**The Changing Company Purpose and Directors' Duties in a Company in Crisis**

***Antun Bilić****, Associate Professor at the Department of Commercial Law and Company Law, University of Zagreb;*

***Marko Bratković****, Assistant Professor at the Department of Civil Procedure, University of Zagreb*

In the ordinary course of business, all company stakeholders, including directors, boards, and shareholders, are expected to pursue the company's purpose. Although there is ongoing debate about how to define this purpose, shareholders generally have the freedom to specify it in the articles of association, while directors possess broad discretion in its pursuit. Creditors, on the other hand, are viewed as third parties in relation to the company and its purpose. Despite having their claims prioritised over shareholders' rights to receive dividends, they lack the corporate influence to govern the company's affairs. In essence, the company retains the prerogative to determine which creditor to satisfy and in what order.

However, this scenario undergoes a significant transformation once insolvency (bankruptcy) proceedings commence. At this juncture, the company's purpose shifts towards ensuring the proportional satisfaction of its creditors. To achieve this objective, the company is placed under insolvency administration, overseen by the state. Shareholders, particularly directors, typically relinquish their previous powers in this process.

These two regulatory frameworks are often demarcated by a single event: the initiation of insolvency proceedings. However, this regulatory shift may not always align with the company's actual financial situation, as insolvency is typically preceded by a period of financial turmoil characterised by missed targets and incurred losses.

In response to such circumstances, many jurisdictions have instituted specialised rules and laws. For example, the EU Preventive Restructuring Directive (PRD) addresses preventive restructuring proceedings for financially distressed companies, aiming to equip them with the necessary tools to restructure and avoid insolvency. Article 19 of the PRD stipulates that directors must consider the interests of creditors, equity holders, and other stakeholders when insolvency is likely. Similarly, the EU Harmonising Insolvency Directive mandates directors to request the opening of insolvency proceedings when a company becomes insolvent, with failure to comply potentially resulting in liability for damages incurred by creditors.

Despite these regulatory frameworks, limitations persist. Existing rules often hinge on specific triggering events and lack flexibility. Consequently, this paper advocates for a new approach to address these deficiencies: an incrementally changing company purpose. Instead of a rigid binary definition centred solely on the interests of shareholders or creditors, the company's purpose would adapt gradually based on its financial situation. Directors would be tasked with monitoring the company's financial health and adjusting its purpose proportionally to reflect creditors' interests as financial distress escalates. This approach aims to facilitate a smoother transition towards insolvency proceedings, if required.

In conclusion, this paper delves into the evolution of European insolvency law and proposes a novel strategy to tackle the challenges confronting financially distressed companies. By incorporating EU directives and considering directors' duties during times of crisis, it aims to provide insights applicable across diverse legal systems.