

## BANKRUPTCY - WHAT IS NEW?

The long-awaited changes to the regulations governing bankruptcy have been introduced under the Law on Amendments to the Bankruptcy Law, published in the "Official Gazette of RS" No. 83/2014.

The new solutions that will have the greatest practical impact on the bankruptcy and reorganisation proceedings cover the following areas:

### 1. Secured creditors and pledge creditors

The amendments introduce a new category of creditor in the bankruptcy proceedings – the pledge creditor.

A pledge creditor is defined as creditor "*holding a security interest over the assets or rights of the bankruptcy debtor registered in public registers or books, however not having any monetary claims against the bankruptcy debtor secured under such security interest*".

In spite of the obvious similarity between the secured creditor and pledge creditor, the difference is fundamental – the pledge creditor does not have a monetary claim against the bankruptcy debtor, but only the right of pledge over a certain asset or right that is part of the bankruptcy estate.

A pledge creditor would exist in case of agreements creating a pledge to the benefit of a third party, *i.e.* in cases where the bankruptcy debtor (as pledgor) has pledged any of its assets or rights to serve as security for a claim which the pledge creditor (pledgee) has against a third party (as principal debtor), rather than against the bankruptcy debtor.

Neither secured nor pledge creditors are deemed to be bankruptcy creditors.

### 2. Forth-rank creditor claims

The number of ranks of priority for claim recovery has been increased from three to four by introducing the last – forth rank, which comprises the creditors having: "*claims arising two years before the date of opening bankruptcy proceedings based on loans, as well as other legal transactions that correspond to granting loans for accounting purposes, to the extent such loans are not secured, and were granted to the bankruptcy debtor by persons affiliated with the bankruptcy debtor, within the meaning of this law, excluding the persons whose business activities normally include lending transactions*".



### **3. Advance payment of the costs of bankruptcy proceedings**

This is the first time that the law has provided (to an extent) for an objective criterion in determining the amount of advance payment of the costs of initiating bankruptcy proceedings, which are borne by the petitioner (*i.e.* the person filing the petition to initiate bankruptcy with the court).

Thus, provisions have been made that the court may not determine an advance payment exceeding 50.000 RSD, where the bankruptcy debtor is classified as a micro entity under the regulations governing criteria for classification of legal entities.

However, in this matter, the Law remains silent in respect of other classes of bankruptcy debtors.

### **4. Filing of claims by bankruptcy creditors and bankruptcy debtor's guarantors**

When filing the claim in bankruptcy proceedings, the bankruptcy creditor is obliged to:

1. state in the claim if there are any guarantors for the bankruptcy debtor's liabilities,
2. to timely inform the bankruptcy debtor's guarantors of the claim filed.

Consequently, should the bankruptcy creditor collect its registered claim from the bankruptcy debtor's guarantor (in part or in full), it is obliged to notify the bankruptcy administrator of such collection within 8 days thereof.

A creditor who fails to notify the bankruptcy administrator of collection of claim from the principal debtor or guarantor is punishable by a fine ranging between 500.000 and 10.000.000 RSD.

### **5. Assignment of claims in bankruptcy proceedings**

The Law explicitly provides that the claims registered in the bankruptcy (and reorganisation) proceedings, whether accepted or disputed, may be subject to assignment.

The assignment of claims is possible until the decision on the main distribution of assets is issued.

### **6. Disputed claims – deadline for initiating a lawsuit and preclusion**

The deadline for initiating a lawsuit to establish a disputed claim has been extended from 8 to 15 days, from the day of receipt of the bankruptcy administrator's decision about the list of accepted and disputed claims.

The law introduces preclusion against the bankruptcy creditor who has failed to initiate a lawsuit to establish a disputed claim within the prescribed deadline – upon expiry of the 15 day period, such creditor's right to initiate a lawsuit, as well as its status of the bankruptcy creditor, shall be forfeited.

#### **7. Affiliated persons have no right to vote on the reorganisation plan**

The most important amendment relating to the reorganisation procedure (and the most important amendment to the Law in the opinion of legal community) is introduced under Article 165 Paragraph 7 of the Bankruptcy Law.

This provision classifies the affiliated persons (within the meaning of Article 125 of the Bankruptcy Law), apart from the persons whose business activities normally include lending transactions, as a separate class of creditors who have no right to vote on the reorganisation plan. Their claims are recovered according to the rank of priority for claim recovery into which they have been classified.

To underline the practical import of this amendment, we need to look up Article 125 of the Bankruptcy Law, defining the persons affiliated with the bankruptcy debtor as:

- a) general manager, or any member of a managing or a supervisory body of the bankruptcy debtor;
- b) any shareholder in the bankruptcy debtor with unlimited liability for company debts;
- c) any shareholder with a significant share in the bankruptcy debtor;
- d) a legal entity controlled by the bankruptcy debtor within the meaning of the law governing companies;
- e) any person having access to confidential information or having the opportunity to become acquainted with the data on financial status of the bankruptcy debtor by virtue of his/her special position in the company;
- f) any person *de facto* able to exert a significant influence on the business of the bankruptcy debtor;
- g) The bankruptcy debtor's blood relatives in direct line regardless of the degree of kinship, or in lateral line up to the fourth degree of kinship, relations by marriage up to the second degree of kinship, or spouse of any of the persons referred to in Items a), b), c), e), and f).

## 8. Exclusive international jurisdiction of Serbian courts

Another amendment was introduced to Chapter XII of the Bankruptcy Law (Cross-border bankruptcy), providing that the courts of the Republic of Serbia shall be exclusively competent to initiate, open and conduct bankruptcy proceedings where Serbia is the main centre of bankruptcy debtor's interest (the so-called main bankruptcy proceedings), and for any disputes that may arise from such bankruptcy proceedings.

The centre of main interest is defined as a location recognised by third parties as the place from which the debtor regularly manages its interests, and in the absence of evidence to the contrary, the debtor's registered office is deemed to be the centre of debtor's main interest.

The main bankruptcy proceedings are conducted with respect to all assets of the bankruptcy debtor, regardless of whether they are located in the Republic of Serbia or abroad.

Exclusive jurisdiction of Serbian courts also applies to cases where:

1. the bankruptcy debtor's registered office is in Serbia while its main centre of interests is in another country, if under the laws of such country the bankruptcy proceedings cannot be initiated based on the centre of main interests,
2. the bankruptcy debtor's main centre of interests is in Serbia while its registered office is in another country.

Please do not hesitate to contact us for any further question.

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