the debtor to submit a Statement of Intention within the relevant limit shall result in the commencement of liquidation proceedings and in immediate divestiture of the debtor's right to control and manage the property of the estate.

**Article 17: Opposition to Statement of Intention.**

- (1) The administrator, any creditor, group of creditors, or other interested party may submit a written opposition to the debtor's Statement of Intention within 30 days of its submission, in order to oppose a reorganization or orderly self-liquidation conducted by the debtor.
- (2) The Court shall send the debtor notice of the opposition within 24 hours, and hold a hearing within ten days of the submission of the opposition.
- (3) The Court shall deny the opposition at the hearing unless the party submitting the opposition can conclusively show--
  - 1) where the debtor intends to reorganize; that the debtor cannot confirm a plan of reorganization pursuant to Article 75 of this Law or there is no realistic possibility for the debtor to reorganize;
  - 2) where the debtor intends to conduct an orderly self-liquidation, that cause exists whereby self-liquidation by the debtor would not, in all

likelihood, result in a higher recovery to creditors than would immediate liquidation under Chapter IX by an administrator.

(4) If the Court grants the opposition, a written order so stating shall be issued on the same day, and shall include a provision ordering the commencement of a liquidation pursuant to Article IX of this Law.

**Article 18: Court power to issue orders.**

The court may issue any necessary order ensure compliance with the spirit and purpose of this Law or the performance of a duty arising from the requirements of this Law.

**CHAPTER III.**

**ADMINISTRATOR AND CREDITORS COMMITTEE**

**Article 19: Appointment of the administrator.**

(1) Within 24 hours of case acceptance, the Court shall appoint an administrator and set the terms of his salary pursuant to this Law.

(2) The Court may, on its own motion or the request of the petitioning party, appoint an interim administrator prior to the case acceptance date, where there is an immediate need to protect assets from damage or unauthorized removal, or where other circumstances exist requiring immediate appointment.

(3) Creditor' s holding 60% or more of the total outstanding debt owed by the debtor, whether secured or unsecured, may, at any point prior to the initial meeting of the creditors, submit a written request to the Court to replace the original administrator with an administrator of their own selection from the list of administrators. Where such a request is validly made and the requirements met, the Court must appoint the selected administrator no later than 2 days after the submission of the request.

**Article 20: Qualifications of the administrator.**

(1) Any administrator appointed under this Law must be--

- 1) a licensed accountant, auditor, lawyer, or other person possessing training or experience appropriate to the needs of the case; and
- 2) must possess at minimum a university degree and at least three years of experience; or
- 3) a certified insolvency administrator duly licensed by a body authorized by the Government of the Republic of Montenegro to perform such licensing. (Ministry of Justice)

(2) A person may not be appointed in the position of an administrator who--

- 1) was convicted for an intentional crime other than minor traffic offense, or was, as a sanction for misconduct, deprived of the right to hold senior management or governing body posts of positions;
- 2) appears as a suspect, accused or defendant in criminal proceedings in progress at the time of proposed appointment;
- 3) has a claim against or obligation to the debtor of over 500 Euros;
- 4) has been recognized as lacking capacity or of limited capacity;
- 5) within the last year has been a member of the governing body or senior management, accountant, independent auditor, or attorney for the debtor or is an immediate family member or close relative of a member of governing body or senior management, accountant, independent auditor, or attorney for the debtor;
- 6) is a close relative or immediate family member of the judge in the Commercial Court handling the case;
- 7) an individual or legal person who is himself a debtor in an insolvency case proceeding;
- 8) was removed from the position of administrator during the last 5 years at the initiative of the Court for serious misconduct;
- 9) possesses any other attribute that presents a conflict of interest or impedes the ability of the administrator to perform his duties in accordance with this Law.

**Article 21: Administrator compensation.**

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(1) The administrator's fees and expenses are paid from the cash resources of the debtor or directly from the proceeds of the sale of the debtor's property pursuant to this Law. The administrator's fees and expenses rank in the priority specified in Article 86 paragraph 2 subparagraphs 2 and 3 of this Law;

(2) In cases where there are little or no assets available for the payment of such priority claims of the kind specified in Article 86 of this law (administratively insolvent), the administrator's fees and expenses are paid from specially designated fund of the Republic for such payment.

(3) (Ceased to be valid based on the decision of the Constitutional Court)

(4) Any payments to the administrator or experts hired by the administrator must be approved by the Court before they are made. A written request for payment must be presented to the court, to the debtor, and to either the creditors committee, if such a committee is formed, or to creditors holding the 10 largest unsecured claims. If no written objection is received within 5 days of the written request, the court shall issue an order approving the request if adequately supported by documentation and deemed appropriate by the Court. Where a written objection is received within the stated time period, the court shall notify the administrator and schedule a hearing on the objection within 10 days to determine its merits. The Court shall issue a ruling within 2 days of the hearing.

(5) The administrator may petition the Court for interim payment of fees and expenses, where necessary, and is not required to wait until the end of the case in

order to obtain payment when it is clear that there are sufficient assets to support such interim payment. The administrator shall deduct prior sums received from any final distribution and shall include a list of all payments previously received in all subsequent requests for payment.

(6) Upon the written request of any creditor, group of creditors, or the debtor the Court may, in its discretion adjust the actual compensation of the administrator downward from that designated in the scale suggested in paragraph 3 of this Article where it is shown that administrator has either failed to perform a duty, exhibited misconduct, or where other significant reason to make such adjustment exists, only after notice to the administrator is given and either no objection is received from the administrator within 5 days of the notice or where an objection is overruled. Where a written objection is received within the stated time period, the court shall notify the objecting party and schedule a hearing on the objection within 10 days to determine its merits. The Court shall issue a ruling within 2 days of the hearing.

(7) In the case of an orderly self-liquidation or a reorganization conducted primarily by the debtor, the administrator's compensation shall be set by the Court by contract with the administrator commensurate with the administrator's duties in such a case. The proposed contract shall be provided to the debtor, and to either the creditors committee, if such a committee is formed, or to creditors holding the 10 largest unsecured claims. If no written objection is received within 5 days of the notice, the Court shall issue an order approving the contract. Where a written objection is received within the stated time period, the court shall notify the administrator and schedule a hearing on the objection within 10 days to determine its merits. The Court shall issue a ruling within 2 days of the hearing. The debtor is not eligible to receive fees in its own reorganization.

(8) In the case of a reorganization conducted by the administrator, the administrator's compensation shall be set by the Court commensurate with the administrator's duties in such a case. The proposed contract shall be provided to the debtor, and to either the creditors committee, if such a committee is formed, or to creditors holding the 20 largest claims. If no written objection is received within 5 days of the notice the Court shall issue an order approving the contract. Where a written objection is received within the stated time period, the court shall notify the administrator and schedule a hearing on the objection within 10 days to determine its merits. The Court shall issue a ruling within 2 days of the hearing.

#### **Article 22: Administrator authority.**

The administrator is authorized to perform the following actions and shall perform such actions in a timely manner where required. The administrator may--

- 1) distraint and put a seizure on the property of the debtor;
- 2) perform a physical inventory of the debtor's property;
- 3) take reasonable and necessary measures for ensuring the protection of the property belonging to the debtor;
- 4) utilize the enforcement services of the government, police services or to hire private security personnel, where necessary for the performance of items 1), 2) or 3) above;
- 5) call creditor meetings and preside over such meetings;

- 6) initiate legal proceedings before the Court based upon provisions set forth in this Law, or any other applicable law where appropriate and justified;
- 7) initiate, prosecute, defend, settle or discontinue legal or administrative actions or proceedings before any courts or administrative bodies within Montenegro or in foreign countries;
- 8) petition the Court for instructions on how to proceed where necessary;
- 9) petition the appropriate bodies of government or the courts of foreign countries as the official authorized representative of the debtor' s estate to request the distraint, seizure, protection or return of property of the debtor located in foreign countries;
- 10) hire and supervise the work of employees, subordinates and experts necessary for the proper administration of the case with Court approval;
- 11) ascertain the validity, extent and priority of claims presented against the debtor, and of any security interests, and to raise appropriate objections to such claims or security interests where adequate grounds to do so exist;
- 12) initiate legal action before the Court or other appropriate judicial bodies in the performance of his duties set forth in this Law, including actions;
  - to recover debtor funds or property in the custody of others;
  - to recover funds fraudulently conveyed;
  - to recover voidable preferences.
- 13) supervise and administer the activity of the debtor within the scope of his duties defined by this Law, including instances where the debtor has submitted a Statement of Intention to either reorganize or to conduct an orderly self-liquidation;
- 14) close all existing debtor bank accounts, to open a special insolvency account in a Court-approved bank located and registered within the Republic, 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;
- 15) convert non-cash property of the debtor into cash;
- 16) where the debtor fails to submit necessary information within the time period defined by this Law, involve corresponding specialists for submitting the mentioned information and to pay them at the expense of the estate.
- 17) involve corresponding specialists for confirming the reliability of the information submitted by the debtor and to pay them at the expense of the estate.
- 18) notify all corresponding persons for transferring all business correspondence addressed to the debtor, to the administrator or to the special insolvency account;
- 19) notify all the banks where the debtor has activity of the insolvency case to prevent a transfer of assets or other transaction without administrator approval;
- 20) notify the corresponding bodies performing the registration of movable, immovable and other property subject to state registration of the insolvency case.

**Article 23: Report of causes.**

Within 30 days appointment of the appointment, the administrator shall submit to the Court a brief memorandum of no more than 3 pages setting forth the primary causes

or main circumstances leading to the debtor's financial difficulty. The document must contain a plain statement of whether or not the administrator believes that there is a reasonable possibility for reorganization. The report shall be of an informational nature and its conclusions shall not have any legal effect. The report shall be made available for inspection by the creditors.

**Article 24: Administrator status and liability.**

(1) The administrator is independent party, appointed under the authority of the Court, and can be sued in his or her own name. The administrator shall exercise reasonable care and diligence in the timely performance of tasks within the scope of administrative duties.

(2) The administrator may be personally liable for intentional torts, intentional criminal acts, gross negligence, or actions taken outside the scope of administrative duties, but shall not be liable for ordinary business losses during the operation of the company or administration of property of the estate.

(3) The administrator shall not be held personally liable for losses incurred by a creditor, the debtor, shareholder, partner, the estate, or any other party for consequences or damages flowing from decisions made or actions taken, or not taken, requiring business judgment during the performance of work within the scope of the administrative duties work, if the administrator has exercised ordinary care and diligence in the timely performance of those duties.

