

Payet Rey Cauvi Pérez

CONTACT:



Juan José Cauvi

Partner

jjc@prcp.com.pe



José Cúneo

Partner

jcg@prcp.com.pe



Rocío Gordillo

Associate

ngs@prcp.com.pe



Government enacts regulations regarding the new Accelerated Refinancing Procedure

June 8, 2020

Supreme Decree No. 102-2020-PCM (the "Regulation"), published on June 7, 2020, provides the rules and regulations for the recently created Accelerated Refinancing Procedure (the "Accelerated Procedure"), which allows debtors and creditors to agree on a refinancing plan to reprogram the due dates on debt obligations. The Regulation specifies that the Accelerated Procedure is a pre-evaluation procedure subject to negative administrative silence and it is entirely carried out electronically.

In general terms, the Regulation sets forth the following:

1. Requisites that debtors must comply with to file for the Accelerated Procedure:
 - Debtor's credit rating must be "normal" or "with potential problems".
 - Debtor must not be under another bankruptcy proceeding (ordinary or preventive) that has been published in the Bankruptcy Gazette.
 - Debtor's losses cannot be greater than 1/3 of its paid share capital.
 - Debtor must not be in an event of dissolution set forth in the Corporations Act.
2. Term of the Accelerated Procedure: The Accelerated Procedure will conclude in approximately 65 business days (if there are no challenges).
3. Filing for an Accelerated Procedure: The debtor must file a petition to start an Accelerated Procedure in accordance with the form approved by Indecopi (the authority that oversees all bankruptcy procedures), as well as certain documents, such as an executive summary explaining how the COVID-19 situation has impacted and caused the debtor's current crisis, financial statements, a list of all the credits the debtor owes (specifying the name of the creditor and the amount owed -including interest and expenses- and indicating the creditor's relationship, if applicable), among others.
4. Commencement of the Accelerated Procedure: Within 5 business days, Indecopi must review the petition filed by the debtor and issue a resolution admitting it. The commencement of the Accelerated

Procedure must be published in the Bankruptcy Gazette a maximum of 5 business days after this resolution has been issued.

5. Automatic stay and protection of assets: With the abovementioned publication, all the debtor's obligations are subject to an automatic stay and the debtor's state is protected until the Refinancing Plan (the "Plan") is approved.
6. Recognition of credits: Creditors will have 10 business days from the date of the publication mentioned above to file a credit recognition request before Indecopi, For this, creditors must use the official form approved by Indecopi and attach documents that prove the credit exists. All creditors must inform Indecopi if they qualify as a related creditor. Indecopi will issue a Credit Recognition Certificate (*Constancia de Crédito Reconocido*) to all creditors whose credits are recognized and a resolution detailing all recognized credits. The Credit Recognition Certificates can be challenged.
7. Call Notice for a Creditors Meeting: Indecopi will publish a call notice for a Creditors Meeting 20 business days after the debtor is notified of the resolution detailing all recognized credits. The Creditors Meeting will be held 15 business days after the call notice is published. The only issue on the agenda will be to approve the Plan.
8. Drafting and Presenting the Plan: The debtor must send a copy of the proposed Plan to Indecopi and all recognized creditors within 5 business days from the publication of the call notice for the Creditors Meeting. The Plan must include all recognized credits, consumer credits, labor credits, credits in dispute and all credits recorded on the financial statements.
9. The Creditors Meeting: Quorum for the Creditors Meeting is met when creditors, who collectively in total own more than 50% of all recognized credits, are present at the virtual meeting. A vote by creditors, who collectively in total own more than 50% of all recognized credits, is necessary to approve the Plan. A Notary Public must virtually join and conduct the Creditors Meeting, verify the quorum and voting process, and draft and file the minutes before Indecopi. The meeting will be recorded, and the Notary Public will send the recording to Indecopi.
10. Conclusion of the Accelerated Procedure: The Accelerated Procedure concludes with the approval or disapproval of the Plan. If the Plan is approved, all the debtor's obligations will be subject to the terms and conditions approved in the Plan. If the Plan is not approved, the automatic stay and protection of assets is lifted.
11. False information: If the debtor files false information before Indecopi, a fine of 1 to 50 UITs (approximately US\$1,300 to US\$65,000) can be imposed. If the debtor provides false declarations as part of the Accelerated Procedure, Indecopi will declare it null and void and, if a Plan has been approved, it will have the same consequence. If Indecopi identifies an act that may constitute a crime, they must inform the District Attorney.

12. **Challenging the Plan:** The Creditors Meeting resolution to approve the Plan can be challenged by: (i) the debtor, or (ii) creditors that hold 10% or more of the recognized credits and that voted against the approval of the Plan. Indecopi will review the challenge and issue a resolution, which can be appealed. The Plan also can be declared null and void as a result of a challenge. If this occurs, the Creditors Meeting can be exceptionally called one additional time to approve an amended Plan.
13. **Declaring the Plan null and void:** The Plan can be declared null and void as a result of a request filed by (i) the debtor, or (ii) creditors that hold 10% or more of the recognized credits and that voted against the approval of the Plan. Indecopi can also declare the Plan null and void without a request being filed. The Plan can be declared null and void if it does not comply with legal formalities, if it does not comply with provisions set forth in Peru's legal system, or if it constitutes an abuse of law. If the Plan is declared null and void, the Creditors Meeting can be exceptionally called one additional time to approve an amended Plan.

Note: This article is intended to be a general summary of the Decree. However, it does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

About Payet, Rey, Cauvi, Pérez Abogados

Founded in 1996, Payet, Rey, Cauvi, Pérez Abogados is one of the preeminent law firms in Peru, with extensive experience in providing high value-added services for all types of business activities.

Our full-service practice covers all areas of business law, including mergers & acquisitions, banking and finance, capital markets, project financing, real estate, foreign investments and privatizations, competition & antitrust, natural resources, environment, administrative and regulatory law, intellectual property, tax law, labor law, dispute resolution and economic criminal law.