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

Claimant

v

REPUBLIC OF NORTH MACEDONIA

Respondent

(ICC Case No. 26696/HBH)

SECOND LEGAL OPINION OF ACO PETROV

11 December 2023

Table of Contents

I. INTRODUCTION....1

II. PURPOSE OF PRELIMINARY REORGANIZATION....1

A. Preliminary bankruptcy reorganization is an essentially different type of reorganization....2

B. The Professional Standards for Bankruptcy Procedure do not apply to the preliminary bankruptcy reorganization....4

C. Draft Bill on Law on Insolvency....8

III. PRELIMINARY REORGANIZATION OF TE-TO....9

A. Proposal for preliminary reorganization....9

1. A bankruptcy judge may return a proposal for correction of deficiencies....9

2. TE-TO submitted evidence that it met the conditions for opening bankruptcy proceedings....10

3. Negotiations with all creditors is not required....10

4. TE-TO was not required to show that litigation with GAMA had ended....11

5. TE-TO was not required to include interest on GAMA's claim in the Reorganization Plan....12

B. Security measures....12

1. Determining security measures before or in conjunction with a determination for initiating a preliminary bankruptcy procedure....12

2. Difference between time of adopting security measures and publication of notice....13

3. Freedom to decide whether to adopt security measures....14

C. Conditions for appointment of interim bankruptcy trustee and his qualifications and role....14

1. Mr. Sazdovski properly prepared a report on the financial situation of TE-TO....14

2. Mr. Sazdovski had no conflict of interest....15

3. The interim bankruptcy trustee is independent from the State....18

D. Request for Recusal of the Bankruptcy Judge....20

E. Scheduling of the Bankruptcy Hearings....21

1. The 14 June 2018 hearing was appropriate....21

2. The timing of the 14 June 2018 hearing was appropriate....24

3. The fulfilment of the deadline of 8 days from the date of the postponement of the hearing to the day of the new hearing....25

IV. TE-TO'S REORGANIZATION PLAN....26

A. Information available to TE-TO's creditors and negotiation between them and TE-TO 26
B. Treatment of claims, including GAMA's claims....27
C. TE-TO's Reorganization plan included annual financial statements of the previous five years with the opinion of the auditor 30
D. Deadline for implementation of the reorganization plan 30
E. Unenforceability of TE-TO's Reorganization Plan due to tax implications....32

V. OUTCOME OF TE-TO'S HYPOTHETICAL BANKRUPTCY PROCEEDINGS 32

A. No obligation to provide comparison 32
B. Simulation of the procedure for the sale of the property of TE-TO in liquidation procedure and monetization in open bankruptcy procedure....33
C. If TE-TO had entered into regular bankruptcy proceedings, would GAMA have been able to claim default interest up until the start of bankruptcy proceedings? Or would the claim become due (mature) only on the date of the opening of the bankruptcy proceedings, meaning that there would be no default interest available to GAMA? 35

I. INTRODUCTION

1. Counsel for the Republic of North Macedonia (the "**Republic**") asked me to prepare a second legal opinion in connection with the arbitration brought by GAMA Güç Sistemleri Mühendislik ve Taahhüt A.Ş. against the Republic, in response to the second expert opinion of Mr. Dejan Kostovski dated 4 August 2023 ("**Second Opinion**").

2. This second legal opinion complements my first legal opinion dated 4 April 2023, fully confirms its content and provides an answer to the allegations made by Mr. Kostovski in his Second Opinion.

3. This second legal opinion refutes Mr. Kostovski's claims, in which I elaborate in detail why the preliminary bankruptcy reorganization is an essentially a different type of reorganization, the professional standards for the bankruptcy procedure do not apply in the preliminary bankruptcy reorganization, the Draft-Law on insolvency is not applicable at all , the bankruptcy judge acted in accordance with the law throughout the preliminary bankruptcy reorganization, the reorganization plan is in accordance with the law, the appointment and actions taken by the temporary bankruptcy trustee are in accordance with the law and why Mr. Kostovski's hypothetical calculation is unrealistic and speculative.

4. I confirm that the opinions expressed in this second legal opinion are my own and the result of my independent investigation and analysis. I also understand that this second legal 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.

II. PURPOSE OF PRELIMINARY REORGANIZATION

5. As I explained in my first legal opinion, the Law on Bankruptcy (hereinafter: LB) is a special procedural law, which regulates the initiation, conduct and completion of bankruptcy procedures.[1] In his Second Opinion, Mr. Kostovski, does not dispute the nature of the LB. Also, Mr. Kostovski does not deny that the bankruptcy procedure is a special non-litigation 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 Procedure, which sets out general rules for all civil court proceedings in North Macedonia, are applied to bankruptcy proceedings.

6. Since the LB is a procedural law, its rules are imperative and all parties to the procedure must comply with them. The court is obliged to apply them ex officio during the entire procedure.

[1] *See* First Legal Opinion of Aco Petrov, Section 2.

A. PRELIMINARY BANKRUPTCY REORGANIZATION IS AN ESSENTIALLY DIFFERENT TYPE OF REORGANIZATION

7. In his Second Opinion, Mr. Kostovski takes the position that preliminary bankruptcy reorganization should not be treated as an essentially different type of procedure compared to traditional bankruptcy procedures.[2] I disagree with his conclusions, which are contradicted by the documents on which he relies.

8. First, in paragraph 7 of his Second Opinion, Mr. Kostovski does not respond to the basis of my conclusion in my first legal opinion that "preliminary bankruptcy reorganization should be treated as a fundamentally different type of reorganization."[3] My conclusion is based on Article 215-d of the LB, by which 26 articles and one paragraph of an article of the LB governing the reorganization procedure and the reorganization plan after opening the bankruptcy procedure are excluded from application to the preliminary bankruptcy reorganization procedure.[4] In contrast, only 12 articles of the "bankruptcy reorganization" procedure are also applicable to the "preliminary bankruptcy reorganization." Articles 215-a to 215-d of the LB provide special rules that regulate in detail the procedure for preliminary bankruptcy reorganization, which do not apply to "ordinary reorganization." Had the preliminary bankruptcy reorganization not been essentially different from the "ordinary" bankruptcy reorganization, there would not have been a need for separate rules for it.

9. Second, not being able to refute the basis of my conclusion, Mr. Kostovski tries to direct the discussion to the explanation for the reasons why the "preliminary bankruptcy reorganization" was introduced in the Macedonian bankruptcy law in order to provide support that the two types of reorganization are not fundamentally different. However, the reasons why "preliminary bankruptcy reorganization" was introduced in the LB cannot be a basis for determining whether the two reorganizations are fundamentally different or not. Mr. Kostovski says that the legislator's intent behind the preliminary bankruptcy reorganization "was to encourage debtors to carry out reorganization proceedings with the aim of faster completion of their bankruptcy proceedings."[5] This legislative intent in no way contradicts my opinion that a preliminary bankruptcy reorganization is fundamentally different from a bankruptcy procedure. The basis of my conclusion is the different rules that apply for each one of the two reorganizations. Mr. Kostovski offers no response on this point.

10. Third, Mr. Kostovski's assertions in paragraph 7 of his Second Opinion contradict the assertion in paragraph 13 of his First Opinion that "Pre-bankruptcy reorganization differs from

[2] Second Expert Opinion of Dejan Kostovski, para. 7.

[3] *See* First Legal Opinion of Aco Petrov, paras. 47-49.

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

[5] Second Expert Opinion of Dejan Kostovski, para.7.

bankruptcy reorganization proceedings, where the Debtor, Creditors or the Bankrupt a Trustee propose a Reorganization Plan in the course of already opened bankruptcy proceedings."[6]

11. Fourth, there are substantial differences between these two types of reorganization.

- In the preliminary bankruptcy reorganization procedure, there is still a debtor – a functioning business venture. The management bodies of the debtor are still performing their function in the preliminary bankruptcy reorganization procedure, and for that reason, there is no appointment of a bankruptcy trustee.

  In contrast, according to the LB, with the opening of the bankruptcy procedure, the rights of the members of the management bodies, the manager (i.e. the director or another management body), representatives and proxies, as well as members of the supervisory bodies, cease. Their rights with regard to the disposal of the property of the bankrupt debtor and other rights that are exercised accordingly for the implementation of the bankruptcy procedure, are transferred to the bankruptcy trustee.[7] This difference in the status of the bankrupt debtor is one of the essential differences that contribute to these two procedures being different from their very beginning.

- In the preliminary bankruptcy reorganization, the appointment of the interim bankruptcy trustee is a security measure. His role is very limited under Art. 59 of the LB, focused on preventing a significant reduction of the assets of the debtor by actions of the management of the debtor until the final approval of the reorganization plan. The interim bankruptcy trustee is appointed after the plan has been prepared and submitted to the court by the debtor. Art. 215-g (2) of the LB explicitly provides that at the same time with adopting a decision for initiating a preliminary procedure for examination of the conditions for opening a bankruptcy procedure and reorganization procedure upon a prepared plan for reorganization, the bankruptcy judge is obliged to adopt a decision with which it shall determine the security measures in articles 58 and 59 of the LB, "by appointing a temporary bankruptcy trustee."[8] By contrast, in the open bankruptcy procedure, a bankruptcy trustee is appointed in order to completely take over the management of the debtor, until the final approval of the reorganization plan. The bankruptcy trustee is even one of the authorized proposers of a reorganization plan in a regular bankruptcy procedure, while a interim bankruptcy trustee does not have any authority to prepare a plan for preliminary bankruptcy reorganization of the debtor.

[6] Second Expert Opinion of Dejan Kostovski, para. 13.

[7] LB (**R-10**), Article 34.

[8] LB (**R-10**), Article 215-g(2).

- Finally, according to Article 215(2) of the LB, authorized proposers of bankruptcy reorganization are the debtor, the creditors and the bankruptcy trustee. In contrast, according to Article 215-a of the LB, the debtor is the only authorized proposer of preliminary bankruptcy reorganization.

B. THE PROFESSIONAL STANDARDS FOR BANKRUPTCY PROCEDURE DO NOT APPLY TO THE PRELIMINARY BANKRUPTCY REORGANIZATION

12. Mr. Kostovski claims that all of the National Standards for Bankruptcy Procedure contained in the Rulebook on Professional Standards for Bankruptcy Procedure from 2006[9], supplemented in 2014, are applied to the preliminary bankruptcy reorganization procedure.[10] The Rulebook is adopted by the Minister of Economy to regulate the conduct of bankruptcy trustees. It does not extend to the conduct of debtors.

13. At the same time, Mr. Kostovski repeatedly refers to the application of the "Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee"[11] and the "Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting."[12] These two standards were created and applied solely to bankruptcy reorganization for a number of reasons.

