

# Serbia



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## 1 Overview

### 1.1 Where would you place your jurisdiction on the spectrum of debtor to creditor-friendly jurisdictions?

It is hard to say whether the legal framework in Serbia is more debtor- or creditor-friendly. The key point in any jurisdiction is the implementation of law and the efficacy of court proceedings rather than the law itself. When it comes to enforcing the collection of debts, it is worth mentioning that Serbia has drastically changed its regulations on enforcement proceedings, insolvency proceedings, and private bailiffs' authorisations recently, in order to make the environment for debt collection more transparent and efficient than it used to be.

### 1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and are each of these used in practice?

The Law on Consensual Financial Restructuring (“*Official Gazette of RS*”, no.89/2015, hereinafter: the “**Consensual Financial Restructuring Law**”) provides for voluntary rearrangement of the debtor-creditor relationship between the company or entrepreneur in financial difficulties, both for a debtor and its creditors. However, such restructuring is not applicable to entities providing financial services, nor can it be performed regarding companies which are already subject to insolvency proceedings, or where preliminary insolvency proceedings are initiated in accordance with a pre-packaged reorganisation plan. Financial restructuring is conducted with mediation by the Serbian Chamber of Commerce.

On the other hand, a reorganisation plan, provided by the Bankruptcy Law (“*Off. Gazette of the RS*”, no. 104/2009, 99/2011 and others; Law no. 71/2012 and decision 83/2014, hereinafter: the “**Bankruptcy Law**”) is used if it is expected that the reorganisation would provide more favourable settlement for creditors than an insolvency process, especially if there are economically justified conditions for the continuation of the debtor’s business. If a reorganisation plan is not in place, the debtor’s bankruptcy will be declared.

## 2 Key Issues to Consider When the Company is in Financial Difficulties

### 2.1 What duties and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

According to the Law on Contracts and Torts (“*Off. Gazette of the SFRY*”, no. 29/78, 39/85, 45/89 – decision of the CCY 57/89, “*Off. Gazette of the FRY*”, no. 31/93 and “*Off. Gazette of Serbia and Montenegro*”, no. 1/2003 – *Constitutional Charter*, hereinafter: the “*Law on Contracts and Torts*”), every creditor whose claim is due for payment shall be entitled to challenge a legal act of his debtor taken to the detriment of creditors. A legal act shall be considered to have been taken to the detriment of creditors if due to it the debtor is left without sufficient means to satisfy the creditor’s claim. According to the Companies’ Law (“*Off. Gazette of the RS*”, no. 36/2011, 99/2011, 83/2014 and others; Law no. 5/2015, hereinafter: the “*Company Law*”), directors/managers have fiduciary duties toward the company, meaning that they are obliged to carry out their duties in that capacity in good faith, with due diligence and in the reasonable belief that they act with the company’s best equity interest in mind. It should be noted that the Criminal Law (“*Off. Gazette of the RS*”, no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014) prescribes a criminal offence “causing a company’s bankruptcy” if directors/managers’ acts result in a waste of money, excessive borrowing, undertaking of disproportionate obligations, frivolous conclusion of contracts with insolvent parties, failure to timely collect the company’s receivables, destruction of the company’s property, or other operations that are not in accordance with conscientious business. The insolvency process may be initiated by a creditor, debtor or liquidator in case of the debtor’s: 1) permanent insolvency; 2) imminent insolvency; 3) over-indebtedness; or 4) failure to comply with the adopted reorganisation plan or if the reorganisation plan was put into effect in a fraudulent or unlawful manner.

### 2.2 Which other stakeholders may influence the company’s situation? Are there any restrictions on the action that they can take against the company?

Any party having a legal interest may influence the company’s situation, and primarily, these are the company’s creditors. When it comes to restrictions, stakeholders must comply with deadlines

envisaged for certain legal actions (such as deadlines in bankruptcy proceedings for submission of a claim, influence on a pre-packaged reorganisation plan, challenge of the bankruptcy administrator's decisions, etc.).

### 2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

As mentioned in question 2.1, transactions may be considered challengeable if they are to the detriment of creditors. A transaction may be challenged, if at the time of effecting the transaction, the debtor was aware or could have been aware that such transaction would do harm to his creditors, and if a third person benefitting from the legal act undertaken was aware of the fact, or could have been aware of it.

