GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAHHÜT A. Ş. (Turkey)

Claimant

v

REPUBLIC OF NORTH MACEDONIA

Respondent

(ICC Case No. 26696/HBH)

LEGAL OPINION OF ACO PETROV

4 April 2023

REORGANIZATION PLAN

IN PRELIMINARY BANKRUPTCY PROCEEDINGS

1. INTRODUCTION

1. I submit this Expert Opinion to address certain issues of Macedonian law at the request of counsel for the Republic of North Macedonia (the "**Republic**"), White & Case LLP, in connection with the arbitration brought by GAMA Güç Sistemleri Mühendislik ve Taahhüt A.Ş. and others against the Republic under the rules of the International Chamber of Commerce..

2. The six principal issues that I have been asked to address are the following:

   - how the preliminary reorganization procedure undertaken by TE-TO fits within the broader Macedonian bankruptcy scheme;
   - whether TE-TO TE fulfilled the conditions for commencing preliminary reorganization;
   - whether TE-TO's preliminary reorganization proceedings were conducted consistently with Macedonian law;
   - whether TE-TO's reorganization plan met the requirements of the Bankruptcy Law; whether the claims of TE-TO's creditors were treated in accordance with Macedonian law; and
   - the expected outcome if TE-TO had undergone a regular bankruptcy procedure.

3. In doing so, I was asked to take into account and respond to the Opinion of Dejan Kostovski (the "**Kostovski Opinion**"). In this regard, I note that the fact that I may not specifically comment on certain items in the Kostovski Opinion should not be taken as agreement on my part.

4. I conclude that the proceedings regarding TE-TO were conducted substantially in compliance with the text and spirit of Macedonian law. It is important to note that these proceedings were commenced and conducted under legal provisions (regarding so-called preliminary bankruptcy reorganizations) that have been very rarely used and applied since they were introduced in Macedonian law in 2013 such that there was (and remain) little practice and authority to guide the courts.

5. I confirm that the opinions expressed in this Expert Opinion are my own and the result of my independent investigation and analysis. I also understand that the Expert Opinion will be submitted as expert evidence in the arbitration and that I have a duty to the Tribunal to be truthful and accurate in my testimony.

EDUCATIONAL AND PROFESSIONAL BACKGROUND

6. As reflected in my *curriculum vitae*, which is enclosed as Appendix A in this Expert Opinion,, I currently work as a licensed bankruptcy trustee and a member of the Chamber of Bankruptcy Trustees of the Republic of North Macedonia, as well as I am the founder of a consulting

company PEKONS DOOEL Skopje, which works with consulting in the field of bankruptcy law and bankruptcy procedures.

7. I was the President of the Chamber of Bankruptcy Trustees from 2007 to 2022.

8. I started working as a bankruptcy trustee in 1996, focusing on bankruptcies of large companies with various activities (including agriculture, construction, television, food industry, pharmaceutical industry, metallurgy and others). I was appointed as bankruptcy trustee in more than 180 bankruptcy proceedings in which one of them was in a bankruptcy proceeding with a Plan for reorganization.

9. During the introduction of the professional exam for authorized bankruptcy trustee, I was part of the first six bankruptcy trustees of the Republic of North Macedonia who acquired the title of authorized bankruptcy trustee. Consequently, in 2002 I established the consulting company PEKONS DOOEL Skopje, which currently employs three bankruptcy trustees, focusing exclusively on the field of bankruptcy law.

10. As a bankruptcy trustee, I have participated in a large number of activities related to bankruptcies and bankruptcy proceedings, including:

- Lecturer in several workshops organized by the Chamber of Licensed Bankruptcy Trustees, the Academy of Judges and Public Prosecutors, the Bar Association, the Chamber of Experts and others;
- Lecturer of postgraduate studies in business law at the University “Ss. Cyril and Methoduis” Faculty Iustinianus Primus Skopje;
- Author of several papers related to bankruptcy in several legal journals;
- Member of a working group regarding the latest law-making activities for the bankruptcy law in the Republic of North Macedonia;
- Member of a working group established by the Government of the Republic of North Macedonia to propose measures to improve the rank of the Republic of North Macedonia in the Doing Business report, in relation to bankruptcy legislation.

2. BANKRUPTCY PROCEEDINGS UNDER MACEDONIAN LAW

11. In this section, I give an overview of bankruptcy proceedings under Macedonian law and describe the various types of bankruptcy proceedings, including the so-called "preliminary bankruptcy reorganization" procedure that was at issue in TE-TO's case.

A. Objectives and framework of the bankruptcy legislation

12. In the Republic of North Macedonia, bankruptcy and the bankruptcy proceedings are regulated by the Law on Bankruptcy (hereinafter: the LB).[1] The LB regulates the objectives and conditions for the opening of bankruptcy proceedings; the organs of the bankruptcy proceedings; the management and disposal of the property included in the bankruptcy estate; the settlement of creditors' claims in the bankruptcy proceedings; the legal consequences of opening the bankruptcy proceedings; the reorganization plan; the personal management; the release from other liabilities; the special types of bankruptcy proceedings for merchants; bankruptcy proceedings with a foreign element and other issues related to bankruptcy.[2]

13. Bankruptcy proceedings are a special non-litigious civil procedure. As a result, for all matters for which there is no special provision in the LB, the provisions of the Law on Civil Litigation Procedure (hereinafter: the LCLP),[3] which is a general regulation for all civil court proceedings in the Republic of North Macedonia, are applied to the bankruptcy proceedings.[4]

B. Conditions for opening bankruptcy proceedings

14. Article 5 (1) of the LB regulates the conditions for opening bankruptcy proceedings. It is foreseen that in order to open bankruptcy proceedings against a particular debtor, at least one of two alternative conditions must be met at the time when the proposal for opening bankruptcy proceedings is submitted, namely:

– that the bankrupt debtor is unable to make payments or

– that the bankrupt debtor faces a future inability to make payments.

15. According to the LB, the debtor is **unable to make payments** if, within a period of 45 days, the debtor has not paid amounts that should have been paid based on valid payment basis from any of its accounts at any institution authorized for payment operations.[5] The existence of the inability to make payments is proven by a certificate issued by the Central Registry confirming that the debtor's current accounts (known as "Giro" accounts) have been blocked.[6]

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1 In the bankruptcy proceedings over the bankruptcy debtor TE-TO AD Skopje 3 ST-124/18 and 160/18 of 2018, the 2006 Law on Bankruptcy was applied with its later amendments and supplements (**R-10**).

2 LB (**R-10**), Article 1.

3 In the bankruptcy proceedings over the bankruptcy debtor TE-TO AD Skopje 3 ST-124/18 and 160/18 of 2018, the 2005 Law on Civil Procedure was applied with its later amendments and supplements (**R-10**).

4 LB (**R-10**), Article 7.

5 LB (**R-10**), Article 5 (2).

6 LB (**R-10**), Article 5 (4).

16. **Future inability to make payments** exists when the debtor establishes that it is probable that it will not be able to meet its existing cash obligations when due.[7] This alternative condition for opening bankruptcy proceedings is a novelty in Macedonian bankruptcy law, which was introduced by the amendments to the Law on Bankruptcy of 2013.[8]

17. Bankruptcy proceedings based on the inability to make payments can be open by third party creditors. In contrast, from the formulation of the definition of future inability to make payments in Article 5(4) of the LB, it follows that bankruptcy proceedings due to such future inability can be initiated only by the debtor itself. A future inability to make payments may exist even though the debtor's current accounts in a commercial bank has not been blocked at all at the time when it submits the proposal for the initiation of bankruptcy proceedings, or has been blocked for less than 45 days. It is sufficient for the debtor to prove that it is facing future inability to make payments – insolvency in its business operations in the coming period.

18. Bankruptcy proceedings **are initiated exclusively on the proposal of an authorized petitioner**, this being the creditor, the debtor or another person authorized by law. On behalf of the debtor, **any person authorized to represent the legal entity by law** can submit a proposal for opening bankruptcy proceedings over the property of the debtor – a legal entity.[9] **The debtor's corporate organs**, authorized for its representation under the law, **are obliged** to submit a proposal for the opening of bankruptcy proceedings within 21 days at the latest from the day when reasons appeared for opening bankruptcy proceedings.[10]

19. When the debtor initiates the bankruptcy proceedings, the debtor shall attach to the proposal for the opening of the bankruptcy proceedings **the evidence** required by law to demonstrate the fulfilment of the conditions for the opening of bankruptcy proceedings.

20. After receiving the proposal for opening bankruptcy proceedings, the bankruptcy judge conducts an examination of the regularity of the proposal, that is, whether the petitioner has submitted all the evidence so that the proposal can be acted upon. If the judge determines that the proposal is incomplete and not all necessary evidence have been submitted, the bankruptcy judge will return the proposal to the petitioner to be completed within a period no longer than eight days. If the petitioner does not complete the proposal or submit the necessary evidence within eight days, the bankruptcy judge will issue a determination rejecting the proposal. No appeal is allowed against this determination. If the proposal for opening bankruptcy proceedings is complete and all the necessary evidence is submitted together with it, the bankruptcy judge, within three days from the day the proposal was submitted to the court, i.e. after the completion of the proposal, issues a determination on determining an advance

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7 LB (**R-10**)**,** Article 5 (5).

8 Law Amending and Supplementing the Law on Bankruptcy, published in the Official Gazette of the Republic of Macedonia no. 79/2013 (**R-3**), Article 2.

9 LB (**R-10**), Article 51 (1).

10 LB (**R-10**), Article 51 (9).

payment of expenses for the preliminary proceedings, the amount of which cannot be less than MKD 15,000 nor more than MKD 25,000. No appeal is allowed against such determination.[11]

C. Preliminary proceedings

21. The initial part of the bankruptcy proceedings that examines whether the conditions for opening bankruptcy proceedings have been met are called the "preliminary proceedings." The preliminary proceedings are regulated in the LB by Articles 54 to 73-a). The objective of the preliminary proceedings is solely to examine whether the legal conditions exist for opening and conducting bankruptcy proceedings against the debtor.

22. The preliminary proceedings are initiated by a **determination by the bankruptcy judge to initiate preliminary proceedings** for examining the conditions for opening bankruptcy proceedings, which the bankruptcy judge is obliged to issue no later than three days after the submission of an orderly proposal for the opening of bankruptcy proceedings by an authorized petitioner and after delivery of a submission that the petitioner has paid the determined advance to cover the costs of the preliminary proceedings.[12] The preliminary proceedings conclude with the adoption of a determination by the bankruptcy judge either opening the bankruptcy proceedings or rejecting the proposal for opening bankruptcy proceedings.[13] In certain circumstances, the bankruptcy judge may also issue a determination terminating the initiated preliminary proceedings (when the judge determines that the debtor has become solvent).[14]

23. During the preliminary proceedings, the bankruptcy judge decides whether to accept or reject the proposal to initiate bankruptcy proceedings following a hearing.[15] The hearing to examine the existence of the legal conditions for opening bankruptcy proceedings is scheduled by the bankruptcy judge with the determination to initiate preliminary proceedings. The hearing must be scheduled for a date that is no later than 30 days from the day of adopting the determination to initiate preliminary proceedings.[16]

D. Security measures

24. In order to protect the interests of the creditors, i.e. to prevent the possibility that the bankrupt debtor will further deteriorate its property and financial status, the LB contemplates the possibility for the bankruptcy judge to order provisional security measures within the preliminary proceedings. With the determination to initiate preliminary proceedings, the bankruptcy judge may, at the request of the petitioner or *ex officio*, prescribe all the necessary

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[11] LB (**R-10**), Article 53 (1)(2) and (3).
[12] LB(**R-10**), Article 54 (1). The advance payment to cover the preliminary proceedings costs is determined by the bankruptcy judge with a decision (LB, Art. 53 (3).
[13] LB (**R-10**), Article 66 (1).
[14] LB (**R-10**), Article 66 (3). The bankruptcy judge makes a decision to stop the initiated preliminary proceedings only if he/she determines that until the completion of the preliminary procedure the debtor has become solvent.
[15] LB (**R-10**), Article 66 (1).
[16] LB (**R-10**), Article 54 (2).

provisional security measures which, until a determination is made on the proposal to open bankruptcy proceedings, would prevent such changes in the debtor's financial status and property from occurring that could be unfavorable for creditors.[17]

25. These security measures can be ordered by the bankruptcy judge even before passing the determination to initiate preliminary proceedings.[18]

26. The appointment of an **interim bankruptcy trustee** is one such measure contemplated by the LB[19] and which is often ordered in practice.[20] The interim bankruptcy trustee is appointed from a list of authorized bankruptcy trustees.[21] The provision of Article 31 (2) of the LB, which mandates the use of an electronic selection method from the list of bankruptcy trustees in so-called "regular bankruptcy proceedings" does not apply to the selection of an interim bankruptcy trustee in preliminary proceedings. This is because the interim bankruptcy trustee is appointed in the determination to initiate preliminary proceedings under Article 54 (1) of the LB, while the (full) bankruptcy trustee is appointed with the determination for opening of bankruptcy proceedings under Article 69 (1) of LB. The provision of Article 31 (2) of the LB provides for the mandatory use of electronic selection method only for the selection of bankruptcy trustees, which leads to the conclusion that the same does not apply to interim bankruptcy trustees. In contrast, in the case when an interim bankruptcy trustee is appointed in a preliminary bankruptcy reorganization procedure according to a previously prepared reorganization plan by the debtor (a special procedure that I discuss further below), the selection is made by the method of electronic selection from among the bankruptcy trustees who have registered with the court and have specialized knowledge in the area of the reorganization plan.[22]

