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BULGARIA: RECENT AMENDMENTS TO LAWS FAVOUR CREDITORS

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With effect from 1 January 2011 several amendments to the law in Bulgaria were made that aim to enhance the position of secured creditors, in particular in insolvency and avoid certain pitfalls in the rules before that.

1. Announcement of petitions for voluntary insolvency

The amendments introduced an obligation for announcing with the Commercial Register insolvency petitions filed by the company itself (voluntary insolvency petitions).

Prior to the amendments such insolvency petitions were not made public in the Commercial Register and thus creditors were often taken by surprise by the opening of insolvency of their debtor, without any practical possibility to take measures of defence, especially in respect of the determination of the so called “initial date of insolvency”, a crucial date in insolvency setting out the timeframe of suspect periods within which transactions (including creating of security interests over assets of the insolvent debtor) can be invalidated.

The amendment would allow prudent creditors to become aware in time about

a voluntary insolvency petition against their debtor and take part in the insolvency proceedings from its early stages, including substitute a voluntary insolvency with an involuntary one and express a view on the determination of the initial date of the insolvency.

2. Secured creditors can appeal the court ruling opening insolvency proceedings

The amendments entitled creditors secured by a pledge or mortgage to appeal the ruling of the court for opening the insolvency proceedings, including to challenge the initial date of the insolvency. This new power provides secured creditors with a weapon against determination of abusively early initial date of insolvency aimed at invalidating security interest granted over assets of the insolvent debtor after such initial date of insolvency.

3. Enforcement of claims secured by third party assets

The amendments created an exception to the general rule that after insolvency proceedings are opened all pending litigation and enforcement actions

against the insolvent debtor are suspended and no new ones can be initiated.

The rule no longer applies to litigations or enforcement proceedings against security assets of third parties (e.g. if a subsidiary has granted a pledge over assets owned by it for the debt of its parent, an insolvency of the parent would not prevent the ability of the secured creditor to take enforcement action against the assets of the third party-security provider) even though formally the litigation or enforcement actions is against the insolvent debtor and not against the third party.

4. Protection of creditors secured with a third party mortgage

If an asset mortgaged by an insolvent debtor as a security for a third party debt is sold within the insolvency proceedings, the secured creditor must be notified of the sale and receive the respective portion of the sale proceeds.

This protects creditors secured by third party assets irrespective of whether or not they take part in the insolvency proceedings of such third party.

5. Satisfaction of receivables arisen after the opening of the insolvency proceedings

With the amendment **all** receivables that have arisen after the date of the resolution for opening the insolvency proceedings (and not only those related to the continuing activity of the insolvent debtor as was the case before) are to be satisfied after the public receivables of the State and municipalities such as taxes, customs duties, fees, mandatory insurance contributions arisen until the date of the resolution for opening the insolvency

procedure.

The change has been provoked by the fact that practically the obligations arising for the debtor after the date of the resolution are not necessarily connected with its continuing activity, quite the contrary – they could arise after the termination of the activity and accrue for the entire period until completion of the realisation of the property. The amendment of the law aims at procuring equal treatment of both kinds of receivables.

6. National Revenue Authorities limited in enforcing public claims

The amendments introduced time limits within which the National Revenue Agency may sell assets of debtors for public liabilities. Outside insolvency such time limit is 12 months and in insolvency it is 6 months. If within such periods the National Revenue Agency was unable to sell the respective assets any other creditor or the insolvency trustee, as the case may be, is entitled to commence enforcement over the same assets. The amendment is aimed at avoiding the often occurring in practice undue protraction of enforcement of public liabilities by revenue authorities, in detriment to private creditors, especially when the debtor is in insolvency proceedings.

7. Taking possession of secured assets easier

With the amendments a creditor secured by a special (i.e. non-possessory) pledge can take the physical possession of the secured assets (when the pledgor is not cooperative in respect of the preservation of or enforcement over them) only based on an excerpt from the respective public register evidencing the registration of the security therein and for the recordation therein of the

commencement of enforcement over the assets (in contrast with the previous provision of the law, which required also an order for immediate enforcement – an additional action often delaying significantly the taking over of the possession of the pledged property).

8. Changes to the rules of sovereign immunity

In principle under Bulgarian law enforcement of monetary claims is not allowed against state bodies, i.e. state bodies enjoy certain sovereign immunity in the sense that monetary claims against them can only be satisfied to the extent there are sufficient funds for that in the budget of the state body for the respective fiscal year. In February 2010 the law was amended to extend the same sovereign immunity also to municipalities. However by ruling effective since 18 January 2011 the Constitutional Court of the Republic of Bulgaria declared the extension of such sovereign immunity also to municipalities as contrary to the Constitution of the Republic of Bulgaria. Thus, such immunity of municipalities became legally ineffective as of said date.

On the other hand, in principle funds on

bank accounts of municipalities transferred to such bank accounts from the republican budget (i.e. the general state budget) were immune from enforcement. With the amendment to the law of February 2010 such immunity was taken away. However with the same ruling above the Constitutional Court declared the waiver of such immunity as contrary to the Constitution of the Republic of Bulgaria and thus the immunity was effectively reinstated as of 18 January 2011.

Borislav Boyanov & Co. has a leading litigation team that deals inter alia in complex insolvency matters. If you require more information on the above changes, need assistance in respect of insolvency or other legal matters or need us to monitor the Commercial Register for insolvency petitions of your debtors, please contact us at mail@boyanov.com