- Mr. Kostovski fails to note that these Professional Standards were enacted by the Minister of Economy on the basis of Article 362 of the LB, which empowers the Minister of Economy to enact "professional standards necessary for conducting of a bankruptcy procedure." Therefore, the Standards are created as standards for the conduct of bankruptcy trustees in performing their tasks in an "opened bankruptcy procedure,"[13] and as such most of them are inadequate to be applied to a preliminary bankruptcy reorganization, which did not even exist in the LB in 2006 when the

[9] The Rulebook is published in the Official Gazette of Republic North Macedonia no. 19/2006. [**C-95 Resubmitted**]

[10] Second Expert Opinion of Dejan Kostovski, para. 9.

[11] Second Expert Opinion of Dejan Kostovski, para. 78.

[12] Second Expert Opinion of Dejan Kostovski, para. 54.

[13] The Professional Standards are set out in the Rulebook on the Professional Standards (**C-95 Resubmitted**) and are:
- Standard for cash management and management of bank accounts;
- Standard for inventory of the assets of the bankruptcy debtor, compiling a list of creditors;
- Standard for compiling the report of the bankruptcy trustee for the reporting session of the assembly;
- Standard for minimum data which the plan for reorganization submitted by the bankruptcy trustee should contain;
- Standard for performing control over the execution of the plan for reorganization;
- Standard for form of monthly report.
- Standard for the manner of conducting and keeping the documentation
- Standard for the form of final report of the bankruptcy trustee

Standards were enacted. As noted above, no bankruptcy trustee is appointed in a preliminary bankruptcy reorganization.

- "Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee": from the title, it is clear that this standard is applied only to the plan submitted after the opening of the bankruptcy proceedings by the bankruptcy trustee. This Standard is applied only to a plan prepared for the regular bankruptcy reorganization, and not to a plan for preliminary bankruptcy reorganization.

  By contrast, in the preliminary bankruptcy reorganization, the reorganization plan is prepared by the debtor, who then submits the plan for reorganization together with the proposal for opening a bankruptcy procedure.[14] In that way, the provisions of the LB on preliminary bankruptcy reorganization are putting solely the debtor in charge of the preparation and submitting of the reorganization plan to the court, inviting flexibility so as to avoid a regular bankruptcy proceeding run by a professional bankruptcy trustee.

- The professional standards are enacted in order to operationalize the provisions of the LB, and they cannot create new requirements for a plan for preliminary bankruptcy reorganization, beyond those provided in the LB itself.

- The said Standard is appropriately implemented when the plan is submitted by other parties (different from the bankruptcy manager) who are actively legitimized for submission of the plan.[15] For the avoidance of doubt, the other parties actively legitimized for submission of a reorganization plan are the creditors and the debtor, as provided in Art. 215 (2) of the LB (which does not apply to preliminary bankruptcy reorganization). For that reason the last paragraph of this Standard provides *inter alia* that: "*Provided that the reorganization plan is not submitted by the bankruptcy trustee, but by other authorized proposers,* ***the bankruptcy trustee*** *shall request an insight into the proposed plan for reorganization in order to determine to what extent that plan meets the content prescribed by this national standard. . . .*"[16]

  Since the Standard provides that "***the bankruptcy trustee*** *shall request an insight into the proposed plan,*" it is evident that the said Standard may be applied only

[14] LB (**R-10**), art. 215-a (1).

[15] "Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee" (**C-95 Resubmitted**) at 22, second paragraph before the end.

[16] "Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee" (**C-95 Resubmitted**) at 22-23.

where a bankruptcy trustee is appointed, and that is in a "regular" bankruptcy reorganization. By contrast, in the preliminary bankruptcy reorganization, there is no bankruptcy trustee appointed, but only a "preliminary bankruptcy trustee," who has a very different role than the bankruptcy trustee.

- "Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting": the title explicitly states that this Standard refers to a report prepared by the bankruptcy trustee for a reporting meeting of the assembly of creditors, which means it applies to a report prepared after the opening of the bankruptcy procedure. Such report is intended for the reporting meeting, where the assembly of creditors (composed of all creditors with established claims) in accordance with Article 96 and 97 of the LB, among other things, should make a decision whether the debtor will be liquidated and his property will be sold or reorganization of the debtor will be carried out. For that reason, the second paragraph of the Introduction of the said Standard provides that: "*The report which is submitted by the bankruptcy trustee is one of the most important documents in the bankruptcy procedure, as based of the submitted report, the creditors decide whether the business venture of the debtor shall be closed and liquidated or temporarily continued and the initiative for preparation of the plan for reorganization shall be accepted.*"[17] Also, the Professional Standard provides that "*the Plan for reorganization must indelibly show the creditors' possibilities for their favorable settlement in the procedure for reorganization, compared to the settling by selling of the assets of the bankruptcy debtor*."[18]

  By contrast, in the procedure for preliminary bankruptcy reorganization, which is expressly regulated by the LB,[19] no assembly of creditors is constituted, nor is there a reporting meeting of the assembly of creditors. The interim bankruptcy trustee does not have authority under the LB to prepare a report which could serve as a basis for the creditors to decide whether the business venture of the debtor shall be closed and liquidated or whether the business venture shall be temporarily continued and the initiative for preparation of the plan for reorganization shall be accepted. At the hearing for deciding and voting on the plan for preliminary reorganization of the debtor, the creditors are only deciding whether to adopt the plan or reject it.[20]

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[17] "Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting", I. Introduction, para. 2.

[18] "Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee" (**C-95 Resubmitted**) at 20.

[19] LB (**R-10**), articles 215-a, 215-b, 215-v, 215-g and 215-d.

[20] LB (**R-10**), article 215-d (3) and (4).

Besides the task of protecting the assets of the debtor as provided in Article 59 of the LB, Article 215-g(2) of the LB explicitly provides a very narrow authority of the interim bankruptcy trustee in the preliminary reorganization procedure: to perform the duties determined by the decision of the bankruptcy judge, and if needed, to examine all data on which the prepared plan for reorganization is based,[21] and to value the amount of claims for the purpose of voting on the reorganization plan.[22] Such a narrow role of the interim bankruptcy trustee in the preliminary bankruptcy reorganization makes the said professional standard inapplicable.

In sum, the report is aimed to assist the creditors to decide on one of the two options before them: first, liquidate the debtor and sell his assets, or second, allow reorganization of the debtor. In the preliminary bankruptcy reorganization, the creditors do not have two options before them, but only one. They only decide whether to adopt the plan or to refuse it, and have no option to decide to conduct the liquidation of the debtor and to sell his assets. For that reason, in the preliminary bankruptcy reorganization, no comparison is necessary between the settlement outcomes for the creditors in reorganization and liquidation of the debtor with selling of his assets.

14. Based on the above, it is my opinion that Mr. Kostovski is mistaken when he asserts that the Professional Standard on Minimum Information to be Contained in the Reorganization Plan Submitted by the Bankruptcy Trustee and the Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting apply to preliminary bankruptcy reorganizations. This mistake gives rise to a large number of wrong conclusions in his Second Opinion, especially his conclusion that the Reorganization Plan prepared by the debtor TE-TO is not in accordance with the National Standards.[23]

15. In paragraph 9 of his Second Opinion, Mr. Kostovski justifies his assertion that the two said Professional Standards for conducting the bankruptcy procedure apply also to preliminary bankruptcy reorganization procedures by equating the Professional Standards for conducting the bankruptcy procedure with alleged principles on which the bankruptcy procedure is based.[24] Mr. Kostovski does not identify any principle of the bankruptcy proceedings that he relies on, nor does he identify any provision of the LB where such principles are provided. Also, he does not explain why the court should apply the two said Professional Standards for conducting the bankruptcy procedure to a preliminary bankruptcy reorganization. Further, Mr.

[21] LB (**R-10**), article 215-d (2).

[22] LB (**R-10**), article 215-d (2).

[23] Second Expert Opinion of Dejan Kostovski, para. 54.

[24] Second Expert Opinion of Dejan Kostovski, para. 9.

Kostovski asserts incorrectly that the National Standards for conducting a bankruptcy proceedings are set out in the LB and in the Rulebook on Professional Standards for Bankruptcy Procedure, since they are set out *only* in the Rulebook.

16. Mr. Kostovski's assertion is wrong, because the LB only provides the legal basis for the Ministry of Economy to enact the Rulebook on the Professional Standards of Bankruptcy Procedure in Art. 362(1), but the LB does not set out any such standards. The Professional Standards for conducting of Bankruptcy Procedure, also referred to as National Standards, are provided solely in the said Rulebook enacted by the Minister of Economy. In fact, it might be said that Mr. Kostovski unsuccessfully attempts to create a confusion, by suggesting that there are "National standards for bankruptcy procedure" that are different from the Professional Standards for Bankruptcy Procedure. Quite the contrary, the National Standards are the same as the Professional Standards for Bankruptcy Procedure. There are no other standards for conducting of the bankruptcy procedure but the ones provided in the Rulebook.

17. In paragraphs 10-13 of his Second Opinion, Mr. Kostovski justifies his assertion that the Professional Standards for conducting the bankruptcy procedure apply also to preliminary bankruptcy reorganization procedure by making a comparison between the preliminary bankruptcy procedure and the 2014 Law on Out of Court Settlement.[25] Such comparison is inadequate, since the out-of-court settlement procedure is an administrative procedure, and not a court procedure. It is conducted by the Ministry of Economy, while the preliminary bankruptcy reorganization is conducted before a court in a non-litigious procedure. It follows that the same rules cannot apply to a non-litigation court procedure conducted according to the LB. Nowhere in his Second Opinion does Mr. Kostovski refer to any provision in any law which would provide that the "Professional Standards for Bankruptcy Procedure apply to the out-of-court settlement procedure.

C. DRAFT BILL ON LAW ON INSOLVENCY

18. Mr. Kostovski relies on a bill for the Draft Law on Insolvency (the "**Draft Bill**").[26] The Draft Bill is still going through the parliamentary procedure. There is no information if, when and in what form it will be adopted.

19. Mr. Kostovski tries to portray the provisions of the Draft Law on Insolvency as mandatory for courts in bankruptcy proceedings. Moreover, Mr. Kostovski explains the goals and principles of the preliminary bankruptcy procedure according to the Draft Bill, although they cannot have a retroactive effect on the procedures conducted according to the LB. The retroactive effect of

[25] Second Expert Opinion of Dejan Kostovski, paras. 10-13.