27. If the bankruptcy judge appoints an interim bankruptcy trustee by a determination, among other obligations provided for by law and stipulated by the determination, the bankruptcy judge can ask the interim bankruptcy trustee as an expert to examine whether the conditions for opening the bankruptcy proceedings have been met, i.e. whether the debtor is unable to make payments.[23] The interim bankruptcy trustee is also obliged to examine whether the debtor has assets that can be used and are sufficient to carry out the bankruptcy proceedings and settle the bankruptcy proceedings costs and the claims of creditors.[24] Then, at a hearing for expressing opinion on the proposal, the report of the interim bankruptcy trustee is reviewed and, if the conditions for this are met, the bankruptcy judge makes a determination to open

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[17] LB (**R-10**), Article 58 (1).
[18] LB (**R-10**), Article 58 (3).
[19] LB (**R-10**), Article 58 (2) 1).
[20] For example: Decision of the Basic Court in Veles on initiation of preliminary proceedings St. no. 37/2021 of 30 December 2021, appointing a temporary bankruptcy trustee (Official Gazette of RN. Macedonia no. 2/2022, Announcement no. 74 (**R-13**) page 1; Decision of the Basic Court in Bitola on initiation of preliminary proceedings St. no. 187/21 of 29 December 2021, appointing a temporary bankruptcy trustee (Official Gazette of RN. Macedonia no. 2/2022, Announcement no. 77 (**R-13**), page 2.
[21] LB (**R-10)**, Article 58 (2) 1).
[22] LB (**R-10)**, Article 31 (5).
[23] LB (**R-10)**, Article 59 (2).
[24] LB (**R-10)**, Article 59 (1) i. 3.

bankruptcy proceedings against the debtor, to reject the proposal to initiate bankruptcy proceedings or to terminate the initiated preliminary proceedings.[25]

28. The role of the interim bankruptcy trustee ends with the completion of the preliminary proceedings. If at the end of the preliminary proceedings, after holding the hearing to examine the conditions for opening bankruptcy proceedings, the bankruptcy judge determines to open bankruptcy proceedings in accordance with Article 66 (1) of the LB, the judge also appoints the bankruptcy trustee in the same determination in the manner and under the conditions determined by the LB on the appointment of bankruptcy trustees.[26]

E. Types of bankruptcy proceedings

29. Once the bankruptcy proceedings are opened, the bankruptcy trustee prepares a written report on the debtor's economic and financial situation and the reasons for such a situation and presents the same at the first meeting of the creditors (the reporting meeting).[27]

30. At the reporting meeting, and based on the bankruptcy trustee's report on the economic and financial situation of the debtor, the creditors acting as the Assembly of Creditors decides whether the debtor's business venture (enterprise) will be closed (liquidated) or temporarily extended. If they decide to continue the debtor's business venture, the creditors at the same time require the bankruptcy trustee to draw up a reorganization plan.

31. Accordingly, and in accordance with the LB[28], the bankruptcy proceedings may be carried out in two ways: (1) Liquidation of the business venture or (2) Reorganization. I describe both types of proceedings below.

1) Liquidation of the business venture

32. Liquidation of the business venture, or liquidation of the debtor, is a procedure by which the debtor's property is either (i) monetized (sold) and the proceeds are distributed proportionally among the bankruptcy creditors or (ii) divided among the creditors without first selling it.[29]

If the Assembly of Creditors makes a determination to close the business venture (liquidation) it will simultaneously determine the method of monetizing the bankruptcy estate.

33. If a determination is passed to close (liquidate) the business venture and convert the debtor's property, property rights and claims that enter the bankruptcy estate into money, the bankruptcy trustee conducts the procedure for the sale of the debtor's property – bankruptcy estate in the manner and procedure provided according to the LB (Articles 98, 99 and 100 of the LB).

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[25] LB (**R-10)**, Articles 64 and 66.
[26] LB (**R-10**), Article 69 (1).
[27] LB (**R-10**), Article 96 (1).
[28] LB (**R-10**), Article 3.
[29] LB (**R-10**), Article 2 (1) i. 23.

34. In current practice in Macedonia, bankruptcy proceedings opened usually end with a procedure of liquidation of the business venture through the sale of the debtor's property as a bankruptcy estate.

35. Most often, property sales are very uncertain, there are no interested parties, or they offer too low prices for the property – bankruptcy estate, since the bankruptcy estate is quite damaged – devalued, and whether it is immovable or movable property (equipment), they are not in function for the debtor's activity and significant financing is needed to put them back into operation. On the other hand, a large part of the property, especially the essential one – significant part for the debtor's functioning, is under pledge-mortgage to commercial banks, which sell it separately and have the primary right to settlement as secured creditors.

36. After three unsuccessful sale attempts – the claims of the creditors are settled with the distribution of the property.[30] This is the most unfavorable variant as a way of settling the claims of creditors, since the property is distributed in ideal parts between the creditors, who do not have the opportunity to sell it as such and settle their claims.

37. Finally, with liquidation, the debtor ceases to be a legal entity since it is deleted from the trade registry, its property is fragmented and becomes even less valuable, and the settlement of creditors is very uncertain and with a low percentage.

2) Reorganization

38. Reorganization means settlement of creditors according to an adopted reorganization plan, in which the debtor's debtor-creditor relations (that is, its legal relations with its creditors) are redefined or changed in another way provided for by the reorganization plan.

39. An initiative for the preparation of a reorganization plan (that is, a reorganization plan proposal) can be submitted to the court by any bankruptcy and secured creditor no later than eight days before the Assembly of Creditors is held. When the Assembly of Creditors does not accept the initiative for the preparation of a reorganization plan (i.e. for a reorganization plan proposal by the bankruptcy trustee to the creditors), in accordance with paragraphs (2) and (3) of Article 97 of the LB, the bankruptcy judge issues a determination on closing the debtor's business venture and obliges the board of creditors to issue a determination within eight days on the method of monetizing the property constituting the bankruptcy estate.

40. There are several reasons why reorganization may be more economically rational than the "ordinary" liquidation procedure of the business enterprise. In particular:

- With the continuation of the debtor's business venture, the going concern values remain preserved.
- There may be real circumstances for the further continuation of the debtor's business venture, supported by economic justification.

[30] LB (**R-10**), Article 99 (4).

- The reorganization may provide for a more favorable settlement of creditors' claims in relation to liquidation.

- If the creditors are convinced that the reorganization procedure holds significantly better prospects for settlement than liquidation, the creditors themselves will help – contribute to preserving the business venture of the debtor company.

- For a successful reorganization, it is necessary to predict the continuity in the future continuation of the business venture through plans, i.e. calculations for the liquidity/profitability of the debtor's operations.

41. Reorganization protects the debtor by:

- imposing a “moratorium” on the creditors in relation to the forced collection of their claims against the debtor;

- preventing the secured creditors from activating the settlement of the secured claim;

- terminating all initiated court proceedings and enforcement;

- providing cancellation of unfavorable contracts for the debtor.

42. There are several methods of reorganization in practice. Reorganization is most often implemented through:

– **debt-liability restructuring** by rescheduling debt obligations towards creditors as business partners, and converting some or all of the debtor's liabilities towards creditors into equity of the reorganized debtor;

– **business restructuring**;

– **legal measures**.

3. PRELIMINARY BANKRUPTCY REORGANIZATION

A. Legislative framework for Preliminary Reorganization

43. The 2013 amendments to the LB[31] and, in particular, the addition of Articles 215-a to 215-d introduced **a new legal institution in the Macedonian bankruptcy law:** reorganization during the preliminary proceedings according to a plan prepared in advance by the debtor (hereinafter: "preliminary bankruptcy reorganization" or "preliminary proceedings reorganization").

44. The intention of these new legal provisions is to ensure greater efficiency in bankruptcy proceedings, as well as to enable the debtor to continue to exist and function in the market by negotiating with creditors on the manner and amount of settling their claims. This enables the debtor to create conditions **for protecting its business venture in case of insolvency or future insolvency** and for **its financial reorganization through an agreement with its creditors** before the opening of bankruptcy proceedings.

45. The LB now contemplates that, when submitting a proposal for opening bankruptcy proceedings, the debtor may also submit a reorganization plan prepared by itself and propose implementing reorganization proceedings. In such a case, only preliminary bankruptcy proceedings are opened, an interim bankruptcy trustee is appointed and a procedure is carried out in which the creditors have to declare whether they accept the debtor's proposed reorganization plan. If the creditors at the hearing declare that they accept the proposed reorganization plan, then the bankruptcy judge makes a determination that simultaneously **opens** the bankruptcy proceedings, **approves** the acceptance of the prepared reorganization plan and **terminates the opened bankruptcy proceedings**.

46. Since its introduction in 2013, the preliminary bankruptcy reorganization procedure has been used only a few times in Macedonia. In addition to the case of TE-TO, I am aware of only two other cases heard in the Basic Civil Court Skopje that involved preliminary bankruptcy reorganizations. One involved company TELESMART TELEKOM DOOEL Skopje in 2015. The other involved company JAKA 80 AD Radovis in 2014. I acted as interim bankruptcy trustee in that latter case.

B. Unique features of Preliminary reorganization

47. The procedure for the so-called preliminary bankruptcy reorganization under the 2013 amendments to the LB[32] significantly deviate from those foreseen for the so-called "regular bankruptcy proceedings" (in which after opening the bankruptcy proceedings, the creditors have to decide whether to liquidate of the debtor's business venture, or to pursues its reorganization). In comparison, the essence of the preliminary bankruptcy reorganization is

[31] Law Amending and Supplementing the Law on Bankruptcy, published in the Official Gazette of the Republic of Macedonia no. 79/2013 (**R-3**).

[32] LB (**R-10**), Articles 215-a to 215e.

that the debtor is given the opportunity to submit to the Court a proposal for commencement of bankruptcy proceedings, together with a previously prepared reorganization plan in preliminary proceedings. This also determines the purpose of the bankruptcy proceedings following such a proposal: to assess whether the conditions have been met in order to accept the debtor's reorganization plan, after which, if the conditions are met, the bankruptcy proceedings are opened with a court determination, which also closes the bankruptcy proceedings.

48. According to the 2013 amendments to the LB,[33] it is **only the debtor** that may submit a proposal for commencement of bankruptcy proceedings with a previously prepared reorganization. In contrast, and as noted earlier, a proposal to initiate the so-called "regular" bankruptcy proceedings against the debtor can also be filed by creditors or another person authorized by law.

49. The provisions of the LB governing the reorganization procedure and the reorganization plan after opening the bankruptcy proceedings are applied to the preliminary bankruptcy reorganization procedure, except for the provisions of Articles 216, 220, 222, 225, 226, 227, 228, 229, 230, 231, 234, 236, 237, 239 paragraph (4), 241, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253 and 254 of LB, all of which are expressly excluded. 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.

C. Conditions for commencing Preliminary Reorganization

50. **The basic condition** for commencement of this procedure is for the debtor to be insolvent with **blocked bank accounts for more than 45 days** or **to be facing a future inability** to make payments, as well as **to have previously drawn up a reorganization plan** and through negotiations secured a **majority** of creditors that will accept the plan.[34]

D. Process of conducting a Preliminary Reorganization

51. The preliminary bankruptcy reorganization procedure begins with **determining security measures**, and scheduling of a hearing to decide on the proposal and vote on the plan which is to be held within 60 days.[35] During that 60-day period, the creditors can inspect the reorganization plan and submit objections to it, and the debtor is obliged to respond to all objections. The plan is prepared and submitted by the debtor who has previously concluded an agreement with the majority of creditors regarding the manner of carrying out the reorganization and regarding the manner and amount for settling the creditors' claims.

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[33] LB (**R-10**), Article 215-a (1).
[34] LB (**R-10**), Article 5.
[35] LB (**R-10**), Article 215-d (1) (2).

52. The reorganization plan in preliminary proceedings is a legal provision giving companies that face uncertain financial future a chance – an opportunity to reorganize their operations, in order to enable them to continue their business venture and further functioning in the business world. Namely, companies facing future insolvency and the risk of defaulting on their obligations to creditors have the opportunity to meet these risks in a timely manner and, by submitting an already prepared reorganization plan, offer their creditors a systematic payment of debts through continuing their operations instead of liquidation of their property and its monetization.

4. TE-TO'S PRELIMINARY REORGANIZATION

In this section, I discuss various aspects of the preliminary bankruptcy reorganization procedure of TE-TO. I conclude that the procedure was commenced and conducted regularly, in accordance with Macedonian law and consistent with my experience of the practice of Macedonian bankruptcy courts.

A. TE-TO fulfilled the conditions for commencing Preliminary Reorganization

QUESTION 1. According to the Law on Bankruptcy, was the Court obliged to reject the Proposal for implementing the Reorganization Plan submitted by the debtor TE-TO dated 24.04.2018?

53. No. The Bankruptcy court was not required to reject the proposal and could instead direct the debtor to correct deficiencies. The preliminary bankruptcy proceeding of TE-TO, conducted before the Civil Court in Skopje under no. 3ST-124/18 and no. 160/18, included a procedure for preliminary reorganization, which was carried out in accordance with the provisions of Article 215-a to 215-d of the LB. At the hearing held on 14.06.2018, the proposed reorganization plan of the debtor TE-TO was approved.[36]

54. The preliminary reorganization procedure no. 3ST-124/18 was initiated before the Civil Court in Skopje based on a proposal submitted by the debtor TE-TO dated 24.04.2018, together with a reorganization plan prepared by the debtor, with evidence attached. The plan was then deposited with the bankruptcy file on 26.04.2018.[37]

On the regularity of the Proposal for implementing Preliminary Reorganization of the Debtor TE-TO, dated 24.04.2018

55. After receiving the proposal for commencement of a preliminary bankruptcy reorganization with a previously prepared plan by the debtor, the bankruptcy judge is first obliged to **examine the regularity** of the proposal for opening bankruptcy proceedings and the reorganization plan prepared in addition to the proposal, i.e. to examine whether the proposal and the plan have the content provided for in Article 215-b of the LB, as well as whether the conditions for opening bankruptcy proceedings from Article 5 par. 1 of the LB.

