A&O SHEARMAN

Restructuring across borders
Croatia

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | JANUARY 2024

Contents

Introduction

The three principal restructuring and insolvency regimes for companies under Croatian law are:

- Bankruptcy proceedings *(stečajni postupak)*;
- Pre-bankruptcy settlement proceedings *(postupak predstečajne nagodbe)*; and
- Voluntary winding-up proceedings.

Bankruptcy proceedings

(stečajni postupak)

The Bankruptcy Act (Official Gazette No. 71/2015, 104/2017, 36/2022) 1996 regulates bankruptcy proceedings. Bankruptcy proceedings are initiated primarily to jointly satisfy creditors' claims through the realisation of the debtor's assets and the distribution of those assets to creditors – i.e., bankruptcy is used mainly to liquidate insolvent companies. It is also possible to rescue the company through bankruptcy proceedings, as the Bankruptcy Act allows the creditors and the debtor to agree a bankruptcy plan (*stečajni plan*) within the framework of bankruptcy proceedings. Therefore, depending on the result of the proceedings, an indebted company may either be dissolved or be rescued as a going concern through a bankruptcy plan and continue operating. However, bankruptcy proceedings in Croatia have a negative trend toward dissolving the indebted company upon completion of the bankruptcy procedure. Bankruptcy plans under the Bankruptcy Act tend to be rare.

Bankruptcy proceedings take place under the supervision of the competent Commercial Court. The debtor or any of its creditors may apply to the Court to commence bankruptcy proceedings. The Financial Agency (the leading provider of financial and electronic services in Croatia, owned by the state) is required by law to submit a proposal to commence bankruptcy proceedings against any legal entity that has payment obligations evidenced in the respective registry of the Financial Agency which have been due and payable for over 120 days, within eight days after the end of that period. If a debtor or creditor applies to commence bankruptcy proceedings, it must show that, on the balance of probabilities, the debtor is either unable to make payment or is over-indebted. A debtor may also apply to commence bankruptcy proceedings if it presents probable evidence that it will be unable to settle its outstanding payment obligations at maturity. If a creditor applies to commence bankruptcy proceedings, it must also show that it has a claim against the debtor on the balance of probabilities.

Upon opening bankruptcy proceedings, a Court-appointed bankruptcy trustee takes over the management of the debtor and its assets. The bankruptcy trustee acts as the main advocate of the debtor.

From the moment bankruptcy proceedings are opened, enforcement procedures against the debtor are stayed, and any litigation proceedings which are ongoing when the bankruptcy proceedings commence, are stayed.

The Bankruptcy Act also regulates expedited bankruptcy proceedings for companies:

- with no employees and for which the conditions to initiate another deletion procedure from the Court registry are not met; and
- against which unpaid enforcement writs have been evidenced in the Financial Agency's Register of Unpaid Claims for over 120 days.

Rescuing a debtor as a going concern requires putting together a bankruptcy plan. The bankruptcy trustee and the debtor are authorised to propose a bankruptcy plan. The plan can be submitted at any stage of the proceedings since the Bankruptcy Act does not specify a timeframe for submission.

Bankruptcy proceedings (cont.)

The only restriction is that the Court will not consider the bankruptcy plan after the final court hearing in the bankruptcy procedure. A bankruptcy plan must consist of a preparation and implementation section.

The preparation section details the measures that have been (or will be) taken to preserve the rights of those proposed to participate in the bankruptcy plan. The implementation section sets out how the debtor's liabilities will be restructured. Generally, there are no restrictions on what can be proposed in a bankruptcy plan (other than the principle of equal treatment of claims of creditors [within the same class]). The usual restructuring options are therefore available (for example, the postponement of payment of creditors' claims, a reduction in the amount payable to creditors, debt for equity swaps etc). As a rule, all those parties who will participate in the plan must have had the chance to suggest the content of and comment on the proposed plan. The plan must include all creditors other than secured creditors. It is possible for creditors with a right to separate satisfaction (broadly, a form of secured creditor) to be affected by the plan, but the creditor must specifically agree, in the plan, to their rights being affected. For this purpose, creditors are organised into separate groups based on their legal rights and/or economic interest. For example, employees will form one group of creditors and creditors with the right to separate satisfaction will form another group if the plan affects their rights. If the approved bankruptcy plan alters the debtor's title and rights in respect of assets recorded in public registries, the appropriate changes must be sent to the relevant registry.