[26] Second Expert Opinion of Dejan Kostovski, paras. 14-23.

the laws is prohibited by art 52 paragraph 4 of the Constitution of Republic of North Macedonia,[27] except in cases when this is more favorable for citizens.[28]

20. The Draft Bill was prepared in 2021, and in 2023 the Government sent it to the Parliament. The Draft Bill is still not on the Parliament's agenda and there is no information available when it will be on the agenda.

21. In the Republic of North Macedonia, laws that have not been adopted and are not part of the legal order. Positive law is not interpreted according to draft bills which are not part of the legal system.

22. It follows from this that the provisions of the Draft Bill cannot be applied in any way, neither on a theoretical nor on a practical level, in order to evaluate the preliminary bankruptcy reorganization of TE-TO.

III. PRELIMINARY REORGANIZATION OF TE-TO

A. PROPOSAL FOR PRELIMINARY REORGANIZATION

1. A bankruptcy judge may return a proposal for correction of deficiencies

23. Mr. Kostovski states that in my first opinion I overlooked the fact that the "Bankruptcy Law does not provide the bankruptcy judge an opportunity to return a proposal in a pre-bankruptcy reorganization for rectifying in terms of providing evidence that the requirements for opening bankruptcy proceedings are met."[29] I do not agree.

24. Article 215-g (4) of the LB expressly provides that if the judge considers that the proposal for the initiation of preliminary bankruptcy reorganization is irregular, because the proposal or the plan contains deficiencies and correctable technical errors, the bankruptcy judge should order the debtor to amend the proposal and plan within 8 days. Mr. Kostovski ignores that not only

[27] Constitution of Republic of North Macedonia Published in Official Gazzette of Republic North Macedonia no. 52/1991, with subsequent amendments (**R-66**).

[28] Article 52 of the Constitution of Republic North Macedonia (**R-66**) provides:

"Laws and other regulations are published before they come into force.

Laws and other regulations are published in "The Official Gazette of the Republic of Macedonia" no more than seven days after the day of their adoption.

Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly.

Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens."

[29] Second Expert Opinion of Dejan Kostovski, para. 24.

technical errors but also other deficiencies of the proposal for initiating preliminary bankruptcy reorganization can be edited (corrected).

25. The purpose of the request for information from the bankruptcy judge was to amend the proposal and plan as permitted under Article 215-g(4).[30] That letter request instructed the Debtor to edit the Proposal for preliminary bankruptcy reorganization within the specified period of 8 days, so that the procedure, which is of an urgent nature, could continue in its subsequent stages.

2. TE-TO submitted evidence that it met the conditions for opening bankruptcy proceedings

26. Mr. Kostovski still holds to the thesis that the conditions for opening TE-TO bankruptcy proceedings have not been met.[31] As stated in my first opinion, together with the proposal for opening bankruptcy proceedings based on 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 from Article 5 of the LB has been met.[32] Specifically, the debtor must provide proof that he is unable to pay or that he is facing a future inability to pay.

27. Mr. Kostovski ignores paragraph 5 of article 5 of the LB on future insolvency of the debtor as one of the conditions for opening bankruptcy proceedings. TE-TO faced the future inability to pay, and thus the fulfillment of the conditions for opening bankruptcy proceedings.[33]

3. Negotiations with all creditors is not required

28. In paragraph 31 of his Second Opinion, Mr. Kostovski wrongly states that "TE-TO did not provide adequate evidence of any notifications sent to all of its creditors, availability of information to all of its creditors and the course of negotiations with creditors in accordance with the order of the Court."[34]

29. This is incorrect, because he uses the term "all of its creditors" throughout paragraph 31. Neither the LB, nor the bankruptcy judge's 30 April 2018 request for information, uses the term "all creditors" to describe the procedure for preparing the plan for opening of preliminary bankruptcy proceedings and negotiations with creditors.[35] Article 215-b (2), point 4 of the LB requires that the plan also contain "data on the procedure for preparing the reorganization plan,

[30] Request for information from the Basic Court, dated 30 April 2018 (**C-91**).

[31] Second Expert Opinion of Dejan Kostovski, paras. 25-27.

[32] Legal Opinion of Aco Petrov, paras. 62-66.

[33] Legal Opinion of Aco Petrov, paras. 65 (noting that TE-TO attached an audit report that fully described the economic and financial condition of TE-TO).

[34] Second Expert Opinion of Dejan Kostovski, para. 31.

[35] Request for information from the Basic Court, dated 30April 2018 (**C-91**).

including data on sent notifications, availability of the information of creditors and the course of negotiations."[36] The request for information also stated that the plan does not contain data on the preparation of the plan "including data on notifications sent, the availability of information for the creditors and the course of the negotiations."[37] In response, TE-TO submitted to the court written evidence of correspondence with creditors for their statement regarding the reorganization plan.[38]

30. TE-TO thus acted in accordance with Article 215-b, paragraph 2, point 4 of the LB and in accordance with the request for information from the court, and it was not obliged to notify and conduct negotiations with all of the creditors. Article 215-b, paragraph 2, point 4 of the LB does not include require that the negotiations between the debtor and the creditors be finalized. Also, the consolidated version of TE-TO's reorganization plan of 6 June 2028 was not a new plan, but only an amended and modified version of the previously submitted plan, in line with comments and remarks of some of creditors that TE-TO accepted in its brief of 30 May 2018[39] and at the Hearing of 5 June 2018.[40] For that reason, there was no requirement for TE-TO to conduct any negotiations with the creditors on such consolidated version, nor to invite the creditors to submit comments on the consolidated version of the Plan. The consolidated version of the plan is a result of the acceptance of the remarks of the creditors, and therefore no invitation for a new round of remarks was necessary.

4. TE-TO was not required to show that litigation with GAMA had ended

31. In paragraph 32 of his Second Opinion, Mr. Kostovski states that TE-TO's reorganization plan included GAMA's claim against TE-TO contrary to the Law on Bankruptcy, and that TE-TO did not state that a litigation is ongoing with GAMA regarding that claim. Mr. Kostovski states that "the bankruptcy judge had to request TE-TO to provide evidence that this litigation was completed in order to allow TE-TO to include GAMA's claim in the Reorganization plan."[41] In addition, Mr. Kostovski states that in request for informaiton the bankruptcy judge asked TE-TO to give a statement in regards to whether the claim of GAMA is contested, and TE-TO did not submit evidence that the litigation was terminated.

32. Mr. Kostovski does not state according to which article of the LB the court should have requested proof from TE-TO whether the court proceedings brought by GAMA had been

[36] LB (**R-10**) Article 215-b, (2) 4)

[37] Request for information from the Basic Court, dated 30April 2018 (**C-91**).

[38] TE-TO additional information, dated 2 May 2018 (**C-92**).

[39] Brief by TE-TO to the Civil Court Skopje in response to GAMA's objections and remarks, dated 30 May 2018 (**C-100**).

[40] Minutes of the hearing before the Civil Court Skopje, dated 14 June 2018 (**C-102**).

[41] Second Expert Opinion of Dejan Kostovski, para . 33.

terminated. Given that GAMA recognized the claim by TE-TO, it is considered that the claim is an established claim in the reorganization plan and that there is a clear intention of TE-TO to settle that obligation in the manner provided for in the plan. Also, the recognition of GAMA's claim in the reorganization plan made the litigation between GAMA and TE-TO obsolete, since GAMA's claim entered among the claims against TE-TO that would be settled through the realization of the plan, and the said claim could no longer be settled outside of the plan.

5. TE-TO was not required to include interest on GAMA's claim in the Reorganization Plan

33. Mr. Kostovski asserts that GAMA's claim was incorrectly included in the reorganization plan without legal default interest being calculated on it. On that basis, Mr. Kostovski asserts that the claims were not correctly determined in the reorganization plan, and therefore neither were the voting rights of the creditors of TE-TO.[42]

34. Mr. Kostovski ignores the fact that before initiating the preliminary bankruptcy reorganization of TE-TO, there was a dispute between GAMA and TE-TO about whether GAMA's claim was ripe. TE-TO recognized only the principal amount of GAMA's claim in the reorganization plan, while the default interest remained disputed between the two parties. Hence, considering that only the principal of the claim was recognized to GAMA in the reorganization plan, its voting rights were determined according to the amount of the principal claim. Therefore, in the procedure for the preliminary bankruptcy reorganization of TE-TO, the voting rights of the creditor GAMA were correctly determined.

B. SECURITY MEASURES

1. Determining security measures before or in conjunction with a determination for initiating a preliminary bankruptcy procedure

35. In paragraph 71 of my first opinion, I explained that "the provisions of Article 58 (3) of the LB complements the one from Article 215-g (2)." In paragraph 40 of his Second Opinion, Mr. Kostovski calls my position contradictory because it enables the bankruptcy judge to adopt security measures even before the adoption of a determination to initiate a preliminary proceeding, for the purpose of protecting the interests of creditors.

36. My position is in accordance with the provisions of Article 215-g(2) of the LB, which explicitly refer to the application of Article 58 and 59 of the LB when determining security measures by the bankruptcy judge. A provision from Article 58(3) explicitly allows the bankruptcy judge

[42] Second Expert Opinion of Dejan Kostovski, para. 34.

to adopt a determination for determining security measures even before adopting a determination for initiating a preliminary procedure.[43]

37. I also do not agree with Mr. Kostovski's statement that "a procedural assumption for the court to be able to issue a decision on security measures both in bankruptcy proceedings pursuant to Article 58 paragrpah 3 and in pre-bankruptcy reorganization pursuant to Article 215-g paragraph 2 of the Bankruptcy Law is that a debtor must have submitted an orderly proposal for the opening of bankruptcy proceedings."[44] This statement is based on the flawed premise that in the preliminary bankruptcy reorganization Article 58 (3) of the LB does not apply, which is why it is not possible for the court to adopt a determination for determining a security measure before the bankruptcy court passes the determination for initiating a preliminary procedure. In fact, Article 215- g(2) of the LB explicitly refers to the application of Article 58 and 59 of the LB when determining security measures in preliminary bankruptcy reorganization. I therefore remain of the opinion that Article 215- g(2) of the LB, together with Article 58(3) of the LB, allow the bankruptcy judge in a preliminary bankruptcy reorganization to pass a determination for determining provisional measures before or in conjunction with the determination for initiating a preliminary bankruptcy procedure, for the purpose of protecting the interests of the creditors.

