

## APPROVAL OF EXPEDITED PROCEDURE FOR BANKRUPTCY REFINANCING ("PARC") TO ENSURE CONTINUITY OF PAYMENTS IN THE FACE OF THE COVID-19 IMPACT

### PURPOSE:

Through Legislative Decree No. 1511, published in the Official Gazette "El Peruano" last May 11th, the Expedited Procedure for Bankruptcy Refinancing ("PARC", for its initials in Spanish) -special bankruptcy procedure- was approved, which allows companies, affected by the financial crisis derived from COVID-19, to negotiate with its creditors and agree on an **orderly rescheduling of the payment of all its obligations through a Business Refinancing Plan ("BRP") approved by its creditors, within the framework of an expedited insolvency procedure, thus avoiding its insolvency, the loss of business and the elimination of sources of employment.** In other words, it cares for the continuity and viability of formal companies temporarily affected by the effects of COVID-19.

### EFFECTIVENESS:

Legislative Decree No. 1511 will enter into force on the day following the publication of the Presidency of the Council of Ministers' Supreme Decree approving its Regulations, which must be published within a period of no more than 20 working days from the day following the publication of the referred Legislative Decree. This is without prejudice of certain final complementary provisions of the referred Legislative Decree, entering into force.

### What are the benefits of applying to PARC?

Taking into consideration that PARC's purpose is to provide a negotiating mechanism with creditors and the rescheduling of obligations for legal entities affected by a crisis originated in an unpredictable manner, with immediate and widespread effects, the procedure provides for simple requirements for entry and short processing times, both for submitting the procedure, as well as for the credit recognition stage, holding of Creditor Meetings and approval of the BRP.

Although the published Legislative Decree **does not establish deadlines or requirements**, since it has delegated the approval of such details to the PARC Regulation, it has been conceived as an alternative, agile mechanism with fewer formalities than the bankruptcy proceedings currently provided for in the General System Bankruptcy Law, to refinance obligations, which compliance has been affected by the crisis generated by COVID-19. It is also a procedure that is processed entirely electronically and virtually, from start to finish.

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Likewise, as in the case of the bankruptcy proceedings provided for in the General System Bankruptcy Law, the initiation of the PARC procedure entails the suspension of payments of the obligations of the debtor under the procedure and the legal protection of its assets (avoidance of seizures and execution of guarantees), until the approval or disapproval of the BRP. In that sense, companies will be able to count on the abovementioned benefits in an expedited manner, since the very idea of PARC is to grant the referred protections in a faster manner, compared to the standard bankruptcy procedure.

Additionally, the Legislative Decree provides, in an interesting way, that banking and financial entities are not obliged to modify the credit rating of the debtors under PARC, being able to maintain the "Normal" or "CPP" rating registered before the beginning of the procedure in the credit bureaus, unlike what happens with the debtors under the bankruptcy procedures provided in the General System Bankruptcy Law, which, by regulation of the financial system, are granted a lower rating than the one they had before the beginning of such procedures.

The above mentioned should make it easier for companies to maintain access to bank financing, since banks would not be obliged to make greater provisions when granting financing to companies undergoing PARC (which would happen if the company were under an ordinary bankruptcy proceeding).

## **What are the particularities of PARC?**

Due to the fact that it is a special procedure, created to allow the accelerated refinancing of obligations of companies or even civil associations which, due to the crisis generated by COVID-19, are unable to meet their obligations, PARC has the following particularities which differentiate it from the Ordinary Bankruptcy Procedure and the Preventive Bankruptcy Procedure provided for in the General System Bankruptcy Law:

- a)** Due to the fact that this is an exceptional and transitory procedure, legal entities that comply with the requirements established in the Regulations may only apply to PARC just one time and until December 31, 2020.
- b)** The publication of the commencement of PARC in INDECOPI's Bankruptcy Bulletin website generates the inadmissibility of any request to initiate an Ordinary Bankruptcy Procedure filed against the debtor after filing for PARC application (i.e. it is not possible to have more than one bankruptcy procedure open).
- c)** The PARC filing request takes precedence over the ordinary bankruptcy proceeding initiation requests filed by one or more creditors against the same debtor previously, provided that the publication of the initiation of an ordinary bankruptcy proceeding in the Bankruptcy Bulletin has not been carried out. If the filing to PARC is admitted, the conclusion of the procedure requested by the creditors will be declared without ruling on the substance.
- d)** Creditors with employment claims or claims arising from consumer relations (e.g. claims arising from tickets where the debtor is an airline or payments for hotel accommodation where the debtor is a hotel or hotel chain) do not participate in PARC.



