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STUDY ON ACCOUNT BLOCKING IN WESTERN BALKAN COUNTRIES AND ITS IMPACT ON FINANCIAL RESTRUCTURING AND REORGANISATION

Country Report – Montenegro

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1. Executive Summary

Under Montenegrin law, bills of exchange used to be the only instrument in the hands of ordinary creditors which were capable, without prior court proceedings, of sweeping cash across all the debtor's accounts and blocking all such accounts. This resulted in all account receivables being transferred to the enforcing creditor until the enforcing creditor's claim was satisfied in full.

Since 17 November 2017 when the Decision of Montenegrin Constitutional Court came into force, bills of exchange are no longer capable of direct cash sweeping and account blocking. The Decision abolished the provisions of the Security and Enforcement Act that enabled direct cash sweeping and account blocking based on bills of exchange.

However despite the heavy reliance on bills of exchange by market participants, the Constitutional Court Decision did not envisage a controlled or gradual transition away from bills of exchange. Since the Decision, direct enforcement of bills of exchange is no longer possible and any ongoing enforcement processes using bills of exchange have been terminated by the Central Bank. Creditors must instead rely on enforcement of bills of exchange through the courts and bailiff system. The Montenegrin legal system currently does not offer creditors an effective alternative to bills of exchange in their previous form. Account pledges are considered to be weak security instruments and not favourably looked upon by creditors (especially as a substitute for bills of exchange) because: (i) unlike bills of exchange they are subject to a statutory perfection procedure, as well as a slow and easily obstructed judicial enforcement procedure; (ii) substantial legal uncertainties affect implementation of the account pledges structures due to the ambiguous legal framework under the Pledge Act; and (iii) the Pledge Act fails to explicitly provide creditors with a floating charge over the borrower's bank accounts, preventing any new funds standing to the balance of the debtor's account from being captured by the pledge. Meanwhile the new financial collateral regime does not extend to corporates and therefore security over cash in commercial loan transactions does not benefit from the reduced formalities and safe harbour granted to financial collateral arrangements.

Nevertheless, while the old system enabling direct cash sweeping and account blocking based on bills of exchange was very popular among creditors both in every day commerce and financing transactions, it also endangered the viability of debtors' business and thereby the prospects of successful out-of-court restructuring and/or reorganisation of financially distressed but viable businesses.

Therefore, we recommended as follows:

- the old system where bills of exchange had the capability of direct cash sweeping and account blocking should not be re-introduced in the future;
- the account pledge regulation should be revised and improved to provide for a fully functional and efficient account pledge and mitigate any negative impact of the recent change of law;
- consideration should be given to extending the financial collateral law to legal persons referred to in Article 1(2)(e) of the EU Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**EU Directive**") to capture security over cash in commercial loan transactions and thereby provide more certainty to creditors and greater access to financing by commercial debtors.

The implementation of the above recommendations would further align the Montenegrin legal system with the legal systems of some of the most developed EU countries such as Austria and Germany as well as with some of the regional countries that also transitioned from "very powerful" bills of exchange to "weaker" bills of exchange such as Slovenia. The legal systems of the abovementioned countries do not afford bills of exchange with cash sweeping and account blocking powers however they provide for effective security instruments against the debtor's cash assets (e.g. account pledge). Among EU Member States only Austria exercised the full opt out to exclude legal persons referred to in Article 1(2)(e) of the EU Directive from their implementing legislation. Many EU countries instead modified this or only partially implemented this provision.[1] This includes Germany which partially implemented Article 1(2)(e) of the EU Directive to cover a collateral provider which is an undertaking, provided the financial collateral is used to secure specifically defined financial obligations (excluding mainly long-term cash loans).[2]

2. Study Background and Methodology

Moravčević Vojnović i partneri AOD in cooperation with Schönherr (the "**Legal Consultant**") has been engaged by the European Bank for Reconstruction and Development ("**EBRD**") to prepare a study on the impact of bills of exchange (in particular, their cash sweeping and account blocking capabilities) on out-of-court work-outs (i.e. voluntary restructuring and consensual financial restructuring) and reorganisation of corporate debtors in Montenegro, the Republic of Serbia, the Federation of Bosnia and Herzegovina, the Republic of Srpska and FYR Macedonia.

During the time when the study covering Montenegro was underway, the Montenegrin Constitutional Court adopted[3] a decision which abolished the direct cash sweeping and account blocking powers of bills of exchange.

The study has therefore been amended to reflect the changes to the Montenegrin legal system post-Constitutional Court Decision and to explain and recommend that:

(i) the direct account blocking and cash sweeping capabilities of bills of exchange should not be re-introduced in Montenegro; and

(ii) effective forms of security e.g. account pledge and financial collateral arrangements should be introduced into Montenegrin legislation to fill the gap left by the reform of bills of exchange.

The study first examines the historical position of bills of exchange and their enforcement (both prior and after the Constitutional Court Decision) and the impact which bills of exchange used to have on out-of-court restructuring and reorganization. Finally, the study recommends further actions to address the vacuum created in the market as a result of the Constitutional Court's Decision to strip bills of exchange of their cash sweeping/account blocking capabilities.

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[1] http://www.efmlg.org/Docs/Documents/2006%20March%20-%20EFMLG%20report%20on%20the%20survey%20on%20the%20implementation%20of%20Directive%202002_47_EC%20on%20Financial%20Collateral%20Arrangements.pdf

[2] Germany, similarly to the UK and Luxembourg, has also extended the Directive in its Law of 5 April 2004 to include transactions between two legal persons or undertakings.

[3] The Montenegrin Constitutional Court adopted the decision on a session held on 29 September 2017.

The study also incorporates feedback from key market participants (i.e., commercial banks operating in Montenegro that responded to a questionnaire that is attached as Appendix 2).

The study has been prepared with a view to further discuss with the regulators, primarily the Central Bank and the Ministry of Finance, a potential course of action for bridging the gap that resulted from Constitutional Court Decision abolishing the most popular (and arguably the only functional) cash security and demand of modern day economy for functional cash security.

3. Legal Framework

3.1 Legislation on cash sweeping and account blocking

The Constitutional Court Decision (Odluka Ustavnog suda Crne Gore) which was adopted in the session held on 29 September 2017 and published in the Official Gazette of Montenegro on 17 November 2017, has abolished the provisions of the Enforcement and Security Act (please see below) which provided that bills of exchange could be directly enforced through a centralized bank account system maintained by the Central Bank. In effect, the Decision has disabled the direct cash sweeping and account blocking features of bills of exchange.

The legal framework governing cash sweeping and account blocking was not encapsulated in a single law, but was spread over several statutes, bylaws and regulations. These are, specifically, the following:

- The **Enforcement and Security Act** (*Zakon o izvršenju i obezbjeđenju*) which regulates enforced collection, thus represents the key piece of cash sweeping and account blocking legislation as cash sweeping and account blocking are parts of enforced collection.

In particular, the Act regulates the following aspects of cash sweeping and account blocking:

- the instruments capable of cash sweeping and account blocking;
- the rights and obligations of the parties involved in proceedings for the enforcement of the instruments capable of cash sweeping and account blocking;
- the legal requirements for proceedings for the enforcement of the instruments capable of cash sweeping and account blocking; and
- the collection process within proceedings for the enforcement of the instruments capable of cash sweeping and account blocking.

- The Enforcement and Security Act was supplemented by the Instructions on the Enforced Collection of Funds from a Debtor's Account (*Uputstvo o bližem načinu sprovođenja izvršenja na novčanim* sredstvima *koja se vode na računu izvršnog dužnika*) (Official Gazette of Montenegro, no. 16/2012) adopted by the Ministry of Finance which regulates the technical aspects of enforced collection from the debtor's bank accounts. These include: (i) electronic messages exchanged between the Central Bank and the account bank, (ii) software *via* which enforcement is technically undertaken, (iii) type of information which the account bank and the Central Bank exchange in course of enforcement.
- Bills of exchange are regulated by the **Bills of Exchange Act** (*Zakon o mjenici*). This piece of legislation has been unchanged by the decision of the Constitutional Court.

  The Bills of Exchange Act regulates:

  - different types of bills of exchange;
  - formal requirements for their validity;
  - bills of exchange authorisation letters;
  - transfer of bills of exchange; and
  - mutual rights and obligations of rightful holders of bills of exchange, issuers and drawees.

3.2 Out-of-court restructuring legislation

Companies facing bankruptcy or financial difficulty have various work-out procedures available to them, which vary in terms of the level of regulation (ranging from voluntary, informal processes to those that are formal, regulated and supervised).

The informal work-out method has its legal basis in general civil law. Namely, the **Obligations Act** (*Zakon o obligacionim odnosima*), which is underpinned by the freedom of contract, serves as the legal basis for contractual parties to both agree and amend their respective rights and obligations. Thus, parties wishing to rearrange their contractual rights and obligations may do so at any time, in accordance with the

Obligations Act and within the boundaries of the Montenegrin legislation applicable to their relations (e.g., foreign exchange transactions).

The recently adopted Consensual Financial Restructuring Act (*Zakon o sporazumnom finansijskom restrukturiranju dugova prema finansijskim institucijama*), sets out an incentive-based legal framework to support voluntary consensual financial restructuring of rights and obligations of creditors and distressed debtors.

The Centre for Mediation supports the framework as institutional mediator. The Consensual Financial Restructuring Act incorporates certain internationally accepted principles or practices of financial restructuring, such as standstill agreements, cooperation of creditors, acting in good faith, relaxation of provisioning rules for financial institutions as well as a range of measures through which creditor-debtor relations can be redefined (e.g. debt-to-equity swap, claim/debt assignment).

3.3 Court Reorganisation Legislation

Reorganisation in bankruptcy is a court supervised process that may be undertaken through the two forms available under the Bankruptcy Act (*Zakon o stečaju*). The Bankruptcy Act provides that reorganisation may be undertaken either through (i) reorganisation plans (*plan reorganizacije*) which are part of formal bankruptcy proceedings and enforceable by the court; and (ii) pre-packaged reorganisation plans (*unapred pripremljen plan reorganizacije*), which is a mixed procedure consisting of out-of-court negotiations and judicial approval of the plan.

