BAKER & McKENZIE

Restructuring & Insolvency contacts:

Europe, the Middle East & Africa
Ian Jack
London
+44 20 7919 1700
ian.jack@bakermckenzie.com

North America
David Heroy
New York & Chicago
+1 312 861 3731
david.heroy@bakermckenzie.com

Asia Pacific
Maria O'Brien
Sydney
+61 2 8922 5222
maria.obrien@bakermckenzie.com

Latin America
Jose Augusto Martins
Sao Paulo
+55 11 3048 6977
joseaugusto.martins@bakermckenzie.com

Restructuring & Insolvency Newsletter

February 2016

In this issue:

Greece simplifies rehabilitation and liquidation procedures

Greece's Bankruptcy Code has undergone substantial changes that will simplify procedures, facilitate the avoidance of bankruptcy, and promote the rescue of businesses. Guest contributor Konstantinos Issaias of the Kyriakides Georgopoulos Law Firm shares the highlights of this legislation. →

Foreign bank may utilize simplified Russian procedure to initiate its debtor's bankruptcy

Anton Maltsev and Pavel Novikov explain how foreign banks with Russian debtors will benefit from a recent court decision making it easier for them to initiate the bankruptcy of their debtors. →

The Canadian resource sector: challenges and opportunities

The Canadian resource sector continues to be weak, with no recovery in sight. Frank Spizzirri reports on the challenges and opportunities for distressed investors and solvent resource companies during this *de facto* reorganization of the sector. →

Special thanks to Konstantinos Issaias for contributing an article to this issue of the Global Restructuring & Insolvency Newsletter.

Greece simplifies rehabilitation and liquidation procedures

On August 14, 2015, the Greek Parliament voted to approve Law 4336/2015, amending the Greek Bankruptcy Code. The key objectives were to simplify the rehabilitation and special liquidation procedures by removing formalities found to be problematic in practice, as well as to comply with the European Commission Recommendation C2014/1500 on a new approach to business failure and insolvency.

Rehabilitation procedure

Rehabilitation when insolvency is probable. The insolvency rehabilitation procedure may now be initiated even in cases where inability of the debtor to meet its debts is not (yet) present, provided that the insolvency court deems the insolvency of the debtor probable and reversible through this process.

The insolvency rehabilitation procedure is now available even when the debtor can pay its debts.

Preventive measures. The insolvency court must suspend all enforcement acts against the assets of the debtor, if the following conditions are satisfied: (1) creditors representing at least 30% of the total value of claims, including at least 20% of secured creditor claims, formally state to the court that they are participating in negotiations for the conclusion of a rehabilitation agreement; and (2) the court considers the rehabilitation agreement likely to occur and to avert the future cessation of payments.

Also, the filing of a prepackaged rehabilitation plan for immediate ratification by the insolvency court, agreed upon by creditors meeting the requisite quantitative criteria (60% of the totality of the claims, of which at least 40% are claims of secured creditors), automatically suspends individual and collective enforcement acts, pending or not, against the debtor. This suspension may not exceed four months.

Duration of procedure. The duration of the rehabilitation procedure is lengthened. A procedure may now range between four months and one year in total. The obligation to make a deposit to address the fee costs of professionals involved in the rehabilitation procedure and to cover other expenses is abolished.

New “objective” agreement ratification criteria. The new law establishes objective criteria for ratification of a rehabilitation agreement. These criteria do not require a vi ability assessment by the insolvency court or an opinion on the sustainability of the business by the expert participating in the process. They do, however, require the explicit agreement of the contracting creditors with the proposed business plan, a detailed record of the identity of all the creditors (contracting or not) and their claims, and a notification to the non-contracting creditors.

New procedure. The waiting period before commencing a new rehabilitation procedure for the same debtor, following the ratification of a previous rehabilitation agreement, has been reduced from five years to three years.

Special liquidation

A simplified special liquidation procedure is available to companies regardless of their size.