2. <u>Difference between time of adopting security measures and publication of notice</u>

38. In paragraph 42 of his Second Opinion, Mr. Kostovski wrongly claims that the provision of Article 215-g(3) of the LB obliges the bankruptcy judge to publish an announcement at the same moment when he passes the determination on determining of security measures. The provision of Article 215-g(3) can be applied only if both the determination for initiating a preliminary procedure and the determination of determining security measures have been previously adopted. In a situation where the bankruptcy judgeadopted a determination for determining provisional measures before he adopted a determination for initiation a preliminary procedure in accordance to Article 58(3) of the LB, the provision for publishing an announcement from Article 215–g(3) is inapplicable until the moment when the determination for initiating a preliminary procedure is adopted also. Only then, when both determinations are adopted, can the announcement be prepared to be published, as provided in Article 215-g(3).

39. In my view, the bankruptcy judge in the preliminary bankruptcy reorganization of TE-TO acted in accordance with Article 215–g(3) and Article 58(3) of the LB when the announcement for

[43] LB (**R-10**) Article 58(3) ("The bankruptcy judge can adopt the determination for ruling security measures together with the determination for opening a preliminary procedure for examining the conditions for commencement of a bankruptcy procedure or before the adoption of the determination for initiating preliminary procedure.")

[44] Second Expert Opinion of Dejan Kostovski, para. 41.

initiating a preliminary procedure for a preliminary bankruptcy reorganization of TE-TO was published after adopting a Determination for initiating a preliminary procedure.

3. Freedom to decide whether to adopt security measures

40. It is necessary to emphasize that the judge has freedom, in evaluating the evidence, whether to adopt a security measure or not. The threshold that should be met depends on whether, if the security measure is adopted, greater damage will occur than if the measure was not adopted.

41. Taking this into consideration, I remain of the opinion that the adoption of a determination for security measures before adopting a determination for initiating a preliminary procedure is not contrary to the LB.

C. CONDITIONS FOR APPOINTMENT OF INTERIM BANKRUPTCY TRUSTEE AND HIS QUALIFICATIONS AND ROLE

42. In my first opinion, I stated that one of the provisional security measures which can be rendered in a preliminary bankruptcy proceeding is appointing a interim bankruptcy trustee, according to Article 58(2) paragraph 1 and 59 of the LB. Mr. Kostovski does not object to my position regarding this question.

1. Mr. Sazdovski properly prepared a report on the financial situation of TE-TO

43. In his Second Opinion, Mr. Kostovski opines that the interim bankruptcy trustee, Marinko Sazdovski, compiled a Report on the economic-financial situation of TE-TO contrary to the National Standards for Bankruptcy, in particular contrary to Attachment No. 3 Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting.[45]

44. Mr. Kostovski is wrong for three reasons.

45. First, contrary to Mr. Kostovski's assertion, the Professional Standard on Compiling a Bankruptcy Trustee's Report for a Reporting Meeting did not apply to the report on the economic-financial situation of TE-TO prepared by Mr. Sazdovski. This Professional Standard, as explained in paragraph 13 above, applies only to the report prepared by the bankruptcy trustee in ordinary bankruptcy procedure. That kind of report it is submitted to the first reporting meeting of the assembly of creditors, which is conducted after opening the bankruptcy procedure. The report of Mr. Sazdovski is a report prepared by a interim bankruptcy trustee at a request of the Bankruptcy Judge under Article 59(2) of the LB, and not a report prepared by a bankruptcy trustee. That report is not submitted to a reporting meeting of the assembly of creditors (which is held after the bankruptcy proceedings had been opened),

[45] Second Expert Opinion of Dejan Kostovski, para. 54

but to a hearing for expressing the opinion on the plan for preliminary bankruptcy reorganization of the debtor TE-TO.

46. Second, Marinko Sazdovski is not appointed as a bankruptcy trustee of TE-TO, but as a interim bankruptcy trustee in a preliminary bankruptcy reorganization of TE-TO.

47. Third, as it was already established in paragraph 13 above, the Professional Standard on Compiling a Bankruptcy Trustee's Report for Reporting Meeting was adopted in 2006, seven years before the preliminary bankruptcy reorganization was introduced in the LB.

48. For these reasons, in my opinion the Professional Standard on Compiling a Bankruptcy Trustee's Report for Reporting Meeting cannot be applied to the report on TE-TO's economic-financial situation prepared by the interim bankruptcy trustee Mr. Sazdovski.

2. Mr. Sazdovski had no conflict of interest

49. In his Second Opinion, Mr. Kostovski asserts that "the appointment of Marinko Sazdovski as temporary bankruptcy trustee of TE-TO in conditions when he was simultaneously proposed by TE-TO as an independent expert to supervise the implementation of the Reorganization Plan represents an obvious conflict of interest contrary to the Code of Ethics for Bankruptcy Trustees."[46] Specifically, Mr. Kostovski argues that the appointment of Mr. Sazdovski was contrary to point 4 paragraph 2 and 3, and point 6 paragraphs 1, 2, 3 and 4 of the Code of Ethics.[47]

50. It is peculiar that Mr. Kostovski did not refer to the purported violations of the Code of Ethics in his First Opinion, but mentioned them for the first time only in his Second Opinion. Mr. Kostovski's assertion is wrong for the following reasons.

51. First, Mr. Kostovski fails to mention that Article 246(1) of the LB allows the bankruptcy trustee to supervise the implementation of the reorganization plan in a regular bankruptcy reorganization.[48] *Argumentum a maiore ad minus*. Given that the LB does not consider as a conflict of interest the appointment of the bankruptcy trustee as a person to supervise the implementation of the reorganization plan in a regular bankruptcy reorganization, there cannot be a conflict of interest in appointing the interim bankruptcy trustee as a person to supervise the implementation of the reorganization plan in a preliminary bankruptcy reorganization. For

[46] Second opinion of Dejan Kostovski, para. 47.

[47] Second opinion of Dejan Kostovski, paras. 48-50.

[48] LB (**R-10**) Art. 246(1) provides:

"*(1) The supervision over the implementation of the plan for reorganization after the conclusion of the bankruptcy procedure may be entrusted to the bankruptcy trustee or to other persons (controller). For that purpose the authorizations and obligations of the bankruptcy trustee and of the members of the board of creditors, if such board has been founded, as well as the supervision of the bankruptcy judge will continue to exist. In this case, article 59, paragraph (4) of this Law shall be applied.*"

that reason, Mr. Kostovski is wrong when he states that "the appointment of Marinko Sazdovski as temporary bankruptcy trustee of TE-TO in conditions when he was simultaneously proposed by TE-TO as an independent expert to supervise the implementation of the Reorganization Plan represents an obvious conflict of interest."[49]

52. Second, the appointment of Mr. Sazdovski as interim bankruptcy trustee of TE-TO is not contrary to the provisions of the Code of Ethics relied upon by Mr. Kostovski. Point 4 paragraph 2 of the Code of Ethics provides:

> 2) The bankruptcy trustee must be independent in relation to other people that could influence the decision-making or the result of his work in the bankruptcy procedure.[50]

53. Mr. Kostovski does not refer to any situation that could lead to the conclusion that Mr. Sazdovski was dependent on any person that could influence the decision-making process or the result of his work in the bankruptcy proceedings. Therefore, the allegation of Mr. Kostovski that the appointment of Sazdovski for a interim bankruptcy trustee of TE-TO is contrary to point 4 paragraph 2 of the Code of Ethics is wrong.

54. Point 4 paragraph 3 of the Code of provides:

> 3) Before accepting the appointment, the bankruptcy trustee is obliged to investigate if there are any business-financial ties with the bankruptcy debtor or with other people related to the bankruptcy debtor that could represent an obstacle, i.e., to influence the actions and decision-making of the bankruptcy trustee, as well as the existence of circumstances that represent a legal obstacle to being appointed as a bankruptcy trustee and to notify the court.[51]

55. Mr. Kostovski's Second Opinion does not identify any business-financial relationship that existed between Mr. Sazdovski and TE-TO or with any other people related to TE-TO, nor any other legal obstacle as for him to be appointed as a interim bankruptcy trustee. Therefore, Mr. Kostovski's assessment that appointing Mr. Sazdovski as a interim bankruptcy trustee vioalted point 4 paragraph 3 of the Code of Ethics is wrong.

56. Third, the appointment of Mr. Sazdovski as a interim bankruptcy trustee of TE-TO is not contrary to point 6 paragraph 1, 2, 3 and 4 of the Code of Ethics, which provides:

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[49] Second Expert Opinion of Dejan Kostovski, para. 47.

[50] Code of Ethics for Bankruptcy Trustees (**C-90**) Point 4, para. 2.

[51] Code of Ethics for Bankruptcy Trustees (**C-90**) Point 4, para. 3.

> 1) The bankruptcy trustee is obliged to perform his duties in such a way that their performance does not subordinate them to his personal interest, or causes a conflict between them (hereinafter: conflict of interests).
>
> 2) The bankruptcy trustee must avoid situations in which a conscientious trader would reasonably conclude that the situation resembles a conflict of interest.
>
> 3) The conflict of interests occurs when the bankruptcy trustee has personal interests that affect or can affect a conscientious trader, can affect the correct performance of the bankruptcy trustee's duties.
>
> 4) If there is conflict of interests or after the appointment of the bankruptcy trustee it is determined that such a conflict exists, the bankruptcy trustee is obliged to immediately submits a request for his dismissal from the duty of bankruptcy trustee.[52]

57. According to the Second Opinion of Mr. Kostovski,[53] Mr. Sazdovski had a personal financial interest in the reorganization plan being accepted by the creditors, taking into consideration that the same plan provided him with a monthly compensation of MKD 40.000 (approximately US$ 700) over of 12 years.

58. There is no legal obstacle because of which the interim bankruptcy trustee cannot be in the role of a person supervising the implementation of a reorganization plan. If there was such a prohibition, the legislator would have regulated it. Also, Mr. Kostovski ignores that the Code of Ethics does not in any way define as an impermissible personal interest of the bankruptcy trustee the receipt of payment for work performed by the bankruptcy trustee during the bankruptcy procedure. On the contrary, point 6 paragraph 5 of the Code of Ethics stipulates that: "The bankruptcy trustee cannot negotiate nor receive any type of compensation or have any other benefit for the duties he performs as a bankruptcy, **except the reward for the work and compensation of the material costs approved by the Court**."[54]

59. The engagement of Mr. Sazdovski as a person to supervise the implementation of the reorganization plan is an activity within the framework of the implementation of the preliminary bankruptcy reorganization of TE-TO and the promise and receipt of compensation for that work cannot be a basis for creating a conflict of interest for Mr. Sazdovski. If TE-TO or related companies promised Mr. Sazdovski an engagement for compensation outside of the implementation of the reorganization plan for the preliminary bankruptcy reorganization, that would constitute an impermissible personal interest in the sense of point 6 paragraph 1 to 4 of the Code of Ethics. Moreover, the amount of the proposed compensation is not contrary to any

[52] Code of Ethics for Bankruptcy Trustees (**C-90**) Point 6.

