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Serbia: Bankruptcy Law

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Restructuring

[Marija Bojović](#)

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The latest amendments of the Bankruptcy Law (*Zakon o stečajju*, *Official Gazette of the Republic of Serbia no. 104/2009, 99/2011 – other Law, 71/2012 - decision of Constitutional Court and 83/2014*, hereinafter the “Law”) apply as of 13 August 2014.

The goal of the changes is to eliminate the issues which have been noted in practice as a result of imprecise and incomplete regulatory framework on bankruptcy, as well as acceleration of the bankruptcy procedure and enabling of more transparent manner of settlement of creditors. Whether these amendments will achieve these goals remains to be seen.

The Law amends the legal status of affiliated persons with the aim to prevent misuse of rights related to claims of the affiliated persons which were noted in practice, and therefore for the majority of claims of the affiliated persons a new - fourth payment rank has been introduced. The affiliated persons will no longer be able to be elected within the Creditors' Committee, and in case of reorganization their claims have to be classified in separate class which does not vote. The affiliated persons which grant loans in their regular business operations are exempted from the application of described provisions, in respect to their claims arising from the granted loans.

Another important novelty is the introduction of a new category of creditors – collateral creditors, which are defined as creditors who have security over assets of the bankruptcy debtor, but have no simultaneous claim against the bankruptcy debtor (the security was established to ensure the creditor's claim towards a third party). According to the Law, as well as in accordance with the adopted position of the Appellate Commercial Court, such creditors are not considered secured creditors in bankruptcy proceedings, and are instead treated as pledgees or mortgagees of the bankruptcy debtor who are not obliged to submit an application pertaining to their claim, but are obliged to inform the court about the existence of a collateral on the assets of the bankruptcy debtor and the amount of outstanding claim from the relevant third party.

The amendments to the Law potentially prevent some of common abuses of reorganization procedure by, *inter alia*, limitation of the duration of the measure of ban of enforcement against bankruptcy debtor's assets and determination of the period upon which the bankruptcy debtor has to file new extraordinary report of the auditor. Further, the provisions which expand the group of persons who cannot be appointed as bankruptcy administrators and as the independent expert who monitors the implementation of the reorganization plan are also expected to have positive effect on the prevention of misuse of the reorganization procedure.

The amendments contain a number of refinements of existing provisions which were needed in practice: contesting of claims by creditors is allowed until the conclusion of the examination hearing at which their application for recognition of claims is considered, specifying the starting date of the reorganization plan implementation and the date of enactment of the legal consequences of bankruptcy proceedings initiation, etc.

An interesting novelty is the introduction of the exclusive international jurisdiction of the Serbian court for conducting the bankruptcy proceedings over foreign entities that have a center of main interests in Republic of Serbia.

Despite the fact that some earlier drafts of the amendments have contained the provisions on automatic bankruptcy, the adopted amendments do not regulate automatic initiation of the bankruptcy procedure due to permanent incapability of payment of the debtor.

All in all, hope remains that the remaining issues will be resolved by the planned comprehensive amendments of the Law, the preparation of which is expected to start in the fall this year, and which, according to certain announcements, might even include bankruptcy of entrepreneurs.