

New stabilization procedure in Bulgaria for traders in financial distress

Traders who find themselves in financial distress currently have the opportunity to undergo a procedure for restructuring of their obligations. The amendments to the Bulgarian Commerce Act introducing the new procedure entered into force on 1 July 2017.

The amendments reflect the European Commission Recommendation of 12 March 2014 on a new approach to business failures and insolvency which aimed to ensure the prevention of insolvency of viable enterprises experiencing financial difficulties and to give honest bankrupt entrepreneurs a second chance.

The goal of the amendments to the Bulgarian Commerce Act is to provide an effective method for restructuring of the trader's obligations to its creditors and to ensure conditions for recovery and the continuation of the commercial activities of the enterprise. Under the new procedure, the trader could reach an agreement with its creditors defining the method of fulfilment of the obligations whereas the agreement could provide for partial remission of debts. The procedure is aimed at preventing the opening of an insolvency procedure.

A stabilization procedure can be opened only for a trader who faces imminent insolvency. Imminent insolvency would be present when with a view of the forthcoming maturity of its obligations in the next six months, the company would not be able to pay the due monetary obligations or may suspend payments.

The legal amendments clearly stipulate that the stabilization procedure is not applicable for banks, insurance companies and public undertakings exercising a state monopoly or established under a special law.

The stabilization procedure is initiated with an application by the trader filed with a competent court in Bulgaria. Creditors of the concerned undertaking are not entitled to initiate such procedure. A compulsory attachment to the application submitted by the trader is a list indicating all creditors, the ground, the amount and the maturity date of their receivables and the established security interests. The trader should also provide the court with complete information on the state of its property. The application should be submitted together with a detailed stabilization plan suggesting the terms and the conditions for payment to the creditors, the degree of satisfaction, and the offered guaranties and security. If the plan provides for deferred payment of the obligations, the term for payment by the trader towards all creditors should be no longer than three years as of the date the stabilization procedure has been terminated. Once the application is filed with the court, a notice announcing that the stabilization procedure has been initiated by the trader is published in the Commercial Register.

The application for opening a stabilization procedure could be dismissed by the court on several grounds such as if the prerequisites for opening of an insolvency procedure for the particular trader are already present or if the proposal for stabilization obviously does not correspond to the state of the property and finances of the trader.

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If the prerequisites for opening a stabilization procedure are present, the court renders a ruling for opening a stabilization procedure. This ruling is published in the Commercial Register together with a list of the creditors as indicated by the trader.

The court appoints a trusted person which is an auxiliary body assisting the court during the procedure. Once the stabilization procedure is opened, the trader is not allowed to perform payment of obligations incurred before the date the application was filed and which were not paid on their maturity date. Some exceptions to this rule exist, such as for payments of due taxes and excise duties.

In any case, the court may allow the company to continue its commercial activity under the supervision of the trusted person.

As of the day the stabilization procedure is opened, all enforcement procedures are suspended, new enforcement procedures cannot be commenced and no limitation period for the receivables towards the trader runs. The suspended limitation period starts running again as of the day the stabilization procedure has been terminated unless the procedure has been terminated with an approved stabilization plan.

The stabilization plan submitted by the trader is voted on by the creditors and once adopted by them is subject to final approval by the court. The adopted and approved stabilization plan is obligatory for the trader and for the creditors with receivables incurred before the court ruling approving the plan. However, creditors not included in the list of creditors or who have had no opportunity to vote for the adoption of the plan are not bound by the plan.

The approval of the stabilization plan leads to the termination of the stabilization procedure. The stabilization procedure could also be terminated on other grounds such as if the trader withdraws its application or if within a period of four months no stabilization plan has been approved by the court.

Since the amendments introducing the new stabilization procedure have entered into force several traders have already filed applications for the opening of a stabilization procedure before the competent courts. According to publicly available information, one of the applications was dismissed by the court on the ground that the prerequisites for the opening of an insolvency procedure for the particular trader are already present.

The main purpose of the new amendments is to ensure a procedure which gives a second chance to a trader in financial distress to continue its commercial activities without becoming insolvent, while at the same time provides its creditors with guarantees that their receivables towards the trader would be at least partially paid. On a larger scale, the new stabilization procedure will hopefully contribute to the financial stability of companies in Bulgaria and to the prevention of job losses in companies facing imminent insolvency.

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