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AGROKOR - TOO BIG TO FAIL

Act on the Procedure of Extraordinary Administration in Companies of Systemic Importance

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What is happening with Agrokor

Heavy media coverage, boils down to a recent Reuters report:

The financial problems that have hit Croatia's largest food and retail undertaking, Agrokor, will almost certainly have an impact on the country's gross domestic product, the central bank governor said on Thursday.

Agrokor, the biggest food producer and retailer in the Balkans with 60,000 employees, and its main creditors have hired foreign restructuring experts led by consultants Alvarez & Marsal to rescue it after it built up debts of about HRK 45 billion (approx. EUR 6.1 billion) - or six times its equity - during its expansion¹.

Faced with possible hiccups of the economy and overall unstable macroeconomic environment, the Croatian government has prepared a special law designed to ringfence the national economy from Agrokor problems, which are apparently threatening to spill over across sectors and the Balkan region.

The new piece of legislation

The Act on the Procedure of Extraordinary Administration in Companies of Systemic Importance for the Republic of Croatia² (hereinafter: "Act") entered into force on 7 April 2017, only a day after it was passed in the Croatian Parliament. On the same day, the Act was "activated" by Ivica Todorić, Agrokor's President of the Board who submitted a request for the opening of extraordinary administration procedure over Agrokor.

The Act, proclaims to enshrine mechanisms to protect the viability of companies of systemic importance for Croatia.

¹ For more, please go to: <http://www.reuters.com/article/us-croatia-growth-agrokor-idUSKBN178oXN>

² "Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku", Official Gazette of the Republic of Croatia no. 32/2017.

The extraordinary administration shall be applied to joint stock company of the debtor and all its subsidiaries and associated companies³ where it is established the existence of any of the grounds for the opening of the bankruptcy or prebankruptcy proceedings.

Joint Stock Company of systemic importance for the Republic of Croatia, aside of Agrokor, is one which, individually or together with its subsidiaries or affiliates, cumulatively meets the following conditions:

- that in the calendar year preceding the year in which it submitted a proposal for initiation of extraordinary administration alone or together with its subsidiaries or affiliated companies employ an average of more than 5,000 employees; and
- that the existing liability alone or together with its subsidiaries or affiliated companies, amounts to more than HRK 7,5 billion.

The structure of the Act

In a nutshell, the structure of the Act mimics the Bankruptcy Act⁴ with few twist that strive to safeguard remaining economic optimism in Croatia. However, it appears that creditors could pay the costs of this rescue mission, which by each day resembles more to Parmalat case than ordinary bankruptcy failure.

In the process of extraordinary administration pursuant to the Act the Commercial Court in Zagreb is exclusively competent, regardless of the seat of the debtor and related companies to which this Act applies and regardless of the seat of its subsidiaries and/or affiliates.

Bodies of procedure of extraordinary administration are, besides the Court, Extraordinary Administrator, an Advisory Body and Creditors' Council.

What does it mean for creditors (suppliers)

Creditor and supplier that have claims are referred below as: "creditor".

The Extraordinary Administrator independently conducts the business of the debtor and takes all other actions in the proceedings entrusted to him. He is, *inter alia*, authorized to conduct payments required for regular business operations, such as: settling priority claims, salaries for the employees; covering and paying for operating costs (invoices for electricity, water, etc.); procurement of goods and services required for performing regular business operations; value added tax etc.

Eventually, one have to be prepared for a complete shift from regular business relations with Agrokor that it may have got used to.

³ Please see provisional list of affected companies as the appendix to this Paper (in yellow are marked companies which are directly encompassed by the opened proceedings).

⁴ "Stečajni zakon", Official Gazette of the Republic of Croatia no. 71/2015.

In addition, one could experience completely new negotiation (possibly hostile) environment. Namely, the Extraordinary Administrator cannot without the consent of the Creditors' Council make a decision or take action with the aim to dispose of property of the debtor, shares or interests in subsidiaries and other companies and the transfer of an economic entity, if the value exceeds HRK 3.5 million (appox. EUR 473,000).

Who are the creditors

The creditors in extraordinary administration proceedings are creditors at the time of opening of extraordinary administration proceedings which have outstanding claim towards the debtor and/or subsidiaries and affiliates. Also, all others that shall establish the business relations during the proceedings may fall into this basket. The creditors shall be classified in groups according to their claims.

It is to note that all undue claims become due by opening of extraordinary administration proceedings.