As a general rule, the restructuring plan must treat all creditors of the same group equally, regardless of their status. However, it is possible for creditors within the same group to be treated unequally, but only with the direct agreement of those creditors whose rights would be affected. Creditors must be protected, and the Court can refuse to approve a restructuring plan that fails to respect the equal treatment of creditors or to protect the rights of the minority.

The restructuring plan and its supporting documents will be published on the Court's webpage and in the Court's administrative offices so that they can be inspected by the debtor's creditors. The bankruptcy judge will schedule a hearing for the creditors to vote on whether or not they approve the plan. Creditors are separated into groups, and every group has a separate vote.

The groups are:

- creditors with a right to separate satisfaction to the extent that the restructuring plan affects their rights (i.e. secured creditors);
- creditors whose claims are not 'lower ranked' and creditors whose claims are 'lower ranked', to the extent the restructuring plan states that they are not extinguished (i.e., the general unsecured creditors, including tax claims);
- employees of the debtor, and
- stockholders, shareholders, and holders of other founding rights of legal entities, to the extent that the restructuring plan affects their rights.

The plan will be deemed accepted if, in each group, the majority of creditors in number and at least two-thirds of creditors in value voted in favour. The debtor must also formally vote in favour of the plan.

The debtor will be deemed to have voted in favour if it does not file an objection. After the creditors and the debtor have voted on the plan, the bankruptcy judge decides whether or not to approve it. If approved, a copy is sent to all participants, and its terms will be binding.

Pre-bankruptcy settlement proceedings

(postupak predstečajne nagodbe)

Effective from 1 September 2015, the Bankruptcy Act also includes pre-bankruptcy settlement proceedings. Its purpose is to provide more effective solutions for companies which would otherwise face dissolution if bankruptcy proceedings were initiated.

The pre-bankruptcy settlement procedure is voluntary and can only be initiated by the debtor. Upon the initiation of pre-bankruptcy settlement proceedings, all prior proceedings initiated against the debtor are stayed for the duration of the proceedings. An application to commence bankruptcy proceedings cannot be made during pre-bankruptcy settlement proceedings. While the restructuring of the debtor through a bankruptcy plan is an exception in bankruptcy proceedings, in pre-bankruptcy settlement proceedings, the debtor must prepare a draft restructuring plan and put it before the creditors for their approval. The Bankruptcy Act requires that a restructuring plan set out at least the following:

- information on the identity of the debtor;
- information on the identity of the commissionaire, if the proposal of the restructuring plan is submitted after the opening of the pre-bankruptcy proceedings;
- information on the assets and the value of the debtor's assets at the time of the submission of the restructuring plan;
- a description of the economic status of the debtor and the position of its employees and a description of the reasons and the extent of the debtor's difficulties;
- a description of the facts and circumstances which gave rise to the existence of the conditions necessary for the commencement of pre-bankruptcy settlement proceedings;
- the financial restructuring measures to be implemented by the plan and a calculation of their likely effects on the debtor's lack of liquidity;
- the operational restructuring measures to be implemented by the plan and a calculation of their likely impact on the profitability of the business and the elimination of debtor's insolvency/threatened insolvency;
- a detailed three-year business plan;
- a formal offer to the creditors containing the terms on which their claims will be settled or amended;
- an indication of the categories of claims that are not affected by the restructuring plan;
- how the employees will be informed and consulted; and
- an explanation of the restructuring plan and that it will offer a reasonable prospect of preventing the debtor's insolvency.

Pre-bankruptcy settlement proceedings (cont.)

Essentially, in the restructuring plan, the debtor proposes a way in which its debts and other obligations will be settled and a corresponding timetable.

The creditors will vote on the restructuring plan in classes at a special hearing convened for voting. Creditors can also vote before the meeting by postal ballot. The classes and the necessary majorities are the same as when a bankruptcy plan is adopted.

If the requisite majority of creditors approves the restructuring plan, the Court will make an order confirming the plan and the settlement entailed within. The settlement proposal will reflect the agreed restructuring plan. The pre-bankruptcy settlement procedure is concluded when the court order has been made. The pre-bankruptcy settlement is binding on the debtor and its creditors, regardless of whether they participated in the procedure.

