

10_Opening of Insolvency Proceedings_november_2013_KY

The term “insolvency” has several meanings: (i) a legal institute of norms regulating relationships in cases when a trader cannot repay his debts; (ii) a legal condition in which the trader has only limited opportunities for participation in business operations and cannot freely dispose of his assets; and (iii) a specific type of judicial proceedings for universal enforcement for the purposes of satisfaction of the creditors of an insolvent trader. Insolvency proceedings are filed also in the case of over-indebtedness of a limited liability company, a shareholding company or a company limited by shares. This article explains the judicial proceedings.

A trader is insolvent when he is unable to pay a debt due under a business contract or a public law debt to the central or local government related to his business or a private debt to the State. The law reads that once he has stopped making payments, the debtor is presumed to have become insolvent. Insolvency exists also when the debtor has paid or is able to pay wholly or in part only to debt to certain creditors.

Over-indebtedness exists when the assets of a business are not sufficient to cover its outstanding debts.

Under the Bulgarian laws insolvency proceedings may be opened only with regard to persons who are traders.

Insolvency proceedings start with the filing of an insolvency petition to the competent regional court at the principal office of business of the trader. The petition may be filed by the trader himself or a person representing him, a creditor, or the National Revenues Agency in the case of a public law debt or a private debt to the State. The opening of insolvency proceedings due to over-indebtedness may be requested also by a member of the managing body of the company or by its liquidator.

There are some special cases in which the insolvency rules are not applicable. No insolvency proceedings may be opened for a trader who is a public undertaking which holds a state monopoly or has been established under a special law. The relations linked to the insolvency of this type of traders are settled in a different law. The insolvency proceedings of a bank or

an insurance company follow the provisions of a special law, whereas the general rules apply only insofar as the special law does not rule otherwise.

With a view to protecting creditors' interests the law allows the imposition of preliminary precautionary measures like the appointment of a provisional receiver, foreclosure, liens or other precautionary measures, suspension of enforcement proceedings, except for those under the Taxation and Social Security Code of Procedure, sealing of premises, equipment, vehicles, etc.

The next phase of insolvency proceedings is associated with the identification of the actual condition of the trader, his assets and debts. This involves a review of his liquidity ratio, the financial autonomy ratio and the leverage ratio. Where it comes to the conclusion that the trader is in a condition of over-indebtedness or insolvency, the court will rule on the commencement date, open insolvency proceedings, appoint a provisional receiver, allow precautionary measures, and set the date of the first creditors' meeting. Where it becomes obvious that the continuation of the proceedings would damage the assets, the court may declare the debtor insolvent and wind up his business upon the opening of the insolvency proceedings or on a later date but prior to the expiration of the time limits for the submission of a rehabilitation plan.

Where the available assets are insufficient, the court will declare the insolvency or the over-indebtedness respectively, allow precautionary measures, wind up business operations, declare the debtor insolvent and suspend proceedings. Suspended proceedings may be resumed within a year provided that there are sufficient assets available. If there is no request for proceedings to be resumed, the court will terminate the insolvency proceedings and rule on the deregistration of the debtor from the Companies Register.

In case it deems that the difficulties of the debtor are only temporary or that the debtor holds assets which are sufficient to honour his obligations without exposing the interests of creditors to risk, the court will reject the insolvency petition. In such cases the debtor has the right to compensation if the creditor has acted with intent or gross negligence.

If insolvency proceedings are opened, the actions that follow are to make arrangements for the management of the assets, to identify the debtor's creditors, and to hold the initial and

the subsequent creditors' meetings. A rehabilitation plan may be submitted. Failing to submit a rehabilitation plan or failing to have the rehabilitation plan approved or confirmed, the court will declare the debtor insolvent and the assets will be cashed in.

Insolvency proceedings are terminated upon a court decision, where the debts have been paid or the assets have been exhausted. The company cannot be deregistered if all creditors have been satisfied and there are still assets available.