In addition to this, transactions may also be contested within the bankruptcy proceedings. The bankruptcy administrator, as well as any of the company's creditors, is entitled to request annulment of transactions or any other legal actions concluded/undertaken by the company, including both active and passive actions (i.e. failure to undertake a legal action), if such transaction/legal action is undertaken/concluded before the commencement of the insolvency process and if such transaction/legal action prevents proportional settlement of creditors, or causes damage to certain creditors and/or benefits the other creditors of the company. In case the company concludes transactions with its affiliated entities, the possibility for their annulment is higher than in case of transactions with an unrelated party.

## 3 Restructuring Options

### 3.1 Is it possible to implement an informal work-out in your jurisdiction?

Strictly speaking, informal work-outs where a group of creditors would create a contractual restructuring plan in Serbia is possible; however, if done informally on a contractual basis or without including all creditors of the company, such a "work-out" could be contested by unparticipating creditors. On the other hand, as of 2011 it is possible to implement a voluntary restructuring in Serbia. Facing the economic crisis and the increasing number of non-performing loans, the Serbian parliament adopted the Law on Consensual Financial Restructuring of Companies in 2011. Due to poor results in practice and changes in legislation, this law was replaced with the new Consensual Financial Restructuring Law in October 2015, applicable as of 2 February 2016. The Consensual Financial Restructuring Law applies to both companies and entrepreneurs. However, it is not applicable to banks, insurance companies, private investment funds, companies in bankruptcy or companies against which pre-bankruptcy proceedings have been initiated in accordance with a pre-packaged reorganisation plan.

### 3.2 What formal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies? Are debt-for-equity swaps and pre-packaged sales possible?

The Bankruptcy Law ("Off. Gazette of the RS", no. 104/2009, 99/2011 and others; Law no. 71/2012 and decision 83/2014, hereinafter: the "Bankruptcy Law") provides for a reorganisation procedure which restructures the liabilities of an insolvent company.

The insolvency proceedings may be conducted as a bankruptcy or reorganisation. The reorganisation shall be conducted if such process ensures favourable settlement for creditors compared to the bankruptcy. A reorganisation plan may be submitted by:

- 1) the bankruptcy administrator;
- 2) the bankruptcy debtor;
- 3) secured creditors holding at least 30% of the secured claims in relation to total claims against the debtor;
- 4) bankruptcy creditors holding at least 30% of the unsecured claims in relation to total claims against the debtor; and
- 5) any of the bankruptcy debtor's shareholders owning at least 30% of shares.

The reorganisation plan has to be submitted within 90 days from the initiation of insolvency proceedings.

On the other hand, the debtor may submit a pre-packaged reorganisation plan simultaneously with a request for the opening of bankruptcy proceedings. The rules regarding a standard reorganisation and a reorganisation according to a pre-packaged plan are largely the same, with slight differences.

The Bankruptcy Law contains provisions regarding measures which should be implemented in the reorganisation plan. One of these measures is a debt-for-equity swap. This cannot be performed without the consent of the bankruptcy debtor's shareholders.

In addition, the Consensual Financial Restructuring Law provides that parties to the financial restructuring agreement may, *inter alia*, contain a clause regarding debt-for-equity swaps. As for pre-packaged sales, a legislator has not recognised such option as a measure for restructuring. However, under the Bankruptcy Law, the bankruptcy debtor may be sold as a legal entity, but this does not represent a measure for restructuring.

### 3.3 What are the criteria for entry into each restructuring procedure?

Under the Consensual Financial Restructuring Law, a debtor or creditor(s) may initiate financial restructuring. At least two domestic or foreign banks have to participate in this process unless the debtor is an entrepreneur, in which case participation of one bank satisfies the condition for financial restructuring. Also, instead of banks, domestic developing institutions (e.g. state agencies) or domestic bank in bankruptcy or liquidation may participate in the process. The governing law does not prescribe other mandatory preconditions for entry into this informal process.

The reorganisation plan must contain all elements prescribed by the Bankruptcy Law. Only entitled persons may file the plan within the prescribed time limit. As for the pre-packaged reorganisation plan, the bankruptcy judge will reject it if:

- 1) the plan is not in accordance with the Law;
- 2) the plan does not include creditors who could have affected the vote on the plan's adoption if they had been included;
- 3) the plan is incomplete or contains inaccuracies; and
- 4) the judge determines that none of the grounds for bankruptcy exist.

