LAW ON BANKRUPTCY

1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Regulate additionally the position of secured and pledged creditors to provide the two-instance procedure with respect to their settlement from the sale of pledged property.	2016			√
Stipulate the possibility and procedure for one amending the adopted reorganization plan, as well as the prohibition of the re-adoption of the reorganization plan/ pre-packaged reorganization plan within the certain time period in case of non-implementation, and specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan begins to be implemented.	2016			√
Regulate the delivery issue in bankruptcy proceedings to make it faster and more efficient, and consider legal regulation of digitalization process in operations of creditors' bodies and communication between bankruptcy bodies.	2016			√
Regulate in detail the procedure of electronic sale, if possible, by following the example from the Law on Enforcement and Security.	2020	√		
Stipulate that the opening of bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette.	2017			√
Regulate the procedure of entrepreneur insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.	2016			√
Stipulate the obligation of regularly delivering and permanently publishing all the key documents from the bankruptcy proceedings, as well as the proper consequences for failure to meet such obligations.	2023			√
Stipulate the consequences for the bankruptcy administrators in case of failure to comply with the deadlines for actions in order to sell the assets and settle creditors.	2023			√

CURRENT SITUATION

According to data on the Bankruptcy Supervision Agency's website, as of 3 June 2024 there were a total of 1,524 pending bankruptcy proceedings in the Republic of Serbia, with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy, and Liquidation (SFRY Official Gazette Nos. 84/89, SRY 37/93, and 28/96) and bankruptcy proceedings conducted against banks, which are within the Deposit Insurance Agency's jurisdiction. The average duration of the procedures initiated under the Law on Bankruptcy Proceedings is about 4 years and 10 months, while average duration of the proceedings initiated under the Law on Bankruptcy is about 2 year and 10 months.

186 bankruptcy proceedings were initiated in the first six months of 2024. This means that approx. 31 bankruptcy proceedings were initiated per month, almost the same as in 2023. That number is still significantly below the monthly average of 80 initiated proceedings in 2012. The grounds for such a decrease after 2012 were presented in previous editions of the White Book, and the main cause was the Decision of the Constitutional Court of Serbia on the unconstitutionality of automatic bankruptcy.

After public consultations on the Draft amendments to the Law on Bankruptcy and the Law on Bankruptcy Supervision Agency in 2021, the procedure for their consideration and adoption by the National Assembly has not yet been initiated. These are the fifth amendments to the Law on

Bankruptcy since its entry into force in early 2010.Additionally, despite the Ministry of Economy forming a working group to draft of a law on the bankruptcy of entrepreneurs no specific steps have been taken.

Most of the latest amendments are expected to improve the efficiency, transparency and quality of the procedure, but actual results will be seen after their adoption end entry into force and in court practice in the following period.

POSITIVE DEVELOPMENTS

Previous editions of the White Book analysed potential improvements in the draft amendments to the Law on Bankruptcy and the Law on the Bankruptcy Supervision Agency. However, since these drafts still did not find its way to the National Assembly, all "Positive developments" from previous editions of the White Book remain pending.

Notable proposed regulatory amendments include:

Improved position of secured and pledged creditors

The proposed amendments to the Law on Bankruptcy introduce the authority for a bankruptcy judge to decide on the abolition of security measures, upon the proposal of a secured or pledge creditor, including a ban on enforcement against the pledged property of the bankruptcy debtor with the possibility of the bankruptcy judge to, when making this decision, request the opinion of an expert on cruciality of the pledged property for the reorganization.

