Serbia: Amendments to the Insolvency Act

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Long-awaited amendments to the Insolvency Act, proposed back in October 2016, were finally adopted by the Serbian Parliament, and came into force on 25 December 2017.

Improvement of the position of secured creditors and boost to fresh money

The most important amendments concern improvement of the position of secured creditors, as well as creditors holding pledge over insolvency debtor's assets as security for a third-party debt. They aim at reducing the time-to-money period and vesting the creditors with more control over the enforcement of collateral, including the right to takeover the sale of a collateral, right of first refusal over a buyer in a direct sale, and right to bid for the collateral with one's claim (credit bidding). Another important amendment protects fresh money lent to insolvent debtor in restructuring. These specific changes were discussed in detail in an article by Tijana Kojovic, Managing Partner of BDK Advokati, published in International Corporate Rescue in spring 2017.

In the ensuing text, we discuss other changes brought about by the recent amendments.

Composition and authorities of the board of creditors

Secured creditors are now entitled to one place on the board of creditors. The board is shrunk from nine to seven members. A representative of secured creditors on the board has equal rights as members nominated by ordinary creditors. If the board of creditors is not elected at the first creditors' hearing, the judge will appoint four largest unsecured creditors and the largest secured creditor to the board of creditors.

The board of creditors is given a new authority to replace the insolvency administrator without cause, subject to a vote of three-quarters of board members. This authority can be exercised during the entire insolvency proceedings.

Speeding up the process by preventing reorganization

Unsecured creditors who can demonstrate probability that their aggregate claims together account for more than 50% (prior to the amendments the threshold was set at 70%) of all unsecured claims, may decide at the first creditors' hearing that the debtors should immediately go to bankruptcy, i.e. that its assets should be liquidated, instead of first having to undergo a waiting period during which a

creditor or the insolvency administrator may propose a reorganization plan.

Mandatory appraisals of collaterals and insolvency estate by licensed experts

Appraisals of assets forming insolvency estate, as well as appraisals of collaterals, will have to be performed exclusively by licensed appraisers. At present, this will be applicable only with respect to real property appraisals, since the laws governing appraisals of other types of assets are yet to be adopted. Until special laws regulating evaluators of movables and intangibles are adopted, evaluators of these types of assets will have to be appointed from a court-approved list.

Insolvency reorganization

Once proposed, a reorganization plan, whether proposed by a creditor, the insolvency administrator or the debtor himself (pre-packed plan), can be modified pursuant to the objections raised by creditors only once. This is a reaction to a bad practice of repeated modifications of draft reorganization plans, which has led to protraction of the resolution of the debtor's situation. Furthermore, deadlines in reorganization proceedings are now tighter - a hearing for voting on the proposed plan must be scheduled not later than 90 days from the date of the filing of the plan, the objections to the proposed plan are due within 15 days from the date of the publication of the plan in the official gazette, while responses to the objections are due within 15 days from expiry of the deadline for the objections. This is supposed to shorten the overall timeline for deliberations of a proposed reorganization plan.

The amendments now explicitly authorize the debtor to file for a new pre-pack reorganization plan during implementation of another reorganization plan. Given that implementation of reorganization plans may take years, and that the initial circumstances reflected in the plan may significantly change during that time, the new solution gives more flexibility to the debtor and the creditors to effectively agree on changes to the adopted plan by replacing it with a new pre-packed plan.

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