

Bulgaria

New Recovery Plan Adopted and Approved

The amendments to the Bulgarian bankruptcy regulations improve the whole procedure regulating the proposal, adoption and approval of a recovery plan. The legislator has clearly distinguished the two phases: the recovery plan phase and the cashing-down of the bankruptcy mass phase, which is possible only where the debtor is declared bankrupt by the District Court.

The new provisions under the Act guarantee the subjective rights of creditors whose receivables are contested by other creditors. If court proceedings are initiated, portions of the bankruptcy mass shall be detached for the contested receivables during all phases of the procedure. Repayment of such claims should be provided for by the recovery plan. Thus, the interests of the creditors are guaranteed and the whole bankruptcy procedure is speeded up.

The recovery plan may envisage the sale of the entire enterprise or a part of it. In such cases, the market assessment of the enterprise, or part of it, shall be attached to the recovery plan. Also attached to the plan shall be a draft contract, signed by the buyer.

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The Bulgarian Commercial Act ('the Act') was adopted by the National Assembly and published in the State Gazette on June 18, 1991. Chapter IV of the Act, which regulates bankruptcy proceedings and the entire procedure for the adoption, the requirements for the adoption and the implementation of a recovery plan, was adopted three years later. Chapter IV has been amended twice - in 1998 and in 2000. The present briefing provides a brief overview of the most recent amendments (adopted October 13, 2000) relating to the recovery plan proposal, adoption and approval procedure.

Under Article 696 of the Act, the recovery plan may provide for a deferment or rescheduling of payments, a remission of the debt in full or in part, reorganization of the enterprise, or the undertaking of other acts or performing of other transactions. Certain persons are empowered to propose the adoption of a recovery plan, as follows: (i) the debtor; (ii) the trustee; (iii) the creditors holding at least one-third of the secured receivables; (iv) the creditors holding at least one third of the unsecured receivables; (v) the partners and shareholders who respectively hold at least one-third of the capital of the enterprise (debtor); (vi) each unlimited liability partner; and (vii) 20 per cent of the total number of the debtor's employee. At first, the recovery plan is only a proposal, made by any of the above authorised persons. It becomes a binding plan when a decision of the District Court to approve it comes into force. The provisions of Article 696 in its new wording exclude the possibility of a special procedure for "cashing-down" the property of the debtor's enterprise to be envisaged with the recovery plan. Thus, the Bulgarian legislator aims to prevent the abuse of rights and to distinguish clearly the two phases of the bankruptcy proceedings- the recovery plan phase and the cashing-down (of the debtor's property) phase, which is possible only where the debtor is declared bankrupt by the District Court.

The new paragraph 3 of Article 697 of the Act explicitly prohibits the proposal of a recovery plan where it is obvious that further continuation of the debtor's activities could damage the bankruptcy property (bankruptcy mass). In such cases the District Court shall, upon request by the debtor (the liquidator, trustee or creditor), declare the debtor bankrupt and terminate its activities simultaneously the Decision of the District Court to initiate the bankruptcy proceedings. In this case a recovery plan cannot be adopted by the Creditors' Meeting and the bankruptcy mass must be cashed-down.

In the interests of improving the overall recovery plan procedure, the amendments under the Act explicitly regulate few procedural terms. The new version of Article 698 states that a recovery plan can be proposed not later than one month from the date of publication in the State Gazette of the District Court ruling approving the list of the accepted creditors' receivables. The term under the old version of the Article was also one month. The amendment does not relate to time-frame within which a recovery plan can be proposed, only the inception date- ie the date of publication of the Court ruling whereby all those authorised to propose a recovery plan are alerted that the one-month term is running. Article 701 also retains the seven-day term for the issuance of the District Court ruling on proposal of a recovery plan to be put to the Creditors' Meeting. Again the amendments concern the inception date of this seven-day term, to be calculated as of the date when the 30-day term for the proposal of a recovery plan elapses. Thus all recovery plan proposals will be considered and voted on at one Creditors' Meeting.

