

CORPORATE
THE AGROKOR STORY

Croatia's first extraordinary administration

Akin Gump lawyers who worked with the creditors' committee explain how the unprecedented corporate restructuring came together

The Agrokor group was an enormous enterprise holding interests in agriculture, food and drink, distribution and sales. Annual group revenues exceeded €5 billion (\$5.5 billion), representing 11% of the GDP of Croatia. By the time of its collapse, the group had more than 155 subsidiaries and affiliates with over 50,000 employees, having grown rapidly through internal development and acquisitions. Many of these acquisitions were of large and established businesses, such as the 2014 acquisition of Mercator, Slovenia's largest retail chain. The founder of Agrokor, Ivica Todorić, remained the ultimate owner of the group.

Growth came at significant cost. By late 2016, when Agrokor embarked on a major refinancing exercise, the group had third-party liabilities of approximately €5.2 billion. The debt burden, along with increasing operating costs, severely restricted the group's liquidity. While an additional €100 million loan was drawn in February 2017, that funding was insufficient to address the liquidity and balance sheet crisis in the group.

The new EA Act

It was against this backdrop that the Croatian Parliament quickly drafted and passed the Law on the Procedure of Extraordinary Administration in Companies of Systemic Importance for the Republic of Croatia (the EA Act). The EA Act provided the legal framework for extraordinary administration, based on the Italian Marzano Law that was passed in the wake of the Parmalat collapse.

The EA Act was explicitly designed as a new rescue procedure for huge Croatian companies in desperate financial condition. Rather than liquidate the insolvent company, the EA Act protected the 'sustainability of operations of companies of systemic importance' that 'affect the entire economic, social and financial stability' of Croatia (Article 1(1), EA Act).

The EA Act came into effect on April 6 2017, and Agrokor filed for protection under the EA Act almost immediately afterwards. The appointment of Ante Ramljak as extraordinary administrator took effect on April 10 2017.

1 MINUTE READ

The appointment of an extraordinary administrator to Balkans conglomerate Agrokor in April 2017 was a controversial and unprecedented step in Croatia. The restructuring negotiations that followed over the next 15 months were the subject of intense scrutiny and fierce criticism. However, within two years the extraordinary administrator had implemented a global settlement that received the overwhelming support of Agrokor's diverse creditor group.

The restructuring process and the creditors' committee

The extraordinary administrator faced a number of challenges following his appointment. He had to stabilise a severely distressed corporate group while running a court-supervised restructuring procedure. To that end, the extraordinary administrator borrowed €1.06 billion of emergency super-priority funding and commenced the court procedure for the registration of creditors' claims.

The EA Act gave the extraordinary administrator 12 months to formulate and propose a global settlement for the satisfaction of creditors' claims. That settlement plan had to be approved by a sufficient majority of the group's international and regional financial creditors, and approximately 6,000 trade and other creditors.

The credibility of any restructuring process relies upon engagement with key creditors. The Marzano Law was widely criticised for

administration still had many obstacles to overcome to achieve a successful restructuring.

As Agrokor was Croatia's first extraordinary administration, the court and the extraordinary administrator had no direct precedent on which to draw. While it was often possible to draw parallels with existing Croatian bankruptcy law, that was not the case for many provisions of the EA Act. International restructuring tools and best practice had to be drawn upon to fill this gap.

Attempts to find consensus among creditors were not helped by a wave of litigation brought by local creditors, challenging the validity of claims held by international institutions. There was no precedent for how creditors might vote on, and receive value under, a settlement plan in respect of claims challenged in this way. Litigation against the extraordinary administration outside of Croatia further destabilised the restructuring, most notably through opposition to applications for cross-border recognition.

The settlement plan needed to establish a viable restructuring solution for the group. It also had to prescribe a credible mechanism for the allocation of value among creditors to gain consensus among the various creditor groups. The extraordinary administrator and the creditors' committee drew on the expertise provided by their advisers, including international best practice to negotiate the key elements of a settlement plan. Agreement was reached one day before the expiry of the initial 12-month statutory deadline. A three-month extension to the deadline was then approved by the Commercial Court of Zagreb, to give time for the negotiation of a full form settlement plan.

The settlement plan

The negotiated settlement plan provided for a huge deleveraging of the group via a debt-for-equity swap. Agrokor's business would be transferred out of the existing group structure owned by Ivica Todorčić to a new Fortenova group owned by Agrokor's creditors.

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not giving creditors a voice within its procedure. The EA Act went some way to correcting that shortcoming by providing for a court-appointed creditors' committee. The members of the creditors' committee were selected from each class of the group's creditors: secured, unsecured, noteholders, large suppliers and small suppliers.