### 3.4 Who manages each process? Is there any court involvement?

The Chamber of Commerce and Industry of Serbia (hereinafter: the "Chamber") manages the process of voluntary financial restructuring. The Chamber acts as a mediator between a debtor and its creditor(s). In this process there is no court involvement.

As for the reorganisation process under the Bankruptcy Law, the court manages each process, although it acts upon the request of the debtor, creditor, bankruptcy administrator, or shareholder holding at least 30% equity. The bankruptcy judge examines the reorganisation plans, rejects them if they are not in accordance with the law, and schedules hearings regarding the submission of the reorganisation plan. In creating the reorganisation plan, the Rules on National Standards in Administering the Bankruptcy Estate (“*Official Gazette of the RS*” no. 13/2010, hereinafter: the “**Rules**”) play a significant role. The Rules elaborate in a more detailed manner, *inter alia*, provisions regarding the reorganisation plan. Finally, the court confirms whether the reorganisation plan is to be adopted or dismissed by the creditors. A bankruptcy administrator, debtor, and secured/unsecured creditors may appeal against the court’s decision. This provides complete court control over the process of restructuring in accordance with the reorganisation plan. Once the court decision on the reorganisation plan is adopted, the court does not control its execution.

### 3.5 How are creditors and/or shareholders able to influence each restructuring process? Are there any restrictions on the action that they can take (including the enforcement of security)? Can they be crammed down?

As already pointed out, the shareholders are entitled to submit the reorganisation plan. Additionally, often the shareholders are also creditors. This allows shareholders to influence the restructuring process. All creditors may vote on the proposed reorganisation plan, except for secured creditors. Secured creditors may vote if their claims are not entirely secured by the means of security. The creditors are divided into classes. The reorganisation plan must be adopted within each class by a simple majority of votes. If the plan of reorganisation is accepted, all claims (also claims which are not included in the reorganisation plan) will be governed in accordance with the reorganisation plan. Consequently, dissenting creditors may be crammed down by a simple majority of their class. As for the enforcement of security, no execution is possible against the bankruptcy debtor or its assets from the date of the opening of the bankruptcy proceedings, nor any measures of the enforcement procedure. All initiated enforcement procedures shall be suspended.

### 3.6 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

Pursuant to the Consensual Financial Restructuring Law, a debtor and its creditor(s) may enter into a financial restructuring agreement. The parties to this agreement may postpone payments, agree on instalments, change time limits of maturity, etc.

All rights and obligations are governed strictly in accordance with the reorganisation plan.

### 3.7 How is each restructuring process funded?

The costs of creating and submitting the reorganisation plan are borne by the party who created and submitted the plan. If the bankruptcy administrator or bankruptcy debtor created and submitted the plan, the costs of it shall be covered at the expense of the bankruptcy estate.

## 4 Insolvency Procedures

### 4.1 What is/are the key insolvency procedure(s) available to wind up a company?

Having in mind that the Bankruptcy Law provides two different outcomes for insolvent companies: reorganization proceedings; and bankruptcy proceedings, only the latter provides for the winding up of the company. In that sense, the bankruptcy means creditor satisfaction through the sale of all of the assets of the bankruptcy debtor, or the sale of the debtor as a legal entity. Having said that, it is apparent that the bankruptcy proceedings have two ways of execution, of which, again, only one (the sale of all of the assets of the bankruptcy debtor) inevitably ends with the permanent termination of the company. In this sense, the bankruptcy of a company means (1) the sale of all a company’s assets, (2) settlement of the company’s creditors through liquidation of the bankruptcy estate, and (3) termination (winding up) of the company.

The insolvency proceedings may be initiated by a petition of the creditor, the bankruptcy debtor, or the liquidator, and the authorities that govern the bankruptcy proceedings are the bankruptcy judge and the bankruptcy administrator.

In addition to this proceeding, there is also a separate bankruptcy proceedings concerning banks, insurance companies and other financial leasing companies, defined by the Law on Bankruptcy and Liquidation of Banks and Insurance companies (“*Official Gazette of the Republic of Serbia*” no. 14/2015). This Law governs the manner of initiating and conducting insolvency proceedings against banks, insurance companies and financial leasing companies. The proceeding is initiated based on the decision of the competent court.

