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Dear Client!

This newsletter is to provide a concise overview of the recently amended bankruptcy procedure that – unlike the liquidation procedure – aims to provide more efficient tools for companies with payment difficulties in order to avoid their insolvency ending up in termination.

More Chance for Companies in Trouble to Survive

Contacts:

Dr. Katalin Balázs

katalin.balazs@bpv-jadi.com

Dr. Gyula Körösy

gyula.korosi@bpv-jadi.com

Dr Zoltán. Kató

zoltan.kato@bpv-jadi.com

bpv | JÁDI NÉMETH

Attorneys at Law

H-1051 Budapest

Vörösmarty tér 4.

Telefon: (+36) 1 429 4000

Fax: (+36) 1 429 4001

budapest@bpv-jadi.com

www.bpv-jadi.com

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Reason for the amendment: relieve the impact of economic crisis

In Hungary, the detrimental effects of the international economic crisis and the resulting large number of bankrupt companies finishing up in termination prompted the legislator to amend Act 49 of 1991 on Bankruptcy and Liquidation Procedures (“the Bankruptcy Act”). As a result, the whole bankruptcy procedure has seriously been touched upon, and, in order to have the earliest possible reparation of the current situation implemented, most of the new provisions have already entered into force on 1 September 2009 (the provision prescribing that companies can submit bankruptcy petition only on an electronic form will enter into force on 1 July 2010).

Further to debtors, creditors also become eligible to initiate bankruptcy procedures

According to the legislator’s intent, with the recent amendment in place, companies in trouble will get considerably more chances to survive, as the granting of the temporary suspension of payments (so called “bankruptcy moratorium”) will be simplified. If the duration of the moratorium and the bankruptcy agreement concluded between the debtor and the creditors during the moratorium prove to be of ample help for the debtor company in rescheduling its debts and regaining its solvency, the liquidation procedure can be avoided. In order to best reach these objectives, the legislator’s aim is to make the creditors interested in favouring bankruptcy procedure vis-à-vis liquidation procedure, since the survival of the company offers more promising scenarios to realize creditors’ claims than the liquidation of the debtor company. Unquestionably, the most apparent sign of enhancing creditors’ interest is revealed, further to their already existing right to file a request for liquidation procedure, by their new statutory right to initiate a bankruptcy procedure (although the cooperation of the debtor is inevitable for the ordering of the bankruptcy).

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Now it is easier to obtain bankruptcy moratorium

By virtue of the earlier regulation, applying for and obtaining a moratorium was a lengthy and rather cumbersome procedure. Within 30 days after the submission of the bankruptcy petition, the debtor was to convene a meeting with its creditors with the purpose to obtain

- the consent of more than half of the creditors with overdue claims and
- the consent of more than 1/4 of the creditors with not yet due claims, and
- also provide that the consenting creditors represent more than 2/3 of the aggregate claims

in order to get under the shelter of bankruptcy moratorium.

As of September 2009, the procedure has become more simple *on the one hand*, as the above complicated and hardly workable consenting system is not any more included amongst the pre-conditions of the moratorium, and much swifter *on the other hand*, since, on the grounds of the bankruptcy petition filed by the debtor, the court automatically grants, in a non-appealable decree issued within one business day, a temporary payment moratorium and by so doing a bankruptcy protection for the debtor. Afterwards, the court decides on the merits of the bankruptcy petition within further 5 business days (or within approximately within 1 month if the bankruptcy petition was filed by a creditor) and examines whether the petition meets the statutory conditions. In the case of a positive judgment, without having to be engaged in any negotiations with the creditors to this effect, the debtor is granted a 90-day (ordinary) payment moratorium, such period to be reckoned from the publication of the granting decree in the government paper Companies Gazette. During the period of the moratorium, practically no claims can be enforced against the debtor, nor can the debtor make any payments or undertake any commitments without the consent of the bankruptcy receiver.

Notwithstanding the above, in order to avoid abusing the opportunity offered by a bankruptcy moratorium, the debtor shall submit a detailed financial documentation already at the beginning of the procedure, annexed to the bankruptcy petition, and this way enable the court to decide if the debtor is indeed eligible and prepared for carrying out the procedure. Furthermore, with the aim to hinder abuse, no bankruptcy procedure can be initiated if at least two years have not passed since the completion of any former bankruptcy procedure, or if any claims having been or become due during such former procedure have not been duly settled. If either the debtor or the petitioner creditor discloses false or misleading information in this regard or in any other respect, the court will be able to impose fines amounting up to cc. EUR 3,000 and to charge the costs of the procedure upon the party furnishing the misleading information.

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katalin.balazs@bpv-jadi.com
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gyula.korosi@bpv-jadi.com
Dr. Zoltán Kató
zoltan.kato@bpv-jadi.com

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The maximum term of the moratorium has significantly been extended

In accordance with of the former regulation, the moratorium could have been granted for either 60 or 120 days, depending on the decision taken by the creditors, and it could have been extended with further 60 days, provided that the creditors consented thereto. In the case of the procedures initiated on or after 1 September 2009, the 90-day payment moratorium can be extended up to 1 year reckoned from the starting date of the bankruptcy procedure, although the consent of the creditors representing a certain proportion of the claims is still necessary for the prolongation. The meeting with the creditors shall be held within 45 days as opposed to the former 30 days. Prior to the meeting, the debtor and the bankruptcy receiver are obliged to work out the in depth terms and conditions of the debt settlement scheme to be incorporated into the settlement agreement.

Security for the creditors

Enhanced securities have been implemented for the creditors, as the conclusion of the bankruptcy settlement agreement between the debtor and its creditors becomes more documented and controlled, and the authority and liability of the receiver also increase, these safeguards collectively securing that the debtor does not abuse with the bankruptcy defence and does not have the possibility to conceal its existing assets.

Based on the above, the legislator's intent is to render the conclusion of the bankruptcy settlement agreement swifter and simpler, so that the all-time managers and owners of debtor companies may have better prospects to revive their insolvent company. However, in case the creditors do not come to an agreement with the debtor, or the debtor does not hold on to the conditions of the bankruptcy settlement agreement, the bankruptcy procedure is likely to be turned into a liquidation procedure, similar to the former regulation.

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Dr. Gyula Kőrösy

gyula.korosi@bpv-jadi.com

Dr. Zoltán Kató

zoltan.kato@bpv-jadi.com

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