

CAPITAL Market

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Two new laws will enable companies to recover financially

Two new laws that will allow the companies to recover financially will come into force on March 14. These are the Insolvency Law and the Law that regulates the restructuring of delinquent loans. They will enable to simplify the procedures for regulating the activity of the viable companies that experience financial difficulties and to accelerate the liquidation of those without economic potential. At the same time, there will be simplified the mechanism for making the execution of mortgage contracts obligatory.



The bills were drafted by the Ministry of Economy in concert with a working group that included representatives of the National Bank of Moldova, the Ministry of Justice, the Ministry of Finance, the Execution Department, the Public Property Agency, the Supreme Council of Magistrates, the Association of Banks of Moldova, the Association of Liquidators and Administrators of Moldova, and the Chamber of Trade and Industry.

The new possibilities were recently explained by Vasile Vulpe, head of the Law Division of the Ministry of Economy. According to him, the implementation of the two bills will improve the investment climate and will create favorable conditions for entrepreneurial activity. "For example, the new Insolvency Law will be a beneficial mechanism for the economy sector – as a family doctor for the active companies because it will contribute to their development in the future, and as a care assistant for enterprises facing financial difficulties because it will help put again the assets into circulation, or will simplify the procedure for liquidating them", said Vasile Vulpe.

The new Insolvency Law, correlated with the best European practices, offers efficient solutions for ensuring the observance of the principle of rapidity (celerity) of the procedure, the protection of creditors, and the appropriate activity of the administrators and liquidators in the insolvency process. The law also comes to remove the shortcomings related to the juridical procedure existing in the legal system. It transposes the EU recommendations concerning the informing of the entrepreneurs about the insolvency procedure, ensuring of accessibility of counseling on the market for companies experiencing financial difficulties, regardless of the type of ownership and legal organizational form, to the national normative framework.

The new law stipulates the method of restructuring solvability and offers opportune and functional legal conditions for recovering debtors' debts to creditors as soon as possible. Under the new law, the

insolvency process cannot exceed 100 days of the initiation date and until the creditors' reporting assembly. The previous law didn't set terms for this procedure. The law also facilitates the application of the operational, functional, financial and juridical strategy that would contribute to the remedying the insolvency situation in the case of viable companies with increased economic potential that became insolvent in certain circumstances.

Thus, in order to facilitate the restructuring of the viable companies, among others, the law provides for setting a maximum term from the moment the insolvency procedure is initiated, during which the guaranteed creditors do not have the right to use the secured property of which the creditor comes into possession when the term expires, in accordance with the legal provisions (if a restructuring plan wasn't proposed and adopted). This will create stimuli for the debtors and creditors to negotiate a restructuring plan and to avoid long-term liquidation processes.

The changes will also establish an operational procedure that will enable the courts of law to rapidly approve restructuring plans. This way, there will be limited the possibility of minority creditors blocking the restructuring. Currently, this process can last for years.

According to the authorities, the Insolvency Law, by its regulations, contributes to the maximization of the total value distributed to creditors, shareholders, employees and other interested sides. The economic entity that became unable to honor the financial obligations can be reorganized, restructured, sold or liquidated. Any of these options is appropriate if it generates maximum efficiency. Another provision makes refers to the rehabilitation of the viable businesses and the liquidation of the nonviable ones. This way, the business environment will be improved by creating possibilities for companies for which there are real chances to restart work and for liquidating companies without statutory bodies, which stopped work or do not have an official head office, whose associates disappeared or do not have official domi-

cile or residence (so-called phantom companies). The law also says that the creditors with guaranteed loans must be paid first.

The second mentioned law – the Law on Mortgaging by Including the Execution Formula in the Mortgage Contracts – is aimed at ensuring a balance between the rights and obligations of the bank-creditor and of the debtor within the lending relations.

The authors of the law consider that certain provisions would encourage the banks to more actively lend to persons, to accept more types of goods as mortgage, to create more favorable conditions for obtaining loans, to reduce their costs and to ensure better protection of the debtor's interests in the relations with the creditor (bank). These changes will also contribute to the development of the mortgage market by regulating the lending activity, creating legal conditions for the quicker exercise of the mortgage right instituted for guaranteeing the loan.

