



Vlasic, 26th and 27th May, 2005

Identification of Rights of Bankruptcy Debtor Over Bankruptcy Estate

TRANSFORMATION OF RIGHTS OVER COMPANY'S PROPERTY

- **Right of management**, introduced immediately after World War II, everything was people's property, and state owned legal entity had the right to manage that property
- **Right of use** for legal entities was introduced by the Constitutional Law in 1953, when public (communal) property was introduced. Right of use included the right to use that property, dispose it, transfer it to other entities, to encumber it, and to lease it out
- Law on registration of real property in public ownership (Official Gazette "SFRJ" 12/65) prescribes that registered state property is considered public property, and registered management right as right of use (art. 5, par. 1), if the body of management is indicated and holder of use right, it is important who has the right of use (art. 5. 3.)

Disposal Right

- Company disposal right of property was introduced by ZUR (Law on United Labor “Official Gazette SFRJ” 53/76), and it included transfer of assets to different public entity, removal, giving out to temporary use, and other disposals of those assets (article 243 of ZUR)
- Law on Registration of Real Property in Public Ownership (Official Gazette “SFRJ” 28/77), art. 6 prescribes that registration in the LR of right of use is considered the disposal right (this change does not have to be spelled out in the LR, but an excerpt must contain only the disposal right)

TRANSFORMATION OF PUBLIC OWNERSHIP

- In RS, in 1993, Law on Transfer of Public Ownership Into State Ownership (4/93, 8/96, 9/95, 20/98)
- In RBIH, the same being applied now in FBIH, the same law 1994 (33/94)
- In FBIH, Law on Initial Balance Sheet of Companies and Banks (12/98), article 3, par. 4 transforms registered disposal right (but not also if the right of use is registered!) into ownership of companies and banks

- In RS there's no such provision, the question is, in bankruptcy (or enforcement) procedure, can property be sold for which state (public) ownership is registered in the LR, with disposal right (or right of use) in favor of bankruptcy debtor
- According to the RS Law on Companies, art. 53, a company is liable for its debts with all of its property, but it is not the property of bankruptcy debtor if it is registered in the LR as (public property) state property
- Does this mean that property of bankruptcy debtor must always be sold by the rules of enforcement procedure, when bankruptcy debtor is not registered as owner in the LR?
- Or, the right registered in the LR in favor of bankruptcy debtor can be sold even without application of enforcement procedure?

Conclusion on Management, Use, and Disposal Rights

- By an array of legal provisions, these rights, registered in the LR, have been incoherently reduced to one and the same right in FBiH, company's ownership right
- In RS, two previous rights (management and use) have been reduced to disposal right, which is treated in current court practice as company's ownership right
- According to the text of the future new Property Law, the rights of management, use, and disposal become ownership right