KOVÁCS RÉTI SZEGHEŐ
ÜGYVÉDI IRODA

New reorganization procedure during the emergency

Until 22 May 2021, companies in imminent insolvency may initiate reorganization proceedings at the Metropolitan Court.

The government decree, which entered into force on 17 April 2021, temporarily provides a completely new procedural option to help companies in financial difficulties, which is very similar to the already known bankruptcy procedure, but there are some important differences. The most important information is presented by the experts of the KRS Law Office in their comprehensive article.

Similar to bankruptcy proceedings, the decision-making body of the company decides on the reorganization of the company and on the initiation of the reorganization procedure by a resolution of the general meeting on the proposal of the managing director. The content elements of the proposal are laid down in a government decree.

Derogation from bankruptcy proceedings is that the debtor company can decide for itself which of its creditors to include in the proceedings, however if the company has overdue debt, the creditor must be involved in the reorganization.

The reorganization proceedings are initiated with an application to be submitted to the court within 8 days of the decision, which is ordered by the court within 10 working days.

The participation of a reorganization expert in the reorganization procedure is obligatory and only the National Reorganization Non-Profit Limited Liability Company may act as a reorganization expert, who may involve the liquidating organizations under certain conditions.

The reorganization expert has an important role to play in the process. From the beginning of the moratorium, the chief executive of the company may make a legal declaration and make a commitment beyond the day-to-day management of the company in connection with the company's assets and in the course of the company's business only with the prior written approval of the reorganization expert.

The reorganization expert is the person who carries out the preliminary expert examination on the basis of the submissions and documents attached by the debtor and takes a position on whether the company is suitable for conducting the reorganization procedure.

If, in this preliminary expert opinion, the reorganization expert considers the company to be suitable for reorganization proceedings, the court shall impose a moratorium for 90 days on the day following the expert's opinion, which may be terminated, for example if the company does not cooperate with the expert, or does not start negotiations with creditors or the negotiations have been terminated.

In addition to the moratorium, another important consequence of the procedure is that the performance of the outstanding contract cannot be suspended with reference to the commencement of the reorganization procedure, nor can the contract be terminated by such reference, and the company's contractual partners cannot unilaterally modify their contracts with less favorable conditios.

As regards the course of the reorganization proceedings, the purpose of the proceedings is for the debtor to reach an agreement with the creditors involved in the proceedings. The agreement requires the approval of all creditors involved

The reorganization plan prepared for approval may contain any measures aimed at restoring the financial situation of the company, in the reorganization plan the creditors may grant a payment discount to the company, they may partially waive their claim. The reorganization plan to be submitted before the creditors must also specify a deadline for its implementation, which may not exceed two years.

A new possibility is for the company to use temporary or new financing for the operation during the reorganization procedure or for the implementation of the reorganization plan, which creditors will be involved in the reorganization and whose creditor's claims will be satisfied firstly in a later liquidation procedure as a liquidation cost.

A reorganization plan approved by a final court order shall also be recognized as a notarised amendment to the agreement affected by the reorganization plan concluded by the creditors involved in the reorganization and the the debtor and as the acknowledgement of the debt in respect of recognized and uncontested debts existing between the company and the creditor involved in the reorganization on the date of the acceptance of the reorganization plan and in the event of default, the creditor may apply to the court of first instance for an enforcement clause.

As a general rule, the data related to the reorganization is not public, it does not appear in the Company Gazette, however, the decision-making body of the company may also decide to get approved the reorganization plan with its creditors in a public reorganization procedure in which procedure the provisions of the the Cstv. regarding to the bankruptcy procedure shall be applied, in accordance with the specifics of the reorganization procedure, with the exceptions set out in the Government Decree

An important difference between public and non-public reorganization proceedings is that in a public proceeding a reorganization plan is considered to be approved by the creditors even if the company received 60% of the votes in relation to all creditors entitled to vote on the reorganization plan, provided that no creditor can be satisfied less than 60% of its capital claim.

In the reorganization proceedings, legal representation is obligatory before the court - the experts of the KRS Law Office emphasized.