

7 April 2014

*To our Clients and Friends*

## INFORMATION MEMORANDUM

### Amendments to the legislation of the Republic of Kazakhstan on bankruptcy

On 24 March 2014 a new Law on Rehabilitation and Bankruptcy (hereinafter – «Law»), was entered into effect and simultaneously the earlier effective 1997 Bankruptcy Law became inoperative.

Adoption of the Law entailed amending a number of effective regulatory acts, including the Civil Code, Criminal Code, Civil Procedural Code, Code of Administrative Violations, Code of Taxes and Other Obligatory Payments to the Budget, Code of Customs Business in the Republic of Kazakhstan, Law on State Registration of Legal Entities and Registration of Branches and Representative Offices, Law on Economic Partnerships, Law on Natural Monopolies and Regulated Markets, and some other laws<sup>1</sup>.

This Information Memorandum offers a brief analysis of certain basic innovations introduced by the Law.

#### 1. General evaluation of the Law

In our view, the adoption of the new Law aims at both construction of efficient system of bankruptcy of market participants which ensures the most rational and just distribution of economic value of enterprises, for which restoration of solvency is impossible, and at the financial recovery of organizations which are competitive and could, in future, reach commercial viability, bypassing a bankruptcy process.

In the Law:

- (a) mechanisms of bankruptcy and rehabilitation are rationalized;
- (b) competence of courts and judicial acts on rehabilitation and bankruptcy cases are brought into line with legislative innovations applied herein;
- (c) grounds for the invalidation of a debtor's transactions and grounds for assets return are clarified;
- (d) conceptual framework is improved.

The initial reading of the Law evidences that some of its provisions to a certain extent are directed towards the change of procedural rules, and since such rules have not yet been

<sup>1</sup> Law No. 177-V of the Republic of Kazakhstan, On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Matters of Rehabilitation and Bankruptcy, and Taxation, dated 7 March 2014.



applied in practice, in our view, the implementation of the Law's provisions may cause certain difficulties.

## 2. Conceptual framework

The Law clarifies the definitions of existing concepts, the terms used in the old law are fixed on the level of concepts, crucially new concepts are introduced, and some concepts are excluded.

For example, the concepts «Bankrupt's estate» and «Competition commissioner» are transformed into the concepts «Collation» and «Bankruptcy commissioner».

There emerged the earlier unknown concepts of «Temporary administrator» and «Temporary commissioner». According to the Law, temporary administrator is the person appointed by the court for compilation of a register of creditors' claims and agreeing of transactions outside the framework of ordinary commercial transactions during a period of the rehabilitation plan development, while temporary commissioner is the person appointed by the court for collecting information on the financial status of a debtor and also for conducting the bankruptcy procedure prior to the appointment of the bankruptcy commissioner.

The well-known term «Register of creditors' claims» is included into the conceptual framework.

## 3. Procedures applicable to an insolvent debtor

The Law retained the following procedures: accelerated rehabilitation, rehabilitation, and bankruptcy procedure.

Due to non-relevance, a procedure of external supervision is excluded.

The procedure of bankruptcy of absent debtor was refined.

The procedures of rehabilitation and bankruptcy are appended with rules on a temporary administrator and a temporary commissioner who performs functions designed to rationalize procedures of rehabilitation and bankruptcy.

## 4. Participants of procedures

Creditors. Pursuant to the Law, bondholders and also micro-credit organizations may now establish a separate group of creditors in the procedures of accelerated rehabilitation.

*The sequence of satisfaction of creditors' claims* is amended and appended in a certain way. This requires obligatory attention both on the part of a creditor in recovery of debts from a debtor and on the part of a debtor in satisfaction of creditors' claims.

The Law clarifies the procedure for satisfaction of claims of secured creditors.

Debtor. For the first time the legal status of a debtor is regulated in the Law by special rules. The Law's innovation is placing of duty on a debtor to apply to a court with a claim on his recognition as a bankrupt within the deadline established by the Law from the moment when the debtor knew or should have known on the occurrence of his insolvency.

A group of officials of a debtor-legal entity who are responsible for deliberate bankruptcy of a legal entity is expanded. In this respect, the issue whether the shareholders of a debtor-joint stock company could be brought to responsibility for deliberate bankruptcy remains open, and this issue requires a special analysis.

## 5. Grounds for invalidation of the debtor's transactions

The Law establishes additional criteria to the earlier established grounds for invalidation of transactions performed by a debtor. These are as follows:

- (a) the price of the performed transaction and/or other terms are considerably worse for the debtor as compared with the price and/or other terms under which similar transactions are being performed under comparable circumstances, if the consequences of the transaction led to financial losses;
- (b) property gift contracts of a debtor, excepting those executed within the framework of ordinary commercial transactions, if such transactions considerably differ from transactions performed one year prior to the institution of a case of rehabilitation or bankruptcy;
- (c) and others.

The Law secures the initiative of rehabilitation and bankruptcy commissioner's applying to a court to invalidate the debtor's transactions; in our view, this is done for the purpose of motivating the proper implementation by them of their obligations imposed by the Law.

Should you have any questions regarding the application of the Law, we would be glad to provide the required advice.

Best regards,

AEQUITAS Law Firm