**Article 25: Reporting.**

(1) The administrator shall submit to the Court on a monthly basis a report entitled "Report of Monthly Activities" .

(2) The Report of Monthly Activities shall, at minimum, contain the following information:

- 1) List of property sold, transferred or otherwise disposed of;
- 2) List of cash expenditures and disbursements;
- 3) Bank account balances, indicating beginning and ending balances, additions and reductions;
- 4) List of experts hired and the rates expended;  
and
- 5) In the case of a reorganization, monthly financial statements, including a Balance Sheet and Income Statement.

**Article 26: Opposition, Appeal and Request to Compel.**

(1) The debtor, a creditor, or any affected party may submit to the Court a written Opposition to any action of the administrator, or may submit a Request to Compel the performance of any action required of the administrator under this Law.

(2) Written Opposition to action of the administrator must be submitted to the Court within 5 days of the offending action.

(3) For any action taken by the administrator for which there was adequate notice given and an opportunity to respond provided by this Law before such action was taken, such action shall not be subject to an Opposition under this Article, unless the notice given was defective and justice so requires.

(4) Within 5 days after the submission of the Opposition, the Court shall make a decision on the Opposition or Request to Compel and shall send notice of such to the objecting party and the administrator.

(5) The mere submission of an Opposition or Request to Compel shall not operate to suspend the actions of the administrator during the time of consideration by the Court, unless the suspension is necessary and such suspension is ordered by the Court.

(6) Appeals of the decisions of the Court shall be initiated according to procedures specified by applicable law governing appeals of Commercial Court decisions. Submission of an appeal does not operate to suspend the procedure of the case in any way during the time of the appeal, unless such suspension is necessary and is specifically ordered by the appeals court. For any actions which were suspended by the pendency of an appeal shall be allowed additional time to compensate for the time the action was suspended.

#### **Article 27: Removal of the administrator.**

The Court, on its own initiative, or where adequate cause is shown by the written request of either the debtor, individual creditor, group of creditors, or by the administrator him or herself, the Court may dismiss the administrator, relieve him or her of all duties and appoint a new administrator in his or her place.

The replaced administrator is required to cooperate with the new administrator in turning over records, transferring accounts and other aspects of transition.

#### **Article 28: Initial creditors meeting and formation of a creditors committee**

(1) The administrator shall preside over the first meeting of creditors.

(2) At the first meeting of creditors, the creditors shall form and elect members to serve on a Creditors Committee.

(3) A meeting of creditors may be called at the initiative of creditors, administrator, or the creditor or creditors holding 5 % or more of the claims. Creditors who initiate the meeting shall cover all expenditures made for organizing the meeting.

(4) The expenses related to meetings called at the initiative of the administrator shall be covered at the expense of the estate.

(5) The presence of the debtor, or debtor's representative where the debtor is a legal person, is obligatory at all meetings of creditors where the debtor's presence is requested, unless the absence is excused by written permission of the administrator.

(6) During the meeting of creditors, the debtor, when the debtor is an individual entrepreneur, or debtor's representative where the debtor is a legal person, shall be obligated to answer any question of the administrator and creditors related to the debtor's financial-economic activity or the location of property of the estate.

(7) Any creditor may participate in the meeting of creditors

**Article 29: Creditors committee.**

The creditors committee shall include three to five creditors having the largest unsecured or partially secured claims. No creditor's committee shall be considered constituted if the debtor has less than three creditors or if the creditors willing to serve on the committee is less than three.

**CHAPTER IV.**

**PROPERTY OF ESTATE**

**Article 30: Property of the estate.**

The *registration* of a petition creates a bankruptcy estate consisting of all property owned by the debtor at the time of the submission of the petition, including but not limited to—

- 1) all movable, immovable, tangible or intangible property, wherever located, whether in the custody of the debtor or third parties;
- 2) claims and legal actions against third persons;
- 3) proceeds from actions recovering fraudulent or preferential transfers;
- 4) inheritance, insurance and other funds received within 6 months of the petition date;
- 5) rent, income and proceeds generated from the use of the property of the estate or operation of the debtor's business;
- 6) contractual rights, licenses, or other rights created or granted by law.

**Article 31: Restrictions on the transfer of property.**

(1) From the moment of *registration of any petition* until the appointment of an administrator, the sale, disposal, alienation, transfer or initiation of a rental of any property of the debtor's estate, in whole or in part, including any transfers for the satisfaction of existing obligations, or creation of pledges or security interests against the debtor's property is prohibited without a Court order.

(2) After the appointment of the administrator, sale, disposal, alienation, transfer or initiation of a rental of any property of the debtor's estate, in whole or in part, including any transfers for the satisfaction of existing obligations, or creation of pledges or security interests against the debtor's property is prohibited without a Court order, except for the sale or transfer of goods in the ordinary course of operation of the debtor's business where the business operations continue to function.

- (3) The administrator shall not have the right to sell or otherwise alienate the property belonging to the debtor, if--
- 1) the debtor has submitted a Statement of Intention to reorganize or conduct an orderly self-liquidation and the time within which the plan must be confirmed has not expired, or
  - 2) a plan of reorganization or plan of orderly liquidation has been confirmed and does not require the alienation of the property by the administrator.
- (4) The debtor' s right to sell, alienate, transfer, rent property of the estate, create pledges or security interests against the property or otherwise control the property of the estate shall in any event cease upon—
- 1) the issuance of an order by the Court commencing a liquidation under Chapter IX of this law.
  - 2) the failure by the debtor to submit or approve a plan of reorganization or Self-Liquidating Plan within the time limits specified in Article 63, unless extended by an order of the Court;
  - 3) removal of the debtor or debtor' s management pursuant to Article 43 of this Law.

**Article 32: Distraint, sealing and seizure of the debtor' s property.**

- (1) Immediately after appointment by the Court in a liquidation case, the administrator shall take all necessary steps to locate, distrain, seal, safeguard and protect the property of the estate. The administrator shall take reasonable measures required for the maintenance of the property of the estate.
- (2) The administrator is authorized to sell perishable goods with consent of the court on an expedited *ex parte* basis, in accordance with procedures set forth in Article 82, paragraph 2 of this Law.
- (3) The administrator is authorized to sell property requiring significant maintenance costs with consent of the court on an expedited *ex parte* basis.
- (4) Where property of the estate is in the custody of a third party, the administrator shall issue a notice of distraint to the party possessing the property, and, where deemed necessary, issue a request for turnover of custody. The administrator may, in his discretion temporarily leave the property with the third party if the property is protected, physically safe, and it is prudent to do so.
- (5) Where property of the estate is located in other countries, the administrator shall, in accordance with the laws and procedures established by the Republic, apply to the Courts of those countries with a notice of distraint, seal or seizure of the mentioned property.

**Article 33: Inventory of the debtor' s property.**

- (1) The administrator shall conduct and tabulate the physical inventory of the property, within 30 days after his appointment. The Court may, at the request of the

administrator, extend this deadline in unusually large or complex cases or where appropriate circumstances to do so exist.

(2) The administrator may hire an accountant or expert where deemed necessary to assist in the inventory, at the expense of the estate with the prior notice to the creditor's committee, or where one is not formed, notice to creditors holding the 10 largest unsecured claims.

(3) The administrator may demand that the debtor or designated representatives of the debtor's management be present and assist in the physical counting.

(4) The inventory shall include all property of the estate and shall indicate the book value at the moment of the inventorying. The inventory may include estimates of fair market value where such information is available.

(5) The final inventory report shall be signed by the administrator, any experts hired by the administrator to assist in the inventory, as well as the debtor's representatives participating in the inventory. The signatures of the latter shall evidence their presence at the inventory taking and shall state that all relevant property has been inventoried. In the event the debtor's representatives do not agree with some aspect of the inventory, the representatives shall nonetheless sign the inventory noting their disagreement. The disagreeing representatives shall append a document explaining the nature of their disagreement.

#### **Article 34: Property on which the debtor has not yet obtained ownership rights**

(1) If goods sold to the debtor is in the state of transit at the moment of the petition submission, and the debtor has not yet obtained ownership rights to those goods, the seller may seek to have the goods returned, whereby the seller shall bear all the expenses connected with return, and shall returning any advance payment made by the debtor.

(2) Notwithstanding paragraph (1) of this Article, the administrator may demand delivery of the goods, if the estate pays the total contractual amount of the transaction, at his written instruction.

#### **Article 35: Contracts on transfer of securities and other goods.**

Where the debtor has entered into a contract mandating the transfer of certain recognized commodities or securities that are subject to trading on recognized stock exchanges or markets within a specified time period, and those time periods expire after the petition submission date, the difference between the purchase price and the market price at the close of the market on the petition submission date shall be the relevant price.

#### **Article 36: Agency and property held on behalf of third persons.**

(1) Where the debtor is the agent or broker of a third party authorized to receive or sell property belonging to the third party, that party may rescind the agency and seek

return of the property held in the debtor' s custody by submitting a written request for such with the administrator.

(2) Where at the time of the request for the return of the property it is impossible to return all or part of the property held in the debtor' s custody on behalf of a third party, the third party is entitled to submit a claim at the contract price. Where it is impossible to determine the contractual price, sales price as of the petition submission date shall govern.

(3) Where at the time of the request for the return of the property the debtor possesses property to be sold, but its specifications are subject to rapid and severe decline in value, as in the case of perishable goods, then owner is entitled to submit a claim for the contractual price of the property.

## **CHAPTER V.**

### **ADMINISTRATIVE POWERS**

#### **Article 37: Moratorium and suspension of all actions.**

(1) From the moment of *petition submission*, all actions, proceedings or acts of any kind aimed at satisfying the claims against the debtor, shall be suspended (hereinafter: Moratorium), including--

- 1) any acts to collect or recover a claim representing debts, taxes, penalties or obligations of any kind arising prior to the petition submission date except though the claims submission procedure ;
- 2) any and all acts to create, modify, increase, perfect or enforce a lien, pledge or security interest in the property of the estate or against the debtor;
- 3) any acts to realize, seize, or sell any secured, pledged property of the debtor' s estate or to exercise control over property of the estate;

(2) The moratorium from paragraph (1) of this Article shall not apply to—

- 1) actions directed against third parties or non-debtor guarantors;
- 2) set off (cancellation of mutual debts) only to the extent permitted in Article 58 of this Law;
- 3) criminal proceedings against the debtor, its governing bodies, officers or management;
- 4) regulatory proceedings or actions taken by the competent Government bodies with regard to the prevention or remediation of violations of health, safety, and the environment;
- 5) the clearing of checks of funds through the authorized institutions or other check clearing mechanism, the clearance of contracts or trades in recognized securities or commodities markets or other regulated exchanges, but not including the collections of fines penalties or margin amounts;
- 6) inspections and requests for inspection made by secured creditors of any assets that are the subject of their security interest.