56. If the bankruptcy judge assesses that the submitted proposal is orderly, within 3 days of the submission, the bankruptcy judge will issue **a determination** on commencement of preliminary proceedings.[38] On the contrary, **if the judge assesses that the proposal** is **not in order** (because the proposal or the plan **contain deficiencies and technical errors that can be corrected**), then the bankruptcy judge is obliged to issue a **determination** ordering the debtor to revise the proposal and/or the plan and resubmit corrected version within eight

[36] Decision no. 3ST-124/18 and no. 160/18 dated 14 June 2018 (**C-15**).
[37] Proposal for implementing a reorganization plan before the opening of bankruptcy proceedings with a reorganization plan prepared by the debtor TE-TO (**C-074**).
[38] LB (**R-10**), Article 215-d (1).

days.[39] If the deficiencies in the proposal or plan cannot be remedied, the bankruptcy judge will reject the debtor's proposal for preliminary bankruptcy reorganization.

57. In the instant case, the bankruptcy judge (Ms. Sashka Cvetkovska) found that the proposal submitted by the debtor TE-TO was not in order, because it did not contain all the necessary information such that the debtor should revise the proposal, that is, remove the deficiencies. By letter dated 30.04.2018,[40] the bankruptcy judge required the debtor to revise the proposal within eight days from the day of receipt of the notice from the Court, and advised the debtor that if it did not revise the proposal within that deadline, the court would reject the proposal.

58. In my experience, there was nothing out of the ordinary in the bankruptcy judge inviting the debtor to revise its proposal, as the same is expressly contemplated by Article 215-v of the LB. From a formal point of view, pursuant to Article 215-v (4) of the LB, the bankruptcy judge **should arguably have used a formal determination, instead of a letter, to order** the debtor TE-TO to revise the proposal within 8 days. But from a substantive point of view, the letter issued by the judge (Exhibit C-091) contained all the elements of a determination **ordering the debtor to revise** the proposal.

59. The debtor TE-TO then fully **complied with the requirements** stated by the bankruptcy judge by letter of 30.04.2018. By submission dated 02.05.2018 (that is, within the eight day period),[41] the debtor **revised** the proposal for commencement of preliminary bankruptcy reorganization, to which it appended:

– Evidence of future insolvency, namely, a report on the debtor's economic and financial situation drawn up and signed by the chairman of the debtor's management board and a statement signed by the chairman of the debtor's management board dated 30.04.2018, certified by a notary public, that the debtor company faced future insolvency to make payments.

– Information from the Central Registry of the Republic of Macedonia from 27.04.2018 about an account blocked for more than 45 days;

– Decision of the TE-TO management board on the preparation and submission of a proposal Reorganization Plan in preliminary bankruptcy proceedings of TE-TO No. 02/3/1 of 12.04.2018

– Minutes of the Management Board number 6 from 12.03.2018.

– Written evidence of completed correspondence with creditors on their statement regarding the reorganization plan

– Other corrections to the Reorganization Plan.

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[39] LB (**R-10**), Article 215-d (4).

[40] Letter from the Bankruptcy Judge Sashka Trajkovska to the Debtor/Proposer with an order to edit the proposal for opening bankruptcy proceedings of the debtor Company for the production of electricity and thermal energy from Skopje dated 24 April 2018, dated 30 April 2018 (**C-091**).

[41] Reply to Letter dated 30 April 2018, dated 02 May 2018 (**C-092**).

60. In my opinion, with the submission dated 02.05.2018 and with the evidence attached to it, the debtor TE-TO fulfilled its obligation to revise the proposal for commencement of procedure for preliminary bankruptcy reorganization with a plan prepared by the debtor itself. Following that submission, the bankruptcy judge was required to evaluate whether the proposal and the plan were in order and whether the procedure could continue according to the provisions of the LB. In my opinion, after the revisions of the proposal by the debtor TE-TO, the bankruptcy judge had no basis for rejecting it. The bankruptcy judge then concluded that the proposal and the plan were in good order and in accordance with the LB and issued Determination ST. No. 124/18 of 02.05.2018 decided "a preliminary procedure is initiated for the examination of the conditions for the opening of a proceeding with a submitted plan for reorganization over the debtor Company for the production of electrical and thermal energy TE-TO AD Skopje with headquarters at 515 Street, Skopje, Gazi Baba."[42]

61. In my opinion, the bankruptcy judge acted correctly and in accordance with Article 215-g (1) of the LB when he/she passed Determination ST. No. 124/18 of 02.05.2018 for commencement of a preliminary proceedings.

On whether TE-TO had fulfilled the condition for future inability to make payments, Article 5 paragraph 1 of the Law on Bankruptcy

62. As explained above in paragraph 14 of this Opinion, together with the proposal for opening bankruptcy proceedings with a plan prepared in advance by the debtor, the debtor must also submit evidence that **one of the two alternative conditions for conducting bankruptcy proceedings under Article 5 of the LB have been met**. Specifically, the debtor must provide proof that it is currently unable to make payments or that it is facing future inability to make payments.

63. In the specific case in the preliminary bankruptcy reorganization of TE-TO, the debtor TE-TO as the petitioner pointed out and proved that it was facing future inability to pay the existing due monetary liabilities towards its creditors Bitar Holdings Limited (in the amount of MKD 6,894,017,050.00) and TOPLIFIKACIJA AD Skopje (in the amount of MKD 1,723,641,327), which was why it also submitted a proposal to implement a reorganization plan in preliminary bankruptcy proceedings.

64. In its proposal dated 24.04.2018, TE-TO also submitted evidence that on 19.04.2018 (five days before submitting the proposal) its transaction account had been blocked for 38 days.[43] Although the blocking of the transaction account at the time of submitting the proposal was 43 days (the proposal was submitted on 24.04.2018), it is indisputable that the debtor was unable to pay the liabilities due, which was later proven/established to be true because the blocking of the transaction account continued for more than 45 days, for which evidence was appended (namely, confirmations from the competent institution, the Central Registry).

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[42] Decision of the Basic Court, dated 2 May 2018 (**C-093**) at 1.

[43] Proposal for Commencement of insolvency with reorganization plan by TE-TO dated 24 April 2018 (**C-074**).

65. In accordance with the LB[44], on 02.05.2018, as part of the Submission for amending the Proposal for opening bankruptcy proceedings dated 02.05.2018 (Exhibit C-092), the debtor attached to the reorganization plan an extraordinary audit report that fully described the economic and financial situation of the debtor TE-TO, signed by the chairman of the management board of TE-TO with a notarized statement. In my experience, in the practice of the Macedonian courts, the submitted report is sufficient evidence to establish the debtor's future inability to make payments.

66. In my opinion, the debtor TE-TO thus established that it was facing future insolvency, which fulfilled the second alternative condition for opening bankruptcy proceedings under Article 5(1) of the LB. Because it was in the presence of at least one of the two alternative conditions for opening bankruptcy proceedings in accordance with Article 5 paragraph 1 of the LB – (future inability to make payments), the court had no basis to reject the proposal and the proposed reorganization plan and was thus well founded in commencement of the preliminary proceedings.

B. TE-TO's Preliminary Reorganization proceedings were conducted in accordance with Macedonian law

QUESTION 2. Was the Bankruptcy Judge's order of security measures in violation of the Law on Bankruptcy?

67. No. The security measures ordered by the bankruptcy judge on 26.04.2018 were in accordance with the LB and Macedonian law. By way of a Determination dated 26.04.2018,[45] and in order to protect the property of the debtor, and thus protect the interests of the creditors, the bankruptcy judge in accordance with Article 58(3) of the LB *ex officio* ordered security measures, prior to submitting a determination on commencement of preliminary proceedings with a reorganization plan prepared by the debtor. **It is my opinion that the Determination of the bankruptcy judge dated 26.04.2018 for imposing security measures was not contrary to the LB, for the reasons stated below.**

68. In the context of a procedure for preliminary bankruptcy reorganization according to a previously prepared plan of the debtor, the court imposes (through a determination) provisional security measures in accordance with the provisions of Articles 58 and 59 of the LB.[46] Article 215-g (2) of the LB thus provides that the bankruptcy judge has the duty to issue a determination establishing the security measures under Articles 58 and 59 of the LB and appointing an interim bankruptcy trustee. No appeal is allowed against the determination to impose security measures.

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[44] LB (**R-10**), Article 215-b (2) point 5.

[45] Determination on imposing provisional security measures, adopted by the Civil Court in Skopje, dated 26 April 2018 (**C-089**).

[46] LB (**R-10**), Art. 215-d, para. 2.

69. Article 58(3) of the LB further provides that the bankruptcy judge may issue a determination to impose security measures either together with the determination to commence preliminary proceedings for examining the conditions for opening bankruptcy proceedings **or before adopting the determination to initiate preliminary proceedings.**

70. The question arises as to whether Article 58(3) of the LB is applicable in the context of a preliminary bankruptcy reorganization procedure. That is, whether the bankruptcy judge in such a procedure may, on the basis of Article 58(3) of the LB, adopt a determination imposing provisional security measures and appointing an interim bankruptcy trustee even before the moment of adopting a determination to commence the preliminary proceedings, or whether provisional measures may at the earliest be adopted with the determination to initiate preliminary proceedings?

71. My professional opinion is 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. 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. In my opinion, the purpose of this provision is to determine the last moment when the bankruptcy judge must issue a determination to impose security measures, but it does not exclude the possibility for the court to issue a determination on imposing security measures at some earlier point in accordance with the authority of Article 58(3) of the LB. After all, the provision of 215-g(2) expressly refers to the application of the provisions of Articles 58 and 59 of the LB. In other words, the provisions of Articles 215-g(2) and Article 58(3) of the LB are complementary and supplement each other. Both provisions have the same objective: protecting the interests of creditors by providing for security measures for their claims and appointment of an interim bankruptcy trustee.

72. In this regard, I disagree with the Kostovski Opinion, where in paragraph 41 it is stated that by issuing the Determination 3 ST-124/18 determining security measures of 26.04.2018 ("Decision on Security Measures") before deciding to proceed with a preliminary proceeding, the Bankruptcy Judge was "acting contrary to the provisions of 215-g of the Bankruptcy Law".[47] In my opinion, Mr. Kostovski is wrong when he states that under Article 215-g(2) of the LB, in the Preliminary bankruptcy reorganization the security measures can be ordered only simultaneously with the issuing of the Determination on commencing of the preliminary bankruptcy procedure, and not before. It is obvious that Mr. Kostovski's opinion does not take into consideration that the provision of Article 215-g(2) of the LB refers to Articles 58 and 59 of LB, as a legal ground for issuing a determination for security measures in the preliminary bankruptcy reorganization. Furthermore, Mr. Kostovski's opinion omits that Article 215-g (2) of the LB actually provides for the last moment (end of a deadline) until when the bankruptcy judge must render the Determination on security measures in the preliminary bankruptcy

[47] See: Expert Opinion of Dejan Kostovski, Skopje, 25 November 2022,, page 10, para. 41. (**CE-01 EN**).

reorganization, and not the earliest moment (beginning of the deadline). Furthermore, Mr. Kostovski's own Commentary on Article 58 of the LB states that *"The determination for issuing preliminary measures of security, may be issued by the bankruptcy judge prior to the issuing of the determination for commencing of the preliminary procedure, together with the determination for commencing of the preliminary procedure, which happens most often in the judicial practice, and also after the issuing of the determination for commencing of the preliminary procedure"*. [48]

73. Further, if Mr. Kostovski's opinion in this arbitration were to be followed, the result would be that the bankruptcy creditors would be deprived of the protection of Articles 58(3) of LB, which gives the bankruptcy judge authority to issue security measures immediately upon submission of a proposal for opening of bankruptcy proceedings and before the determination for commencing of preliminary procedure is issued. I can think of no valid policy rationale why the creditors in a preliminary bankruptcy reorganization procedure should be denied that protection which is afforded bankruptcy creditors in other procedures. **For this reasons, it is my opinion that the Bankruptcy Judge did not act against article 215-g(2) of LB, when she issued a Determination on security measures on 26.04.2018.**

74. In addition to the measures adopted on 26.04.2018, the bankruptcy judge also imposed security measures in her Determination of 02.05.2018 for commencement of preliminary proceedings for preliminary bankruptcy reorganization against the debtor TE-TO[49]. These measures were imposed in accordance with Article 58 para. 3 of the LB. With the same Determination, the bankruptcy judge also determined that the security measures previously imposed by the Determination of 26.04.2018 ceased to be valid. **Our opinion is that the Determination dated 02.05.2018 in the section on determining provisional security measures is fully in accordance with the provision of Article 215-g(2) of the LB, i.e. that the Determination is not contrary to the LB.**

QUESTION 3: Was the appointment of Marinko Sazdovski as an interim bankruptcy trustee contrary to the rules for independence and avoidance of conflict of interest?

