



Basic Characteristics of Bankruptcy Plan

- The most significant change in the reform of bankruptcy procedure in BiH
- Done in the German Law model, which in turn found its source in the American Bankruptcy Law
- The trend of reforms in bankruptcy law modeled by the American Law is present almost in entire Europe since the beginning of 90s, especially in its eastern part

The Goal Of Bankruptcy Plan

- Better satisfaction of bankruptcy creditors (v. 175)
- Give creditors right to depart from legal rules on liquidation of debtor's property and distribution of proceeds collected
- Give creditors authority to arrange their relationships with debtor in any way legally permissible
- Creditors are free to dispose debtor's property, because it is in fact considered theirs

Legal Nature of Bankruptcy Plan

- Agreement elements (between creditors)
- Settlement elements (between creditors and debtor)
- Elements of court decision (after confirmation of plan by bankruptcy judge)

Types of Bankruptcy Plans

- Liquidation plan (different time and manner of liquidating property than that prescribed by the law)
- Transferring plan (part or entire property of debtor is transferred to existing or new legal entity)
- Salvage plan (which leads to reorganization of bankruptcy debtor)

Right To Submit Bankruptcy Plan (article 143)

- Bankruptcy debtor:
 - Together with motion for initiation of bankruptcy, or after its opening
 - Knows its situation the best, and is in position to provide “ready” solutions
 - In order for creditors to accept it, the plan must satisfy their interests

■ Bankruptcy trustee:

- upon request of bankruptcy creditors (most often at investigation hearing)
- upon own initiative (questionable, but PROBABLY possible)

Can not be submitted by (court rejects the plan, article 156):

- bankruptcy creditors
- interim bankruptcy trustee
- third persons

BASIC ELEMENTS OF BANKRUPTCY PLAN

1. Preparatory basis (prerequisites for implementation of the plan)
2. Basis for implementation of the plan (in what way is the legal position of debtor and its creditors changed)

CLASSIFYING BANKRUPTCY CREDITORS IN GROUPS (article 147)

1. Voting on the plan is done by groups of creditors.
2. Classifying creditors in groups, for voting on the plan (within each group majority of creditors and majority of capital), is based on:
 - Legal position of creditors (secured, higher, general, and lower repayment orders)
 - Economic interests of creditors who are in the same legal position (are they interested in liquidation or continued operations, as co-owners or only as creditors etc)

3. Workers always make up a special voting group

4. Classifying must be based on valid reasons, and those reasons must be explained in the plan

BASIC PRINCIPLES OF BANKRUPTCY PLAN (I)

- 1. The plan must ensure the same rights for all members of one group (article 151)
- 2. Cram-down – article. 170, it is considered that a group accepted the plan if:
 - Majority of groups accept the plan
 - Group is in no worse position than if the company was liquidated
 - Members of group get appropriate benefits from the plan

BASIC PRINCIPLES OF BANKRUPTCY PLAN (II)

Creditor gets appropriate benefits if:

1. According to the plan, no creditor gets more than its claim
2. If there was no plan, property benefits would not be received by creditors of lower repayment order in comparison to creditors of that group
3. If no creditor of the same repayment order is not put in worse position compared to the situation with no plan

BASIC PRINCIPLES OF BANKRUPTCY PLAN (III)

- Protection of minority (court rejects the plan) - 176:
 - Upon creditor's request
 - If a creditor is put in worse position by the plan
 - Burden of proof is on the creditor

ROLE OF BANKRUPTCY JUDGE IN REORGANIZATION

- Upon receipt, judge rejects the plan (art. 156):
 1. If provisions are violated on filing (who can file), content (preparatory and implementation basis, and their elements), classifying in groups (omitting a mandatory group for example), or unlawful modification of the position of certain creditors – and those irregularities cannot be rectified subsequently

- 2. it is obvious that there is no chance of accepting the debtor's plan or court confirmation thereof (debtor submits the plan, but the assembly of creditors has already voted for liquidation, for example)
- 3. it is obvious that there is no chance of realizing the debtor's plan (it is planned to repay all creditors in full, with no realistic mechanisms of how to achieve it)

- The court **must ex officio** reject the voted plan (art. 175):
 1. If creditors have not accepted the plan or debtor has not agreed to it, or if provisions on content and processing of the plan and its attachments have been violated (most often violations from filing in court to voting)
 2. If acceptance has been achieved in prohibited manner (buying votes, recognizing false claims and similar)