INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—Bulgaria

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Bulgaria prompted by the coronavirus (COVID-19) pandemic. Written by Angel Ganev, lawyer, partner at Ddjingov Gouginski Kyutchukov & Velichkov law firm (DGKV), member of INSOL Europe.

With a decision dated 13 March 2020 the Bulgarian National Assembly declared a State of Emergency (SE) on the territory of Bulgaria, which was in force (after a prolongation), until 13 May 2020. According to the official announcements of the Bulgarian government, the SE will not be prolonged past this date.

In order to respond to the coronavirus crisis, Bulgaria has promulgated the Law on the Measures and Actions during the State of Emergency (LMASE), published and effective (with only minor exceptions) as of 13 March 2020, State Gazette Issue (SGI) No 28. The LMASE was subsequently amended on 9 April 2020, SGI No 34 (the 'Amended LMASE') with a view to clarifying and refining the scope and content of certain provisions, where some of the major amendments concern the conduct of court hearings and the procedural and other related deadlines. Numerous other legislative acts were also amended with the Transitional and Final Provisions of the LMASE, however, no amendments have been discussed nor introduced to the Bulgarian Law on Commerce—the act directly regulating insolvency proceedings in Bulgaria.

Thus, the legislative response to the coronavirus pandemic in Bulgaria affects only indirectly insolvency proceedings (see below). Most importantly, it does not provide for any prolongation or relief from the obligation of the management of an insolvent company to file for insolvency within 30 days of the date on which the company ceased the payments to its creditors.

General overview of the Bulgarian insolvency procedure

Triggering events

Insolvency under Bulgarian law is regulated as a court administered procedure, which could be initiated with respect to a company which is either: (i) insolvent or (ii) over-indebted (balance-sheet insolvency):

- a company will be considered insolvent provided that: (a) it is not able to repay an obligation arising out of or related to a commercial transaction (including with regard to the validity, performance, breach, annulment or rescission of such transaction as well as the consequences of its termination); or a public obligation to the municipalities and public or private obligation to the state; or an obligation to at least one-third of the employees for salaries, which has been due for more than two months; (b) such obligation is due and payable; and (c) the inability is not temporary. A company is presumed to be insolvent if it has stopped payments to its creditors
- a company is considered over-indebted when its assets are not sufficient to cover its cash liabilities (on the basis of the ratio of all assets (both long-term and current) to all existing cash liabilities (long-term and current), regardless whether they are due and payable). The satisfaction of both: (i) the insolvency test, and/or (ii) the over-indebtedness test is determined by the courts solely on the basis of an expert opinion, which, as a matter of procedural practice, is always assigned by the court to an expert

Filling for Insolvency and liability of the management

Pursuant to the applicable law, the management of a company is obliged to file for insolvency within 30 days as of the date on which the company became insolvent or over-indebted. There is no coherent court practice on the issue as to when exactly the obligation of the directors is triggered—on the date the management

acknowledges the existence of over-indebtedness and/or insolvency or the date on which the management was able to establish the insolvency had it acted with the due care.

Failing to file for insolvency results in personal civil liability of the management for damages incurred to the creditors of the respective company due to the delay. Furthermore, the Bulgarian Criminal Code provides that the management faces criminal liability if the company is insolvent (and not over-indebted) and the management failed to file for insolvency within 30-day period of the date on which the company ceased the payments to its creditors.

Emergency measures affecting the insolvency proceedings

The measures, which have been introduced during the SE, and have implications for the insolvency proceedings can be summarised as follows:

- general stay on procedural terms and suspension of court hearings, applicable to pending insolvency proceedings—the general stay, introduced by LMASE, is effective for the period of the SE and concerns all procedural terms on administrative, litigation, arbitration and enforcement proceedings, except for some urgent criminal proceedings and other administrative cases (listed explicitly in the law). This stay affects ongoing court proceedings in relation to submitted insolvency fillings, and also the procedural terms at the stage of liquidation of the debtor's assets (terms for submitting tendering bids to an announced public sale, terms for challenging the assignment order, etc)

  For the duration of the SE, because of the stay, companies running the risk of becoming insolvent have been also been prevented from initiating a business stabilisation procedure (see below).