Additional increase of transparency and efficiency of the proceedings

The proposed amendments to the Law on Bankruptcy aim to enhance the transparency and information. They include provisions for collecting, processing and analyzing statistical data related to bankruptcy proceedings. The amendments also allow all creditors to request and receive all information related to the bankruptcy debtor, the bankruptcy procedure, the property and management of the property of the bankruptcy debtor and all state authorities have the obligation to submit to the bankruptcy administrator data on the property, rights and interests of the bankruptcy debtor, free of charge. Also, it is proposed to introduce the sale of the bankruptcy debtor's property electronically, through the portal of the authorized organization for the sale of property. Further, it is proposed to shorten the deadline for filing bankruptcy claims from 120 to a maximum of 60 days and to shorten the deadline for scheduling hearings to decide and vote on the reorganization plan from 90 to 60 days. The draft amendments to the Law on the Bankruptcy Supervision Agency proposes, among other things, the addition of two new articles, which regulate the implementation of actions in bankruptcy proceedings through an electronic portal, and collection and statistical processing of the data related to bankruptcy proceedings.

All proposed changes should lead to greater transparency and efficiency of bankruptcy proceedings.

Better control of bankruptcy administrator's work and expertise

The proposed amendments to the Law on Bankruptcy specify that the selection of bankruptcy administrators will be made either from the general or from a special list of active bankruptcy administrators, depending on the criteria for classifying legal entities into micro, small, medium and large legal entities. The amendments to the Law on the Bankruptcy Supervision Agency prescribes the professional training of bankruptcy administrators, in order to develop and improve their profession. The existence of two lists of bankruptcy administrators from which the selection is made and the existence of the obligation of professional training should solve the issue of bankruptcy administrators' expertise. Finally, the proposed amendments to the Law on Bankruptcy and the introduction of additional reasons for the dismissal of bankruptcy administrators enable better control of their work.

REMAINING ISSUES

Even though the proposed amendments implemented in the last amendments to the Law on Bankruptcy cover some of the most important topics, which would, if adopted, resolve a lot of problems (improved position of secured and pledged creditors, additional increase of transparency and efficiency of the proceedings, better control of bankruptcy administrator's work and expertise), not all of the existing problems would be solved with it – including these already covered problems, and some other problems which were the subject of the previous editions of the White Book, but were not included in the last draft of the amendments at all.

Following the topic of improving the position of the secured and pledged creditors, we continue to highlight the issue

with the distribution of funds collected through the sale of a bankruptcy debtor's property that was pledged in favour of secured and pledge creditors. The claims of these creditors should be settled within five days from the date of receipt of the funds by the bankruptcy administrator. The bankruptcy administrator autonomously, independently and without control by the bankruptcy judge, decides on the amount of settlement of secured and pledge creditors, who then do not have the right to appeal against this decision. The only legal remedy available to them is an objection to the work of the bankruptcy administrator decided by the bankruptcy judge of first instance, and no appeal is allowed against this decision. The legal solution envisaging the right to appeal for unsecured creditors may seem unfair, while secured and pledge creditors are deprived both of a first and second-instance review of the legality of the decision of the bankruptcy administrator.

Also, following the spirit of the amendments of the Law on Bankruptcy and the Law on the Bankruptcy Supervision Agency, to ensure the more efficient and more transparent bankruptcy proceeding, it would be good to stipulate the obligation of the bankruptcy administrator and Agency to regularly deliver and permanently publish all the key documents from the bankruptcy proceedings (conclusion on the adopted and contested claims with all its amendments, draft of the decision on distribution). Bankruptcy administrators ignore the already existing obligations of publishing the documents (quarterly reports for example), without the proper consequences – this problem is especially common when the Agency conducts the bankruptcy.

In practice, a problem also arises in certain cases when the delivery of a decision on the confirmation of a plan lasts longer than the procedure of the adoption itself. This has direct negative implications on the duration and efficiency of bankruptcy proceedings.

It often happens in practice that it is necessary to change a reorganization plan which has already been confirmed by a court, but the current legislation does not allow it. This poses a serious problem, since a bankruptcy debtor's business activity may not be on the expected level after the adoption of the plan and the debtor cannot comply with the payment dynamic envisaged in the adopted plan, whereas a majority of the creditors are willing to accept an amendment to the plan, which formally cannot be made. Having in mind that, in accordance with the provisions of the Law on bankruptcy which are currently in effect, the only possible alternative in such situation is the opening of the bankruptcy or submission of the new pre-packaged reorganization plan (both of these options prolong the collection of claims) it would be in both debtors' and creditors' interest if there was the possibility of one change of the plan once during its implementation (limiting it to one change would prevent possible abuses). Also, it would be good to take into consideration the solution provided by the Law on Bankruptcy Procedure - in such situations, the bankruptcy was continued instead of initiating the new proceeding.

