IN THE MATTER OF AN ARBITRATION FILED UNDER NO. 26696/HBH IN ACCORDANCE WITH THE RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE

between

GAMA GUC SISTEMLERI MUHENDISLIK VE TAAHHUT A.S.

Claimant

v.

REPUBLIC OF NORTH MACEDONIA

Respondent

SECOND EXPERT OPINION OF

DEJAN KOSTOVSKI

---

4 August 2023

TABLE OF CONTENTS

1. INTRODUCTION

1. The Counsels of GAMA Guc Sistemleri Muhendislik Ve Taahhut A.S. (hereinafter, "**GAMA**") have asked me to prepare a Second Expert Opinion in response to the Legal Opinion of Mr. Aco Petrov dated 4 April 2023 (hereinafter, "**Petrov's Opinion**").

2. This Second expert opinion complements my first Expert opinion dated 25 November 2022 (hereinafter, "**Kostovski's First Opinion**"), the content of which I fully confirm.

3. I have described my skills and qualifications for preparing these Opinions in the Introduction to my first opinion.

4. In my first opinion, I concluded that Basic Civil Court Skopje committed a series of substantive violations of the Bankruptcy Law (hereinafter, the "**Bankruptcy Law**")[1] within the pre-bankruptcy reorganization of the Company for Production of Electricity and Heat TE-TO AD Skopje (hereinafter, "**TE-TO**").

5. Mr. Petrov disagrees with my conclusions. He states that the pre-bankruptcy reorganization of TE-TO was conducted substantively in accordance with the text and spirit of the Bankruptcy Law.[2] With due respect, I disagree with the views and opinions of Mr. Petrov for the reasons explained hereinafter.

2. OPINION

A. PURPOSE OF PRE-BANKRUPTCY REORGANIZATION

6. As I explained in my first opinion, the implementation of the proceedings by filing a proposal to open bankruptcy proceedings, including a reorganization plan, are basically hybrid reorganization proceedings, where in the first phase, the debtor is required to prepare a reorganization plan, to notify and conduct negotiations with its creditors in order to secure the statutory majority required for acceptance of the reorganization plan, while in the second phase, the debtor submits the proposal for opening bankruptcy proceedings, including the reorganization plan, to the court which oversees the fulfilment of the requirements for opening bankruptcy proceedings and the legality of the reorganization plan and conducts the proceedings for the creditors to vote on the reorganization plan.[3]

7. Mr. Petrov generally agrees with the purpose of pre-bankruptcy reorganization outlined in my opinion[4] but concludes that pre-bankruptcy reorganization should be treated as a fundamentally different type of reorganization.[5] Relying on Article 215-d paragraph

[1] Bankruptcy Law (Official Gazette of the Republic of Macedonia Nos. 34/2006, 126/2006, 84/2007, 47/11, 79/13, 164/13, 29/14, 98/15 and 192/15) (hereinafter, the "Bankruptcy Law")

[2] Petrov's Opinion, paragraph 4

[3] Kostovski's First Opinion, paragraphs 13-15

[4] Petrov's Opinion, paragraphs 44, 45, 52

[5] Petrov's Opinion, paragraphs 47-49

(6) of the Bankruptcy Law[6], Mr. Petrov claims that *"...the exclusion of so many of the provisions applicable for the debtor's reorganization after the bankruptcy proceedings are opened clearly indicates that the Legislator intended to treat the preliminary bankruptcy reorganization as a fundamentally different type of reorganization to which different rules apply.*" Mr. Petrov's conclusion is wrong. The lawmaker's intention by the amendments to the Bankruptcy Law, which introduced the pre-bankruptcy reorganization,[7] was to encourage debtors to carry out reorganization proceedings with the aim of faster completion of their bankruptcy proceedings. Namely, in 2013, the Ministry of Economy proposed the introduction of pre-bankruptcy reorganization with the aim of reducing the excessive application of liquidation of debtors' business ventures and faster closing of bankruptcy proceedings, particularly the fact that any court disputes with creditors would further be conducted by the reorganized debtor "... *debtor reorganization plans are rarely applied, despite the fact that such a plan would relatively quickly end the bankruptcy proceedings, since legal disputes would continue to be conducted by the reorganized debtor and the bankruptcy proceedings would be closed.*"[8]

8. The exclusion of the application of specific articles of the Bankruptcy Law that regulate the reorganization in bankruptcy proceedings to pre-bankruptcy reorganization is mainly from a procedural standpoint for the purpose of implementing the pre-bankruptcy reorganization within the shortest possible period after the debtor submits its proposal for pre-bankruptcy reorganization[9] with no prior assumption of the management of the insolvent debtor's assets by a bankruptcy trustee[10] or establishment of the bankruptcy administration, i.e., a Board of creditors and an Assembly of creditors.[11] From a substantive standpoint, pre-bankruptcy reorganization has the identical objective as a reorganization in bankruptcy, that is, the collective settlement of insolvent debtor's creditors by concluding a special agreement for the settlement of claims determined by the reorganization plan, aimed at preserving the debtor's business venture.[12]

9. Pre-bankruptcy reorganization is not isolated from the principles and cornerstones of bankruptcy proceedings and it is a part of bankruptcy proceedings[13] where instead of

---

[6] According to Article 215-d paragraph (6) of the Bankruptcy Law, the provisions governing the reorganization procedure and the Reorganization Plan in bankruptcy proceedings shall also apply to pre-bankruptcy reorganization, except for Articles 216, 220, 222, 225, 226, 227, 228, 229, 230, 231, 234, 236, 237, 239 paragraph (4), Articles 241, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253 and 254 of the Bankruptcy Law

[7] Law on Amendments and Supplements to the Bankruptcy Law (Official Gazette of the Republic of Macedonia No. 79/2013)

[8] Initial assessment of legislation's impact – Bankruptcy Law of 13 March 2013, p. 2

[9] Pursuant to Article 215-g paragraph 1 of the Bankruptcy Law, a hearing to decide on the Proposal and vote on the Reorganization Plan must be held within 60 days as from the date of rendering a Decision to initiate a preliminary procedure

[10] Pursuant to Article 77 paragraph 1 of the Bankruptcy Law, after the opening of bankruptcy proceedings, bankruptcy trustee shall immediately take possession and management of all the assets included in the Bankruptcy Estate

[11] Bankruptcy Law, Articles 38 and 45

[12] Bankruptcy Law, Article 3 paragraph 1

[13] Pursuant to Article 2 paragraph 1 indent 66 of the Bankruptcy Law, bankruptcy proceeding is a collective procedure conducted by a competent court for either the reorganization or liquidation of a debtor.

liquidation of the debtor's assets to settle the creditors' claims, the reorganization can be implemented by either writing off the debt, deferring the debt, converting the debt into equity or selling the venture as a whole or part thereof.[14] The role of the court in pre-bankruptcy reorganization is identical to that in bankruptcy proceedings, that is, to protect the interests of creditors of the debtor proposing reorganization, in particular, by examining whether the requirements for opening a bankruptcy proceeding against the debtor are met and whether the reorganization plan proposed is drafted in accordance with the Bankruptcy Law.[15] In doing so, the Court must adhere to the national standards for conducting bankruptcy proceedings contained in the Bankruptcy Law and the Rulebook on Professional Standards for Bankruptcy Proceedings[16] (hereinafter, the "**National Bankruptcy Standards**").[17]

10. The lawmaker's intention for pre-bankruptcy reorganization to be conducted in accordance with the National Bankruptcy Standards is also evident from the fact that, immediately after the introduction of the pre-bankruptcy reorganization, in January 2014, the Law on Out-of-court Settlement was adopted (hereinafter, the "**Law on Out-of-court Settlement**").[18] The Law on Out-of-court Settlement introduced an out-of-court proceedings for financial restructuring with the aim of enabling a debtor that has become illiquid (is in arrears with meeting either one or more debt obligations for more than 30 days)[19] and/or insolvent (where within a period longer than 30 days, a debtor is unable to pay, without delay, a due liability based on reliable documents or if the value of debtor's assets does not cover debtor's liabilities)[20] to undergo financial restructuring based on which it will become liquid and solvent and to provide its creditors with more favorable prospects to have their claims settled compared to the prospects they would have by opening bankruptcy proceedings against the debtor.[21] The objective of pre-bankruptcy reorganization and out-of-court settlement is identical, whereby the pre-bankruptcy reorganization is conducted within bankruptcy proceedings, while the out-of-court settlement is conducted within administrative proceedings.[22] What is specific for an out-of-court settlement is that these proceedings are mandatory for a debtor that has become illiquid and/or insolvent[23] and that until the completion of these proceedings, bankruptcy proceedings cannot be opened against such debtor.[24]

11. Same as in a pre-bankruptcy reorganization, out-of-court settlement proceedings can be opened only at the proposal of the debtor.[25] A debtor that is illiquid or insolvent is required to propose the opening of out-of-court settlement proceedings within 30 days

[14] Bankruptcy Law, Article 2 paragraph 1 indent 60

[15] Kostovski's First Opinion, paragraphs 13-15

[16] Rulebook on Professional Standards for Bankruptcy Proceedings (Official Gazette of the Republic of Macedonia Nos. 118/2006 and 47/2014)

[17] Pursuant to Article 2 paragraph 1 indent 31 of the Bankruptcy Law, National Standards shall mean any standards referring to the procedure, method and deadlines for the sale of bankruptcy estate, the manner of document-keeping and any other national standards if they are stipulated by the Bankruptcy Law and the Rulebook on Professional Standards for Bankruptcy Proceedings

[18] Law on Out-of-court Settlement (Official Gazette of the Republic of Macedonia No. 14/2014) (hereinafter, the "Law on Out-of-court Settlement")

[19] Law on Out-of-court Settlement, Article 4

[20] Law on Out-of-court Settlement, Article 5 paragraphs 3 and 4

[21] Law on Out-of-court Settlement, Article 8

[22] Law on Out-of-court Settlement, Article 18

[23] Law on Out-of-court Settlement, Article 7

[24] Law on Out-of-court Settlement, Article 26 paragraph 3

[25] Law on Out-of-court Settlement, Article 14 paragraph 2

of the illiquidity thereof or no later than 21 days of the insolvency thereof.[26] The proposal for opening out-of-court settlement proceedings is to be submitted to the Ministry of Economy. In its Proposal, the debtor is required to enclose: a report on the debtor's financial status and operations, a financial restructuring plan, an operational restructuring plan, an authorized valuator's report containing a valuation of the debtor's enterprise and a positive opinion on both the financial and operational restructuring plans, an inventory of the debtor's assets and rights recorded in the respective registers, and a description of the negotiations with creditors, if any, that preceded the proposal for opening the proceedings, including any required notifications delivered to the creditors participating in the proceedings.[27]

12. Same as in pre-bankruptcy reorganization, a debtor can, in its financial restructuring plan, envisage reduction and postponement of debtor's due liabilities,[28] however there are protective mechanisms in relation to the maximum amount of such reduction of creditors' claims depending on the period for the financial restructuring plan's implementation. More specifically, if a debtor proposes a reduction of the claims, the percentage proposed by the debtor to its creditors for the settlement of their claims cannot be less than 30% if the proposed payment is to be made within four years or less than 40% if the proposed payment is to be made within eight years.[29]

13. The bodies in the out-of-court settlement proceedings include a Settlement Council consisting of three members appointed by the Ministry of Economy and a trustee who is selected from the list of bankruptcy trustees.[30] Upon receipt of an orderly proposal for an out-of-court settlement, unless there are any procedural obstacles, the Settlement Council decides to open an out-of-court settlement proceedings and publishes a notice inviting all creditors to report their claims.[31] After creditors report their claims, the Settlement Council holds a hearing where it establishes such claims as per creditors' reports and any documents provided by the debtor, allows both the debtor and the trustee to elaborate the proposal, and, if the requirements are met, invites the creditors to vote on the proposed financial restructuring plan.[32] Only unsecured creditors and secured creditors that have waived their right to separate settlement are entitled to vote, and the financial restructuring plan is deemed to have been accepted if the majority of creditors with claims over half of the value of all determined claims vote in favor thereof.[33] In case if the financial restructuring plan is accepted, the debtor submits a proposal for concluding an out-of-court settlement to a notary public, who issues a decision approving the out-of-court settlement in the form of an enforceable deed.[34] The out-of-court settlement proceedings are urgent and must be completed before the Settlement Council no later than 120 days from the day of opening.[35]

14. The out-of-court settlement, the same as pre-bankruptcy reorganization, was rarely used in Macedonia. In 2022, the Ministry of Economy prepared a Draft Law on

[26] Law on Out-of-court Settlement, Article 7 and Article 26
[27] Law on Out-of-court Settlement, Article 27
[28] Law on Out-of-court Settlement, Article 31 paragraph 1
[29] Law on Out-of-court Settlement, Article 31 paragraph 3
[30] Law on Out-of-court Settlement, Articles 19-21
[31] Law on Out-of-court Settlement, Articles 33-37
[32] Law on Out-of-court Settlement, Article 45
[33] Law on Out-of-court Settlement, Articles 46-47
[34] Law on Out-of-court Settlement, Article 49
[35] Law on Out-of-court Settlement, Article 14 paragraph 1

Insolvency (hereinafter, the "**Draft Law on Insolvency**")[36] in order to improve the existing legislative rules in the area of bankruptcy and financial restructuring. By the Draft Law on Insolvency, the Ministry of Economy, amongst other things, proposes the improvement of certain solutions in the pre-bankruptcy reorganization proceedings based on a proposed reorganization plan by taking over specific legal provisions from the out-of-court settlement proceedings under the Law on Out-of-court Settlement and repealing the Law on Out-of-court Settlement.[37] The Draft Law on Insolvency is in the process of adoption by the Assembly of the Republic of Macedonia.

