Recent Legislative Amendments to Bulgarian Bankruptcy Legislation

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As of October 16, 2000, serious amendments of the Bulgarian commercial law legislation and in particular of the bankruptcy field are in force. It could be noted, that these changes came into life due to the following reasons: **i)** on one hand Bulgaria was invited to commence negotiations for joining the European Union in December 1999. Thus the legislative program of the government was adjusted to adopt modern laws complying with the European laws and aiming to improve the legal framework for doing business in Bulgaria, and **ii)** on the other hand the present legal provisions brought lots of difficulties in respect to their implementation both by the addressees and by the jurisdictions. Since there is no EU directive, providing model regulation of the bankruptcy of the merchants, foreign bankruptcy experts were invited to contribute to the working group preparing of the recent draft law.

The Bulgarian Commercial Act (hereunder referred to as **"the CA"**) is the basic framework legislative act regulating the business activity in Bulgaria, i.e. the status of the merchants, commercial agencies and branches, commercial transactions and the bankruptcy. This article intends to provide a brief overview in respect of the major recent legislative changes of the bankruptcy field only, and shall examine in details the proposal, adoption and approval of a recovery plan.

There could be distinguished five groups amendments.

The *first group amendments* come to improve and quicken the whole bankruptcy procedure. Some statutory terms are shortened and new deadlines are introduced. New principle for assuring uninterrupted procedure is provided – in case of absence of one of the judges of the panel, even during court vacations, new substitute judge should be appointed by the Chairman of the court. The competence of the District Court and the Court of Appeal is defined much more precisely. Furthermore clear enumeration of the court acts issued during the bankruptcy proceedings that are subject to appeal, is made. The most positive amendment to our opinion is the granted right for appealing the decisions and other acts, issued by the Court of Appeal, and subject to appeal, before the Supreme Cassation Court as third instance. The old provisions provided two-instance court control only, and that brought contradictory practice on similar cases by the different Courts of Appeal. Another amendment concerns the right of a creditor to initiate court litigation in order to contest other creditors' claim out of the bankruptcy proceedings. Thus, the dissociation of the contesting procedure ensures promptness and effectiveness of the bankruptcy procedure.

The *second group amendments* concern the rights of the subjects during the proceedings. According to the new regime, the liquidator shall be entitled to request initiating of bankruptcy proceedings while the old revision of Article 625 of the CA did not provide for such a possibility. The new provisions guarantee the subjective rights of the creditor, which receivable is contested by another creditor. If respective court proceeding is initiated, amounts of the bankruptcy mass shall be detached for the contested receivable during all phases of the procedure. Repayment of such claims should be provided for by the recovery plan, as well. Other amendments provide for improvement of the competence of the bankruptcy authorities including the procedures and the prerequisites for the appointment and the dismissal of the syndic, its remuneration, the management of the bankruptcy mass, the competence and rights of the Creditors Meeting, etc.

The *third group amendments* concern the principle of publicity during the bankruptcy proceedings. The provisions regulating the necessity of promulgation of certain facts in State Gazette are revised and improved. That will allow all interested parties to exercise their rights. Furthermore, a possibility is granted to the interested parties for having free access to all the information regarding the acts, issued in the bankruptcy proceedings and the documents attached to the court file.

The *fourth group amendments* refer to the procedure for filing and acceptance of creditors' claims. Restricting provisions are introduced regarding the rights of the creditors to file claims, which have arisen before opening of the bankruptcy proceedings, after expiration of a 5-months term after the promulgation of the court decision on opening of the bankruptcy proceedings in State Gazette.