According to current legislation, the opening of bankruptcy proceedings produces effects as of the date on which a notice of the opening of bankruptcy proceedings is posted on a court's notice board. In practice, this rule creates problems as in some procedural situations it is not clear which is the relevant date of the opening of bankruptcy proceedings. To eliminate uncertainties, it is recommended that the opening of bankruptcy proceedings produces effects as of the date of the publication of the notice of the opening of bankruptcy proceedings in the Official Gazette.

One of the outstanding issues where no progress was seen is personal insolvency and entrepreneur insolvency primarily. The resolution of this issue would benefit both creditors and insolvent entrepreneurs. The existing options available to creditors regarding insolvent entrepreneurs do not lead to the most favourable collective settlement. They result in the settlement of the claims of some creditors through enforcement procedure, while other creditors, in most cases, do not have any possibility to settle their claims with over-indebted entrepreneurs. We consider that the introduction of the concept of entrepreneur insolvency would ensure creditors higher settlement amounts, while protecting the integrity and basic needs of overindebted entrepreneurs. Having in mind that in the last couple of years there have been efforts to pass such law, which at this moment have been completely passive, this is very important topic for future.

The trend of increasing digitization should also be followed in in bankruptcy proceedings, often requiring the presence of a large number of people at hearings, meetings of creditors, public sales, etc. (this was confirmed during the COVID-19 pandemic). In that sense, it would be useful to regulate in more detail the procedure of electronic sale and the functioning of creditors' bodies and electronic communication and the delivery between the bodies in bankruptcy procedure.

Finally, the introduction of new reasons for the dismissal of bankruptcy administrators is not without flaws, as the reason relating to their inefficient work is still not prescribed, including prolongation of the sale of property or of the distribution of money obtained from the sale of the property of the bankrupt debtor, etc., which are more common in practice than violations of the duties of bankruptcy administrators. Hence, it would be useful to introduce such a provision, which would include the adequate consequences for the failure to comply with obligations, to better prevent practical problems related to the work of bankruptcy administrators.

At the end, many other questions arise regarding improving and clarifying corresponding regulations in practice, such as the possibility and method of enjoying secured-creditor rights based on a pledge on claims; insufficiently precise definitions of entities to which Article 123, para. 2 of the Law refers, the ability to dispose of the subject of an exclusion request during a dispute regarding such a request; and others.

Some of the expectations presented in the previous editions of the White Book regarding comprehensive amendments to the Law on Bankruptcy have been met, but many other insufficiencies of legal solutions have not yet been fixed and we sincerely hope to see at least concrete proposals of amendments this year.

FIC RECOMMENDATIONS

- Regulate additionally the position of secured and pledged creditors to provide the two-instance procedure with respect to their settlement from the sale of pledged property.
- Stipulate the possibility and procedure for amending the adopted reorganization plan, as well as the prohibition of the re-adoption of the reorganization plan/ pre-packaged reorganization plan within the certain time period in case of non-implementation, and specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan begins to be implemented.
- Regulate the delivery issue in bankruptcy proceedings to make it faster and more efficient, and consider legal regulation of digitalization process in operations of creditors' bodies and communication between bankruptcy bodies.
- Regulate in detail the procedure of electronic sale, if possible, by following the example from the Law on Enforcement and Security.
- Stipulate that the opening of bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette.
- Regulate the procedure of entrepreneur insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.
- Stipulate the obligation of regularly delivering and permanently publishing all the key documents from the bankruptcy proceedings, as well as the proper consequences for failure to meet such obligations.
- Stipulate the consequences for the bankruptcy administrators in case of failure to comply with the deadlines for actions in order to sell the assets and settle creditors.