

Law on financial restructuring adopted

Law of Ukraine "On Financial Restructuring", drafted to overcome the negative effects in financial sector, caused by the crisis in the economy of Ukraine, and for the purpose of Ukraine's obligations fulfilment towards international financial organizations came into force on October 19, 2016. The law will be valid until October 19, 2019.

The Law provides for recovering of economic activity for debtors, who are in financial distress by means of restructuring their financial obligations and/or commercial activity. A familiar opportunity was implemented in Article 6 of the Law of Ukraine "On Restoring Debtor's Solvency or declaring it Bankrupt".

The Law, in particular, provides:

- conditions for participation of the debtor and creditors in the procedure of financial restructuring as well as the participation of the Deposit Insurance Fund and state banks in such procedure;
- basic principles of cooperation between the creditors in the process of financial restructuring;
- debtor's obligation to provide information and to hold an inspection of its business activity;
- conditions to the receipt of financing in the process of financial restructuring by the debtor.

The application features of the new Law are:

- restructuring is carried out without legal recourse by way of negotiations between the debtor, its affiliated parties and creditors involved;
- the debtor is exceptionally a legal entity with a debt to, at least one, financial institution, which is not related to the debtor and initiates the procedure of financial restructuring according to the Law. In this case, financial institution or public enterprise cannot be a debtor;
- a forfeit (fine, penalty) and other economic or financial sanctions (as opposed to the liability in bankruptcy) are included to financial obligation of the debtor;
- debtor has the right to enforce the law in case, if its activity is recognized to be perspective, that is, if the involved creditors have signed an agreement on restructuring. In addition, the report on financial and economic activity inspection confirms the prospects;
- the total duration of the procedure of financial restructuring should not exceed 180 days;
- debtor is not entitled to apply for restructuring within 18 months after the beginning of the financial restructuring procedure, upon its preliminary statement, or after the initiation of financial rehabilitation of the debtor before proceedings commencement in the bankruptcy

- case;
- if the application for restructuring was submitted by several debtors who are related between each other and have at least one common creditor, a financial institution, the financial restructuring of such debtors can be performed in one procedure with written approval of involved creditors - financial institutions;
 - signing of the Framework Agreement, which regulates the principles and basics of coordination between the financial institutions. By this, the Framework Agreement draft is developed and published by NBU and financial institutions are joined to it by a NBU notification;
 - if several financial institutions are involved in the procedure, they have the right to establish a coordination committee. Other creditors have the right to establish a committee of creditors;
 - if application for proceedings commencement in the bankruptcy case of the debtor was submitted to Commercial Court by the date of beginning of the procedure of financial restructuring, involved creditor or debtor have the right to apply for the court for suspension of bankruptcy procedure before the court made the decision on proceedings commencement in the bankruptcy case.

The Law provides for the establishment of Supervisory Board, which appoints and forms Registry, Arbitration Committee and approves the list of arbitrators.

Registry deals with administrative and procedural issues, and develops recommendations. The Arbitration Committee solves disputes during the procedure of financial restructuring.

In order to initiate the procedure:

- debtor should file the application to the Registry;
- involved creditors should give the consent, signed by financial institutions, which own at least 50 percent of the total number of claims of financial institutions.

After procedure initiating, a moratorium is to be introduced and debtor's restructuring plan is to be developed. Plan is to be approved at the meeting of creditors involved. The debtor and the creditors involved are obliged to conclude negotiations and approve the restructuring plan in 90 days from the date of financial restructuring procedure conduction. The term may be extended for another 90 days.

It should be noted, that the Law makes the amendments to a number of laws, including the Law of Ukraine "On Banks and Banking Activity", which introduces the possibility of banking secrecy disclosure: banks that participate in the process of financial restructuring, have the right to give the information containing banking secrecy against the debtor, its guarantor (property guarantor), related parties of the debtor, without their consent, to other participants in financial restructuring procedure and also to bodies that provide the procedure of financial restructuring.

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Also, for a duration period of the restructuring plan, NBU does not apply interventions for violation of economic norms, making financial restructuring favourable for banks.

In general, it may be said, that the Law enables prospective debtors to resume their economic activities without use of complicated and long bankruptcy procedure. In addition, the Law protects the interests of financial institutions, giving them certain advantages over other creditors and establishing uniform rules of interaction.