4. Bills of Exchange

4.1 Introduction

The Bills of Exchange Act does not provide a definition of a bill of exchange. However, a definition may be inferred from prevailing legal theory and legal doctrine, which define bills of exchange according to their features and elements stipulated in the Bills of Exchange Act.

Therefore, bills of exchange are described as security instruments based on which their issuer unconditionally instructs a third party to pay the monetary amount stated in the bill of exchange to its rightful holder, or undertakes to itself pay such amount to the rightful holder of the bill of exchange.

The most common type of bill of exchange on the market is the blank bill of exchange. Its popularity is attributed to the flexibility it provides to the creditor. As their name suggests, blank bills of exchange do not include any information regarding the debt on the face of the document. Such information, and other information required by the Bills of Exchange Act to ensure the validity and enforceability of the bill of exchange is filled in by the authorised creditor at the moment of its enforcement. The authorisation is proved by the authorisation letter issued by the debtor to the creditor at the time of issue of the blank bill of exchange.

Prior to further elaborating on bills of exchange, it is important to explain why (prior to the Constitutional Court Decision) they, as an instrument that had direct cash sweeping and account blocking powers, were more relevant for this study than court/bailiff decisions on enforcement which have similar effects.

4.2 Bills of exchange in comparison to court/bailiff decision on enforcement

Although cash sweeping and account blocking are inherent features of a court/bailiff decision on enforcement, bills of exchange were the only instruments authorising regular creditors to perform direct cash sweeping and account blocking.

Unlike a court/bailiff decision on enforcement, bills of exchange did not require prior court proceedings; instead they authorised the creditor to sweep cash and block the debtor's bank accounts directly.

Therefore, compared to the other instruments and prior to the Constitutional Court Decision, bills of exchange had the greatest impact on out-of-court restructuring and/or reorganisation (as they afforded creditors with direct cash sweeping and account blocking powers and were available to all creditors).

On the other hand, the powers of direct cash sweeping and account blocking which bills of exchange used to have prior to the Constitutional Court Decision afforded creditors with a powerful tool for debt collection against cash assets. Such powers were, thus, regularly used and enjoyed vast popularity both in every day commerce and in financing transactions.

4.3 Key features of bills of exchange prior to the Constitutional Court Decision - cash sweeping and account blocking

While the below describes the legal regime that is, following Constitutional Court Decision, not applicable anymore, a more thorough understanding of such pre-existing legal regime is important for understanding the recommendations made in this study as it serves as the background against which the recommendations were made.

4.3.1 Cash sweeping

Cash sweeping used to be the first measure applied by the debtor's account bank and/or the Central Bank against the debtor's cash assets when enforcing bills of exchange. Cash sweeping was a two-stage process.

Firstly, all funds held in the debtor's bank accounts kept with the bank to which bills of exchange were submitted for enforcement were transferred to the benefit of the enforcing creditor by debtor's account bank.

Secondly, and only if the first step did not cover the entire creditor's claim, all funds held in all the debtor's bank accounts at the time of commencement of the enforced collection were transferred to the account of the enforcing creditor. This second step used to be undertaken in co-ordination between debtor's account bank and the Central Bank. In case of insufficient funds on debtor's account kept with the account bank, the account bank "confirmed" bills of exchange (by making a note on the back of the bill(s) of exchange or in a separate document that the amount paid to the creditor only partially covered the claim stipulated in the submitted bill(s) of exchange) ("**Confirmed Bills of Exchange**"). Upon such bills of exchange being confirmed by the debtor's account bank, the creditor submitted the Confirmed Bills of Exchange to the Central Bank. Subsequently, the Central Bank was authorised to sweep cash from all debtor's bank accounts and transfer all swept cash to the enforcing creditor.

4.3.2 Account blocking

If cash sweeping failed to satisfy in full the claim under the bill of exchange, the Central Bank was authorised to activate the account blocking measure, which involved (i) prohibiting the debtor from disposing of any future income transferred to its bank accounts; and (ii) automatic transfer of such proceeds to the enforcing creditor.

4.3.3 A breakdown of cash sweeping and account blocking

Cash sweeping and account blocking may be broken down into the following key components:

	Cash Sweeping	Account Blocking
Legal basis for implementation	Both cash sweeping and account blocking are implemented based on the enforcement court/bailiff decisions on enforcement. Prior to the Constitutional Court Decision cash sweeping and account blocking were implemented also based on enforcement of bills of exchange.	
Form	Transfer of all funds held in a particular bank account (i.e. bank account kept with the commercial bank to which bills of exchange are submitted for enforcement), if collected funds are insufficient for satisfaction of the entire claim; transfer of all funds held in all debtor's bank accounts to the account of the enforcing creditor.	• Debtor prohibited from disposing of any future proceeds paid into his bank accounts; and • Automatic transfer of any future proceeds paid into the debtor's bank accounts to the enforcing creditor.
Implementation	Automatic implementation by the debtor's account bank and Central Bank when enforcing bills of exchange.	Automatically implemented by the Central Bank if cash sweeping fails to satisfy in full the claim under the bills of exchange.
Termination	Automatically terminated when: (i) claims covered by the bills of exchange have been satisfied in full; or (ii) all funds held in all bank accounts of the debtor have been transferred to the enforcing creditor to satisfy the claims under the bills of exchange, and the enforcement process	In the ordinary circumstances, automatically terminated where the claim under the bills of exchange being enforced has been satisfied in full; In consensual financial restructuring – the account blocking implemented by the parties to the consensual financial restructuring is automatically terminated once they submit a standstill

	has transitioned to the account blocking phase due to the insufficiency of the swept funds to cover the entire claim under the bills of exchange.	agreement to the competent enforcement bodies [*note: account blocking implemented by non-participating creditors remains in force as the standstill agreement is not binding on such creditors*]; and In reorganisation – automatically terminated once bankruptcy proceedings have been opened (reorganisation is carried out in bankruptcy proceedings).

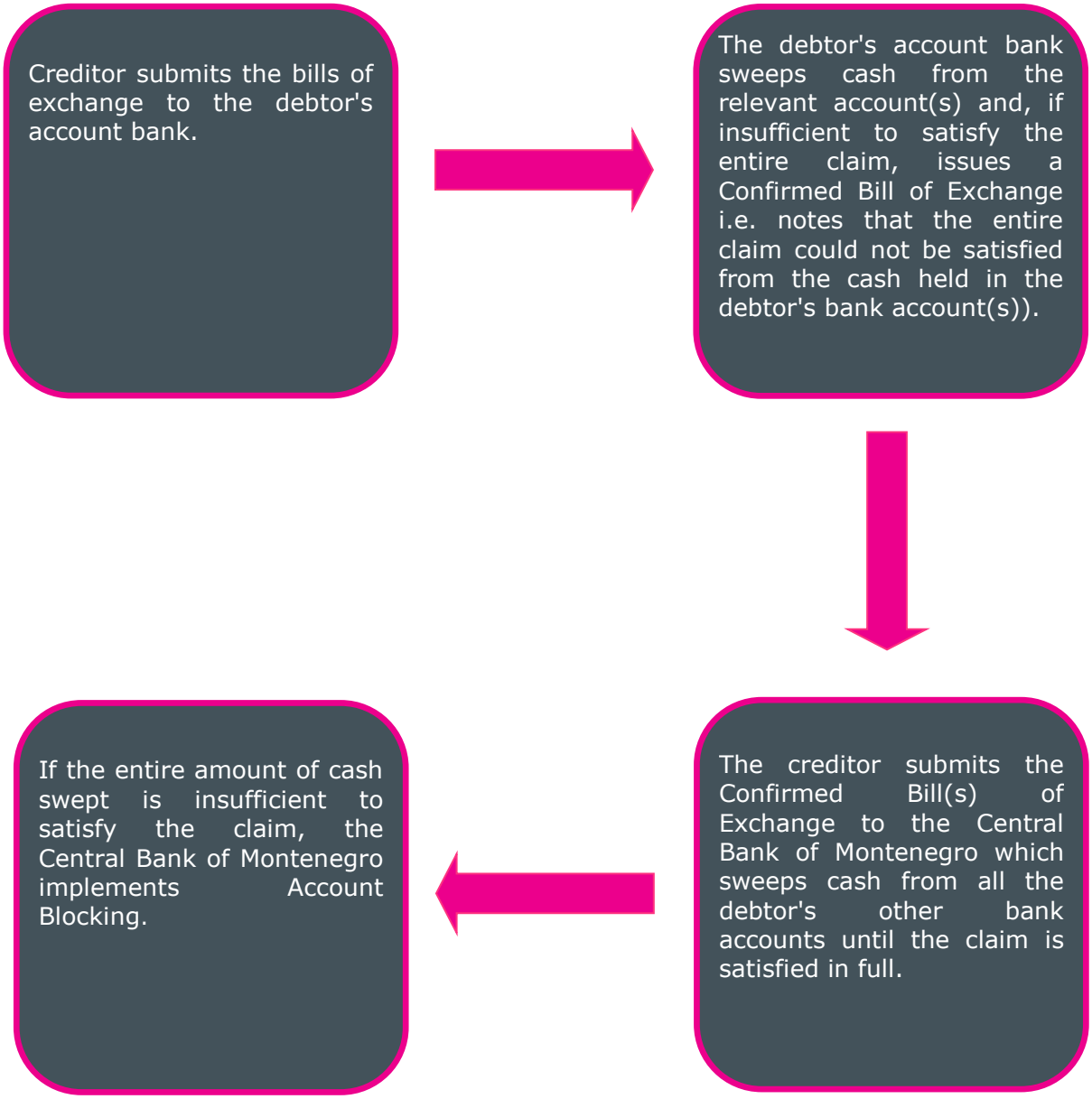
4.4 Enforcement of bills of exchange prior to the Constitutional Court Decision

Enforcement of bills of exchange used to be initiated by a creditor presenting the completed bill(s) of exchange to the debtor's account bank. Once the completed bill(s) of exchange were presented to the account bank, the account bank verified the validity of the bills of exchange and immediately payed out the amount specified on the bill of exchange to the creditor from the debtor's monetary account kept with the bank of submission. If there were sufficient funds in the debtor's accounts kept with the bank of submission the entire process used to be completed within minutes. Namely, the debtor's bank would transfer cash to cover the claim stipulated under the bill(s) of exchange to the creditor and thereby the enforced bill(s) of exchange would be fully satisfied.