[53] Second opinion of Dejan Kostovski, para. 50

[54] Code of Ethics for Bankruptcy Trustees (**C-90**) Point 6, para. 5 (emphasis added).

rule of the LB, the by-laws based on it or the Code of Ethics. Therefore, I stand by my contention that the receipt of a monthly allowance of MKD 40,000 is not unusual and does not provide any reason to doubt the independence and impartiality of the interim bankruptcy trustee, set out in my first opinion in paragraph 84.

60. Under the BL, compensation and reimbursement of the expenses of the interim bankruptcy trustee are considered as expenses of the bankruptcy procedure,[55] which are settled (paid) from the estate of the debtor.[56].

3. The interim bankruptcy trustee is independent from the State

61. The interim bankruptcy trustee is not an authority of the Macedonian state, nor is he a civil servant. He does not receive compensation from the state and he acts as a professional who provides professional services that are regulated. The interim bankruptcy trustee, as well as the bankruptcy trustee, do not act in the name and on behalf of the state, but take care of the debtor's property and protection of the rights of the creditors to whom they are accountable for their work.

62. An interim bankruptcy trustee can be named from among the persons qualified as bankruptcy trustees. In order for a person to be appointed as a bankruptcy trustee (and thus to be appointed as a interim bankruptcy trustee), the LB provides three conditions that must be fulfilled cumulatively:

- the natural person has acquired a license to perform the work of a bankruptcy trustee;
- is registered in the commercial register as a sole trader, a public trading company, or a limited liability company that has a license for a bankruptcy trustee and is registered to perform the activity referred to in Article 20 paragraph 3; and
- is a member of the Chamber of Bankruptcy Trustees.

63. In order for a natural person to acquire a license to perform the work of a bankruptcy trustee, in accordance with Article 24 paragraph 1 of the LB, it is necessary to fulfill the following conditions:

- be a citizen of the Republic of Macedonia;

[55] BL (**R-10**), article 134 (1) 2).

[56] BL (**R-10**), article 133 (1) and (2).

- have passed an exam with which he obtained a certificate for an authorized bankruptcy trustee; and

- submit a written statement to the Ministry of Economy that when performing the duties of a bankruptcy trustee, he will apply the rules in accordance with the Code of Ethics and professional standards.

64. The fact that registration in the commercial register is a condition for appointing a person as a bankruptcy trustee indicates that the person is performing a commercial activity, and not performing a function of public authority. Listing the forms in which the natural person can be registered indicates that the same is not part of the state government bodies.

65. In addition, a bankruptcy trustee (and therefore the interim bankruptcy trustee) who by performing his duties causes damage to the bankrupt debtor, creditors or another interested party, is obliged to compensate them.[57] The state has no role in compensating the damage in the same way as the state does not pay the compensation for the work performed by the bankruptcy trustee. The bankruptcy trustee has the right to compensation for his work and the right to reimbursement of the actually necessary expenses, which are paid immediately after the completion of individual stages in the bankruptcy procedure.[58] The amount of the bankruptcy trustee's compensation is determined according to the amount of the monetary value of the settlement of the bankruptcy creditors' claim, the percentage of settlement of the bankruptcy creditors, the complexity of the bankruptcy procedure (e.g., the size of the bankruptcy estate), the duration of the bankruptcy procedure, the way of conducting the bankruptcy procedure, that is whether the property is monetized or a reorganization plan is implemented, the success of the implementation of the reorganization plan.[59] Finally, the board of trustees approves the payment of compensation and reimbursement of costs to the bankruptcy trustee.

66. The interim bankruptcy trustee has a limited scope of activities and actions that he can undertake. Thus, according to Article 59 paragraph 1 of the LB, where the bankruptcy judge appoints an interim bankruptcy trustee with a decision and it imposes on the debtor a general prohibition for disposal, the authorization for disposing of the debtor's property shall pass to the interim bankruptcy trustee. In such case the interim bankruptcy trustee is obliged to: the interim bankruptcy trustee is obliged to: 1) protect the property of the debtor with all appropriate means; 2) give consent to the management bodies of the debtor and, if he is a trader ,run the business until the adoption of a decision to open bankruptcy proceeding in order to avoid a significant reduction of the property and; 3) examine whether the debtor has assets that

[57] LB (**R-10**) Article 26.

[58] LB (**R-10**) Article 37 para. 1.

[59] LB (**R-10**) Article 37 para. 3.

can be monetized and are sufficient for the implementation of the bankruptcy procedure and settlement of the costs of the bankruptcy procedure and the claims of the creditors. In addition, the bankruptcy judge may request the interim bankruptcy trustee as an expert to examine whether the conditions for opening the bankruptcy procedure are met, that is, whether the debtor is unable to pay.[60]

67. It follows from this that the interim bankruptcy trustee is not an organ of the state, nor does it act on its behalf, nor does the state control it. The interim bankruptcy trustee is a person who undertakes all activities for the protection of the debtor's property, for which he receives an appropriate compensation that is not paid by the state.

68. For these reasons, TE-TO's interim bankruptcy trustee, Mr. Sazdovski, did not act on behalf of the Republic of North Macedonia in the preliminary bankruptcy proceedings of TE-TO.

D. REQUEST FOR RECUSAL OF THE BANKRUPTCY JUDGE

69. Mr. Kostovski remains of the opinion that the procedure for GAMA's request for recusal of the bankruptcy judge was violated.[61] In his Second Opinion he states that there is an allegedly established case law for delaying hearings until a decision is made on the recusal request,[62] although he does not cite any case. On the contrary, there is no established jurisprudence for postponing hearings, but the practice is to have a break until a decision is made regarding to request for recusal. That kind of break was convened when GAMA requested the recusal of the bankruptcy judge. During the one-hour break, the request together with all the evidence were delivered to the Deputy President of the Court. Also, a statement was taken from the bankruptcy judge in accordance with Article 67 paragraph 4 from the Law on Civil Procedure.[63]

70. Mr. Kostovski criticizes that period of one hour is not enough time for the Deputy President to be able to adopt a decision in regard to the request for recusal, especially since the Deputy President did not have any expert knowledge on preliminary bankruptcy reorganization in order to determine whether the bankruptcy judge lacked impartiality in the case at hand.[64] However, there is no provision in any law that would require that the person (President of the Court or his Deputy) who decides the request for recusal of a judge must have expert knowledge on preliminary bankruptcy reorganization procedure. The request for recusal of a

[60] LB (**R-10**) Article 59 (2).

[61] Second opinion of Dejan Kostovski, para. 61-65.

[62] Second opinion of Dejan Kostovski, para. 63.

[63] Article 67 paragraph (4) of the Law on Civil Procedure (**R-36**) reads:

"Before adopting the Determination for recusal, a statement from the judge or juror whose recusal is requested, will be taken, and if necessary, there will also be recusal of others."

[64] Second Expert opinion of Mr. Kostovski, para. 64

judge is decided upon assessment of the assertions that there are circumstances that raise doubt as to the independence and impartiality of a judge, no matter what type of issue is decided in the said proceeding. For that reason, the Deputy President that decided GAMA's request for recusal of the bankruptcy Judge in the TE-TO preliminary bankruptcy reorganization was not required to have expert knowledge on preliminary bankruptcy reorganization. Since GAMA did not submit evidence with its request for recusal, one hour would have been enough time to decide on the motion to recuse.

71. In the end, Mr. Kostovski claims that the statement by the bankruptcy judge was made after the end of the voting on the reorganization plan, and not during the period of adjournment of the hearing.[65] What Mr. Kostovski misses is that according to Article 67 paragraph 4 of the Law on Civil Procedure, it is foreseen that before a declaration of recusal is adopted, a statement from the judge or juror whose recusal is sought will be taken. It can be taken orally or in writing. In the specific case, it undoubtedly was the case that the bankruptcy judge gave an oral statement during the adjournment and delivered the written statement later on.

72. For these reasons, I remain of the opinion that there was no violation of the procedure for recusal of the bankruptcy judge.

E. SCHEDULING OF THE BANKRUPTCY HEARINGS

1. The 14 June 2018 hearing was appropriate

73. Mr. Kostovski asserts that "the bankruptcy judge held a hearing to consider the written objections of the creditors, instead of a hearing to decide on the proposal and vote on the Reorganization Plan in violation of the Bankruptcy Law."[66] His assertion stems from an incorrect analysis of Article 215-g(7) of the LB.

74. Mr. Kostovski disagrees with my position in my first opinion, where I argued that Article 215-g(7) does not prohibit the Court from allowing the creditors to submit their comments at the hearing for deciding on the proposal and voting on the reorganization plan, although in TE-TO's case, it might have been more efficient if the bankruptcy judge had scheduled a separate hearing before 5 June 2018.[67] Mr. Kostovski's position is that Article 215-g(7) prohibits considering the written objections of the creditors at the hearing for deciding and voting of the reorganization plan, and argues that the objections can be considered only at a separate hearing which should be held prior to the hearing for deciding and voting of the reorganization plan.

[65] Second Expert opinion of Mr. Kostovski, para. 65

[66] Second Expert opinion of Mr. Kostovski, para. 70.

[67] First expert Opinion of Aco Petrov, para. 101.

75. Mr. Kostovski's position is wrong, because the language used in Article 215-g(7) of the LB is permissive, and provides: "In the course of the preliminary procedure the bankruptcy judge may schedule a hearing at which certain issues regarding the previously prepared reorganization plan shall be reviewed".[68] This permissive language authorizes the bankruptcy judge to schedule a separate hearing to consider certain issues related to the reorganization plan, including the written objections of creditors, but in no way does it says that the said objections may not be considered at the hearing for deciding and voting of the reorganization plan.