- e) Registration of contingent claims is not allowed; however, the Business Reorganization Plan to be submitted to creditors and approved by the Creditors Meeting should provide for the treatment of such claims. Contingent claims are understood to be those claims that are being discussed in a judicial, arbitral or administrative venue.
- f) Creditors who have a relationship with the debtor in bankruptcy, under the terms of the General System Bankruptcy Law (common accounting, integration of the same economic group, among other cases) may participate in the procedure, but will not have the right to vote at the Creditors Meetings that take place
- g) The procedure is exclusively electronic, so the filing of the application for the procedure, the recognition of credits submissions, the challenges and even the Creditors Meetings will be carried out virtually. Similarly, the decisions, summonses and any administrative act generated within the framework of the procedure will be notified to the parties electronically.
- h) The procedure concludes with the approval or disapproval of the Business Refinancing Plan, it is not possible for the creditors to adopt an agreement that involves the debtor's acceptance of an Ordinary Bankruptcy Procedure, as occurs in the Preventive Bankruptcy Procedure with suspension of the enforceability of obligations when creditors disapprove of the Debtor's proposed Global Refinancing Agreement; and, even less, the liquidation of the debtor, as occurs in the Ordinary Bankruptcy Procedure.

## **Who can file for PARC?**

Micro, small, medium and large enterprises, as well as any legal entity, including civil associations (such as football clubs and schools), domiciled in the country, are eligible, as long as they fulfil the requirements set out in the corresponding Regulation.

Natural persons, marital partnerships or undivided estates, whether they carry out business activities or not, are not included in the scope of the Legislative Decree; entities forming part of State structure, such as public organisms and other public law entities; private pension fund administrators; and, persons that are part of the financial system or the insurance system are not include also. This means that a professional natural person or a person with a unipersonal business may not file for PARC to refinance, for example, mortgage loans, credit cards debts, public service debts, schools, etc.

The requirements and deadlines for the acceptance and submission to the Expedited Bankruptcy Refinancing Procedure will be established through the corresponding Regulation, but we understand that due to their nature, they must be simple requirements for the debtor to comply with.



## **How can PARC creditors participate?**

The persons who have pending claims against the debtor on the date of publication of PARC in INDECO-PI's Bankruptcy Bulletin (cut-off date), may request the recognition of their claims in the terms and periods determined by the Regulation, except for the holders of labor credits and claims derived from a consumer relationship, which are not eligible for recognition. Although labor credits do not participate, they have a significant payment preference to be considered in the Business Refinancing Plan.

Similarly, the registration of contingent credits is not appropriate.

Applications for recognition of credits submitted after the established deadline in the corresponding Regulation shall be declared inadmissible.

The requirements and time limits for the creditors to appear in the proceedings and for the recognition of claims shall be laid down in the corresponding Regulation.

## **How is the Business Refinancing Plan (BRP) approved and who approves it?**

The BRP must be approved by the creditors gathered in a virtual meeting and recorded electronically, with the participation of a Notary Public who certifies the adopted agreement, through the drafting of an act.

The Creditors Meeting will have as its one and only agenda matter, the approval of the BRP and only those creditors who have been recognized as such by the Insolvency Proceedings Commission will be able to participate in it, excluding the credits of holders who maintain a connection with the debtor under the terms of the General System Bankruptcy Law.

The BRP approved by the Creditors Meeting binds the debtor and all its creditors (including the holders of contingent credits, labor credits, credits derived from consumer relations and those linked to the debtor), even those that have voted against it or have not requested recognition of their credits in a timely manner.

In case the BRP is declared to be null and void, the Creditors Meeting may meet again, just once, to approve a new Plan to rectify the aspects that caused the nullity.

The holding of sessions of Creditors Meeting, as well as the quorum for the installation, the majorities for the approval of the BRP, the cases of suspension, objections and other aspects related to the Creditors Meeting will be established in the Regulation, to be approved in the following days.

It is important to mention that the creditors do not have the right to disempower the debtor's bankruptcy administrator, nor do they have the right to substitute themselves in the attributions of the Creditors Meetings, as it happens in the Ordinary Bankruptcy Procedure. Nevertheless, 30% of the creditors recognized under PARC have the right to appoint, at their own expense, a supervisor of the BRP.





## What should the Business Reorganization Plan include?

The BRP must contain:

- a) All credits recognized by the Bankruptcy Proceedings Committee, as well as those not recognized that are included in the debtor's financial position statement, such as labor credits and those derived from consumer relations maintained by the debtor.
- b) The treatment and schedule of payments for all creditors, which must include (i) at least 40% of the resources to be allocated to the payment of credits per year must be assigned to labor credits payments; and, (ii) at least 10% of the resources to be allocated to the payment of credits per year must be assigned to the payment of credits derived from consumer relations.
- c) The system of provisions for contingent claims.
- d) The applicable interest rate, if any.
- e) Additionally, if one or more creditors representing more than 30% of the total credits recognized by the Insolvency Proceedings Commission request it, the Plan must contemplate the appointment of a supervisor to verify its compliance, and its fees must be paid by said creditor or creditors.

The approval or disapproval of the BRP determines the termination of the procedure, without the need for a pronouncement by the Commission to that effect.

## What happens if the debtor defaults on the BRP?

Non-compliance with any of the obligations assumed by the debtor in the BRP generates its automatic termination, without the need of a pronouncement by the Bankruptcy Proceedings Committee. Any creditor may request the payment of the credits held against the debtor, under the terms originally agreed upon.