NEW LAW ON CONSENSUAL FINANCIAL RESTRUCTURING

JPM | JANKOVIĆ POPOVIĆ MITIĆ

NEW LAW ON CONSENSUAL FINANCIAL RESTRUCTURING

The new Law on Consensual Financial Restructuring ("Official Gazette of RS" No. 89/2015) which came into effect on November 4, 2015, began to be applied on February 3, 2016. As opposed to the previous Law on Consensual Financial Restructuring from 2011, which did not deliver the expected results with regard to decreasing number of irrecoverable debts, the new Law establishes a better legal framework for voluntary debt restructuring in Serbia. The goal behind the enactment of this Law was to find a solution for the growing problem of insolvency of companies and sole proprietors, whose debts, according to data from the National Bank of Serbia, amount to 256.7 billion dinars for around 30,000 blocked accounts held by companies, and 15.5 billion dinars for over 26,000 blocked accounts held by sole proprietors. This Law was therefore enacted as one of the measures for resolving the issue of irrecoverable loans.

Consensual financial restructuring is a fully voluntary, extrajudicial model for restructuring corporate debts through redefining the debtor-creditor relationship between a company/ sole proprietor as debtor and its creditors.

The essence of consensual financial restructuring lies in timely recognition and resolution of financial difficulties a company/sole proprietor encounters, creating necessary conditions for them to resume their business and also for an appropriate treatment of non-performing loans in Serbia's financial system. This procedure is resorted to if creditors of a company/ sole proprietor in financial distress determine that the survival of debtor is both financially justified and feasible in the long run, and that collection of creditors' claims is possible.

As compared to the previous regulation, the new Law specifies a broader circle of legal entities for which the financial restructuring measures cannot be implemented. According to the amendments, the excluded entities are; companies in the business of factoring, payment institutions and electronic money institutions, other companies providing financial services in accordance with the law, as well as entities undergoing bankruptcy and entities over which a previous bankruptcy procedure has been initiated in accordance with a reorganization plan prepared in advance.

Apart from the above, the following are additional novelties introduced by this Law:

- Introducing the concept of development institutions, which include: the Development Fund of the Republic of Serbia, the Serbian Export Credit and Insurance Agency, the Deposit Insurance Agency when it acts in the name and on behalf of the Republic of Serbia and other legal entities incorporated under a special law for the purpose of financing or stimulating development in the Republic of Serbia:
- Application of the principles of sustainability of a debtor's business is expanded to include sole proprietors as well;
- The principle of acting in good faith no longer specifies the prohibition for the creditor and debtor to undertake actions that could cause damage to the other;
- The principle of cooperation of creditors no longer provides for coordination of creditors;
- A request for financial restructuring can, except by a creditor, be submitted by a debtor as well, to the Serbian Chamber of Commerce as the institutional intermediary;

- If the debtor is a sole proprietor, the financial restructuring can also be carried out with the participation of only one bank;
- The circle of creditors that can take part in financial restructuring is restricted. Namely, it is unambiguously specified that, apart from banks, creditors can only be national development institutions, while one of the banks or institutions can be replaced by a national bank under bankruptcy or liquidation;
- Concluding a debt dormancy agreement is set forth as a possibility, not an obligation;
- As opposed to the previous Law, it is not specified who is competent to prescribe the content of debt dormancy agreements;
- The competence of the Serbian Chamber of Commerce is now regulated in detail and expanded, so that, apart from intermediary-related duties, it also includes maintaining records and monitoring the fulfilment of executed financial restructuring agreements;
- Debtors no longer submit agreements on consensual financial restructuring to the Business Registers Agency's register of commercial companies, but rather records of such agreements are maintained by the Serbian Chamber of Commerce.

The solutions provided for by the new Law facilitate the procedure and enable streamlined and more efficient resolution of complex debtor-creditor relationships in the Republic of Serbia. This is primarily demonstrated by the fact that the restructuring procedure can now also be carried out if the creditors are development institutions. Furthermore, one of the banks or development institutions can now be replaced by a national bank under bankruptcy or liquidation. If the debtor is a sole proprietor, financial restructuring can be carried out if at least one bank takes part.

On the other hand, considering that the consensual restructuring procedure is a voluntary one, a potential problem could arise in case of lack of interest on the part of banks to take part in reaching an agreement. Namely, there is the possibility that banks will not show interest in waiving the right to block a debtor's account even during the negotiations because the creditors, who are not taking part in the procedure, are not restricted with regard to blocking accounts and could find themselves in a more favourable position than the banks taking part in the consensual restructuring procedure.

It remains to be seen whether the Law will give positive results and meet the planned goals set forth in the National Strategy for resolving the increased number of non-performing loans in Serbia, adopted in August 2015.

Milica Stojanović, Associate

Jelena Malešević, Associate

JPM Jankovic Popovic Mitic

Vladimira Popovića 6 | NBGP Apartments
11070 Belgrade | Serbia | tel: +381 11 207 6850
fax: +381/11/207-6899
www.jpm.rs

JPM | JANKOVIĆ POPOVIĆ MITIĆ