The *fifth group amendments* come to improve the whole procedure for proposal, adoption and approval of a recovery plan. Under Article 696 of the CA, the recovery plan may provide for a deferment or rescheduling of payments, a remission of the debts in full or in part, a reorganization of the enterprise, or undertaking other acts or performing other transactions. Certain persons are empowered to propose the adoption of a recovery plan – these are the following: **1)** the debtor; **2)** the trustee; **3)** the creditors holding at least one third of the secured receivables; **4)** the creditors holding at least one third of the unsecured receivables; **5)** the partners, the shareholders respectively, who hold at least one-third of the capital of the enterprise (debtor); **6)** each unlimited liability partner; **7)** twenty per cent of the total number of the debtor's employees. At first, the recovery plan is only a proposal, which shall be made by the above authorized persons. It becomes a plan, which is a binding one, when the decision of the District Court for the approval of the plan comes into force. The regulation of Article 696 in its new wording excludes the opportunity a special procedure for cashing down the property of the debtor's enterprise to be envisaged with the recovery plan. Thus, the Bulgarian legislator aims to prevent the abuse of right and to distinguish clearly the two phases, implemented in the bankruptcy proceedings - the recovery plan phase and the cashing down (of the debtor's property) phase, which is possible only in case that the debtor is declared bankrupt by the District Court.

The new paragraph 3 of Article 697 of the CA explicitly prohibits the proposal of a recovery plan where it is obvious that further continuance of the debtor's activities could damage the bankruptcy property (bankruptcy mass). In such case the District Court shall, upon request by the debtor, respectively the liquidator, the trustee or the creditor, declare the debtor bankrupt and terminate his activities simultaneously with the Decision of the District Court for the initiating of the bankruptcy proceedings. In this case a recovery plan cannot be adopted by the Creditors' Meeting and the bankruptcy mass has to be cashed down.

The amendments under the CA explicitly regulate few procedural terms in order to improve the whole recovery plan procedure. The new version of the regulation of Article 698 of the CA states that a recovery plan can be proposed not later than one month as of the date of promulgation in State Gazette of the ruling of the District Court for the approval of the list of the accepted creditors' receivables. The term under the old version of the Article was also one month. The amendment does not concern the duration, in which a recovery plan can be proposed. It concerns only the inception date – this is the date of the promulgation of the Court ruling in State Gazette. By means of a promulgation required, all the authorized to propose a recovery plan persons shall be aware of the fact that the one month term is running. The regulation of Article 701 also preserves the stipulated 7-days term for the issuance of the District Court ruling to admit or not to admit the proposal of a recovery plan to be considered and voted by the Creditors' Meeting. Again the amendments concern the inception date of this 7-days term. It shall be calculated as of the date when the above 30-days term for the proposal of a recovery plan has elapsed. Thus, it is guaranteed that all of the proposals for recovery plans shall be considered and voted at one Creditors' Meeting. Please, note that more than one plan may be proposed in the bankruptcy proceedings. The District Court is under an obligation to specify the date of the Creditors' Meeting no later that 45 days after the date of the Court ruling for the admittance of the recovery plan being issued.

An important amendment represents the new regulation of Article 700 of the CA. Paragraph 1 of the said Article regulates the mandatory requisites that the recovery plan shall contain, and namely: **1)** the extent of satisfying the receivables, the manner and periods for paying the creditors within each class, as well as guarantees for fulfillment of the contested unaccepted receivables - subject to pending court proceedings as to the date of proposing the recovery plan; 2) the terms and conditions under which the partners in general or limited partnerships are relieved from their commitments in full or in part; **3)** the extent of satisfaction (payment) received by each class of creditors as compared with what it would have received in case of distributing the assets under the terms and procedures provided by the Act; 4) the guarantees provided to each class of creditors in connection with the implementation of the recovery plan; 5) the managerial, organizational, legal, financial, technical, and other actions for the implementation of the plan; **6)** the effect of the recovery plan on the employment of the debtor's employees. The recent amendments concern the first point – the guarantees for fulfillment of the contested unaccepted receivables - subject to pending court proceedings as to the date the recovery plan being proposed. This corresponds to the new provisions under the Act, which guarantee the subjective rights of the creditors, which receivables are contested by another creditors. If respective court proceedings are initiated, amounts of the bankruptcy mass shall be detached for the contested receivables during all phases of the procedure. Thus, under Article 700 of the CA, repayment of such claims should be provided for by the recovery plan. Therefore, the rights of the creditors with contested receivables are guaranteed and at the same time the whole bankruptcy procedure is quickened.