Pre-bankruptcy settlement proceedings are classed as urgent proceedings and must be completed within 120 days from the date of publication of the decision commencing pre-bankruptcy settlement proceedings. In respect of certain debtors, expedited pre-bankruptcy settlement proceedings must be used and completed within 100 days from the day the decision commencing pre-bankruptcy settlement proceedings was published. This period is rarely complied with in practice. The Bankruptcy Act, therefore, allows for an extension of up to 180 days at the request of the debtor, the creditors or the commissioner.

If the pre-bankruptcy settlement proceedings are successful, the debtor emerges as a solvent and liquid company. If no restructuring plan is accepted, the pre-bankruptcy settlement proceedings are terminated. After the termination of unsuccessful pre-bankruptcy settlement proceedings, bankruptcy proceedings will usually follow since the court is authorised, in certain events, to continue the proceedings as if a proposal for the initiation of bankruptcy proceedings had been submitted.

Voluntary winding-up proceedings

The Companies Act (Official Gazette No. 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 125/2011, 111/2012, 68/2013, 110/2015, 40/2019, 34/2022) 1993 regulates voluntary winding-up proceedings. Voluntary winding-up proceedings are initiated by the shareholders of the solvent company. In voluntary winding-up proceedings, the company's remaining assets are distributed among the shareholders after the company's creditors have been fully satisfied.

In the course of voluntary winding-up proceedings, the company's management must initiate bankruptcy proceedings if it is ascertained that the company's assets will not cover its existing liabilities. Filing for bankruptcy proceedings during the voluntary winding-up proceedings is permitted only before the debtor's assets have been divided among its creditors.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**), continues to apply to all proceedings opened after Croatia acceded to the European Union on 1 July 2013 and before 26 June 2017.

One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency "rescue" proceedings, which are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/ territorial proceedings, but secondary proceedings are no longer restricted to a separate list of winding up proceedings - secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, only bankruptcy proceedings (*stečajni postupak*) were available as main proceedings under the Original Regulation.

Bankruptcy proceedings were also available as secondary proceedings under the Original Regulation.

Under the Recast Regulation, only bankruptcy proceedings were listed in Annex A; however, given the wider scope of proceedings under the Recast Regulation, it is expected that pre-bankruptcy settlement proceedings (*postupak predstečajne nagodbe*) will be added to Annex A in the future.

At the time of writing, pre-bankruptcy settlement proceedings are still not included in Annex A.

Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**.

This fact sheet has been prepared with the assistance of Divjak Topić Bahtijarević & Krka. Any queries under Croatian law may be addressed to the key contacts listed below:

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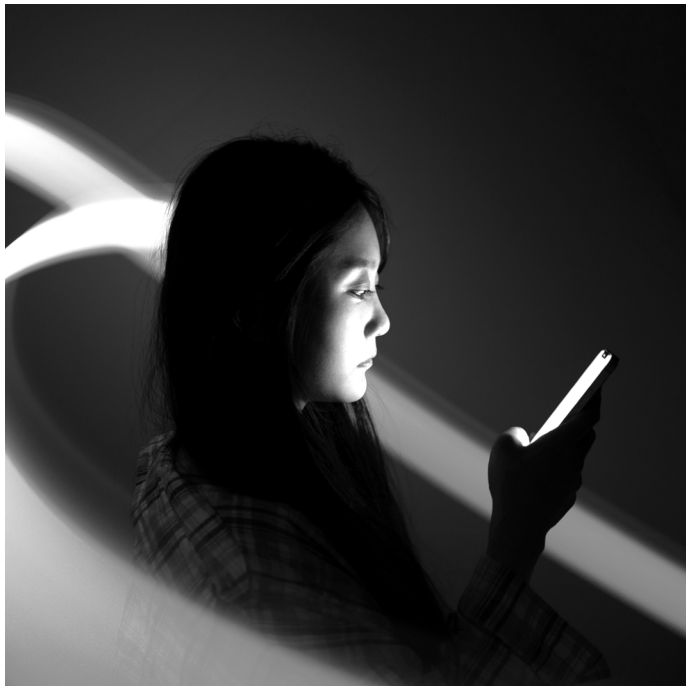
Further information

Developed by Allen & Overy Shearman market-leading Global Restructuring Group, "**Restructuring Across Borders**" is a free and easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please **click here**.



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