

Problems before business in the state of emergency – stabilization and insolvency proceedings

The COVID-19 pandemic has changed the world we live in. The various measures adopted by countries across the globe in an effort to stop the disease from spreading and to slow it down have pushed many business to the brink of survival. The stabilization and insolvency proceedings provided for by the Bulgarian Commerce Act can be the final measure to defend businesses and their creditors, when all other options have been exhausted.

The Bulgarian Measures and Actions during the State of Emergency Declared with a Decision of the National Assembly from 13 March 2020 Act has put forward partial solutions by suspending a number of time limits, including limitation periods; by outlining options for regulating employer-employee relations; by extending the time limits for meeting obligations under tax laws, etc. One law, however, cannot take into account all situations occurring in real life.

In the good-case scenario, the parties to a contract will be able to enter into additional agreements and thereby postpone payments, reduce the amounts due and provide for other facilitating conditions. Some contracts will not be fulfilled due to the existence of a reason for which the debtor is not responsible. In many cases, when the obligation of one party lapses due to impossibility of performance, the contract will be terminated by law. The existing provisions of the Obligations and Contracts Act and the Commerce Act are applicable, and the provisions of the Measures and Actions during the State of Emergency Act should also be taken into account, especially as concerns time limits.

The Measures and Actions during the State of Emergency Act, with one exception in connection with enforcement under the Tax and Social Security Procedure Code, does not include any explicit provisions concerning bankruptcy proceedings and stabilization proceedings. As such, the current rules of the Commerce Act apply to those proceedings, subject to compliance with the Measures and Actions during the State of Emergency Act.

Stabilization proceedings aim to create an opportunity for the financially distressed trader to save and maintain its activity by reaching an agreement with its creditors as to how its obligations will be fulfilled.

Stabilization proceedings may be instituted by a trader who is not yet insolvent, but who faces imminent danger of insolvency. Such a danger exists if the trader, in view of the

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forthcoming maturities of its monetary obligations within the next 6 months following the submission of the stabilization application, will be unable to fulfil monetary obligations which are due to its creditors or might stop payments.

Once stabilization proceedings are instituted, the activities of the trader are restricted. A stabilization plan is considered by the court and approved, if the prerequisites provided by law are met. The approved plan is mandatory for the trader and for creditors whose claims arose before the date of the decision approving the plan.

The plan produces no effect on a creditor who is not on the list of creditors or who was not given the opportunity to vote at the adoption of the plan. The plan is without prejudice to the rights of creditors with respect to their collaterals, including with respect to collaterals established by third parties, and the rights of creditors against joint and several debtors.

The desired result of the proceedings is to prevent bankruptcy proceedings by ensuring maximum benefit for the creditors, debtor, and the employees and workers of the latter, by saving and maintaining the activity of the trader.

In cases where the trader has already become insolvent or over-indebted, it must file an application to institute bankruptcy proceedings.

A trader is insolvent if it is unable to perform a matured (due):

- 1) monetary obligation due under or in relation to a commercial transaction, including its validity, performance, non-performance, termination, invalidation or dissolution, or the results from termination thereof, or
- 2) public duty to the state and the municipalities related to its commercial activity, or
- 3) private state obligation, or
- 4) an obligation to pay wages to at least one third of the workers and employees, which has not been fulfilled for more than two months.

It is assumed that the trader is unable to fulfil due obligations, if, prior to submitting the request for opening bankruptcy proceedings, it has not declared in the Commercial Register

its annual financial reports for the last three years.

Insolvency is assumed when the debtor has stopped payments. Paying in full or partially the claims of only certain creditors is also considered stopping payments.

Insolvency is assumed if, under enforcement proceedings initiated for the implementation of an act, which has entered into force, of a creditor who has filed a petition for opening bankruptcy proceedings, the claim has remained entirely or partially unsatisfied within 6 months upon receiving invitation or notification for voluntary compliance.

A company is deemed over-indebted when its assets are insufficient to meet its financial liabilities

A debtor who has become insolvent or over-indebted must file an application for instituting bankruptcy proceedings within 30 days. Not filing an application within this time period might lead to criminal liability.

The opening of bankruptcy proceedings should not necessarily be seen as the end of the trader. It may continue its business under the supervision of the receiver, without excluding the possibility of rescuing the enterprise.

During the bankruptcy proceedings a recovery plan may be proposed. This can be done alongside the application for instituting bankruptcy proceedings or, at the latest, within one month from the announcement in the Commercial Register of the court's decision approving the accepted claims. The plan may be proposed by a creditor or by the debtor. More than one recovery plan may be proposed during the proceedings. The plan must note the degree of satisfaction of creditors and the guarantees they receive.

The court issues a ruling to accept the plan for consideration and approves it, if the prerequisites provided by law are met. The approved plan is mandatory for the trader and for creditors whose claims arose before the date of the decision for opening bankruptcy proceedings. The claims of the creditors are transformed in accordance with what is envisaged in the plan.

A new limitation period starts running for the claims under the recovery plan. On the basis of

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the court-approved recovery plan creditors can acquire a writ of execution. If the debtor does not adhere to the recovery plan, the creditors or the supervisory authority may request resumption of the bankruptcy proceedings.

If no recovery plan is proposed or accepted during the bankruptcy proceedings, the court declares the debtor bankrupt and proceeds to the liquidation of his assets. The proceedings end when the debts have been paid or when the bankruptcy estate has been depleted. Once the court issues a decision for termination of proceedings, it orders the deletion of the debtor, unless all creditors have been satisfied and there are still assets left.

If there are creditors who have not been satisfied during the bankruptcy proceedings, there are consequences for the persons who represented the debtor.

A person cannot be a sole trader, a manager, or a member of a managing or controlling body, if they are in bankruptcy proceedings, or have been declared bankrupt and their rights have not been restored, or have been a manager or a member of a managing or controlling body of a company terminated due to bankruptcy within two years prior the decision for declaring bankruptcy, if any unsatisfied creditors remain.

There exists the possibility to file an application for restoring one's trader's rights. The rights may be restored for such debtors who have completely paid off the claims accepted during the bankruptcy proceedings, including interest and expenses.

The debtor's rights are restored without having fully paid all the obligations when the bankruptcy is due to an unfavourable change in economic conditions.