Recent reforms to insolvency law in Serbia

Djuro Djuric and Vladimir Jovanovic report on changes in Serbia aimed to improve the provisions of the law on Insolvency already in force and introduce new processes

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In December 2017,[1] and in June[2] and December 2018,[3] the Serbian legislator adopted the amendments to the Law on Insolvency.[4] This was the fifth time amendments were brought to this Law since its entry into force in early 2010, but only the third time since 2017.

The purpose of the amendments presented by the legislator was to improve the provisions of the Law on Insolvency already in force, but also to introduce some new processes and to present the provisions concerning conditions for more adequate and better implementation of the existing legal processes, so as to more effectively carry out the insolvency procedure and improve creditor settlement. The most recent Amendments came into force on 9 December 2018 and the Amendments adopted in June 2018 came into force on 1 January 2019.

More control in the hands of the creditors

One of the main novelties is more creditor control over the appointment of the insolvency administrator. In the future, if an insolvency procedure is initiated at the creditor's request, the bankruptcy petition may also include a proposal for the appointment of an administrator from the list of active insolvency administrators within the jurisdiction of the competent court. The insolvency judge, when deciding upon the appointment of an insolvency administrator, will also consider the creditor's proposal if the insolvency procedure was initiated at the creditor's request and if the request contained such a suggestion.

At the first session of the creditors' assembly, the insolvency creditors, whose claims are likely to amount to more than 50% of the total claims of the insolvency creditors, can approve the election of the appointed insolvency administrator. Should they not approve, they may propose the dismissal of the nominated administrator and the simultaneous appointment of a new insolvency administrator. The insolvency judge will then dismiss the appointed insolvency administrator and, in the same decision, appoint the proposed new administrator from the list of active insolvency administrators within the jurisdiction of the court. An exception exists where a public organisation prescribed by a special law is designated to act as an insolvency administrator (e.g. the Deposit Insurance Agency for bank and insurance companies' insolvency).

Less expensive, but more precise and transparent procedure

The new amendments have reduced the down payment for initiation of the insolvency procedure and provided more precision and transparency. The amount is determined depending on the classification of the legal entity as a micro, small, medium or large one, in accordance with the regulations governing the criteria for classification of legal entities, and may not exceed:

1) RSD 50,000 for micro legal entities;
2) RSD 200,000 for small legal entities;
3) RSD 600,000 for medium-sized legal entities;
4) RSD 1,000,000 for large legal entities.[5]

Secured and pledge creditors

The implementation of the new provisions should improve the position of secured and pledge creditors. It acknowledges the right of the secured creditors to participate in the creditors' committee by appointing one of them. From now on both the secured and pledge creditors have the right to submit a proposal for the lifting of the prohibition on enforcement and collection regarding the debtor's pledged assets for the purpose of settlement of secured claims.

The court will rule on the lifting proposal and, if all prescribed conditions are fulfilled, it will allow separate claims settlement outwith? outside proceedings. These novelties will also relieve the insolvency administrator from having to carry out the sale of the debtor's assets encumbered by a pledge in the case, for example, where, based on the assessment of the value of the pledged asset, it is evident that the entire price will be used to settle the claim of the secured or pledge creditor. In practice, it should also help to avoid situations where there are large numbers of uncollectible loans.

Additional rules on compensation of secured claims, pre-emptive rights and the right to

give consent for a sale below 50% of the appraised value of the assets (in the case of the sale of the legal entity or debtor as a whole) have been introduced in order to improve the position of the creditors in accordance with a comparative assessment of international best practice. The new rules have simplified legal remedies related to the sale and extended the right of access to court for all interested parties, including participants in the sale process. This should provide greater legal security in the insolvency procedure for all participants.

Reorganisation – abolishing the threshold for submitting a plan

Furthermore, from now on, the reorganisation plan may be submitted by the insolvency administrator, the secured creditors, the non-secured creditors, as well as the persons who own at least 30% of the capital of the insolvent debtor, provided the option for bankruptcy has not been made at the first creditors' hearing. Besides this, the deadline for the submission of the reorganisation plan is now clearly prescribed and the possibility for (only one) amendment of the reorganisation plan is clearly stipulated (either under the insolvency or in a pre-packed plan procedure).

Considering current practice, these new legal solutions should eliminate the risk of the long duration of insolvency procedures in which the deadlines for submitting reorganisation plans have often been extended as well as where proposals for reorganisation plans have been repeatedly altered without a final decision on the proposals being made. Thus, the risk of delay to the adoption of a decision on bankruptcy and the realisation of assets (and thus the settlement of creditors) has been avoided. As such, the likelihood of failure of the reorganisation process or its adoption (albeit as only a formality), which is not in line with the aim of the legislator, will also be removed.

Conclusion

Generally, the new amendments are in line with the regulatory reform being implemented in the Republic of Serbia, especially in the area of improving the business environment and accelerating the domestic economy. The new provisions are also in line with the National Strategy for resolving non-collectable loans adopted in 2015 by the Government of the Republic of Serbia. In addition, these amendments to the Law on Insolvency follow the solutions in comparative legislation, taking into account the EU Directive No. 2000/1346/EC of 29 May 2000 on insolvency proceedings and Directive No. 2002/47/EC of 6 June 2002 on financial collateral arrangements, which the Republic of Serbia will be obliged to implement in the coming period as an EU candidate country. However, Serbian insolvency law is still not in line with EU Regulation No. 2015/848/EC of 20 May 2015 on insolvency proceedings (recast) because there is no obligation to comply until accession to the EU.

The amendments to the Serbian insolvency regulation have been adopted in order to direct the insolvency procedure towards becoming a more effective instrument for protection of creditors' rights, but also in order to provide protection of interests and safeguard the position of an insolvent debtor capable of undergoing reorganisation as an instrument of business recovery and fresh start. In that sense, the changes cumulatively introduced have provided creditors with more control over the appointment of the insolvency administrator, reduced the down payment for the initiation of the insolvency procedure and provided more precision and transparency in relation to the reorganisation plan, as well as easier submission of that plan. Consequently, it should increase the attractiveness of the Serbian insolvency procedure and provide a better instrument for collection of creditors' claims. The clearly prescribed deadline for the submitting of the reorganisation plan leaves less space for interpretation and avoids unnecessary delays. However, by introducing a new threshold for its submission, the Serbian legislator might have inadvertently opened the door for possible abuse. ■

> THESE NEW LEGAL SOLUTIONS SHOULD ELIMINATE THE RISK OF THE LONG DURATION OF INSOLVENCY PROCEDURES

Footnotes:

1 Law on Insolvency Amendments of 14.12.2017 (*Official Gazette of the RS*, No. 113/2017).
2 Law on Insolvency Amendments of 08.06.2018 (*Official Gazette of the RS*, No. 44/2018).
3 Law on Insolvency Amendments of 07.12.2018 (*Official Gazette of the RS*, No. 95/2018).
4 Law on Insolvency (*Official Gazette of the RS*, No. 104/09, 99/11 – other. law, 71/12 – CC, 83/14).
5 For comparison: 1 EUR = 117 RSD, Source: www1.oanda.com/currency/converter/.