Amendments and supplements to the Bankruptcy Law

JPM

JANKOVIĆ • POPOVIĆ • MITIĆ

The amendments and supplements to the Bankruptcy Law that were adopted by the National Assembly of the Republic of Serbia on August 2nd, 2014, came into force on August 13th, 2014.

The provisions regulating the manner of submission of receivers' reports will be applied from October 1st, 2014, and the provision regulating the publishing of court decisions and filings of receivers and other parties in the procedure on the court's electronic notice board and delivery of court decisions to public registers will be applied from January 1st, 2014.

The most important novelties introduced by the Law on amendments and supplements to the Bankruptcy Law are:

1. ensuring additional transparency in conducting bankruptcy procedures;

2. advancement of the profession and status of receivers;

3. strengthening the position and active role of creditors in bankruptcy procedures;

4. ensuring efficiency in conducting bankruptcy procedures and shortening such procedures;

5. improving the provisions regulating the content of reorganization plans, reorganization measures and voting on reorganizations plans; and

6. regulating jurisdiction with regard to international bankruptcy and legal assistance provided after the recognition of a foreign procedure.

TRANSPARENCY IN CONDUCTING BANKRUPTCY PROCEDURES

The amendments and supplements define the obligation of courts to publish documents on their notice boards and electronic notice boards on the day of rendering a decision and/or other document, and to forward the decision and/or other documents to the necessary registers to be published on the relevant register's website or in some other manner that enables the public to be informed. All filings made by receivers and parties in the procedure, together with all attachments, are also published on the public portal of the competent commercial court as soon as they are received, or made public in some other manner that enables the general public to be informed of the course of the bankruptcy procedure, while fully observing the regulations governing personal data protection. Thereby the parties in a procedure and the general public are kept informed of the course of the procedure, which ensures that the procedures are conducted efficiently and the work of receivers is additionally monitored. This also ensures that the bodies maintaining public databases are mutually connected, and thus that the data registered in different public registers is harmonized, which additionally ensures the security of legal transactions and reliability of the data in public registers.

ADVANCEMENT OF THE PROFESSION AND STATUS OF RECEIVERS

Receivers will now have identification documents that will identify them in their professional capacity, which they will only be able to use in connection with official business within their legal powers.

Supervision over the work of receivers is conducted by a special organization in compliance with the rules regulating administrative procedures, and this organization investigates whether receivers act fully in compliance with the law, national standards for administering bankruptcy estates, and code of ethics in discharging their duties. The authorized supervisory organization is authorized to pronounce the proper measure against a receiver after conducting a disciplinary procedure – a warning, public warning, fine or revocation of license, depending on the severity of the receiver's breach of duty, and based on the criteria for qualifying irregularities in the work of receivers determined by the competent ministry.

A 20-day deadline has been put in place to submit three-month reports in written and electronic form, and the competent supervisory organization is obliged to publish these reports on its website. This helps make the work of receivers more transparent and controlled, and provides the parties in a procedure with the additional opportunity to continuously follow the activities of the receiver and have direct insight into the status of the bankruptcy estate.

The introduction of a three-year statute of limitation for submitting requests for damages against a receiver, starting from the day of deletion of a bankruptcy debtor or bankruptcy estate from the competent register, or date of coming into force of the decision confirming the adoption of a reorganization plan, harmonizing this period of time with the Companies Law and the statute of limitation applied in commerce, is an important novelty of this Law.

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TRENGTHENING THE POSITION AND ACTIVE ROLE OF CREDITORS IN BANKRUPTCY PROCEDURES

Amendments and supplements to the Bankruptcy Law have introduced numerous novelties intended to make the position of creditors as clear and precise and the role of creditors as active as possible. Thus bankruptcy creditors can now be members of boards of creditors regardless of the amount of their claim, neutralizing the difference between majority and minority creditors who, in practice, can and frequently do have completely opposing interests. This marks a step forwards as compared to practice so far, in which seats on boards of creditors were practically reserved for majority creditors who joined together to protect their businesses, which has been known to affect the interests of minority creditors.

The activity of boards of creditors is strengthened by the requirement that all members of boards of creditors have to provide the court, the receiver and all creditors with their contact e-mail address, whereby simply accepting membership on a board of creditors practically requires the members of boards of creditors to be always reachable by the bodies in the bankruptcy procedure and the other creditors whose interests they represent.

Moreover, if the first creditors' hearing fails to result in the forming of creditors' bodies, the duties of board of creditors will be discharged by the five creditors whose individual unsecured claims are the largest according to the overview of claims compiled for the requirements of voting at the first creditors' hearing, ensuring a "substitute" mechanism for forming creditors' bodies, and the unhindered continuing of the bankruptcy procedure in cases when members of the board of creditors cannot be appointed due to absence from the hearing or disagreement about nominated candidates.

