Law on Out-of-Court Financial Restructuring Comes into Force in Ukraine

KINSTELLAR

19 October 2016

Gulliver Business Center
16th floor
1-A, Sportyvna sq.
Kyiv 01601, Ukraine
Tel. (38) 044 394 9040

WHO can commence a financial restructuring process?

A debtor, where it is supported by any of the following creditors which is not a related party of the debtor:

a bank or other financial institution as determined under Ukrainian law

OR

an international financial organisation such as EBRD or IFC

OR

a non-resident financial institution that extended to the debtor a loan under an agreement registered at the National Bank of Ukraine

provided that it holds, individually or together with other financial institution(s), at least 50% of all financial institutions' claims (excluding claims by the debtor's related parties)

MULTIPLE DEBTORS in the same corporate family may have a joint proceeding where

they have at least one common creditor – financial institution

AND

2/3 of all participating creditors – financial institutions by value in relation to each debtor, have consented to such a joint restructuring

WHAT can a financial institution do?

Insolvency Proceedings

Prevent any other creditor to start insolvency proceedings against the debtor

Suspend for the term of restructuring any insolvency procedure against the debtor prior to the court's ruling on the commencement of proceedings

Moratorium

Impose moratorium for at most 180 days on

the debtor and its related parties

other creditors in relation to non-current unencumbered assets of the debtor

tax, customs, treasury and state enforcement bodies, if their claims are less than 1/3 of all participating creditors' claims

Cramdown

Cram into the restructuring plan

participating creditors that did not vote for the restructuring plan, if their claims are less than 1/3 of all participating creditors' claims

related parties of the debtor

tax, customs, treasury and state enforcement bodies, if their claims are less than 1/3 of all participating creditors' claims

Tax Incentives

Take advantage of tax benefits in connection with approval of the restructuring plan

Where tax authorities participated in the process, 3-year old tax debt and disputed penalties of the debtor will be considered fully written off

The increase of the financial result due to reversal of loan loss provisions may be done gradually, by 1/3 of such amount in each of the following three years

The financial result shall not be increased even if the cancelled debt is not a "bad debt"

Sales proceeds used by the debtor to repay its debts in accordance with the restructuring plan are exempt from VAT

The debtor's assets shall be released from any tax pledge and administrative arrest

HOW and WHEN: timeline and important deadlines

Day 1

The debtor submits a written application for restructuring to the secretariat accompanied by consent(s) of financial institution(s) holding in aggregate at least 50% of total claims of all financial institutions (excluding claims of the debtor's related parties)

Day 2 — not later than on the next business day after Day 1

The secretariat decides on the commencement of the restructuring process and notifies the creditors indicated in the debtor's application of the date of the first creditors meeting. The moratorium on the creditors' claims is imposed automatically for the initial 90-day period.

Within 10 business days, but not earlier than 7 business days, after Day 2

The first creditors meeting must be held.

7 business days prior to the date of the first creditors' meeting

The debtor must provide the participating creditors with, in particular, (1) the background for restructuring, (2) information on overdue debt, (3) creditors' contractual rights to accelerate any loans, (4) any breaches of the security agreements, (5) the debtor's 12-month financial forecast and (6) list of existing court and enforcement proceedings.

2 business days prior to the date of the first creditors' meeting

The debtor may supplement the list of the participating creditors.

Within 30 days after Day 1

The debtor may recall its application for restructuring.

Within initial 90 days after Day 2 (that may be extended up to 180 days)

The restructuring plan must be approved in respect of the debtor.

Within 18 months from the date of commencement of the previous restructuring procedure

The debtor may not again file for restructuring under the Financial Restructuring Law.

Your Contact

Andriy Nikiforov
Counsel
Head of Restructuring & Insolvency
Andriy.Nikiforov@kinstellar.com
D.: +380 44 496 3851
M.: +380 50 338 5995
T.: +380 44 394 9040
www.kinstellar.com