75. The Kostovski Opinion states "When appointing the temporary bankruptcy trustee of TE-TO, the Court did not respect these mandatory requirements of the Law, nor did it proceed with the appointment of the bankruptcy trustee under the electronic selection method nor did it choose a bankruptcy trustee who can be identified as having special knowledge in the area of reorganization plans."[50]

76. As explained above in Paragraph 26, one of the provisional security measures that can be adopted in the preliminary proceedings is the appointment of an **interim bankruptcy trustee**, in accordance with Articles 58 (2)(1) and 59 of the LB. The procedure for preliminary bankruptcy reorganization, regulated by Articles 215-a to 215-d of the LB, likewise expressly

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[48] See: Dejan Kostovski, Komentar za zakonot za stechaj (Commentary of the Law on bankruptcy),Skopje, 2014 (**R-8**), page 295 (emphasis added).

[49] Determination on commencement preliminary proceedings of the Civil Court in Skopje no. "ST-124/18, dated 02 May 2018 (**C-093**).

[50] Expert Opinion of Dejan Kostovski, Skopje, 25 November 2022, page 11, para. 46. (**CE-01 EN**)

contemplates that the bankruptcy judge may impose provisional security measures, including the appointment of an interim bankruptcy trustee.[51] In relation to the preliminary bankruptcy reorganization procedure, the LB explicitly stipulates that the interim bankruptcy trustee performs the duties specified by the bankruptcy judge in the determination appointing the trustee, and if need be, he/she can be in charge of examining all the data on which the proposed reorganization plan is based.[52]

77. The LB explicitly stipulates that the appointment of the interim bankruptcy trustee in a preliminary bankruptcy reorganization procedure is carried out by electronic selection of bankruptcy trustees who have special knowledge in the area of the reorganization plan.[53] Therefore, it follows that in contrast to the appointment of the interim bankruptcy trustees for the so-called "regular preliminary bankruptcy proceedings", in the preliminary bankruptcy reorganization procedure, there is a requirement to apply the electronic selection method for interim bankruptcy trustees, whereby the appointed interim bankruptcy trustee must have special knowledge in the area of the reorganization plan.

78. In the instant case, the electronic selection method was not used. The interim bankruptcy trustee, Marinko Sazdovski, was appointed by the bankruptcy judge with the Determination on imposing provisional security measures, dated 26.04.2018.[54] As evident from the Determination, the electronic selection method was not used for his appointment, although the bankruptcy judge should have done so in accordance with the provision of Article 215-g (2) of the LB. In particular, Article 215-g (2) of the LB provides that the appointment of the interim bankruptcy trustee in a preliminary bankruptcy reorganization procedure is: a) carried out by electronic selection of bankruptcy trustees and b) the appointee must have special knowledge in the area of the reorganization plan.

79. In my experience, it is very likely that the bankruptcy judge, reasoning by analogy, appointed the interim bankruptcy trustee Marinko Sazdovski in accordance with the rule of Article 58 (2)(1) of the LB, which applies to the appointment of interim bankruptcy trustees in preliminary proceedings in the so-called "regular" bankruptcy proceedings and which, as I explained above, do not require the use of the electronic method. That practice is not uncommon. For example, the same approach was taken by the Basic Court Skopje II (now Civil Court) in the Determination for commencing of preliminary bankruptcy reorganization procedure against the Debtor TELESMART TELEKOM DOOEL uvoz izvoz Skopje.[55] In that case, the Bankruptcy Judge Sashka Trajkovska appointed directly the licensed bankruptcy trustee Vasil Markov from Skopje as an interim bankruptcy trustee. Taking into consideration that, in the Republic of North Macedonia (population of 1,8 million), there has been a very small number of proceedings for preliminary bankruptcy reorganization since that new

[51] LB (**R-10)**, Article 215-d (2).
[52] LB (**R-10)**, Article 215-d (2).
[53] LB (**R-10)**, Article 215-d (2) and Article 31 (5).
[54] Decision on determining provisional security measures, adopted by the Civil Court in Skopje, dated 26 April 2018 (**C-089**).
[55] Determination for commencing of preliminary bankruptcy reorganization procedure against the Debtor TELESMART TELEKOM DOOEL uvoz izvoz Skopje 3 ST 239/15 of 9 July 2015 (**R-9**)

institution was introduced in 2013, it should come as no surprise that the court may have made some technical mistakes, such as applying the provisions of the so-called "regular" bankruptcy proceedings (which are regular practice and where interim bankruptcy trustees in the preliminary bankruptcy proceedings are not appointed by the electronic selection method).

80. I also do not see a substantive issue with the appointment of Marinko Sazdovski. Mr. Sazdovski is on the list on the list of approved/authorized bankruptcy trustees from which the electronic process would draw names since he is licensed. Mr. Sazdovski is an experienced, long-term bankruptcy trustee with extensive practical experience and has led and continues to lead bankruptcy proceedings on a significant scale. As regards the requirement to appoint a bankruptcy trustee with a particular specialization for a reorganization plan, to my knowledge, in the Republic of North Macedonia there has not yet been a procedure for any bankruptcy trustee to hold a reorganization plan certificate. In 2014 the then Minister of Economy Valon Srachini adopted the "PROGRAMME ON THE SPECIALIST TRAINING FOR THE PREPARATION AND IMPLEMENTATION OF THE PLAN FOR REORGNISATION, EXAM FOR ACQUIRING OF CERTIFICATE FOR SPECIALIZED KNOWLEDGE",[56] but to my knowledge such program was never implemented, nor has any certificate been issued. For those reasons, in the procedure for the TE-TO preliminary bankruptcy reorganization in 2018, it was not possible for the bankruptcy judge to appoint an interim bankruptcy trustee with specialist knowledge in the area of the reorganization plan. Therefore, I am of the opinion that in the procedure for the preliminary bankruptcy reorganization of TE-TO, Article 215-g (2) of the LB has not been violated with the Determination on imposing provisional security measures no. 3 ST-124/18 of April 26, 2018 of the bankruptcy judge not appointing an interim bankruptcy trustee with a specialist knowledge certificate in the area of the reorganization plan.

81. I am also not aware of any circumstances that would have disqualified Mr. Sazdovski from acting in this case. Regarding the independence of the interim bankruptcy trustee and the question of conflict of interests, the LB regulates in great detail the role of bankruptcy trustees in bankruptcy proceedings, the procedure for their licensing and appointment, the rules for avoiding conflicts of interest and provides a legal basis for further regulation of the professional standards for the work of bankruptcy trustees[57] and for their remuneration[58] with by-laws. The same rules apply to interim bankruptcy trustees, who according to Article 58 (2)(1) of the LB are appointed from the list of bankruptcy trustees who have acquired the title of authorized bankruptcy trustee. The method of electronic selection of the bankruptcy trustees is only one of the mechanisms for ensuring the independent and professional performance of

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[56] Program on the Specialist training for the preparation and implementation of the plan for reorganization, exam for acquiring of certificate for special knowledge, issued by the minister of economy Valon Saracini, no. 15-1436/1 of 26 February 2014, published in Official gazette of Republic North Macedonia no 47/2014 (**R-7**) page 1.

[57] See: Rulebook on Professional Standards for Bankruptcy Proceedings, adopted by the Minister of Economy of the Republic of North Macedonia, published in the Official Gazette of the Republic of Macedonia no. 119/2006 (**C-095**).

[58] See: Rulebook on the Award and Compensation of the Realistically Necessary Costs of the Bankruptcy Trustee and the Method of Determining Their Amount, adopted by the Minister of Economy of the Republic of North Macedonia, published in the Official Gazette of the Republic of Macedonia no. 47/2014. (**R-4**).

the bankruptcy trustees' duties, without conflict of interests. The basic rule for avoiding the conflict of interests, which applies to all types of bankruptcy proceedings, including the appointment of an interim bankruptcy trustee in the preliminary bankruptcy reorganization procedure with a reorganization plan prepared by the debtor, is Article 22 of the LB, which stipulated which persons cannot be appointed as bankruptcy trustees at all.

82. Article 22 of the LB provides:

"(1) The following person cannot be appointed as a bankruptcy trustee:
1) A lineal relative to any extent, and remote family relation up to four times removed, relatives in-law up to the second degree, or a spouse of the bankruptcy judge and members of the bankruptcy council;
2) Debtor who is jointly liable with the bankruptcy debtor;
3) Has been in a contractual relation, shareholder or member of the management or supervisory board of the bankruptcy debtor in the preceding 3 years prior initiating the bankruptcy procedure;
4) Any employee in the bankruptcy debtor or in the preceding 3 years prior initiating of the bankruptcy procedure;
5) Creditor of the bankruptcy debtor or any employee thereof in the preceding 3 years prior to initiating the bankruptcy procedure;
6) Debtor of the bankrupt debtor or any employee thereof in the preceding 3 years prior to initiating the bankruptcy procedure;
7) Competitor of the bankruptcy debtor or employee thereof, or a person that has any kind of conflict of interests in relation to the bankruptcy debtor in the preceding 3 years prior to initiating the bankruptcy procedure;
8) Any person that acted as an advisor to the bankrupt debtor regarding to the debtor's assets in the preceding 3 years prior to the initiating the bankruptcy procedure;
9) A lineal relatives to any extent, and collateral (remote family) relation up to fourth degree, relatives in law up to second degree of any person that may not be appointed for a Bankruptcy trustee according to items 2 – 8 of this Article.
(2) A bankruptcy trustee company cannot be appointed as a bankruptcy trustee if any of its employees, who participate in the conduct of the bankruptcy proceedings, fulfills the requirements of paragraph (1) of this Article."

83. In the preliminary bankruptcy reorganization procedure with a reorganization plan prepared by the debtor TE-TO, the interim bankruptcy trustee Marinko Sazdovski, according to the information contained in the documents that I have reviewed, could not be placed under any of the categories of persons under Article 22 of LB who due to a conflict of interests could not be appointed as an interim bankruptcy trustee in the given procedure for preliminary bankruptcy reorganization. Therefore, I am of the opinion that the bankruptcy trustee Marinko Sazdovski had no obstacles according to Article 22 of the LB to be appointed as an interim bankruptcy trustee in the Preliminary Bankruptcy Reorganization procedure with a reorganization plan prepared by the debtor TE-TO.

84. In the TE-TO Reorganization Plan dated 24.04.2018 (C-013) on page 20, and in the Consolidated Reorganization Plan dated 08.06.2018 (C-014) on page 52, the bankruptcy

trustee Marinko Sazdovski is proposed by the debtor TE-TO as an independent expert for supervision and control over the implementation of the reorganization plan, if approved. Namely, according to the Professional Standard for exercising control over the execution of the reorganization plan,[59] licensed bankruptcy trustees are appointed, as a rule, as independent professionals for implementing supervision and control over the implementation of the reorganization plan, but it is allowed to appoint other persons who are not licensed bankruptcy trustees as controllers. In my opinion, there is no statutory or other legal obstacle for the person proposed by the debtor in the Reorganization Plan as a controller over the execution of the Reorganization Plan in a certain preliminary bankruptcy reorganization procedure, to be appointed as an interim bankruptcy trustee in the same procedure for preliminary bankruptcy reorganization. In the TE-TO Reogranization Plan, a compensation of MKD 40,000.00 (or approximately USD 800) per month is provided. In my opinion and experience, the foreseen compensation for the controller over the implementation of the TE-TO Reorganization Plan was within the framework of the Regulation on the Award and Compensation of the Realistically Necessary Costs of the Bankruptcy Trustee and the Method of Determining their Amount.[60] In my experience, I would also not consider that remuneration to be excessive.

85. In sum, I see no grounds on which the competence and independence of the appointed interim bankruptcy trustee Marinko Sazdovski could be challenged.

QUESTION 4: Did the Civil Court err in its 14 June 2018 denial of GAMA's motion to recuse the bankruptcy judge?

86. The recusal of judges is a procedural device regulated in the Law on Civil Litigation Procedure (Articles 64-69). The purpose of this device is to enable the dispute to be resolved by an impartial and independent judge.

87. The grounds for recusing a judge are contained in Article 64 and they can be divided into absolute and relative. Absolute grounds for recusal are those whose existence must lead to the recusal of a judge. In the presence of absolute grounds for recusal, the judge must be recused from acting in the specific case.

88. The absolute grounds for recusal are listed exhaustively in Article 64 paragraph 1 item. 1-5. They are: (1) if the judge himself/herself is a party, a legal representative or an attorney of a party, if he/she is related to the party as a co-authorized person, co-obligor or recourse debtor or if he/she was heard as a witness or expert in the same case; 2) if he/she permanently or temporarily works for an employer who is a party to the proceedings; 3) if the party or the party's legal representative or attorney is related by blood in the direct line up to any degree, and in the lateral line up to the fourth degree, or is his/her spouse, common-law partner or in-

[59] Rulebook on Professional Standards for Bankruptcy Proceedings, Professional Standard for Exercising Control over the Execution of the Reorganization Plan, published in the Official Gazette of the Republic of Macedonia no. 119/2006 (**C-095**).

[60] See: Rulebook on the Award and Compensation of the Realistically Necessary Costs of the Bankruptcy Trustee and the Method of Determining Their Amount, adopted by the Minister of Economy of the Republic of North Macedonia, published in the Official Gazette of the Republic of Macedonia no. 47/2014 (**R-4**)

law up to the second degree, regardless of whether the marriage has ended or not; 4) if he/she is the party's guardian, adoptive parent, adoptee, breadwinner or supported person, of his/her legal representative or attorney; 5) if in the same case he/she participated in the decision-making of the lower court or another authority.