76. Moreover, Mr. Kostovski's position directly contradicts his opinion that "the bankruptcy judge decided to hold a hearing to consider creditors' written objections only to allow TE-TO to modify the Reorganization plan again, contrary to the Bankruptcy Law.[69] In paragraph 68 of his Second Opinion, Mr. Kostovski claims that the written objections of the creditors may be considered at a separate hearing, which implies that such objections may be accepted by the debtor and the plan can be amended after a hearing has been held. And then, in paragraph 69, Mr. Kostovski states that in his opinion the LB prohibits any amendment to the previously submitted reorganization plan, and that the bankruptcy judge allowed the written objections of the creditors of TE-TO to be considered at the hearing for deciding and voting of the Reorganization plan of 5 June 2018 only to "allow TE-TO to modify the Reorganization plan, contrary to Bankruptcy Law."[70]

77. For these reasons, I remain of the opinion that Article 215-g(7) does not prohibit the bankruptcy judge from allowing the written objections of the creditors to be considered at the hearing for deciding and voting on the reorganization plan, and that the bankruptcy judge in the TE-TO case acted in accordance with Article 215-g(7) when she allowed the written objections of the creditors on the TE-TO Reorganization plan to be considered at the hearing for deciding and voting of the reorganization plan held on 5 June 2018, as further explained in my first opinion.[71]

78. As stated in my first opinion, in the preliminary bankruptcy reorganization of TE-TO the hearing of 5 June 2018 was scheduled as a hearing for deciding on the proposal and voting on the plan from Article 215-d of the bankruptcy law. As can be seen from the content of the minutes of the hearing held on 5 June 2018,[72] in the form of a Meeting of Creditors, the subject was consideration of the comments and written objections from the creditors in connection with the previously drawn up reorganization plan.

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[68] LB (**R-10**) Article 215-g(7).

[69] Second Expert opinion of Mr. Kostovski, para. 69.

[70] Second Expert opinion of Mr. Kostovski, para. 69.

[71] First Expert Opinion of Aco Petrov, para. 101.

[72] Minutes of a hearing held before the Civil Court in Skopje in case 3 ST-124/18, dated 05.06.2018 (**C-018**).

79. It is also evident from the content of the minutes for the same hearing that 90.19% of the total determined creditors with recognized claims were present, and it none of the present creditors objected when the court made a determination to hold a meeting of creditors for consideration of comments and written objections from creditors regarding the previously drawn up reorganization plan.[73]

80. In his Second Opinion, Mr. Kostovski asserts that the statement in my first opinion that "[t]he fact that none of TE-TO's creditors objected to the holding of the hearing for consideration of creditors' written objections regarding the reorganization plan" means "that this action of the bankruptcy judge is in accordance with the Bankruptcy Law."[74] This assertion of Mr Kostovski is wrong. I explained in my first opinion that: "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."[75] Therefore, it is evident that I only stated that none of the creditors present at the hearing of 5 June 2018 objected when the bankruptcy judge adopted the determination to hold a meeting of creditors for consideration of comments and written objections from creditors regarding the previously drawn up reorganization plan. I made no conclusions, as Mr. Kostovski asserts in his Second Opinion.

81. I can add that the lack of any objections from the creditors itself cannot serve as a solid evidence that the bankruptcy judge acted in accordance with Article t215-g(6) of the LB. However, when the lack of objections from the creditors is put together with the absence of any prohibition in Article 215-g (6) of the LB for the bankruptcy judge to decide to have a hearing for consideration of comments and written objections from creditors regarding the previously drawn up reorganization plan, it becomes evident that the behavior of the creditors at the hearing of 5 June 2018 provides no indication that the said determination of the bankruptcy judge was not in accordance with Article 215-g(6) of LB.

82. I disagree with Mr. Kostovski that the bankruptcy judge decided to hold a hearing to consider the written objections of the creditors in order to allow TE-TO to amend the reorganization plan again, contrary to the LB.[76] On the contrary, at this hearing, comments and written objections were considered and the plan was subsequently amended by TE-TO in accordance with the accepted objections, which is to the benefit and not to the detriment of the creditors. The purpose of allowing the creditors to submit objections to the reorganization plan is to give

[73] Minutes of a hearing held before the Civil Court in Skopje in case 3 ST-124/18, dated 05.06.2018 (**C-018**).

[74] Second Expert Opinion of Dejan Kostovski, para 72.

[75] First Expert Opinion of Aco Petrov, para. 112.

[76] Second Expert Opinion of Dejan Kostovski, para.69.

the opportunity to point to any flaw in the plan, which flaw can afterwards be corrected by the debtor if he accepts that the objection or a comment from the creditor is justified. Since the LB does not prohibit that the debtor amend the reorganization plan in accordance with objections and comments of the creditors, it cannot be said that the determination of the bankruptcy judge to hold a hearing where the creditors would be allowed to argue their objections was motivated by an intention of the bankruptcy judge to allow the debtor to amend the plan. The debtor has right to amend the plan in accordance with the objections of the creditors, no matter whether they were allowed at the hearing for deciding and voting of the plan to argue their objections.

83. I also disagree with Mr. Kostovski's position that the debtor does not have the opportunity to amend or add to the reorganization plan after receiving comments from creditors. On the contrary, the creditors make the observations so that they are accepted by the debtor and then appropriate changes are made to the plan. The debtor has the opportunity to change the plan in accordance with the comments received from the creditors and without holding a hearing to consider the comments.

84. Also, Mr. Kostovski is wrong in his argumentation that the consolidated text of the reorganization plan of 6 June 2018 is a new reorganization plan, and not a corrected/consolidated text of the reorganization plan.[77] His argumentation is that the corrected/consolidated text of the reorganization plan of 6 June 2018 contains changes that "are related to the classes of creditors, which entail a range of other substantial changes", and that "[t]his change triggered a number of other consistency changes in the rest of the Reorganization Plan."[78] And indeed, the said change is a significant one, and it did trigger a number of other consistency changes in the rest of the reorganization plan, but that is not sufficient to qualify the text of 6 June 2018 as a new reorganization plan, since the core of the plan remained identical.

2. The timing of the 14 June 2018 hearing was appropriate

85. Mr. Kostovski says that the "creditors were not given sufficient time to acquaint themselves with the contents of the Reorganization Plan dated 6 June 2018" before the 14 June 2018 hearing.[79] I disagree. When conducting court proceedings, one of the key principles is the principle of procedural economy and efficiency. From the perspective of conducting bankruptcy proceedings, the principle of process economy and efficiency means quick, successful and quality resolution of issues in bankruptcy proceedings when the rights and interests of creditors and all subjects in the proceedings are decided.

[77] Second Expert Opinion of Dejan Kostovski, para 75.

[78] Second Expert Opinion of Dejan Kostovski, para 75.

[79] Kostovski II ¶ 76.

86. Also, the judge has wide discretion regarding the scheduling of the hearings, of course taking into account the minimum of 8 days which is considered as necessary for allowing the parties enough time to exercise their procedural rights.[80] According to the schedule of the judge and the urgency of the issues, hearings are scheduled and there is no violation in the part of scheduling the hearing on 14 June 2018, because the minimum of 8 days is complied with.

87. During the entire procedure, the court takes care to protect the rights of the parties ex officio. When scheduling the hearings, the judge takes into account the complexity of the material to be considered, the appropriate schedule of the parties' representatives, as well as the urgency of the issues discussed.

3. <u>The fulfilment of the deadline of 8 days from the date of the postponement of the hearing to the day of the new hearing</u>

88. When scheduling the hearing, the deadline stipulated by the Law on Civil Procedure of at least 8 days was respected. After the end of the hearing on 5 June 2018, the next hearing was scheduled for 14 June 2018. Mr. Kostovski mistakenly believes that the hearing was scheduled with the submission of the reorganization plan. In addition, it is a matter of delivering a corrected plan, not a completely new plan that requires a longer period of time to become familiar with its content.

89. In paragraph 74 of his Second Opinion, Mr. Kostovski states that the postponement of the hearing from 05 June 2018 was made to enable TE-TO to make substantial changes in the reorganization plan immediately before the vote on it.[81] I do not agree with the opinion of Mr. Kostovski from this paragraph and I maintain my opinion that the postponement was made in order to prepare a refined text of the reorganization plan, and for the creditors to have a better insight into the text of the plan after the adopted comments from on the part of the debtor, then the creditors will vote for that refined text of the plan at the hearing scheduled for 14 June 2018.

90. Also, Mr. Kostovski mistakenly considers the plan for preliminary bankruptcy reorganization as new evidence, and for that reason the court had to give the creditors a minimum of 8 days to reconsider the consolidated version of the plan before holding a hearing for deciding and voting on the plan on 14 June 2018. Since the consolidated plan was delivered to the creditors

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[80] Art 108 (1) and (2) of the Law on Litigation Procedure (LPL) which applies as a default Law under art. 7 of LB provide:

"*(1) The court may postpone the hearing when necessary for the purpose of exhibiting evidence or when there are other justified reasons thereof. The new hearing* ***shall be held in a period of at least eight days, i.e. in a period of at most 45 days as of the day when the hearing has been postponed****.*

(2) When the hearing is postponed, the court shall immediately announce the place and time of the new hearing to the people present. . . ." (emphasis added)

[81] Second expert opinion of Dejan Kostovski, para. 74.

on 8 June 2018, the Hearing could not have been held on 14 June, since it is only six days from the delivery of the Consolidated Plan.[82]

91. Under the Law on Litigation Procedure, evidence consists of the following: public documents, inspection, experts, witnesses and statement of the parties.[83] The reorganization plan cannot be considered as evidence in the preliminary bankruptcy reorganization, since it is a subject matter to be decided upon, and not a means of evidence in the sense of the Law on Civil Procedure. For that reason, the deadline of a minimum 8 days of Article 108 of Law on Litigation Procedure for holding a postponed hearing is not to be calculated from the day the consolidated version of the plan was delivered to the parties, but from the day when the court announced the hearing, and that is from 5 June 2018. The Bankruptcy Judge acted in compliance with Article 108 of the law on Litigation Procedure because there were more than eight days from 5 June 2018 until 14 June 2018.

92. For these reasons, I stand by the position expressed in my first opinion that the conduct of the proceedings was in accordance with the LB, and the scheduling of hearings was in accordance with the Law on Litigation Procedure.

IV. TE-TO'S REORGANIZATION PLAN

A. INFORMATION AVAILABLE TO TE-TO'S CREDITORS AND NEGOTIATION BETWEEN THEM AND TE-TO

93. Mr. Kostovski states that "the creditors of TE-TO were not made available information about the Reorganization Plan from 06.06.2018, nor were there any negotiations."[84] This statement of Mr. Kostovski is wrong for two reasons.

94. First, the statement is a consequence of Mr. Kostovski's understanding that the refined text of the TE-TO Reorganization Plan dated 06 June 2018 (Exhibit C-14) represents a completely new plan, completely independent from the reorganization plan submitted together with the proposal for initiation of a procedure for preliminary bankruptcy reorganization of TE-TO on April 24, 2018 (Exhibit C-13). Mr. Kostovski's claim that the refined text of the TE-TO Reorganization Plan dated 6 June 2018 represents a new plan that needs to be negotiated with the creditors is wrong, because it is an amended version of the plan dated 26 April 2018, only amended and supplemented in accordance with the accepted notes of creditors. According to the logic of Mr. Kostovski, the acceptance of the creditors' comments on the reorganization plan by TE-TO should lead to new negotiations with those same creditors. Simply, according to the LB there was no obligation and no need for TE-TO to negotiate with the creditors on the

[82] Second expert opinion of Dejan Kostovski, para. 76.