(3) Lapse of moratorium. The moratorium from paragraph (1) of this Article shall lapse and cease to exist after the expiration of time permitted for the submission of a plan of reorganization or plan of orderly self-liquidation as set forth in Article 63 of this Law, except where a plan is submitted to the court in a timely manner. In such case, the moratorium shall continue for 30 days or until the plan voting is complete. Once voting is complete, the moratorium shall lapse unless a plan is confirmed, in which case the moratorium shall continue for the duration of the plan.

**Article 38: Adequate protection.**

(1) Where property of the estate is secured by a pledge, lien or security interest, and the creditor holding the pledge, lien or security interest is prevented from exercising its right to seize, possess or sell the property due to the operation of the moratorium, the secured creditor is entitled to adequate protection of the secured property in order maintain its condition and value as it was at the time the moratorium came into being.

(2) Where the property subject to a security interest is not being adequately protected, the secured creditor may submit a written request to the Court seeking an order granting substitute adequate protection. Such a request may be combined with a request for suspension of the moratorium.

(3) The Court must issue a ruling on the request for adequate protection within 20 days of its submission otherwise the moratorium shall be considered suspended by operation of law with regard to the requesting creditor and only to the extent necessary for the creditor to exercise its rights in the secured property.

(4) The following shall be considered by the Court as substitute adequate protection:

- 1) Compensation by means of regular cash payments to the secured creditor equal to the decline in property value or compensation for actual or anticipated losses;
- 2) Exchange or the designation of additional secured property sufficient to compensate for the decline in property value or compensation for losses;
- 3) Delivery of proceeds generated from sale, use, alienation of the collateral to the corresponding secured creditor, to the extent of the secured claim of the latter;
- 4) Repair, maintenance, insurance coverage or security guard, as needed to remedy the problem;
- 5) Other protective or compensatory measures as the Court sees fit to protect the secured creditor's property value.

**Article 39: Suspension of the moratorium.**

(1) The Court may suspend or condition the operation of the moratorium upon the written request for such suspension where--

- 1) the debtor or administrator has not adequately protected secured property such that its physical safety is at risk or its value declining and there is no ability to otherwise provide adequate protection or substitute adequate protection;

- 2) the value of the subject property is less the combined amount of the secured interests, pledges or liens and the subject property is not critical to a reorganization; or
- 3) the request merely seeks permission to initiate or to continue a legal action commenced before another court or administrative agency. The Court in such cases may permit the action to proceed solely to enable the other action to reach a determination of the amount owed, the resulting amount which shall be subject to the claim submission and distribution procedures set forth in this Law.

(2) The Court must issue a ruling on the request for suspension of the moratorium within 20 days of its submission otherwise the request is considered automatically granted by operation of law and the moratorium suspended with regard to the requesting creditor only to the extent necessary to allow the creditor to exercise its rights in the secured property under the applicable security agreement.

**Article 40: Suspension of limitation periods.**

The running of any limitation periods for legal actions against the debtor that were prohibited by the commencement of the moratorium shall be interrupted during the operation of the moratorium. The running of such periods of limitations shall resume at the time when the moratorium no longer applies.

**Article 41: Provision of public utility services.**

(1) Upon the submission of the petition, any organization providing public utility services, including but not limited to electricity, natural gas, water, telephone, communication, and the like to the debtor may not cease providing these services based either upon unpaid pre-petition debts or upon the fact that the debtor is the subject of an insolvency proceeding. The debtor or administrator must make payment on current utility services going forward from the petition date onward.

(2) Upon the written request of the organization providing public utility services, the Court may, where justified, require the debtor or the administrator to set aside a portion of the debtor's funds with the Court to provide for payment of services provided by the requesting utility. The size of the amount transferred to this account shall not exceed one month's payment for utility services provided to the debtor by the corresponding company based upon the calendar month preceding the petition submission date.

**Article 42: Debtor duty to cooperate.**

The debtor is required to cooperate with the administrator, and is required to provide him with access to all documents and information concerning his activity and resources, including all information regarding all disbursements and transfers or alienation of property made with within one year of the petition submission date, and of all payments, transfers or business dealings made with the members of the debtor's management, governing body, family members, or other insiders as defined by Article 60, paragraph 2 of this Law.

**Article 43: Removal of the debtor or the debtor's management.**

(1) Where the debtor has not submitted a Statement of Intention to reorganize or to conduct an orderly self-liquidation within the period defined by this Law, or where the Court has otherwise ordered a liquidation to commence, all the rights of the debtor to manage or alienate the property are suspended. In such cases, the administrator is vested with the responsibility of managing the property of the estate from that moment forward.

(2) For appropriate cause, the administrator may request the Court to suspend or limit the activities of, or altogether remove, the debtor, any member of the debtor's management, or any of the debtor's employees from their positions, and, where necessary, have them physically barred from entering the premises.

(3) A creditor, group of creditors, or the debtor, or the affected party proposed to be removed or have their activities suspended may object to the decision by the Court to remove the debtor, in which case the Court shall set a hearing within 5 days of submission of the objection. The objection shall be heard in the Court within 10 days after submission. All affected parties may participate in the hearing.

(4) If the rights of the debtor or management have been removed or activities suspended or limited according to the procedure defined in paragraph (1) of this Article, the administrator may nonetheless, obtain Court permission to allow the utilization of the debtor or the debtor's management, fully or partially, under the control and supervision of the administrator, in accordance with the scope set by Court order, if the administrator shows that such involvement would be likely to increase the possibility of satisfying the claims of the creditors to a greater extent.

(5) If the debtor or other party has submitted a plan of reorganization or plan of orderly self-liquidation within the period defined by this Law, and the Court has confirmed such plan, then the debtor and the debtor's management shall continue to operate under the supervision of the administrator, according to the provisions of the confirmed plan, and within any restrictions set by the Court. The operation of this provision shall remain in effect until the Court issues an order acknowledging the completion or suspension of the plan of reorganization or orderly self-liquidation.

**Article 44: Rescission of unperformed contracts.**

(1) The administrator may rescind or affirm any contract, including those for the lease of real estate, and other long-term contracts, where both parties have not completed or substantially completed performance, provided that the administrator gives notice of rescission to the party to the contract to be rescinded within 30 days of the case acceptance date. Where the administrator fails to issue a notice of contract rescission, the contract shall be deemed affirmed.

(2) Parties to contracts rescinded pursuant to provisions of this Article may submit claims for damages that arose from the rescission according to the claims procedure defined by this Law.

- (3) In the case of leases having a duration of over one year, claimants may submit damage claims limited to an amount that is the lesser of--
- 1) the amount to which they are entitled to receive if the remaining lease term is performed according to the terms of the lease contract; or
  - 2) an amount equal to 2 years of lease payments under the terms of the lease contract.
- (4) Damages arising from the breach of a contract either affirmed or deemed affirmed under this Article shall be considered an administrative expense.
- (5) If the lease contract stipulates regular payments by the debtor, the administrator may execute them only after Court approval of the lease terms.

**Article 45: Provision of professional or personal services.**

- (1) The administrator may choose to perform contracts upon which the debtor has committed to provide personal services requiring professional qualification, unique skill or talent stipulated by law or other legal acts, only where the other party to the contract agrees in writing to accept substituted performance from the administrator or an authorized representative, and where the latter possesses all necessary and appropriate professional qualifications for the performance of such activities.
- (2) Where the administrator fails to perform the obligations set for the in paragraph (1) of this Article or where the other party to the contract does not agree to accept substituted performance, the pay is entitled to submit claim in the amount of the damages incurred therefrom in accordance to the procedure set forth in this Law.

**Article 46: Obtaining credit.**

- (1) Where the debtor enterprise continues to operate and there is an intent to reorganize, the administrator may obtain unsecured credit or incur unsecured debt in the ordinary course of the debtor' s business operations without obtaining Court approval. Such credit is an administrative expense.
- (2) Where the debtor enterprise continues to operate and there is an intent to reorganize, the administrator may obtain unsecured credit or incur unsecured debt that is outside the ordinary course of the debtor' s business operations only by obtaining Court approval after notice and opportunity to object pursuant to paragraph (5) of this Article. Such credit is an administrative expense.
- (3) Where the administrator is unable to obtain unsecured credit as a priority expense pursuant to paragraphs (1) and (2) of this Article, the Court may, after notice and opportunity to object pursuant to paragraph (5) of this Article is provided, authorize the administrator to obtain credit—
- 1) with a priority over other priority claims of the kind specified in Article 86, paragraph (2) of this Law;
  - 2) secured by property of the estate that is otherwise not subject to a pledge, lien or security interest;

- 3) secured by a junior (inferior) pledge, lien or security interest on property of the estate that is subject to an existing pledge, lien or security interest.

(4) The Court may, after notice is given to creditors committee, or creditors holding the 10 largest unsecured claims where no such committee is formed, where appropriate, authorize the administrator to obtain credit secured by a security interest senior or equal to that of an existing pledge, lien or security interest where —

- 1) the administrator is unable to obtain such credit otherwise;
- 2) there is adequate protection of the status of the holder of the existing pledge, lien or security interest upon which the senior or equal security interest is to be granted.

(5) Where Court approval is sought under paragraphs (2), (3) or (4) of this Article, appropriate notice must be given to the creditors committee, or to creditors holding the 10 largest unsecured claims where no such committee is formed, and any affected secured creditors or priority claim holders. If no objection is received within 5 days of the issuance of the notice, the Court shall grant the requested permission. Where a timely objection is received, the court shall set a hearing within 5 days of the objection to resolve the matter.

## **CHAPTER VI.**

### **CLAIM SUBMISSION**

#### **Article 47: Claim registration and procedure.**

(1) All claims submitted for inclusion in the bankruptcy proceeding are governed by the procedures set forth in this Article.

(2) All claims shall be submitted to the Court in written form no later than 60 days of the *case acceptance date*. Such written document shall be called a “Proof of Claim.”

(3) All Proofs of Claim shall contain the following information, where applicable:

- 1) The creditor’s name, address and telephone, or the name, address of its designated contact or authorized representative;
- 2) The amount of the claim, indicating whether the claim is secured or unsecured, priority or otherwise entitled to special status;
- 3) Documents evidencing the existence, amount, status or priority of the claim;
- 4) Where the claim is based on a pending civil lawsuit, the court before which the case is pending and the number of the case.

