



Basic Characteristics of the RS and FBIH Law on Bankruptcy Procedure

THE ORIGIN OF THE LAW

- RS and FBIH models of the law on bankruptcy are taken from the German bankruptcy law
- German bankruptcy law is in implementation since 1999
- Since the day it was passed (1996) Germany was adjusting the system and training all participants in bankruptcy
- In drafting of the law the Germans studied around 30 different bankruptcy systems in the world, and created unique combined model
- The US bankruptcy law, in reorganization part, had great influence on them, although it has been in implementation in the USA for only 25 years

TREND – GLOBALIZATION OF BANKRUPTCY RULES

- In global economy, investors seek equal conditions in protection of their rights and investments, where ever they may be
- As the result of these efforts, rules are being created to standardize bankruptcy procedures in all modern societies
- Uniform UN rules on bankruptcy, and several EU directives in that area
- Every country, especially one in transition, that wants to encourage investments (foreign and domestic) must follow the basic bankruptcy principles from these international documents

- According to estimate of some international experts, our law models have been designed as modern and potentially efficient, and they meet all the international principles a Law on Bankruptcy should have
- Since it was almost directly transcribed from the German language, linguistic constructs are unusual for our legal system, thus there are many doubts regarding the meaning of certain terms
- For now, it is not possible to amend this law, and best ways for its implementations should be sought jointly

Basic Concept of the Law

- **Bankruptcy procedure is urgent**

according to rough estimates, 4 months of bankruptcy proceedings cost around 50 000 KM, (without litigations), and it is paid from bankruptcy estate

- **Property of bankruptcy debtor in fact belongs to bankruptcy creditors**

bankruptcy debtor's property serves for satisfaction of bankruptcy creditors in the best possible manner

for that purpose, bankruptcy creditors are the ones who make the most important decisions in the bankruptcy proceedings

- **the task of bankruptcy trustee is to satisfy the interests of bankruptcy creditors to the greatest possible extent**

in that regard, the trustee must have approval of bankruptcy creditors for any strategic decision

therefore, the trustee should preserve the bankruptcy estate and maximize its value

bankruptcy trustee protects the interests of all bankruptcy creditors, making sure that none of them is deprived of their rights

Main Participants in Bankruptcy Are (Article 3):

- Bankruptcy judge
- Bankruptcy trustee
- Assembly of creditors
- Board of creditors (not mandatory)

optionally:

- interim bankruptcy trustee
 - interim board of creditors
- No more: bankruptcy council

Bankruptcy Judge Should (Art. 22):

- lead and manage the bankruptcy proceedings in accordance with the law (issues writs and appoints individual participants in the proceedings when required by the law)
- performs legal supervision of bankruptcy trustee's work (interim one as well)
- appoints:
 - bankruptcy (and interim) trustee
 - members of interim board
 - expert witnesses

Bankruptcy Trustee Should (Article 25):

- enter into possession of property
- manage the property
- resume operations until the reporting hearing, under condition that this is not going to harm bankruptcy creditors
- compose the list of property and debts
- verify claims at the investigation hearing, and submit the report at the reporting hearing (art. 98 and 112)
- compose the bankruptcy plan, if such instruction has been received from the bankruptcy creditors (art. 143)
- run the books
- represent the bankruptcy debtor in any proceeding

Assembly of Creditors Should Decide

On:

- terminated or resumed operations (art. 99)
- decide whether the bankruptcy debtor is heading for sale or reorganization
- manner and terms of liquidation of property (art. 101)
- reorganization plan (art.160-169)
- appointment of the board of creditors (art. 29)
- replacement of bankruptcy trustee

Board of Creditors Should:

- Assist and supervise the work of bankruptcy trustee (29, par. 5)
- Approve any significant legal actions of bankruptcy trustee (art. 29 par. 6; art. 108), such as assuming obligations, disposing and acquiring real property, certain parts or the company in full, litigating, **drafting the bankruptcy plan before it is submitted in court or presented to creditors etc**

Interim Board of Creditors

- Appointed by the judge for protection of interests of bankruptcy creditors until the appointment of the “permanent” board of creditors (article 29 par. 2)
- It can perform all of the tasks as the “permanent” board (resulting from the entire article 29)

Interim Bankruptcy trustee Should (Article 16):

- Investigate the conditions for opening of the bankruptcy proceedings
- In some cases, also manages the bankruptcy debtor (according to article 15 – security measures)