[83] Articles 212,215,220, 235 and 249 of Law on Litigation Procedure (**R-36**).

[84] Second expert opinion of Dejan Kostovski, para. 86

refined text of the reorganization plan, because the negotiations had already been carried out previously.

95. Second, Mr. Kostovski does not give any arguments why the correspondence between TE-TO and the creditors enumerated in more detail in paragraph 87 of the Second Opinion of Mr. Kostovski does not represent sufficient proof of availability of information to creditors. Mr. Kostovski completely rejects the evidence of the negotiations between TE-TO and the creditors that preceded the Reorganization Plan of 24 April 2018 and instead claims that there were new negotiations between TE-TO and the creditors after the refined text of the Plan of 06 June 2018. This claim of Mr. Kostovski is contrary to the actual progress of the procedure for the preliminary bankruptcy reorganization of TE-TO, where there were no negotiations between TE-TO and the creditors according to the refined text of the plan, because such negotiations are not provided for by the LB. Creditors actively participated in the procedure for preliminary bankruptcy reorganization of TE-TO, gave written comments on the Reorganization Plan, explained the comments at a hearing, and TE-TO adopted most of such comments. Therefore, I conclude that the creditors had the necessary information to be able to vote on the Reorganization Plan and their rights were not violated in any way in the procedure, nor was there any violation of the LB.

B. TREATMENT OF CLAIMS, INCLUDING GAMA'S CLAIMS

96. Mr. Kostovski disagrees with my opinion that the bankruptcy judge did not make an error in including TE-TO's debt to GAMA in the approved reorganization plan.[85] Mr. Kostovski claims that the provisions of Articles 215-d and Article 144 of the LB apply only to undisputable claims. On this basis, he concludes that those provisions are not applicable to GAMA's claim. He also claims that "GAMA's claim became due on 31 March 31 2012 and was contested by TE-TO, which led to litigation before the Basic Civil Court Skopje."[86]

97. I do not agree with Mr. Kostovski's claim that the provisions of Articles 215-d and Article 144 of the Bankruptcy law are not applicable to GAMA's claim.

98. First, Mr. Kostovski is wrong in asserting that GAMA's claim "came due on March 31, 2012."[87] Such assertion contradicts a fact that he himself states, namely that there was a lawsuit between GAMA and TE-TO concerning said claim. TE-TO's defense in the litigation was that the claim was not due.[88] In the absence of a final court judgment establishing the existence of the claim and when it is due, Mr. Kostovski has no basis for stating that the claim became "due on March 31, 2012." Since at the time of adopting the plan, TE-TO did recognize the main

[85] Second expert opinion of Dejan Kostovski, para. 89.

[86] Second expert opinion of Dejan Kostovski, para. 89.

[87] Second expert opinion of Dejan Kostovski, para. 89.

[88] Second expert opinion of Dejan Kostovski, para. 89.

claim of GAMA, under Article 215-d(1) TE-TO was also obliged to recognize that GAMA's claim became due on the day when the reorganization plan was approved (although TE-TO disputed the maturity of the claim in the civil litigation), which led to a consequence that no default interest was accrued to GAMA's claim.

99. Mr. Kostovski's statement that Article 215-d(1) of the LB does not apply to GAMA's claim because GAMA's claim was contested is also wrong. GAMA's claim is not contested in terms of the principal in the TE-TO Reorganization Plan. On the contrary, TE-TO included such a claim in the Reorganization Plan and thereby acknowledged the same, which is elaborated in more detail in paragraphs 131 to 138 of my first opinion. The fact that TE-TO contested GAMA's claim in litigation that began well before the preliminary bankruptcy reorganization does not preclude TE-TO from admitting the claim in the reorganization plan. From the moment of the adoption of the plan, the principal of GAMA's claim is regulated by the plan and the litigation between GAMA and TE-TO regarding the principal becomes moot. GAMA could only litigate for the interest. I therefore maintain my view that section 215-d(1) applies to GAMA's claim.

100. Mr. Kostovski's claim that "given that the court dispute between GAMA and TE-TO was ongoing, TE-TO had to make a reservation of funds for the payment of GAMA's claim (principal debt and statutory default interest) in the Reorganization Plan pursuant to Article 215-b (1) 2) point 3" is wrong.[89] It is wrong because it ignores that TE-TO recognized the principal of GAMA's claim in the Reorganization Plan. By including GAMA's principal claim in the Reorganization Plan, GAMA got what it would have gotten in litigation: its claim to be settled as part of TE-TO's Reorganization Plan. Even if TE-TO made a reservation of funds to settle GAMA's claim, those funds would not be in the nominal amount of the claim, but in the proportion according to the Reorganization Plan.

101. Second, Mr. Kostovski's assertion that "the provisions of Articles 215-d and Article 144 of the Bankruptcy law are not applicable to GAMA's claim" is primarily based on his erroneous assessment that GAMA's claim "became due" on March 31, 2012." Hence, the assertion based on such a flawed premise is also flawed.

102. Mr Kostovski wrongly states that in the Determination for approval of the Reorganization plan of TE-TO of 14 June 2018 (C-015 EN), "on the one hand, the bankruptcy judge approved the inclusion and write-off of 90% of GAMA's claim (without acknowledging the statutory default interest), and on the other hand, the bankruptcy judge conditioned the payment of such claim on the final resolution of the court proceedings between GAMA and TE-TO."[90] Mr Kostovski relies on the Reasoning part of the Determination, where the court explained its

[89] Second expert opinion of Dejan Kostovski, para. 90.

[90] Second expert opinion of Dejan Kostovski, para. 93.

decision to approve the Plan.[91] Furthermore, Mr. Kostovski wrongly asserts that: "By the aforementioned conditioning of the settlement of GAMA's claim with the effective resolution of the court dispute, the bankruptcy judge acted contrary to Article 239 of the Bankruptcy Law, according to which any final court decision approving a reorganization plan constitutes an enforceable deed, and upon the effectiveness thereof, the provisions of the substantive part of the plan shall become binding for all participants."[92] Such assertion of Mr. Kostovski is wrong. The Determination for approval of the Reorganization plan of TETO of 14 June 2018 (C-015 EN) is an enforceable deed (*titulus executionis*). What is enforceable in the Determination is the Dispositive part (pages 1-15), and not the Reasons (pages 15-40). Therefore, Mr. Kostovski wrongly relies on cited part of the Reasons of the Determination[93] when concluding that "the bankruptcy judge acted contrary to Article 239 of the Bankruptcy Law, according to which any final court decision approving a reorganization plan constitutes an enforceable deed."[94] The Determination for approval of the Reorganization plan of TETO of 14 June 2018 (C-015 EN) is an enforceable title (*titulus executionis*), as expressly provided on page 15 of the same,[95] and therefore Article 239 of the LB is not violated by the Bankruptcy Judge.

103. Even if GAMA's claim was disputable, TE-TO's Reorganization Plan includes funds to settle GAMA's claim. According to Article 215-b (1) 2) point 3 of the LB, the content part of the Preliminary Bankruptcy Reorganization Plan must contain data on the amount of money or property that will serve to fully or partially settle the classes of creditors, including and secured and unsecured creditors, as well as the funds reserved for creditors whose claim is contested, procedure for settlement of creditors and time dynamics of payment. Undisputed claims are included in the Payment Plan, and funds are reserved for disputed claims. For each creditor, it is more favorable for the claim to be recognized and settled directly according to the Plan, and not to have funds reserved for him in the same amount, so that after litigation he receives the same amount that he would have received if the claim had been recognized and included in the plan.

104. Finally, the provision of Article 144 of the LB, which stipulates that bankruptcy creditors can realize their claims against the debtor only in bankruptcy proceedings, reflects the essence of the collective settlement of creditors in bankruptcy proceedings. The purpose of implementing a preliminary bankruptcy reorganization or opening bankruptcy proceedings against the debtor is realized only if all the claims against all the debtor's creditors are included

[91] Second expert opinion of Dejan Kostovski, para. 93.

[92] Second expert opinion of Dejan Kostovski, para. 94.

[93] In para 93 of his Second Opinion, Mr. Kostovski quotes part of the Reasons of the Determination (**C-015 EN**) which is located on page 38.

[94] Second expert opinion of Dejan Kostovski, para 94.

[95] Determination for approval of the Reorganization plan of TETO of 14 June 2018, (**C-015 EN**), page 15.

in those proceedings. Hence, Article 144 of the Bankruptcy law is also applied to GAMA's claim, the principal amount of which is recognized in the TE-TO Reorganization Plan.

C. TE-TO'S REORGANIZATION PLAN INCLUDED ANNUAL FINANCIAL STATEMENTS OF THE PREVIOUS FIVE YEARS WITH THE OPINION OF THE AUDITOR

105. Mr. Kostovski asserts in his Second Opinion that TE-TO's reorganization plan "was also incomplete due to the fact that TE-TO did not provide an annual financial report for 2017, although TE-TO was obliged according to the Bankruptcy Law to submit annual financial reports for the previous five years (from 2012 to 2017), including an auditor's opinion."[96] According to his opinion, Article 215-b((1) line 10 was violated, since the Plan did not include the 2017 annual financial report including an auditor's opinion.

106. This assertion of Mr. Kostovski is wrong for two reasons.

107. First, Mr. Kostovski wrongly calculates which are the previous five years for which financial reports with auditor's opinion should be submitted. He properly states that the first of the five years is 2012. The next four years are 2013, 2014, 2015 and 2016. And indeed, TE-TO's reorganization plan includes financial reports with auditor's opinion for 2012, 2013, 2014, 2015 and 2016.[97]

108. Second, it was impossible for TE-TO to submit a financial report with auditor's opinion for 2017, since the deadline for preparing and submitting such report was 30 June 2018, which is more than two months from the day of submission of the proposal with the reorganization plan to the court.

D. DEADLINE FOR IMPLEMENTATION OF THE REORGANIZATION PLAN

109. In his Second Opinion, Mr. Kostovski states that I misinterpreted Article 215-b (1) 2) paragraph 13 of the LB, regarding when an exception can be made to the deadline for implementing a reorganization plan of 5 years which refers to the postponement of the collection of the claims of unsecured creditors.[98]

110. Furthermore, Mr. Kostovski claims that from the content of Article 215-b (1) 2) paragraph 13 of the LB, it clearly follows that the exception regarding the 5-year term refers to "claims of creditors based on long-term loans and loans taken before the preliminary bankruptcy

[96] Second expert opinion of Dejan Kostovski, para. 37.