The legislative amendments concern also the additional requisites of the recovery plan. In accordance with paragraph 2 of Article 700, the plan may envisage the sale of the entire enterprise, or of a separate part thereof, the manner and the conditions of the sale (sale contract), the buyer, a debt equity swap, innovation, or undertaking other actions or performing other transactions. The definition of a separate part of an enterprise is regulated by paragraph 1 of the Additional provisions of the Transformation and Privatization of State and Municipality Owned Enterprises Act and means the following: an organizational structure, which may independently perform

business activity. The sale of a separate part of the enterprise aims the activities of this part to be preserved. At the same time it is expected that the funds received from the performed transaction will allow the enterprise to recover. In the above cases under paragraph 2 of Article 700, a mandatory requirement is that the market assessment of the property – subject to the respective transaction, shall be attached to the recovery plan. The adoption of the assessment by the Creditors' Meeting is a prerequisite for the adoption of the recovery plan. If the assessment of the property is not adopted, the recovery plan shall not be considered and voted by the Creditors' Meeting and therefore cannot be adopted. Where the recovery plan stipulates a sale of the entire enterprise or a separate part thereof, attached to the plan shall be a draft contract for the transaction, signed by the buyer. The nature of this contract is subject to certain disputes in the Bulgarian legal doctrine.

The right to vote the proposed recovery plan belongs only to the creditors whose receivables have been accepted or whose rights to vote have been recognized on grounds of represented convincing evidences in writing supporting the existence of their receivables. The CA maintained the general rule that each class of creditors adopts the recovery plan separately with a simple majority of the size of the receivables of the class. However, the recent legislative amendments to the CA abolished the presumption, regulated by Article 703, paragraph 4, under which the recovery plan was considered to be adopted by a class of creditors without being voted by the class in case that the plan envisages that all of the receivables of the creditors from the class shall be paid in full. In accordance with the new paragraph 6 of Article 703, a recovery plan shall not be considered adopted when voted against by creditors representing more than half of the accepted receivables regardless of the classes among which they are allocated. Under the revoked legislative framework, a requirement for the adoption of a recovery plan was to be supported by two classes of creditors with a simple majority. This was an ineffective legislative decision because it often happens the plan to be adopted by two classes of creditors, which receivables represent very small part of the total size of the receivables. The new paragraph 6 of Article 703 is intended to solve the problem and requires the recovery plan to be adopted not by two classes of creditors but by the creditors representing more than the half of the total size of the accepted receivables. No matter of the classes in which the receivables are distributed.

The District Court shall approve the recovery plan only if the requirements of the CA have been observed. In case that several plans have been adopted, approved shall be the plan for which creditors with more than half of the total size of the accepted receivables have voted. If it cannot be approved, approved shall be the plan accepted by the classes of creditors whose interests have been affected to a greater extent. In case that the plan envisages partial payment, at least one of the creditor classes, which have approved it, shall receive partial payment. Under the regulation of Article 707, by the decision approving the recovery plan, the District Court terminates the bankruptcy proceedings.

Regardless of the above said, there are some amendments that could hardly be found efficient. An example could be given by the new legislative idea of transformation of the non-monetary obligations into monetary as of the date of the decision on opening of the bankruptcy proceedings. Usually after the said date the debtor continues to perform its business activity nevertheless supervised or managed by syndic. By enactment of such transformation practically the debtor's business will be hampered.

On the other hand, the legislator does not provide for regulation of the pending proceedings. As far as some of the newly amended provisions are of procedural and others are of material legal nature, problems on which regime shall be followed will arise shortly in respect of the pending proceedings.

There are other critical remarks that could be made, but in general, to our estimation, the new amendments will have positive impact on the effectiveness and promptness of the bankruptcy proceedings. At the same time, compared to the old regime, they provide for better protection of the rights of the parties involved. That makes our bankruptcy legislation complying with the modern legislative solutions in most of the countries of the EU.

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