89. In contrast to the absolute grounds for recusal, the relative grounds for recusal include those whose existence may call into question the independence of the judge. In the LCLP, the relative grounds are not exhaustively stated, but a general provision is made in Article 64 para. 1 item 6 according to which the judge cannot perform the judicial duty if there are other circumstances that call into question his/her impartiality. Thus, it follows that the parties have room to question the impartiality of the judge themselves, provided that there are specific circumstances that call into question the impartiality and independence of the judge. Of course, this does not imply that any circumstance will lead to the impeachment of the judge, and it is necessary for the party seeking the recusal to establish a link between the circumstance invoked by the party and the independence of the judge.

90. The parties can request the recusal of the judges (see Article 66 paragraph 1 of the LCLP). Thus, when a judge learns that a request for his/her recusal has been submitted, he/she is obliged to immediately stop work on the relevant case and, if the request for recusal is based on a relative ground, until the decision on the request is made, he/she can only take those actions for which there is a risk associated with any delay.

91. In bankruptcy practice in Macedonia, it is common practice for parties (debtors and creditors alike) to file unfounded requests for recusal for the sole purpose of delaying the proceedings. In the specific case of Preliminary Reorganization of TE-TO, the request for the judge's recusal was submitted by GAMA during the hearing held on 14.06.2018 (as reflected in the minutes of that hearing).[61] The basis for recusal, as stated on pages 4-5 of the minutes , refers to the following circumstance:

> "*The doubt about the impartiality of the Court comes from the fact that after a proposal to open bankruptcy procedure has been initiated; the debtor was allowed to amend the submitted reorganization plan, which actually is a new reorganization plan As part of the reorganization, the Court allows division in classes which is contrary to the Bankruptcy Act, especially concerning the possibility the Court gives to persons connected to the bankruptcy debtor. More precisely, its shareholders and partners, as well as creditors of lower compensation rank, are put in a creditor class of a higher compensation rank. This raises doubts whether this fulfils the purpose of the Bankruptcy Act, which is to fully compensate and protect the interests of the creditors, not of the bankruptcy debtor and its connected persons. The unlawfulness of the reorganization plan, which the Court refuses to reject despite the explicit legal duty to do so, results from the fact that the so-called consolidated version of the reorganization plan, was submitted to the court on 06.06.2018 which is contrary to the provisions of*

[61] Minutes of the 14 June 2018 hearing (**C-102**).

art. 215 paragraph 2, item 1, which clearly states that the plan is to be submitted together with the proposal, not later. The So-called consolidated version does not contain the substantial elements required by the BA. More precisely, the bankruptcy debtor tries to introduce new statements from majority creditors in which they accept the reorganization plan which they have negotiated and has been offered to them and has been filed together with the proposal, However, it fails to propose statements of acceptance of the new plan, i.e. of the so-called consolidated version. At the same time, the Court violated the BA, particularly by the fact that despite the submission of a new reorganization plan containing new classes and a new manner of compensation of creditors with unsecured claims, it failed to publish an announcement for the new plan, failed to call all creditors, and failed to ask for remarks on the plan [...]"[62]

92. From the stated circumstance, it follows that GAMA believed that, due to the procedural decisions made by the judge, she must have been biased, although there was no evidence supporting this request other than the judge had decided against GAMA. The challenge was heard and swiftly dismissed as groundless by the Deputy President of the Basic Court Skopje II. In addition, as correctly determined by the Deputy President of the Basic Court Skopje II, the circumstances referred to by the plaintiff are issues of a procedural nature, for which there are appropriate remedies before the Court of Appeals during the appeal procedure.

93. I understand that it is alleged at paragraph 113 of GAMA's Statement of Claim that the judge continued the procedure even though the judge was required under Article 68 to immediately stop work on the relevant case upon learning of a request for recusal. This appears to be an incorrect statement of facts. From the Minutes of the held Assembly of Creditors of 14.06.2018, page 5, it is unequivocal that immediately after GAMA presented the request for recusal, the judge stopped the proceedings at 12:00 and gave a break of 1 hour to decide on the request for recusal. In the meantime, as evident from Determination no. 03 IZZ no. 102/2018 dated 14.06.2018, the Deputy-President of the Basic Court Skopje II Skopje rejected the request for recusal as groundless. The bankruptcy judge then informed the parties that the request for her recusal had been rejected as groundless, informed them that no appeal was allowed against that determination and made a determination for the meeting of the creditors to continue. It follows that from the moment the request for recusal was submitted until a determination was made on it, no procedural action was taken by the judge, thus the statements in paragraph 113 of the Statement of Claim are incorrect. Rather, the hearing continued only after the recusal request was denied.

94. In my opinion, 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. The determination rejecting the request for recusal is fully in accordance with the LCP, and the judge's actions are in accordance with Article 68 – the procedure was stopped after the request

[62] Minutes of the 14 June 2018 hearing (**C-102**) at 4-5.

for recusal was presented, and continued after the determination to reject the request for recusal was made.

QUESTION 5: Is Mr. Kostovski right when he says that the 5 June 2018 hearing was a "Meeting of the Assembly of Creditors" rather than a "hearing to decide on the Proposal and vote on the Reorganization Plan" [63]?

95. Relying on the Kostovski Opinion, GAMA argues that it was not proper for the Bankruptcy Judge to hold a meeting of assembly of creditors to review creditors' objections on 5 June 2018.[64] I disagree. The hearing of 5 June 2018 was scheduled by the Determination of the Bankruptcy Judge to commence Preliminary Bankruptcy proceedings of 02.05.2018[65] (Exhibit C-093), as a "hearing to decide on the motion [Proposal] and vote on the debtor's reorganization plan".[66] That was in accordance with article 215-g (1) of LB.

96. First, the translation of para 59 of the Kostovski Opinion is incorrect. The English translation states:

> "Following the published announcement, several creditors submitted remarks to the Plan after which the Debtor promptly submitted replies and instead of the Court holding a hearing to decide on the Proposal and vote on the Reorganization Plan, it decided to hold a *Meeting of the Assembly of Creditors* to review the objections by the creditors submitted regarding the previously prepared Reorganization Plan." (emphasis added)

97. The proper translation, however, is: "it decided to hold a **Hearing** of the Assembly of Creditors." (emphasis added)

98. In short, it is undisputed that there was a court hearing on 5 June 2018. After all, Exhibit C-018 is titled "Minutes of the hearing before the Civil Court in Skopje, dated 5 June 2018".

99. Second, the Kostovski Opinion, at para 59 last sentence, wrongly asserts that "The Bankruptcy Law does not provide for the possibility to review creditors' remarks on a submitted plan at a hearing scheduled for voting on a reorganization plan." This statement is incorrect for two reasons.

100. The first reason is that the Kostovski Opinion relies on a wrong translation of Article 215-g(1) of the LB. The Kostovski Report uses the wrong translation of the phrase "a hearing scheduled for voting on a reorganization plan" while Claimant's own translation of the LB (Exhibit C-075) properly translate the said phrase as "a hearing **for deciding on the proposal** and voting for the plan". (emphasis added) The Kostovski Opinion leaves out the reference to "deciding

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[63] See: Dejan Kostovski, Expert legal opinion, dated 25 November 2022(**CE-01 EN**), page 14, para. 59.
[64] Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 14, para. 59.
[65] Decision by the First instance Civil Court Skopje, dated 2 May 2018 (**C-093**).
[66] Decision by the First instance Civil Court Skopje, dated 2 May 2018 (**C-093**).

on the proposal," which makes clear that the hearing may include discussion related to deciding on the proposal, as well as voting on the plan.

101. The second reason is that the Kostovski Report is not supported by any provision of the LB. It is correct that Article 215-g (1) does not explicitly state that at the Hearing for deciding on the proposal and voting for the Reorganization plan, the comments of the creditors may be reviewed, but that article also does not set forth a prohibition. And having in mind that the LB explicitly allows the creditors to submit comments on the Reorganisation Plan (Article 215-g para (5) of LB), it would be logical that the Bankruptcy Judge may allow the comments to be heard at a hearing before the Court. It might have been more efficient if the Bankruptcy Judge had scheduled a separate hearing prior to 05.06.2018, where the Creditors would have argued on their comments and objections to the Reorganization plan, and at the Hearing on 05.06.2018 only a voting on the Reorganization plan to be held, but LB does not prohibit the Court to act in another way and to allow the creditors to argue their comments at the hearing for deciding on the proposal and voting on the plan.

102. Article 215-g para (7) of LB authorizes the bankruptcy judge to hold even a separate hearing where "certain issues regarding the previously prepared reorganization plan shall be reviewed." It is in the bankruptcy judge's discretion to decide whether the comments should be reviewed at a separate hearing or at the Hearing for deciding on the proposal and voting for the Reorganization plan.

103. Finally, reviewing of the creditors' comments on the Reorganization Plan is for the purpose of protecting of the interests of the creditors, and allowing them to present their comments on the Reorganization Plan at an oral hearing is consistent with that objective. Allowing for the comments and objections of the creditors to be argued at the Hearing for deciding on the proposal and voting for the Reorganization Plan is in my opinion consistent with and not in violation of the LB.

QUESTION 6: Were the bankruptcy proceedings of TE-TO otherwise conducted in accordance with Macedonian law?

104. In my opinion, the preliminary bankruptcy reorganization proceedings of TE-TO were conducted in compliance with Macedonian law.

105. As I have explained, the bankruptcy judge commenced the preliminary bankruptcy proceedings on 02.05.2018. In the preliminary bankruptcy reorganization of TE-TO, in accordance with Article 215-d (3) of the LB, the decision to commence the preliminary bankruptcy proceedings was published on 8.5.2018 in the Nova Makedonija daily newspaper,[67] in the Official Gazette of the Republic of Macedonia and on the court's bulletin board. The published advertisement contained as follows:

– Published security measures determined by the determination in question.

[67] Announcement of the Civil Court in Skopje, published in the Official Gazette of the Republic of Macedonia, no. 80/2018 of 5 July 2018. (**C-094**).

– Announced scheduled hearing to decide on the proposal and vote on the debtor's reorganization plan.

– A Notice to Creditors has been published that they may **inspect** the prepared reorganization plan that has been filed in the bankruptcy file.

– A call to all interested participants who have objections to the proposed reorganization plan, disputing its content, and especially the basis or amount of the covered claims, to submit them to the court and the debtor within 15 days from the date of publication of the announcement in the Official Gazette of the Republic of Macedonia.

106. With the public announcement, the principle of informing all creditors and participants in this procedure was observed, and the Announcement was fully in accordance with paragraph 215-d (5) of the LB.

107. The provisions of Article 215-a to 215-d of the LB (as newly included in 2013) regulate in more detail the procedure for submitting a reorganization plan with a proposal for opening bankruptcy proceedings by the debtor itself.

108. According to the LB,[68] when adopting a determination to initiate preliminary proceedings, the bankruptcy judge schedules a **hearing** to decide on the proposal to open bankruptcy proceedings and vote on the reorganization plan, to which he/she invites all known creditors of the bankrupt debtor. That hearing must be held within 60 days from the day of adopting the determination, a period within which the preliminary proceedings must also be finalized.

109. In the preliminary bankruptcy reorganization of TE-TO, the bankruptcy judge scheduled a **hearing** on 05.06.2018 for deciding on the proposal for opening bankruptcy proceedings and voting on the reorganization plan.[69] After an initial postponement, the hearing was held on 14.06.2018,[70] that is, within the legal deadline of 60 days from the adoption of the determination to initiate preliminary proceedings.

110. After the published announcement, three creditors (including GAMA) promptly submitted comments and objections to the proposed Reorganization Plan: Toplifikacija AD and Komercijalna Banka AD submitted their comments and objections on 21.05.2022,[71] and GAMA submitted comments and objections on 22.05.2022.[72]

111. On 30.05.2018, the debtor TE-TO issued a written submission based on the comments submitted by GAMA.[73] In doing so, it accepted some of GAMA's comments, the most significant being that it accepted that there were should be only two classes of creditors in the

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68 LB (**R-10)**, Article 215-e (1)

69 Decision by the First instance Civil Court Skopje dated 2 May 2018 (**C-093**), page 1.

70 Minutes of the hearing before Civil Court Skopje, dated 14 June 2018 (**C-103**).

71 Submission of the Creditor Toplifikacija AD Skopje with opinion expressed on the Reorganization Plan of the Company for the Production of Electric and Thermal Energy TE-TO AD from Skopje, dated 21 May 2018 (**C-098**); and Submission of the Creditor Komercijalna Banka AD Skopje with comments on the Reorganization Plan of the Company for the Production of Electric and Thermal Energy TE-TO AD from Skopje, dated 21 May 2018 (**C-099**).

72 Submission of the Creditor GAMA with objections and comments on the Reorganization Plan of the Company for the Production of Electric and Thermal Energy TE-TO AD from Skopje, dated 22 May 2018 (**C-097**).

73 Submission of the debtor TE-TO, dated 30 May 2018 (**C-100**).

Plan: secured and unsecured creditors. The two classes of unsecured creditors that were originally contemplated in the proposed Reorganization Plan were merged into one class of unsecured creditors.