The special liquidation procedure is simplified with a view to being more frequently utilized. The process now applies to all businesses which have ceased

debt payments or are in a state of imminent risk of ceasing payments, without any quantitative criteria related to the size of the business that used to exist.

- Aside from the legal-entity debtor, creditors representing at least 20% of the totality of the claims can file an application for special liquidation.
- It is no longer a required condition of admissibility of the special liquidation application to present a creditworthy investor interested in purchasing the assets of the company.
- The rejection of the special liquidation application is now subject to appeal.
- The acceptance of the special liquidation application results in the automatic suspension of all individual enforcement acts against the debtor throughout the process of the special liquidation.
- In order to avoid obstacles in the procedure, only creditors representing at least 60% of the total value of the claims, including at least 40% of the secured claims, are permitted to file third-party interventions with a view to rejecting the special liquidation application.

Reorganization plan

Reorganization in bankruptcy results in the restructuring of the debtor's debts, assets and business operations, while it can also be used as a mechanism for liquidation and distribution of the bankruptcy estate; by comparison, rehabilitation may take place in the pre-bankruptcy stage with the view to preserving a distressed business. The recent amendment of the reorganization framework allows for the reduction of unsecured creditors' claims below 10% of their face value.

Other amendments

Priority of claims. The Bankruptcy Code’s framework for the priority of claims has been brought into line with the priority of claims in enforcement acts taken pursuant to the recently amended Code of Civil Procedure.

The legislation improves the position of unsecured creditors vis-à-vis privileged and secured creditors.

The most important changes concern the enhancement of the position of secured creditors relative to creditors equipped with a general privilege (the State, social security organizations, employees) and that of the unsecured creditors relative to any or both of the above categories of privileged and secured creditors.

Insolvency professionals. Starting from January 1, 2016, the powers of the bankruptcy syndic (the Greek equivalent to the “administrator/trustee”), mediator, special agent, and special liquidator, where the respective functions are required by the Greek Bankruptcy Code, may be exercised only by legal entities and individuals registered in the Insolvency Professionals Registry.

The effects of bankruptcy on contracts. The general provision of the law, which allowed for all contracts of a “continuing character” to be automatically terminated due to bankruptcy, in accordance with clauses contained in the relevant contracts, has been repealed. It was replaced with a provision that financial contracts of continuing character can be terminated or amended as a result of bankruptcy,

pursuant to specific contractual insolvency clauses. Also, termination may still occur due to special provisions of the law (e.g. leasing contracts).

Final comments. Interested parties, both debtors and creditors, are expected to utilize the new, simplified procedures. Taking into account that many rescue plans were recently suspended, it can be predicted with relative certainty that a new wave of insolvency proceedings will ensue in the near future based on the amended provisions of the Greek Bankruptcy Code aiming at the avoidance of bankruptcy and the rescue of businesses.

Guest contributor:
Konstantinos S. Issaias
Kyriakides Georgopoulos Law Firm
Athens

> Back to contents

Foreign bank may utilize simplified Russian procedure to initiate its debtor's bankruptcy

Russia's simplified procedure gives foreign banks more leverage over their Russian debtors.

Under the general rules of the Russian bankruptcy law, a creditor may file for the bankruptcy of its debtor in a Russian bankruptcy court only after obtaining an enforceable court judgment recognizing the debt.

However, amendments to the Russian bankruptcy law effective 29 January 2015 entitle lending institutions to initiate a debtor's bankruptcy without such a judgment. This was a long-awaited change for the banking community, because obtaining a debt judgment (through litigation or through arbitration and recognition and enforcement of an arbitral award) is an expensive and lengthy process.

It had been debated whether these amendments apply to both Russian and foreign banks or only to Russian banks. The debate was based on the definition of a "lending institution" in Russian law, according to which a lending institution must hold a license issued by the Central Bank of the Russian Federation.

Relatively recently, in a case involving the Bank of Cyprus, the Russian courts recognized that a foreign bank may indeed initiate the bankruptcy of a Russian debtor without first going through debt arbitration and litigation (see case # A41-15150/15, Arbitrazh [State Commercial] Court of the Moscow Region).