However, if there was insufficient cash in a debtor's account to satisfy a creditor's claim in full as stated in the bill(s) of exchange, the debtor's bank used to: (i) pay out the full balance of the debtor's account kept with the bank of submission, (ii) "confirm the bills of exchange" and thereby bills of exchange submitted to debtor's account bank for enforcement become Confirmed Bills of Exchange and (iii) return the Confirmed Bills of Exchange to the creditor for further use. Subsequently, the creditor would file a request for enforcement of the Confirmed Bills of Exchange with the Central Bank. From this point on, enforcement of Confirmed Bills of Exchange did not require any further action on the part of the creditor or debtor. The Central Bank, which maintains the centralised system of all bank accounts opened in Montenegro, then performed cash sweeping across all the debtor's accounts until the claim stipulated in the Confirmed Bills of Exchange would have been satisfied in full. If this was insufficient for full repayment, the Central Bank activated account blocking across all the debtor's bank accounts and bared the debtor from opening new bank accounts until full satisfaction of the Confirmed Bills of Exchange.

Unlike typical collaterals (e.g. pledges, mortgages) which are priority ranked according to the time of collateral perfection (i.e. registration with the competent collateral register), holders of bills of exchange were priority ranked according to the time of enforcement of the bills of exchange.

Illustration of enforcement process of bills of exchange prior to the Constitutional Court Decision



4.5 Summary of key features bills used to have prior to the Constitutional Court Decision

The table below describes and explains the key features that bills of exchange used to have *prior to the Constitutional Court Decision*.

Key Feature	Comment
No perfection requirements	Unlike other collaterals, the validity and enforceability of which is contingent upon their perfection (typically, registration with

	competent registers), this is not the case with bills of exchange i.e. perfection is not required.
Efficient tool for sweeping cash from a particular bank account	The bank to which bills of exchange have been submitted transfers all the cash in the debtor's bank account against which the bills of exchange have been submitted.
Efficient tool for cash sweeping across all debtor's bank accounts	If there is insufficient cash in the debtor's account, against which bills of exchange have been submitted, to cover the claim in full as stipulated under the bills of exchange, then the Central Bank of Montenegro automatically, within 24 hours of being presented with the Confirmed Bills of Exchange by the creditor, performs Cash Sweeping across all the debtor's other bank accounts in Montenegro.
Limited involvement required on the part of the creditor in the enforcement	The creditor is only required to fill in the blank bills of exchange and submit it to the debtor's account bank and, subsequently, where its claim is only partially satisfied from cash found in the debtor's bank account kept with the bank to which bills of exchange have been submitted, submit the Confirmed Bills of Exchange to the Central Bank of Montenegro.
Account blocking capability	Should the entire sum collected through Cash Sweeping across all a debtor's accounts in Montenegro be insufficient for repayment of the amount stipulated in the Confirmed Bills of Exchange, all of the debtor's accounts will be blocked until the creditor's claim is satisfied in full by way of the automatic transfer of all cash credited to the debtor's account.
Safe and reliable form of collateral	Bills of exchange are independent from underlying legal obligations, thus a creditor is not required to prove the existence of a valid underlying obligation prior to enforcing a bill of exchange (including Confirmed Bills of Exchange) nor can the debtor challenge the existence of such obligation. No court involvement is needed.
Priority between creditors is determined based on the time of	In practice, priority between creditors that have enforced bills of exchange is

submission of bills of exchange for enforcement	determined according to the time of commencement of their respective enforcements i.e. according to the time of submission of bills of exchange to the account bank.

4.6 The effects of bills of exchange prior to Constitutional Court Decision

4.6.1 Race between creditors and chain reaction

The ranking of creditors according to the time of enforcement of bills of exchange, cash sweeping and account blocking used to trigger a race between creditors to submit their respective bills of exchange in order to ensure better prospects of satisfying their respective claims.

Payment priority ranking encouraged first movers to race for the cash available in the debtor's bank accounts in Montenegro. In addition, first movers also got the benefit of reserving all future cash receivables of the debtor until satisfaction of their claims in full *via* account blocking.

The issues associated with first movers among creditors in submitting bills of exchange are, link in Montenegro upon Constitutional Court Decision, not prevalent in Austria, Germany and Slovenia, since the legal regimes of these countries do not equip bills of exchange with the power of direct (i.e. without court proceedings) cash sweeping across all debtor's bank accounts, and/or account blocking.

Besides triggering a race between creditors, the payment priority ranking and the account blocking capability of bills of exchange also led to creditor chain reactions: Once a creditor enforced its bills of exchange, other creditors typically followed suit and initiate enforcement in order to reserve as much of the future cash flows to the debtor's account as possible.

4.6.2 Potential bankruptcy of a debtor

The chances of bankruptcy proceedings being initiated were significantly increased once bills of exchange were enforced and accounts were blocked, as all payments from these accounts were prohibited, except those made in favour of the creditors enforcing their bills of exchange.

Grounds for opening bankruptcy proceedings will be satisfied in the event of non-payment of monetary claims within 45 days of their maturity, or a default on all payments for 30 consecutive days.

The opening of bankruptcy proceedings against the debtor is detrimental for the debtor's business as it could, *inter alia*, also trigger the revocation of the operating licenses for the debtor's business, where the debtor's business is subject to licensing requirements.

4.6.3 Deterioration of the debtor's business and businesses of its transacting counterparties

Due to the account blocking feature of bills of exchange, all payments from the debtor's bank accounts, other than those made in favour of the enforcing creditor, were suspended, which had adverse effects on the debtor's business.

The discontinuation of the debtor's payments inevitably led to his inability to acquire goods and services for its day-to-day business, as most suppliers are reluctant to supply goods/services where there is a risk of not being paid.

In most cases, businesses also ceased operating due to employee work stoppages stemming from increasing uncertainty associated with account blocking.

In addition, suspension of payments by the debtor also adversely affected the financial standing of the debtor's transacting counterparties, including the creditors who have not enforced their bills of exchange.

Furthermore, account blocking led to the debtor's transacting parties being unable to service their own debts, especially if their income heavily relied on revenue generated from doing business with the debtor.

4.6.4 Fraudulent behaviour

Pursuant to the Prevention of Illegal Business Act (*Zakon o sprječavanju nelegalnog poslovanja*), a debtor whose bank accounts are blocked is prohibited from assigning its claims/debts or setting off its rights and liabilities.

In practice, this prohibition has led to fraudulent behaviour by debtors, which devise various schemes to diminish the effects of account blocking. These schemes include, among other matters, debtors redirecting their cash receivables/liabilities to their affiliates through claim/debt assignment in order to circumvent the restrictions imposed on their bank accounts[4] or debtors operating through the bank accounts of related parties.

Such fraudulent behaviour of the debtors is frequently accompanied by a reluctance to share business-related information with their creditors as such information sharing could reveal the fraud.

4.7 Changes introduced by the Constitutional Court Decision

As indicated in previous sections above[5], the Constitutional Court Decision that was adopted on 29 September 2017 abolished direct enforcement based on bills of exchange i.e. direct cash sweeping and account blocking capabilities of bills of exchange.

Nevertheless, the prior sections are very important for understanding the background against which the recommendations (*Section 8*) are made, especially for understanding that the re-introduction of old system could be detrimental for economy due to a number of factors, including the adverse effect of the old system on out-of-court restructuring and reorganisation for financially-struggling, but otherwise viable business.

5. Out-of-Court

Before analysing the impact that bills of exchange and account blocking had on out-of-court restructuring and reorganisation in greater detail, we will attempt to explain the importance of these procedures and provide some background in form of the

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[4] Prohibiting the debtor from disposing of any future proceeds paid into its bank account; and automatic transfer of such proceeds to the creditor enforcing its cash sweeping/account blocking instrument.

[5] Sections 4.3, 4.4, 4.5 and 4.6 above.

Montenegrin legislation regulating them and the internationally recognised standards applicable to such procedures, provided by:

- the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes'[6];
- the European Commission's Recommendation 'On a new approach to business failure and insolvency'[7]; and
- the proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedure and Amending Directive 2012/30/EU[8].

5.1 Importance of out-of-court restructuring and reorganisation

The purpose of out-of-court restructuring and court reorganisation (in particular, based on the pre-packaged reorganisation plans) is to ensure that viable enterprises in financial difficulty are able to restructure at an early stage, with a view to preventing their liquidation in bankruptcy and thereby maximising the overall value to creditors, employees, owners and public revenue authorities[9].

In contrast to liquidation in bankruptcy, where the debtor's estate is sold or realised to satisfy the creditors' claims, the maximisation of value to creditors is achieved at an early stage of financial difficulty in out-of-court restructuring and/or reorganisation, by giving the debtor a chance to generate revenue by continuing to carry on its business.

This fundamental difference also ensures a positive impact on employment, the debtor's transacting counterparties and public revenue, which all benefit from the debtor remaining in business.

Therefore, the continuation of the debtor's business, which is a key characteristic of out-of-court restructuring and reorganisation, is beneficial to the economy as a whole, as it leads to:

(i) no or limited employee redundancies;

(ii) continued contribution to public revenues (e.g. through taxes);

(iii) benefits for debtor's suppliers and customers; and

(iv) Reduced pressure on the judicial system, which is overburdened with bankruptcy proceedings.

These characteristics distinguish out-of-court restructuring and reorganisation from liquidation in bankruptcy, and underpin the importance of the former two.

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6 http://pubdocs.worldbank.org/en/919511468425523509/ICR-Principles-Insolvency-Creditor-Debtor-Regimes-2016.pdf

7 http://ec.europa.eu/justice/civil/files/c_2014_1500_en.pdf

8 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0723&from=EN

9 Provided by the European Commission Recommendation 'On a new approach to business failure and insolvency'.

5.2 Consensual financial restructuring

Consensual financial restructuring in Montenegro may be carried out under two statutes: the Obligations Act and the Consensual Financial Restructuring Act.