The Extraordinary Administrator may, with the prior consent of the Creditors' Council, undertake a new debt in the name and on behalf of the debtor in order to reduce systemic risk, continue operations, safeguard the assets or to settle claims from the operating business. These debts shall have a priority in settlement over other claims of creditors, except the claims of employees and former employees.

Filing the claims

Creditors have to file its claims by separate submission. to the Extraordinary Administrator within **60 days from the date of publication of the decision** in accordance with the rules of the Bankruptcy Act on the registration of the claims.

The claims reported within the prescribed period shall be considered confirmed if they are recognized by the Extraordinary Administrator and if they are not challenged by another creditor(s), or in the case that the challenging has been withdrawn.

The court shall issue a decision on the confirmed and disputed claims. By that decision the court shall decide on referral to civil proceedings for determining or challenging the claim. Decision on confirmed and disputed claims shall be published on the website of the e-notice board of courts.

If the Extraordinary Administrator has disputed the claim, the court shall instruct the creditor to instigate litigation proceedings against the debtor or a subsidiary or an affiliate to determine such disputed claim.

Other implications of the Act on past business relations

All existing claims are halted during the proceedings. (Only) with the consent of the Creditors' Council, Extraordinary Administrator can make payments of due claims incurred prior to the decision on the opening of extraordinary administration proceedings if it is required to reduce systemic risk, continue operations and safeguard the assets.

Prohibition of initiating enforcement proceedings

From the date of opening of compulsory administration until its completion it is not allowed to initiate (separate) litigation, enforcement and security procedures nor the procedures of out of court settlement against the debtor and its subsidiaries and affiliated companies, save from procedures in relation with employment relations.

Representation in the proceedings

Creditors can represent themselves or can simply hire a lawyer to prepare a filing, strategy for the proceedings, as well as to represent them throughout the proceedings. For that the creditor has to obtain and issue:

- (i) a brand new excerpt from the commercial register for the creditor, certified by the authority issuing it e.g. competent court, notary public (historic if it is evident that the company has changed its name, merged or when its general legal predecessor entered into the relevant agreement etc.),
required translation should be conducted in Croatia
- (ii) power of attorney, signed by the authorized representatives of creditor in line with their signing powers whereas their signatures shall be legalized by a notary public,
- (iii) precise calculation of the claim,
- (iv) the statement of open accounts verified by the company (i.e. original excerpts from the financial books),
required translation should be conducted in Croatia
- (v) the calculation of interests provided by the creditor (in case that non-Croatian law applies, please provide us with the provision that regulates interest(s) applicable in the business relationship between two legal persons. if possible we kindly ask you to provide us with the link to resp. law),
- (vi) (copy of the document that serves as the legal basis of a claim, e.g. contract, documents evidencing payments pursuant to the guarantee etc.,
- (vii) if the claim has been transferred, we have to submit the legal basis of such transfer e.g. agreement or any other basis for succession.

Having in mind that the proceedings is formal; documents that are to be provided have to follow formal standards. Thus, instructions of your counsel have to be respected.

A special care has to be taken at the time when the creditor establishes its claims, as the consequences of flawed notifications may be significant. Namely, as already indicated, during the proceeding it is not allowed to initiate a litigation, enforcement and administrative proceedings nor procedures for the insurance of claims that came into existence prior to the quoted proceedings. Furthermore, the Act implies that after the conclusion of a settlement creditor is not allowed to initiate enforcement, administrative or civil proceeding against the debtor, in order to determine and/or collect claim which arose prior to the opening of proceeding and which was not notified by the creditor or included independently by the debtor in the list of claims (table).

More info

Finally, an experience bankruptcy and restructuring team would be more than happy to answer any question you might have. For more info please contact Mr. Mislav Bradvica, Attorney at Law, using the following contact details:

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What to expect from the proceedings

Against the backdrop of the previously stated, we believe that the proceedings are conducted so that Agrokor, who became illiquid and insolvent, could arrange more-favorable conditions of settling its claims with its creditors. Continuance of business is also one of the tasks.

In the core of this Act lays financial, business, capital and operative restructuring of Agrokor, which would allow it to continue with business activities and repay its debts toward creditors. Main instruments of financial and equity restructuring is debt reorganization, including reduction of creditor's claims towards debtor (haircut), rescheduling the repayments, extending a new refinancing, debt-to-equity swap, remodeling of claims etc.