(4) The submitted Proof of Claim shall be received and marked by the Court in a manner to indicate the date and time of submission. A receipt shall be provided by the Court to the submitting party to evidence the time and date of the registration. The Court shall enter the Proof of Claim in a separate register designated for this purpose, called a “Claims Register.”

(5) Within 10 days after the expiration of the claims bar date specified in paragraph (1) of this Article, the Court shall notify the administrator, debtor and creditors committee if such has been formed, of the closure of the Claims Register and shall transfer a copy of the Claims Register for evaluation by the administrator.

**Article 48: Computation of claim.**

(1) The amount of the claim shall include the principal debt and any interest that accrued under the rate specified under the contract, until the time petition submission. Claims shall also include the costs of civil and enforcement proceedings up to the case acceptance date, if so specified in the contract between the parties, and may include any other amounts pursuant to the original contract terms allowed by law.

(2) Where a portion of the creditor's claim was satisfied pre-petition, only the unsatisfied claim shall be included in the list of general claims.

(3) Where a claim or portion of a creditor's claim was satisfied and the creditor was required to remit all or a portion thereof back to the estate as part of a recovery of a preferential transfer pursuant to Article 60 of this Law, the amount remitted shall be allowed as an unsecured claim, if the claim is otherwise valid.

(4) Where a plan of reorganization contemplates satisfaction of less than the full computed claim amount, the percentage to be paid pursuant to the plan shall be applied to the whole amount of the ascertained claim referred to in paragraph (1) of this Article.

**Article 49: Interest on unsecured and secured claims.**

(1) For unsecured claims in an ordinary liquidation case, interest, penalties or other amounts shall cease to accrue on all unsecured claims from the petition submission date.

(2) For secured claims in an ordinary liquidation case, interest at the pre-default, non-penalty contract rate shall continue to accrue on the pre-petition claim up to the extent of the value of the secured property and no further.

(3) Notwithstanding the prohibition of interest on pre-petition unsecured claims under paragraph (1) or (2) of this Article, the accrual and payment of interest may nonetheless be allowed where funds are available for disbursement after satisfaction of all other claims under the distribution priorities specified by Article 86 of this Law. Such interest shall accrue at non-default contract rates and shall rank equal to subordinated claims under Article 86, paragraph (5) of this Law.

**Article 50: Claim maturity.**

Claims not yet matured shall be deemed matured as of the case acceptance date for purposes of submitting a Proof of Claim. The claims of the debtor that are reduced to a monetary amount or have not yet matured shall be included their equivalent financial value.

**Article 51: Foreign currency.**

Claims denominated in foreign currency shall be converted into their equivalent value in Euros at the official exchange rate as of the petition submission date. The Proof of Claim shall report the amount in both the original currency, as well as the converted amount.

**Article 52: Claims not fixed in amount.**

The claims against the debtor that are or that are not stated in a fixed amount of currency shall be converted into a fixed sum for purposes of submission of a Proof of Claim.

**Article 53: Conditional claims.**

(1) Funds from the bankruptcy estate shall be set aside from the satisfaction of contingent or conditional claims, if it appears reasonably likely that such claims will be valid.

(2) Claims that depend on the resolution of a condition shall not be entitled to receive a distribution until the condition takes place. However, the Court, in its discretion, may allow distribution where the creditor provides sufficient security that the distributed sum will be returned to the bankruptcy estate if such condition does ultimately not take place.

(3) Where it becomes probable that the condition will not come into being prior to the final distribution, the Court shall decide whether funds should be set aside in a special account specifically reserved for the payment of such claims as they come into being after case closure. In such cases, special escrow instructions shall be drawn up by the administrator and approved by the Court setting forth the conditions for payment.

(4) Where it becomes probable that the condition will no longer come into being, such claims shall be extinguished and any remaining funds shall be distributed to other creditors according to the provisions of this Law.

**Article 54: Secured and partially secured claims.**

(1) Where the proceeds generated, or estimated to be generated, from the sale or transfer of secured property are insufficient to fully satisfy the corresponding secured claim, the portion estimated to remain unsatisfied shall be considered an unsecured claim, and the creditor shall be considered an unsecured creditor to the extent of the unsecured claim.

(2) The value of the secured portion shall be estimated by the creditor on the creditor's Proof of Claim. This value shall be considered accurate for the purposes of voting on any proposed plan of reorganization or plan of orderly self-liquidation unless subject to an objection according to the procedure and time limits for the submission of claims specified by this Law.

(3) The secured creditor is entitled to participate in the distribution of funds from the sale of the non-pledged property generated before the sale of the pledged property. The size of the amount received from this distribution shall subsequently be deducted from the amount of the proceeds generated from the sale of the pledged property.

**Article 55: Obligations with unexpired periods of performance.**

Time periods of all obligations with unexpired time periods for performance are considered as expired as of the petition acceptance date. All claims arising therefrom shall be treated pursuant to the procedure and extent defined by this Law.

**Article 56: Validation of claims.**

- (1) The administrator shall obtain the Claims Register, or a copy of the Claims Register, from the Court within 10 days of the expiration of the claims bar date.
- (2) The administrator shall evaluate the validity, extent and priority of claims presented against the debtor, and of any related security interests claimed, and submit an objection within 30 days of the claim bar date where adequate grounds to do so exist.
- (3) The administrator or debtor may submit a claim or claims to recognize debts that have not been included in the claims register or presented in a Proof of Claim in order to have the claim subject to proceedings under this law.
- (4) All claims submitted before the bar date shall be deemed valid and accepted where no objection is submitted to the Court within 30 days after the claims bar date.
- (5) The Claims Register shall be made available for inspection by the debtor, any creditor or any interested party. If the Claims Register is in the custody of the administrator, appropriate arrangements shall be made for any creditor or interested party to view or photocopy the register during normal business hours upon request.
- (6) Where a timely objection to a proof of claim is submitted, the Court shall set a hearing within 10 days and shall notify the affected creditor of the objection. At this hearing, the Court shall set a schedule for the proceedings governing the resolution of the objection which will include, at minimum, the date set for the submission of evidence by both parties, and the date set for the following hearing. A decision on the claim objection shall be made within 60 days of the first hearing unless it is determined by the Court that the complexity of the dispute or other valid reasons exists justifying a longer period of time. The lack of a decision on a claim objection shall not stop the proceeding of the bankruptcy case in all other respects.
- (7) The Court may permit the resolution of any claim or claims to be decided by another court, government agency, or private arbitration panel, where it deems appropriate to do so.

**Article 57: Final claims list.**

(1) Within 10 days of after resolution of all or substantially all claim objections, the administrator shall compile and submit to the Court a final list of claims, indicating their amount, status as secured or unsecured, and their priority.

(2) The final claims list, prepared pursuant to paragraph (1) of this Article, shall be transmitted to the Court, the debtor, the creditors committee or to creditors holding the 10 largest unsecured claims where no such committee is formed.

**Article 58: Set off of claims.**

(1) The cancellation or “set off” of mutually held claims is allowed only to the extent provided in this Article.

(2) Mutual claims that were both in existence prior to the petition submission date that were indeed mutually canceled in the normal and ordinary conduct of business dealings shall be considered as set off and shall not be subject to inclusion in the bankruptcy estate, nor the claims registration process, provided that written notice of the mutual cancellation is provided to the Court prior to the claims bar date.

(3) Set off is not allowed if the claim to be set off has been purchased or assigned to one of the participating creditors within six months before or after the petition submission date.

(4) Under no circumstances shall claims that have arisen *prior* to the petition submission date be set off against a claim that has arisen *subsequent* to the petition submission date.

**Article 59. Post petition Employee Termination Claims.**

(1) Any termination of employees during a liquidation, reorganization, or orderly self-liquidation under this law is deemed to be a termination of labor contracts by force of law pursuant to a bankruptcy regardless of whether such termination occurs on the date of case commencement or later in the case.

(2) Notwithstanding paragraph (1) above, any claims arising under applicable non-bankruptcy law from employee termination occurring during any time during a liquidation, reorganization, or orderly self-liquidation under this law shall not in any event exceed 15 times the minimum salary per month.

## CHAPTER VII.

### AVOIDANCE ACTIONS

#### Article 60: Avoidance of certain transfers.

- (1) A “transfer” for the purpose of this Article shall include any mode, direct or indirect, of conveyance, sale, exchange, gift, disbursement, disposal, grant of a pledge, lien or security interest, or other rights.
- (2) The following persons are considered “insiders” of the debtor:
- 1) The owner of 20 per cent or more of the debtor’s share capital, or otherwise in possession of a clear controlling interest in the debtor enterprise;
  - 2) Members of the governing bodies, management or those otherwise holding a position of control over the debtor enterprise;
  - 3) A person with access to inside information not generally available to the public regarding the decisions of the debtor or financial condition of the debtor enterprise;
  - 4) Members of the immediate families or close relatives of those listed in subparagraphs 1), 2) and 3) of this Article.
- (3) Inequitable (fraudulent) transfers. The administrator, debtor, creditor committee, or if the latter is not formed, any creditor, *within one year after the case acceptance date*, may initiate a legal action to void and recover transfers--
- 1) to, or on behalf of, insiders of the debtor, or where the debtor is an individual entrepreneur, made to immediate family members or close relatives the debtor, where no value, or less than the equivalent value, was received, *made within five years* preceding the petition submission date;
  - 2) to any third party where no value, or less than the equivalent value, was received, *made within three years preceding* the petition submission date, where there is an intent to defraud or conceal assets from a creditor;
  - 3) to any third party as a purported donation where no value, or less than the equivalent value, was received, *made within one year* preceding the petition submission date, except for donations of less than 500 Euros to bonafide religious, cultural or charitable organizations;
  - 4) to any third party where no value, or less than the equivalent value, was received, *made within five years* preceding the petition submission date, where—
    - the debtor was insolvent at the date such transfer was made, or became insolvent because of such transfer;
    - the debtor, as a result of the transfer, incurred debts clearly beyond the debtor’s ability to pay the debt or debts;
    - the debtor engaged in a transaction where the remaining property or capital was unreasonably small.
  - 5) to any third party where no value, or less than the equivalent value, was received, made by the debtor or insiders *during the time period since the petition submission date prior to the appointment of the administrator without Court authorization.*

