Changes to the Croatian insolvency framework: Restructuring procedure revisited





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A second set of amendments to the Croatian Bankruptcy Act (2015) came into effect on 31 March 2022 and was introduced to implement the EU Directive 2019/1023 (Directive on Restructuring and Insolvency).

Most of the new provisions were added to the existing "pre-insolvency" procedure (predstecajni postupak), which is intended to be used as a restructuring procedure. The changes are substantial and introduce new tools intended for businesses in a distressed situation that are not yet in a state of permanent insolvency which would "qualify" them for insolvency (bankruptcy) proceedings.

Notable changes include additional provisions for temporary new money which can be approved by creditors who hold two-thirds of established claims, subject to being necessary for restructuring and aimed at increasing the value of the business in restructuring. The final decision goes to the court which will specify the amount and any conditions. Furthermore, there is the possibility for new money, included in a restructuring plan, to be given, in case of subsequent insolvency, priority over unsecured claims (second to employee claims and social security and health security fund contributions).

Other changes include new duties for insolvency practitioners whose appointment by court becomes mandatory. Their role will be to supervise and, in some cases, also make decisions on the debtor's day-to-day business. In relation to the period while the debtor is in restructuring, there is a limitation on avoidance actions regarding new money transactions in case of (subsequent) bankruptcy proceedings.

The possibility to reduce the



rights of secured creditors has also been introduced, as long as they are no worse off than in the case where there is no plan and insolvency (bankruptcy) proceedings are opened.

Moreover, the mandatory moratorium in this procedure is now limited in the first instance to 120 days, with the possibility for two further extensions of 90 days each.

As an added benefit, the restructuring plan can be submitted at a later stage, which is also a big difference from the last legislative changes. Provisions that debtor can submit bankruptcy plan in "regular" insolvency (bankruptcy) proceedings have been reintegrated in the text.

Additional to the changes in restructuring proceedings, the mandatory differentiation of creditor classes has been introduced, together with shareholders being placed in a separate class. Changes in voting include the presumption of acceptance of a restructuring plan in case no vote was cast/submitted. Provisions for the treatment of "executory contracts" now feature as do new provisions rendering "ipso facto" clauses ineffective once restructuring proceedings have

commenced.

In regards to insolvency practitioners, the previous two lists for appointments, depending on the type of procedure (summary/regular), have now been merged, though there is also a newly-introduced list of "highly skilled insolvency practitioners". In other improvements, an early warning system has been introduced, as has the systematic collecting of data in insolvency proceedings, the introduction of restrictions for debtors previously convicted for criminal acts connected with insolvency proceedings, all of which are awaiting secondary legislation to be enacted by the Ministry of Justice and Public Administration.

These new provisions will bring additional flexibility to the restructuring regime through providing more solutions, but will also be more demanding for courts and practitioners alike. In light of the small number of restructuring procedures compared to insolvency (bankruptcy) procedures in Croatia (and the overall reduced number of insolvency proceedings in the last two years), it will probably take some time to properly analyse the outcomes and allow for relevant feedback.

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