

No More Speculative Moves for Creditors of Bankrupt Debtors

As of 11 August 2011, such amendment of the Bankruptcy Act took effect, which no longer enables creditors, who have missed the statutory deadline to announce their claims, to assert their claims against the debtor under bankruptcy proceedings. **Debtors co-operating with their creditors having concluded a settlement agreement need no longer be afraid that following a successful reorganisation, an earlier creditor – out of speculative interests and through such means – eventually asserts its debts against it.**

The amendment of the Act on Bankruptcy introduced by Act CXV of 2011 concluded the debate arisen in theoretical law declaring unambiguously that a creditor having failed to announce his claims may not assert these against the debtor later.

The theoretical and practical legal problem has arisen since September 2009 was caused by the fact that the Bankruptcy Act did not set out legal consequences (loss of rights) to the omission of announcement. Consequently the literal interpretation of the wording of the act could lead to a result contrary to the original legislative intent and there emerged such opinions according to which the omitting creditors were able to enforce earlier incurring claims after the successful bankruptcy proceedings.

The amendment of the act as of August recognised the situation and remedied the legislative inconsistency within a relatively brief timeline following the evolvement of the problem of theoretic law. The creditor failing announcement out of negligence or for speculative reasons following the debtor's reorganisation is able to enforce its unexpired claim against the debtor only in the liquidation proceedings eventually commenced by a third party. Obviously, it may not enforce default surcharge or default interest in the course of such liquidation proceedings either.

Even prior to this year's amendment of the act, those applying the law were able to arrive from the declared intent of the Bankruptcy Act to such interpretation thereof that the unannounced creditors are not entitled to the subsequent enforcement of their claims against the debtor. Here such provisions are meant like deeming it a debtor's obligation to give particular notice to the creditors and calling upon them to announce the creditor's claim, also the rules on mandatory settlement agreement and such provisions which limit the rights of creditors that may be asserted in the subsequent liquidation proceedings. However, in lawsuits commenced prior to such amendment of the Bankruptcy Act taking effect, prudence and correct law interpretation will still be required of those applying the law in order to reject creditors' attempts at the subsequent enforcement of their claims. This interpretation of the law, in our view is clearly supported by the amendment taking effect this August.

Should you have any question in connection with further reorganisation, bankruptcy or liquidation issue, please contact us.

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