- (4) The administrator, debtor, creditor committee, or if the latter is not formed, any creditor, may, *within one year after the case acceptance date* may initiate a legal action to void and recover transfers made--
- 1) for the direct or indirect payment of pre-existing debt owed to a non-insider *within 90 days of the petition submission date*;
  - 2) for the direct or indirect payment of pre-existing debt owed to an insider *within one year of the petition submission date*;
  - 3) which create, perfect, modify or increase or remove a lien, pledge or security interest *within 90 days prior to the petition submission date*.
- (5) Transfers indicated above may not be voided—
- 1) where the debtor received new value reasonably equivalent to what was provided;
  - 2) which were made in the normal course of the regular, routine business activities or transactions of the debtor, specifically including—
    - payment for purchases of inventory, goods and supplies normally sold or consumed as a part of the debtor' s primary business activity;
    - sale and payment for merchandise or services that the debtor customarily sells or provides as a part of the debtor' s primary business activity;
  - 3) transfers made in satisfaction of administrative convenience claims.
- (6) Upon an adequate showing of a transfer of the kind specified in this Article where no exceptions apply, the Court shall issue an order—
- 1) reversing the transfer, where possible;
  - 2) directing the initial transferee, the beneficiary of the transfer, or a subsequent transferee to return the subject money or property transferred; or
  - 3) where the property is significantly damaged or can no longer be returned, directing the initial transferee, the beneficiary of the transfer, or a subsequent transferee to pay the estate a sum of money equivalent to the worth of the property transferred, plus any compensatory damages necessary to restore the debtor to its pre-transfer position.
- (7) The transferee having returned the transferred property or otherwise reversed the transfer shall be entitled to submit a claim in accordance with provisions of claim submission procedure --
- 1) for an amount equal to the amount returned, if the voided transfer was for the return of money or property received in satisfaction of a legitimate preexisting debt of the kind specified in paragraph (4), subparagraphs 1) and 2) of this Article.
  - 2) for the return any money the transferee paid to the debtor in a voided exchange of the specified in paragraph (3) of this Article, unless there is evidence that the transferee was involved in wrongdoing, collusion with the debtor or knew the exchange was fraudulent.
- (8) A “succeeding transferee” is a party receiving the property subject to a transfer of the kind specified in paragraphs (3) and (4) of this Article. The Court shall allow actions to recover property or money received by a subsequent transferee, except

where the subsequent transferee is an innocent bonafide purchaser for value who was unaware of, or had no reason to know, the voidable nature of the transfer.

(9) While actions to recover voidable transfers of the kind specified in this Article may be maintained against the initial transferee, the beneficiary of the transfer, or a subsequent transferee, the recovery obtained shall not exceed the amount of the transfer plus any compensatory damages necessary to restore the debtor to its pre-transfer position.

## **CHAPTER VIII.**

### **REORGANIZATION**

#### **Article 61: The plan of reorganization.**

(1) Any proposal for the reorganization, restructuring or transformation of the debtor enterprise that does not require the immediate liquidation by a Court appointed administrator, including an orderly self-liquidation, shall be subject to the provisions of this Chapter.

(2) Any plan of reorganization of the debtor shall be formulated into a written document known as a “ plan of reorganization.”

(3) Any program for the self-liquidation of the debtor in a manner that contemplates other than the immediate liquidation of the property of the estate by an administrator pursuant to Chapter IX of this Law, shall be formulated into a written document known as a “ plan of orderly self-liquidation.” Provisions of this law referring to a “ plan” or “ plan of reorganization” refer equally to a plan of orderly self-liquidation” unless obviously inapplicable or otherwise stated.

#### **Article 62: Who may submit a plan.**

A plan of reorganization may be submitted by the debtor, administrator, creditors holding at least 30% of the secured claims, creditors holding at least 30% of the unsecured claims, as well as persons owning at least 30% of the debtor’ s ownership interest whether in the form of shares, partnership interest or otherwise.

#### **Article 63: Period for plan submission.**

A plan of reorganization must be submitted to the Court for approval no later than 90 days after the case acceptance date. The deadline for submission of the plan may be extended by the court, where appropriate circumstances exist, for an additional 30 days. Any extension beyond 120 days can only be extended with the unanimous consent of the secured creditors.

**Article 64: Pre-packaged plan.**

Nothing in this Law prohibits the submission of a plan of reorganization at the same time that a petition is submitted, provided that other requirements of this Law have been complied with.

**Article 65: Expenses for plan submission.**

Expenses related to the formulation and submission of a plan of reorganization proposed by a party other than the debtor shall be covered by the proposing party. Expenses related to the formulation and submission of a plan of reorganization proposed by the administrator or debtor shall be covered at the expense of the estate, and shall rank in accordance with 86 subparagraph (2) point 5 of this Law.

**Article 66: Methods of reorganization.**

Measures taken to accomplish the reorganization may include any measures, either separately or in combination, that are not prohibited by this Chapter or other laws, provided that the measures comply with all plan approval requirements and with any specific provisions of this Law which apply to the particular measure. Such measures may include:

- 1) Retention of all or part of the property of the estate;
- 2) Sale of all or part of the property of the estate, with or without continuation of lien, pledge, or security interest; or transfer of the property in satisfaction of claims;
- 3) Closure of unprofitable operations or changing business activities;
- 4) Cancellation or reformulation of burdensome or unfavorable contracts or leases;
- 5) Deferment of debt payments, or providing for repayment by installments;
- 6) Modification of maturity dates, interest rates, or other terms of a loan or security instrument;
- 7) Full or partial debt forgiveness;
- 8) Satisfaction or modification of pledges, liens or security interests;
- 9) Conversion of unsecured loans into secured loans;
- 10) Pledge of unencumbered assets;
- 11) Conversion of debt to equity;
- 12) Obtaining new credit;
- 13) Obtaining new investment;
- 14) Challenge and invalidation of claims lacking in legal validity;
- 15) Curing of defaults;
- 16) Termination of employees;
- 17) Transfer of unencumbered assets in satisfaction of claims;
- 18) Amendments of the debtor's charter, by laws or other founding or governing documents;
- 19) Merger or consolidation with one or more entities;
- 20) Transfer of all or part of the property to one or more existing or newly formed entities;
- 21) Cancellation or issuance of new securities by the debtor, or of any new entity created pursuant to the above paragraph; or

22) Any other measures not prohibited by law and in conformity with the restrictions of the plan requirements and plan approval process.

**Article 67: Adequate disclosure.**

(1) The plan of reorganization must disclose information sufficient to allow an ordinary person to make an informed choice on whether or not to vote in favor of the plan.

(2) Notwithstanding other provisions of this Chapter, the plan shall, at minimum, set forth in language sufficiently clear for an ordinary person to understand how claims will be paid, what amount will be distributed and when.

**Article 68: Contents of the plan of reorganization.**

The plan of reorganization shall include:

- 1) A brief introduction generally describing the debtor's business activity and the circumstances leading to financial difficulty, of no more than one page in length;
- 2) A description of the method and means for accomplishing the plan, detailing what measures are intended to be taken, such as those set for in Article 66 of this Law, or other measures contemplated in sufficient detail such that it is clear as to how the reorganization shall be accomplished;
- 3) A statement of what amount of money or property is proposed to be transferred for the full or partial satisfaction of claims by category, including secured, priority, senior, unsecured and any other classes of creditors, as well as the procedure satisfaction of the claims and the timing for such payment;
- 4) A description of the procedure to be used for the sale of any assets, describing what assets are to be sold, whether with or without continuation of any pledge, lien or security interest, the intended use of any proceeds from such sales,
- 5) A statement of the time periods for completion of the plan, and a statement of the time periods anticipated for the implementation of major components of the plan where possible;
- 6) A statement of who the management will be and what their compensation shall be;
- 7) A statement of what hired specialists are to be utilized and what their compensation shall be, as well what the administrator's compensation shall be;
- 8) Financial statements, including balance sheets and income statements for the preceding five years;
- 9) Financial projections including projected income statement for the next five years;
- 10) An estimate of what amounts of money would be expected to be generated in a liquidation, if the company were liquidated;
- 11) The date that the plan shall be come into effect, which shall be known as the "effective date."

**Article 69: Absolute priority.**

In any plan of reorganization, no class lower in priority shall receive any distribution or retain any rights unless all higher ranking classes are either satisfied in full or have voted in favor of lesser treatment accorded within the plan.

**Article 70: Full satisfaction.**

In any plan of reorganization, no class higher in priority shall receive a distribution exceeding the full satisfaction of their claims unless all lower ranking classes of creditors are either satisfied in full or have voted in favor of such treatment under the plan.

**Article 71: Minimum protection.**

All claims of creditors who did not vote in favor of the plan of reorganization shall receive under the plan no less than they would receive in a liquidation in accordance with that claim's rank in priority pursuant to a liquidation conducted under Chapter IX of this law.

**Article 72: Taxation of debt forgiveness pursuant to a plan.**

Any debt forgiveness that occurs pursuant to the provisions of a confirmed plan of reorganization shall be exempt from taxation as ordinary income. Any transfer or sale of property pursuant to a reorganization plan shall not be considered a taxable exchange to the debtor enterprise or to the bankruptcy estate. Where the entity continues to conduct ordinary business in the period after the bankruptcy petition, the entity shall be liable for all applicable taxes incurred for post petition activity as is ordinarily assessed for the given type of business operation.

**Article 73: Exemption from certain securities laws.**

- (1) Any securities that are issued or canceled pursuant to the provisions of a confirmed plan of reorganization shall be exempt from the requirements of the securities registration laws of the Republic to the extent set forth within this article.
- (2) Any securities issued pursuant to the provisions of a confirmed plan of reorganization to the existing participants to the reorganization is not be considered a public offer under Article 33 of the Law on Securities (Official Gazette of MN, No. 59/00, 10/01). However, any such securities shall be registered with the Central Depository Agency and the Securities Exchange Commission in accordance with Articles 5 of the Law on Securities.
- (3) Any new securities offered to the general public beyond the parties to the existing bankruptcy case are required to comply with all applicable laws governing new issues of securities.

**Article 74: Hearing of the plan of reorganization.**

(1) The Court shall schedule a hearing for consideration of the plan and voting by the creditors within 20 days of the plan submission.

(2) Notice of the scheduled hearing shall be given by the Court, or by the plan proponent in a manner approved by the Court, to the debtor, administrator, all creditors, and any other affected party no later than 10 days prior to the hearing. The plan of reorganization shall be delivered or made easily available 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 regarding the voting on the plan for publication in the press with a print-run of at least 1000 issues. The public notice shall indicate the name of the debtor, the name of the party proposing the plan, the day and place of the hearing, and the procedure for voting.

**Article 75: Voting and confirmation.**

(1) All creditors possessing valid claims are eligible to vote.