PROVISIONAL LIST OF SUBSIDIARIES AND AFFILIATED COMPANIES (IN *YELLOW* ARE MARKED COMPANIES WHICH ARE DIRECTLY ENCOMPASSED BY THE OPENED PROCEEDINGS)

1. 360 Marketing d.o.o.
- 2 Aoo7 d.o.o.
3. Adria Retail d.o.o.
4. Adriatica.Net d.o.o.
5. Agrokor d.o.o. Serbia
6. Agrokor AG Switzerland
7. Agrokor-Energija d.o.o. Croatia
8. Agrokor kft. Hungary
9. Agrokor-trgovina d.o.o. Croatia
10. Agrokor-Zagreb d.o.o. Bosnia and Herzegovina
11. Agrolaguna d.d. Croatia
12. Aliquantum ulaganja d.o.o.
13. Ambalažni servis d.o.o. Croatia
14. Ambalažni servis d.o.o. Bosnia and Herzegovina
15. Ambalažni servis d.o.o. Serbia Serbia
16. Angropromet d.o.o. Serbia
17. Atlas d.d.
18. Aureum Stella d.o.o.
19. Backstage d.o.o.
20. Belje d.d. Croatia
21. Belje Agro.-vet d.o.o.
22. Bio zone d.o.o.
23. DB Kantun Veleprodaja d.o.o.
24. Dijamant a.d. Serbia
25. Euroviba d.o.o. Croatia
26. Frikom d.o.o. Serbia
27. Frikom Beograd d.o.o.e.l. Macedonia
28. Fonyodi kft. Hungary
29. Hoteli Forum d.o.o.
30. Idea d.o.o. Serbia 1
31. INIT d.d. Bosnia and Herzegovina
32. Irida d.o.o. Croatia
33. Jamnica d.d. Croatia
34. Jamnica d.o.o. Beograd Serbia
35. Jamnica d.o.o. Maribor Slovenia
36. Jolly projekti jedan d.o.o.
37. Kikindski mlin a.d. Serbia
38. Konzum d.d. Croatia
39. Konzum d.o.o. Sarajevo Bosnia and Herzegovina
40. Kompas d.o.o.
41. Kor Broker d.o.o. Croatia
42. Kron d.o.o. Serbia
43. Krka d.o.o. Croatia
44. Ledo d.o.o. Čitluk Bosnia and Herzegovina
45. Latere Terram d.o.o.
46. Ledo d.d. Croatia
47. Ledo d.o.o. Kosovo
48. Ledo kft. Hungary
49. Ledo d.o.o. Slovenia
50. Ledo d.o.o. Podgorica Montenegro
51. Lovno gospodarstvo Moslavina d.o.o. Croatia
52. Poslovni sistem Mercator d.d. Slovenia
53. M-profil SPV d.o.o. Serbia
54. Mladina d.d. Croatia
55. mStart d.o.o. Croatia
56. Multiplus card d.o.o. Croatia
57. Nova Sloga d.o.o. Serbia
58. Pet-prom ulaganja d.o.o.
59. PIK BH d.o.o. Laktaši Bosnia and Herzegovina
60. Agrokor Group
61. PIK Vinkovci d.d. Croatia
62. PIK Vrbovec d.d. Croatia
63. Photo Boutique d.o.o.
64. Plodovi Podravine d.o.o.
65. Poliklinika Aviva
66. Projektgradnja d.o.o. Croatia
67. Rivijera d.d.
68. Roto dinamic d.o.o. Croatia
69. Roto ulaganja d.o.o. Croatia
70. Sarajevski kiseljak d.d. Bosnia and Herzegovina
71. SK - 735 d.o.o.
72. Sojara d.o.o. Croatia
73. Solana Pag d.d. Croatia
74. Super Kartica d.o.o. Bosnia and Herzegovina
75. Super Kartica d.o.o. Serbia
76. Tisak d.d. Croatia
77. Tisak-usluge d.o.o.
78. Tisak inPost d.o.o.
79. Terra Argenta d.o.o.
80. TPDC Sarajevo d.d. Bosnia and Herzegovina
81. Velpro-centar d.o.o. Croatia
82. Vjesnik-usluge d.o.o.
83. Vupik d.d. Croatia
84. Zvijezda d.d. Croatia
85. Zvijezda d.o.o. Ljubljana Slovenia
86. Zvijezda d.o.o. Sarajevo Bosnia and Herzegovina
87. Žitnjak d.d. Croatia

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