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New Amendments in Insolvency and Business Stabilisation

New substantial amendments in the fields of insolvency and business stabilisation procedure have been recently introduced by the Bulgarian legislator.

While the amendments came into force on 4 August 2023, the state authorities and institutions that are responsible for taking the necessary technical steps to make some of the amendments operational, will have 6 months to do so.

The changes include both refinement of already existing legal provisions and adoption of entirely new legal framework such as the insolvency of natural persons - entrepreneurs. The changes will aim at updating the existing regulation, removing some flaws revealed over the years and presenting entirely new set of legislation in attempt to implement the measures required under the plan for spending funds from the EU's Recovery and Resilience Facility (RRF). The changes have been also adopted in implementation of 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 (Directive on restructuring and insolvency).

Some of the most significant changes are:

1. **Insolvency:**

(i) Debtor's bodies and authorities would be under a new obligation, in case of imminent risk of insolvency, to take all necessary measures to avoid it and not to jeopardise the viability of the enterprise intentionally or with gross negligence.

(ii) All restrictions on the managers related to a previous bankruptcy shall be lifted with the expiration of 5 years from the termination of the company due to bankruptcy. The lifting of the restrictions shall be declared explicitly, with an indication of the specific circumstances.

(iii) The territorial competence of the insolvency court shall be now determined as per the debtor's registered seat, announced no later than 6 months before filing of the application for opening of insolvency proceedings. This new rule will help to avoid "forum shopping" by debtors acting in bad

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faith, who usually change their registered office immediately before filing the application for the opening of insolvency proceedings for the sole purpose of choosing an "appropriate" insolvency court.

(iv) The process of appealing acts, rendered within the insolvency proceedings, is facilitated through reduction of the time limits for appeal (all acts of the insolvency court shall be appealed within 7-day term and the acts of the appellate court within 14-day term) and change of the starting point from which the deadlines for appeal run – this shall be the date of their announcement in the Commercial Register, instead of their service to all parties, as it was until now.

(v) It will be now possible to merge applications for opening of insolvency proceedings lodged by both debtor and creditors for joint examination in the same proceedings. Until now they have been reviewed in separate proceedings, where more recently instituted proceedings were stayed until resolution of the earlier ones and priority was given to proceedings opened at the request of a creditor.

(vi) Provision is made for the possibility of prior (i.e., before opening of the formal liquidation stage) liquidation of debtor's assets by the trustee to cover costs in the insolvency proceedings.

(vii) The deadlines for filing avoidance claims are extended from one to two years, and the amount of the state fee on such claims shall be calculated only on one quarter of the claim's value.

(viii) Mandatory templates are introduced for some of the most important documents produced during insolvency proceedings - the application for lodging a claim, the lists of accepted and unaccepted claims, prepared by the trustee, distribution lists, trustee's diary and others. The necessary technical support (approving templates, etc.) shall be provided by the Ministry of Justice within a 6-month deadline as from adoption of the new law.

(ix) Sale of assets from the insolvency estate shall be possible through an electronic public auction conducted in a special unified electronic platform for open bidding under unified rules.

(x) New rules are adopted with respect to the conduct of public auctions, to better guarantee the rights of the debtor and creditors, as well as the most effective replenishment of the bankruptcy estate.

(xi) New, stricter requirements for the trustees, have been introduced. However, trustees who have been struck off the list of approved insolvency practitioners due to infringements will be able to be

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reinstated after the expiry of a 3-year period from the imposition of the sanction, subject to certain conditions.

(xii) The regulation of the interim measures has been also amended – now the debtor itself could also ask the court for the imposition of interim relief measures with respect to its own assets. Although this shall be possible only with respect to a specific measure – suspension of forcible execution proceedings against the debtor (those initiated for public obligations are explicitly excluded), some practitioners criticize this possibility as being contrary to the principle that the debtor shall have no legal interest to apply for interim measures against its own property vis-à-vis the creditors.