According to the documents on file, the Bank of Cyprus filed an application to initiate the bankruptcy of Zhedochi-16, a surety to the bank, under the simplified procedure, i.e., without obtaining a debt judgment against this company. The defendant objected, arguing that the Bank of Cyprus is not a lending institution under Russian law as it did not have a Central Bank license. The trial court, however, decided that the law does not require a claim to be based on (licensed) banking operations. The Bank of Cyprus provided documents to confirm its status as a lending institution, which the courts considered satisfactory: its Cypriot banking license and permit to open a representative office in Russia show that the applicant is a bank.

The court's ruling was reversed on appeal. However, the cassation court quashed the appellate court's ruling and affirmed the trial court's ruling. The cassation court rejected the narrow interpretation of the term "lending institution" adopted at appeal and ruled that the law does not provide that only Russian lending institutions can initiate bankruptcy of their debtors under the simplified procedure.

This is so far the first example in which the Russian courts have recognized that foreign banks can use the simplified bankruptcy proceedings against debtors. Not only does this save foreign banks a lot of time and money, it also gives them a powerful instrument to influence their debtors.

Anton Maltsev
Partner
Tel: +7 495 787-2700
Email: anton.maltsev@bakermckenzie.com

Pavel Novikov
Associate
Tel: +7 495 787-2700
Email: pavel.novikov@bakermckenzie.com

> Back to contents

The Canadian resource sector: challenges and opportunities

Mining claims, oil fields, extraction equipment, and entire companies are on the selling block.

A significant portion of the Canadian economy is based on the extraction sector, whether it be metals and minerals or oil and gas. This is especially so in Western Canada, the primary beneficiary of the resource sector's cyclical boom of the past many years. But all booms are inevitably followed by busts: the slow leak of the metals sector over the past few years and the spectacular fall of oil prices since November 2014.

This has led to a rise in resource based insolvencies and restructurings in Canada as companies are finding it difficult if not impossible to service debts and operating expenses with revenues declining. In the mining sector, the persistently low gold, silver and copper prices have pushed a number of higher cost operators into insolvency proceedings over the last 12 months. The same if not worse can be said for the iron ore sector, where projects are being shelved, even seemingly economical ones, given the expectation of low prices for several years to come. And the oil patch is similarly challenged – low prices have caused spending on capital expenditures to be curtailed or outright suspended (along with dividends to shareholders), and layoffs, causing an insolvency ripple effect across the economy.

While the news is bad and there is no reasonable expectation of a quick or painless recovery in sight, the resource sector does represent opportunities for distressed investors and solvent resource companies. Distressed companies have been and continue selling off equipment and reserves in an attempt to generate cash and cut expenses. As a result, there is a glut of cheap large scale extraction equipment on the open market. As well and more importantly, mining claims and oil fields are also on the selling block, many at discounted prices. And public companies are finding that they too are for sale, whether they like it or not, given their depressed stock prices.

The result has been a number of asset deals and hostile takeover bids being announced in recent months as the stronger players gobble up smaller weaker players or their assets. This de facto restructuring of the sector will continue for some time. Distressed investors and those sector players with money and time to wait for prices to recover will be the big winners.

Frank Spizzirri
Partner
Tel: +416 865-6940
Email: frank.spizzirri@bakermckenzie.com

> Back to contents

www.bakermckenzie.com

Baker & McKenzie is a leading global law firm with 77 locations in over 47 countries throughout Europe, North and South America, Asia and Australia.

This Newsletter is for information purposes only. Its contents do not constitute legal advice and should not be regarded as detailed advice in individual cases.

For more information about any of these articles, please contact the individual authors or your usual Baker & McKenzie contact. To subscribe or unsubscribe to the Newsletter, or for reprint requests contact Danielle Jerums:

Baker & McKenzie LLP
100 New Bridge Street
London
Tel: + 44 20 7919 1703
Fax: + 44 20 7919 1999
danielle.jerums@bakermckenzie.com

©2014 Baker & McKenzie. All rights reserved. Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.