15. If a comparison is made between the provisions of the Bankruptcy Law regulating the pre-bankruptcy reorganization with the provisions of the Draft Law on Insolvency, it is evident that the Ministry of Economy intends to explicitly regulate both the procedural and substantive law issues of the pre-bankruptcy reorganization in order to not leave any room for courts' arbitrary interpretation thereof, for the purpose of protecting debtor's creditors, as explained below.

16. **The purpose of pre-bankruptcy reorganization**. The Draft Insolvency Law defines the purpose of the pre-bankruptcy reorganization as a financial restructuring of the debtor's business venture, which would allow for: 1) debtor's shareholders to retain their interest in the share capital that correspond to the debtor's remaining assets which they would receive in the event that bankruptcy proceedings were opened against the debtor; 2) more favorable conditions for creditors to settle their claims than if bankruptcy proceedings were opened against the debtor, in accordance with the priority of claims; and 3) continuation of debtor's business venture.[38] By this provision, the proponent of the law confirms the main principles of pre-bankruptcy reorganization, which are consistent with the National Bankruptcy Standards, as a way to preserve the going concern of the debtor, provided that it facilitates a more favorable settlement of creditors compared to liquidation of the debtor's assets and observance of the claim payment priority by preventing debtor's shareholders (as creditors of the lowest payment rank)[39] from having a more favorable position in the pre-bankruptcy reorganization compared to the one they would have in regular bankruptcy proceedings.

17. **Bodies in pre-bankruptcy reorganization**. The pre-bankruptcy reorganization bodies include the bankruptcy judge and the trustee.[40] The trustee is to be selected from among bankruptcy trustees and perform his/her duty until the day of effectiveness of the decision approving the reorganization plan.[41] The trustee has strictly defined obligations in the pre-bankruptcy reorganization, including an obligation to examine the inventory of the debtor's assets and liabilities, to examine whether the overview of the debtor's liabilities to creditors is credible, and to supervise the debtor's operations, especially debtor's financial operations.[42] The trustee is entrusted with the obligation to examine and confirm the overview of established and contested claims of the debtor's creditors, enclosed together with the proposal, and to prepare a special report

[36] Draft Law on Insolvency dated February 2022 (hereinafter, the "Draft Law on Insolvency")

[37] Draft Report on Legislation's Impact Assessment – Draft Law on Insolvency dated 3 March 2021, p. 6

[38] Draft Law on Insolvency, Article 3

[39] Draft Law on Insolvency, Article 313 paragraph 1 indent 5

[40] Draft Law on Insolvency, Article 39

[41] Draft Law on Insolvency, Article 41

[42] Draft Law on Insolvency, Article 42

to be submitted to both the court and creditors for review and any possible objections thereon.[43]

18. **Proposal for pre-bankruptcy reorganization**. There is an explicit obligation for the debtor to enclose to the proposal for opening a pre-bankruptcy reorganization, among other things, a report by an authorized valuator containing a valuation of the debtor's enterprise in accordance with international valuation standards for the valuation of a going concern (enterprise).[44] This is understandable since the debtor's creditors must be clearly informed of whether the pre-bankruptcy reorganization would be more favorable for them compared to liquidation of the assets in bankruptcy proceedings in accordance with the main principle of pre-bankruptcy reorganization. The reorganization plan must substantially contain the same elements that are now also prescribed by the Bankruptcy Law.[45]

19. **Term for implementation of the reorganization plan**. The proponent of the law has explicitly defined that when a reorganization plan provides for the reduction or postponement of unsecured claims' payment, the same reduction percentage and the same deferred payment periods must be defined for all claims, whereby the period for payment of any unsecured claims may not be longer than five years as from the effectiveness of the decision approving the reorganization plan unless a creditor explicitly agrees to a higher percentage of reduction and/or a longer period of payment for its claims.[46]

20. Same as in the Bankruptcy Law, there are exceptions to the absolute period of five years for the implementation of the reorganization plan in case where the measures for implementation refer to any changes in due dates, interest rates or other conditions of long-term loans or credits taken by the debtor before the opening of the pre-bankruptcy reorganization proceedings, any loans taken during the pre-bankruptcy reorganization and any debt securities.[47]

21. **Grouping of creditors, right to vote and required majority**. The Draft Law on Insolvency provides for the creditors to be grouped into separate classes depending on their legal position, where distinction must be made between creditors with the right to separate settlement (if the plan affects their rights), bankruptcy creditors from a lower payment rank and creditors who are debtor's employees.[48] All creditors whose claims were established in the claims overview submitted by the debtor have the right to vote on the reorganization plan, whereby any affiliated companies and persons to the debtor in the meaning of the provisions of the Law on Trading Companies[49] shall not have the

[43] Draft Law on Insolvency, Article 57

[44] Draft Law on Insolvency, Article 45 paragraph 2 indent 10

[45] Draft Law on Insolvency, Article 215-b

[46] Draft Law on Insolvency, Article 47 paragraphs 4 and 5

[47] Bankruptcy Law, Article 215-b paragraph 1 item 2 indent 13 and Draft Law on Insolvency, Article 47 paragraph 1 indent 10

[48] Draft Law on Insolvency, Article 63 paragraph 1 and Article 347

[49] The Law on Trading Companies (Articles 492-499) defines affiliates as a company that has a share in another company (from 10% to 20% share in the capital/voting rights), a significant share (from 20% to 50% share in the capital/voting rights), a majority share or majority right in decision-making (more than 50% share in the capital/voting rights) or a mutual share, including a dependent company, a holding company and companies acting jointly

right to vote thereon.[50] Thus, the affiliated companies and persons to the debtor are prevented from having any influence on the decision-making regarding the reorganization Plan for the purpose of protecting the creditors.

22. The court is required to establish the creditors' voting rights based on the final claims overview confirmed by the trustee by ensuring ex officio that the affiliated companies and persons to the debtor do not have the right to vote.[51] Creditors shall be deemed to have accepted the reorganization plan if the majority of all creditors with voting rights voted in favor thereof and if, in each group of creditors, the sum of claims of creditors who voted in favor of the Plan is greater than the sum of claims of creditors who voted against accepting the Plan.[52]

23. **Procedural issues**. The Draft Law on Insolvency foresees different rules on procedural law issues than the rules regulating the pre-bankruptcy reorganization under the Bankruptcy Law as follows:

(a) **Examination of the proposal for re-bankruptcy reorganization**. The bankruptcy judge is required to examine whether the proposal for pre-bankruptcy reorganization is properly prepared in terms of whether it contains all the information required and, if it is not properly prepared, the bankruptcy judge must order the petitioner to rectify it within eight days as from the day of receipt thereof.[53] Unlike the Bankruptcy Law, which does not allow for any additional rectification of the proposal, but only of the reorganization plan,[54] the proponent of the law foresees an obligation for the bankruptcy judge to allow the petitioner the opportunity to rectify the proposal. If the petitioner does not rectify the proposal within the period given, the bankruptcy judge must reject it by a decision against which the petitioner has the right to appeal.[55] Unlike the Bankruptcy Law, which does not allow the right to appeal against the decision rejecting the proposal for pre-bankruptcy reorganization as a result of failure to rectify the reorganization plan,[56] the proponent of the law allows this right. Same as in the Bankruptcy Law,[57] the bankruptcy judge must take all procedural actions in the pre-bankruptcy reorganization by a decision or a conclusion.[58]

(b) **Review the reorganization plan**. Unlike the Bankruptcy Law, where the holding of a hearing to review any issues related to the reorganization plan is left to the bankruptcy judge's discretion,[59] the proponent of the law has provided for a mandatory holding of a hearing to review the reorganization plan if the creditors raised any objections against it.[60] Also, unlike the Bankruptcy Law, which leaves no possibility to change the reorganization plan after the deposition thereof in the bankruptcy file,[61] the bankruptcy judge can order the

[50] Draft Law on Insolvency, Article 63 paragraph 3
[51] Draft Law on Insolvency, Article 62 paragraphs 2 and 3
[52] Draft Law on Insolvency, Article 63 paragraph 2
[53] Draft Law on Insolvency, Article 50 paragraph 2
[54] Bankruptcy Law, Article 215-v paragraph 4
[55] Draft Law on Insolvency, Article 50 paragraph 3 and 4
[56] Bankruptcy Law, Article 215-v paragraph 6
[57] Bankruptcy Law, Article 11
[58] Draft Law on Insolvency, Article 14
[59] Bankruptcy Law, Article 215-g paragraph 6
[60] Draft Law on Insolvency, Article 59 paragraph 3
[61] Bankruptcy Law, Article 215-v paragraph 6

petitioner to make changes to the reorganization law within eight days if the need to make such changes emerged from the hearing for review of the reorganization plan. The bankruptcy judge is required to publish the amended reorganization plan and schedule a hearing to vote on such an amended reorganization plan within eight days of the date of the publishing thereof.[62]

(c) **Approval of the reorganization plan**. The proponent of the law has provided for an explicit ex officio obligation of the bankruptcy judge to examine whether the reorganization plan is a more favorable option than the liquidation of assets and to have the right to refuse the reorganization plan's approval, despite the fact that creditors have accepted the reorganization plan by the required majority. In such a case, the bankruptcy judge must issue a decision that the requirements for the reorganization plan to be approved have not been met and discontinue the pre-bankruptcy reorganization proceedings. [63]

B. PRE-BANKRUPTCY REORGANIZATION OF TE-TO

1) Proposal for Pre-bankruptcy Reorganization

24. Mr. Petrov considers that the Basic Civil Court Skopje acted correctly when instead of rejecting the proposal to implement a reorganization plan prior to opening bankruptcy proceedings by TE-TO dated 24 April 2018 (hereinafter, the "**Proposal**"), it ordered TE-TO by a letter (instead of a decision) to rectify both the Proposal and the Reorganization plan dated 4 April 2018 (hereinafter, the "**Reorganization Plan**").[64] Mr. Petrov agrees that the bankruptcy judge was required to examine whether the legal requirements for opening bankruptcy proceedings against TE-TO were met;[65] however, Mr. Petrov ignores the fact that the Bankruptcy Law does not provide the bankruptcy judge an opportunity to return a proposal in a pre-bankruptcy reorganization for rectifying in terms of providing evidence that the requirements for opening bankruptcy proceedings are met.[66]

25. In this specific case, it is undeniable that TE-TO did not enclose any evidence to the Proposal proving that the requirements for opening bankruptcy proceedings were met.[67] In the letter by the Basic Civil Court Skopje to TE-TO dated 30 April 2018 asking TE-TO to rectify the Proposal, the bankruptcy judge explicitly requested TE-TO to submit proof that the requirements for opening bankruptcy proceedings were met.[68] Mr. Petrov, while relying on Article 215-g paragraph 4 of the Bankruptcy Law,[69] wrongly concludes that if "*...the proposal is not in order (because the proposal or the plan **contain deficiencies and technical errors that can be corrected**), then the bankruptcy*

[62] Draft Law on Insolvency, Article 60 paragraphs 5, 6 and 7

[63] Draft Law on Insolvency, Article 64

[64] Petrov's Opinion, paragraphs 53-66

[65] Petrov's Opinion, paragraph 55

[66] Kostovski's First Opinion, paragraphs 16-19

[67] Proposal for commencement of insolvency with reorganisation plan by TE-TO dated 24 April 2018

[68] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 1

[69] Bankruptcy Law, Article 215-g paragraph 4, "*In case the submitter of the proposal doesn't pay the advance, which may not be higher than 50.000 Denars within the deadline determined in paragraph (2) of this article, the bankruptcy judge shall adopt a decision with which it shall stop the previous procedure and reject the proposal.*"

*judge is obliged to issue a **determination** ordering the debtor to revise the proposal and/or the plan and resubmit corrected version within eight days*."[70] I assume that Mr. Petrov refers to Article 215-g paragraph 4 of the Bankruptcy Law instead of Article 215-v paragraph 4 of the Bankruptcy Law due to a technical error. Nonetheless, Mr. Petrov misconstrues Article 215-v paragraph 4 of the Bankruptcy Law, which does not provide a possibility whatsoever to rectify the Proposal, but only the Reorganization plan, and only if it contains any deficiencies and technical errors that can be corrected "*In cases when the **prepared plan for reorganization contains deficiencies and technical mistakes which can be corrected**, the bankruptcy judge shall order the bankruptcy debtor with a decision to complete the plan within eight days.*"[71]

26. Article 215-v paragraph 4 of the Bankruptcy Law cannot be applied by equivalence also to the Proposal, so the omission of TE-TO along with its Proposal to submit evidence of the fulfillment of the requirements for opening bankruptcy proceedings cannot be treated as "correctable deficiencies or technical errors". The fulfillment of legal requirements to open bankruptcy proceedings is a substantive law prerequisite for the commencement of pre-bankruptcy reorganization proceedings, so since TE-TO did not provide any evidence to the Proposal in that sense, the bankruptcy judge had no other choice but to reject the Proposal with a decision in accordance with Article 215-v paragraph 3 indent 4 of the Bankruptcy Law without allowing TE-TO the right to appeal.[72]

27. Instead of issuing a decision rejecting the Proposal, the bankruptcy judge, by a letter, requested TE-TO to provide evidence that the legal requirements for bankruptcy proceedings were met and to rectify the Reorganization plan. From the content of the bankruptcy judge's letter and the fact that the bankruptcy judge deposited the Reorganization plan in the bankruptcy file on the date of the filing thereof contrary to the Bankruptcy Law[73] although no evidence was provided to the bankruptcy judge that the requirements for opening bankruptcy proceedings were met and the fact that the Reorganization plan was incomplete, defective and contained deficiencies, it is evident that the bankruptcy judge deliberately allowed TE-TO to rectify the Proposal and the Reorganization plan contrary to the Bankruptcy Law. Namely, the bankruptcy judge was not allowed to deposit the Reorganization plan in the bankruptcy file knowing that it was incomplete, flawed, and contained deficiencies, particularly because the bankruptcy judge was not provided with any evidence that the requirements for opening bankruptcy proceedings were met.