Although rare in practice, the bankruptcy proceedings for the purpose of completion of the privatisation process, provided by the Law on Privatisation (“*Official Herald of the Republic of Serbia*”, No. 83/2014, 46/2015, 112/2015 and 20/2016 – *authentic interpretation*), it is impossible not to mention it, especially having in mind the period of transition in Serbia that has reached its peak. The Ministry responsible for economic affairs may file a motion for initiation of bankruptcy of the privatisation entity in case of the existence of some of the reasons for bankruptcy that are provided in the abovementioned Law, but mostly due to absence of interest in privatisation.

### 4.2 On what grounds can a company be placed into each winding up procedure?

According to the Bankruptcy Law, the grounds for initiating insolvency proceedings are:

- permanent insolvency;
- imminent insolvency;
- over-indebtedness; and
- failure to comply with the adopted reorganisation plan or if the reorganisation plan was put into effect in a fraudulent or unlawful manner.

The Bankruptcy Law states that permanent insolvency exists when the bankruptcy debtor is unable to pay its debts within 45 days from the date they became due or the bankruptcy debtor has completely ceased all payments for a consecutive period of 30 days, while imminent insolvency is deemed to exist if the bankruptcy debtor makes it apparent that it will not be able to fulfil its obligations as they become due.

In the sense of this Law, over-indebtedness is when liabilities of the bankruptcy debtor exceed its assets and it represents a legal ground for initiation of an insolvency procedure.

Also, failure to comply with the adopted reorganisation plan is also considered to be a ground for initiation of the bankruptcy proceedings, meaning that the bankruptcy debtor has failed to act in accordance with the plan or acts in a manner that substantially endangers the implementation of the adopted reorganisation plan.

Finally, it should be noted that the Law stipulates that if the proposal for the initiation of bankruptcy proceedings was filed by a creditor who was unable to obtain satisfaction of his claim by any of the means of enforcement in a judicial or tax enforcement proceeding conducted in the Republic of Serbia, it is assumed that the debtor is permanently insolvent.

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#### **4.3 Who manages each winding up process? Is there any court involvement?**

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Management of the bankruptcy proceedings is exclusively reserved for the court determined by the law governing the court jurisdiction, while the enforcement actions are carried out by the bankruptcy judge, in accordance with this Bankruptcy Law. It should be noted that territorial jurisdiction is the main criteria, i.e. depending on the official area of the court and the debtor's registered seat, it is determined which court will conduct the proceedings. The bankruptcy judge is authorised to rule on the initiation of pre-bankruptcy proceedings, establish grounds for bankruptcy and rule on the opening of bankruptcy proceedings, appoint and dismiss the bankruptcy administrator, confirm the adoption of the reorganisation plan (if proposed) or note that the plan has not been adopted, etc. The bankruptcy judge can also, *ex officio* or upon a motion for initiation of the proceedings, determine security measures in order to prevent any alienation of the debtor's assets or destruction of business documentation. Furthermore, upon expiry of the deadline for filing claims, the bankruptcy judge will submit all received claims to the bankruptcy administrator. The bankruptcy administrator determines the grounds, scope and payment rank of each claim, and will compile the list of all acknowledged and contested claims. As of the day of initiating the bankruptcy proceedings, the representation and management rights of the director, representative, management and supervisory bodies of the bankruptcy debtor will cease and will be transferred to the bankruptcy administrator. The bankruptcy administrator is obliged to take all necessary measures to protect the assets of the debtor, including the prevention of the alienation of assets, its seizure if necessary, as well as to contest legal actions, if such challenge would increase the bankruptcy estate. He/she is also responsible to ensure the completion of initiated and unfinished business of the debtor, in order to maximise the value of the debtor or its assets. The bankruptcy administrator is also obliged to liquidate the bankruptcy estate, in accordance with the Law, and to represent the bankruptcy debtor or the bankruptcy estate in the initiation and conduct of judicial, administrative and all other procedures.