Voluntary restructuring is performed based on the fundamental principle of contracting freedom under the Obligations Act. Specifically, parties are free to choose their contractual counterparties; decide whether to enter into a contract; and include suitable provisions to regulate their contractual relations, provided such provisions are in line with mandatory rules of law (e.g. foreign exchange rules).

By the same token, the parties that have already entered into contracts are free to amend their terms and conditions without the intervention of any governmental or judicial authority.

It is important to note that, pursuant to the Obligations Act, agreements are only binding *inter partes* and will have no legal effect on any third party. As a result, a voluntary restructuring plan would not be binding on any creditor that has not agreed to, for example, a standstill agreement.

The Consensual Financial Restructuring Act defines the consensual financial restructuring as "redefining debtor creditor relations of a company or entrepreneurs[10] in financial difficulty as the debtor and its creditors, with the assistance of a mediator". The designated institutional mediator for consensual financial restructuring is the Centre for Mediation of Montenegro (*Centar za posredovanje Crne Gore*).

The availability of consensual financial restructuring to the debtor and its creditors is conditioned by (i) state of financial difficulty of the debtor, (ii) viability of its business and (iii) debtor's suitability to be restructured. Under Consensual Financial Restructuring Act, the aforementioned three pre-conditions shall be deemed fulfilled where: (i) no bankruptcy proceedings are opened against the debtor, (ii) cash flows over the previous three months and cash flow projections for the next 12 months show that there is shortage of cash inflow from operating income in relation to financial debt obligations and (iii) the financial consensual restructuring plan is capable of ensuring the timely servicing of loan agreement obligations using the debtor's operating income and liquid assets.

The Consensual Financial Restructuring Act provides consensual financial restructuring parties with a range of tools, including:

- conversion of a lump-sum payment obligation into a payment by instalments obligation;
- postponement of maturity;
- change of interest rates and other terms and conditions of credit arrangements, collateral or other arrangements;
- sale of assets or exchange of assets as compensation for liabilities;
- debt write-offs;
- realisation, release or substitution of collateral;
- provision of collateral by debtor or third parties; and

[10] Debt of natural persons may also be restructured provided that it is mortgage backed debt.

- debt-to-equity swaps and issuing of corporate securities.

In accordance with international best practice, the Consensual Financial Restructuring Act envisages standstills as crucial requirements for successful financial restructuring[11].

Provision for standstills has been made under the Consensual Financial Restructuring Act as a simple two-stage process. Namely, in the first stage of consensual financial restructuring, creditors who agree to participate in such procedure, by signing a consensual financial restructuring participation accord, automatically agree not to enforce against the debtor or its assets and to suspend all enforcement proceedings they have initiated. This temporary stay is designed to protect standstill agreement negotiations, since it is valid until either (i) conclusion of a standstill agreement or (ii) failure to conclude the standstill agreement. After successful negotiations and signing of a standstill agreement, as the second stage of a two-stage process, the debtor's creditors who signed the standstill agreement agree to stay any enforcement of financial instruments or claims against the debtor for a specified period, including claims under bills of exchange. As previously mentioned this was due to the powerful effect which bills of exchange used to have on restructurings. The aim of standstill agreements is to allow the debtor sufficient time to repair its finances without fear of creditor enforcement. The standstill agreement obligates participating creditors who have already commenced enforcement (including enforcement under bills of exchange) to terminate such proceedings. Such obligation is introduced through the duty of creditors to submit a standstill agreement to the competent enforcement authorities, which automatically terminates enforcement (including enforcement under bills of exchange).

While standstill agreements and their consequences are in accordance with international best practice and successfully reduce the disruptive pressure of potential enforcement by creditors during negotiations, their conclusion is strictly voluntary and they are only binding on parties to the agreements. Thus, as general rule, the standstill agreement cannot shield consensual financial restructuring negotiations from hold-out creditors (i.e. creditors who chose not to participate in consensual financial restructuring negotiations). The sole exception to this general rule is that hold-out creditors are prohibited from initiating bankruptcy proceedings against the debtor for three months as of signing the consensual financial restructuring participation accord, provided the accord is signed by creditors holding 75% or more of the claims.

According to the Consensual Financial Restructuring Act, the Consensual Financial Restructuring is underpinned by the following core principles:

- *Voluntariness* - Participation in financial restructuring is voluntary. The principle of voluntariness dictates that financial restructuring agreements must be signed by all parties involved in financial restructuring and do not affect the rights and obligations of non-participating constituencies.
- *Viability of debtor's business and other conditions* – Consensual Financial Restructuring can be employed only if: (i) at least one bank participates in the Consensual Financial Restructuring, (ii) no bankruptcy proceedings are pending against the debtor, (iii) cash flows in the previous three months and cash flow projections for the next 12 months show that there is shortage of cash inflow from operating income in relation to financial debt obligations and (iv) the

[11] provided by the World Bank in their 'Principles for Effective Insolvency and Creditor/Debtor Regimes'.

Financial Consensual Restructuring Plan is capable of ensuring the timely servicing of loan agreement obligations using the debtor's operating income and liquid assets.

- *Cooperation of creditors* - The Financial Restructuring Act provides that creditors have a duty to cooperate. However, it does not detail the form that any such cooperation should take (e.g. formation of coordinating bodies authorised to act on behalf of creditors that have common interests).
- *Reference to General Principles of Contract Law* - Restructuring in Montenegro is regulated by the Financial Restructuring Act with reference to the Obligations Act. The latter contains the principles and general rules that parties should abide by in the course of their contractual dealings, not exclusive to financial restructuring. Its principles are applicable as underlying principles to restructuring and provide that parties engaged in mutual obligations act conscientiously and in good faith, refrain from causing damage to one another and settle any disputes by agreement, mediation or any other amicable manner.

5.3 Court reorganisation

Under the Bankruptcy Act, one of the outcomes of bankruptcy proceedings is court reorganisation. Bankruptcy proceedings in Montenegro are conducted in form of reorganisation or liquidation in bankruptcy. As defined in the Bankruptcy Act, liquidation in bankruptcy is the process of satisfying creditors' claims by means of realising the debtor's estate.

Reorganisation (*reorganizacija*) is the process of satisfying creditors' claims in accordance with an approved plan, by way of redefining debtor-creditor relations, status changes to the debtor or any other method determined in the reorganisation plan. The process is aimed at achieving a more favourable settlement of creditors' claims than liquidation in bankruptcy, where there are economically viable conditions for the continuation of the debtor's business.

The Bankruptcy Act provides for two forms of reorganisation (i.e., reorganisation carried out based on a reorganisation plan or a pre-packaged reorganisation plan).

Pre-packaged reorganisation plans may be negotiated outside of formal bankruptcy proceedings (exceptionally[12], within the formal bankruptcy proceeding – when submitted by debtor); however, they are always adopted as part of bankruptcy proceedings.

On the other hand, the reorganisation plan is typically negotiated, submitted and adopted as part of formal bankruptcy proceedings. The pre-packaged reorganisation plan may be submitted by a bankruptcy debtor; secured creditors whose secured claims account for at least 30% of all claims; unsecured creditors whose claims account for at least 30% of all claims; and shareholders holding at least 30% of the debtor's share capital, while the reorganisation plan may be submitted also by bankruptcy receiver.

The stage at which the pre-packaged reorganisation plan, save for the one submitted by debtor[13], and reorganisation plan are prepared and negotiated *vis-à-vis* the moment of

[12] Please see the following paragraph.

[13] Due to the rule that, in case the debtor submits the Pre-Packager Reorganisation Plan, bankruptcy proceedings are automatically opened with submission of the Pre-Packaged Reorganisation Plan.

opening of the bankruptcy proceeding leads to the crucial difference between those two forms of Reorganisation. While preparation and negotiation of the reorganisation plan is protected from unilateral creditor action as it is done during the application of automatic stay on creditor action (including account blocking) imposed as of the moment of opening of the bankruptcy proceedings, negotiations around the pre-packaged reorganisation plan, save for the one submitted by debtor, are only protected by a stay on creditor action (including account blocking) where the bankruptcy judge grants a temporary stay on creditor action on foot of a motion filed by the debtor following submission of the pre-packaged reorganisation plan. The pre-packaged reorganisation plan submitted by the debtor shares same protection from creditors' actions (i.e. automatic stay) as reorganisation plan due to the rule that bankruptcy proceedings are automatically opened by Pre-Packaged Reorganisation Plan submitted by debtor.

Finally, it is worth noting that debtors and creditors alike have taken to the hybrid nature of pre-packaged reorganisation plans, which in practice[14] allows parties to negotiate freely and without the pressure of negotiation failure due to the actions of non-participating creditors (due to the stay on creditor action and cram-down possibility of hold-out creditors), while having the certainty of judicial approval of their course of action.

5.4 Implementation of internationally accepted standards for functional out-of-court restructuring and reorganisation in Montenegrin legislation

The implementation in Montenegrin legislation of internationally accepted standards for functional out-of-court restructuring and reorganisation, provided by the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes' and the European Commission's Recommendation 'On a new approach to business failure and insolvency' is detailed in Appendix 1.

6. Ramifications which enforcement of bills of exchange used to have on the various stages of reorganisation and out-of-court restructuring prior to the Constitutional Court Decision

The following sections describe the impact which, prior to the Constitutional Court Decision, enforcement of the bill of exchange used to have on the prospect of achieving a successful reorganisation and/or out-of-court restructuring by reference to the critical stages of these proceedings.

While, after adoption of the Constitutional Court Decision which abolished direct enforcement of the bills of exchange, ramifications of bills of exchange on prospect of achieving successful out-of-court restructuring and/or reorganisation are not applicable, a proper understanding of ramifications is important for any future policy assessment of whether to reintroduce the cash sweeping and account blocking powers of bills of exchange, particularly given the lack of effective security over cash assets that resulted from abolishment of direct enforcement of bills of exchange.