The negotiation of a settlement plan

The extraordinary administrator presented his initial settlement proposals in December 2017. Time was already very short. The statutory deadline was due to expire on April 10 2018. Missing that deadline may have resulted in the group being placed into bankruptcy and a free-fall liquidation. The prospect of bankruptcy was a grave concern throughout the restructuring process, not just for economic reasons, but in political terms too. The short maturity of the emergency super-priority funding only added to the time pressure. However, the extraordinary

administration still had many obstacles to overcome to achieve a successful restructuring. The prominence of Russian banks, US hedge funds, other international investors and international advisers was often criticised by local media. Political pressure brought the resignations of the first extraordinary administrator and the deputy prime minister of Croatia.

The establishment of the creditors' committee provided the extraordinary administrator with a vital forum in which to address and negotiate the restructuring, and was a key element in building support for the ultimate settlement. The creditors' committee members had diverging interests and marked differences in restructuring experience, which reflected those of the wider body of creditors. Many in Croatia, for example, believed the process should favour local creditors in preference to the equal treatment of all creditors.

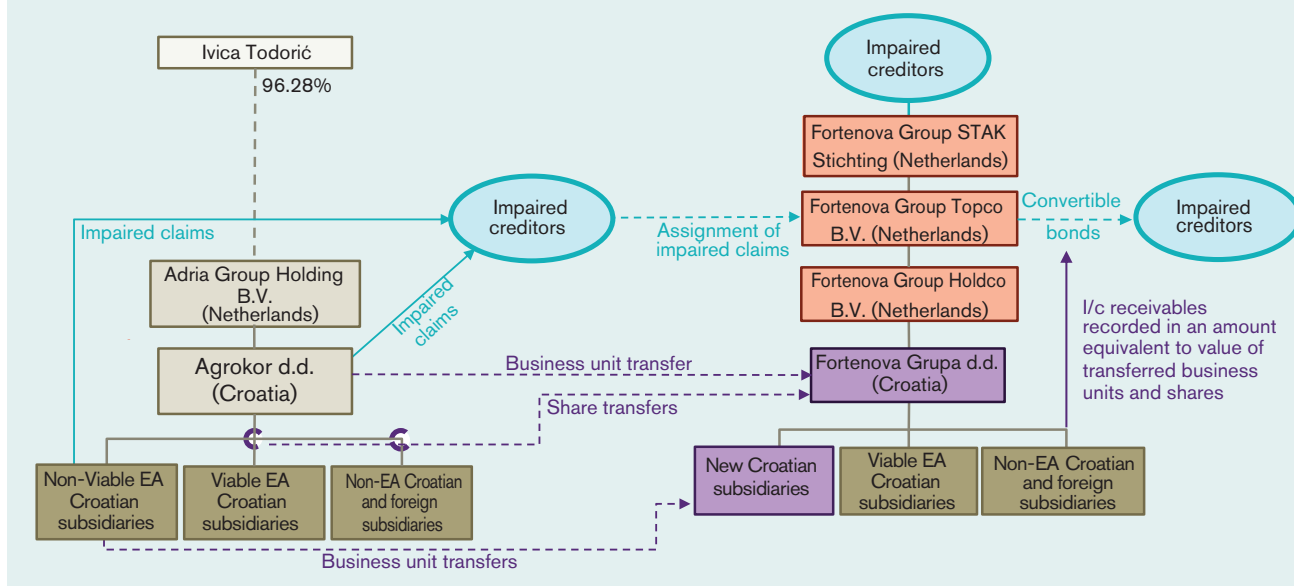
Unfortunately, the Croatian court determined early on that local law did not permit the estate to meet the costs of advisers for the creditors' committee. This shortcoming in local law resulted in a number of false starts in the negotiations.

The transfer of the business

The settlement plan placed each group company into one of the following categories. This categorisation determined how each group company and its assets would transfer to the Fortenova group.

- Agrokor d.d. and non-viable EA Croatian subsidiaries: Croatian companies in extraordinary administration that were classified as insolvent. The assets of these companies transferred to newly incorporated operating subsidiaries in the Fortenova group by a business unit transfer.
- Viable EA Croatian subsidiaries: Croatian companies in extraordinary administration that were classified as solvent. These companies were transferred to the Fortenova group by share transfer.
- Non-EA Croatian subsidiaries: Croatian companies that were not subject to extraordinary administration. These companies were transferred to the Fortenova group by share transfer.
- Foreign subsidiaries: non-Croatian companies that were not subject to extraordinary administration. These companies were transferred to the Fortenova group by share transfer, other than those companies that remained in the

The settlement plan



existing group following implementation in accordance with the terms of the settlement plan.

