

Montenegro: Personal Bankruptcy Act

SEPTEMBER 2015

Personal bankruptcy has been introduced for the first time in Montenegro. The Personal Bankruptcy Act came into force on 22 August 2015.

The new law applies to consumers. Consumer is defined as an individual entering into a commercial transaction outside his/her commercial or professional activity. Consequently, an individual acting in his/her capacity of private entrepreneur or artisan is not covered by the definition of consumer. However, personal bankruptcy may be initiated over a private entrepreneur or an artisan who: (i) has no more than 10 creditors, (ii) has a debt that does not exceed EUR 15,000, (iii) has no obligations towards its employees, if any, and (iv) is not already subject to regular insolvency proceedings as a commercial entity.

Personal bankruptcy proceedings can be filed for if the consumer is insolvent, by the consumer himself/herself or by a creditor. The consumer is considered to be insolvent in case he/she (i) has been in delay with the fulfilment of one or more payment obligations for a period of more than six months, which obligations in total exceed seven times the amount of the consumer's salary or other regularly received income, or (ii) is unemployed for more than five months and his/her overdue payment obligations exceed EUR 2,500.

Personal bankruptcy proceedings involve three phases: out-of-court negotiation, in-court settlement phase and bankruptcy.

Out-of-court negotiation

A 60-day out-of-court negotiation period is a mandatory condition to filing for consumer's personal bankruptcy. This phase, taking place before a mediator, can be extended for another 30 days. The consumer is obliged to make a plan for debt settlement and a list of assets. The list of assets includes all existing assets, income and liabilities of the consumer, a list of creditors, a list of claims, expected income and expected inheritance. Any out-of-court settlement requires consent of and must encompass all creditors or else it is null and void. If out-of-court settlement is certified before a notary, it represents a directly enforceable instrument.

In-court settlement

If out-of-court negotiation yields no settlement with creditors, the consumer or any creditor can petition the court to declare the consumer bankrupt. If the consumer files for personal bankruptcy, it must submit to the court a debt settlement plan.

Procedure for personal bankruptcy is urgent. However, phase 2 may be suspended for a period of three months pending negotiations between the debtor and its creditors. At the preliminary hearing, the debt settlement plan, if any, is considered and put to vote by the creditors. Creditors whose claims are not included in the debt settlement plan may register their claims within 30 days from the announcement of the preliminary hearing. If the debt settlement plan is accepted, the petition for the opening of bankruptcy proceedings is deemed to be withdrawn. Debt settlement plan must be accepted by all creditors. Creditors that do not oppose the plan within the statutory deadline are deemed to have accepted the plan. If the majority of creditors support the plan, the court may enact a decision replacing the consent of dissenting creditor(s) after it hears the dissenter(s). The plan accepted by the creditors has the force of a court settlement.

Opening of bankruptcy proceedings

If the creditors do not approve of the debt settlement plan, the court shall open formal bankruptcy proceedings and appoint a bankruptcy administrator. This decision may be appealed. The creditors can register their claims no later than within 30 days from the opening of bankruptcy proceedings. If the administrator dismisses a creditor's claim, the creditor may initiate litigation seeking a declaration that the claim exists.

The bankruptcy estate includes all assets of the consumer, including those acquired during the proceedings, or during the period of good conduct (see below), except for the property that is exempt from enforcement under the general enforcement law. Any disposal by the consumer with his/her assets after the opening of bankruptcy proceedings is null and void. The consumer subject to bankruptcy may not take loan, provide surety or maintain a payment account without the approval from the court. The consumer may not start a private business or engage as a freelancer without the approval from the court. Before granting the approval, the court is obliged to seek an opinion from the creditors and the administrator. The consumer may petition the court to approve separation of the assets necessary for the private business from the bankruptcy estate. The consumer must pay to the estate a monthly fee for the use of those assets, which cannot exceed 0.5% of the market value of the assets.

The bankruptcy administrator is responsible for sale of the debtor's assets and distribution of the proceeds to the creditors on a *pro rata* basis. Secured creditors are in charge of liquidating the

collaterals owned by the debtor. However, if a secured creditor does not liquidate the collateral within the deadline determined by the court (60 days), the right to liquidate the collateral transfers on the administrator. Neither the secured creditor nor the bankruptcy administrator may sell the secured asset for less than 50% of its estimated value.

Transactions undertaken by the consumer prior to the opening of bankruptcy proceedings which undermine the principle of *pro rata* settlement of creditors or otherwise favor one or more creditors can be challenged by the administrator. The law does not limit the suspect period, which means that any transaction can be challenged, irrespective of when it was undertaken.

The bankruptcy administrator draws up a final list of recognized claims. If the consumer makes a proposal for debt discharge, the court determines the period of good conduct, which lasts no less than two years and no more than seven years. During that period, the consumer may not refuse any work for which it is qualified, including seasonal work. It must hand-over to the administrator 50% of any inheritance proceeds. After the expiry of that period, and provided none of the obstacles preventing debt discharge, as stipulated in the law, are present, the court makes a decision on discharge of the debt which remains unsettled after liquidation of the debtor's assets. Debt discharge has effect towards all creditors, including those who did not register their claims in bankruptcy proceedings. Debt discharge does not encompass liabilities for child or parent support, those resulting from illegal gains or crimes and tax liabilities. A special registry of debtors whose debts have been discharged will be established.

BDK Serbia



Majke Jevrosime 23
11000 Belgrade
Tel: +381 11 3284 212
Fax: +381 11 3284 213
office@bdkadvokati.com

BDK Montenegro

BuL. Džordža Vašingtona 51
81000 Podgorica
Tel: +382 20 230 396
Fax: +382 20 230 396
office.cg@bdkadvokati.com

BDK Bosnia and Herzegovina (Advokat Dijana Pejić u saradnji sa BDK Advokati AOD)

Gundulićeva 6
78000 Banja Luka
Tel: +387 51 250 641
Fax: +387 51 250 642
office.banjaluka@bdkadvokati.com

