

COVID-19: Arrangement of Bankruptcy

BACKGROUND

By means of the amendment dated 15.03.2018 in the Law on the Bankruptcy and Enforcement numbered 2004 (the "Law"), the suspension of bankruptcy was replaced by the rules of arrangement of bankruptcy (the "AoB").

In general terms, AoB is executed by means of an agreement between the debtor and the creditors, and the affirmation of such agreement by the court. The debtor shall make the payments to the creditors according to the terms in such agreement. This arrangement of bankruptcy enables the debtor to be released from remaining debt without having to go through insolvency proceedings. The debtor also has the option of negotiating a one-off payment or installment payment on reduced terms with the original claim.

In this respect, either the debtor or any creditor is entitled to request the AoB for the payment of the debts to be made in a fixed term or with a certain deduction in order to prevent a possible bankruptcy.

ARRANGEMENT OF BANKRUPTCY

As noted above, either the debtor or any one of the creditors is entitled to request the AoB. In this respect, it is necessary to approximately prove the indebtedness or incapability in payment of the debtor. The financial statements and other relevant documents, which are required to be submitted to the court, shall indicate such incapability in payment and the foreseeable bankruptcy risk. The relevant processes and their effects on the debtor's assets are elaborated hereunder.

a) Temporary Permission

Upon the submission of the required documents to the court, the court grants the debtor with the temporary permission of 3 months provided that all required documents are submitted by the debtor.

During the temporary permission, the court should take all necessary measures to preserve the assets of the debtor, appoint a commissar to supervise the AoB and suspend all execution proceedings against the debtor. However, there may be exceptional cases for the suspension of execution proceedings for the creditors with pledge and for the receivables of employees.

During the temporary permission period, the commissar is vested with the duty of conducting an assessment in respect of the success of AoB, auditing the business and activities of the debtor and avoiding any risks on the assets of the debtor.

b) Certain Permission

At the end of the temporary permission, the court shall decide whether to grant certain permission to the debtor. In this respect, the commissar's report and the creditors' statements shall be taken into consideration to assess the possibility of success of AoB. It's important to note that all creditors' receivables should be payable in part or in whole.

If the foreseeable success of the arrangement of bankruptcy is affirmed, the debtor will be given a certain permission with one-year period. Such decision will be announced in the Trade Registry Gazette and in the official advertisement portal of the Press Advertising Agency. Within 15 days upon the announcement, the creditors shall register their receivables otherwise the relevant creditor will not be able to participate in the negotiations of AoB.

During the certain permission, the court should appoint a commissar, establish a creditors' board, limit the debtor's power of disposition to a certain extent; additionally, no legal proceedings, except for lawsuits, can be filed against the debtor in relation to the debts.

c) Agreement and Affirmation

The debtor's project for AoB is negotiated in the creditors' meeting. The debtor's AoB project is accepted, if;

- More than ½ of the creditors and the amount more than ½ of the total receivables approve the project, or;
- More than ¼ of the creditors and the amount more than 2/3 of the total receivables approve the project.

The majority vote ratio for the adoption of the agreement is different in the case of the pledged creditors. In this respect, more than 2/3 of the pledged creditors shall sign the meeting minutes as a result of the negotiations or within 7 days as of the negotiations for the agreement to be deemed as accepted.

Afterwards, the assessment for affirming the arrangement of bankruptcy shall be conducted by the commercial court of first instance. The debtor shall pay the debts as stipulated in the project without waiting for the finalization of the affirmance decision in the judiciary system.

It should be noted that any creditor is entitled to apply to the court to request the termination of AoB.



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