Currently, the legal framework envisions an extra-judicial mechanism for the forced execution of the mortgage right. Under this mechanism, if the mortgagor does not fulfill the obligations according to the contract on the provision of the loan by the bank, microfinance and leasing companies or savings associations, the mortgagee (bank) can track the mortgaged property, in order to recover the money, without being obliged to obtain first a court decision. This procedure is now difficult and costly. The law also tends to ensure a balance between the rights and obligations of the creditor and the debtor within the lending relations.

The proposed amendments will facilitate the faster implementation of the procedure for the execution of the mortgage right and, respectively, for clearing the debts to the bank and for minimizing the loan-related costs by saving court costs, both for the mortgagee and the mortgagor. It should be noted that no additional tax is levied for the procedure for including the execution formula in the loan contract. All these can lead to the fostering of the bank lending activity.

Cristina MIRON

GOVERNMENT OF MOLDOVA BRINGS BILLS TO INTRODUCE THE SINGLE AGRICULTURAL TAX AND RAISE PENSIONS BEFORE PARLIAMENT

Cabinet ministers requested for the bills to be read on a priority basis. The agricultural tax was drafted by the Agriculture Ministry and provides consolidation of 6 of 9 taxes paid in agriculture, namely the profits tax, the land tax, the real estate tax, the road toll and other local taxes.

As before, farmers will have to pay VAT and contributions to the social insurance and mandatory health insurance funds. The tax rate is calculated as a mark given for soil quality and multiplied by the average rate of 3.1 leis per point/hectare. 50% of the total sum of the tax must be paid before September, 30, with another half to be paid till November, 30. Introduction of the single agricultural tax is expected to bring to the budget the revenue of 353.5 mln. leis. According to the pension bill, in 2013 the adjustment factor will make 6.75%, taking into account the 4.5% annual growth in the consumer prices index and the 8.9% annual growth in the national average wage in the past year.

Thus, the retiree minimal pension will make 749.96 leis a month. Besides, in line with the bill, pensions which do not reach 1.3 thou. leis will be raised 8.25% more and public social allowances will be increased 10.4%. In total, being adjusted, from April, 1, an amount of the pensions in 2013 will grow 15%. This will be beneficial for close to 639 thousand people. The bill is estimated at 449.7 mln. leis of which mln. leis have to be allotted from the budget of social insurance and 13.7 mln. leis have to be provided from the state budget. If the bill is passed, from April, 2013 the minimal pension will amount to 1311 leis and level to the subsistence level established for 2013 in line with law in force.

THE GOVERNMENT OF MOLDOVA TO PROVIDE 200 MLN. LEIS TO INCREASE THE AUTHORIZED CAPITAL OF BANCA DE ECONOMII, THE LATTER TO BE INCREASED BY 355 MLN. LEIS IN TOTAL

This was decided on their sitting on Thursday by Cabinet ministers, who approved the respective amendments top the law of state budget for 2013. According to Finance Minister Veaceslav Negruta, the amendments are designed to redirect some funds assigned for the internal debt service to the increase in the authorized capital of BEM through additional closed emission.

In total the authorized capital of Banca de Economii is to be increased by 355 mln. leis, the state as the major shareholder and owner of 56% of shares providing 200 mln leis or 56% of the total sum required, and minor shareholders providing 155 mln leis, the Minister explained. By estimates, after the increase in the authorized capital by 355 mln. leis, the Bank will be comfortable as for meeting all requirements and obligations. It will be well-capitalized and fit all requirements concerning the minimal authorized capital.

The decision to increase the authorized capital is planned to be adopted by shareholders of the Bank by absent voting at their extraordinary general meeting on March, 25. It should be reminded that the total regulatory capital of BEM is 126.6 mln. leis, minimum required being 200 mln. leis.

Earlier, Dorin Dragutanu said that if Banca de Economii does not adopt the resolution to increase the total regulatory capital till March, 31, 2013, by law, NBM has the right to revoke its license.

IN JANUARY-FEBRUARY, 2013 THE STATE FISCAL SERVICE ENSURED RECEIPTS TO THE NATIONAL PUBLIC BUDGET AT A SUM OF 2681.5 MLN. LEIS, 5.9% UP AS COMPARED WITH THE TARGET

Within first 2 months receipts of state budgets made 862.3 mln. leis, 21.2% up of the target, the Fiscal Service informs. In January-February, 2013, receipts to the budget of administrative-territorial units were 541.7 mln. leis, 2.4% up as compared with the target.

