

SPECIAL LEGISLATION AIMED AT RESCUING AGROKOR IS NOW IN FORCE

On 6 April 2017 the Croatian Parliament passed the Act on Special Administration Procedure for Companies of Systemic Importance for the Republic of Croatia ("Act"), commonly referred to as *Lex Agrokor*. The Act was published on the same date and entered into force on 7 April 2017.

While the Act is aimed at any company of systemic significance for Croatia (to qualify, the company must employ more than 5,000 employees, and have liabilities exceeding approx. EUR 1 billion), the immediate cause for such legislation is to create a framework for rescuing the Agrokor Group, the largest privately owned company in Croatia with consolidated annual revenues of HRK 49 billion (approx. EUR 6.5 billion) and almost 60,000 employees.

The Act deals with several aspects of the recovery process, formally called the "*special administration*", deviating from the standard options of pre-bankruptcy settlement process and regular bankruptcy proceedings available to all entities in Croatia.

While a comprehensive analysis of the Act is yet to be made, we believe the following features will be of immediate interest to the existing and prospective creditors of Agrokor:

- **STARTING THE PROCESS.** The special administration can be requested only by (x) Agrokor itself, or (y) any of its creditors (or creditors of its subsidiaries), subject to Agrokor's consent.
- **STANDSTILL.** Special administration mandates (i) immediate moratorium on all collections against Agrokor and all its subsidiaries (except employment related claims), which also includes enforcing collateral by secured creditors, and (ii) suspension of any bankruptcy or pre-bankruptcy proceedings that may already be initiated against Agrokor or its subsidiaries.
- **RUNNING THE BUSINESS.** The recovery is handled on the operational level by the **special commissioner**, nominated by the government. The main features are:
 - the commissioner may undertake all activities falling into the ordinary course of business, including, in particular, payments to suppliers and employees;
 - creditors influence the process through the **creditors' council** of up to 9 members, each representing a group of creditors. The exact number of members and the classification of creditors in groups is set by the court, while the creditors of each group elect the representatives. There is a concern that each relevant creditor group (e.g., high-yield bond holders) may not be guaranteed adequate representation;

- for asset disposals (including shares in subsidiaries) exceeding approx. EUR 500,000, the commissioner needs prior approval of the creditors' council;
 - in subsidiaries, the existing management stays, but can only undertake actions falling into the ordinary course of business; for all other activities they need the consent of the commissioner;
 - a special restructuring advisor with international experience and references will be selected to support the commissioner.
- **NEW MONEY AND SUPPLIES.** The commissioner may:
 - obtain new financing which has a super-priority to all other obligations except claims of the employees and former employees, subject to the prior consent of the creditor's council;
 - settle the ordinary course of business obligations; however, such obligations are not granted any super-priority (i.e., if Agrokor eventually goes into ordinary bankruptcy, they should rank pari passu with other unsecured obligations);
 - settle some of the existing due obligations, where (x) this is necessary to reduce systemic risk, continue operations of the company or preserve its assets, or (y) these are receivables from the ordinary course of business subject to the prior consent of the creditor's council;
 - **RESTRUCTURING.** The commissioner may propose a restructuring plan covering the entire group within 12 months (with a possible extension for another 3 months). Prior consent of the creditors' council is required. The restructuring plan is approved if accepted by:
 - (x) the majority (by number) of all creditors, and (y) in each class of creditors, if the amount of claims held by creditors voting for is greater than the amount of claims held by creditors voting against; or
 - if the amount of claims held by creditors supporting the plan amounts to at least 2/3 of all outstanding claims.

The Act lacks the typical correction criteria, such as prohibition of discrimination of individual classes of creditors or the requirement that no creditor is worse off than in the case of liquidation;

- **TIMEFRAME.** Special administration can last up to a **maximum of 15 months**; at any time, the commissioner may, with the consent of the creditors' council, end the process and apply for the regular bankruptcy proceedings.

Certain provisions of the Act have already raised concerns in the legal community as to their compliance with both domestic and EU laws. While a more detailed assessment is required, it seems likely that challenges as to the constitutionality of the Act will eventually be raised.

UPDATE: According to the latest press reports, the management board of Agrokor filed a request for special administration on 7 April 2016.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna almost 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



Luka Tadić-Čolić

Partner

luka.tadic-colic@wolftheiss.com

T: +385 1 4925 488



Dalibor Valinčić

Partner

dalibor.valincic@wolftheiss.com

T: +385 1 4925 476

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss Rechtsanwälte GmbH & Co KG – Zagreb Branch
Ivana Lučića 2a (Eurotower 19th floor)
10 000 Zagreb
Croatia
T +385 1 4925 400
F +385 1 4925 450
zagreb@wolftheiss.com
www.wolftheiss.com