112. The LB provides that, during the preliminary proceedings, the bankruptcy judge can schedule a hearing at which certain issues related to the proposed reorganization plan will be considered.[74] It is indisputable that in TE-TO's preliminary bankruptcy reorganization, the hearing of 05.06.2018 was scheduled as a hearing for deciding on the proposal and voting on the plan. As evident from the content of the Minutes of the hearing held on 05.06.2018,[75] in the form of Assembly of Creditors, the topic discussed included **consideration of the comments, written objections from the creditors in connection with the previously prepared reorganization plan. Consideration of these matters does not contradict the Law on Bankruptcy**. At the said hearing, all of the creditors elaborated on their written remarks and objections on the Reorganization plan. The interim bankruptcy trustee ascertained the voting right, stating that all creditors with secured and unsecured claims had the right to vote. As evident from the contents of the Minutes for the same hearing dated 05.06.2018, 90.19% of the total established creditors with recognized claims were present (constituting the required quorum), and none of the creditors present objected when the bankruptcy judge issued a determination to hold the Assembly of Creditors for consideration of creditors' comments and written objections regarding the previously prepared reorganization plan.[76]

113. The Minutes of the Hearing held on 05.06.2018 also show that all the objections against the Reorganization Plan received from the creditors GAMA, Komercijalna Banka and Toplifikacija were read. It was established that the debtor TE-TO decided to accept part of the creditors' objections, such that the Reorganization Plan had to undergo changes. Therefore, the court passed a determination obliging the debtor within three days of the hearing to submit a corrected or consolidated text of the Reorganization Plan with the incorporation of the comments that were of an essential nature and to deliver it to the creditors attending the hearing for inspection, in order for them to get familiar with the consolidated text of the Plan for the purpose of expression their opinion in relation to it.

114. The bankruptcy judge postponed the hearing for deciding on the proposal and voting on the plan until 14.06.2018 in order for TE-TO to prepare a corrected – consolidated text of the proposed Reorganization Plan, since TE-TO had stated at the hearing held on 05.06.2018 that it accepted part of the objections of the bankruptcy creditors.

115. In my opinion, it is indisputable 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.

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[74] LB (**R-10**), Article 215-g (6).
[75] Minutes from Hearing 3 ST-124/18 of the Basic Civil Court Skopje, dated 5 June 2018 (**C-018**) page 3.
[76] Minutes from Hearing 3 ST-124/18 of the Basic Civil Court Skopje, dated 5 June 2018 (**C-018**) page 3.

116. Acting on the authority of the Court, the debtor prepared a consolidated text of the reorganization plan that incorporated and accepted some comments, and the plan was submitted to the Court in a timely manner on 08.06.2018[77] and duly delivered to all creditors who had attended the hearing meeting on 05.06.2018.

117. I disagree with the Kostovski Opinion, where it is stated that "after receiving TE-TO's response to the letter, the Bankruptcy Judge did not request that such remarks be included in the Reorganization Plan"[78]. My understanding of Mr. Kostovski's comment is that the failure of the bankruptcy judge would be that she didn't instruct the debtor (TE-TO) to include GAMA's objections, which the debtor had indicated it accepted in his written response to GAMA's letter of 22.05 2018. However, the submitted evidence that I reviewed clearly demonstrate that the bankruptcy judge did order the debtor to include in the Reorganization Plan all the objections from the creditor GAMA that had been accepted by the debtor first in his written response of 29.05.2018. Namely, the Minutes of the Hearing held on 05.06.2018 reveal that after the creditors presented their objections to the plan, and the debtor stated which objections were acceptable for him, the bankruptcy judge postponed the Hearing until 14.06.2018, and issued a Determination providing that: "***Within 3 days of this hearing the debtor shall submit a corrected and consolidated version of the reorganization plan which shall be communicated to the creditors*** *present at today's assembly, which creditors should receive so they can be acquainted with the content of the consolidated version and can clearly determine what position to take and what to vote for.*"[79] In my view, Mr Kostovski's opinion is also wrong, when he states in his opinion that : "*Thus, the creditors that did not participate in the negotiations for accepting the Reorganization Plan were denied a full insight into the Reorganization Plan and all the corrections made in the initial text."* The said Determination clearly demonstrates that the bankruptcy judge ordered the debtor not only to prepare a consolidated version of the Reorganization Plan, but also to deliver that consolidated version to all the creditors that were present at the hearing. So, the creditors were fully acquainted with the consolidated version of the Reorganization Plan. In fact, GAMA submitted a brief to the Court with objections and remarks on the consolidated plan on 12.06.2018.[80] Therefore, it is apparent that the creditors that did not participate in the negotiations of the Reorganization Plan (GAMA being one of them) were afforded full insight into the consolidated version of the Reorganization Plan prepared by TE-TO.

118. The Kostovski Opinion states "The Bankruptcy Judge concluded that some of the remarks were of an essential nature and that the Plan should be changed in terms of grouping the creditor classes, so therefore, a new Reorganization Plan should be prepared."[81] However, it

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77 Submission from the Debtor TE-TO together with the Consolidated Text of the Reorganization Plan, dated 7 June 2018 (**C-014**).

78 See: Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 13, para. 52.

79 Minutes of the hearing held before the Civil Court in Skopje in case 3 ST-124/18, dated 5 June 2018 (**C-018**), page 11 (emphasis added).

80 Brief by GAMA to the Civil Court in Skopje dated 12 June 2018 with objections and remarks to the Reorganization plan, dated 6 June 2018 (**C-101**).

81 Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 15, para. 61.

is my opinion that the consolidated text of the Reorganization Plan of the debtor TE-TO is not a new reorganization plan, but is only a corrected/consolidated text of the previously prepared Reorganization Plan dated 24.04.2018, edited on 02.05.2018, with changes and additions made following the comments and objections from the creditors (including GAMA in its submission dated 22.05.2018 and repeated at the hearing of 05.06.2018). Specifically, the changes included: merging of all the unsecured creditors into a single second class, instead of being separated into two classes (second and third). After this change was implemented, only two classes of creditors were provided in the Reorganization Plan (secured creditors and unsecured creditors), and the third class of creditors was canceled.[82] This change triggered a number of other consistency changes in the rest of the Reorganization Plan.[83]

119. GAMA submitted further comments on the consolidated text of the TE-TO Reorganization Plan with a submission dated 12.06.2018.[84]

120. At the hearing held on 14.06.2018, the Assembly of Creditors, with a majority of creditors' votes in each class (secured and unsecured), **accepted** the revised Reorganization Plan.[85] As a result, in accordance with the LB[86], by Determination 3 ST 124/18 and ST 160/18 dated 14.06.2018[87], the bankruptcy judge then **adopted** the proposal for opening bankruptcy proceedings with a reorganization plan submitted by the debtor TE-TO, **opened** the bankruptcy proceedings, **approved** the acceptance of the prepared reorganization plan, and **terminated** the open bankruptcy proceedings. This was in full compliance with the LB and Macedonian law.

121. With Determination 3 ST 124/18 and ST 160/18 of 17.07.2018,[88] the bankruptcy judge then **corrected** her Determination of 14.06.2018 such that the enacting clause indicated and mentioned read "consolidated plan for reorganization" instead of "plan for reorganization" (with the word "consolidated" being added before the words "plan for reorganization" in the document).

122. Appeals were filed against the abovementioned Determinations of the bankruptcy judge dated 14.06.2018 and 17.07.2018 by the creditors Komercijalna Banka, Toplifikacija and GAMA. By Determination TSZH-1548/18 of 30.08.2018,[89] the Skopje Court of Appeal, as a second-instance court, deciding on the appeals submitted by these creditors, rejected the appeals as groundless, and affirmed the Determinations. A page 16 of the explanatory note of the second-

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[82] See: Consolidated version of the Reorganization plan of TE-TO AD Skopje no. 302-685 dated 06 June 2018 (**C-014**), page 31.

[83] See: Brief by TE-TO to Civil Court Skopje in response to GAMA's objections and remarks, dated 30 May 2018 (**C-100**), pages 3-10.

[84] Submission of the Creditor GAMA with objections and comments on the consolidated text of the Reorganization Plan of the Company for production of electric and thermal energy TE-TO AD from Skopje, dated 22 May 2018 (**C-097**).

[85] Minutes of the hearing held before the Civil Court in Skopje in case 3 ST-124/18, dated 14 June 2018 (**C-102**).

[86] LB (**R-10)**, Article 215-e (3)

[87] Decision ST 124/18 and 160/18 dated 14 June 2018 of the Basic Court Skopje 2 Skopje (**C-015**).

[88] Decision ST 124/18 and 160/18 dated 17 July 2018 of the Basic Court Skopje 2 Skopje (**C-016**).

[89] Enacting clause of Decision TSZH-1548/18 dated 30 August 2018 of the Court of Appeals Skopje (**C-017**)

instance determination[90], the Skopje Court of Appeal, establishing the factual situation, established and accepted that the conclusion of the first instance court was correct, that in the specific case GAMA's contention that the consolidated Reorganization Plan constituted a new reorganization plan was groundless, because it was not a new plan for reorganization, but only a corrected version of the reorganization plan in which all the comments of the creditors had been incorporated, and with which the creditors were already familiar at the hearing held on 05.06.2018.

123. In my opinion, the Determination of the Civil Court in Skopje as the first instance court approving the consolidated Reorganization Plan of the debtor TE-TO and the Determination of the Court of Appeals in Skopje dated 30.08.2018 rejecting the appeals of the creditors Komercijalna Banka AD, Toplifikacija AD and GAMA correctly decided that the Reorganization Plan should be approved and that the consolidated text did not constitute a new plan, such that the Determinations were made in accordance with the provisions of the LB and did not violate any of the provisions of the LB or Macedonian law.

C. TE-TO's Reorganization plan met the requirements of the Bankruptcy Law

QUESTION 7: **Was the Reorganization Plan prepared by TE-TO and adopted by the Creditors in violation of LB for not containing "a detailed analysis as to why reorganization was a more favourable option to settle the claims of unsecured creditors of a higher payment priority order, such as GAMA, compared to the option [of] liquidation of assets" as stated in the Kostovski Opinion (at para. 21)?**

124. The mandatory contents of the reorganization plan in Preliminary Bankruptcy Reorganization proceedings are provided in Article 215-b of the LB. That provision does not include any obligation on the debtor (who prepares the reorganization plan) to include in the plan: "a detailed analysis as to why reorganization was a more favourable option to settle the claims of unsecured creditors of a higher payment priority order, compared to the option [of] liquidation of assets".

125. Therefore, Mr. Kostovski's critique of the TE-TO Reorganization Plan is without legal grounds. Paragraphs 21-24 of the Kostovski Opinion do not reference any provision of the LB that would impose an obligation on the debtor to provide in the plan an analysis of why reorganization would be a better option for the creditors than liquidations of debtor's assets.

QUESTION 8: **Was the Reorganization Plan prepared by TE-TO and adopted by the Creditors in violation of LB for purportedly not analyzing how TE-TO planned to address future risk, as stated in the Kostovski Opinion (at para. 33)?**

126. The mandatory contents of the reorganization plan in Preliminary Bankruptcy Reorganization proceedings are provided in Article 215-b of LB. That provision does not include an obligation on the debtor (who prepares the plan) to include in the plan: "an analysis on how TE-TO will

[90] Explanation of Decision TSZH-1548/18 dated 30 August 2018 of the Court of Appeals Skopje (**C-017**).

deal with any future risks"[91]. Therefore, this critique by Mr. Kostovski of the Reorganization Plan is again without legal ground. Paragraphs 33-34 of the Kostovski Opinion do not reference any provision of the LB that would impose an obligation on the debtor to provide in the plan "an analysis on how TE-TO will deal with any future risks".

QUESTION 9: **Was the Reorganization Plan prepared by TE-TO and adopted by the Creditors in violation of LB for purportedly not detailing TE-TO's attempts to negotiate a solution as stated in Kostovski Opinion (at para. 27)?**

127. The Kostovski Opinion, at in para. 27, relies on Article 215-b, paragraph (2) line 4) of the LB:

> *"(2) The plan for reorganization prepared by the debtor, in addition to the items referred in paragraph (1) of this article, contains:*
> *4) Data on the procedure for the preparation of the plan for reorganization, including the data for sent notifications, the availability of information to creditors and the course of negotiations:"*

128. Also, para. 27 of the Kostovski Opinion refers to the contents of Reorganization Plan of TE-TO AD Skopje no. 302-439 dated 4 April 2018 and the Brief by TE-TO to the Civil Court in Skopje, dated 2 May 2018 (Exhibit C-092). Relevant is also the Consolidated version of the Reorganization Plan of TE-TO AD Skopje no. 302-685 dated 6 June 2018 (Exhibit C-014).

129. In the consolidated version of the Reorganization Plan, at pages 92 and 93, under paragraph 2.20, there are provided "Data on the procedure for preparing the Reorganization Plan, including data for sent notifications, availability of creditors' information and the course of negotiations".[92] In addition, attached to the Reorganization Plan are Statements of a majority of Creditors of each one of the two classes (secured and non-secured creditors) that they would vote for acceptance of the Plan. In the class of Secured Creditors, the Statement is provided by Landesbank Berlin (with 95.56% of the secured Claims) (on page 520). In the class of unsecured creditors, Statements are provided by Bitar Holding (with 66,61% of unsecured claims) (page 613), TE-TO Gas Trade DOOEL (0,56% of the unsecured claims) (page 621), Balkan Energy Security DOOEL (0,04% of unsecured debt) (page 623), and Balkan Energy Group (0,17% of unsecured debt) (on page 625).

130. In my opinion, the Reorganization Plan includes information on the negotiations as required under Article 215-b, paragraph (2) line 4 of the LB.

D. The claims of TE-TO's creditors were treated in accordance with Macedonian law

QUESTION 10: Did the Bankruptcy Court err when it approved the Reorganization Plan that included TE-TO's debt to GAMA after the Civil Court had previously revoked

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[91] Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 8, para. 33.

[92] Consolidated version of the Reorganization plan of TE-TO AD Skopje no. 302-685 dated 06 June 2018 (**C-014**), page 93.

the determination of Notary Public Snezhana Vidovska to approve enforcement of that debt?

131. No. In my opinion, the bankruptcy judge did not err in including TE-TO's debt to GAMA in the approved Reorganization Plan.