The fund of mandatory health insurance accumulated 263.6 mln. leis, or 101.9% of what was budgeted. Revenues of the budget of state social insurance amounted to 1 bln. 013.8 mln. leis, 2.7% down as compared with the target for this period. Revenues to the national public budget administered by the State Fiscal Service increased 338.5 mln. leis, or 14.4% up as compared with the same period of 2012.

In particular, as compared with the same period of 2012, incomes to the state budget exceeded incomes of the past year by 167.2 mln. leis or 24.1%; incomes to budgets of administrative-territorial units grew 85.2 mln. leis, or 18.7%; incomes to the budget of social insurance grew 73.4 mln. leis, or 7.8%; incomes to the budget of mandatory health insurance increased 12.7 mln. leis, or 5.1%.

According to the State Fiscal Service, as of January, 31, 2013 the debt to the national public budget made up 1 bln. 178.1 mln. leis, 209.3 mln. leis down as compared with the previous month. IN 2012 the state fiscal service ensured payments of debts to the budget at a sum of 746.8 mln., including 427.1 mln. leis collected forcibly. In January, 2013 as a result of enforcement, the State Fiscal Service ensured recovery of 26.1 mln. leis, or 4.7 mln. leis more than in the same period of 2012.

InfoMarket

GAP Insurance between price and quality

Insurance is a business of promises – said somebody. We probably should ask if it's the business of fulfilled or unfulfilled promises. We tried to answer this question below.

ONE CASE – SEVERAL CONCLUSIONS

“On May 6, 2012 the Reno Clio car by which I traveled was struck by a taxi that didn't give way at the intersection of the streets Kogalniceanu and Tighina. As a result, the car was seriously damaged and the examination performed by an independent expert, in cooperation with an expert of the insurance company established that: “the average market price of a similar car, according to the data of the motor market of Moldova, the current economic press and Internet data is 6,500 euros to 6,700 euros (6,600 euros on average). According to the currency exchange rate of the National Bank of Moldova, the value is 102,051 lei, while the value of the damage caused is 109,432 lei”.

According to the assessment report, [...] it is not rational to repair the vehicle because the costs are higher than the average market value of a similar car”, said Constantin Elisei.

According to him, the damage payment offer was made by the insurance company after 38 days, even if the legislation provides that the term must be at most 15 days of the day the accident occurred.

“The insurance company set the damages at only 45,514 lei. Another offer was having my car repaired. At the repair station I was informed that they were very busy and I was to wait for three months to have my car repaired during another one month. So, both of the variants proposed by the insurance company disadvantaged me evidently”, said Elisei.

He also said that he decided to try to follow another path – to sell the car the way it was. “I published photos of the damaged car on specialized sites and found a buyer who offered me the price that suited me. Afterward, I discussed with the taxi driver who agreed to pay 9,000 lei damages for the accident that happened because of his fault”, he stated

However, before this, Constantin Elisei signed an AORCA agreement with the insurance company, concerning the setting and method of paying insurance damages by which the company pledged to pay 48,000 lei in two installments: the first installment until October 8, while the second installment until October 23, 2012. “Both of the installments were paid with delay. I received the second installment on December 27, after numerous calls, letters, meetings with the director of the insurance company, summonses to court. At the end of November, I wrote a letter to the National Financial Market Commission, which intervened. I received the damage probably due to its intervention”, said the quoted source.

Asked how the direct and indirect damages were paid, Constantin Elisei said he spent 3,000 lei on the lawyer he hired, but cannot count the hours that he spent numerous letters, on phone calls, roads and investigations when looking for solutions to recover the losses as a result of an accident for which he and the persons to blame for the accident held motor civil liability insurance policies.

“The most unpleasant and stressing thing in this case was the lack of possibilities of taking a decision in such a situation. This was mainly due to the attitude of the employees and managers of the insurance company, who tried to deceive me by delaying things, postponing meetings and providing ambiguous information. In the



end, I established that a process that should last for at most three months, according to the legislation, lasted for eight months with efforts and enormous stress”, said Constantin Elisei.

REACTION OF INSURERS

Eugeniu Slopac, manager general of the insurance company ASITO, said the company's policy consists in avoiding litigations in favor of solving the cases between the dissatisfied clients and the company amicably. “We are examining the opinions that do not correspond to the company's positions on certain aspects. Thus, only 0.5% of the 300,000 clients express their dissatisfaction with certain aspects based on the existing contracts. Currently, we have about 300 disputes. This means that 1 in 1,000 clients is in litigation with the company or vice versa”, he said.