(2) Where voting is done in absentia, the legal persons must submit to the Court the ballot ratified by their seal, while natural persons and enterprises not having the status of legal persons must submit their ballots ratified by notary procedure.

(3) Where more than one plan of reorganization has been submitted, then the voting on all submitted plans shall take place at the same hearing.

(4) The following classes of creditors shall be formed and shall vote separately:

- 1) secured claims;
- 2) priority claims;
- 3) senior claims;
- 4) unsecured claims

(5) Where circumstances are deemed appropriate, the Court may allow the formation of one or more additional classes, provided that--

- 1) real and substantial attributes or rights possessed by the claims such that the formation of a separate class is warranted; and,
- 2) all the claims within the proposed separate class are substantially similar, except for any convenience class pursuant to paragraph F of this Article.

(6) A special class of claims may be established for administrative convenience where there exists a large volume of claims (over 200) small in amount (no greater than 500 Euros) where the Court approves the establishment of such a class. Upon Court approval, such a class of convenience claims may receive expedited satisfaction where necessary to relieve the administrative burden that a large number of relatively small claims poses. These claims may be paid only when it is clear that there will be sufficient resources available for payment of all Priority and Senior claims.

(7) Prior to the commencement of voting, the Court shall inform all in attendance at the hearing of the results of the votes received as a result of voting in absentia.

(8) The plan shall be considered as accepted by the class of creditors, if creditors owning the simple majority of the claims in that respective class vote in favor of its adoption.

(9) A class whose claims are to be satisfied in full at the time of the effective date are deemed to have accepted the plan.

(10) The plan shall be confirmed if **all but two classes** of creditors accept the plan and the plan otherwise complies with all other provisions of this law.

(11) Competing plans. If more than one proposed plan is eligible for confirmation under this Article, then the Court shall adopt the plan proposed by the debtor.

(12) Failure to obtain confirmation. If the plan proponent fails to obtain the required votes or submits a plan that fails to otherwise satisfy requirements for confirmation or other provision of this law, the Court may grant the plan proponent an additional 30 days to submit a revised plan and shall schedule a hearing in accordance with Article 74 of this Law. Failure to obtain confirmation of the revised plan shall result in an order for commencement of a liquidation pursuant to Article 79 paragraph (2) of this Law.

#### **Article 76: Consequences of confirmation.**

(1) Upon confirmation of the plan, all claims and rights of the creditors and other interested parties and obligations of the debtor specified by the plan are reformulated and governed by the terms stated within the plan. A confirmed plan has the force of a court order and shall be considered a new contract for the satisfaction of claims presented therein.

(2) The activities and operations of the debtor enterprise shall conform to, and comply with, the provisions of the confirmed plan.

(3) The debtor is obligated to undertake all measures set forth within the confirmed plan.

(4) The administrator shall monitor compliance with plan provisions.

#### **Article 77: Plan completion.**

(1) Upon successful completion of the plan whereby the debtor satisfies all obligations set forth in the plan, the equity holders of the company gain ownership rights to all the property of the estate as of that date.

(2) Upon successful completion of the plan, whereby the debtor satisfies all obligations set forth in the plan, the creditors remaining unpaid claims are extinguished.

**Article 78: Breach of confirmed plan.**

(1) Upon a failure by the debtor to abide by the provisions of a confirmed plan, any creditor or other affected party may submit to the Court a Notice of Breach of Confirmed Plan. The Court shall transmit a notice to the debtor and the administrator within 5 days of receipt of the submission, and schedule a hearing on the matter within 10 days of submission of the notice.

(2) Upon a finding that the debtor has committed a breach of the plan provisions, the Court may--

- 1) issue an order directing the debtor to cure the breach within a specified period of time;
- 2) order the administrator to assume control of the debtor enterprise;
- 3) issue an order converting the case to a liquidation pursuant to Article 79 of this law; or
- 4) issue any other order to remedy the breach consistent with this Law serving the needs of the case.

**Article 79: Conversion to Liquidation..**

The Court shall issue an order for the commencement of a liquidation in accordance with Chapter IX of this Law--

- 1) where no plan is submitted within the time proscribed in Article 63 of this Law;
- 2) where no plan is confirmed at the time of the hearing pursuant to Article 75 paragraph (10) of this Law;
- 3) where the debtor fails to conform to the requirements of a confirmed plan and no satisfactory remedy is proposed pursuant to Article 78 of this Law;
- 4) when the debtor fails to file a timely statement of intention pursuant to Article 16 of this Law;
- 5) where the debtor fails to cooperate with the administrator or the creditors committee in responding to reasonable requests for information;
- 6) where the debtor fails to follow the orders of the Court;
- 7) where the debtor requests that a liquidation be commenced where there is no competing plan proposed by another party.

## CHAPTER IX

### LIQUIDATION

#### **Article 80: Sale of the debtor's property.**

- (1) The sale of any or all of the property of the estate shall be conducted by the administrator, by his designee or hired expert under the close supervision of the administrator.
- (2) Property of the estate may be sold free and clear of pledges, liens or security interests where the administrator deems it necessary to do so. In such cases, the pledge, lien or security interest attaches to the proceeds of the sale.
- (3) Two methods of sale are recognized under this Law: Sale by auction or sale by direct negotiation. Any other method contemplated must receive prior authorization by the Court.
- (4) The administrator shall notify the Court, the debtor, all creditors where feasible, any person or entity possessing the right of pledge, lien or security interest, or any other rights, title or interest in the subject property of the intent to sell the property through an auction no less than **20 days prior** to the proposed date of auction. The notice shall include the place of location of the property being auctioned, a detailed description of the property, starting price of the auction, and the terms under which the auction shall be conducted. In addition, the administrator shall publish an announcement of auction through the Official Gazette of MN and in daily press in the Republic, and the details of the notice shall be posted in a special place in the Court building.
- (5) The administrator shall notify the Court, the debtor, all creditors where feasible, any person or entity possessing the right of pledge, lien or security interest, or any other rights, title or interest in the subject property of the intent to sell the property through direct negotiation no less than **20 days prior** to the proposed transaction date. The notice shall include a detailed description of the property, the name of and information regarding the proposed buyer, the price, terms and conditions of the proposed sale.
- (6) The debtor, one or more of the creditors, any other interested party, or the Court on its own motion, may object to the proposed sale, either by direct negotiation or by auction, upon proper grounds **within 10 days** prior to the proposed sale. The Court shall schedule a hearing to discuss the objection **within 5 days** after its submission. The sale shall not be postponed pending the resolution of the objection unless the Court issues an order to suspend the sale. Any objections to an auction sale must be made **within 3 days** of the auction taking place.
- (7) Appropriate grounds for an objection to the sale, either by direct negotiation or by auction, include fraud, collusion, or other improper conduct, inadequate notice given, or any other reason whereby the conduct of the sale procedure is improper. The mere assertion by a creditor that the offering or sale price is insufficient, without

some substantial showing that the price greatly deviates from the property's fair market value, is not a valid ground for objection, and the sale shall proceed as scheduled.

**Article 81: Abandonment.**

The administrator may transfer (abandon) property subject to a pledge, lien or security interest to the holder of the a pledge, lien or security interest where the value of the asset is less than the value of the combined pledges, liens, or security interests attached to the property, and the property is not necessary to a reorganization. Notice and opportunity to object shall be governed by the procedure specified for sales by direct negotiation found within Article 80 paragraph (5) of this Law.

**Article 82: Extraordinary sale of property.**

(1) Where goods of a perishable nature are proposed to be sold, the administrator shall inform the Court of the intention to sell such goods without the necessity of the procedure defined in Article 80 by means of an *ex parte* "Emergency Notification of Proposed Sale of Perishable Goods." The Court shall respond to the administrator's notification within **24 hours** of its submission. If the Court fails to issue an order staying such proposed sale within the 24-hour period, the administrator may proceed with the sale.

(2) Where property is such that it requires as significant expenditure for maintenance or is otherwise demonstrably burdensome for other reasons, the administrator shall inform the Court of the intention to sell such goods without the necessity of the procedure defined in Article 80 by means of an *ex parte* "Emergency Notification of Proposed Sale of Burdensome Property." The Court shall respond to the administrator's notification within **5 days** of its submission. If the Court fails to issue an order staying such proposed sale within the 5-day period, the administrator may proceed with the sale.

**Article 83: Proceeds from sales of property.**

Proceeds received from the sale of property of the estate are also property of the estate and shall be protected and accounted for by the administrator. Any rights in such proceeds arising from a valid pledge, lien or security interest shall be respected according to applicable law.

**Article 84: Proceeds from property use.**

Proceeds received from the use of property of the estate are also property of the estate and shall be protected and accounted for by the administrator. Any rights in such proceeds arising from a valid pledge, lien or security interest shall be respected according to applicable law.

**Article 85: Expenses of sale.**

(1) Proceeds from the sale of property that is unsecured shall at the outset cover the sale expenses, after which the remaining funds shall be distributed in the sequence defined by Article 86 of this Law.

(2) Proceeds from the sale of pledged property shall first be applied to cover direct sale expenses, after which the remaining funds shall meet the claim or claims of the secured creditors in the sequence of their priority under applicable law. The remaining funds shall be distributed in the sequence defined by Article 86 of this Law.

**Article 86: Distribution priorities.**

Claims of creditors shall be satisfied by class in the following order in all cases of liquidation other than a validly approved orderly self-liquidation plan:

- 1) Secured Claims, less reasonable cost of sales pursuant to Article 86 paragraph (2) of this Law;
- 2) Priority Claims, including:
  - court expenses;
  - administrator' s expenses;
  - administrator' s remuneration;
  - administrative expenses required for the maintenance and governing of the property;
  - reorganization expenses;
  - reorganization financing and credit;
  - all the payments and expenses for the administrative personnel;
  - creditor' s committee expenses;
  - claims for unpaid pre-petition employee' s wages (limited up to 5,000 Euros per person);
  - pre and post-petition employee claims for physical personal injury incurred while working in the debtor enterprise;
- 3) Senior Claims, including:
  - claims for unpaid taxes arising in the period of one year prior to the petition date;
  - claims for unpaid obligations to the state budget of the Republic arising in the period of one year prior to the petition date;
  - claims for unpaid alimony and child support for the debtor' s underage children where the debtor is an individual entrepreneur,
  - claims arising from employee termination claims occurring within the preceding the 6 months before the moment of recognizing the debtor as insolvent, and which shall not exceed 15 times the minimum salary per month;
- 4) Unsecured Claims, except for those subordinated;
- 5) Subordinated Claims;
- 6) Equity Holders (claims of the debtor' s owners, shareholders, founders, participants or partners).