132. With her Determination UPDR No. 2806/12 dated 04.12.2012, Notary Public Snezhana Vidovska from Skopje allowed the proposed enforcement of TE-TO's debt to GAMA on the basis of a reliable/authentic document (invoice) and obliged TE-TO to pay GAMA an amount of EUR 5,000,000.00 with statutory penalty interest and costs.[93]

133. On 13.12.2012, TE-TO submitted an objection against that determination, within the legal time period, based on the fact that GAMA had not performed the agreed upon obligations from the concluded contract (settlement agreement) between these two parties, specifically arguing that GAMA's claim was not due for collection.[94]

134. After the objection, a special civil procedure was carried out before the Civil Court in Skopje under Articles 417 to 428 of the LCP, after which the Civil Court in Skopje as a first-instance civil court issued Judgment 50 PL1-286/13 on 04.05.2018, accepting the objection of TE-TO and terminating the Determination UPDR no. 2806/12 of 04.12.2012 by Notary Public Snezhana Vidovska from Skopje.[95]

135. Despite the fact that GAMA's claim to TE-TO was disputed and there were ongoing civil litigation proceedings between TE-TO and GAMA, TE-TO still recorded the obligation owed to GAMA in the amount of EUR 5,000,000.00 in its accounting records and the claim of the creditor GAMA was also recorded in the TE-TO's proposed Reorganization Plan dated 24.04.2018, supplemented on 02.05.2018.

136. In my opinion, considering that the debtor TE-TO itself had recognized GAMA's claim in the proposed Reorganization Plan, the bankruptcy judge was correct to include that claim in the amount of EUR 5,000,000.00 when she approved the Reorganisation Plan in Determination no. 3ST 124/18 and 160/18[96] dated 14.06.2018. The LB[97] expressly provides that, for the purpose of voting on a prepared reorganization plan, all the liabilities of the bankrupt debtor incurred before the submission of the prepared reorganization plan are deemed to be accelerated and due on the day that the hearing for voting on the plan is held. Accordingly, even if TE-TO's debt to GAMA was not matured (due) before the submission by TE-TO of its Preliminary Bankruptcy Reorganization Proposal, by virtue of Article 215-d (1) of the LB,

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93 Decision on permitting enforcement based on a reliable document UPDR No. 2806/12 issued by Notary Public Snezhana Vidovska, dated 4 December 2012 (**C-006**).

94 Objection by TE-TO against the Decision on permitting enforcement based on reliable document UPDR no. 2806/12 issued by Notary Public Snezhana Vidovska, dated 13 December 2012 (**C-040**).

95 Judgment of the Civil Court in Skopje no. 50 PL1-286/13, dated 4 May 2018 (**C-010**).

96 Decision of the Civil Court in Skopje, no. 3ST 124/18 and 160/18, dated 14 June 2018 (**C-015**).

97 LB (**R-10**), Article 215-d (1).

that claim would still be considered to be mature (due) on the day of the hearing for voting on the plan.

137. Further, pursuant to Article 144 of the LB, bankruptcy creditors can realize their claims against the debtor only in the bankruptcy proceedings. Having in mind this provision, it follows that, if the TE-TO Reorganization Plan was approved, GAMA would not be able to collect its claim outside of the Reorganization Plan. Therefore, the debtor TE-TO was obliged to include GAMA's claim in the Reorganization Plan, and the bankruptcy judge correctly approved such inclusion of GAMA's claim in TE-TO's Preliminary Bankruptcy Reorganization Plan.

138. Finally, the cancellation by Judgment of 04.05.2018 of the Notarial Determination UPDR no. 2806/12 approving enforcement of the date has no bearing on the approval of the Reorganisation Plan. The cancellation would be relevant if the debtor TE-TO had disputed the claim in question in the bankruptcy proceedings, which it did not. On the contrary, the debtor TE-TO listed GAMA's claim in the Reorganization Plan.

QUESTION 11: Does the final Reorganization Plan of June 6, 2018 violate Macedonian law by placing the shareholders of TE-TO in the same class with other unsecured creditors or by giving equal priority to all creditors in the same class?

139. No. In my opinion, and as I explain below, the classification of creditors adopted by the Reorganization Plan was consistent with the LB.

140. The Kostovski Opinion adopts the view that "TE-TO establishes two classes of creditors by its Reorganization Plan submitted on 6 June 2018 to both the Court and other Creditors, where the first class consists of creditors with secured claims, while the second group includes creditors with unsecured claims, which also includes TE-TO shareholders. This classification of creditors is contrary to the legal provisions envisaging that the claims of shareholders shall be treated as of a lower order of payment priority, i.e., in a separate class."

141. In the context of bankruptcy reorganization, however, the LB does not require the creation of a separate class for shareholders' loans. Pursuant to Article 215-b (1) item 2) paragraph 2 of the LB, in a preliminary bankruptcy reorganization, the reorganization plan prepared by the debtor should contain:

> "[*l]ist of creditors with a* ***division of classes of creditors and criteria*** *on the basis of which the classes are formed."*[98] (Emphasis added)

142. Contradicting his position in this arbitration, in his Commentary on the Law of Bankruptcy, Mr. Kostovski is clear that the LB does not mandate the creation of separate classes. With respect to Article 215-b of LB Mr. Kostovski states that "the legislator provides the opportunity for the formation of classes of creditors, just as during the voting on the proposed

[98] The term "classes of creditors" itself is a new term in the LB, introduced for the first time with the 2013 amendments, and appears only in Article 215-b. However, in the bankruptcy court practice, the terms "class of creditors" and "group of creditors" are given the same meaning. Therefore, in this opinion, I treat the two terms as synonyms.

plan submitted in bankruptcy proceedings. **The formation of classes is possible, but not mandatory**. The classes of creditors who will vote according to the prepared plan for reorganization are proposed by the debtor."[99] (Emphasis added).

143. The LB thus gives broad discretion to the debtor to prepare the plan in the context of a preliminary bankruptcy reorganization. The provisions of the LB regarding preliminary bankruptcy reorganization do not specify the criteria by which the classes of creditors should be determined. In other words, 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.

144. This is in contrast to the rules applicable to the so-called "regular" bankruptcy proceedings (i.e. reorganization of the debtor after opening the bankruptcy proceedings). Article 220 (which applies in the so-called "regular" bankruptcy reorganization proceedings") contains mandatory guidelines that must be applied when determining the rights of the participants in the reorganization plan. Articles 220 (1) and (2) of the LB thus stipulate that, when determining the rights of the participants in the reorganization plan, a distinction must be made between, on the one hand, creditors with the right to separate settlement and creditors of a higher order of payment, if their rights are affected by the plan, and, on the other hand, other creditors who can be organized into groups according to their interests. Pursuant to the 2013 amendments to the LB governing the procedure for preliminary bankruptcy reorganization, the application of Article 220 of the LB is expressly excluded, however.[100]

145. The provision of Article 215-b of the LB, which regulates the content of the reorganization plan prepared by the debtor in the preliminary bankruptcy reorganization, does provide some guidance according to which the debtor should carry out the division of creditors by class. Article 215-b (1) 1) paragraph 3 states that:

> *"the reorganization plan prepared by the debtor especially contains … [a]mount of monetary or amounts or assets that will be used for full or partially settlement of the classes of creditors, including both secured and unsecured creditors, as well as the funds reserved for creditors whose claim has been disputed, the procedure for settlement of the creditors and time dynamics of payment".*

146. Article 215-b (1) 2) line 3 thus contemplates three classes of creditors, for which the reorganization plan prepared by the debtor should contain "amount of monetary amounts or assets that will be used for full or partial settlement of the classes of creditors". These are: a) secured creditors, b) unsecured creditors and c) creditors whose claim is disputed (and who should initiate civil litigation to establish their claim).

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[99] Dejan Kostovski, Commentary on the Law on bankruptcy, Skopje, January 2014 (**R-8**) page 657.
[100] LB (**R-10**), Article 215d (6).

147. The TE-TO Reorganization Plan was prepared in accordance with these provisions. In the procedure following the Proposal for preliminary bankruptcy reorganization of TE-TO dated 24.04.2018, the Reorganization Plan prepared by the debtor TE-TO listed the classes of creditors as well as the criteria according to which they were made, and according to the LB, both secured and unsecured creditors were listed. The initial plan dated 24.04.2018 (C-018) provided for the division of creditors into three classes: First class – Creditors with secured claims; Second Class – Creditors with unsecured claims on the basis of loans and investments and Third Class – Creditors with unsecured claims on the basis of TE-TO's current operations.[101] Later, after receiving comments from creditors GAMA, Komercijalna Banka and Toplifikacija,[102] and the statement submission of the debtor TE-TO after the remarks[103], as well as after the hearing held on 5.06.2018, the debtor TE-TO made corrections to the classes of creditors in the consolidated text of the Reorganization Plan dated 08.06.2018 (C-104), with the Reorganization Plan then providing for only two classes of creditors: First class – Creditors with secured claims; and Second Class – Creditors with unsecured claims.[104]

148. I note that there were no disputed claims in the Reorganization Plan (either in its initial version of in the revised consolidated version), which is why there were no class of creditors with disputed claims in it. For the purposes of bankruptcy proceedings, GAMA's claim was an undisputed claim. Its maturity was disputed by TE-TO (the dispute was whether the claim was conditional or not, and whether the conditions for maturity were fulfilled) in the special civil litigation for payment order under articles 417-429 of LCLP, but the existence of that claim was not disputed by the debtor TE-TO in the bankruptcy proceedings and was included in the Reorganization Plan. (As explained earlier, this was consistent with the LB, since the LB provides that all the claims against the debtor are deemed to become mature when the bankruptcy proceedings is opened (art. 119 (1) of LB: "(1) Claims that are not matured shall become payable as of the day when the bankruptcy procedure is opened.")

149. The division of creditors into two classes in the consolidated text of the TE-TO Reorganization Plan, where the classification criterion was whether the claims were secured or not is in full accordance with the provision of Article 215-b, (1) 2) line 3. Also, since there are no creditors with disputed claims in the plan, all creditors of TE-TO are included in accordance with Article 215-b (1) point 2) paragraph 3 of the LB. The provisions of the LB do not restrict the possibility of partners/shareholders being included in the same class as other creditors with unsecured claims in the Preliminary Bankruptcy Reorganization Plan prepared by the debtor, which is why the consolidated text of the TE-TO Reorganization Plan in preliminary proceedings, in my opinion, is in accordance with the LB.

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[101] Plan for the reorganization of the Company for production of electric and thermal energy TE-TO AD Skopje (**C-013**), page. 15-16.
[102] Exhibits **C-097, C-098** and **C-099**.
[103] Submission by the debtor TE-TO in response to the remarks of the creditor Gama, dated 30 May 2018 (**C-100**).
[104] Refined text of the plan for the reorganization of the Company for production of electric and thermal energy TE-TO AD Skopje (**C-014**), pages. 28-29.

QUESTION 12: Do shareholder loans fall into Article 118 of the LB and does that Article apply to TE-TO's Reorganization Plan?

150. No. While shareholder loans are listed in Article 118 of the LB (and are placed at the bottom of the ranking of claims under the said provision), in my opinion, and as I explain below, that article does not apply to the settlement of creditors in the preliminary bankruptcy reorganization procedure conducted under a reorganization plan prepared by the debtor pursuant to Articles 215-a to 215-g of the LB.

151. Articles 116-118 of the LB establish certain rules for ranking the bankruptcy creditors. I discuss these below.

152. Article 116 (1) provides for the basic rule for the ranking of creditors into two categories:
- First, Creditors of higher payment order; and
- Second, Creditors of lower payment order.

153. Article 116 (2) LB provides for that "The claims of the creditors of the lower payment order may only be settled only after the creditors of the previous (higher) payment order have been fully settled. The bankruptcy creditors of the same payment order are settled in proportion to the size of their claims."

154. Article 117 LB determines the claims of the higher payment rank (including unpaid salaries and social security contributions for the last three months prior the opening of the bankruptcy procedure, compensation claims for injuries that employees suffered while working for the debtor, as well as for occupational diseases, and unpaid salary compensation claims for annual vacations which were not used in the respective calendar year).

155. Article 118 LB determines the creditors of the lower payment rank, and also determines their sub-ranking (priority of payment between the different categories of claims of lower payment rank). It provides for 5 categories of claims in the lower payment rank:

1) Interest on the claims of the bankruptcy creditors that are due as of the date of opening of the bankruptcy procedure;

2) Costs of certain creditors that could incur as a result of the creditors' participation in the procedures;

3) Fines for criminal acts or misdemeanors, as secondary consequences from criminal acts or misdemeanors that impose the payment of fines;

4) Claims for debtor's services provided free of charge; and

5) Claims for return of a loan or other appropriate claim that indemnifies the property of a partner/member, i.e. a shareholder. Shareholders' loans are contemplated by item (5) above.

156. The Kostovski Opinion in paragraph 37 incorrectly asserts that the Article 116 of the LB ranks the creditors as a) creditors with secured claims or separate claims and b) creditors with unsecured claims of a higher order of payment priority and of a lower order of payment priority. However, a brief look at Article 116, at first glance, reveals that the provisions does not deal with the secured claims. They are not subject of ranking, since they are settled

separately from the unsecured claims, from the amount received from the sales of the secured asset (Articles. 128-132 of LB).

157. The Kostovski Opinion also does not specify in which one of the two categories of creditors under Article 118 (higher or lower ranking) GAMA belongs. This is not surprising because Article 118 does not include the "regular" bankruptcy creditors with unsecured claims. In the practice of Macedonian bankruptcy courts, the "regular" unsecured bankruptcy creditors are generally considered to fall in between the higher and lower payment ranks. So, they are higher than the claims in the lower rank, but they are considered lower than the claims in the higher payment rank.

