

THE LAW ON THE PROTECTION OF OVER-INDEBTED NATURAL PERSONS – A SECOND CHANCE FOR *BONA FIDE* DEBTORS OR A LOOPHOLE FOR *MALA FIDE* DEBTORS?

On 21 July 2017, the personal insolvency bill was submitted to the National Assembly. As is seen from its name, the debtors covered by the bill are only natural persons, while sole proprietors and partners with unlimited liability are explicitly ruled out from its scope. The main objective of the bill is to ensure the protection of the rights and interests of natural persons in the event of over-indebtedness and to provide for the fair satisfaction of their creditors. To achieve this objective seems to be quite a challenge for the law-makers due to the opposite interests of debtors and creditors. Striking a balance between them seems even impossible at first glance.

The bill defines the over-indebtedness of a natural person as a situation in which the property and reasonably expected income of the person for the next ten years are insufficient to cover his or her debts. It reads that there is a case of over-indebtedness where the outstanding debts exceed the value of the debtor's property and income by more than one-third. The presenters of the bill have omitted to envisage a methodology to calculate the "reasonably expected income" of the debtor, notwithstanding the multiple facts which have or could have an impact on its amount. Is it possible to forecast such a long-term horizon for any individual? It is precisely this issue that could cause a lot of debates in Parliament.

It is appropriate that the scope of the bill excludes *mala fide* debtors who have become over-indebted because they have committed a willful offence or administrative infraction, as well as persons without a steady source of income during three out of the last five years prior to the opening of the proceedings.

The debtor can invoke the remedy by serving an application to the district court at his or her current address, attaching also a declaration in the prescribed form to specify his or her property and income in detail (presenting proof thereof), to identify his or her creditors, including the amount of debt and the value of the security, to provide a list of his or her own debtors and their property, to indicate the pending proceedings in which the person is a claimant or a defendant, etc. In the declaration, the debtor has to give his or her consent with the use of all his or her property and future income to satisfy the creditors in the course of ten years.

Having notified the creditors specified in the declaration and having provided them with the opportunity to give their opinion, the court should rule on the case within a month. The court order might be either a refusal to grant the debtor's request if the debtor is found to be acting in bad faith, or that there is no case of over-indebtedness, or that the debtor has only temporary difficulties. However, if it is upheld that the debtor is over-indebted, the district court declares the debtor to be over-indebted and places the debtor under protection, terminating the payment of interest and penalties on all debts, specifying the exempt property, and approving the list of creditors whose claims are accepted. All creditors who have secured their claims with a pledge or mortgage prior to the date of the court order retain their privileges and the exemption is not enforceable with regard to them. Either the debtor or the creditors may appeal against the court order before the regional court but the appeal may refer only to the debtor's property and income that the court has exempted.

The bill provides for enforcement on the non-exempt property in the conventional manner, i.e. through debt recovery proceedings by a bailiff. If, at a later stage, the debtor receives income in excess of the

exempt level, the excess has to be paid to a special bank account used for the sole purpose of satisfying the creditors, from which the debtor has no right to withdraw any amounts during the ten-year term.

The Registry Agency is assigned with the establishment and maintenance of a public register of natural persons who have received protection under the new law. The register contains court orders, lists of approved creditors and other details.

During the final stage of the proceedings, after the expiration of the ten-year period of protection as from the date of the court order, the debtor is released from all debts which occurred prior to the court order on the over-indebtedness and were not rescheduled or deferred. An exception is made only with regard to the obligations to pay maintenance and damages. This is perhaps the most crucial part of the bill because after the expiration of the special ten-year statute of limitation the debtor is given a chance “to start afresh”.

In the final analysis, if the bill is enacted, it is only the future to tell whether it will put an end to the lifetime indebtedness *of bona fide* debtors or, conversely, it would offer an opportunity to *mala fide* individuals to abuse it in yet another attempt to fail their creditors.

The wording of the law has not been finalized yet and it is not clear when or even whether it will be passed at first and second reading because the bill is currently discussed in the parliamentary committees and then it will be discussed in plenary. Whenever this happens, the parliamentary debates on the bill will attract the interest of the general public.

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Hristo Kazarmov, Attorney-at-law