6.1 Assessing the feasibility of a reorganisation and out-of-court restructuring

The preparation to commence a reorganisation or an out-of-court restructuring entails an assessment of the viability of the debtor's business, a statutory precondition for both

[14] Typically, bankruptcy judge grant automatic stay on creditors' actions when pre-packaged reorganisation plans are submitted by authorised person (other than debtor); automatic stay on creditors' actions is always applicable when pre-packaged reorganisation plans are submitted by debtor.

proceedings under both the Consensual Financial Restructuring Act and the Bankruptcy Act[15].

Out-of-court restructuring and reorganisation proceedings are an option only if a debtor's business is viable. Otherwise, any attempt to maximise value for creditors through redefining debtor-creditor relations would only delay an inevitable liquidation in bankruptcy.

Cash sweeping and account blocking powers of bills of exchange diminished the prospect of a successful outcome for reorganisation and out-of-court restructuring, as they negatively affected the viability of a debtor's business in a number of ways.

6.1.1 Adverse effect on debtor's business

Cash sweeping and account blocking represent a major uncertainty for the business of a financially distressed debtor, which may at any time come to a halt if payments are discontinued as a result of the enforcement of bills of exchange.

In practice, once account blocking commenced it led, in most cases, to the demise of debtor's business. The statistics complied by the Central Bank evidence that the amount of blockage only increases with time.

[15] This precondition is also envisaged in the European Commission Recommendation 'On a new approach to business failure and insolvency'; the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes'; and the proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedure and Amending Directive 2012/30/EU.

Company[16]	Amount blocked in EUR (approx.) on 31 January 2017	Amount blocked in EUR (approx.) on 31 August 2017
Company no. 1	10,776.68	11,009.23
Company no. 2	9,585.92	9,853.76
Company no. 3	53,865.68	55,679.70
Company no. 4	41,323.34	45,243.36
Company no. 5	13,874.67	13,985.82
Company no. 6	3,686.56	3,824.33
Company no. 7	57,095.99	57,537.10
Company no. 8	29,541.85	57,293.10
Company no. 9	44.52	44.52
Company no. 10	30.00	30.00

6.1.2 Possible bankruptcy

As mentioned in Section 6.1 above, the viability of a debtor's business is also diminished by the high prospects of bankruptcy (and its effects), which could occur as a consequence of illiquidity caused by the enforcement of bills of exchange.

All market participants would generally initiate bankruptcy on the ground of the debtor's accounts being blocked, if upon careful examination of the financial standing of the debtor and its position among the remaining creditors it is determined that the prospects of repayment are low.

6.1.3 Run on the debtor

Given the priority ranking of bill of exchange holding creditors and the consequences of enforcement, as explained in Section 4.6.1 above, the enforcement of bills of exchange by one creditor may alert other first mover creditors to enforce their own bills of exchange. 75 % of market participants also recognise that enforcement of bills of exchange by one creditor may result in forced collection by other creditors.

Further enforcements effectively lead to an increase in the blocked amounts, thereby diminishing the chances of the debtor's business continuing.

[16] Companies' names are not provided as publishing them may be viewed as imprudent and does not add value to the study.

6.2 Negotiation of pre-packaged reorganisation plan/out-of-court restructuring plan

Amongst other elements, the stability of the debtor's business and the availability to creditors of complete and accurate information on the debtor and its business are essential for successful negotiation of pre-packaged reorganisation plans and out-of-court restructuring plans.

6.2.1 Stability of debtor's business

The existence of a standstill agreement in the context of an Out-of-Court Restructuring or a stay on creditor action as part of a court Reorganisation procedure is critical for stabilising a debtor's business.

Standstill agreements ensure that the viability of the debtor's business is not exposed to the risk of creditors' enforcement actions[17], and that assets required for successful reorganisation are not depleted by creditors' enforcement of bills of exchange.

With reference to Section 5.3 above, it should also be noted that, while reorganisation is shielded from all creditors by an automatic stay resulting from the opening of bankruptcy proceedings, due to the voluntary nature of out-of-court restructuring, in the latter proceedings debtors are only protected against actions of those creditors that signed a standstill agreement.

The benefit of claim recovery from cash available in all the debtor's bank accounts through cash sweeping and the reservation of all future cash flows into the debtor's bank accounts through account blocking, afforded to the first enforcing creditor, incentivises the enforcement of bills of exchange, rather than the participation in the negotiations of out-of-court restructurings.

Creditors are also motivated to enforce their bills of exchange by the fear that another creditor may do so, and that they will reduce/forfeit their chance of recovery by choosing not to enforce. Such risk leads to runs on the debtor, triggering a further downward spiral for its business and financial position.

The statistics compiled based on the questionnaires show that, 25% of the market participants would not typically enforce at the first sign of debtor's financial trouble, all market participants are inclined to enforce as result of other creditors enforcing their bills of exchange.

These incentives for the enforcement[18] of bills of exchange also discourage creditors that do not hold bills of exchange, and those who do but would normally opt for out-of-court restructuring, from actually doing so. Due to the stay not being compulsory for non-participating creditors, negotiations are exposed to the issue of hold-out creditors, which are capable of undoing the conclusion of an out-of-court restructuring plan.

The negotiations for out-of-court restructuring are not protected against non-participating creditors[19]; therefore, the viability of debtor's business is uncertain

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[17] Please see Section 5.2 above.

[18] Enforcing creditors "take" all current cash balances and "reserve" all future income of the debtor for their benefit.

[19] Standstill agreement is only binding upon creditors signatories of the agreement.

and the assets required for successful out-of-court restructuring are at a constant risk of enforcement.

Creditors wishing to participate in out-of-court restructuring are discouraged from doing so by the risk that non-participating creditors could enforce their bills of exchange, which could in turn:

- lead to the debtor being declared bankrupt;
- cause the debtor's business to wind up; and
- deplete the debtor's asset base required for out-of-court restructuring.

The impact of bills of exchange on the prospect of a successful outcome was more prevalent in the case of out-of-court restructurings than in pre-packaged reorganisation plans, and is non-existent in reorganisation plans.

Namely, a debtor who has prepared a pre-packaged reorganisation plan may request an automatic stay from the bankruptcy judge. Such automatic stay, if granted, precludes all creditors from enforcing their bills of exchange (and prevents cash sweeping and account blocking), in contrast to out-of-court restructuring, where only signatories to the standstill agreement may be precluded from enforcing their bills of exchange.

In addition, if the bankruptcy judge does not grant an automatic stay of enforcement, the negotiations for a pre-packaged reorganisation plan are, much like those for the out-of-court restructuring plan, exposed to unilateral enforcement of bills of exchange.

On the other hand, reorganisation plans are not affected by bills of exchange, as negotiations are always protected by an automatic stay, triggered by the initiation of bankruptcy proceedings (reorganisation plans being negotiated within bankruptcy proceedings).

6.2.2 Information Sharing

The Out-of-Court Restructuring Plan and Pre-Packaged Reorganisation Plan must be founded on complete and accurate information about the debtor and its business affairs in order to be viable. Namely, if plans are based on inaccurate or incomplete information they would be susceptible to failure, as forecasts and measures envisaged therein would be inappropriate, and incapable of achieving the intended results of the work-out.

Debtors that are subject to account blocking (i.e. whose accounts are blocked), typically devise and implement schemes to re-direct cash receivables/liabilities in order to minimise the negative effects of account blocking on their business. Such schemes are in direct contravention of the provisions of the Prevention of Illegal Business Act prohibiting claim/debt assignment upon elapsing of 30 days from the date of account blocking, and are classed as a criminal offence under the Criminal Code. Therefore, it cannot be reasonably expected that debtors, which have engaged in such schemes and thereby violated statutory rules, have fully and accurately disclosed all information to their creditors.

This issue is less relevant in the case of reorganisation plans as such plans are prepared and negotiated as part of bankruptcy proceedings, i.e. at the time of their preparation and negotiation an independent bankruptcy receiver is

appointed to manage the company and therefore oversees the information provided.

6.3 Implementation of out-of-court restructuring measures

The World Bank and the European Commission, as well as Serbian legislation, all dictate that a functional work-out or restructuring and reorganisation in a bankruptcy environment requires an enabling framework.

A framework is considered to be enabling if, *inter alia*, it provides for a wide range of measures for re-defining debtor-creditor relationships. Such measures typically include debt/claim assignment and set-off.

Considering that the Prevention of Illegal Business Act prohibits claim/debt assignment as well as the set-off of rights and liabilities of a debtor whose accounts are blocked for more than 30 days, once account blocking is implemented and 30 days lapse, out-of-court restructuring plans may not envisage claim/debt assignment nor set-off as a measure for re-defining debtor-creditors relationships. Therefore, unless supported by all creditors, certain typically used measures for redefining debtor-creditors relationships might not be used as part of an out-of-court restructuring once account blocking is in place.

6.4 Adoption of the pre-packaged reorganisation plan/out-of-court restructuring plan

The adoption of the out-of-court restructuring or pre-packaged reorganisation plan is correlated to the participation of the key creditors in out-of-court restructuring/reorganisation negotiations.

The question of whether creditors holding bills of exchange will vote for the adoption of an out-of-court restructuring plan is redundant, since such plans are not binding on them without their consent, while incentives presented by bills of exchange encourage them to take unilateral action (i.e., enforcement), rather than participate in collective action (i.e., out-of-court restructuring).

7. Benefits and uses of bills of exchange prior to the Constitutional Court Decision

Prior to the Constitutional Court Decision, the fact that creditors could enforce against all present and future debtor's cash assets *via* cash sweeping and account blocking features of bills of exchange and without having to go through prior court proceedings, made bills of exchange very popular instruments (evidenced by all Market Participants requiring bills of exchange as security for their claims).

In particular, bills of exchange were used as collateral due to the principle that bills of exchange are independent from the underlying legal ground of the claim secured by them[20], prescribed by the Bills of Exchange Act, as well as their above referenced qualities regarding perfection and enforcement, have greatly contributed to the widespread use of bills of exchange as collateral in Montenegro.

