

Agrokor Group emergency administration - key facts and consequences -

Following the enactment of the Act on Emergency Administration in Companies of Systemic Importance for the Republic of Croatia (hereinafter: the Act), one of Croatia's largest group of companies, Agrokor Group, has been put under emergency administration on 10 April 2017.

Agrokor d.d. is a holding company, whose core businesses are production and distribution of food and beverages and retail. Members of the Agrokor Group include, amongst others:

- Konzum d.d., Croatia's leading retail chain
- Jamnica d.d., Croatia's largest water producer;
- Ledo d.d., Croatia's leading ice cream producer;
- Zvezda d.d., the biggest domestic producer of oil, margarine and mayonnaise;
- PIK Vrbovec d.d., the largest Croatian meat industry.

The creditors of Agrokor Group have 60 days as of opening the procedure to file their claims to the emergency administrator.

Below are some of the most relevant features of the emergency administration procedure.

Company Management

The restructuring process is administered by an executive (emergency administrator) appointed by the competent court, upon the proposal of the Government. The emergency administrator will run the business of the company under the administration, but for any disposal topping 3.5 million kuna (cca 0.53 million US dollar/0.5 million euro) the administrator will need a consent of the creditors' council.

Filing and Recognition of Claims

The deadline for the creditors to file their claims (even the ones that were not due at the time of opening the procedure) is 60 days as of opening the procedure of emergency administration. The process of recognition of the claims is largely identical to the one applicable in bankruptcy procedure.

Standstill

After opening the emergency administration procedure, all pending procedures (including litigation, enforcement, bankruptcy or pre-bankruptcy procedures, but excluding the employment related disputes) are immediately suspended and no new procedures may be initiated without an instruction from the court (if a filed claim is contested).

Other Consequences of Opening the Emergency Administration

Generally, the provisions of bankruptcy legislation prescribing the consequences of opening the bankruptcy are applicable also to emergency administration. However, the procedure of emergency administration also has some significant differences from the bankruptcy. Some of the most important differences are as follows:

- Emergency administrator can (with the consent of the creditors' council) assume new borrowings by way of senior debt – if such borrowings are necessary for reduction of systemic risks, business continuance, safeguarding the assets or if the payments arise out of “regular or operative business”;

- The lenders providing the senior debt shall have the priority over all the other creditors, except for the current and former workers; the priority will remain even in case of opening the bankruptcy procedure after the emergency administration terminates;
- Emergency administrator can (with the consent of the creditors' council) make payments of certain claims that were due even before opening the procedure of emergency administration – if such payments are necessary for reduction of systemic risks, business continuance, safeguarding the assets or if the payments arise out of “regular or operative business”;
- Although the general prohibition of litigation/enforcement against the debtor is the same as in bankruptcy, the procedure of emergency administration prevents also separate settlement of secured claims by collecting on the collateral.

The Act envisages reaching a restructuring deal within the maximum of 15 months – if the deal is not reached within this period, the procedure of emergency administration shall be terminated.

The provisions of the Act itself, as well as opening the emergency administration procedure over Agrokor Group, has raised a series of questions and concerns in Croatia and abroad. It is expected that the Act and/or the decision on opening the emergency administration procedure over Agrokor Group will be contested as regards its compliance with Croatian constitution and European Law.

Cross-border Spill over

Given the Agrokor's presence in the entire South-East Europe, Agrokor's struggles may have an impact in other countries, such as Slovenia, Serbia or Bosnia and Hercegovina. It has been reported that Slovenian government adopted a bill authorising appointment of a government official to boards of companies in distress, which employ more than 6000 workers and have annual revenues exceeding a billion euro. Unofficially, the aim of the bill is to prevent leakage of funds from Agrokor's Slovenian subsidiaries to Agrokor.

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