158. In my opinion, however, Article 118 has no application in the context of a preliminary bankruptcy reorganization. The provisions of Articles 116-118 of the LB are further operationalized in the specific rules for settlement of creditors in the LB. Thus, the rules for settlement of the creditors in liquidation (through sale of his assets and proportional distribution of the received amount) are provided in Articles 189-199 of the LB. The rules for settlement of creditors in a "regular" bankruptcy reorganization are provided for in Article 220 of LB, which sets forth the rules for grouping of creditors in the reorganization plan:

"**Article 220**
(1) In the course of the establishment of the rights of the participants in the reorganization plan, a difference will be made between creditors with a right to separate settlement and creditors of higher payment rank, if the plan affects their rights;
(2) The other creditors may organize themselves in groups according to their interests.
(3) Within each group of creditors, all participants shall have equal rights.
(4) Each different treatment of the participants that form a group will require the consent of all interested participants."

159. The said provision imposes the application of the ranking criteria of Articles 116-118 of LB to the grouping of creditors in the "regular" reorganization plan (with the higher ranking creditors being treated in a separate group). **As noted, however, in the context of a preliminary bankruptcy reorganization, Article 215-d (6) of the LB expressly excludes the application of Article 220 of the LB regarding the determination of the classes of creditors in the Reorganization Plan.** That leads to a conclusion that indirectly, by excluding the application of Article 220, the LB also excluded application of Articles 116-118 of LB as criteria for determining the classes of creditors in the reorganization plan in preliminary bankruptcy reorganization. This is understandable, since the preliminary bankruptcy reorganization includes settlement of the creditors in accordance with the prepared plan, where there is uncertainty whether the creditors would have better options for settlement in a liquidation of the debtor and sale of his assets. The creditors provide their consent (by voting) in the preliminary bankruptcy procedure, and if a majority is achieved, the reorganization plan is approved and becomes obligatory for all creditors. **Therefore, by excluding the application of Article 220 to preliminary bankruptcy reorganization plan, the LB implicitly excluded the application of Article 118 to determine classes of creditors in the Reorganization Plan.**

QUESTION 13: Did the Civil Court err in postponing the settlement of 10% of GAMA's and of the unsecured claims for 12 years?

160. The approved consolidated text of the Reorganization Plan[105] contemplates the implementation of the Reorganization Plan over a period of 12 years. It is correct that this 12-year term exceeds the 5 year timeline generally prescribed by Article 215-b (1) 2 paragraph 13 of the LB. Pursuant to Article 215-b (1) 2 paragraph 13 of the LB, it is stipulated that the deadline for implementing the reorganization plan:

> *"cannot be longer than five years, except in the case when the measures for realization of the plan for reorganization plan refer to the foreseen repayment of claims in installments, **change of maturity dates**, interest rates **or other conditions** of the loan, credit **or other claim** or security instruments, the repayment period of the credit or loan taken during the duration of the preliminary proceedings or in accordance with the plan for reorganization, as well as the maturity dates of the issued debt securities". (emphasis added)*

161. Article 215-b (1) 2) paragraph 13 as a basic rule contemplates a period for implementing the reorganization plan of 5 years. However, that same provision makes clear that the basic rule is not absolute. There are exceptions where the deadline for implementing the reorganization plan can be longer than 5 years. Among other things, it is provided that the period for implementing the reorganization plan of the debtor in preliminary proceedings may last more than 5 years when the Plan provides for:

> **"*change of maturity dates**, interest rates **or other conditions** of the loan, credit or **other claim** or security instruments…*".

162. GAMA's claim against TE-TO originates from the Agreement between GAMA and TE-TO dated 24.12.2012. GAMA's claim against TE-TO under the Agreement dated 24.02.2012 cannot be classified as "loan", "credit", nor "security instrument", but there is no doubt that it can be classified as "other claim" from Article 215-b, (1) item 2 line 13 of LB. The Preliminary Bankruptcy Reorganization Plan of TE-TO contemplated the settlement of GAMA's claim in a different time period and under different conditions than those contained in the Agreement of 24.02.2012, that is, it modified its maturity dates and other conditions.

163. **On that basis, I am of the opinion that, with the approved consolidated text of the TE-TO Reorganization Plan in preliminary proceedings, it was possible to establish a period for implementation of the Plan for GAMA's claim (and other unsecured claims) longer than 5 years, as GAMA's claim can be regarded as "other claim" for which the "maturity period" and "other conditions" are changed with the Plan, thereby meeting the conditions for applying the exception of Article 215-b (1) 2) line 13 of the LB and allowing for the implementation period for the Reorganization Plan in preliminary proceedings for that claim to be longer than 5 years.**

[105] Consolidated text of the TE-TO Reorganization Plan no. 0302-685, dated 6 June 2018 (**C-14**), point 2.6, page 44.

164. I therefore disagree with the Kostovski Opinion that "the period for implementation of the Reorganization Plan is contrary to the provisions of the Bankruptcy Law",[106] for the following reason. Mr Kostovski concludes that "Given that GAMA's claim does not derive from a **loan or credit agreement**, the timeframe for implementing the Reorganization Plan cannot be longer than 5 years."[107] (emphasis added) The conclusion of Mr. Kostovski simply omits that under the Art 215-b (1) 2) line 13 of LB which is properly cited by him in paragraph 29 of his Opinion, not only claims that derive from a loan or credit agreement are exempted from the 5 year timeframe for implementation of the bankruptcy plan, but also "other claim or security instruments" are subject to the said exemption. As stated the previous paragraph, GAMA's claims falls under "other claims" and is also exempted from the 5 years' timeframe for implementation of the Reorganization Plan. For the said reasons, our opinion is that Mr. Kostovski's conclusion that the timeframe for implementing the Reorganization plan of TE-TO could not be longer than 5 years is wrong.

E. The outcome of a regular bankruptcy proceedings for TE-TO would have been uncertain

QUESTION 14: If the TE-TO Reorganization Plan was not approved, would bankruptcy proceedings be opened against TE-TO?

165. On 24.04.2018, when the Proposal for implementing reorganization procedure in preliminary proceedings of the debtor TE-TO was submitted to the Court, the transaction accounts of TE-TO were blocked.

166. According to the current balance of the account with NLB Bank AD Skopje, the initial balance of TE-TO's current ("giro") account was 0 (zero), the account was blocked and had outstanding liabilities of MKD 1,339,936,354.00. According to the account status report with Komercijalna Banka AD Skopje, the balance of TE-TO's current account was MKD 3,046.00, the account was blocked and there were no outstanding obligations. According to the creditworthiness of the account with Ohridska Banka AD Skopje, the balance of TE-TO's current account was MKD 67,652.00, the account was blocked and had outstanding liabilities of MKD 501,470.00.

167. It was obvious from the statements submitted by the commercial banks where TE-TO had current accounts that TE-TO had an insignificant amount of cash, while having outstanding liabilities in the amount of over EUR 21 million.

168. **The evidence thus submitted indicates that if the Reorganization Plan of TE-TO was not approved, bankruptcy proceedings would have been opened against TE-TO, because as of 26.04.2018, TE-TO met the two alternatively set conditions for commencement of bankruptcy proceedings under Article 5 from LB – its account was blocked for more than 45 days and it faced future inability to pay its liabilities to creditors.**

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[106] See: Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 8, para. 29.
[107] Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 8, para. 30.

169. In addition, on 30.05.2018, the Creditor Toplifikacija AD submitted a proposal for opening bankruptcy proceedings, which indicates the certainty of opening bankruptcy proceedings if the TE-TO Reorganization Plan was not adopted. The bankruptcy judge rejected the proposal of Toplifikacija AD in her Determination approving the Reorganization Plan dated 14.06.2018 with a correction made on 17.07.2018, no. ST-124/18 and 160/18, precisely because the TE-TO Reorganization Plan had been approved. Even GAMA was confident that bankruptcy proceedings would certainly be opened against TE-TO following the Proposal of Toplifikacija AD dated 30.05.2018, as the conditions for commencement of bankruptcy proceedings from Article 5 of the LB were met, as expressly stated in GAMA's Appeal to the Determination approving the reorganization plan.[108] On page 2 of that Appeal, GAMA expressly states:

> *"Conditions for opening bankruptcy proceedings in the sense of Article 5 paragraph 2 of the LB exist on the day on which the proposal for opening bankruptcy was submitted by Toplifikacija AD Skopje registered under ST no. 160-18 and it is grounded, but the bankruptcy judge rejects it."*

QUESTION 15: If liquidation of business venture had been implemented, would GAMA be settled for more than 10% of its claim against TE-TO?

170. The Kostovski Opinion assert that "it is reasonable to expect that a bankruptcy proceeding including a foreclosure (realization) of assets and collective settlement would be more favourable for them."[109]

171. This opinion rests on significant speculation. In order to arrive at a possible answer to this question, many factors need to be taken into account, which in turn depend on various internal and external influences and which differ in each bankruptcy proceedings.

172. First of all, it is not possible to say exactly whether in an open bankruptcy proceedings, the secured creditors with pledges, i.e. the creditors secured by the property of the bankrupt debtor, will be settled inside or outside the bankruptcy proceedings. According to the Law on Bankruptcy, the pledged – secured creditor has the right to "exit" the bankruptcy proceedings and realize its secured claim against the pledged assets outside of the proceedings.

173. In this case, the proceeds from the sale of the property in the enforcement procedure would first have been used to settle the secured creditors, and it is not possible to know in advance whether they would have been fully settled and whether there would be a balance left to pay other creditors, including GAMA. This sale of pledged property is within an enforcement procedure, which is conducted outside of the bankruptcy proceedings. And if the secured creditor remains to be settled within the bankruptcy proceedings, then the secured creditors again have priority of settlement from the proceeds from the sale of the property.

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[108] GAMA's appeal against the Decision approving the reorganization plan of the Civil Court, dated 26 June 2018 (**C-104**).

[109] Dejan Kostovski, Expert legal opinion, 25 November 2022 (**CE-01 EN**), page 20, para. 86.

174. The proceeds that can realized from selling the debtor's assets are also uncertain. While an assessment of the debtor's property was prepared, the assets are liquidated in the bankruptcy proceedings through bidding at an electronic auction, which starts at 0 (zero), and it is not possible to know what the offer of a certain potential buyer would be, if any buyer appears at all. Bearing in mind that the opening of bankruptcy proceedings against a certain entity automatically reduces that entity's goodwill, potential buyers often offer only about 30% of the estimated value of the property. In this case, the percentage of settling the secured and the other creditors is uncertain, and may be well below 10% for unsecured creditors. If the property is not sold after two/three unsuccessful sales, which is very likely and often happens in practice, given the specific characteristics of TE-TO's property (i.e., the Plant and equipment), that property would be subject to distribution among the creditors in kind, where again the creditors with secured claims would have the right to priority.

175. Based on the above, I do not think that it can be reasonably concluded that GAMA would have been better off in a liquidation scenario. In fact, based on my experience, there is a high probability that upon opening **bankruptcy proceedings against TE-TO instead of carrying out a preliminary bankruptcy reorganization, GAMA would have been settled with less than 10% of its claim against TE-TO.**

04.04.2023 "A Petrov"
S k o p j e **Aco Petrov – authorized bankruptcy trustee**

APPENDIX A

Curriculum Vitae

NAME AND SURNAME:

Aco Petrov

NATIONALITY:

Macedonian

DATE AND PLACE OF BIRTH:
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September 23rd, 1957, Republic of North Macedonia

EDUCATION:

- LLB Degree at the Faculty of Law Iustinianus Primus (judicial program), University Ss Cyril and Methodius, Skopje, Republic of Macedonia, 1976-1983

POSITIONS:

- Head of a personnel department, Manager for personnel and judicial matters in Construction company BETON AD Skopje (1983-2002);

- Bankruptcy Trustee in the Republic of North Macedonia (1996-);

- Founder of consulting company PEKONS DOOEL Skopje, which works on business and management consulting activities regarding business law, focusing on bankruptcy law and bankruptcy proceedings (2002-).

- President of the Macedonian Chamber of Bankruptcy Trustees (2007-2022).

PROFESSIONAL ENGAGEMENTS:

- Bankruptcy trustee in more than 180 bankruptcy proceedings for debtors with various types of businesses – agriculture, construction, TV and broadcasting, food industry, pharmaceutical industry, steel industry etc.
- Member of a work group from 2017-2021 formed for drawing up new Insolvency Law in Republic of North Macedonia;
- Member of a work group formed by the Macedonian Government for proposing measures in improving the rank of Republic of North Macedonia in the Report Doing Business 2015 for the World Bank, regarding bankruptcy legislative;
- Lecturer in many workshops organised by the Chamber of licenced bankruptcy trustee, The Academy for judges and public prosecutors, Chamber of Lawyers, Chamber of experts;
- Lecturer in workshops organised by the Macedonian Lawyers Association;
- Lecturer in workshops organised by the Public Revenue Office;
- Lecturer for post graduate students of business law in the Faculty of Law Justinijan I Skopje;
- Author of a few bankruptcy themed articles in legal magazine Lawyer for the Macedonian Lawyers Association;
- Participant and a lecturer on the International conference for insolvency and liquidation in Skopje, North Macedonia, 2017;
- Participant and a lecturer on the 6th annual conference of INSOL Europe (Eastern European Countries' Committee) in Timisoara, Romania (2010);

- Panelist and speaker on the 2nd annual International conference of the Serbian Bankruptcy Supervision Agency in Belgrade, Republic of Serbia, 2009;

LANGUAGES:

Macedonian, Serbian, Croatian

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