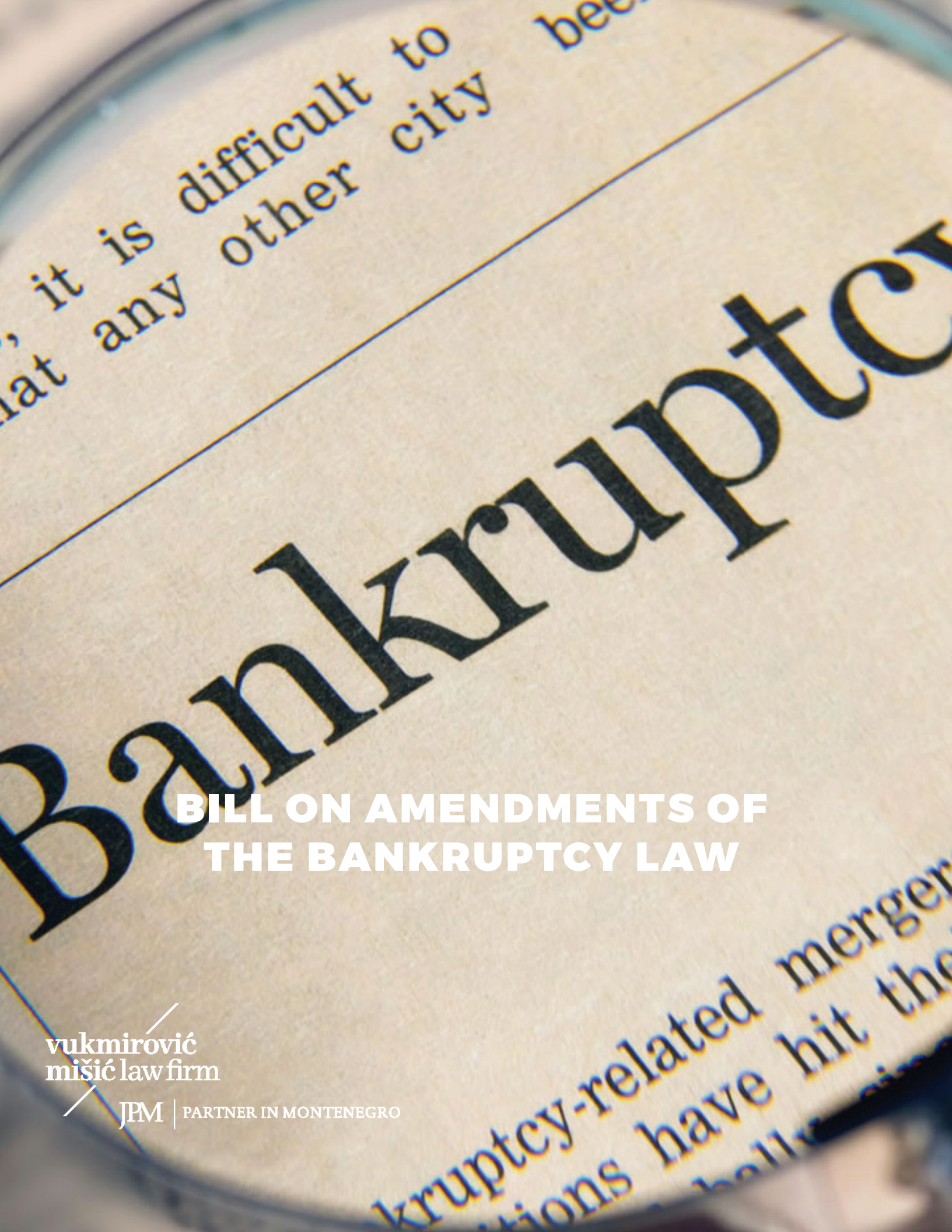

BILL ON AMENDMENTS OF THE BANKRUPTCY LAW

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The Government of Montenegro enacted a Bill on amendments of the Bankruptcy Law ("Bill on amendments"). This Bill on amendments was enacted in an effort to make the bankruptcy proceedings more efficient and straightforward, but it also offers significant amendments to the provisions regulating bankruptcy administrators' appointment and status.

1. CHANGES TO THE INSTITUTE OF A BANKRUPTCY ADMINISTRATOR

From provisions aiming to provide more sovereignty over the decisions making in the bankruptcy proceedings to changes in the conditions for becoming a bankruptcy administrator, the Bill on amendments has dedicated significant attention to this institute. Amendments regarding rules on appointment of bankruptcy administrator, their status throughout the bankruptcy proceedings and relations with the Board of Creditors ("BoC") are included.

A bankruptcy administrator shall have to obtain a license after passing an exam and fulfilling a set of conditions including registration in the Registry of licensed bankruptcy administrators. Bankruptcy creditors and debtors will be entitled to file an appeal against the judge's decision on appointment of a bankruptcy administrator.