28. Mr. Petrov agrees that the bankruptcy judge was required to issue a decision instead of a letter, but Mr. Petrov wrongly concludes that the bankruptcy judge could, by such a decision, allow TE-TO to rectify the Proposal in accordance with Article 215-v of the Bankruptcy Law[74] for the reasons stated above. Also, Mr. Petrov concludes that the letter was substantively in accordance with the Bankruptcy Law because it "*...contained all the elements of a determination **ordering the debtor to revise** the proposal*."[75] This conclusion of Mr. Petrov's is unserious. According to the Bankruptcy Law, any

[70] Petrov's Opinion, paragraph 56
[71] Bankruptcy Law, Article 215-v paragraph 4
[72] Kostovski's First Opinion, paragraphs 16-17
[73] Decision on security measures of the Basic Civil Court Skopje 3 ST-124/18 dated 26 April 2018, see also Kostovski's First Opinion, paragraph 58
[74] Petrov's Opinion, paragraph 58
[75] Petrov's Opinion, paragraph 58

decisions in bankruptcy proceedings are made in the form of a decision or a conclusion[76] and in no case whatsoever may the court take any procedural actions in bankruptcy proceedings by a letter. In my experience so far, no bankruptcy judge whatsoever has taken any procedural actions in a bankruptcy proceeding by sending letters instead of a decision or a conclusion to the parties in the proceeding.

29. Mr. Petrov states that TE-TO fully complied with the order of the bankruptcy judge and remedied the Reorganization plan.[77] This is not correct. TE-TO did not fully comply with the order of the court and did not provide adequate evidence, as explained below.

30. **First**, TE-TO did not submit a corrected version of the Reorganization plan but specified the proposed changes in its letter to the court.[78] The bankruptcy judge explicitly requested TE-TO to submit a corrected Reorganization plan[79], and since TE-TO did not act upon this order, the bankruptcy judge, who had already illegally allowed TE-TO to additionally provide evidence of meeting the requirements for opening bankruptcy proceedings, had to reject the Proposal due to the flawed Reorganization plan in accordance with Article 215-v paragraph 5 of the Bankruptcy Law.

31. **Second**, TE-TO did not provide adequate evidence of any notifications sent to all of its creditors, availability of information to all of its creditors and the course of negotiations with its creditors in accordance with the order of the Court.[80] The e-mail correspondence with Landesbank Berlin AG, Bitar Holdings Limited and Triglav Osiguruvanje AD Skopje (a third class creditor), and the minutes of meetings with its subsidiary TE-TO Gas Trejd DOOEL Skopje, its affiliates Balkan Energy Security DOOEL Skopje, Balkan Energy Group AD Skopje and Notary Public Snežana Sardžovska and Polenak Law Firm (third class creditors)[81] do not constitute sufficient proof of availability of information to all creditors and the course of negotiations. If it is considered that the Reorganization plan envisaged the write-off and payment deferral of the claims only of the creditors of the second class, TE-TO was obliged to notify and conduct negotiations with all of its creditors of this class, including GAMA.

32. **Third**, the Reorganization plan included GAMA's claim against TE-TO contrary to the Bankruptcy Law. In its Reorganization Plan, TE-TO listed GAMA in the second class of creditors having a claim of 307,453,500 denars (5 million euros),[82] but stated that there was a court process underway with GAMA regarding such a claim.[83] In her letter for rectification of both the Proposal and the Reorganization Plan, the bankruptcy judge

[76] Bankruptcy Law, Article 11

[77] Petrov's Opinion, paragraphs 59-60

[78] Reply to the letter by TE-TO AD Skopje dated 2 May 2018

[79] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 3 "*The Court orders you to submit the motion, evidence and the corrected reorganization plan of the debtor to the court within a period of 8 days upon the day of receipt of the present instructions so as to enable the court to act on your motion in accordance with the Bankruptcy Law, and in the contrary the court shall proceed in accordance with article 215-a of the Bankruptcy Law.*"

[80] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 2

[81] Reply to the letter by TE-TO AD Skopje dated 2 May 2018

[82] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 16

[83] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 34

asked TE-TO to state whether GAMA's claim was contested[84] and TE-TO stated that the claim was not contested, but did not provide any evidence that the litigation was terminated.[85] In 2013, one of the reasons for the introduction of pre-bankruptcy reorganization was precisely the lengthy duration of court disputes regarding claims in bankruptcy proceedings since "*…a relatively large number of litigation proceedings are initiated for the collection of the debtor's claims, with relatively long-lasting refutations of legal actions being very common*", so the expectation was that pre-bankruptcy reorganization "*...would relatively quickly end the bankruptcy proceedings, since legal disputes would continue to be conducted by the reorganized debtor and the bankruptcy proceedings would be closed*." For these reasons, the Bankruptcy Law stipulates that the substantive part of the reorganization plan must, among other things, contain the amount of funds reserved for any creditors whose claims are disputed.[86]

33. In circumstances where the bankruptcy judge was aware that there was pending litigation between TE-TO and GAMA regarding GAMA's claim included in the Reorganization plan and where TE-TO confirmed that such claim was not disputed, the bankruptcy judge had to request TE-TO to provide evidence that this litigation was completed in order to allow TE-TO to include GAMA's claim in the Reorganization plan.

34. **Fourth**, the Reorganization plan did not correctly establish the claims and, thus, the voting rights of TE-TO's creditors. GAMA's claim was (illegally) included in the Reorganization plan with no statutory default interest being calculated thereon.[87] In circumstances where the bankruptcy judge unlawfully allowed TE-TO to include GAMA's claim in its Reorganization plan, TE-TO had to calculate and recognize statutory default interest on GAMA's principal claim from the due date of the claim, just like it had calculated and recognized the statutory default interest and contractual interest on the claims of the other creditors in the second class of creditors.[88] GAMA is the only second class creditor in the Reorganization plan that has not been recognized statutory default interest on its claim, and as a result, has had its voting rights incorrectly determined.

35. Also, in the Reorganization Plan, the third class of creditors included the Public Revenue Office with a claim of 16,011,762 denars (approximately 260,000 euros),[89] which TE-TO settled during the preparation of its Reorganization plan.[90] In view of the fact that this claim was settled, it had been unlawfully included in the Reorganization plan and affected the determination of the voting rights of all creditors in the third class of creditors.

36. **Fifth,** the creditors of TE-TO were not properly classified in its Reorganization Plan. GAMA was classified in the second class of TE-TO's creditors (creditors based on

---

[84] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 3

[85] Reply to the letter by TE-TO AD Skopje dated 2 May 2018, p. 6

[86] Bankruptcy Law, Article 215-b paragraph 1 item 2 indent 3

[87] Reply to the letter by TE-TO AD Skopje dated 2 May 2018, p. 6

[88] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 16

[89] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 14

[90] Notice by the State Attorney of the Republic of North Macedonia dated 24 December 2019 with attachments

loans and investments),[91] and GAMA's claim is not based on any loan or investment but is a commercial claim based on a settlement agreement.[92] Taking into account that the claims of TE-TO's shareholders are of a lower payment rank according to the Bankruptcy Law,[93] the bankruptcy judge requested that TE-TO change the Reorganization Plan such that "*...it should be clearly stated that the claims of the second class are claims of a lower settlement rank and shall be settled last*"[94] so TE-TO made the requested change and stated that "*...second class are creditors lower in the settlement order than creditors of the first and third class, i.e., the creditors of the second class shall be settled last.*"[95] However, as I stated in my first opinion, GAMA's claim is not of a lower payment rank but of a higher payment rank.[96] Mr. Petrov agrees that GAMA's claim is of a higher payment rank than the claims of lower payment ranks.[97] Accordingly, the classification of GAMA in the second class of creditors (creditors based on loans and investments) in the Reorganization Plan, together with TE-TO's shareholders, is contrary to the Bankruptcy Law.

37. Even if TE-TO had acted in full compliance with the court's order, the bankruptcy judge would still have had the obligation to issue a decision rejecting the Proposal due to the fact that the Reorganization plan was in breach of the Bankruptcy Law.[98] Mr. Petrov does not address the deficiencies in the Reorganization plan identified in my first opinion in terms of the court's obligation to reject the Proposal, and he casually says that after the rectifying of the Proposal, the bankruptcy judge had no grounds to reject the Proposal.[99] In addition to the deficiencies identified in my first opinion, I note that the Reorganization plan was also incomplete due to the fact that TE-TO did not provide an annual financial report for 2017,[100] although TE-TO was obliged according to the Bankruptcy Law to submit annual financial reports for the previous five years (from 2012 to 2017), including an auditor's opinion.[101] TE-TO did not provide its 2017 annual financial report including an auditor's opinion along with its letter of 2 May 2018.[102]

38. Due to the above, I remain of the opinion that the bankruptcy judge had a legal obligation to reject the Proposal with no right to appeal because TE-TO did not provide any evidence that the requirements for opening bankruptcy proceedings were met along with its Proposal and the Reorganization plan, and after the (illegal) adjustment thereof, was in violation of the Bankruptcy Law.

2) <u>Decision Determining Security Measures</u>

[91] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 16

[92] Settlement Agreement between GAMA and TE-TO dated 24 February 2012

[93] Bankruptcy Law, Articles 116-118

[94] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 2

[95] Reply to the letter by TE-TO AD Skopje dated 2 May 2018, p. 4

[96] Kostovski's First Opinion, paragraph 35

[97] Petrov's Opinion, paragraph 157

[98] Kostovski's First Opinion, paragraphs 20-39

[99] Petrov's Opinion, paragraph 60

[100] Reorganization Plan by TE-TO AD Skopje dated 4 April 2018, p. 26

[101] Bankruptcy Law, Article 215-b paragraph 1 item 2 indent 10

[102] Reply to the letter by TE-TO AD Skopje dated 2 May 2018

39. Mr. Petrov is of the opinion that the bankruptcy judge acted in accordance with the Bankruptcy Law by issuing Decision 3 ST-124/18 on 26 April 2018, which determined security measures[103] prior to issuing the Decision on commencement of preliminary proceedings3 ST-124/18 dated 2 May 2018.[104] Mr. Petrov considers that the purpose of Article 215-g paragraph 2 of the Bankruptcy Law is to determine the latest point in time when a bankruptcy judge must issue a decision to determine security measures, but that this does not exclude the possibility of a court making such a decision at some earlier point in time pursuant to Article 58 paragraph 3 of the Bankruptcy Law.[105]

40. Mr. Petrov is being self-contradictory because, on the one hand, he agrees that "*Article 215-g(2) foresees the duty/obligation of the bankruptcy judge, to adopt a determination on imposing security measures simultaneously with the adoption of the determination to commence preliminary proceedings*", while on the other hand, he claims that "…*the provision of Article 58(3) of the LB complements Article 215-g (2), since that provision enables the bankruptcy judge to adopt measures even prior to adopting the determination to commence preliminary proceedings, for the purpose of protecting the interests to creditors*.[106]

41. Mr. Petrov ignores the fact that a procedural assumption for the court to be able to issue a decision on security measures both in bankruptcy proceedings pursuant to Article 58 paragraph 3 and in pre-bankruptcy reorganization pursuant to Article 215-g paragraph 2 of the Bankruptcy Law is that a debtor must have submitted an orderly proposal for opening bankruptcy proceedings. More specifically, a court may pass a decision on security measures under Article 58 paragraph 3 of the Bankruptcy Law only after determining that the proposal for opening bankruptcy proceedings is duly prepared and contains all the evidence of the fulfillment of requirements for opening bankruptcy proceedings under Article 5 paragraph 1 of the Bankruptcy Law and once a debtor has paid the advance payment for the costs of conducting such bankruptcy proceedings.[107] Considering that the Proposal was not orderly, as also confirmed by Mr. Petrov,[108] the bankruptcy judge did not have any legal ground to pass the Decision on security measures prior to issuing the Decision on commencement of preliminary proceedings.

42. Pursuant to Article 215-g paragraph 3 of the Bankruptcy Law, the bankruptcy judge was required, together with the issuance of the Decision on security measures, to prepare a notice and publish it both on the notice board of the court and in the Official Gazette of the Republic of Macedonia, as well as in at least two highly circulated daily newspapers distributed in the territory of the Republic of Macedonia, at TE-TO's expense. The bankruptcy judge did not do so, but published the notice on 8 May 2018 only after the issuance of the Decision on commencement of preliminary proceedings.[109] Considering that the bankruptcy judge had to publish the notice together with the Decision on security measures, and the bankruptcy judge did so only after passing the Decision on the commencement of preliminary proceedings, it clearly

[103] Decision on security measures of the Basic Civil Court Skopje 3 ST-124/18 dated 26 April 2018

[104] Petrov's Opinion, paragraphs 63-74

[105] Petrov's Opinion, paragraph 71

[106] Petrov's Opinion, paragraph 71

[107] Bankruptcy Law, Article 53 paragraph 3 and paragraph 4

[108] Petrov's Opinion, paragraph 57

[109] Announcement on initiation of preliminary proceedings against TE-TO AD Skopje by Basic Civil Court Skopje dated 8 May 2018

follows that the Decision on security measures was passed in violation of the Bankruptcy Law.

43. With regard to the content of the Decision on security measures, Mr. Petrov states that he sees no logic in not providing the same protection to creditors in pre-bankruptcy reorganization as is given to creditors in other bankruptcy proceedings.[110] In my first opinion, I explained in detail why the security measures imposed by the court were not adequate to implement a pre-bankruptcy reorganization.[111] Even more so, the bankruptcy judge decided on the security measures ex officio at a time when she still did not have available evidence that the requirements for opening bankruptcy proceedings were met, while the Reorganization plan was defective and incomplete.