  In order to mitigate the effect of potential excessive delays of judicial proceedings, the Amended LMASE abolished the annual court vacation between 15 July and 1 September 2020 as this period will be used by the courts to catch up with the delayed cases. Also, court hearings postponed due to the SE, shall be scheduled with priority over cases initiated during the SE.
- access to the court and serving of court documents have been suspended—instructed by the Supreme Judicial Council (SJC), the insolvency courts suspended the servicing of court documents for the period between 13 March and 28 April 2020. For the SE, access to the courts rooms and files is allowed only upon prior request and approval for each individual case. Currently, SJC and the administrative managers of the courts are discussing measures to return back to normal working conditions
- suspension of the payment of loans and other financing and leasing obligations towards banks and financial institutions—for the duration of the SE the Amended LMASE allows private companies to lawfully suspend the payment of their bank loans and leasing obligations and provides that no interest and penalties shall be charged, nor shall this suspension constitute an event of default. Thus, financial institutions will not be able to rely on the presumption for insolvency upon the cessation of payments towards them for the duration of the SE

  However, the LMASE contains no guidance as to what happens to these outstanding obligations immediately after the end of the SE. In order to mitigate the potential risk of default, it is highly recommendable that debtors renegotiate explicitly the terms of their loan and leasing agreements with their creditors. The Bulgarian National Bank approved rules to be applied by commercial banks for the granting of private moratoriums for up to six months upon the explicit request by the debtor (to be submitted no later than 22 June 2020). Commercial banks shall agree to amend the repayment schedules of the principal and/or of the interest under the loan agreements, without changing the basic parameters of the provided loans (such as the interest rate). It is left to the commercial banks to determine their own application procedure for the private moratorium, and some banks do require a proof or a declaratory statement that the applicant has been negatively affected by the pandemic.

Besides these legislative measures, the Bulgarian government has been working on the implementation of different financing schemes and mechanisms, available to financially distressed companies in order to help them avoid employment redundancies and becoming insolvent.

Business stabilisation procedure

With the 2016 amendments of the Law on Commerce the so called 'business stabilisation procedure' was introduced in Bulgarian law in response to the call of the European Commission and the Council for adoption of expedited debt restructuring procedure for traders and commercial enterprises, which are threatened by insolvency.

The stabilisation procedure is a court administered procedure and applies only in cases where the trader is solvent, but there is an imminent threat that it will become insolvent (ie the debtor is in 'financial distress'). In legal terms, an 'imminent threat' is deemed where the trader, with a view of maturity of its debts for the next six months as from the date of the application for opening stabilisation proceedings, will not be able to repay due payments or is likely to stop payments.

The procedure may be initiated only upon request of the trader. Parties to the procedure are all creditors, including those to which the trader has given security on debts to third parties. The core stage of the stabilisation procedure concerns the review and approval of the proposed stabilisation plan (providing, inter alia, for rescheduling of the obligations and for reduction of their size).

However, contrary to the goal of the EU legislator to provide viable enterprises and entrepreneurs, that are in financial difficulties, with access to effective preventive mechanism, the amendments have been adopted in a very formal manner, repeating to a great extent the onerous regulation of the restructuring mechanism, already provided within the insolvency legal framework.

It is not strange, therefore, that the mechanism adopted has no practical benefits for the period after its adoption. Based on DGKV's independent review of the most recent case law, no stabilisation procedures have been launched or successfully completed in Bulgaria yet. In the very few cases of attempting to initiate such a procedure, the court refused to initiate it on some of the formal grounds, provided by the regulation.

INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: Coronavirus (COVID-19) Tracker of insolvency reforms globally.

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.