The use of bills of exchange as collateral was also attributed to their comparable advantage over other collateral instruments (i.e., considerably greater efficiency of enforcement compared to other types of collateral, such as mortgages or pledges).

Other types of collateral typically involve higher costs, greater uncertainties and longer enforcement periods. On the contrary, the enforcement of registered bills of exchange

[20] A principle also applicable to instruments such as bank guarantees.

in Montenegro used to be a straightforward process, which required very limited involvement on the part of either the creditor or the debtor.

Their widespread use as collateral is evidenced by 100% of market participants demanding bills of exchange as the instrument for securing their claims.

8. Recommendations

8.1 Refraining from re-introducing the direct enforcement of bills of exchange

Considering the ramifications which enforcement of bills of exchange used to have on the various stages of reorganisation and out-of-court restructuring prior to the Constitutional Court Decision, it is highly advisable that the system in which bills of exchange could, without prior court proceedings, be enforced against debtors' cash assets i.e. cash sweeping and subsequent account blocking, is not re-introduced in Montenegrin legislation.

It is important to note that the previous system was confined to countries of former Yugoslavia and that EU countries (e.g. Austria and Germany) as well as Slovenia, which while part of Yugoslavia had the same bills of exchange regulation as Montenegro, do not afford bills of exchange with direct cash sweeping and account blocking powers.

The enforcement of bills of exchange in the above-referenced jurisdictions does not result in the blocking of all the debtor's bank accounts, nor does it prevent the disposal of any future income, or allow automatic transfer of such incoming cash flows to the enforcing creditor.

Austrian law provides for the enforcement of bills of exchange in a two-step court procedure, which may be followed by cash sweeping.

The enforcing creditor must seek the competent court to issue a payment order based on the bills of exchange. Once the payment order has become final and binding, the creditor obtains an enforcement title, which may then be enforced through the competent enforcement court. Priority over cash assets is afforded to the creditor which first obtains a court seizure order based on the enforcement title.

If the funds available in the debtor's account are insufficient to satisfy the full amount indicated in the court order, unlike it used to do in Montenegro, this does not give rise to account blocking. The debtor is not barred from disposing of the available funds in his accounts and no automatic transfer of debtor's future income is available to the enforcing creditor.

The court may issue an attachment order and instruct the transfer of the debtor's receivables to the account of the enforcing creditor, resulting in direct cash sweeping or account blocking. But the enforcement of bills of exchange under Austrian law does not in and of itself allow for direct cash sweeping or account blocking.

Similarly, Germany does not have a centralised system that permits direct enforcement of bills of exchange resulting in cash sweeping or account blocking. Instead, the enforcement of bills of exchange is secured through a court ruling or a comparable title such as a court settlement, writ of execution or notarial certification with submission under immediate execution.

A judgement or comparable title is required for the competent government authorities to implement any enforcement measure, including the freezing of debtor's bank accounts and the transfer of debtor's receivables to an enforcing creditor.

Account blocking is also possible. However, after receiving a judgment in court proceedings, the creditor must first apply to the court for a temporary freezing of debtor's accounts to ensure non-depletion of cash assets; once this has been granted, the creditor may apply for attachment and the transfer of the debtor's cash receivables to the creditor's account.

In contrast to Austria and Germany, Slovenia recognises some of the legal concepts that used to be applicable in Montenegro. Specifically, under Slovenian law, bills of exchange that indicate the place of payment and the payee (domiciled bills of exchange) are deemed to include the debtor's authorisation to the creditor to issue a payment order to the debtor's bank and debit a specific bank account.

A Slovenian bank receiving bills of exchange from an enforcing creditor is only authorised and obliged to sweep cash from the debtor's account if the account holds sufficient funds to settle the full claim covered by the bill of exchange.

However, any further enforcement of bills of exchange under Slovenian law requires the enforcing creditor to initiate and conduct prior court proceedings.

Cash sweeping across all bank accounts of a debtor and transferring its future income to the benefit of the enforcing creditor requires a court ruling rendered in enforcement proceedings.

8.2 Alternative options for creation of security over debtor's cash assets

Unlike in Germany, Austria and Slovenia, the lack of other reliable security instruments over cash assets under Montenegrin law has significantly contributed to the widespread use of bills of exchange as collateral. In fact, all market participants answered that they require their debtors to provide bills of exchange as security for their liabilities towards the market participants. Upon adoption of the Constitutional Court Decision creditors were abruptly left with no instrument for securing their loans against the debtor's cash assets. The old system with powerful bills of exchange was dismantled as, based on the Decision, direct enforcement of bills of exchange is not possible any longer and the Central Bank terminated all, then current, enforcements of bills of exchange and referred to enforcement before courts/bailiffs.

While, Montenegrin law recognises the concept of the account pledge, in practice, it is a weak form of security and not fully effective for the following reasons:

- *Creation and perfection* – while the account pledge is created and perfected in the same manner as any other type of pledge (i.e. by way of registration in the Pledge Register), its perfection is more cumbersome, costly and time consuming in comparison with bills of exchange, which do not require any perfection formalities and costs associated therewith.
- *Enforcement* – while on the paper the enforcement procedure envisaged under the Pledge Act may appear efficient, in practice it is rather slow and complicated. One of the key impediments is the requirement to successfully notify debtor about any enforcement proceedings and failure of the competent courts to render decisions within statutory deadlines. In practice, when debtors refuse to co-operate and try to obstruct enforcement and courts fail to comply with the statutory deadlines, enforcement of the account pledges is practically useless. Therefore, the enforcement of pledges in Montenegro, would benefit from a centralised public notification system for the debtor (e.g. publication of the planned enforcement on the Pledge Register web-site) and full compliance by the

court with prescribed statutory deadlines for rendering decisions. In this regard consideration could also be given to making this type of security instrument enforceable out-of-court in proceedings before the Pledge Register, with limited right of the debtor to appeal;

- *Life cycle of account pledge* – the concept of a floating charge over the debtor's bank accounts as a security instrument does not exist in Montenegro. Further, according to the unofficial position of the Montenegrin Pledge Register, the account pledge captures only cash assets which were deposited on the account at the moment of pledge perfection (i.e. registration in the Pledge Register), thus, any account balance top-up(s) are not considered to be pledged. This creates practical problems as it does not capture the cash balance (up to the pledge amount) additionally deposited into pledged accounts and thus requires any account balance top-up(s) to be additionally (by way of pledge amendment) pledged. This substantially deviates from the bills of exchange which capture all cash found on all debtor's accounts at the moment of enforcement of the bills of exchange. There do not appear to be any clear policy grounds for such distinction.
- *Legal certainty* - Legal uncertainties surround the Pledge Act provisions that regulate pledge over cash assets. Namely, the uncertainties relate to: (i) the possibility and manner of *pledging* cash assets standing on the balance of the debtor's accounts; and (ii) the possibility and manner of *enforcement* of the pledge over cash assets standing on the balance of the debtor's accounts.
- *No immunity from other enforcements* - creditors do not deem account pledges to be a solid security instrument because the pledged accounts are not immune from enforcement over the debtor's cash assets by third parties. Therefore, enforcement against debtor's cash assets by other creditors could render the account pledge to be economically worthless. In this respect, explicit provisions ring fencing the pledged accounts from enforcement should be considered.

It is therefore the general consensus among the Market Participants[21] that the account pledge in Montenegro: (i) provides very limited security to creditors, i.e. an account pledge does not encompass all accounts of the debtor (ii) allows for fraudulent behaviour of debtors using its other accounts, (iii) is difficult to enforce due to legal uncertainty regulating enforcement of pledges, and (iv) is less fast and efficient to enforce than bills of exchange. 75% of the Market Participants who we surveyed said that they would consider replacing bills of exchange with an account pledge, subject to improvements in Montenegrin legislation relating to security over cash. The remaining 25% of Market Participants questioned said that they would require bills of exchange regardless of changes introduced in to account pledge legislation.

The existing financial collateral regime does not provide creditors with an alternative to account pledges or bills of exchange. Montenegro has implemented a Financial Collateral Act which captures security over cash arrangements but the Act does not extend to corporates. Therefore, transactions with corporates may not benefit from arrangements in the form of: (i) title transfer financial collateral arrangements including repurchase agreements under which full ownership over financial collateral is transferred; and (ii) security financial collateral arrangement under which the collateral is provided as a

[21] The statistics have been developed based on a questionnaire answered by four powerful commercial banks.

security interest, being a limited in rem right (i.e. the ownership remains with the collateral provider) capturing collateral in form of (a) cash deposited to an account, (b financial instruments and (c) credit claims. Further, corporates and their lenders would not be able to rely on efficient netting provisions that will remain effective: (i) notwithstanding the commencement or continuation of insolvency proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and (ii) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of financial collateral. Accordingly creditors cannot rely on the Financial Collateral Act as a replacement for bills of exchange in respect of loans to corporates. In addition, the Financial Collateral Act does not enable efficient enforcement outside of court and without reference to restrictions in the legal framework such as avoidance provisions in insolvency law.

Therefore, it is recommended that: (i) the Pledge Act, which regulates account pledge, is amended so as to: (A) define and explicitly regulate account pledges; (B) provide that the account pledge encompasses floating (up to the maximum secured amount) cash balance on pledge accounts (i.e. includes account balance top-up(s)); (C) explicitly regulate swift enforcement of account pledge and set-off of the account balance against the secured obligation ; and (ii) consideration is given to extending the financial collateral arrangements to corporates as well, creating a special regime for enforcement of financial collateral, including security over cash that would bring Montenegrin in line with other EU countries which have implemented the EU Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, and which, in particular, have opted to include corporates[22].

[22] Among EU Member States only Austria exercised the full opt out to exclude legal persons referred to in Article 1(2)(e) of the EU Directive from their implementing legislation.

Appendix 1 - Implementation of internationally accepted standards for functional out-of-court restructuring and reorganisation in Montenegrin legislation

Prior to assessing the implementation of internationally accepted standards for functional out-of-court restructuring and reorganisation in Montenegrin legislation, it is important to first explain the elements that are, according to such standards, considered to characterise the functional framework that enables work-out procedures.

