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SATISFACTION OF BANKRUPTCY CREDITORS

From the provisions on satisfaction of bankruptcy creditors, starting with article 117, through article 130, ensues that the Law on Bankruptcy Procedure ("Official Gazette FBiH" no. 29/03, dated 06/30/2003) provides for three types of distribution as follows:

1. Partial distribution
2. Main distribution
3. Subsequent distribution

The procedure prescribing the provisions of partial distributions is provided in articles 117 through 123 of the Law. The procedure for main distribution is prescribed in articles 117 through 127. The procedure for subsequent distribution is prescribed in the provisions of articles 128 through 130 of the Law on Bankruptcy Procedure.

We will try to explain this part of bankruptcy procedure by asking questions that could arise in every article starting with article 117 through 130 of the Law on Bankruptcy Procedure, which prescribe the procedure for settlement of bankruptcy creditors, and answering those questions as to how I interpret these legal provisions, and how I implement them in practice. I will not ask questions or give answers in regard to those provisions I find clear, simple, and that they can be understood simply by reading the law.

Partial Distribution

Article 117

- *What is the earliest time for the partial distribution?*
- After the first investigation hearing. (In practice, I think that partial distributions will be carried out after the first special investigation hearing, because at that hearing we have the entire table established,

and it is unlikely that the property is even going to be liquidated before that hearing.

- What is the role of bankruptcy judge in partial distribution?
- Bankruptcy judge only decides on creditors' objections against distribution list – article 123. par. 2. and 3.
- What does approval of board or assembly for the distribution contain, and can they discuss the distribution list?
- It contains only the decision on approval of partial distribution and the provision as to what amount of collected bankruptcy estate is to be paid to creditors.

Distribution list

Article 118

- What makes up the **list of claims** taken in consideration during the distribution?
 - a) in the list of claims, established bankruptcy claims from the table are indicated
 - b) claims of preferred creditors that are taken into consideration.
- What makes up the **list of claims** the bankruptcy trustee must publicly announce?
- The sum of claims is made up of:
 - a) recognized claims of all repayment ranks
 - b) disputed claims for which suits are filed
 - c) claims of preferred creditors if:
 - they waived their right to separate settlement
 - it is not separately satisfied
 - liquidation of goods that serve as security did not lead to satisfaction of personal claim.
- What is the bankruptcy available for distribution?

- It is the estate that remains after settlement of debts to creditors of bankruptcy estate from article 40, and types of expenses projected by the end of bankruptcy proceedings.

Article 119 – Taking disputed claims into account

- What is the legal deadline for the court to determine that the objection of bankruptcy debtor or bankruptcy creditor is founded?
- I think this legal formulation is unclear, and that the legislator meant that the court would determine whether the creditor filed the litigation on time, like instructed to do.
- Is the disputed amount retained if the trustee is sent to litigation?
- Yes, because the trustee is aware of the dispute, since he/she initiated it.

Article 120. – Taking preferred creditors into account

- No unresolved issues.

Article 121. – Subsequent taking into consideration

- No unresolved issues.

Article 122.

- What is the deadline for bankruptcy trustee to make changes of the list necessary on the basis of articles 119, 120, and 121?
- It is the 18 day deadline after public announcement of the sum of claims and the amount of bankruptcy estate available for distribution.
- What is the deadline for creditors to file objections against the distribution list?

- Within 23 days of the public announcement of the sum of claims and the amount of bankruptcy estate available for distribution.
- Does bankruptcy judge issue an order by which the trustee is ordered to perform partial distribution after expiry of the deadline for objections against the distribution list, or after the final ruling on objections?
- Judge issues no order for that purpose, because article 117 prescribes that partial distributions will be carried out according to the trustee's own assessment.

Main Distribution

Article 124.

I think that the main distribution, according to article 124, cannot be carried out without the risk of creditors being deprived of the right to file objections and possible appeal in case the objection is denied, the option given to them by article 123. For that reason, I think that in main distribution it is also necessary to run the procedure starting with article 118, by composing the distribution list, its public announcement, and giving creditors opportunity to file appeals in case of objection denial. After that part of procedure is executed, the trustee will compose the distribution proposal, which must include all changes ordered according to article 123. After service of that proposal, according to article 124, bankruptcy judge will give approval of the main distribution, and schedule the hearing for main distribution.

- Can creditors object in the main distribution hearing?
- Yes.
- What decisions can be made by bankruptcy judge in the main distribution hearing regarding the objections uttered?
- Article 124 has not prescribed that the judge decides on the objections, but I think that all provisions of article 123 should be applied.
- In what cases does the bankruptcy judge notify creditors, whose claims have not been satisfied in entirety or partially, that they can pursue their rights in regular enforcement procedure, by returning the documentation and the excerpt from the distribution list approved by the judge?

- This is the case when the bankruptcy procedure is opened against a bankruptcy debtor individual.
- Where is the decision approving the main distribution announced?
- Mandatory announcement in the "Official Gazette of FBiH" and on the court notice board.
- Is objection against the final calculation allowed?
- It is allowed, and it should be ruled upon without the right to appeal (article 11.).
- Should the decision on non liquidated property be made by court order on approval of distribution proposal?
- Yes, and it should be served to creditors with the note that they become solidary creditors.

Article 125. – Depositing retained amounts

- No questions.

Article 126. – Court order closing the bankruptcy proceedings

- Should the order include the order for deletion of bankruptcy debtor from the court registry?
- Yes – article 140, par. 3 prescribes so.

Subsequent Distribution

Article 128.

- What should the order on subsequent distribution say?
 - That the **proceedings continue**
 - Appoint bankruptcy trustee (the previous one is possible)
 - Order the trustee to compose the distribution list

Article 129. – Legal remedy

- No questions

Article 130. – Performing the subsequent distribution

- *What is the procedure in subsequent distribution?*
- If the amount that can be freely disposed, or the amount received from liquidation of subsequently found item of bankruptcy estate (liquidation is done by the trustee) distribution list will be composed, the same procedure will be carried out as in partial distribution. After the distribution trustee reports to bankruptcy judge, after which the judge issues the decision closing the proceedings.