Treatment of creditor claims

Creditors' claims against the group and recognised in the extraordinary administration were treated in accordance with the categorisation of the group company that was liable for that claim.

- Claims against Agrokor d.d and non-viable EA Croatian subsidiaries were defined as impaired claims.
- An entity priority model was used to attribute a settlement recovery value to each impaired claim.
- Each impaired claim with a settlement recovery of over Croatian kuna (HRK) 40,000 (approximately \$6,000) was assigned to the Fortenova group. In exchange, creditors received stapled new instruments issued by a newly-incorporated holding structure in the Netherlands. The new instruments consisted of (i) equity (in the form of depositary receipts issued by a Dutch foundation (*stichting*) in respect of shares issued by a Dutch BV) and (ii) convertible bonds which convert to depositary receipts in certain circumstances. On the implementation of the settlement plan, the creditors that held these impaired claims became the ultimate owners of the Fortenova group. The businesses and assets of the Agrokor group were transferred to

the Fortenova group in partial satisfaction of the assigned impaired claims.

- Each impaired claim with a settlement recovery of up to HRK40,000 was paid its settlement recovery in cash. This helped to ease the administrative burden on the Fortenova group by reducing the number of smaller creditors that would have otherwise received new instruments by thousands.
- Each impaired claim that benefitted from security was reinstated in the Fortenova group up to the value of the secured asset, on amended repayment terms. Any claim

by certain international sanction regimes.

- The holders of impaired claims received new instruments even if the validity of their claim had been challenged in the Croatian courts. A structure was needed to deal with the situation where the Croatian courts upheld a challenge in the future. In such a case, the new instruments issued in respect of that invalid impaired claim would either be cancelled or re-allocated among the other impaired creditors, depending upon the settlement recovery value of the invalid impaired claim.
- Claims against Viable EA Croatian

The prospect of bankruptcy was a grave concern throughout the restructuring process

amount in excess of the value of the secured asset was treated as an unsecured impaired claim.

- An escrow structure was devised to address concerns related to the issuance of the new instruments to a wide pool of recipients. For example, new instruments would be registered in the name of an escrow agent to avoid a breach of securities laws applicable to a particular creditor, or to prevent 50% or more of the depositary receipts with voting rights from being held by entities who were subject to or targeted

Subsidiaries, Non-EA Croatian Subsidiaries and Foreign Subsidiaries were reinstated in the Fortenova group on amended repayment terms.

The creditor vote on the negotiated settlement plan took place on July 4 2018 at the Commercial Court of Zagreb. The court had to relocate to a basketball stadium due to the size of the creditor group. Creditors voted over 80% of total claims (approximately HRK27.075 billion of HRK33.760 billion) in favour of the settlement plan. The Commercial Court of

AlixPartners, Houlihan Lokey, Kirkland & Ellis and Bogdanović Dolički & Partners advised the extraordinary administrator. Akin Gump advised on the interests of Agrokor's creditors and worked with the creditors' committee to help formulate the terms of a settlement plan, along with PJT Partners, Madirazza & Partneri, and the Dutch law firm, Houthoff.

The court had to relocate to a basketball stadium due to the size of the creditor group

Zagreb approved the settlement plan on July 6 2018, just four days before the extended statutory deadline.

The High Commercial Court of Zagreb dismissed appeals filed against the settlement plan. Meanwhile, the extraordinary administrator, his internal teams and external advisers, prepared the group for the transfer of its operating business and the issuance of the new instruments by the new Fortenova group.

Lessons and relevance

Past experience of similar situations suggest that it will usually take several years following the collapse of a systemically important business for economic and political

stakeholders to absorb the consequences, allocate blame and move on to design a settlement. In this case, the extraordinary administration of Agrokor only had 15 months in which to do so.

The pressure caused by the short timescale resulted in a fraught process. However, the statutory deadline provided a hard stop that meant the key stakeholders were forced to reach a consensual solution quickly. The time pressure also curtailed the period that the business was in restructuring, and consequently limited the costs and strains of that process.

The lack of precedent in Croatia saw the restructuring rely heavily upon international best practice and expertise to fill the gaps in the Croatian legal framework. The presence of international investors and advisers in the restructuring was often criticised locally. However, the restructuring expertise of the bank and fund members of the creditors' committee and the international advisers

played a key role in the restructuring. Their presence and knowhow facilitated a robust process and the negotiation of a settlement plan that met international standards.

The restructuring emphasised the importance of early engagement with all key stakeholders, and of giving creditors a voice throughout the process. While the competing interests within the creditors' committee were a challenge to manage, the creditors' committee provided direct creditor input into the settlement proposals. The extraordinary administration benefited from their expertise and insight in formulating a settlement plan that was ultimately both credible and acceptable to Agrokor's creditors.



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