A. Elements characterising functional framework that enables work-out procedures

1. Enabling framework

A functional framework should facilitate out-of-court restructuring and reorganisation by providing various measures available to creditors and debtors, and enable achievement of out-of-court restructuring and reorganisation through their application. Such measures should include debt-to-equity swaps, debt write-off, set-off, amendment of debt obligations and priority for new financing providers.

In addition to introducing these measures, a functional framework should also incentivise both debtors and creditors to accept them. Such incentives should range from the relaxing of bad debt provisioning for banks to tax benefits.

Finally, regardless of the functionality of out-of-court restructuring and reorganisation legislation, other legislation should also incentivise out-of-court restructuring and reorganisation rather than hinder these work-out procedures.

2. Neutral forum

A functional out-of-court restructuring and reorganisation legal environment should facilitate these work-out procedures by providing for a neutral forum where both creditors and debtors can negotiate, explore arrangements and overcome their opposing interests with a view to implementing out-of-court restructuring and reorganisation.

3. Participants

Out-of-court restructuring and reorganisation both have in common the indebtedness of the debtor towards numerous creditors of varying financial and risk profiles. It is therefore paramount that the key creditors, whose collateral could lead to the debtor's liquidation in bankruptcy, or affect restructuring measures, be involved in negotiations and included in the out-of-court restructuring plan or reorganisation plan. The feasibility of such plans is contingent on the creditors' not jeopardising work-out by exercising the rights arising out of their arrangements with the debtor.

4. Coordination

Typically, a debtor has numerous creditors, whose actions tend to be disorganised and contradictory; this can frustrate the out-of-court restructuring and reorganisation process. Thus, for a functional work-out, it is essential that the actions of creditors be coordinated and uniform. Such coordination could be achieved through the creation of coordinating bodies with delegated authority from groups of creditors having a common denominator.

5. Stabilisation

In order to prevent unilateral action by creditors intending to realise their individual interests, triggered by the debtor's financial difficulties, a functional out-of-court restructuring and reorganisation environment must provide for a contractual or statutory stay of action against the debtor. This step should have a stabilising effect on the debtor and his creditors, as it ensures that the debtor's assets will not be subject to enforcement during negotiation of the work-out plan, and will be included in the process once the plan is adopted.

6. Access to new money

Most unsuccessful out-of-court restructurings and reorganisations fail due to a lack of liquidity, which is crucial for implementing the necessary measures. The parties to the process are unwilling to inject further cash into a financially distressed debtor, and so are new investors. A functional legal framework should provide incentives for injecting new money into financially distressed companies.

Such incentives could be in the form of priority payment, collateral ranking or deferral of outstanding liabilities. In particular, the debtor may offer his creditors to repay, in the long term, more than they were originally entitled to, in return for their agreement to extend the maturity of their claims and maintain their business relationship with the debtor.

7. Information

The out-of-court restructuring and reorganisation process can only be effective if all key participants have access to key information regarding the debtor's affairs. Otherwise, the plan would be based on unconfirmed or false presumptions, making it susceptible to failure.

8. Legal effects

Ideally, the out-of-court restructuring plan and reorganisation plan should be binding on all constituencies whose actions could result in liquidation in bankruptcy of a financially distressed debtor. Where there are creditors not bound by the plan, out-of-court restructuring and reorganisation envisaged thereunder may be at a risk of the debtor's liquidation in bankruptcy resulting from unilateral action by such creditors.

B. Implementation of the elements characterising functional framework that enables work-out procedures into Montenegrin legislation

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
Enabling Framework	√	√	√	**Voluntary Restructuring** While Voluntary Restructuring is not institutionalised in a special legislation (i.e. voluntary restructuring is not codified), the provisions of general civil and corporate law could be used as the legal basis for the implementation of work-out measures (e.g. debt/claim assignment may be agreed pursuant to the Obligations Act, debt-to-equity swap may be agreed pursuant to the Companies Act). **Consensual Financial Restructuring** The Consensual Financial Restructuring Act provides a wide range of restructuring measures for redefining debtor-creditor relations. Please see Section 5.2 of this Study for Consensual Financial Restructuring measures. **Reorganisation** The Bankruptcy Act contains a wide range of measures that are available to creditors and debtors to agree upon and redefine their relations accordingly. Such measures include: (i) repayment through instalments, change of maturity dates, interest rates or other terms of a loan, a credit or other claim or a security instrument, (ii) closure of plants or change of business activities, (iii) pledge of encumbered or unencumbered assets, (iv) transfer of part or all of

[23] Please see Appendix 1 for an explanation of elements of a functional Reorganisation/Out-of-Court Restructuring environment.

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
				the property to one or more existing or newly established entities, (v) conversion of debt to equity, (iv) debt/claim assignment.
Neutral Forum	√	√	x	**Voluntary Restructuring** Given that Voluntary Restructuring is not codified, there are no explicit provisions governing the forum for such work-outs. However, there are no obstacles to parties, based on general civil law, agreeing on a forum in which the work-out shall be performed. **Consensual Financial Restructuring** The Centre for Mediation and the mediator who is appointed are the neutral forums in Montenegro competent for facilitating negotiations and meditate between opposing interests. **Reorganisation** The role of the bankruptcy court is completely different as it does not get involved in the preparation of the Pre-Packaged Reorganisation Plan/Reorganisation Plan. Its role is limited to verifying the legality of a Pre-Packaged Reorganisation Plan/Reorganisation Plan and supervising/facilitating voting on the plans.
Ensured Participation of Key Constituen-cies	x	x	√	**Voluntary Restructuring** As mentioned above, given that voluntary restructuring is binding only upon its participants, and that there is no legislation prescribing other mechanisms to ensure the participation of all creditors (e.g. the Bankruptcy Act), voluntary restructuring is undertaken and effective only between parties wishing to engage in it.

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
				Consensual Financial Restructuring Participation is voluntary and the effects of adopted Consensual Financial Restructuring plans are limited to its signatories. Further, the availability of financial restructuring as a solution to financial distress is contingent on the participation of at least one bank. Finally, the involvement of banks is limited by the requirement that they can only participate if their receivables against the debtor are classified in categories B or C of the classification instructions set down by the Central Bank of Montenegro. The Financial Restructuring Act does not require obligatory participation by key constituencies (i.e. creditors whose unilateral actions could lead to the distressed debtor being declared bankrupt). **Reorganisation** All parties wishing to realise their claims must participate in the bankruptcy proceedings. The Pre-Packaged Reorganisation Plan/Reorganisation Plan must include all claims and its terms are imposed on every creditor, regardless of whether the creditor is for or against such plan (i.e. cram-down).
Coordina-tion/organisation of creditors	x	x	√	**Voluntary Restructuring** There are no explicit provisions regulating coordination/organisation of creditors. However, parties may, based on general civil law, agree on the manner of coordination, delegate authority (based on power of attorney). **Consensual Financial Restructuring** While proclaiming the principle of creditor cooperation and envisaging their duty to cooperate, the Financial Restructuring Act fails to provide any

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
				specific coordination facilitating bodies or duties. **Reorganisation** The Bankruptcy Act does not explicitly regulate the coordination of creditors in respect of preparation and negotiation of the reorganisation plan. However, such coordination is implicitly, at some level assumed, as the Bankruptcy Act provides that only groups of creditors surpassing certain thresholds can submit a reorganisation plan, thus assuming certain level of coordination within such groups.
Stabilisation	x	x	√	**Voluntary Restructuring** Given the inter-party legal effect of contractual obligations, standstill agreements reached in the course of Voluntary Restructuring are binding only upon their signatories. **Consensual Financial Restructuring** The Financial Restructuring Act envisages a temporary moratorium on creditor action from entry into the Financial Consensual Restructuring procedure until signing of the standstill agreements and standstill agreement designed to protect the Consensual Financial Restructuring negotiations, both of which have legal consequences in accordance with international best practice. However, their significance is diminished by their voluntary nature and lack of assurance of key constituencies' participation. **Reorganisation** Conventional Reorganisation, based on a Reorganisation Plan, is protected from hold-out creditors' unilateral actions due to an automatic stay on such actions triggered at the moment of initiation

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
				of bankruptcy proceedings. The same legal regime is applicable[24] to Pre-Packaged Reorganisation Plans that are submitted by the debtor. The same protection is also available for hybrid reorganisation based on a Pre-Packaged Reorganisation Plan (save for the one submitted by the debtor), provided that the debtor requests such protection and the bankruptcy judge approves it.
Information	√	√	x	**Voluntary Restructuring** Based on the Obligations Act's principles, contracting parties must, in the course of negotiations, act in good faith and with due care. Furthermore, the Obligation Act prescribes prohibition of causing damage and obligation to compensate for damage occurring as breach of good faith negotiations. **Consensual Financial Restructuring** The Financial Restructuring Act obliges a debtor to share information with its creditors. **Reorganisation** While there is an obligation to share information during implementation of the reorganisation plan, there is no obligation to share information in the course of the preparation of the pre-packaged reorganisation plan.
Legally Binding on all Creditors	x	x	√	**Voluntary Restructuring** Agreements concluded in the course of voluntary

[24] Due to the rule that, in case the debtor submits the Pre-Packager Reorganisation Plan, bankruptcy proceedings are automatically opened with submission of the Pre-Packaged Reorganisation Plan.

Elements of a functional environment[23]	Voluntary Restructuring	Consensual Financial Restructuring	Reorganisation	Comments
				restructuring, due to the inter-party legal effects of contractual relationships (and lack of specific legal regime regulating voluntary restructuring), are binding only upon their signatories. **Consensual Financial Restructuring** Due to the voluntary nature of financial restructuring, the financial restructuring plan is obligatory only for its signatories. **Reorganisation** The Bankruptcy Act obliges all creditors to participate in bankruptcy proceedings (that could be carried out as Reorganisation), thus participation of all creditors is ensured in Reorganisation by the mandatory provisions of the Bankruptcy Act. Furthermore, the Bankruptcy Act provides for a cram-down of dissenting creditors by providing that Reorganisation is binding upon all creditors if enacted with a certain majority of votes in the majority of classes.