44. Also, the bankruptcy judge, while determining the security measures, speculated that the Reorganization plan foresaw a more favorable way of settling all creditors, i.e., that without determining the security measures, "*…preventing the procedure for carrying out the proposed Reorganization Plan by the Debtor, envisaging more favourable plan for settling all creditors covered by the plan.*"[112] In circumstances where the Reorganization Plan did not contain an estimate of the expected amount of money that would be realized by the liquidation of TE-TO's assets in a liquidation procedure, the bankruptcy judge did not have the opportunity to make a comparison with the proposal for settlement of creditors in the Reorganization plan to be able to reach such conclusion. It is unclear, based on what information, the bankruptcy judge reached this conclusion at this stage of the proceedings.

45. Due to the above, I remain of the opinion that the bankruptcy judge issued the Decision on security measures in violation of the Bankruptcy Law.

3) <u>Appointment of an interim bankruptcy trustee</u>

46. Mr. Petrov agrees with my first opinion regarding the fact that the bankruptcy judge appointed Marinko Sazdovski as interim bankruptcy trustee of TE-TO in violation of Article 215-g paragraph 2 of the Bankruptcy Law according to which such appointment must be made through electronic selection from among bankruptcy trustees having special knowledge in the area of reorganization.[113] Mr. Petrov qualifies the appointment of Marinko Sazdovski as a "technical error" made by the bankruptcy judge.[114] Such violation of the Bankruptcy Law regarding the method of selection of the interim bankruptcy trustee can by no means whatsoever be treated as a "technical error" of the bankruptcy judge. When appointing Marinko Sazdovski, the bankruptcy judge completely ignored both the Bankruptcy Law[115] and the procedure prescribed by the

[110] Petrov's Opinion, paragraph 73

[111] Kostovski's First Opinion, paragraphs 43-45

[112] Decision on security measures of the Basic Civil Court Skopje 3 ST-124/18 dated 26 April 2018, p. 2 and 3

[113] Petrov's Opinion, paragraph 78

[114] Petrov's Opinion, paragraph 79

[115] In addition to Article 215-g paragraph 3, Article 31 paragraph 5 of the Bankruptcy Law also contains the obligation to appoint an interim bankruptcy trustee electronically "*In cases where an interim bankruptcy trustee is appointed in the procedure for reorganization upon previously prepared plan for reorganization, the election shall be made according to the method for electronic election from the*

Rulebook on the manner of bankruptcy trustee selection according to the electronic selection method. According to this Rulebook, the E-bankruptcy system automatically prepares a ranking list of bankruptcy trustees for each individual court and a bankruptcy judge, upon receiving a new bankruptcy case or when required to appoint a new bankruptcy trustee in an existing bankruptcy case, through the E-bankruptcy system, receives the ranking list of bankruptcy trustees of the court where the bankruptcy case is conducted and chooses the first-ranked bankruptcy trustee therefrom.[116]

47. The bankruptcy judge appointed Marinko Sazdovski as interim bankruptcy trustee of TE-TO in spite of the fact that in the Reorganization plan, he was proposed by TE-TO as an independent expert to supervise the implementation of the Reorganization Plan.[117] Mr. Petrov deems that Marinko Sazdovski's independence could not be called into question because allegedly, none of the requirements under Article 22 of the Bankruptcy Law[118] was fulfilled, and he believes that there is no either legal or another legal obstacle for a person proposed by the debtor to supervise the implementation of the Reorganization plan in a given pre-bankruptcy reorganization procedure also to be appointed as the interim bankruptcy trustee in such pre-bankruptcy reorganization procedure.[119] I disagree with Mr. Petrov. I believe that the appointment of Marinko Sazdovski as interim bankruptcy trustee of TE-TO in circumstances where he was simultaneously proposed by TE-TO as an independent expert to supervise the implementation of the Reorganization Plan is an apparent conflict of interest contrary to the Code of Ethics for Bankruptcy Trustees.[120]

48. According to the Code of Ethics for Bankruptcy Trustees, bankruptcy trustees are required to perform their work professionally and conscientiously and act objectively with no prejudice, personal interests or biased views.[121] A bankruptcy trustee must be independent in relation to any other persons who could influence the decision-making or outcome of his/her work in the bankruptcy procedure, and before accepting the appointment, **a bankruptcy trustee must investigate whether there are any business and financial ties with the insolvent debtor or with any other entities related to the insolvent debtor that could be an obstacle or influence the bankruptcy trustee's actions and decision-making**, including any circumstances that may be a legal impediment for him/her being appointed as bankruptcy trustee and he/she shall notify the Court thereof.[122]

49. The bankruptcy trustee must perform his/her duties such that the performance thereof shall not be subordinated to his/her personal interest or cause any conflict of interest between his/her duties and personal interest or any situations where the bankruptcy trustee has personal interests that affect or may affect a conscious businessman, or can

---

bankruptcy trustees who applied in the court and have specialist knowledge in the field of plan for reorganization."

[116] Rulebook on the Manner of Selection of Bankruptcy Trustees according to the Electronic Selection Method (Official Gazette of the Republic of Macedonia No. 47/2014)

[117] Decision on security measures of the Basic Civil Court Skopje 3 ST-124/18 dated 26 April 2018, see also Decision on commencement of preliminary proceedings 3 ST-124/18 dated 2 May 2018

[118] Petrov's Opinion, paragraphs 81-83

[119] Petrov's Opinion, paragraph 84

[120] Code of Ethics for Bankruptcy Trustees (Official Gazette of the Republic of Macedonia No. 119/2006) ("Code of Ethics")

[121] Code of Ethics, Item 2 paragraph 1 indents 1) and 2)

[122] Code of Ethics for Bankruptcy Trustees, Item 4 paragraphs 2 and 3

affect the proper performance of bankruptcy trustee's duty.[123] The Code of Ethics for Bankruptcy Trustees explicitly instructs bankruptcy trustees to avoid any situations where a conscious businessman shall reasonably conclude that the situation resembles a conflict of interest, and if a conflict of interest occurs or if after a bankruptcy trustee's appointment, it is established that such conflict exists, a bankruptcy trustee shall immediately submit a request to be dismissed from the bankruptcy trustee duty.[124]

50. Marinko Sazdovski had a personal financial interest in the Reorganization Plan to be accepted by the creditors, given that the Reorganization plan provided for him a monthly reimbursement of MKD 40,000 for a period of 12 years. This situation, in the eyes of a conscious businessman, reasonably represents a conflict of interest, which is why, under the circumstances where the bankruptcy judge appointed Marinko Sazdovski contrary to the Bankruptcy Law, upon such appointment, he had to request to be relieved of his duties.

51. Mr. Petrov agrees with me that Marinko Sazdovski did not have professional knowledge of reorganization, but he states that he does not see anything controversial in the appointment of Marinko Sazdovski as TE-TO's interim bankruptcy trustee because Mr. Sazdovski is an experienced long-term bankruptcy trustee with extensive practical experience who has conducted a large number of bankruptcy proceedings, and in Macedonia, there are no bankruptcy trustees with professional knowledge of reorganization due to the fact that the Program for special specialist training on the preparation and implementation of a Reorganization Plan, including an exam for obtaining a certificate for special specialist knowledge, has never been implemented.[125] The appointment of an interim bankruptcy trustee with no professional knowledge in the area of reorganization is still a violation of the Bankruptcy Law, regardless of the reasons why there are no bankruptcy trustees who have completed the specialist training and passed the exam.

52. Before the adoption of the amendments to the Bankruptcy Law, which introduced the pre-bankruptcy reorganization, the Ministry of Economy established that in order to successfully implement pre-bankruptcy reorganization, "*highly expert bankruptcy trustees - specialists in the development, evaluation and implementation of a sustainable reorganization plan are needed.*"[126] Considering the role of interim bankruptcy trustees in a pre-bankruptcy reorganization, the possession of specialist knowledge is a guarantee for the implementation of a debtor's reorganization in accordance with the Bankruptcy Law. The Chamber of Bankruptcy Trustees was obliged, in cooperation with the Ministry of Economy, to organize special specialist training and to issue certificates of successfully completed training in preparation and implementation of a reorganization plan in order to enable bankruptcy trustees to take the exam thereon.[127] I am not aware why the Chamber of Bankruptcy Trustees did not organize such training.

53. In view of the above, regardless of whether due to the existence of a conflict of interest or lack of specialist knowledge of reorganization, Marinko Sazdovski made a series of

[123] Code of Ethics for Bankruptcy Trustees, Item 6 paragraphs 1 and 3

[124] Code of Ethics for Bankruptcy Trustees, Item 6 paragraphs 2 and 4

[125] Petrov's Opinion, paragraph 80

[126] Initial Assessment of Legislation's Impact – Bankruptcy Law of 13 March 2013, p. 6

[127] Bankruptcy Law, Article 290-a paragraph 1

errors in TE-TO's pre-bankruptcy reorganization, which the bankruptcy judge tolerated without any objection, as explained below.

54. **First**, Marinko Sazdovski compiled a report on the economic and financial situation of TE-TO contrary to the National Bankruptcy Standards. According to the National Bankruptcy Standards, a bankruptcy trustee must analyze the reorganization plan submitted by the debtor and give an opinion on the feasibility of such reorganization plan, which, among other things, must contain **a parallel overview of the anticipated settlement of creditors in both a procedure of closing the business venture and reorganization, prepared in accordance with the order of payment to creditors**.[128] The Report on the economic and financial situation of 4 June 2018 by Marinko Sazdovski does not contain this type of presentation, but only a mere recommendation to the creditors to accept the Reorganization plan "*...Based on the findings expressed in the report on the debtor's economic and financial condition, the debtor has the opportunity to implement the Reorganization Plan submitted with the petition to the Court and consequently adjusted in linen with the debtor's response to the creditors' remarks, ensuring settlement of the creditors in the same scope and dynamics as provided for in the Reorganization Plan, which is why I propose that the creditors adopt the plan.*"[129]

55. **Second,** Marinko Sazdovski incorrectly established the claims of TE-TO's creditors and thus, their voting rights, in violation of Article 215-d paragraph 2 of the Bankruptcy Law, according to which he was obliged to perform an assessment of the amount of their claims for the purposes of voting on the prepared reorganization plan.[130] Namely, Marinko Sazdovski failed to establish that the Reorganization plan included the claim of the Public Revenue Office in the amount of 16,011,762 denars (approximately 260,000 euros),[131] which had been previously settled by TE-TO in the course of preparation of its Reorganization plan.[132] Also, Marinko Sazdovski failed to calculate the statutory default interest on GAMA's principal claim, which as of 1 March 2018 amounted to 2,958,435 euros in denar equivalent of 181,943,752 denars.[133] Marinko Sazdovski stated that the Reorganization plan foresaw "*…a complete write-off of the interest*" on GAMA's principal claim, although it had not been calculated and recognized for the purposes of voting on the Reorganization Plan.[134]

---

[128] Rulebook on Professional Standards for Bankruptcy Proceedings, Appendix No. 3 Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting, Item 5 "*Provided that the bankruptcy debtor has submitted plan for reorganization simultaneously with the proposal for opening bankruptcy procedure, the bankruptcy trustee is obliged to perform analysis on the submitted plan and to give an opinion on the feasibility of the plan for reorganization, containing all elements of sub- items from 1) to 5) of this item.*"

[129] Report on the economic and financial situation of TE-TO AD Skopje by bankruptcy trustee Marinko Sazdovski, dated 4 June 2018, p. 20

[130] Report on the economic and financial situation of TE-TO AD Skopje by bankruptcy trustee Marinko Sazdovski, dated 4 June 2018, p. 18

[131] Reorganization Plan by TE-TO AD Skopje dated 4 April 2018, p. 14, see also Consolidated text of the Plan for the Reorganization of TE-TO AD Skopje dated 6 June 2018, p. 27

[132] Notice by the State Attorney of the Republic of North Macedonia dated 24 December 2019 with attachments

[133] Objections and remarks on the Reorganization Plan by GAMA dated 22 May 2018, p. 2

[134] Report on the economic and financial situation of TE-TO AD Skopje by bankruptcy trustee Marinko Sazdovski, dated 4 June 2018, p. 16

56. **Third**, Marinko Sazdovski submitted the report on the economic and financial situation to the court on 4 June 2018, or just one day before the holding of the hearing for deciding upon the Proposal and voting upon the Reorganization plan, thus preventing the creditors from reviewing its contents prior to the hearing. In addition, in his report, Marinko Sazdovski stated that the Reorganization plan of 6 June 2018 grouped the creditors into two classes[135] even before the bankruptcy judge allowed TE-TO (illegally) to modify the Reorganization Plan at the hearing held on 5 June 2018.[136] Namely, for Marinko Sazdovski, it was sufficient that TE-TO, in its response to GAMA's objections and remarks dated 22 May 2018, stated that (for the second time) TE-TO was proposing changes to the Reorganization plan by grouping creditors into two classes instead of three.[137]

57. **Fourth,** Marinko Sazdovski did not supervise the implementation of the Reorganization plan dated 6 June 2018 (hereinafter, the "**Reorganization plan dated 6 June 2018**") in accordance with the National Bankruptcy Standards.[138] Marinko Sazdovski was obliged to develop a programme for performing control over TE-TO's operations and to inform TE-TO of what would be considered a material change in the implementation of the Reorganization plan dated 6 June 2018 and that in the event of a material change, he would notify both the bankruptcy judge and the creditors thereof.[139] A material change related to the situation foreseen by the adopted reorganization plan in the sense of this standard is any event, change or deviation of a significant nature that, in the opinion of the person authorized to supervise the implementation of the reorganization plan: 1) adversely affects cash flows; 2) prevents a debtor in reorganization from performing some or all of its business activities; 3) reduces the likelihood of the successful implementation of the reorganization plan; and significantly jeopardizes the interest of one or more classes of creditors.[140] Based on the documents I have reviewed, I conclude that Marinko Sazdovski did not prepare a programmme for performing control over TE-TO's operations and did not inform TE-TO of what would be considered a material change in the implementation of the reorganization plan dated 6 June 2018.