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#### **4.4 How are the creditors and/or shareholders able to influence each winding up process? Are there any restrictions on the action that they can take (including the enforcement of security)?**

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In addition to the bankruptcy judge and bankruptcy administrator, other bodies of the bankruptcy proceedings are the creditors' assembly (not applicable to insolvent banks and insurance companies) and the creditors' board. The shape and the manner of conducting the proceedings is very much under the control of the creditors' assembly and the creditors' board. The creditors' assembly consists of all bankruptcy creditors, regardless of whether they filed the claim, including secured creditors (if they prove the amount exceeding the secured claim). The assembly is formed at

the first creditors' hearing. Votes at the creditor's assembly will be calculated in proportion to the amount of the claim. If there are no more than five creditors in the assembly, the creditors' assembly is considered to be the creditors' board, whereby the voting in such board will be in proportion to the amount of the claim. When rendering the decision on the opening of bankruptcy proceedings, the first creditors' hearing is scheduled. At the first hearing, the creditors discuss the report on the economic and financial situation of the bankruptcy debtor and the bankruptcy administrator's estimate on the possibility of reorganisation of the bankruptcy debtor. If, at this hearing, the creditors who hold 70% or more of the value of all claims decide that the proceedings should immediately continue to bankruptcy proceedings, the bankruptcy judge will render a decision on the bankruptcy.

At the first creditors' hearing, the creditors' assembly elects the members of the creditors' board. The creditors' board has the authority to give its opinion to the bankruptcy administrator regarding the manner of sale of the property, on continuation of the bankruptcy debtor's business operations, or to approve the final account of the bankruptcy debtor and to perform other activities stipulated by the Law. The role of the board is to actively participate in supervision of the bankruptcy proceedings by the bankruptcy judge and the bankruptcy administrator, in such a way that they can, among other things, submit written complaints against the bankruptcy administrator to the bankruptcy judge, submit the appeal on the decisions of the bankruptcy judge (e.g. the decision on bankruptcy), submit a proposal for the replacement of the bankruptcy administrator and appointment of a new one and give an opinion about the amount of the final award for the bankruptcy administrator.

The creditors, as well as the bankruptcy administrator, have the opportunity to contest legal transactions and other actions entered into or taken before the initiation of the bankruptcy proceedings that are preventing equal settlement of bankruptcy creditors or damaging the creditors, as well as transactions and actions putting some creditors in a more favourable position over the others. A legal transaction or action of the bankruptcy debtor will be contested by filing a lawsuit.

Creditors and other interested parties may file an objection to the sale of assets proposed by the bankruptcy administrator, no later than 10 days in advance of the day of the sale or transfer. The objection shall be ruled upon by the bankruptcy judge. The objection shall not stay the sale, unless the bankruptcy judge decides otherwise.

As for the restrictions on the actions that creditors can take, no execution is possible against the bankruptcy debtor or its assets from the date of opening of the bankruptcy proceedings, nor any measures of the enforcement procedure, except for the execution relating to the obligations of the bankruptcy estate and the costs of the bankruptcy proceedings. The procedures that are ongoing will be suspended.

As for the influence of the shareholders, their influence can only exist if the shareholders are at the same time creditors of their own company, allowing them to file their claim to the bankruptcy estate, since all the ownership and representative rights are, as of the day of the opening of the bankruptcy proceedings, transferred to the bankruptcy administrator.

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#### **4.5 What impact does each winding up procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?**

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Creditors' claims in relation to the bankruptcy debtor that have not become due, before the day of the opening of bankruptcy proceedings, will be deemed due as of the date of the opening of proceedings. Additionally, by filing the claim to the bankruptcy

estate, the statute of limitations period is interrupted. Where a lessee is subject to the bankruptcy proceedings, the lessor must file a request for the exclusion of the leased asset from the bankruptcy estate. If the debtor and its counterpart did not, before the opening of bankruptcy proceedings, fulfil their obligations arising from a mutually binding contract in its entirety, the bankruptcy administrator can, on behalf of the debtor, execute the contract and demand the other party to fulfil its obligations. If the bankruptcy administrator does not accept the fulfilment of the contract, the other party may pursue its claim as a bankruptcy creditor. If the other party to the contract requests the bankruptcy administrator to state its position on fulfilling the contract, the bankruptcy administrator is obliged to inform the other party in writing, within 15 days of the receipt of such request, on whether he intends to fulfil the contract. If the bankruptcy administrator upholds the contract but ceases fulfilment in the course of the bankruptcy proceedings, any claims arising from the contract will be considered a liability of the bankruptcy estate. As for contracts with fixed periodical obligations, if obligations for such arise after the initiation of the bankruptcy proceedings, the counterparty cannot seek fulfilment of such obligations, but can seek compensation due to a failure to fulfil its role as a bankruptcy creditor.