2. FORMATION OF A REGISTRY ON BANKRUPTCY ENTITIES

A significant addition in the Bill on amendments is formation of a Register of Bankruptcy Estate ("RBE") which would contain information on bankruptcy estate, as well as monitor and update changes to the registered information. RBE would be publicly available and under the authority of Central Registry of Business Entities.

Information on the bankruptcy estate shall be inscribed into the RBE once the bankruptcy proceedings are finalized and most of the estate has been cashed, but there are ongoing proceedings towards the bankruptcy estate. In this case, upon adopting a Decision on conclusion of the bankruptcy proceedings, the bankruptcy judge shall deliver the Decision to the Central Registry of Business Entities.

3. CLARIFICATIONS TO THE PROVISIONS WHICH HAVE BEEN DIFFERENTLY INTERPRETED IN THE PAST

Proposed amendment to the Article 13 of the Bankruptcy Law ("Official Gazette of Montenegro" no. 001/11, 053/16, 032/18, 062/18) ("Bankruptcy Law") offers a long-needed clarification to an article that has been differently interpreted in the practice. Per the Bill on amendments, Article 13 of the Bankruptcy Law shall be subjected to change and the part "on all enforcement means" shall be erased from the current formulation, consequently providing that the presumption of bankruptcy cause would exist upon 45 days of the debtor's inability to settle its claim in the enforcement proceedings, regardless of the means of the enforcement.

Another amendment aiming to clarify a current provision of the Bankruptcy Law provides that Article 168 paragraph 6 now contain a formulation stating that the "the commencement day of the reorganization plan shall be considered as the date of validity of the decision suspending the bankruptcy proceedings". Previous formulation did not specifically define whether the commencement date shall be considered the date of adoption of decision or its later validity, which caused different interpretations in practice.

4. EFFORTS TO MAKE THE PROCEEDINGS MORE EFFICIENT

A novelty regarding BoC allows that in case of obstruction and harmful actions performed by one of the members of the BoC, the judge may, upon the request of the majority of the BoC members, dismiss the obstructing member from her/his position. So far, the right of dismissal was reserved only for the BoC. If the current wording of the Bill on amendments is adopted the Article 46 would be unclear whether the BoC or creditor's meeting decides on the appointment of a new BoC member.

Furthermore, it is provided that the party which proposed the reorganization plan is obliged to cover the costs of the plan within 60 (sixty) days of the day of validity of decision on adopting the reorganization plan, otherwise it is considered as if the plan has not been adopted and the proceedings shall be continued as bankruptcy proceedings. Bill on amendments does not further define whether a Decision on bankruptcy shall be adopted here, since Article 133 of the Bankruptcy Law governing the causes for this decision has not been amended to include this situation.

Creditors who have not registered their claim within the deadline and those not included in the Reorganization plan even if their claim arose before the Reorganization plan was adopted, are prohibited to commence enforcement proceedings to settle their claims. This is to enable the reorganization plan to succeed without obstruction, as well as to indirectly sanction all creditors who do not conform with the defined timeline for registering their claims.

5. OTHER NOTABLE AMENDMENTS WE SEE AS PROBLEMATIC

Status of the fiduciary creditors

Although the fiduciary creditors are not recognized under the Bankruptcy Law, in practice they were considered as other secured creditors. The Bill on amendments explicitly defines the status of the fiduciary creditor equaling its position with that of the secured creditor. In addition, the Bill on amendments provides that the rights provided by the agreement on fiduciary transfer of ownership are invalid after the bankruptcy proceedings have been opened.

We understand from the reasoning of the Bill on amendments that the intention of this provision was to disable the enforcement of the fiduciary right outside of the bankruptcy process, but the drafting of this provision is not aligned with this intention and can be interpreted in a way which would be harmful for the fiduciary creditors as e.g., in case of suspension of the bankruptcy proceedings. We hope that this provision will be amended before the Bill on amendments is passed.

Deadline for secured creditors to report the claims

The Bill on amendments introduces the obligation of the secured creditors to report their claims under the same procedure as the bankruptcy creditors. According to the reasoning of the Bill on amendments failure of the secured creditors to report the claim under the set deadlines would trigger the dismissal of the claim.The practice so far was on the standing that in case the secured creditor fails to act within the deadlines set in the Bankruptcy law it can only lose the part of the unsecured claim while his claim remains valid up to amount of the value of the security. In our view this interpretation is correct.

For example, similar to the provision on statute of limitation of the claims under the Article 377 Law on Contract and Torts, when the statute of limitation expires, the creditor whose claim is secured by a pledge or mortgage may be settled only from the subject of the security.

Changing the current practice may lead to severe misuse of the debtors which may trigger the bankruptcy proceedings, hoping that the bankruptcy process will remain unnoticed for the secured creditors which are often the creditors with largest claims.

6. TRANSITIONAL PROVISIONS

Transitional provisions provide that the RBE shall be established within 3 (three) months of entry into force, and the bylaws shall be adopted within 2 (two) months.

The bankruptcy proceedings which started in accordance with the previous Law on Bankruptcy but in which the decision on main division has not been adopted, shall be continued in accordance with the Bill on amendments.