58. Also, Marinko Sazdovski had the obligation to notify the bankruptcy judge if he found that a circumstance had occurred which had a negative impact on the projections for the expected cash flows or other aspects of TE-TO's financial operations and, without any delay, to warn TE-TO's management bodies of such circumstances and inform them of any activities he intended to undertake thereon. If, even after the warning addressed to TE-TO's management bodies, no appropriate actions were taken, Marinko Sazdovski had the obligation to submit a proposal for reopening bankruptcy proceedings.[141]

---

[135] Report on the economic and financial situation of TE-TO AD Skopje by bankruptcy trustee Marinko Sazdovski dated 4 June 2018, pgs. 14, 15 and 16

[136] Minutes of the hearing of Basic Civil Court Skopje dated 5 June 2018

[137] Response to GAMA's remarks by TE-TO AD Skopje dated 30 May 2018

[138] Rulebook on Professional Standards for Bankruptcy Proceedings, Appendix No. 6 Professional Standard on Performing Control over the Reorganization Plan's Implementation (hereinafter, the "Professional Standard on Plan Control")

[139] Professional Standard on Plan Control, Item 7

[140] Professional Standard on Plan Control, 2. Definitions

[141] Professional Standard on Plan Control, paragraphs 12-15

59. Due to the write-off of unsecured creditors' claims, on 1 April 2019, TE-TO was liable for profit tax in the amount of 888,138,225 denars (approximately 14.5 million euros) and monthly advance payments for profit tax in the amount of 74,011,519 denars (approximately 1.2 million euros)[142] – liabilities which TE-TO did not foresee at all in its Reorganization plan dated 6 June 2018 contrary to the Bankruptcy Law.[143] The incurrence of these liabilities is a material change regarding the situation foreseen by the Reorganization plan dated 6 June 2018 and a circumstance that would adversely affect the expected cash flow projections, and Marinko Sazdovski was obliged to inform both the bankruptcy judge and the creditors about these circumstances, to warn TE-TO's management bodies and finally to submit a proposal for reopening of bankruptcy proceedings if certain measures were not taken by TE-TO's management bodies. Based on the documents I have reviewed, I conclude that Marinko Sazdovski did not take any of the actions prescribed by the National Bankruptcy Standards.

60. Due to the above, I remain of the opinion that the bankruptcy judge appointed Marinko Sazdovski as a interim bankruptcy trustee in violation of the Bankruptcy Law and that his appointment is in violation of the conflict of interest rules of the Code of Ethics for Bankruptcy Trustees.

4) Requests for Recusal of the Bankruptcy Judge

61. Mr. Petrov deems that the Basic Civil Court acted correctly when it rejected the request for recusal of the bankruptcy judge by GAMA[144] because "*the request for recusal filed by GAMA was a classic example of guerilla tactic by a disappointed creditor to prevent the holding of the Assembly of Creditors.*"[145] I am of the opinion that Mr. Petrov's conclusion is wrong due to the fact that there were serious signals that the bankruptcy judge was biased while conducting the proceedings, bearing in mind the fact that since the receipt of the Proposal, the bankruptcy judge had taken procedural actions in violation of the Bankruptcy Law and enabled TE-TO to take procedural actions in violation of the Bankruptcy Law.[146]

62. The parties in bankruptcy proceedings have the right to submit a request for recusal of the bankruptcy judge[147] if they deem that there are some other circumstances that call into question the impartiality of such judge.[148] A party must identify these "other circumstances" specifically in its request for recusal. This means that in any request for recusal of a judge pursuant to Article 64 paragraph 1 item 6 of the Litigation Procedure Law, it shall not be sufficient for the party to state that it doubts the impartiality of the Judge, but it must specify the circumstances that create such doubt for the Party.[149] The requests for recusal by Toplifikacija[150] and GAMA (which presented the request both at the hearing[151] and prior to that in writing[152]) list specific circumstances that indicate

[142] Analytical card for profit tax of TE-TO AD Skopje as of 1 January 2018 – 19 May 2013, p. 3
[143] Kostovski's First Opinion, paragraph 28
[144] Petrov's Opinion, paragraphs 86-94
[145] Petrov's Opinion, paragraph 94
[146] Kostovski's First Opinion, paragraphs 12-52, 53-65, 66-69, 76-83, 84-86
[147] LPL, Article 66 paragraph 1
[148] LPL, Article 64 paragraph 1 item 6
[149] LPL, Article 66 paragraph 2 indent 3
[150] Minutes of the hearing of the Basic Civil Court Skopje dated 14 June 2018, p. 4-5
[151] Minutes of the hearing of the Basic Civil Court Skopje dated 14 June 2018, p. 4-5
[152] The requests for recusal by GAMA dated 14 June 2018

the bias of the bankruptcy judge in dealing with the case. Notably, in their requests for recusal, both Toplifikacija and GAMA correctly indicated that the bankruptcy judge, contrary to the Bankruptcy Law, allowed TE-TO to rectify the Proposal and to amend the Reorganization plan, including a new division of creditor classes at a stage of the proceedings where this is not allowed. In my first opinion, I explained in detail that the bankruptcy judge violated the Bankruptcy Law when she allowed TE-TO to submit a corrected reorganization plan, including a change in creditor classes.[153]

63. In my opinion, it is highly unusual that after receiving the requests for her recusal from GAMA and Toplifikacija, the bankruptcy judge, instead of adjourning the hearing for voting on the reorganization plan to a later date in order for the President of the Basic Civil Court to make a Decision on the Requests, decided to suspend the hearing for an hour.[154] It is the usual practice of judges, upon receipt of any request for recusal, to postpone the hearing until a decision on such request for recusal is made by the President of the court. It is extremely unusual that the bankruptcy judge granted such a brief one-hour recess for deciding upon the requests for recusal. If the bankruptcy judge deemed, as Mr. Petrov says, that it was about guerilla tactics to obstruct the court from taking action, the question rightfully arises as to why the bankruptcy judge did not use the legal possibility and proceed with her work on the case before a decision has been made.[155]

64. The Deputy President of Basic Civil Court Skopje decided that the requests for recusal were unfounded within one hour.[156] From my experience as a judge, it is practically impossible for the Deputy President of Basic Civil Court Skopje to review the requests for recusal, review the case files, take a statement from the bankruptcy judge and decide upon the requests for recusal within a period of one hour. Even more so the Deputy President of the Basic Civil Court did not have professional knowledge in the area of pre-bankruptcy reorganization to examine with certainty whether the bankruptcy judge acted with partiality in the specific case.

65. The bankruptcy judge's written statement cited in the decision rejecting the requests for recusal indicates that the bankruptcy judge gave such a statement after the vote on the reorganization plan and not within the period of adjournment of the hearing for voting on the reorganization plan "*the Court determined that the debtor entirely acted according to the order of the Court and the provided consolidated text plan for reorganization, contains all the elements provided for in article 215 - b paragraph 1 of the mentioned law, which are mandatory for the preparation of the plan, and after the conducted voting procedure and determination that the conditions of Article 5 of the BL have been met it passed a decision*."[157] If this was indeed the case, the Deputy President of the Basic Civil Court issued the decision rejecting the requests for recusal after the hearing for voting on the reorganization plan and not before the voting. By such action, the bankruptcy judge committed a violation of Article 68 of the Litigation

[153] Kostovski's First Opinion, paragraphs 53-65

[154] Minutes of the hearing of the Basic Civil Court Skopje dated 14 June 2018

[155] Litigation Procedure Law (LPL), Article 68 paragraph 2

[156] Minutes of the hearing of the Basic Civil Court Skopje dated 14 June 2018

[157] Decision for rejection of the request of recusal 03 IZZ no. 102/2018 dated 14 June 2018 by the Deputy President of the Basic Civil Court Skopje

Procedure Law, which provides an express prohibition for a judge to continue working on the case until a decision on such request is made.[158]

5) Hearing on Creditors' Written Objections

66. Mr. Petrov deems that the bankruptcy judge acted correctly when, on 5 June 2018, instead of holding a hearing to decide on the Proposal and voting on the Reorganization plan, the bankruptcy judge decided to hold a meeting of the Assembly of Creditors to consider creditors' written objections regarding the Reorganization Plan.[159] Mr. Petrov ignores the fact that by the Decision for commencement of preliminary proceedings and the Notice on commencement of preliminary proceedings dated 8 May 2018, the bankruptcy judge scheduled "*a hearing to decide on the proposal and vote on the reorganization plan.*"[160] Since the bankruptcy judge scheduled a hearing to decide on the Proposal and vote on the Reorganization plan, and TE-TO had previously responded[161] to the remarks by GAMA, Toplifikacija and Komercijalna Banka[162], the bankruptcy judge acted contrary to the Bankruptcy Law when she held a hearing to consider creditors' written objections regarding the Reorganization Plan.[163]

67. Pursuant to Article 215-g paragraph 6 of the Bankruptcy Law, "*In the course of the preliminary procedure* ***the bankruptcy judge may schedule a hearing at which certain issues*** *regarding the previously prepared reorganization plan shall be reviewed.*" According to this provision, if a bankruptcy judge deems it necessary, he/she can, by a decision, schedule a separate hearing to consider any issues related to the reorganization plan, but he/she may not consider creditors' written objections at a hearing scheduled for deciding on a proposal and reorganization plan.

68. Mr. Petrov claims that although Article 215-g paragraph 6 of the Bankruptcy Law does not expressly provide a possibility of considering any creditors' written objections at the hearing for deciding on the proposal and reorganization plan, it does not expressly prohibit this either and claims that scheduling a separate hearing would be more efficient.[164] I disagree with Mr. Petrov. The bankruptcy judge had a legal obligation to schedule a hearing to decide on the Proposal and vote on the Reorganization plan by passing a Decision on commencement of preliminary proceedings (and she did so) and, if within the period until holding such hearing, she deemed there was a need to schedule

---

[158] LPL, Article 68 paragraph 1 "*When a judge or lay judge, president of the council, member of the council or the president of the court, finds that a request for his/her exemption has been submitted, he shall be obliged to immediately stop the work upon the respective case, if an exemption referred to in Article 64, point 6 of this Law is at question, until the adoption of the determination upon the request, he can only undertake those activities wherefore risk of postponement exist.*"

[159] Petrov's Opinion, paragraphs 95-103

[160] Decision on commencement of preliminary proceedings against TE-TO AD Skopje by Skopje Basic Civil Court dated 2 May 2018, p.1, Notice on commencement of preliminary proceedings against TE-TO AD Skopje by Skopje Basic Civil Court dated 8 May 2018

[161] Response to Komercijalna Banka's remarks by TE-TO AD Skopje dated 29 May 2018, Response to remarks of Toplifikacija AD Skopje by TE-TO dated 29 May 2018, Response to GAMA's remarks by TE-TO AD Skopje dated 30 May 2018

[162] Remarks on the Reorganization Plan by Komercijalna Banka AD Skopje dated 21 May 2018, Opinion on the Reorganization Plan by Toplifikacija AD Skopje dated 21 May 2018, Objections and Remarks on the Reorganization Plan by GAMA dated 22 May 2018

[163] Kostovski's First Opinion, paragraphs 59-60

[164] Petrov's Opinion, paragraph 101

a separate hearing to consider certain issues related to the Reorganization plan, she should have done so by a separate decision, before holding the hearing to decide on the Proposal and vote on the Reorganization plan.

69. I believe the bankruptcy judge decided to hold a hearing to consider creditors' written objections only to allow TE-TO to modify the Reorganization plan again, contrary to the Bankruptcy Law. At the hearing, the bankruptcy judge concluded that "*the announcement to convene an Assembly of Creditors to review the creditors' remarks and objections against the reorganization plan and to vote on the plan has been published in the Official Gazette of RM no. 80 from 07.05.2018 and in the daily newspapers Nova Makedonija on 08.05.2018 and Vecher on 07.05.2018.*"[165] This is not true, the notice does not schedule a hearing to consider creditors' comments and objections against the Reorganization plan but a hearing to decide on the Proposal and vote on the Reorganization plan.[166] Moreover, the judge's decision to postpone the hearing explicitly specifies that "***The hearing for deciding on the proposal and voting on the reorganization plan of the debtor AD TE-TO Skopje*** *shall be postponed for 14.06.2018. This has been communicated verbally and shall be considered proper service.*"

70. Due to the foregoing, I remain of the opinion that the bankruptcy judge held a hearing to consider creditors' written objections instead of a hearing to decide on the Proposal and vote on the Reorganization Plan in violation of the Bankruptcy Law.

6) <u>Conducting the Bankruptcy Proceeding</u>

71. Mr. Petrov deems that TE-TO's bankruptcy proceeding was conducted in accordance with the Bankruptcy Law.[167] I disagree with Mr. Petrov. As I explained in my first legal opinion and in this opinion, the bankruptcy judge committed a series of serious violations of the Bankruptcy Law from the receipt of TE-TO's Proposal up until the adoption of the Decision approving the Reorganization plan dated 6 June 2018.

72. Mr. Petrov agrees that on 5 June 2018 the bankruptcy judge scheduled a hearing to decide on the Proposal and vote on the Reorganization Plan, but instead of allowing the creditors to vote on accepting the Reorganization plan, she changed her mind and held a hearing to consider creditors' written objections regarding the Reorganization plan.[168] As I explained earlier, this action by the bankruptcy judge is contrary to the Bankruptcy Law. The fact that none of TE-TO's creditors objected to the holding of the hearing for consideration of creditors' written objections regarding the Reorganization plan does not mean that this action of the bankruptcy judge is in accordance with the Bankruptcy Law, as claimed by Mr. Petrov in paragraph 112 of his opinion.

