INSOL Europe/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States

Croatia

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Restructuring & Insolvency analysis: This article looks at how Croatia has implemented Directive (EU) 2019/1023 as part of the Joint Project between INSOL Europe and LexisPSL to track implementation.

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INSOL Europe/LexisNexis research on implementation of the EU Directive

LexisPSL are working with INSOL Europe on a joint project to obtain articles from the INSOL Europe membership and Country Co-ordinators showing how EU Member States have implemented Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (the EU Directive).

A consolidated table appears at Practice Note: INSOL Europe/LexisPSL Joint Project on EU Harmonisation Directive 2019/1023: consolidated table

As always, you should contact local lawyers in the relevant jurisdiction to check the current measures in force and the impact of any particular circumstances or nuances of your case.

Question 1: When did/will the new restructuring law come into force? What is/are the name of the new proceedings which comply with the EU Directive?

The implementation of the EU Directive was completed via an amendment to the existing Croatian Bankruptcy Act (National Gazette 71/15, 104/17 amendments published in 36/22). The new provisions came into force on 31 March 2022. The pre-existing restructuring proceeding, ‘pre-insolvency proceeding’ (*predstečajni postupak*) retained the same name as before.

Question 2: Is court approval automatically required? Is court involvement possible during the course of the proceedings? (for eg to rule on short notice on conflicts regarding classes of creditors with voting rights, etc…)

Court approval is required to start the proceedings and also to confirm the restructuring plan.

Question 3: What are the entry criteria (ie must insolvency be proved)? Could you please define the entry criteria under your national legislation?

The criteria is impeding insolvency. This can be proved by relevant evidence being presented to the court, or by satisfying one of the presumptions stated in Article 4 of the Bankruptcy Act, plus proof that the debtor is not in a state of more permanent insolvency:

- if the debtor has one or more outstanding payments registered in the Payment Transactions Order Register kept by the Financial Agency that should have been (based on valid grounds for payment and without any further consent by the debtor) collected from any of the debtor’s accounts

- if the debtor has, over a period longer than 30 days, failed to pay a salary owed to the employee in accordance with the work contract, work regulation, collective agreement, special regulation or another by-law regulating the employer's obligations toward the employee
- if the debtor has, over a period longer than 30 days, failed to pay salary contributions and taxes owed to the employee in accordance with the work contract, work regulation, collective agreement, special regulation or another by-law regulating the employer's obligations toward the employee, starting from the date when the payment of salary to the worker became due

Question 4: Can foreign companies use the process?

No, not for restructuring proceedings.

For bankruptcy proceedings, provisions of the Croatian Bankruptcy Act require the company to be registered in Croatia or to have an establishment within Croatia for it to be applicable (note that 'establishment' only relates to assets in Croatia).

There is also a possibility of using bankruptcy proceedings if there is evidence that the company's/debtor's centre of main interests is in Croatia (even though it may not be registered there), and evidence that the proceedings cannot be opened in any other jurisdiction.

Question 5: Does the debtor (ie company's management) remain in possession or is an insolvency practitioner (or any other professional, in that case could you please specify) automatically appointed?

The debtor remains in possession and an insolvency practitioner (also referred to as a trustee in pre-bankruptcy) is automatically appointed.

Question 6: Is there any moratorium on claims to protect the debtor during the process? What is the minimum and maximum length of the stay?

There is an automatic moratorium on claims. The initial moratorium lasts for 120 days and can be extended for an initial 90 days, and then for a further additional 90 days. Therefore, the maximum possible moratorium length is 300 days.

Question 7: Are creditors placed into classes for voting purposes? How are 'affected creditors' defined under your legislation?

Creditors are placed into classes for voting purposes. There is no special definition for 'affected creditors', however, it must be noted that they can realise their claims only as part of pre insolvency proceedings.

Question 8: What is the voting threshold to approve the restructuring?

The threshold for approving the plan is a simple majority in each class, and if the creditors who voted for the plan hold two thirds of claims in value.

Question 9: Can shareholders be bound?

Yes. Shareholders should be placed into separate classes if the plan is 'affecting' their rights.

Question 10: How are secured creditors treated?

The rights of secured creditors can be reduced, as long as they wouldn't be worse off than under the alternative (ie in instances where there is no plan and insolvency proceedings are initiated).

Question 11: How are employees treated?

Employee rights are not affected by the proceedings.

Question 12: Can certain (holdout) creditors be crammed down? Is the absolute priority rule applied?

Yes; if the necessary majority isn't reached in some classes, the plan can be approved (thereby cramming down creditors). However, this can only be done if the creditors are not worse off than in the alternative of there being no plan, that they adequately participate in economic benefits with all parties to the plan, and at least one of the classes that accepted the plan is not the class of shareholders.

In Croatia, there are no provisions similar to the 'absolute priority rule' in US insolvency regulations.

Question 13: Can onerous contracts be disclaimed? Are there any restrictions on ipso facto clauses?

There are no special provisions for onerous contracts. Ipso facto clauses are effectively without legal effect in these proceedings.

Question 14: Will the new procedure be listed in Annex A of the EU Recast Regulation on Insolvency 2015/848? If not, how will it be recognized in other countries?

The procedure is not listed in Annex A of the EU Recast Regulation on Insolvency 2015/848. Any external recognition will depend on the legislation of the country in which recognition is requested.

Question 15: Are new money or other arrangements granted any protection/priority (eg DIP finance)?

DIP finance (referred to as 'new money') can be approved by creditors holding at least two thirds of any established claims in value, and if that creditor is taking part in the restructuring plan.

The court ultimately makes a decision on the amount and conditions.

Question 16: How long should the process take (roughly)?

As per provisions of the Bankruptcy Act the process should be completed in 300 days.

Question 17: How much is the process likely to cost (roughly)?

A general estimate cannot be given as it would largely depend on the size and particular situation of the matter in question.