According to Slopac, most of the times the clients do not understand or do not read the conditions of the contract. The dissatisfied persons often do not know the legislation.

Ion Lacatus, director of the insurance company Euroasig, said that they try to solve any case of dissatisfaction of a client by mediation by the company's administration and employees. This means explaining all the aspects that cause the clients' dissatisfaction. “In general, I can say that about 5-7% of the total number of clients are in litigation with the company. But, in most of the cases, the court wins in favor of the insurance company”, said Lacatus.

He also said that in every case of dissatisfaction they aim to identify the cause of the client's discontent: the quality of services provided by the insurance company, the too long terms of repair at the repair stations, etc.

“In general, there are two causes of dissatisfaction: the inappropriate treatment by the company's employees and the size of damages”, stated Lacatus.

Cristina Dolghi, director general of the insurance-reinsurance company Moldcargo, said that the company received no complaints from clients about the services provided by S.A. R. MOLDCARGO S.A.

“There were made requests to terminate the insurance contracts for different reasons, such as the change of the vehicle's owner, the sale of the insured property, the postponement of trips abroad. In such cases, S.A. R. MOLDCARGO S.A., pays back the insurance premium collected based on the contracts to the client”, said Cristina Dolghi.

According to the quoted source, no lawsuit was filed against the company by clients dissatisfied with the services provided by S.A. R. MOLDCARGO.

CNPF DOES NOT HAVE PREROGATIVES TO ESTABLISH CORRECTNESS OF DAMAGE ASSESSMENT

Asked to comment on the case mentioned above, Vladimir Stirbu,

of the General Insurance Supervision Division, said things should be regarded from the angle of two aspects: procedural and technical. “If we refer to the procedural aspect, it should be noted that the insurer must honor the obligations resulting from the procedure for examining the case of damages in accordance with the legislation. This process has four subcomponents: warning, establishment of damage, determination of damages, setting and payment of damages. If taken one by one, it should be noted that the insurer does not have the right to individually assess the damage, only based on the calculations of a service either before or after the repair”, said Stirbu.

According to Stirbu, damages are paid before the repair if a relevant agreement was reached with the insured person involved in the accident, while after the repair of the client agreed to having the vehicle repaired by the repair station chosen by the insurer. If the client does not agree with the overhaul unit selected by the insurer, he must offer an alternative that should be accepted by the insurer.

“After the notification, the damage is being assessed. This thing can be done only by an expert of the insurance company or in cooperation with an independent expert employed by the affected client. This does not mean that that insurance company will recognize the assessments carried out by the damage expert employed by the insurer”, said Stirbu.

Vladimir Stirbu stressed that if the sides cannot reach an agreement on this aspect, they can appeal to court. The CNPF does not have technical prerogatives in establishing the correctness of the damage assessment if the insurer and the insured person count on the calculations of two different third persons who determine different damages.

BY 32% MORE PETITIONS TO INSURERS

Svetlana Lupascu, deputy director of the CNPF's General Insurance Supervision Division, said that the regulatory body has the prerogative of analyzing the petitions of persons dissatisfied with the services provided by operators on the insurance market. Thus, any person who filed a petition to the insurance company and continues to be dissatisfied with the answer or the solution provided by the insurer can lodge an application with the CNPF.

“During 2012, there were recorded 273 petitions, by 89 more compared with the previous year. The petitions came from consumers of insurance services – private individuals and legal entities – and were submitted directly or through the agency of lawyers. The most often addressed problems include the size of insurance damages that do not fully meet beneficiaries' expectations, non-payment of damages, delay in dealing with the applications for insurance, the

lack of communication between the insurance company and the insured persons/third persons as regards the examination of the damage-related cases”, said Lupascu.

According to Svetlana Lupascu, the list of insurance companies that are in litigation with consumers modifies permanently. Thus, it is hard to qualify the insurers involved in a number of trials, given that the risk is higher for insurers that have larger insurance portfolios, depending on the type of provided insurance services. It is in fact the consequence of the dispute that is substantial, as well as the satisfaction of clients' needs, except for cases of fraud or situations when the insurer is exempted from the obligation of paying damages.

