BDK Advokati

Finance

Serbia: Amendments to the Insolvency Act

AUGUST 2014

As of mid-August 2014, the Serbian Insolvency Act applies in its amended form.

The amendments enhance the principles of transparency and cooperation. They provide for on-line publication of all court decisions rendered and parties' submissions made in insolvency proceedings. Insolvency administrators are now obliged to make the insolvency debtor's books and records available to the consultants engaged by a member of the board of creditors. The duty to provide information and records on the debtor to the insolvency administrator is extended to encompass the members of the insolvency debtor's executive board and the controlling shareholders. Commercial banks of the insolvency debtor are obliged to provide to the insolvency administrator the data on all debtor's bank accounts and the transactions carried our via those bank accounts (the relevant amendment fails to specify the transaction period), as well as all agreements with the insolvency debtor on money deposits and safe deposits. Public registries are obliged to deliver to the insolvency administrator the data on the debtor's assets pertaining to the period of five years preceding the opening of insolvency proceedings.

The amendments also introduce new duties on the bankruptcy administrator – he/she is now obliged to challenge the insolvency debtor's transactions concluded within the vulnerable periods if the challenge is likely to increase the value of the bankruptcy estate. This power was previously discretionary.

Stricter rules apply to related parties of the insolvency debtor who are not in the business of lending as their main activity, as well as to third party creditors which are amongst themselves related parties. A debtor's related party cannot be a member of the board of creditors. Third party creditors which are amongst themselves related parties can together have no more than one representative on the board of creditors. The same rule applies to the employees or former employees of the insolvency debtor. Unsecured claims of debtor's related parties created two years before the opening of insolvency proceedings on the basis of loan agreements or equivalent transactions are subordinated to the claims of other unsecured creditors. Security provided to related entities for loans or equivalent transactions at the time when the insolvency debtor was insolvent or in any case within the period of one year prior to the opening of insolvency procedure shall have no effect on the bankruptcy estate. Insolvency debtor's related parties cannot vote on a proposed reorganisation plan.

The amendments introduce the notion of pledge creditor, as distinguished from secured creditor. While secured creditor is a creditor of the insolvency debtor having security over the insolvency debtor's assets, pledge creditor holds security on the assets of the insolvency debtor granted for the debt of a third party. Pledge creditors are not eligible to the creditors' assembly or the board of creditors. They are considered a special class of creditors in the context of insolvency reorganisation and their claims cannot be amended without their consents. For that reason, pledge creditors have no right to vote on the reorganisation plan.

When registering its claim in insolvency proceedings, the insolvency creditor is obliged to state whether its claim is subject to a third party guarantee and to notify the guarantor of the claim registration. It is also obliged to notify the insolvency administrator of any collection under the guarantee. A breach of the latter notification obligation is made a crime punishable with monetary fine in the amount of up to approx. EUR 100,000.

It is now specifically provided that the registered claims, whether accepted or rejected by the insolvency administrator, can be the subject-matter of assignment up until the decision on the main distribution of assets becomes final. The assignment agreement must be notarised and the insolvency debtor must be notified of the assignment.

Any reorganisation plan (other than with respect to an insolvency debtor classified as micro entity for accounting purposes) is now subject to the prior opinions of the competition authority and the state aid commission on the compatibility of the plan with the competition and state aid laws. There is no explicit rule that a negative opinion to this effect prevents the adoption of the plan, although that should stem from the spirit of the relevant provision.

Insolvency debtor's transactions undertaken within the vulnerable periods may be challenged by other creditors or by the insolvency administrator. *Inter alia,* a debtor's legal transaction undertaken within the period of six months prior to the petition for initiation of insolvency proceedings may be challenged if it directly damages other creditors and even if it grants to the counterparty security or settlement which is in accordance with the counterparty's rights, if at the time of the transaction the debtor was insolvent and the counterparty was or must have been aware of the fact. In this context, the amendments introduce a presumption of the counterparty's knowledge of the debtor's insolvency if the debtor's bank accounts had been at the time of the transaction incessantly blocked for at least 30 days. Transactions undertaken within the period of five years prior the filing of the petition for the opening of insolvency proceedings can be challenged if undertaken with the intention to damage creditors, provided the counterparty was aware of such intention. The amendments stipulate that it shall be presumed that the repayment of a loan or equivalent debt to a related party not engaged in the lending business as its main activity is a transaction undertaken with the intention to damage the creditors, if undertaken within one year prior to the filing of the petition. Finally, the transactions undertaken without consideration within five years prior to the petition are also challengeable. The amendments specify that a failure to file an appeal, objection or statement of defence, or a failure to appear at a hearing, are equivalent to a transaction for no consideration if the failure resulted in a material benefit on the counterparty.

Initiation of insolvency proceedings against micro entities is facilitated by capping the advance of costs to approx. EUR 420. Initiation of insolvency proceedings against entities registered for production of weaponry and military equipment is made subject to a discretionary prior approval of the Ministry of Defence.

Finally, the provisions on cross-border insolvency have been significantly amended. Serbian court is exclusively competent for the conduct of insolvency proceedings as well as for any claims in relation to the insolvency proceedings if Serbia is the main centre of debtor's interests. Centre of main interest is defined as a location recognised by third parties as the place from which the debtor regularly manages its interests, taking into account the facts and circumstances existing at the time of the filing of the petition for insolvency proceedings. There is a rebuttable presumption that the place of the debtor's registered seat is the main centre of its interests. If, however, the debtor has its registered seat in Serbia and the main centre of its interests abroad, the Serbian court shall have exclusive jurisdiction. The Serbian court shall also have exclusive jurisdiction over the insolvency debtor whose registered seat is in Serbia while its main centre of interests is in another country, if the insolvency proceedings cannot be initiated or opened in the latter country according to its laws. If the Serbian court does not have exclusive jurisdiction in accordance with the aforementioned rules, it

shall nevertheless have jurisdiction over the insolvency debtor which has a permanent establishment in Serbia or assets in the country, in the latter case only if the Serbian assets cannot be a subject-matter of insolvency proceedings in the country representing the debtor's main centre of interests or the foreign court's decision on the opening of insolvency proceedings cannot be recognised in Serbia.

BDK Serbia

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

BDK Montenegro

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

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

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