73. A reasonable question arises as to why the bankruptcy judge changed her mind and did not hold the hearing to decide on both the Proposal and Reorganization plan if she was confident that the Reorganization plan, after its (illegal) correction by TE-TO, was in accordance with the Bankruptcy Law. The minutes of the hearing dated 5 June 2018,

[165] Minutes of the hearing of the Basic Civil Court Skopje dated 5 June 2018

[166] Notice on commencement of preliminary proceedings against TE-TO AD Skopje by Skopje Basic Civil Court dated 8 May 2018

[167] Petrov's Opinion, paragraphs 104-123

[168] Petrov's Opinion, paragraph 112

clearly indicate that TE-TO asked the bankruptcy judge to allow changes to the Reorganization plan regarding the grouping of creditors[169] and the bankruptcy judge allowed it by noting that "*some of the remarks are substantial, particularly that the plan needs to be amended concerning the classification of creditors and the manner of their compensation*." In my first legal opinion, I explained why this action is contrary to the Bankruptcy Law.[170] The bankruptcy judge had no right to order any changes to the Reorganization plan regarding the classes of creditors established because it is an issue that a bankruptcy judge must deal with by ex officio duty in the sense of Article 215-v paragraph 3 of the Bankruptcy Law and not upon any objection of creditors. Article 215-v paragraph 3 of the Bankruptcy Law requires the bankruptcy judge to fully examine whether the proposed plan is in accordance with the Bankruptcy Law. Pursuant to Article 215-g paragraph 5 of the Bankruptcy Law,[171] creditors can contest the contents of the reorganization plan, especially the basis and the amount of claims included therein.

74. Mr. Petrov agrees that the changes to the Reorganization Plan were of a substantive nature,[172] but claims that "*the postponement was for the benefit of the creditors, so that they could have a clearer picture of what the final text of the reorganization plan would look like with the included changes accepted by the debtor and could vote on the corrected – consolidated text of the plan at the hearing scheduled for 14.06.2018.*"[173] I disagree with Mr. Petrov. The bankruptcy judge did not postpone the hearing in order to protect creditors' interests but rather, to allow TE-TO to make substantial changes to the Reorganization plan immediately before the vote thereon.

75. In paragraph 118 of his opinion, Mr. Petrov claims that the Reorganization plan of 6 June 2018 is not a new reorganization plan but rather, only a corrected/consolidated text of the Reorganization plan. I disagree with Mr. Petrov considering that the changes are related to the classes of creditors, which entail a range of other substantial changes, also identified by Mr. Petrov in the same paragraph of his opinion, "*This change triggered a number of other consistency changes in the rest of the Reorganization Plan.*"

76. Also, creditors were not given sufficient time to acquaint themselves with the contents of the Reorganization Plan dated 6 June 2018. TE-TO provided the Reorganization plan of 6 June 2018 to both the creditors and the court on 8 June 2018, and the hearing for deciding on both the Proposal and the Reorganization Plan was scheduled for 14 June 2018, or a period for preparation shorter than the eight days prescribed by the LPL. According to the LPL, a hearing must be scheduled such that parties shall have sufficient time for preparation of at least eight days as from summons receipt or

---

[169] Minutes of the hearing of the Basic Civil Court Skopje dated 5 June 2018, p. 11 "…*As it is necessary to prepare a consolidated version which will accurately specify the changes in the reorganization plan after the new classification of creditors, I propose that the Court orders the debtor to prepare a consolidated version as soon as possible which is to be communicated to all creditors.*"

[170] Kostovski's First Opinion, paragraphs 53-65

[171] Bankruptcy Law, Article 215-g paragraph 5, indent 2"*...all interested participants that have remarks on the proposal of the prepared plan for reorganization disputing its content, and especially the basis or the amount of the covered claims, to submit those to the court and the debtor within 15 days from the day of publishing the announcement in "Official Gazette of Republic of Macedonia."*

[172] Petrov's Opinion, paragraph 113

[173] Petrov's Opinion, paragraph 115

postponement of the previous hearing.[174] In court practice, this eight-day period is also applied to situations where new evidence is provided to the parties, so a hearing can be held if such new evidence is submitted at least eight days prior to the day of such a hearing. In this case, the Reorganization plan dated 6 June 2018 was provided to the creditors on 8 June 2018, while the hearing was held on 14 June 2018, that is, six days after the receipt of the Plan. Hence, this action of the bankruptcy judge is contrary to the LPL.

C. TE-TO'S REORGANIZATION PLAN

1) Information on More Favorable Settlement of Creditors

77. Mr. Petrov agrees that a reorganization can be economically more rational than a regular procedure for the liquidation of debtor's business venture if, among other things, "*…may provide for a more favorable settlement of creditors' claims in relation to liquidation*" and "*… If the creditors are convinced that the reorganization procedure holds significantly better prospects for settlement than liquidation*."[175] However, in spite of this, Mr. Petrov deems that TE-TO had no obligation in the Reorganization plan of 6 June 2018 to include a detailed analysis as to why a reorganization was a more favorable option for settling the claims of unsecured creditors of a higher order of payment, compared to asset liquidation, since such obligation is not provided by the Bankruptcy Law.[176] Mr. Petrov is wrong because he does not take into account the National Bankruptcy Standards.[177] The National Bankruptcy Standards are applicable to all reorganization plans submitted within bankruptcy proceedings, including the reorganization plan prepared by the debtor in the pre-bankruptcy reorganization.[178]

78. Under the National Bankruptcy Standards, **a reorganization plan must unambiguously present the possibilities for creditors to be favorably settled in a reorganization procedure, compared to their settlement by liquidation of insolvent debtor's assets, and it must satisfy the requirement that by its application, none of the creditors shall receive less than what they could reasonably expect from the procedure of liquidation of insolvent debtor's assets**.[179] The Reorganization plan of 6 June 2018 must have contained an estimate of the expected amount of money that would be generated by sale of the insolvent debtor's property in the liquidation procedure in order to compare this estimate with the proposal for the settlement of creditors in the reorganization procedure, with "*…the aim of unambiguously showing the likelihood that each group of creditors will, by adopting the Plan, achieve a settlement that is at least equivalent to the settlement that could reasonably be expected in the procedure of insolvent debtor's property liquidation*."[180]

---

[174] LPL, Articles 272 and 108

[175] Petrov's Opinion, paragraph 40

[176] Petrov's Opinion, paragraphs 124-125

[177] Rulebook on Professional Standards for Bankruptcy Proceedings, Appendix No. 5 Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee ("Professional Standard on Reorganization Plan")

[178] Professional Standard on Reorganization Plan, "*Adequate application of this Standard where other persons that are actively legitimized to submit the Plan appear as submitters of the Reorganization Plan*"

[179] Professional Standard on Reorganization Plan, Item 2

[180] Professional Standard on Reorganization Plan, Item 17

79. The Reorganization plan of 6 June 2018 contains neither a presentation of possibilities for a more favourable settlement of unsecured creditors in the reorganization procedure, nor an estimate of the expected amount of money that would be realized by selling TE-TO's property in the liquidation procedure. Instead of such analysis, the Reorganization plan of 6 June 2018 contains speculations that if bankruptcy proceedings were opened for TE-TO, the unsecured creditors would be settled less than 10% due to the claims of creditors with secured claims. In the absence of an estimate of the expected amount of money that would be realized by selling the property of TE-TO, these claims are speculative and unproven. Even more so as the creditors with secured claims had claims (EUR 53.6 million) amounting only to one-third of the accounting value of TE-TO's assets.

80. In this context, I must point out that, in addition to a bankruptcy judge, the interim bankruptcy trustee also has a key role in implementing the National Bankruptcy Standards in practice for the purpose of protecting creditors. Marinko Sazdovski had the obligation to establish to what extent the Reorganization plan of 6 June 2018 was in compliance with the content prescribed by the National Bankruptcy Standards, to inform TE-TO of the shortcomings and to instruct TE-TO to make adequate changes thereto. Had TE-TO refused to introduce such changes, and Marinko Sazdovski established that the Reorganization plan of 6 June 2018 did not protect creditors' interests or interests of any group of creditors, particularly where certain creditors or even all creditors would obviously benefit more from liquidation of the assets liquidation, Marinko Sazdovski was obliged to notify both the creditors and the court prior to the day of the hearing at which the vote was to be taken on the adoption of the Reorganization plan dated 6 June 2018.[181]

81. By reviewing the case files, I conclude that Marinko Sazdovski did not indicate to TE-TO that the Reorganization plan of 6 June 2018 must have contained a detailed analysis as to why reorganization was a more favorable option for settling the claims of unsecured creditors of a higher order of payment, compared to liquidation of the assets and the estimate of the expected amount of money that would be realized by selling the insolvent debtor's property in the liquidation procedure, in order to compare this estimate with the proposal for settlement of creditors in the reorganization procedure.

82. Due to the above, I disagree with Mr. Petrov and I remain of the opinion that the Reorganization plan dated 6 June 2018 was in contradiction with the Bankruptcy Law and the National Bankruptcy Standards.

2) <u>Analysis for Managing Future Risks</u>

83. Mr. Petrov again does not take into account the National Bankruptcy Standards, which stipulate that if a Reorganization Plan envisages insolvent debtor's operation continuation, then such plan must contain a detailed explanation of the manner in which the causes leading to bankruptcy will be removed during the implementation of the reorganization.[182] In other words, the Reorganization plan must have contained TE-TO's plan on how TE-TO would deal with the reasons that led it to its bankruptcy in the course of implementing the Reorganization Plan dated 6 June 2018.

[181] Professional Standard on Reorganization Plan, "*Adequate application of this Standard where other persons that are actively legitimized to submit the Plan appear as submitters of the Reorganization Plan*"
[182] Professional Standard on Reorganization Plan, Item 2

84. In this specific case, in the Reorganization plan of 6 June 2018 TE-TO claimed that the reasons for opening the bankruptcy proceedings were the claims based on loans granted by its majority shareholder (Bitar Holdings) and minority shareholder (Toplifikacija)[183] during the period of the construction of the plant and TE-TO envisaged that the funds for the implementation of the plan would be provided from its ongoing operations, while if necessary, TE-TO would procure additional funds from loans granted by other companies and/or loans from banks, as well as funds in the form of investments.[184] This general wording contradicts the National Bankruptcy Standards, according to which a reorganization plan may not be conditioned by any future events, given that creditors can hardly assess the likelihood of their successful settlement by implementing such a reorganization plan, **and where a reorganization plan foresees any additional financing, it must contain information on the lender, the loan amount and other financing conditions, including the conditions for repayment of such loan**.[185]

85. What is of particular concern is that TE-TO has introduced the above general wording regarding the possibility of additional fund provision upon request by the bankruptcy judge.[186] The reason why the National Bankruptcy Standards provide an express obligation that a reorganization plan must contain details of any planned borrowing by the debtor is with the aim of not allowing the debtor, through uncontrolled borrowing, to jeopardize the implementation of the reorganization plan and put itself in a situation where bankruptcy proceedings would be opened against it once again. By approving the Reorganization Plan dated 6 June 2018, the bankruptcy judge enabled TE-TO, in addition to the existing loans taken from its secured creditors, to take credits and loans from other banks and companies without any restrictions.

3) Negotiations between TE-TO and Its Creditors

86. I disagree with Mr. Petrov's statement that the Reorganization plan of 6 June 2018 contains information on the preparation procedure, including information on sent notifications, availability of information to creditors and the course of negotiations in accordance with Article 215-b paragraph (2) indent 4 of the Bankruptcy Law.[187] On the contrary, from the content of the e-mail correspondence and the Minutes of meetings I have reviewed, I find that no information was made available to TE-TO's creditors about the Reorganization plan of 6 June 2018, nor were any negotiations conducted. TE-TO submitted its Reorganization plan dated 6 June 2018 to the Court on 8 June 2018, or just six days prior to the hearing for deciding on both the Proposal and the Reorganization plan of 6 June 2018. Based on the inspection of the case files, I saw that during that period, no notices were sent to the creditors, nor were any negotiations conducted.

87. The e-mail correspondence with Landesbank Berlin AG, Bitar Holdings Limited and Triglav Osiguruvanje AD Skopje, as well as the minutes of meetings with TE-TO's subsidiary TE-TO Gas Trejd DOOEL Skopje, affiliated companies Balkan Energy Security DOOEL Skopje, Balkan Energy Group AD Skopje and the Notary Public Snežana Sardžovska and Polenak Law Firm in relation to the first Reorganization

[183] Reorganization plan of TE-TO AD Skopje dated 6 June 2018, p. 17-18

[184] Reorganization plan of TE-TO AD Skopje dated 6 June 2018, p. 26

[185] Professional Standard on Reorganization Plan, paragraph 4

[186] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 1

[187] Petrov's Opinion, paragraph 130

plan[188] are not sufficient proof of availability of information to all creditors and the course of negotiations regarding the Reorganization Plan dated 6 June 2018. After all, this can be seen from the fact, just like Mr. Petrov also notes, that only Bitar Holdings, TE-TO's majority holder and TE-TO's affiliated companies gave statements for acceptance of the Reorganization Plan dated 6 June 2018 in the class of creditors whose 90% of claims and all interest shall be written off.

4) <u>Treatment of GAMA's Claim</u>

88. Mr. Petrov believes that the bankruptcy judge did not act in violation of the Bankruptcy Law when approving the Reorganization Plan dated 6 June 2018, which also included GAMA's claim against TE-TO. I disagree with Mr. Petrov.