(xiii) New procedural rules are adopted in respect of the meeting of creditors - there will no longer be the so-called first meeting of creditors, which, pursuant to the existing regulations, had to be convened even before the final list of accepted claims is approved thus creating issues regarding the creditors entitled to participate in it and the legitimacy of its decisions.

2. Business Stabilisation:

(i) Some of the conditions for the applicability of stabilisation procedure are redefined – now an imminent risk of insolvency shall be present, if the trader, with a view of the upcoming maturities of its cash obligations in the next 12 months (and not 6 as it was until now) as of filing of the application for stabilisation, will be unable to meet its due cash obligations or may stop payments.

(ii) Stabilisation will be now *inapplicable* to a wider range of entities. Pursuant to the amendments, besides the public entities, banks and insurance companies, stabilisation procedure shall not be applicable also for credit institutions, financial and investment intermediaries, managing companies, alternative investment funds and persons managing such funds, central counterparties as per the meaning of art. 2, item 1 of *Regulation (EU) 648/2012*, central securities depositories as per the meaning of art. 2, para 1, item 1 of *Regulation (EU) 909/2014*, financial holdings, pension insurance companies and others.

(iii) It is now explicitly prescribed that insolvency proceedings could not be initiated after opening of stabilisation proceedings. The 30-day deadline for the insolvent trader to file application for opening of insolvency runs after termination of the stabilisation proceedings.

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(iv) The legal requirements regarding the content of the application for opening stabilisation procedure are minimized and the newly prescribed content of the stabilisation plan is now fully compliant with *Directive (EU) 2019/1023 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* (Directive on restructuring and insolvency). Incumbent ministries (Ministry of Justice, Ministry of Growth and Innovation and Ministry of Technologies) shall create and publish practical guidelines for drafting a stabilisation plan within 6 months as of entry into force of the amendments.

(v) New provisions regulate possible financial proceeds resulting from implementation of the plan (new or intermediate financing by existing and/or new creditors). If insolvency proceedings are initiated after confirmation of the plan, no deals, or transactions of the insolvent trader, aiming at or resulting from new or intermediate financing, could be subject of avoidance claims and could not be declared invalid vis-à-vis the creditors of insolvency estate. Same protection is provided for deals and transactions related to negotiation and confirmation of the plan, as a result of which costs have been incurred.

(vi) The amendments also provide for legal conditions for confirming of the stabilisation plan by the court even without the statutory minimum of creditor votes being present. In addition, a new set of rules has been introduced to protect the creditors who disagree with the plan.
(vii) Appeal against the stabilisation plan shall no longer suspend its execution.

3. New Legal Framework introducing Insolvency of Natural Persons who are Entrepreneurs

Any natural person exercising a craft, business activity or liberal profession shall be deemed an "entrepreneur" as per the meaning of the new legal framework, as far as his/her enterprise does not require the conduct of business in a commercial manner. The personal obligations of the entrepreneur shall also be considered as such related to the business or freelance activity he or she has pursued. The provisions of the ordinary insolvency proceedings against sole traders shall apply to entrepreneurs *mutatis mutandis*. The competent court shall be determined as per the debtor's registered seat, announced no later than 6 months before filing of the application for opening of insolvency proceedings (similar to the ordinary bankruptcy proceedings).

For the first time, discharging of the obligations of the natural person - entrepreneur is introduced, subject to several conditions: termination of the commercial activity to which the liabilities are related,

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repayment of the costs of the bankruptcy proceedings, repayment of at least one third of entrepreneur's liabilities, not carrying out actions and transactions after the opening of the bankruptcy proceedings damaging the creditors, passing of a three-year period since the approval of a recovery plan, respectively from the declaration of bankruptcy or the decision for liquidation of property and termination of proceedings. However, obligations arising from certain types of claims (e.g., secured by pledge and mortgage, public law claims, tort claims, costs of the insolvency proceedings, etc.) shall not be subject to discharge. As from the date of the discharge, all restrictions and prohibitions provided for by the law for the exercise of the respective commercial activity or liberal profession will cease to exist.

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