[97] See: Consolidated version of the Reorganization Plan of TE-TO AD Skopje no. 0302 - 685 dated 06 June 2018 (**C-014**), Page 61.

[98] Second expert opinion of Dejan Kostovski, para. 103.

reorganization and other claims (e.g. expenses) that arose in connection with those loans, credits or the instruments for their security".[99]

111. Mr. Kostovski's claim is contrary to the text of Article 215-b (1) 2) paragraph 13 of the Bankruptcy law, which reads:

> term of implementation of the reorganization plan which cannot be longer than five years, except in the case when the measures for the implementation of the reorganization plan refer to the anticipated repayment of claims in installments, modification of maturity dates, interest rates or other conditions of the loan, credit or other claim or security instruments, the repayment period of the loan or loan taken during the duration of the previous procedure or in accordance with the reorganization plan, as well as the maturity dates of the issued debt securities.

112. In an attempt to argue that my interpretation of Article 215-b (1) 2) paragraph 13 of the Bankruptcy law, Mr. Kostovski actually changes the content of the mentioned legal provision, so after the words "or other claims" he adds the qualification that it is for "**and** other claims (**eg expenses) arisng in connection with such loans, credits, or security instruments thereto**."[100]

113. The legal terminology is "or other claim," not "and other claims" which follow the claims based on long-term loans and credits, as Mr. Kostovski wrongly states. With the word "or", not "and" as stated by Mr. Kostovski, the LB unequivocally separates this claim as a separate claim from the claims on the basis of loans and credits, and even less that these claims represent costs towards the claims for loans and credits. In this way, there is no application of the principle of enumeration, but a wider possibility is left. Nowhere in Article 215-b (1) 2) paragraph 13 of the LB is the term costs used, that is, that these claims represent costs that are related to claims based on long-term loans and credits.

114. Through this amendment of the text of 215-b (1) 2) paragraph 13 of the LB, Mr. Kostovski changes the meaning of this legal provision, with the clear aim of proving that the words "or other claims" are actually claims that arose in connection with long-term loans, credits or instruments for securing them. The interpretation of the legal provisions cannot be done in a way that changes the content of the legal provision, but should determine the meaning of the legal provision with the content as adopted in the Law. And the provision of Article 215 (1) 2) line 13 of the Bankruptcy law provides for the following exceptions, in which the deadline for implementing the reorganization plan may be longer than five years: "repayment of claims in installments, or modification of maturity dates, interest rates, other terms of the loan, credit or other claim or security instruments." It needs to be emphasized that even if one was to consider

[99] Second expert opinion of Dejan Kostovski, para. 103.

[100] Second expert opinion of Dejan Kostovski, para. 103.

the list of exceptions in Article 215-b (1) 2) line 13 of the LB as too wide, still the creditors have a mechanism to prevent an unreasonably long repayment period in the plan, since the creditors may vote against such a plan. The length of the repayment period is not only a prerogative of the debtor, but also needs approval by the creditors. Therefore, the debtor's freedom to propose the term of repayment is consistent with the freedom to tailor a plan that he expects will meet with creditor approval and allow the business to continue.

115. In the end, it is necessary to state again that there is no possibility of applying the provisions on the deadlines of the Draft Bill in relation to the interpretation of the deadlines for the implementation of the reorganization plan. Again, following this logic, causes an absurd situation in which the deadline for the implementation of a reorganization plan is interpreted according to rules that none of the parties knew were planned to be adopted, nor were they adopted. Freedom to set the term of repayment aligns with a debtor's freedom to prepare a reorganization plan that it expects will meet with creditor approval.

E. UNENFORCEABILITY OF TE-TO'S REORGANIZATION PLAN DUE TO TAX IMPLICATIONS

116. There is no specific obligation according to the LB to include tax implications in the reorganization plan. The LB does not provide for the income tax treatment of write-offs or establish how they should be addressed in the financial projections that are included in a reorganization plan.

117. Article 65(5) of the draft Insolvency Law provides that: "For the amount of the realized income from written off liabilities in accordance with the approved reorganization plan, the tax base for paying the profit tax is reduced."[101] This may mean that the legislator wants to clarify the existing uncertainty about how write-offs are presented in reorganization plans.

V. OUTCOME OF TE-TO'S HYPOTHETICAL BANKRUPTCY PROCEEDINGS

A. NO OBLIGATION TO PROVIDE COMPARISON

118. Mr. Kostovski expresses disagreement with my first opinion, according to which TE-TO had no obligation to include in the Reorganization Plan a detailed analysis of why reorganization was a more favorable option for settling the claims of unsecured creditors, compared to monetization (sale) of the assets of the debtor.[102] At the same time, Mr. Kostovski does not deny that there is no provision in the LB that would impose such an obligation on the debtor when drawing up the plan.

[101] Proposed Insolvency Law (**C-151**) Art. 65(5).

[102] Second expert opinion of Dejan Kostovski para.77.

119. According to Mr. Kostovski, the obligation to include in the analysis plan why the reorganization was a more favorable option for settling the claims of unsecured creditors, compared to the monetization (sale) of the debtor's property, derives from the National Standards for Bankruptcy Procedure from 2006, i.e., from "Professional standard for minimum information to be contained in the reorganization plan submitted by the bankruptcy trustee". As explained in paragraph 13 above, this Professional Standard applies only to the reorganization plan in bankruptcy proceedings, according to which the Assembly of Creditors decides at a report hearing.

120. The standard was adopted in 2006, i.e., 7 years before the introduction of preliminary bankruptcy reorganization in the LB, and it cannot be applied to a preliminary bankruptcy reorganization procedure. By its content, the Standard is fully designed for the needs of an open bankruptcy procedure, in which a bankruptcy trustee is appointed and where creditors are offered the opportunity to choose between two options for the debtor's bankruptcy: liquidation and monetization (sale) of the debtor's property or reorganization of the debtor. Such a plan is submitted to the assembly of creditors at a report hearing by the bankruptcy trustee who is appointed after the bankruptcy procedure is opened. In the preliminary bankruptcy reorganization, there is no open bankruptcy procedure, there is no bankruptcy trustee, there is not even a report hearing. The non-application of this professional standard to the preliminary bankruptcy reorganization of TE-TO means that there was no duty for the debtor TE-TO to include in the plan a detailed analysis of potentially more favorable ways to satisfy creditors.

B. SIMULATION OF THE PROCEDURE FOR THE SALE OF THE PROPERTY OF TE-TO IN LIQUIDATION PROCEDURE AND MONETIZATION IN OPEN BANKRUPTCY PROCEDURE

121. A serious difficulty in calculating what creditors would have received had TE-TO gone into bankruptcy is that there is no estimation of TE-TO's property, which would serve as a basis for the calculation. Otherwise, such estimation is mandatory in an open bankruptcy procedure and according to it the percentage of realization from the sale of the debtor's assets is calculated. It has been my experience that the estimated value is often significantly lower than the book value of the property.

122. The calculation of Mr. Kostovski was made without an estimated value of the property of TE-TO. Therefore, my opinion is that Mr. Kostovski's calculation is speculative and one cannot even know the approximate market value that would be obtained upon the sale of the TE-TO's property.

123. In paragraphs 111 and 112 of his Second Opinion, Mr. Kostovski calculates the settlement of creditors after the liquidation of the property of TE-TO at an accounting value of MKD 10,742,489,910.

124. As stated in my first opinion, it should be taken into account that in an open bankruptcy procedure an estimation of the debtor's property is prepared, but the bidding of an electronic auction in a bankruptcy procedure starts from MKD 0 (zero), and it is impossible to know how much would be the offer of a certain potential buyer, if such a buyer appears at all.

125. Bearing in mind that bankruptcy proceedings have been opened for a certain entity and thus the goodwill of that entity has been reduced, potential buyers often offer up to 30% of the estimated value of the property. In my long career as a bankruptcy trustee, the percentage of realized funds from the sale of the property of the bankrupt debtor rarely exceeds 30%.[103]

Calculation for Creditor settlement
during the liquidation of the property of TE-TO

126. My calculation of likely creditor settlement during the liquidation of the property of TE-TO is as follows:

- Accounting value of the property - MKD 10.742.489.910,00.
- During the liquidation of the property with an offer of 30% of the accounting value, a total amount of MKD 3.222.746.997,00 is obtained as an amount for settling creditors.
- First in line for settlement are the creditors with secured claims whose claims amount to MKD 3.299.269.285,00

No.	Creditors with secured claims	Claim	Settlement – 97,68%
1	Komercijalna Banka	136.716.793,00	133.545.823,00
2	Landes Banka Berlin	3.162.552.492,00	3.089.201.173,00
Total		3.299.269.285,00	3.222.746.996,00

- With the amount of MKD 3.222.746.996.00 received during the sale of the property with 30% of the accounting value, the creditors with secured claims are settled first.

[103] Thus, for example, in bankruptcy proceedings I ST-2360/14, I ST-2413/14 and I ST-2449/14, the property of the bankrupt debtor Zito Skopje, which was valued at 310.173.334,00 denars, was sold for 60.000.000,00 denars, which is 19.34% of the estimated value. (**R-76**).

Since their claims are in the total amount of MKD 3,299,269,285, and they settle with 97.68%.

- With such a settlement, there are no funds left to settle the other creditors, including GAMA.
- It is worth mentioning that all these calculations do not include any costs that arise in the bankruptcy procedure, which have priority in their payment and would further reduce the amount of settlement of creditors (costs for securing property, for current-overhead expenses, for hired persons, award of bankruptcy trustee, etc).
- The data on the creditors' claims are taken as provided in the TE-TO Reorganization Plan.

C. IF TE-TO HAD ENTERED INTO REGULAR BANKRUPTCY PROCEEDINGS, WOULD GAMA HAVE BEEN ABLE TO CLAIM DEFAULT INTEREST UP UNTIL THE START OF BANKRUPTCY PROCEEDINGS? OR WOULD THE CLAIM BECOME DUE (MATURE) ONLY ON THE DATE OF THE OPENING OF THE BANKRUPTCY PROCEEDINGS, MEANING THAT THERE WOULD BE NO DEFAULT INTEREST AVAILABLE TO GAMA?

127. In such a case, if GAMA claimed default interest up until the start of bankruptcy proceedings, under LB it would be up to the Bankruptcy Trustee whether he would recognize GAMA's claim as due before the start of the new Bankruptcy procedure, or he would dispute the default interest claim.[104] It would no longer be TE-TO's call.

Skopje **Aco Petrov – authorized bankruptcy trustee**

[104] LB (R-10), Article 89.