As regards the possibility of set-off, if a creditor has acquired the right to set off his claim against the bankruptcy debtor with the bankruptcy debtor's claim against such creditor before the petition to open bankruptcy proceedings was filed, the opening of bankruptcy proceedings will not constitute grounds for the loss of the right to set off such claim. Furthermore, the creditor is obliged to file its claim and a set-off statement to the court before the expiry of the deadline for filing claims, otherwise the creditor loses the right to set-off.

#### **4.6 What is the ranking of claims in each procedure, including the costs of the procedure?**

Upon liquidation of the bankruptcy estate, the costs of the procedure have priority when it comes to settlement. Upon the settlement of such expenses, the proceeds of the bankruptcy estate will be settled amongst the creditors. Bankruptcy creditors, depending on their claims, are classified into ranks. The bankruptcy creditors of lower rank can only be satisfied after the creditors of a higher rank. Bankruptcy creditors of the same rank will be satisfied in proportion to the amount of their claim.

The rank of bankruptcy claims is as follows:

- 1) the first rank of claims is comprised of the unpaid net salaries of employees and former employees, in the amount of the yearly minimum wage for the year before the opening of bankruptcy with interest from the due date to the date of the opening of bankruptcy proceedings and unpaid contributions for pension and disability insurance for two years before the opening of bankruptcy, as well as claims arising from contracts with companies which subject matter are unpaid contributions for pension and disability insurance for two years before the opening of bankruptcy;
- 2) the second rank is comprised of all public revenue claims that have become due over the last three months before the opening of bankruptcy;
- 3) the third rank is comprised of the claims of other bankruptcy creditors; and
- 4) the fourth rank is comprised of all the claims that arose two years before the opening of bankruptcy proceedings in respect of loans and other legal actions that, in economic terms, correspond to approving loans, to the extent which such loans were not secured, and that were approved to the bankruptcy debtor by persons affiliated with the bankruptcy debtor (subordinated loans), except persons which are, within their regular activities, engaged in providing credits and loans.

#### **4.7 Is it possible for the company to be revived in the future?**

At the final hearing, the bankruptcy judge renders a decision concluding the bankruptcy proceedings. This decision is to be posted on the court's bulletin board and published in the "Official Gazette of the Republic of Serbia", and once it becomes final and binding, it will be delivered to the Business Register Agency, or other appropriate register, in order to erase the bankruptcy debtor from such register. Following the deletion, there is no legal possibility to revive such company, but yet, at the same time, there are no obstacles in taking over the name of the company that has been erased from the register.

## **5 Tax**

#### **5.1 Does a restructuring or insolvency procedure give rise to tax liabilities?**

The general rule prescribed under the Bankruptcy Law is that as of the day of rendering the decision on the opening of the bankruptcy proceedings, all ongoing tax proceedings, initiated in order to determine tax liabilities of an insolvent company, will be suspended. Upon such suspension, the Tax Administration must report and collect due tax claims in the bankruptcy proceedings as a bankruptcy creditor. Future taxes pertaining to business operations of a company in bankruptcy and its property (e.g. value-added tax and annual property tax) will continue to apply regardless of commencement of bankruptcy proceedings.

A path of an insolvent company is either through a bankruptcy or a restructuring. In both cases, the entire income of the insolvent company received during the period from the opening of bankruptcy proceedings until the day of implementation of a restructuring plan or the day of the closing of the restructuring proceedings due to bankruptcy, is subject to corporate income tax.

In case of restructuring, all due obligations of the insolvent company (including tax obligations) will be settled in accordance with the restructuring plan (since it practically represents a new agreement which regulates the settlement of insolvent company's obligations). In order to enable debtor to continue with its business operations and accommodate the fulfilment of obligations, the restructuring plan may stipulate various measures. In that regard, the competent authority may approve deferment of the payment of tax obligations by the debtor (being part of the restructuring plan) in tranches for the period of 60 months. It should also be noted that in practice, there were cases when due tax obligations were decreased through a restructuring plan even though such tax reduction is not explicitly envisaged under the tax regulation. However, given that the Tax Administration is just a bankruptcy creditor it may be outvoted within its class of creditors to have the claim on tax obligations decreased in accordance with the adopted restructuring plan.