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The District Court must specify the date of the Creditors' Meeting no later than 45 days after the date of the Court ruling on the admissibility of the recovery plan. One important amendment is the new rules under Article 700 of the Act. Paragraph 1 of the Article stipulates the mandatory requirements for the recovery plan, namely: (i) the extent of satisfying the receivables, the manner and periods for paying the creditors within each class, as well as guarantees for fulfilment of the contested unaccepted receivables - subject to pending court proceedings as to the date of proposing the recovery plan; (ii.) the terms and conditions under which the partners in general or limited partnerships are relieved from their commitments in full or in part (iii) the extent of satisfaction (payment) received by each class of creditor as compared with what it would have received if the assets HAD been distributed under the terms and procedures provided by the Act;(iv) the guarantees provided to each class of creditor in connection with the implementation of the recovery plan; fv) the managerial, organisational, legal, financial, technical, and other actions for the implementation of the plan; and (vi) the effect of the recovery plan on the debtor's employees. The recent amendments concern the first point - the guarantees for fulfilment of the contested unaccepted receivables - subject to pending court proceedings as to the date of the recovery plan being proposed. This corresponds to the new provisions under the Act, which guarantee the subjective rights of creditors whose receivables are contested by other creditors. If court proceedings are initiated, portions of the bankruptcy mass shall be detached for the contested receivables during all phases of the procedure. Thus, under Article 700 of the Act, repayment of such claims should be provided for by the recovery plan Therefore, the rights of the creditors with contested receivables are guaranteed and at the same time the whole bankruptcy procedure is speeded up.

The amendments also deal with other requirements of the recovery plan. Under paragraph 2 of Article 700, the plan may envisage the sale of the entire enterprise, or of a separate part thereof, the manner and the conditions of the sale (sale contract), the buyer, a debt equity swap, innovation, or undertaking other actions or performing other transactions. The definition of a separate part of an enterprise is regulated by paragraph 1 of the additional provisions or the Transformation and Privatisation of State and Municipality-Owned Enterprises Act, where it is defined as an organisation capable of independently performing business activity. The sale of a separate part of the enterprise is aimed at preserving the activities of this part. At the same time it is expected that the funds received from the transaction will allow the enterprise to recover. In the above cases, under paragraph 2 of Article 700, a mandatory requirement is that the market assessment of the property subject to the respective transaction shall be attached to the recovery plan. The adoption of the assessment by the Creditors' Meeting is a prerequisite for the adoption of the recovery plan. If the assessment of the property is not adopted, the recover) plan shall not be considered and voted on by the Creditors' Meeting and therefore cannot be adopted. Where the recovery plan stipulates a sale of the entire enterprise or a separate part thereof, attached to the plan shall be a draft contract for the transaction, signed by the buyer. The nature of this contract is the subject or dispute in Bulgarian legal doctrine.

The right to vote on the proposed recovery plan pertains only to those creditors whose receivables have been accepted or whose rights to vote has been recognised on the basis that they have documentary evidence supporting existence of their receivables. The old Act contained the general rule that each class of creditors should adopt the recovery plan separately by a simple majority of the receivables of the class. However, the recent amendments to the Act abolished the presumption, in Article 703, paragraph 4, under which the recovery plan was considered to be adopted by a class of creditors without being voted by that class where the plan envisaged that all of the receivables of the creditors from that class should be paid in full. Under the new paragraph 6 of Article 703, a recovery plan shall not be considered adopted when voted against by creditors representing more than half of the accepted receivables regardless of the classes among which they are distributed. Under the old rules, a requirement for the adoption of a recovery plan was that it must be supported by two classes of creditors by a simple majority. This was an ineffective legislative decision because it often happens that the

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plan is adopted by two classes of creditors, whose receivables represent only a very small part of the total amount of the receivables. The new paragraph 6 of Article 703 is intended to solve the problem and requires the recovery plan to be adapted not by two classes of creditors but by creditors representing more than half of the total amount of the accepted receivables, irrespective of the distribution of the receivables between the classes.

The District Court shall approve the recovery plan only if the requirements of the Act have been observed. If several plans have been adopted the plan for which creditors with more than half of the total amount of the accepted receivables have voted shall be approved. If that cannot be approved, the plan accepted by the classes of creditors whose interests have been affected to the greatest extent shall be approved. If the plan envisages partial payment, at least one of the classes of creditors which have approved it shall receive partial payment. Under Article 707, by its decision approving the recovery plan the District Court terminates the bankruptcy proceedings.