

What should we pay attention to upon execution of composition agreement?

The Curia has provided indication in its decision of 2017, what the court can investigate upon approval of the composition agreement.

The Bankruptcy Act declares that the composition may not include provisions, which are clearly and remarkably unfavourable or unreasonable regarding all creditors or certain group of creditors.

The Act includes a list of examples regarding that what can be deemed as unfavourable or unreasonable provision. Under the Bankruptcy Act, such provision must be considered, in particular, when the rate of satisfaction of the claims of all creditors is unreasonably low compared to the assets of the debtor, or if the claim of either group of creditors is satisfied at a remarkable lower rate or under unreasonably unfavourable conditions compared to other group of creditors.

Under the facts of the case, on which the most recent decision of the Curia based, the composition agreement only included that the debtor will pay the secured, and unsecured debts under the types of creditor claims within three (3) years after the communication of the final court order approving the composition agreement.

In this respect, the Curia declared that whereas the composition agreement had not included how the creditors will be satisfied, by pro rata partial satisfaction of all creditors or individually according to the decision of the debtor, the composition agreement exercises the rights unlawfully, it cannot be approved on this manner.

The Curia explains its decision that the creditors, who are satisfied at the beginning of the three -year period of payment, they unreasonably receive more claims as the creditors, who will be only paid at the end of the third year because the authorised person will economically benefit from the claim received within a short period of time in a more favourable way than the creditor, who will later receive the claim.

The Curia also noted that however the economic content of the reorganisation plan, namely its economic feasibility, cannot be examined; however, the court must be also examined from the enforcement point of view whether the implementation of the reorganisation plan makes possible to pay the claims as the debtor promised in the draft of the composition agreement.

If it cannot be stated from the reorganisation plan or from the composition agreement whether the sale revenue or other resources of the debtor are able to ensure the payment undertaken, then the enforceability of the composition agreement is not ensured, which may result that the court rejects the composition agreement.

In addition to defining exactly the time limits, it is also necessary to the successful composition agreement that the financial resource of the reorganisation plan and the obligations undertaken in the composition agreement must be complied with one another.