**Article 87: Subordination.**

The Court may, on its own motion or the motion of any creditor after notice and hearing, order the subordination of a claim to the class to which it normally belongs were the claimant has acted inappropriately.

**Article 88: Satisfaction of claims.**

(1) Claims shall be satisfied by class in the order of priority as set forth in Article 86 of this Law.

(2) The satisfaction of claims that belong to a subsequent class of lower priority may be initiated only after the complete and full satisfaction of the claims of the previous class of higher priority.

(3) Where resources are insufficient to fully satisfy all claims of a given class, the claims of that class shall be satisfied in proportion to the amount of each claim.

**Article 89: Claims generated from post-petition activity.**

Claims generated from the debtors continued activities after the petition date shall receive the priority ranking in accordance with Article 86, subparagraph 2) point 4 of this Law.

**Article 90: Late filed claims.**

A claim not submitted within the time period defined by this Law shall be satisfied only after the satisfaction of all the claims of the respective class, where there is sufficient justification for the claim not having been submitted in the time period and the claim is submitted before distributions commence. Upon Court approval, such claims shall be satisfied according to their priority as specified in Article 86 of this law.

**Article 91: Reserve funds.**

Funds or other property may be set aside in a separate fund, placed with the Court, or placed with a private trustee or custodian for the satisfaction of--

- 1) claims that are in dispute and have not yet been resolved by the Court;
- 2) claims for amounts subject to payment or redemption where documents, identification or coupons are required to be submitted, such as with convertible securities, bearer bonds or similar instruments;
- 3) future expenses in connection with maintenance of certain property;
- 4) future claims certain to arise but unascertainable at the time of proposed distribution or plan confirmation.

## **CHAPTER X**

### **CASE CLOSURE**

#### **Article 92: Final report.**

- (1) The administrator shall, after completion of a plan, the completion or substantial completion of distribution of the property of the estate pursuant to a liquidation, or after case closure, submit a Final Report to the Court.
- (2) The Final Report shall contain the following:
  - 1) A final list of all claims allowed clearly indicating what amount of distribution or what property was transferred in full or partial satisfaction of each;
  - 2) A list of all property sold or otherwise disposed of;
  - 3) A list of cash expenditures and disbursements;
  - 4) A list of bank account balances;
  - 5) List of experts hired, amounts expended for each and the rates paid;
  - 6) Balance sheet;
  - 7) Summary of administrators fees and expenses;
  - 8) Request for final payment of administrator' s fees and expenses.
- (3) The administrator shall send a notice of the submission of the Final Report to the debtor, creditors, creditors committee, if formed, within 3 days of its submission. The notice shall contain either the Final Report itself, or a summary thereof on the condition that the full report be made available for inspection to interested parties and that a copy of the report be sent to any party requesting a copy.
- (4) The debtor, any creditor, any interested party or the Court on its own motion, may object to the Final Report within 15 days of its submission. Where such objection is received, the Court shall set a hearing to resolve the objection within 15 days of the objection submission and shall send a notice of the hearing to the administrator debtor, creditors, creditors committee, within 5 days of the objection submission. Where the Court finds the objection justified and the administrator cannot successfully defend a part of the report found objectionable, the Court accept that part of the report which is justified, will initiate a procedure against the administrator to determine his responsibility, and will afterward close the case.

#### **Article 93: Case closure.**

- (1) In a liquidation, reorganization, or an orderly self-liquidation, case closure may occur at the request of the administrator or plan proponent after the distributions have been completed or substantially completed, the plan provisions have been carried out or substantially carried out, once the Court approves the Final Report set forth in Article 92 of this Law.
- (2) At the request of the administrator, at any stage of the procedure, where it is determined that resources form the debtor' s property are insufficient to cover the costs of Priority Claims set forth in the Article 86, subparagraph 2) of this Law, the

Court shall issue a decision permitting closure of the case. The administrator shall submit the Final Report within 15 days of such order pursuant to Article 92 of this Law.

(3) At the request of the administrator, where no creditors have submitted claims within the time period defined by Article 47 paragraph B of this Law, the Court shall issue a decision permitting closure of the case. The administrator shall submit the Final Report within 20 days of such order pursuant to Article 92 of this Law.

**Article 94: Consequences of case closure.**

(1) In a liquidation case or a case involving an plan of orderly self liquidation, upon the closure of the case pursuant to Article 93 of this Law, debtors having the status of a legal person shall be considered terminated, and activities of an individual entrepreneur or other debtors not having the status of a legal person shall be considered concluded. The Court shall issue a notice of case closure and termination to the Central Registry of the Commercial Court within 5 days of case closure.

(2) In a reorganization case where the plan has been completed, or substantially completed, and the case closed, the debtor shall be considered financially recovered and may continue business activities.

**Article 95: Discharge of debts.**

(1) Upon case closure pursuant to Article 93 of this Law, all debts due from the debtor arising prior to the petition date are extinguished by operation of law and that any action to collect such extinguished debts shall be prohibited, except for—

- 1) debts yet to be paid pursuant to a confirmed plan of reorganization that have not yet been satisfied, or
- 2) debts specifically listed as an exception from discharge under Article 97 of this Law.

(2) The Court shall issue an order stating such at the request of the debtor or the request of the administrator.

**Article 96: Tax liability for discharge of debts.**

(1) Where debt is forgiven pursuant to a plan of reorganization or otherwise discharged pursuant to this Law, the resulting reduction or elimination of liability shall not be considered taxable income to the debtor estate or enterprise.

(2) Any transfer of property or distribution of funds pursuant to a reorganization or liquidation under this Law shall not result in taxable income to the debtor' s estate or enterprise.

(3) Any measure or action taken to restructure or reorganize the debtor enterprise pursuant to a plan of reorganization confirmed under this Law shall not result in taxable income to the debtor' s estate or enterprise.

(4) Where the entity continues to conduct ordinary business in the period after the bankruptcy petition, the entity shall be liable for all applicable taxes incurred for post petition activity as is ordinarily assessed for the given type of business operation.

**Article 97: Exceptions to discharge of debts.**

(1) An individual entrepreneur or an enterprise not having the status of a legal person shall not be discharged from--

- 1) debts arising from fraud, deceit, false pretenses or other improper conduct;
- 2) debts arising from willful injury;
- 3) debts for alimony or child support;
- 4) claims of creditors subject to submission but not submitted or otherwise administered under procedures of this law;
- 5) debts for the payment of taxes and other compulsory payments to the Republic or its regulatory agencies arising during a period of one year prior to the petition submission date.

(2) Where the debtor is a legal person, the Court may, upon evidence of direct responsibility of the individual owners or individual members of the governing body having the power to influence the decision of the enterprise and having done so toward the commission of acts resulting in debts of the kind described in paragraph (1), point 1 of this Article, assign to those individuals the debts so arising, either jointly or severally.

**Article 98: Discharge of the administrator.**

After the approval by the Court of the Final Report submitted by the administrator, the Court shall issue an order—

- 1) relieving the administrator of any further duties in relation to the case, except for the execution by the administrator of any final distributions that have not yet been executed;
- 2) approving the final payment of any unpaid administrator fees or expenses where appropriate;
- 3) exonerating the administrator from liability associated with the case.

**Article 99: Court Ordered Liquidation.**

In instances where a court orders a liquidation to commence under other applicable non-insolvency law, the liquidation procedures shall be the same procedures specified under this law.

## **CHAPTER XI.**

### **CROSS-BORDER INSOLVENCY**

#### **Article 100: Cross-border insolvency**

The purpose of this Chapter is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- 1) Cooperation between the courts and other competent authorities of the Republic and foreign states involved in cases of cross-border insolvency;
- 2) Greater legal certainty for trade and investment;
- 3) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- 4) Protection and maximization of the value of the debtor's assets; and
- 5) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

#### **Article 101: Scope of application.**

Provisions of this Chapter shall be applied where:

- 1) Assistance is sought in the Republic by a foreign court or a foreign representative in connection with a foreign proceeding; or
- 2) Assistance is sought in a foreign state in connection with a proceeding under this Law; or
- 3) A foreign proceeding and a proceeding under this Law with respect to the same debtor are taking place concurrently; or
- 4) Creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in, a proceeding under this Law.

#### **Article 102: Definitions.**

For the purposes of this Chapter:

- 1) "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;
- 2) "Foreign main proceeding" means a foreign proceeding taking place in the state where the debtor has the center of its main interests;
- 3) "Foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a state where the debtor has an establishment within the meaning of subparagraph 6) of this article;
- 4) "Foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

- 5) "Foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;
- 6) "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

**Article 103: International obligations of Montenegro.**

To the extent that this Law conflicts with an obligation of the Republic arising out of any multilateral agreement, the requirements of the agreement prevail.

**Article 104: Competent court.**

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by Commercial Court in Podgorica or such other court as may be designated in accordance with law.

**Article 105: Authorization of administrator to act in a foreign state.**

An administrator duly appointed under applicable provisions of the Enterprise Insolvency Law is authorized to act in a foreign state on behalf of a proceeding under this Law, as permitted by the applicable foreign law.

**Article 106: Public policy exception.**

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of the Republic.

**Article 107: Additional assistance under other laws.**

Nothing in this Law limits the power of a court or an administrator to provide additional assistance to a foreign representative under other laws of the Republic.

**Article 108: Interpretation**

In the interpretation of this Chapter, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

**Article 109: Right of direct access.**

A foreign representative is entitled to apply directly to a court in the Republic.

**Article 110: Limited jurisdiction.**

The sole fact that an application pursuant to this Law is made to a court in the Republic by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of the Republic for any purpose other than the application.

**Article 111: Application by a foreign representative to commence a proceeding under this Law**

A foreign representative is entitled to apply to commence a proceeding under this Law if the conditions for commencing such a proceeding are otherwise met.

**Article 112: Participation of a foreign representative in a proceeding under this Law**

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Law.

**Article 113. Access of foreign creditors to a proceeding under this Law**

(1) Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Law as creditors in the Republic.

(2) Paragraph 1 of this article does not affect the ranking of claims in a proceeding under this Law, except that the claims of foreign creditors shall not be ranked lower than unsecured claims provided that a foreign claim is to be ranked lower than an unsecured claim if equivalent claims arising under applicable law in the Republic may be ranked lower also have a lower rank.

