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Draft legislative guide on insolvency law

Note by the Secretariat*

Effective and efficient insolvency regimes

Part two. Core provisions

VI. Reorganization – additional issues

B. Expedited reorganization proceedings [New: see A/CN.9/507, paras. 244-246]

Purpose

The purpose of provisions relating to expedited reorganization proceedings is to:

- (a) recognize that out-of-court reorganization is a cost effective, efficient tool for the rescue of financially troubled businesses;
- (b) encourage, facilitate and preserve the benefits of out-of-court reorganizations which are supported by a majority of each affected class of creditors [and equity holders] by providing for an expedited reorganization procedure under the insolvency law that binds minority members of each affected class of creditors [and equity holders] who do not accept the reorganization plan negotiated out-of-court;
- (c) provide safeguards for dissenting affected creditors.

* The submission of this document was late because of the need to accommodate the completion of consultations.

Recommendations

Commencement of expedited reorganization proceedings

- (1) A debtor [which is eligible under the insolvency law] may file an application to commence expedited reorganization proceedings [to implement a plan of reorganization that has been voted on and accepted by a majority of each affected class of creditors [and equity holders] prior to commencement of insolvency proceedings.]
- (2) The application should comply with the requirements for commencement of a reorganization proceeding and be accompanied by the following additional materials:
 - (a) the reorganization plan;
 - (b) a description of the out-of-court reorganization activity that preceded the filing of the commencement application, including the information provided to affected creditors [and equity holders] to enable them to make an informed decision about the plan [or a summary of that information];
 - (c) a report of the votes of affected classes of creditors [and equity holders];
 - (d) a financial analysis prepared by [the debtor] [an independent expert] demonstrating that the reorganization plan provides that dissenting creditors will receive at least as much as they would have received in a liquidation proceeding under the insolvency law; and
 - (e) a list of the members of any creditor committees formed during the course of the out-of-court reorganization.
- (3) The insolvency law should provide that the application will function as automatic commencement of proceedings, and that:
 - (a) the effects of commencement should be limited to the debtor and classes of creditors [and equity holders] affected by the plan;
 - (b) any creditor committee formed during the course of the out-of-court reorganization should be treated as a creditor committee appointed under the insolvency law; and
 - (c) provisions of the insolvency law that apply to reorganization proceedings shall also apply to expedited reorganization proceedings except as provided in this section; and
 - (d) a hearing on the confirmation of the reorganization plan should be held as expeditiously as possible.
- (4) Notice of the commencement of proceedings should promptly be provided to creditors [and equity holders] affected by the reorganization plan and should:
 - (a) indicate the amount of each creditors claim according to the debtor;
 - (b) indicate the time period for submitting a claim in a different amount if the creditor disagrees with the debtor's statement of claim, and specify the place where the claim can be submitted;
 - (c) indicate the time and place for the hearing on confirmation of the reorganization plan, and for the submission of any objection to confirmation.

Confirmation of the plan

- (5) The court should confirm the reorganization plan where it determines that:
- (a) the plan satisfies the requirements for confirmation of a plan in a non-expedited reorganization proceeding, in so far as those requirements apply to affected creditors [and equity holders];
 - (b) the information provided to affected creditors [and equity holders] during the out-of-court reorganization was sufficient to enable them to make an informed decision about the plan [and any pre-commencement solicitation of acceptances to the plan complied with applicable non-insolvency law];
 - (c) dissenting creditors [and equity holders] will receive as much under the reorganization plan as they would in a liquidation proceeding under the insolvency law.