It should be noted that bankruptcy may result either in the sale of the debtor as a legal entity or in the sale of the assets of the debtor in bankruptcy. In case of sale of the entire legal entity, such sale would be exempted from taxation provided that purchaser has also assumed all the obligations of the company in bankruptcy. If the purchaser did not assume all the obligations or assumed only a part thereof, such sale will be subject to the property transfer tax. Additionally, if the subject of bankruptcy is a public company, the property transfer tax will be decreased proportionally to the share of the state capital. On the other hand, sale of the assets is subject to value-added tax (if the bankruptcy debtor is liable to pay value-added tax) or transfer

property tax (if the bankruptcy debtor is not liable to pay value-added tax). The tax claims will be settled from the proceeds obtained from the respective sale. Tax claims that became due within three months prior to the opening of bankruptcy proceedings are categorised as the second priority payment rank, except for claims regarding the contributions for pension and disability insurance, which are categorised as the first priority payment rank. Other tax claims are categorised as the third priority payment rank. If part of tax claims cannot be settled from the obtained proceeds, after the issuance of decision on closure of bankruptcy, such tax claims will be written-off, unless there is a mortgage or pledge established in order to secure the tax claims, or if in addition to the debtor there are also third parties liable for its settlement.

The outstanding amount (if any) of the bankruptcy estate paid in cash to the shareholders of the debtor upon the conclusion of bankruptcy proceedings, which exceeds the amount shareholders initially invested in the company's capital, are considered dividends and taxed accordingly.

## 6 Employees

### 6.1 What is the effect of each restructuring or insolvency procedure on employees?

When it comes to the issue of the employees, it should be noted that the opening of bankruptcy proceedings for an insolvent company or its restructuring may have various effects on the employees. The major effect of those procedures relates to the potential termination of the employment relationship of the employees (all or some of) working with the insolvent company, but also, such procedures will impact the manner of the settlement of their unpaid salaries earned until the opening of the bankruptcy procedure, i.e. before the restructuring. However, as will be shown below, the position of the employees in the case of a restructuring seems to be more favourable compared to their position within bankruptcy proceedings.

#### Termination of the employment relationship

Opening of bankruptcy proceedings represents a legal ground for termination of the employment agreements of the employees of the bankruptcy debtor. However, it is up to the bankruptcy administrator to decide whether the employment agreements (of all or some) of the employees will be terminated or not and to inform the National Employment Service's local branch on such terminations, if any. It is important to note that, save for the payment of the unpaid salaries (as explained below), the bankruptcy debtor is not obliged to perform any other payment to the terminating employees. With the consent of the bankruptcy judge, the bankruptcy administrator is additionally entitled to engage a certain number of persons for performing undertakings that have already been started, or conducting the bankruptcy proceedings. Having in mind the reasons for opening the bankruptcy proceedings and the "factual condition" of the bankruptcy debtor in this moment, in practice more than one half of the employment contracts are usually terminated due to bankruptcy proceedings.

In case of the reorganisation of an insolvent company, either under a reorganisation plan or a pre-packaged plan, the termination of the employment is one of the legally permissible measures that may be stipulated in such a plan. Considering that upon the adoption of the reorganisation plan the bankruptcy procedure is suspended, the general labour legislation regulating the employment termination apply herein. This is the so-called redundancy termination, as due to the economic, organisational and/or technical changes that take place at the employer, the need for performing certain work ceases or is diminished. Depending on the number of the terminated employees and the exact period of time within which the employment

engagements will cease, the employer might be obliged to adopt a redundancy programme. In any case, a precondition for the termination of employment based on redundancy and a mandatory condition for validity of the decision on termination is the payment of severance, the amount of which is determined by the employer's general policy or by the particular employment agreement, and may not be lower than the sum of one third (1/3) of the employee's salary for each full year of employment with the particular employer (the time spent in the employment relationship with the affiliated companies with the employer, as well as the time spent in the employment relationship with a preceding employer; in case of a status change of the employer, this should also be taken into account for calculation). Having in mind that in case of restructuring the debtor continues to perform its activities, as well as the fact that the costs of terminating the employment relationships due to the redundancy are not negligible, the number of the employment terminations are significantly lower compared to the employment terminations within the insolvency procedure.