**Article 114 - Notification to foreign creditors of a proceeding under this Law**

(1) Whenever under this Law notification is to be given to creditors in the Republic, such notification shall also be given to the known creditors that do not have addresses in the Republic. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(2) Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

- 1) Indicate a reasonable time period for filing claims and specify the place for their filing;
- 2) Indicate whether secured creditors need to file their secured claims; and
- 3) Contain any other information required to be included in such a notification to creditors pursuant to the law applicable in the Republic and the orders of the court.

**Article 115: Application for recognition of a foreign proceeding**

(1) A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

- (2) An application for recognition shall be accompanied by:
- 1) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
  - 2) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
  - 3) In the absence of evidence referred to in subparagraphs 1) and 2) of this Article, any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
- (4) The court may require a translation of documents supplied in support of the application for recognition into the Serbian language.

#### **Article 116: Presumptions concerning recognition**

- (1) If the decision or certificate referred to in paragraph 2 of Article 115 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph 1) of Article 102 and that the foreign representative is a person or body within the meaning of subparagraph 4) of Article 102, the court is entitled to so presume.
- (2) The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

#### **Article 117: Decision to recognize a foreign proceeding**

- (1) Subject to Article 116, a foreign proceeding shall be recognized if:
- 1) The foreign proceeding is a proceeding within the meaning of subparagraph 1) of Article 102;
  - 2) The foreign representative applying for recognition is a person or body within the meaning of subparagraph 4) of Article 102;
  - 3) The application meets the requirements of paragraph 2 of Article 115; and
  - 4) The application has been submitted to the court referred to in Article 104.
- (2) The foreign proceeding shall be recognized:
- 1) As a foreign main proceeding if it is taking place in the state where the debtor has the center of its main interests; or
  - 2) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph 6) of Article 102 in the foreign state.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) The provisions of Articles 115, 116, 117 and 118 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

#### **Article 118: Subsequent information**

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

- 1) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and
- 2) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

#### **Article 119: Relief that may be granted upon application for recognition of a foreign proceeding**

(1) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

- 1) Staying execution against the debtor's assets;
- 2) Entrusting the administration or realization of all or part of the debtor's assets located in the Republic 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 because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- 3) Any relief mentioned in paragraph 1, subparagraphs 3, 4 and 7 of Article 121.

(2) Unless extended under paragraph 1 subparagraph 6 of Article 121, the relief granted under this article terminates when the application for recognition is decided upon.

(3) The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

#### **Article 120: Effects of recognition of a foreign main proceeding**

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding,
  - 1) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
  - 2) Execution against the debtor's assets is stayed; and

3) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of this article are subject to the provisions of Articles 37, 38 and 39 of this Law.

(3) Paragraph 1 subparagraph 1) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Paragraph 1 of this article does not affect the right to request the commencement of a proceeding under this Law or the right to file claims in such a proceeding.

**Article 121: Relief that may be granted upon recognition of a foreign proceeding**

(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

- 1) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 *subparagraph 1* of Article 120;
- 2) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 subparagraph 2 of Article 120;
- 3) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 *subparagraph 3* of Article 120;
- 4) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- 5) Entrusting the administration or realization of all or part of the debtor's assets located in the Republic to the foreign representative or another person designated by the court;
- 6) Extending relief granted under paragraph 1 of Article 119;
- 7) Granting any additional relief that may be available to the administrator under this Law or applicable laws.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Republic to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in the Republic are adequately protected.

(3) In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under this Law or other applicable law in the Republic, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

### **Article 122: Protection of creditors and other interested persons**

- (1) In granting or denying relief under Article 119 or 121, or in modifying or terminating relief under paragraph 3 of this article, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (2) The court may subject relief granted under Article 119 or 121 to conditions it considers appropriate.
- (3) The court may, at the request of the foreign representative or a person affected by relief granted under Article 119 or 121, or at its own motion, modify or terminate such relief.

### **Article 123: Actions to avoid acts detrimental to creditors**

- (1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate avoidance actions under Article 60 of this Law.
- (2) When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law applicable in the Republic, should be administered in the foreign non-main proceeding.

### **Article 124: Intervention by a foreign representative in proceedings in Montenegro**

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law applicable in the Republic are met, intervene in any proceedings in which the debtor is a party.

### **Article 125: Cooperation and direct communication between a court of Montenegro and foreign courts or foreign representatives**

- (1) In matters referred to in Article 101, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the administrator.
- (2) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

### **Article 126. Cooperation and direct communication between the administrator and foreign courts or foreign representatives**

- (1) In matters referred to in Article 101, an administrator shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The administrator is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

#### **Article 127: Forms of cooperation**

Cooperation referred to in Articles 125 and 126 may be implemented by any appropriate means, including:

- 1) Appointment of a person or body to act at the direction of the court;
- 2) Communication of information by any means considered appropriate by the court;
- 3) Coordination of the administration and supervision of the debtor's assets and affairs;
- 4) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- 5) Coordination of concurrent proceedings regarding the same debtor.

#### **Article 128. Commencement of a proceeding under this Law after recognition of a foreign main proceeding**

After recognition of a foreign main proceeding, a proceeding under this Law may be commenced only if the debtor has assets in the Republic. The effects of that proceeding shall be restricted to the assets of the debtor that are located in Montenegro and, to the extent necessary to implement cooperation and coordination under Articles 125, 126 and 127, to other assets of the debtor that, under the law applicable in the Republic, should be administered in that proceeding.

#### **Article 129. Coordination of a proceeding under this Law and a foreign proceeding**

Where a foreign proceeding and a proceeding under this Law are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under Articles 125, 126 and 127, and the following shall apply:

- 1) When the proceeding in the Republic is taking place at the time the application for recognition of the foreign proceeding is filed,
  - Any relief granted under Article 119 or 121 must be consistent with the proceeding in the Republic; and
  - If the foreign proceeding is recognized in the Republic as a foreign main proceeding, Article 120 does not apply;
- 2) When the proceeding in the Republic commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
  - Any relief in effect under Article 119 or 121 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in the Republic; and
  - If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of Article 120 shall be modified or terminated pursuant to paragraph 2 of Article 120 if inconsistent with the proceeding in the Republic;

- 3) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law applicable in the Republic, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

#### **Article 130: Coordination of more than one foreign proceeding**

In matters referred to in Article 101, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under Articles 125, 126 and 127, and the following shall apply:

- 1) Any relief granted under Article 119 or 121 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- 2) 2) If a foreign main proceeding is recognized, after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under Article 119 or 121 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;
- 3) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

#### **Article 131. Presumption of insolvency based on recognition of a foreign main proceeding**

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Law proof that the debtor is insolvent.

#### **Article 132: Rule of payment in concurrent proceedings**

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state may not receive a payment for the same claim in a proceeding under this Law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

## **CHAPTER XII**

### **PENAL PROVISIONS**

#### **Article 133: Submission of false documents.**

(1) Where the debtor, member of the board of directors, or higher governing body of the debtor, the owner or any one of the owners; partner or any one of the

partners, or any person acting on the debtor's behalf submits documents makes an assertion or assertions within documents submitted in a case under this law that are knowingly false or misleading, the person making such submission or assertion shall be fined not more than 20,000 Euros per instance or may be subject to imprisonment from one to three years.

(2) Where a natural person knowingly submits a false document or makes a false statement in a document submitted to the Court in a case under this Law, the person or persons making such submission or assertion shall be fined for criminal offence not more than 20,000 Euro per instance or may be subject to imprisonment from one to three years.

**Article 134: False oath or testimony.**

Where a person knowingly makes a false oath or gives false testimony in a hearing or other proceeding under this Law, the person making such submission or assertion shall be fined for criminal offence not more than 20,000 Euro per instance or may be subject to imprisonment from one to three years.

**Article 135: Submission of false claim.**

Where a natural person or legal person knowingly submits a false claim or false document to the Court in a bankruptcy case under this Law, the person or persons making such submission or assertion shall be fined for criminal offence not more than 20,000 Euro per instance or may be subject to imprisonment from one to three years.

**Article 136: Criminal concealment of assets.**

Any person who knowingly and fraudulently transfers, conceals or fails to turnover any property or documents to an administrator, or to a person acting in the capacity of administrator, or to the Court to evade the processes and procedures of this Law, shall be fined for criminal offence not more than 20,000 Euro per instance or may be subject to imprisonment from one to three years.

**Article 137: Bribery.**

Any person who knowingly and fraudulently gives, offers, receives or attempts to obtain any money, property, remuneration, compensation, reward, advantage or promise of an act or forbearance to act in order to gain any advantage in a case under this Law shall be fined for criminal offence not more than 50,000 Euro per instance or may be subject to imprisonment for up to 5 years.

**Article 138: Knowing disregard of this Law.**

The knowing disregard of a provision of this Law may be punished for criminal offence by a fine of up to 5,000 Euro per instance or may be subject to imprisonment from one to three years.

**Article 139: Misappropriation of assets.**

Where the debtor, administrator, person acting in the capacity of an administrator, persons hired to work under the supervision of the debtor or administrator, knowingly steals, appropriates, destroys, desecrates or purchases, either directly or indirectly, any papers property of the estate, for personal use, or for use by members of the person's immediate family, or destroys, shall be fined for criminal offence not more than 50,000 Euro per instance or may be subject to imprisonment for up to 5 years .

**Article 140. Failure by debtor to cure petition defects.**

Where the debtor fails to cure defects in the petition within the time period specified by this law, in addition to rejecting the petition the Court may fine the debtor or individual members of the debtor's management or governing body in an amount up to 2,500 Euros.

**Article 141. Petition submitted for improper purpose.**

Where a petition was submitted for an improper purpose or in a manner intended to deceive, defraud or subvert the Court or creditors inconsistent with this law, the Court may fine the submitting party, the debtor, individual members of the debtor's management, governing body, or any other party submitting the petition, an amount up to 25,000 Euros where appropriate.

**CHAPTER XIII**

**FINAL PROVISIONS**

**Article 142: The Law entering into force.**

(1) From the moment this Law enters into force are no longer implemented in the Republic of Montenegro *The Act on Compulsory Composition With Creditors, Bankruptcy and Liquidation (Official Gazette of FRY, No. 84/89, 37/93 and 28/96) and Law on Resolving of Conflicts of Laws with Foreign Countries Laws (Official Gazette of FRY, No.43/82, 72/82 and 46/96)* in part in which is contrary to this Law.

(2) Cases on insolvency initiated before this Law enters into force under *The Act on Compulsory Composition With Creditors, Bankruptcy and Liquidation Court* proceedings shall be terminated within 12 months as of the date of application of this Law.

**Article 143**

This Law shall enter into force on the eight day as of its publishing in the Official Gazette of Montenegro and shall be applied as of July 1<sup>st</sup> 2002.