The activity of boards of creditors is also secured by the rule that if the chairman of the board of creditors fails to convene a meeting of the board of creditors within 15 days from receiving a proposal to do so from more than half of the members of the board of creditors, the proponents may convene a meeting of the board of creditors themselves, and may propose the agenda.

Another novelty is the extension of the deadline for initiating a lawsuit in case of a disputed claim or the deadline for continuing an interrupted procedure from eight to fifteen days.

A particularly important novelty is a provision providing for the possibility to assign determined and disputed claims, both in reorganization procedures and in bankruptcy procedures, until the rendering of a decision on main distribution, with a specified form for agreements on assignment of claims – written form with compulsory legalization of the signatures of the parties, and the obligation to notify the receiver of the completed assignment in writing.

This has rectified a major deficiency of earlier regulations, and ensured a relatively flexible but sufficiently organized mechanism for disposition of claims, which provides options for creditors wishing to dispose of lesser quality claims (unsecured or those presumed not collectible in full), as well as options for those in the business of purchasing claims to do so in a legal and organized procedure, preserving legal security.

EFFICIENCY IN CONDUCTING BANKRUPTCY PROCEDURES AND SHORTENING BANKRUPTCY PROCEDURES

One particularly important novelty is the specification that final distribution can be conducted even if the receiver, after several attempts to cash the property of the bankruptcy debtor in the manner specified by the law, has not managed to cash in the entire bankruptcy estate or the majority thereof.

Regardless of the efforts of a receiver to cash the bankruptcy estate in full, insufficient demand for a particular property practically has frequently been known to prevent the final distribution from being conducted, greatly increasing the costs of bankruptcy procedures and causing such procedures to sometimes last for years or even decades.

In striving to achieve efficiency in conducting bankruptcy procedures, the legislator did not leave room for abuse of this provision, since it is specified as an exception to the general rule – final distributions are conducted when the entire bankruptcy estate or the majority thereof has been cashed in – and only in cases where several attempts to cash in the property of a bankruptcy debtor failed to result in a sale.

IMPROVING THE PROVISIONS REGULATING REORGANIZATION

The Law on amendments and supplements to the Bankruptcy Law has additionally defined and regulated the reorganization procedure – particularly in the part relating to:

- compulsory elements of pre-prepared reorganization plans (signed statements of majority creditors according to value of claims in each class as specified in the plan that they are aware of the content of the reorganization plan and are prepared to attend the hearing to vote on the reorganization plan or to vote in writing);

- forbidding pledge creditors from voting on the reorganization plan while at the same time guaranteeing preservation of the rights of pledge creditors who are not secured creditors, so that their rights cannot be changed or diminished by the reorganization plan without their explicit consent;

- ensuring application of the bankruptcy law in full compliance with the regulatory requirements relating to protection of competition and control of state assistance;.

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- specifying a deadline for holding the hearing to vote on the pre-prepared reorganization plan, which may not be held in less than 30 days from the date of publishing the notice on commencement of a preliminary procedure for examining the fulfillment of the requirements for opening a bankruptcy procedure in compliance with the pre-prepared reorganization plan;

- the obligation of the bankruptcy judge to ex officio order the receiver or other engaged professional to submit a new unscheduled report prepared by another auditor;

- estimating the likelihood of settling the claims of secured creditors from encumbered property for the purpose of exercising the voting rights of secured creditors and the right of secured creditors to submit an evaluation of the encumbered property prepared by an authorized appraiser to the court for the purpose of this estimate; and

- defining the date as of which the reorganization plan is to be applied.

EXPECTED ADVANTAGES IN IMPLEMENTING BANKRUPTCY REGULATIONS

What is primarily expected of the amendments and supplements of the Bankruptcy Law is greater efficiency in conducting bankruptcy procedures, which does not depend so much on the wording of the regulation as on the practice in implementation thereof, and first and foremost on the responsible, timely and prompt actions of all parties in a bankruptcy procedure – the judge, the receiver and the creditors.

Jelena Gazivoda,
Senior Partner
Licensed Receiver
JPM JANKOVIĆ POPOVIĆ MITIĆ, Legal Partnership
E-mail: jelena.gazivoda@jpm.rs
Tel: +381/11/2076850

JPM JANKOVIC POPOVIC MITIC
Address: NBGP Apartments, 6 Vladimira Popovića street
11070 Belgrade, Serbia
Phone: +381 11 207-6850, Fax: +381 11 207-6899
E-mail: office@jpm.rs, Online: www.jpm.rs