#### Issue of unpaid salaries

One of the effects of both bankruptcy procedure and restructuring for employees refers to the settlement of their unpaid salaries until the opening of the bankruptcy procedure, i.e. until the commencement of the restructuring.

Within both procedures, the monetary claims of the employees (or former employees) relating to unpaid salaries are to be settled in the following manner. Unpaid net salaries in the amount of the minimum salaries in the year prior to the opening of the bankruptcy procedure, along with the appropriate interest rates (as of the due date until the opening of bankruptcy proceedings) represent the first payment rank of the claims and are to be settled immediately after settlement of the costs of the bankruptcy proceedings. Unpaid contributions for pension and disability insurance for the two years prior to the opening of bankruptcy proceedings (the basis for calculation of the contributions is the lowest monthly basis for the contributions) also fall into the first payment rank of claims.

#### Participation in the creditors' board

In case of the insolvency procedure, the employees (or former employees) of the bankruptcy debtor are entitled to participate in the creditors' board, but they may not have more than one representative.

## 7 Cross-Border Issues

### 7.1 Can companies incorporated elsewhere restructure or enter into insolvency proceedings in your jurisdiction?

Pursuant to the Consensual Financial Restructuring Law, only companies and entrepreneurs incorporated in Serbia may enter into financial restructuring under the rules of this law.

According to the Bankruptcy Law, Serbian courts have exclusive jurisdiction for initiating, opening and conducting the bankruptcy proceedings against a bankruptcy debtor with its centre of main interests in Serbia (main proceedings). Even when the bankruptcy debtor has a registered seat elsewhere, but has its centre of main interests in Serbia, the court in Serbia will have exclusive jurisdiction regarding bankruptcy proceedings.

However, even if there is no centre of main interests or permanent business unit in Serbia, Serbian courts may still have jurisdiction (secondary bankruptcy proceedings) if the bankruptcy debtor has property in Serbia. Bankruptcy proceedings may be opened:

- 1) if there are grounds for bankruptcy, but in the country where the debtor has its centre of main interests, bankruptcy proceedings may not be conducted due to the conditions provided for in the bankruptcy law of that country;

- 2) if under the law of the country where the debtor has its centre of main interests the bankruptcy proceedings apply only to property located in that country; and
- 3) when a foreign court decision on the opening of bankruptcy proceedings may not be recognised.

Bankruptcy proceedings based on the existence of the permanent business unit or property located in Serbia shall only include property located in Serbia.

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#### **7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?**

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Under the Bankruptcy Law, bankruptcy proceedings commenced elsewhere may be recognised. The Bankruptcy Law prescribes grounds for recognition of foreign bankruptcy procedures. A foreign bankruptcy process must be recognised if:

- 1) it could be identified as a court or administrative process for collective settlement of creditors through reorganisation, bankruptcy or liquidation in a foreign country in accordance with foreign bankruptcy law, whereby the debtor's property and business affairs are under control or supervision of the court or other competent body;
- 2) a foreign representative who seeks recognition is a person or body, including those temporarily appointed, entitled to manage reorganisation, bankruptcy or liquidation over the debtor's property and business affairs or to act as representatives of a foreign process;
- 3) the request for recognition contains a foreign enforceable decision on opening proceedings and appointing a foreign representative (translated into Serbian and certified if it is a copy), a foreign certificate issued by a court or competent body which proves the existence of proceedings, and the appointment of representative, or any other evidence that may prove the existence of proceedings and the appointment of a representative; and
- 4) the request for recognition is filed with the competent court designated by the Bankruptcy Law.

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#### **7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?**

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There is no data regarding Serbian companies which were restructured in other jurisdictions.

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### **8 Groups**

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#### **8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?**

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This field has remained unregulated under the Bankruptcy Law. In principal, the insolvency of a group member does not affect other group members. Given that in case of bankruptcy of several group members each bankruptcy proceedings would be conducted independently and separately, the law does not provide any particular manners of co-operation between officeholders of such bankruptcy debtors.

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### **9 Reform**

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#### **9.1 Are there any proposals for reform of the corporate rescue and insolvency regime in your jurisdiction?**

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The new law on bankruptcy and reorganisation is planned and last year a government working group brought reasoning for adopting the new law. The draft of this new law is not yet available.

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