Appendix 2 - Questionnaires completed by market participants

Background

This questionnaire is provided to you within the context of a study conducted by the European Bank for Reconstruction and Development together with its consultants Moravčević Vojnović i partneri AOD in cooperation with Schönherr on account blocking and its impact on debtor-creditor relations in the Western Balkans (i.e. Montenegro, Republic of Serbia, Federation of Bosnia and Herzegovina, the Republic of Srpska as well as in FYR Macedonia).

The ability to restructure or reorganise financial obligations is immensely important for debtors and creditors and for the wider economy, particularly in financially challenging times. Both out-of-court restructuring and court-led reorganisation can maximise value to creditors by ensuring that viable debtors in financial difficulty continue operations rather than enter into unplanned liquidation in bankruptcy (*bankrotstvo*). They can also preserve employment of the debtor's staff and ensure continuation of the business of the debtor's business partners and suppliers, as well as the debtor's ability to pay taxes and contribute to the public revenue.

Cash sweeping and account blocking on the basis of bills of exchange have existed as an effective means of quasi-security for creditors in Serbia for a long time and are perceived to be important in the absence of effective account pledge security instruments. Nevertheless preliminary evidence suggests that this practice can reduce the incentives for creditors (and their debtors) to cooperate on out-of-court restructuring and court-led reorganisation in bankruptcy (*reorganizacija*), since it gives rise to a 'first to act' advantage .

The purpose of this questionnaire is to gather stakeholder feedback on the effects of account blocking on out-of-court restructuring (*vansudsko restrukturiranje*) and court-led reorganisation in bankruptcy (*reorganizacija*) and to obtain stakeholder views on whether any changes are needed to the existing legal framework for account blocking to support out-of-court restructuring and/or court-led reorganisation.

Please note that this questionnaire is voluntary and you are not obliged to answer every question. If you do not know the answer to a particular question or do not wish to answer, please leave this blank.

Questionnaire – Association of Banks

1. Questions - Bills of Exchange

1.1 Does your financial institution typically require bills of exchange from borrowers as a form of collateral for providing financing? Please tick one box as applicable.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

1.2 Do you consider bills of exchange to be essential collateral, without which your financial institution is not willing to provide financing? Please tick one box as applicable.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

1.3 If your answer to the above question 0 is positive, please briefly explain why you consider bills of exchange to be essential collateral for providing financing.

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1.4 The account pledge is not popular in Montenegro due to difficulties in creating effective security over a debtor's bank account(s). If the account pledge were fully effective, would you be willing to rely on the account pledge rather than bills of exchange as collateral? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.5 In your experience, does the enforcement of bills of exchange by your financial institution secure a good rate of recovery i.e. 60% or above of the original debt? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.6 Do you agree with the following statement "The cash sweep and the payment of existing proceeds from the debtor's accounts are important for the overall recoveries of my financial institution"? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.7 Do you agree with the following statement "Account blocking and the payment of future proceeds from the debtor's accounts are important for the overall recoveries of my financial institution"? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.8 Does your financial institution typically enforce bills of exchange at the first sign of financial distress of the debtor? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.9 Does your financial institution typically enforce bills of exchange as a result of other creditors enforcing or threatening to enforce their bills of exchange? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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1.10 Does your financial institution initiate insolvency proceedings in respect of a debtor on the grounds of the debtor's accounts being blocked? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2. Questions - Out-of-Court Restructuring / Reorganisation

2.1 Does your financial institution ever participate in bilateral out-of-court restructuring of a debtor? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2.2 Does your financial institution ever participate in out-of-court restructuring of a debtor with other creditors (including under the Consensual Financial Restructuring of Debt Owed to Financial Institutions Act (*Zakonom o sporazumnom finansijskom restrukturiranju dugova*

prema finansijskim institucijama))? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2.3 When your financial institution participates in an out-of-court restructuring and hold bills of exchange, does it typically:

☐ enforce any bill(s) of exchange first and then engage in out-of-court restructuring (including negotiation of a standstill agreement);

☐ engage in negotiation of a standstill agreement first but hold onto bills of exchange as a leverage tool for the negotiations; or

☐ other/ none of the above.

Please tick one box above as applicable and provide any additional comments below.

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2.4 In your opinion, does the possession of bills of exchange by creditors undermine negotiations on a standstill and/or out-of-court restructuring? Please tick one box above as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2.5 Does your financial institution typically participate in out-of-court restructuring even if bills of exchange by creditors (including your financial institution) have been enforced[25]? Please tick one box above as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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[25] Cash standing on account of debtor, at the time of enforcement, has been transferred to the enforcing creditor and account receivables of the debtor are automatically being transferred to the benefit of enforcing creditor until the creditor is fully repaid.

2.6 Do bills of exchange in any other way effect your decision whether to participate in out-of-court restructuring / court-led reorganisation process and why? Please tick one box above as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2.7 Does existence of bills of exchange in any way affect negotiations or voting of creditors on pre-packaged reorganisation plans (*plan reorganizacije podnijet istovremeno sa predlogom za otvaranje stečajnog postupka*)? Please tick one box above as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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2.8 If the answer to the above question 3.7 is positive, could you please elaborate on how bills of exchange affect negotiations or voting of pre-packaged reorganisation plan?

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2.9 If you see bills of exchange and the effects of their enforcement (i.e. account blocking) as an obstacle for achieving successful out-of-court restructuring / court-led reorganisation, could you please suggest any potential solutions to overcoming this obstacle?

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2.10 Would you generally support a reform of the legal regime for bills of exchange which would strengthen out-of-court restructuring and court-led reorganisation? Please tick one box as applicable and provide any additional comments below.

☐Yes ☐Yes, with reservations ☐No ☐No, with reservations

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Appendix 3 – Definitions and Abbreviations

Account Blocking	Measure that used to be prescribed under the Enforcement and Security Act and implemented by the Central Bank consisting of: (i) prohibiting the debtor from disposing of any future proceeds paid into its bank account; and (ii) automatically transferring such proceeds to the creditor enforcing his account blocking instrument, if the amount of available proceeds at the time of enforcement of the claim is insufficient to repay the creditor's claim in full;
Bankruptcy	Bankruptcy (*bankrotstvo*) is a term defined in the Bankruptcy Act as the process which achieves satisfaction of creditors' claims through the sale of a debtor's assets, or that of the debtor itself as a legal person;
Bankruptcy Act	Bankruptcy Act (*Zakon o stečaju*) ("Official Gazette of Montenegro", nos. 2011 and 53/2016);
Bills of Exchange Act	Bills of Exchange Act (*Zakon o mjenici*) ("Official Gazette of Montenegro", no. 45/2005);
Cash Sweeping	Measure prescribed under the Enforcement and Security Act and implemented by the Central Bank, which entails the transfer of all funds held in all debtor's bank accounts at the moment of commencement of the enforced collection of a cash sweeping instrument to the benefit of the enforcing creditor;
Central Bank	Central Bank of Montenegro (*Centralna banka Crne Gore*);
Confirmed Bills of Exchange	(A) bills of exchange enforced and partially paid by the account bank, on which the account bank has noted that the amount paid to the creditor only partially covers the claim stipulated in the submitted bills of exchange; or (B) bills of exchange enforced and partially paid by the account bank, accompanied by a separate document issued by the account bank evidencing that the amount the account bank paid to the creditor only partially covers the claim stipulated in the submitted bills of exchange.
Consensual Financial Restructuring	Out-of-court financial restructuring carried out under the Consensual Financial Restructuring Act with the assistance of the Centre for Mediation of Montenegro and appointed mediator;
Consensual Financial Restructuring Act	Consensual Financial Restructuring of Debt Owed to Financial Institutions Act (*Zakon o sporazumnom finansijskom restrukturiranju dugova prema finansijskim institucijama*) ("Official Gazette of Montenegro", no.

	20/2015);
Constitutional Court Decision	Decision adopted by the Montenegrin Constitutional Court published in the Official Gazette of Montenegro on 17 November 2017;
Instructions on the Enforced Collection of Funds from A Debtor's Account	Instructions on the Enforced Collection of Funds from A Debtor's Account (*Uputstvo o bližem načinu sprovođenja izvršenja na novčanim sredstvima koja se vode na računu izvršnog dužnika*) ("Official Gazette of Montenegro", no. 16/2012) adopted by the Ministry of Finance;
EBRD	European Bank for Reconstruction and Development;
Enforcement and Security Act	Enforcement and Security Act (*Zakon o izvršenju i obezbjeđenju*) (Official Gazette of Montenegro, nos. 36/2011, 28/2014 and 20/2015);
Financial Collateral Act	Financial Collateral Act (*Zakon o finansijskom obezbeđenju*) (Official Gazette of Montenegro no. 44/2012);
Legal Consultant	Moravčević Vojnović i partneri AOD in cooperation with Schönherr;
Market Participants	Four major banks operating in Montenegro, three being members of international banking groups and one being a local bank;
Obligations Act	Obligations Act (*Zakon o obligacionim odnosima*) ("Official Gazette of Montenegro", nos. 47/2008, 4/2011 and, 22/2017);
Out-of-Court Restructuring	Voluntary Restructuring and/or (depending on the context) Consensual Financial Restructuring;
Payment Transactions Act	Payment Transactions Act (*Zakon o platnom prometu*) ("Official Gazette of Montenegro", nos. 62/2013 and 6/14);
Pledge Act	Pledge as Security Instrument Act (*Zakon o zalozi kao sredstvu obezbeđenja potraživanja*) ("Official Gazette of Montenegro", no. 38/2002);
Prevention of Illegal Business Act	Prevention of Illegal Business Act (*Zakon o sprječavanju nelegalnog poslovanja*) ("Official Gazette of Montenegro", nos. 29/2013 and 16/2016); and
Reorganisation	Pursuant to the Bankruptcy Act court reorganisation (*reorganizacija*) is the process of satisfying creditors' claims in accordance with an approved reorganisation plan/pre-packaged reorganisation plan through the redefinition of debtor-creditor relations, changes in the organisation the debtor or any other method determined in the reorganisation plan/pre-packaged reorganisation plan.