89. Mr. Petrov refers to Article 215-d paragraph 1 of the Bankruptcy Law, according to which, for the purposes of voting on a Reorganization Plan, it shall be deemed that any insolvent debtor's liabilities incurred prior to the submission of a Reorganization Plan shall become due on the day of the hearing for voting on such plan, and Article 144 of the Bankruptcy Law according to which Bankruptcy creditors can settle their claims against the debtor only in bankruptcy proceedings. Mr. Petrov overlooks the fact that these provisions of the Bankruptcy Law refer to any **undisputed claims by bankruptcy creditors that are not due on the day of the hearing for voting on the reorganization plan,** rather than any due claims of creditors which are subject to court disputes. GAMA's claim became due on 31 March 2012 and was contested by TE-TO, which led to litigation before the Basic Civil Court Skopje. Therefore, the provisions of Article 215-d paragraph 1 and Article 144 of the Bankruptcy Law are not applicable to GAMA's claim.

90. Since the court dispute between GAMA and TE-TO was pending, TE-TO had to reserve funds for the payment of GAMA's claim (principal debt and statutory default interest) in its Reorganization plan dated 6 June 2018 in accordance with Article 215-b paragraph 1 indent 2 item 3 of the Bankruptcy Law and continue its litigation. In 2013, one of the reasons for the introduction of pre-bankruptcy reorganization was precisely the lengthy duration of court disputes regarding claims in bankruptcy proceedings since "*...a relatively large number of litigation proceedings are initiated for the collection of the debtor's claims, with relatively long-lasting refutations of legal actions being very common*", so the expectation was that pre-bankruptcy reorganization "*...would relatively quickly end the bankruptcy proceedings, since legal disputes would continue to be conducted by the reorganized debtor and the bankruptcy proceedings would be closed*." For these reasons, the Bankruptcy Law stipulates that the substantive part of the reorganization part must, amongst other things, contain the amount of funds reserved for any creditors whose claims are disputed.[189]

91. Mr. Petrov claims that even though GAMA's claim against TE-TO was disputed and litigation proceedings were pending since TE-TO had recorded the claim in its accounting records, it was justified to include it in the Reorganization Plan dated 6 June 2018. I underline that TE-TO's accounting records had no influence whatsoever on the fact that between GAMA and TE-TO, there was an ongoing court dispute regarding GAMA's claim and that, subsequently, GAMA's claim had to be listed as a disputed claim in the Reorganization Plan dated 6 June 2018.

[188] Reply to the letter by TE-TO AD Skopje dated 2 May 2018

[189] Bankruptcy Law, Article 215-b paragraph 1 item 2 indent 3

92. In the Reorganization plan, TE-TO listed GAMA in the second class of creditors with a claim of 307,453,500 denars (5 million euros)[190] but stated that there was a court process with GAMA regarding this claim.[191] In her order to correct both the Proposal and the Reorganization Plan, the bankruptcy judge requested TE-TO to state whether GAMA's claim was contested[192], and TE-TO stated that the claim was not contested but did not provide any evidence that the litigation was terminated.[193] In circumstances where the bankruptcy judge was aware that there was a dispute between TE-TO and GAMA regarding the claim that was included in the Reorganization plan of 6 June 2018, she was obliged to request evidence from TE-TO that the legal dispute had been terminated.

93. Furthermore, on the one hand, the bankruptcy judge approved the inclusion and write-off of 90% of GAMA's claim (without acknowledging the statutory default interest), and on the other hand, contradictorily, the bankruptcy judge conditioned the payment of such claim on the effective resolution of the court proceedings between GAMA and TE-TO. In the decision approving the Reorganization plan of 6 June 2018, the bankruptcy judge stated that due to the pending court proceedings between GAMA and TE-TO, the status of GAMA's claim was "uncertain", and GAMA's claim would be settled once this court proceedings were resolved effectively, so if the time for settlement of this claims comes and the court proceedings are not resolved, TE-TO would be required to reserve funds for the settlement of GAMA's claim and continue with the implementation of the Plan, "*In terms of the creditor's claim, a court proceeding is in progress* ***and until the lawsuit is over, its status is uncertain and indisputable according to the law the creditors from the same payment lines are settled the same but this claim shall be settled when the procedure is final****, if the period for payment of these claims comes and the court procedure is not completed, the debtor in accordance with the law has an obligation to keep a reservation and to continue with the realization of the plan and in the end the debtor's shareholders are settled*. [194]

94. By the aforementioned conditioning of the settlement of GAMA's claim with the effective resolution of the court dispute, the bankruptcy judge acted contrary to Article 239 of the Bankruptcy Law, according to which any final court decision approving a reorganization plan constitutes an enforceable deed, and upon the effectiveness thereof, the provisions of the substantive part of the plan shall become binding for all participants.

95. Due to the above, I deem that the bankruptcy judge acted contrary to the Bankruptcy Law when approving the Reorganization Plan dated 6 June 2018, which included GAMA's claim that was subject of litigation and whose payment was conditioned on the effective resolution of the court dispute between GAMA and TE-TO.

D. TREATMENT OF CLAIMS OF TE-TO'S CREDITORS

[190] Reorganization Plan by TE-TO AD Skopje dated 4 April 2018, p. 16

[191] Reorganization plan by TE-TO AD Skopje dated 4 April 2018, p. 34

[192] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 3

[193] Reply to the letter by TE-TO AD Skopje dated 2 May 2018, p. 6

[194] Skopje Basic Civil Court's Decision Adopting the Reorganization Plan dated 14 June 2018, p. 32

1) Formation of Creditor Classes

96. Mr. Petrov deems that the classification of creditors in the Reorganization plan of 6 June 2018 is in accordance with the Bankruptcy Law,[195] amongst other things, because "*…the LB does not determine the criteria on the basis of which the Debtor should carry out the differentiation of creditors by classes in the preliminary bankruptcy reorganization.*"[196] I disagree that the classification of creditors in the Reorganization plan of 6 June 2018 was in accordance with the Bankruptcy Law for the reasons explained below.

97. Mr. Petrov states that my comment on Article 215-b of the Bankruptcy Law where I say that the formation of classes is possible rather than mandatory, contradicts my position in my first opinion.[197] Mr. Petrov misinterprets my comment. The formation of classes in pre-bankruptcy reorganization is not mandatory in a situation where the debtor's creditors have claims of the same priority, and the debtor has no secured creditors or identical measures are envisaged to implement the Plan for both secured and unsecured creditors. In other words, in a situation where the debtor's creditors belong to the same payment category, and there are no secured creditors (or if there are, the implementation measures also apply to them), the formation of separate classes of creditors is not mandatory. However, in a situation where debtor's creditors belong to different payment categories or different treatment is foreseen for secured creditors compared to unsecured creditors, then classes of creditors must be formed in accordance with the rules on the subordination of claims, as per the Bankruptcy Law.[198]

98. The lawmaker gave the debtor the right to propose the classes of creditors that shall vote on the reorganization plan. However, the debtor has no unlimited discretion in defining the classes of creditors and must define such classes by applying criteria that are in accordance with the Bankruptcy Law in order to protect creditors. **Otherwise, the objective of the pre-bankruptcy reorganization cannot be achieved, that is, settlement of debtor's creditors which is more favorable than the liquidation of assets in bankruptcy proceedings**. As I mentioned earlier, the Ministry of Economy, in the Draft Law on Insolvency, explicitly defines the goal of pre-bankruptcy reorganization as "*restructuring the debtor's company, which will enable: 1) existing shareholders of the debtor to retain a share in the share capital, corresponding to the value of the remaining assets they would have received if bankruptcy proceedings had been opened; 2) more favorable conditions for creditors for the settlement of their claims, compared to what they would receive if bankruptcy proceedings were opened considering the priority of claims; and 3) the continuation of debtor's venture*" [199]

99. The bankruptcy judge must examine a reorganization plan from a standpoint of, amongst other things, whether a reorganization is more favorable than debtor's liquidation of assets and if the classes of creditors were properly formed, and to reject it ex officio.[200] Mr. Petrov is wrong when he claims that Article 215-b paragraph 1 item 2 indent 3 of the Bankruptcy Law offers the ground on which a debtor shall divide its

[195] Petrov's Opinion, paragraphs 139-149
[196] Petrov's Opinion, paragraph 143
[197] Petrov's Opinion, paragraph 142
[198] Bankruptcy Law, Articles 116-118
[199] Draft Law on Insolvency, Article 3
[200] Bankruptcy Law, Article 215-v paragraph 3 indent 1

creditors by classes.[201] This Article refers to **the amount of money or assets that shall serve to either fully or partially settle any classes of creditors** proposed in the reorganization plan (among which there may also be secured creditors) and the funds to be reserved for any creditors' claims contested by the debtor. If Mr. Petrov's interpretation were taken as correct, then in that case, a debtor could not **propose classes of creditors and criteria for their formation** but would have to classify all creditors into three classes: 1) secured creditors; 2) unsecured creditors; and 3) creditors with contested claims. In such case, Mr. Petrov would have to agree that the classes of creditors in the Reorganization plan of 6 June 2018 were in violation of the Bankruptcy Law because GAMA was not classified in a separate class of creditors with contested claims.

100. Mr. Petrov agrees that the claims of TE-TO's shareholders are of a lower payment rank in accordance with the rules on the subordination of claims as in the Bankruptcy Law. However, he deems that by excluding the application of Article 220, the Bankruptcy Law implicitly excluded the application of Article 118 regarding the formation of creditor classes in the Reorganization Plan.[202] I disagree with Mr. Petrov for the reasons I stated above and for the reasons that follow.

101. The bankruptcy judge, in her letter to TE-TO where she requested the adjustment of the Reorganization plan, explicitly requested TE-TO to "…*clearly specify that the second class of claims shall include any claims of a lower payment order and such claims shall be settled last*."[203] and TE-TO agreed thereto and stated in its letter that "*...second-class creditors shall include any creditors of a payment order lower than first- and third-class creditors, that is, second-class creditors shall be settled last*."[204] Also, in her decision approving the Reorganization Plan dated 6 June 2018, the bankruptcy judge quoted Article 118 of the Bankruptcy Law[205] and refers thereto in relation to Toplifikacija's claim, "*this creditor is debtor's shareholder and founds its claim based on a loan extended to the debtor and it is a claim as per the legal provisions stipulated in Article 118 paragraph 1 item 5 of the Bankruptcy Law, i.e., a claim of a second order of payment.*" In addition, the bankruptcy judge confirms that GAMA's claim is of first order of payment.[206]

2) <u>Deadline for Implementation of the Reorganization Plan</u>

102. Mr. Petrov deems that the 12-year period for the implementation of the Reorganization Plan dated 6 June 2018 and the settlement of claims of TE-TO's unsecured creditors (including GAMA) is in accordance with the Bankruptcy Law because GAMA's claim can be listed under "other claims" for which the "maturity period" and also "other conditions" can be changed, thus meeting the requirements for the application of the

[201] Petrov's Opinion, paragraphs 145-146

[202] Petrov's Opinion, paragraphs 150-159

[203] Request for correcting the proposal for opening of bankruptcy proceedings by the Basic Civil Court Skopje, dated 30 April 2018, p. 2 Item 9

[204] Reply to the letter by TE-TO AD Skopje dated 2 May 2018, p. 4

[205] Decision for adoption of the reorganization plan by the Basic Civil Court Skopje dated 14 June 2018, p. 27 "…*pursuant to Article 118 of the Bankruptcy Law, the claims from lower payment lines from item 5 of the stated Article are the claims for loan repayment or other appropriate request that reimburse the property of the partner or shareholder*."

[206] Decision for adoption of the reorganization plan by the Basic Civil Court Skopje dated 14 June 2018, p. 21

exception as in Article 215-b (1) 2) indent 13 of the Bankruptcy Law regarding the period of implementation of the Reorganization Plan dated 6 June 2018 longer than 5 years.[207]

103. Mr. Petrov incorrectly interprets Article 215-b (1) 2) indent 13 of the Bankruptcy Law regarding the circumstances under which an exception to the absolute deadline of 5 years for the implementation of a Reorganization Plan may be made, specifically concerning the deferral of payment of claims to unsecured creditors. From the content of Article 215-b (1) 2) indent 13 of the Bankruptcy Law, it clearly follows that the exception regarding the absolute 5-year deadline refers to "…*change of maturity dates, interest rates or other conditions of the loan or other security or collateral,*" that is, **creditors' claims based on long-term loans or credits taken prior to pre-bankruptcy reorganization and other claims (e.g., expenses) arising in connection with such loans, credits, or security instruments thereto,** and "…*he repayment period of the loan or the loan taken during the duration of the preliminary procedure or in accordance with the plan for reorganization ,*" namely claims based on long-term credits taken during the preliminary procedure or in accordance with the Reorganization Plan.