“Concomitantly, the Law on Insurance imposes obligations on the insurance companies with a view to protecting the insurance services and consumers that must be known by the insured persons or potential insured persons. It should be noted that in mandatory insurance, the relations between the insured and the insurer, the rights and obligations of every side, the conditions and method of implementation are set by law, while in voluntary insurance the relations between the insured and the insurer, the rights and obligations of every party are laid down in the insurance contract and the insurance conditions, which are set by the insurer. Therefore, it is absolutely necessary for the insured person to know the clauses of the contracts before accepting them and paying the price of the provided services. At the same time, the insurer is obliged to provide the insured or the contractor of insurance with information about the insurance contracts before the signing and during implementation”, stated Svetlana Lupascu.

COURTS IMPLEMENT AND INTERPRET THE LAW DIFFERENTLY

“A study of the judicial practices concerning disputes related to mandatory civil liability insurance for damage caused by motor vehicle revealed that owing to the variety of judicial norms, the courts of law implement and interpret the material and procedural law differently, especially after the adoption of new laws in this respect”, says the Decision of the Supreme Court of Justice of Moldova concerning the implementation by the courts of law of the legislations when dealing with disputes related to mandatory civil liability insurance for damage caused by motor vehicle, No. 3 of 30.03.2009.

In order to ensure the correct and uniform application by courts of the legislation concerning the mandatory civil liability insurance for damage caused by motor vehicles, the Supreme Court of Justice explains the correct interpretation method.

What shall we do if the aforementioned recommendations didn't have an effect?

If the client behaved appropriately at the place of the accident, the insurance company has no reason to avoid paying damages. But there are situations when the insured persons follow strictly all the provisions of the contract, but were refused payment or promises were made to them that the money will be transferred, but the payment is delayed for an indefinite period of time. In these cases, the experts recommend following several pieces of advice.

1. Write letters in order to be sure of the appearance of possible problems in obtaining damages. You should not communicate with the insurance company only in oral form. When writing letters, you will avoid possible cases

when the insurance company says that the request to it wasn't made. In case of refusal, ask the insurance company to explain the reasons for the refusal, with reference to the normative documents. Consequently, you should duplicate by recommended letter with pre-notice, but obligatorily after the road accident happens. So, collect evidence in written form.

2. The termination of the contract. You can influence the insurance company that avoids making the payment by terminating the contract. Taking into account that the insurance company tries to attract more clients and not to lose the old clients, we can influence it by terminating the contract and going to their opponents. The contract termination announcement must be made 30 days beforehand. If the contract is terminated on the own initiative of the insured person, the insurance company is obliged to refund the remaining insurance premium before the expiration of the terms stipulated in the contract, retaining the contract management costs. If the contract is terminated because the contractual clauses are not respected by the insurer, the insurance company is obliged to refund the insurance premiums collected without contract management costs. But in this case, the client will be able to repair the vehicle with the money refunded by the insurance company. Evidently, such a situation advantages us more than that when we are not paid damages.

3. Submit complains to the superior competent bodies. You can 'press' the insurance company by an appeal to the CNPF or other competent bodies. The complaint must contain the name of the insurance company, details of the contract and the essence of the filed complaint. As a result, the insurance company can be inspected by these bodies, causing initiative consequences for it. The non-observance of the contractual clauses by the insurer can lead to the withdrawal of license by the CNPF.

4. File a lawsuit. The court is surely the last body to which the desperate insured person can appeal. Most of the people successfully defended their rights in court and received damages from the insurance company.

The filing of lawsuits is a real method for gaining damages and the even the entrenched skeptics agree with such an assertion. But the clients should be prepared for a long and difficult trial. Furthermore, the insurance company can appeal the decision, delaying the trial. After the decision is applied, the case can reach the Supreme Court of Justice, where it is examined for several months. Thus, the clients often have to repair the vehicles at their own expense. If we go up to the logical end of the trail, the money paid to the lawyer and the effort made will be fully recovered because they are included in the court costs.

Eugeniu Slopac, manager general of the insurance company ASITO, said the company's policy is to avoid trials by solving cases between the company and the dissatisfied clients by amicable ways. “We are examining the opinions that do not correspond to those of the company on certain aspects. Thus, only 0.5% of the 300,000 clients are satisfied with certain aspects of the currently valid contracts. We are now involved in 300 trials. It thus results that one in 1,000 clients is in litigation with our company or vice versa”, said Slopac.

According to Slopac, most of the times the clients do not understand or even do not read the conditions of the contract. There are many cases when the dissatisfied persons do not know the legislation.

Tatiana SOLONARI