104. Mr. Petrov misinterprets the term "any other claim" which refers to claims related to long-term loans or credits taken by the debtor before the pre-bankruptcy reorganization. Also, Mr. Petrov wrongly interprets the exception as a rule. According to Mr. Petrov's interpretation, the exception would cover the claims of all unsecured creditors of TE-TO, so the absolute deadline of 5 years would be meaningless. The deadline for payment of claims to the debtor's unsecured creditors of a higher payment rank may not exceed 5 years, otherwise, the objective of reorganization, which aims to provide creditors with a more favorable settlement than they would receive through the liquidation of debtor's assets, would not be achieved. As I mentioned earlier, the Ministry of Economy proposes an explicit provision in the Draft Law on Insolvency, according to which, where a reorganization plan envisages a reduction or deferral of payment for unsecured claims, the same percentage of reduction and the same deferred payment period must apply to all claims, where payment period for unsecured claims cannot exceed five years from the date of approval of the reorganization plan, unless a creditor explicitly agrees to a higher reduction percentage and/or a longer payment period for their claims.[208]

E. OUTCOME OF TE-TO'S BANKRUPTCY PROCEEDINGS

105. I agree with Mr. Petrov's observation that if the Reorganization plan of 6 June 2018 had not been approved, bankruptcy proceedings would have been initiated against TE-TO based on the proposal for opening bankruptcy proceedings submitted by Toplifikacija on 30 May 2018.[209] However, I disagree with Mr. Petrov's observation that GAMA would not have received more than 10% of its claim against TE-TO through the liquidation of TE-TO's enterprise compared to the Reorganization plan of 6 June 2018.[210] On the contrary, I believe that GAMA and other unsecured creditors of

[207] Petrov's Opinion, paragraph 163

[208] Draft Law on Insolvency, Article 47 paragraphs 4 and 5

[209] Petrov's Opinion, paragraphs 165-169

[210] Petrov's Opinion, paragraphs 170-175

a higher payment rank would be more favorably settled through the liquidation of TE-TO's enterprise. My opinion, as explained below, is based on the fact that GAMA's claim is of a higher payment rank than the claims of TE-TO's shareholders in accordance with the rules of subordination of claims under the Bankruptcy Law.[211]

106. **First**, Mr. Petrov's opinion that GAMA would not have been more favorably satisfied through the liquidation of TE-TO's assets is speculative and unsupported because Mr. Petrov lacks data regarding the market value of TE-TO's assets in 2018. This is not surprising since, as I mentioned earlier, the Reorganization plan of 6 June 2018 does not include an estimate of the expected amount of money that would be generated through the sale of TE-TO's assets in the liquidation procedure in order to compare such an estimate with the settlement proposed to creditors in the pre-bankruptcy reorganization, thus showing the unambiguous likelihood that by adopting the Reorganization plan of 6 June 2018 each group of creditors will achieve a settlement that is at least equivalent to what could reasonably be expected in TE-TO's asset liquidation procedure, in breach of the National Bankruptcy Standards.[212]

107. **Second**, regardless of whether secured creditors would decide to be settled from TE-TO's assets through a bankruptcy proceeding or an out-of-bankruptcy enforcement procedure, the first step would be to determine the market value of TE-TO's assets. The market value is determined based on a report on valuation of the assets prepared by an authorized valuator in accordance with international valuation standards which contains a description of the valuated assets and the method by which the valuation was performed, including the evidence of debtor's ownership over such assets.[213] According to the information from the Reorganization Plan dated 6 June 2018, TE-TO's cogeneration power plant is a functional unit that cannot be divided into parts[214] and it was in excellent technological readiness.[215] Consequently, the valuation of the market value of TE-TO's assets would refer to the plant as a functional unit. Mr. Petrov overlooks the fact that the object of sale would be TE-TO's plant and not TE-TO, so he mistakenly asserts that TE-TO's goodwill would have any influence on the value of such plant.[216]

108. **Third**, I understand that TE-TO's plant is based on modern technology and that it is a strategic facility for the country and is a significant factor of stability in the energy system as it has a large installed capacity with an exceptionally short start-up time and the ability to adjust power output rapidly, which greatly assists MEPSO (the electricity transmission system operator) in regulating the power system and significantly reducing losses therein.[217] I also understand that TE-TO's plant has the potential to

---

[211] Bankruptcy Law, Articles 116-118

[212] Professional Standard on Reorganization Plan, Item 17

[213] Bankruptcy Law, Article 82 paragraph 4

[214] Reorganization Plan by TE-TO AD Skopje dated 4 April 2018, p. 18

[215] Consolidated text of the Reorganization Plan of TE-TO AD Skopje dated 6 June 2018, p. 10 "…*the business activity of TE-TO AD started to show positive financial results and the plant is in excellent technical condition...*" and p. 57 "*...the company's operations are on a cost-effective level, without taking in consideration the violation of the subordination between the creditors-shareholders in relation to the banks and their request for early repayment of loans given as investments for the construction of the plant.*"

[216] Petrov's Opinion, paragraph 174

[217] Report on Significance of TE-TO AD Skopje for the Republic of North Macedonia from Economy, Energy, and Environment Perspective, p. 3 and 4

generate 35% of the total electricity production and 60% of the total heat energy production in the country.[218] I also understand that TE-TO's plant has been the largest natural gas consumer in the country since 2012, thus playing a key role in the Macedonian gas pipeline system and the natural gas market.[219] Therefore, I disagree with Mr. Petrov that in the case of TE-TO's liquidation, there would be no interested buyers for the plant.[220] On the contrary, it is not logical to have no potential buyers for "*a strategic facility for the country and a significant factor of stability in the energy system of North Macedonia*" with immense potential for increasing its market share in the market of electricity and heat energy production and natural gas trade.

109. **Fourth**, Had bankruptcy proceedings been opened against TE-TO, GAMA would have had the right to be settled for its claim in the amount of five million euros in denar equivalent of 307,453,500 denars, including statutory default interest accruing as from the due date of the claim on 1 April 2012 to the date of opening the bankruptcy proceedings against TE-TO.[221] The statutory default interest on GAMA's claim as of 1 March 2018 was 2,958,435 euros in denar equivalent of 181,943,752 denars.[222] Consequently, the total claim of GAMA against TE-TO in a regular bankruptcy proceeding would have amounted to 7,958,435 euros in denar equivalent of 489,397,252 denars, and not only 307,453,500 denars with no recognized statutory default interest, as was foreseen in the Reorganization plan of 6 June 2018 contrary to the Bankruptcy Law.

110. **Fifth**, Mr. Petrov agrees that the claims of TE-TO's shareholders based on loans include claims of a lower payment rank and can be settled only after the claims of TE-TO's creditors of a higher payment rank (i.e., TE-TO's unsecured creditors including GAMA) have been settled in full and that the claims of the same payment order shall be settled in proportion to the amount of such claims.[223] Hence, after the settlement of TE-TO's secured creditors, the order of settlement of the claims of TE-TO's unsecured creditors and the percentage of their settlement in the bankruptcy proceedings against TE-TO would be as is presented in the table below:

	Creditor	Principal claim (EUR)	Interest (EUR)	Total (EUR)	Percentual share in payment rank
1.	**Claims of a higher payment rank (unsecured creditors)**				
1.	Kardicor Investments LTD	8,398,247	236,799	8,635,046	39.19%
2.	GAMA	4,999,243	2,958,434	7,957,677	36.11%
3.	Sintez Green Energy	3,885,186	30,931	3,916,117	17.77%

[218] Report on Significance of TE-TO AD Skopje for the Republic of North Macedonia from Economy, Energy, and Environment Perspective, p. 4 and 5

[219] Report on Significance of TE-TO AD Skopje for the Republic of North Macedonia from Economy, Energy, and Environment Perspective, p. 5 and 6

[220] Petrov's Opinion, paragraph 174

[221] Bankruptcy Law, Article 136 paragraph 3 "*As of the day of opening bankruptcy proceedings, any interest on unsecured claims shall cease to accrue.*"

[222] Objections and remarks on the Reorganization Plan by GAMA dated 22 May 2018, p. 2

[223] Kostovski's First Opinion, Paragraph 78, Petrov's Opinion, paragraphs 151-155

	Creditor	Principal claim (EUR)	Interest (EUR)	Total (EUR)	Percentual share in payment rank
4.	Other unsecured creditors [224]	1,523,787	0	1,523,787	6.91%
		18,806,463	3,226,164	22,032,627	100%
2.	**Claims of a lower payment rank (shareholders)**				
1.	Bitar Holdings Limited	107,975,583	4,122,255	112,097,838	75.25%
2.	Toplifikacija AD Skopje	22,692,996	5,333,691	28,026,687	18.81%
3.	Project Management Consulting	8,577,602	248,775	8,826,377	5.92%
		139,246,181	9,704,721	148,950,902	100%

111. As of 1 March 2018, the accounting value of TE-TO's assets amounted to 10,742,489,910 denars (approximately 174 million euros) (the "**Accounting Value**") and the total claims of TE-TO's secured creditors amounted to 3,299,261,285 denars (approximately 53.5 million euros) (the "**Secured Claims**"). In the absence of any information on the market value of TE-TO's plant in 2018, the calculations of the expected monetary amount in any liquidation of TE-TO's property in bankruptcy proceedings or enforcement proceedings in the scenarios given below are based on the assumption that the market value of TE-TO was equal to the Accounting Value thereof (although I am convinced that the market value of this property is higher).

Scenario 1 – Settlement of creditors upon liquidation of TE-TO's plant for 60% of the Accounting Value

	0.60*Accounting Value – Secured Claims		51,158,254 EUR	
	Creditor	**Percentage share in payment rank**	**Settlement amount (EUR)**	**% of settlement**
1.	**Claims of a higher payment rank (unsecured Creditors)**			
1.	Kardicor Investments LTD	39.19%	8,472,445	100%
2.	GAMA	36.11%	7,957,678	100%
3.	Sintez Green Energy	17.77%	3,916,117	100%
4.	Other unsecured creditors	6.91%	1,523,787	100%
		100%	21,870,027	100%
	Remaining amount for settlement of claims of a lower payment order (51,158,254 EUR – 21,870,027 EUR)		**29,288,227 EUR**	

[224] The claims of other creditors do not include the claim of the Public Revenue Office in the amount of MKD 16,011,762, cca 260,353 euros, which was settled by TE-TO during the pre-bankruptcy reorganization

	0.60*Accounting Value – Secured Claims		51,158,254 EUR	
	Creditor	**Percentage share in payment rank**	**Settlement amount (EUR)**	**% of settlement**
2.	**Claims of a lower payment rank (shareholders)**			
1.	Bitar Holdings Limited	75.25%	21,917,031	19.55%
2.	Toplifikacija AD Skopje	18.81%	5,478,529	19.55%
3.	Project Management Consulting	5.92%	1,724,236	19.55%
		100%	29,119,796	19.55%

Scenario 2 – Settlement of creditors upon liquidation of TE-TO's plant for 50% of the Accounting Value

	0.50*Accounting Value – Secured Claims		33,690,791 EUR	
	Creditor	**Percentage share in payment order**	**Settlement amount (EUR)**	**% of settlement**
1.	**Claims of a higher payment order (unsecured Creditors)**			
1.	Kardicor Investments LTD	39.19%	8,635,046	100%
2.	GAMA	36.11%	7,957,678	100%
3.	Sintez Green Energy	17.77%	3,916,117	100%
4.	Other unsecured creditors	6.91%	1,523,787	100%
		100%	22,032,628	100%
	Remaining amount for settlement of claims of a lower payment order (33,690,791 EUR – 22,032,628 EUR)		**11,658,163 EUR**	
2.	**Claims of a lower payment order (Shareholders)**			
1.	Bitar Holdings Limited	75.25%	8,772,765	7.81%
2.	Toplifikacija AD Skopje	18.81%	2,192,899	7.81%
3.	Project Management Consulting	5.92%	690,163	7.81%
		100%	11,655,827	7.81%

112. As evident from the calculations above, in case of the sale of TE-TO's plant for either 60% or 50% of the Accounting Value thereof, unsecured Creditors of a higher payment order would be settled in full while the unsecured creditors of a lower payment order would be settled partially. Below are some calculations regarding the settlement of unsecured creditors in even more pessimistic scenarios where the sale of TE-TO's plant would be realized for less than 50% of the Accounting Value thereof.

Scenario 3 – Settlement of creditors upon liquidation of TE-TO's plant for 40% of the Accounting Value

	0.40*Accounting Value – Secured Claims		16,223,328 EUR	
	Creditor	**Percentage share in payment order**	**Settlement amount (EUR)**	**% of settlement**
1. Claims of a higher payment order (unsecured Creditors)				
1.	Kardicor Investments LTD	39.19%	6,357,922	73%
2.	GAMA	36.11%	5,858,243	73%
3.	Sintez Green Energy	17.77%	2,882,885	73%
4.	Other unsecured creditors	6.91%	1,121,031	73%
		100%	16,220,081	73%
	Remaining amount for settlement of claims of a lower payment order		**0**	
2. Claims of a lower payment order (shareholders)				
1.	Bitar Holdings Limited	75.25%	0	0%
2.	Toplifikacija AD Skopje	18.81%	0	0%
3.	Project Management Consulting	5.92%	0	0%
		100%	0	0%

Scenario 4 – Settlement of creditors upon liquidation of TE-TO's plant for 33% of the Accounting Value

	0.33*Accounting Value – Secured Claims		3,996,103 EUR	
	Creditor	**Total claim (principal debt and interest)**	**Settlement amount**	**% of settlement**
1.	Kardicor Investments LTD	39.19%	1,566,073	18%
2.	GAMA	36.11%	1,442,993	18%
3.	Sintez Green Energy	17.77%	710,107	18%
4.	Other unsecured creditors	6.91%	276,130	18%
		100%	3,995,303	18%
	Remaining amount for settlement of claims of a lower payment order		**0**	
1.	Bitar Holdings Limited	75.25%	0	0%
2.	Toplifikacija AD Skopje	18.81%	0	0%
3.	Project Management Consulting	5.92%	0	0%
		100%	0	0%

113. As evident from the calculations above, in case of the sale of TE-TO's plant for either 40% or 33% of the Accounting Value thereof, unsecured Creditors of a higher payment order would be partially settled, but at a higher percentage than what was envisaged in

the Reorganization Plan dated 6 June 2018, while unsecured creditors of a lower payment order would not be settled at all.

114. Due to the above, I remain of the opinion that it is realistic to expect that the creditors of a higher payment order, including GAMA, would be settled at a higher percentage level in TE-TO's bankruptcy proceedings compared to the settlement as per the Reorganization Plan dated 6 June 2018.

3. CONCLUSION

115. Due to the reasons stated above, I remain of the opinion that the pre-bankruptcy reorganization of TE-TO was conducted in violation of both the Bankruptcy Law and the National Bankruptcy Standards.

Dejan Kostovski
/signature illegible/

Skopje, 4 August 2023