Bankruptcy law in the Republic of Macedonia

Dejan Kostovski brings us up to date with the history and developments of insolvency legislation reform

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THE 1998 LAW WAS AMENDED THREE TIMES, STRONGLY INFLUENCED BY THE GERMAN AND AMERICAN BANKRUPTCY LAWS

1997: A new law enacted

Insolvency legislation reform in the country began back in 1997 when the new bankruptcy law was enacted and published in the "*Official Gazette*" in October 1997. It entered into force on 6 November 1997 and came into effect on 5 June 1998. With the enactment of this new law, the former "*Law of Forced Settlement, Bankruptcy and Liquidation*", as state regulation, used after the breakup from Yugoslavia, was replaced and not used anymore.

This 1998 law was amended three times, in July 2000, 2002 and 2004 and it was strongly influenced by the German and American bankruptcy laws. The most important innovations introduced are:

- the role of the creditors was changed from advisors into main decision-makers in the bankruptcy proceedings;
- a plan of reorganisation is now required, as an opportunity to extend the business and reorganise the debtor after the opening of bankruptcy proceedings;
- proceedings for personal bankruptcy; and
- special bankruptcy proceedings against the property of a sole proprietor.

Suma sumarum, the new law was quite complex, affecting both the case law and the role of creditors in bankruptcy proceedings, while generally creating a different perception of insolvency.

2006: Reforms continue

The reform continued with the enactment of the Law on Bankruptcy in 2006. This law was published in the "*Official Gazette*" no.34/2006 on 22 March 2006 and entered into force on the 30 March 2006.

In connection with the application of the Bankruptcy Law, Regulations were also published, affecting the programme and the manner in which the exam for obtaining a certificate as an authorised trustee will take place, the remuneration of IPs and the reimbursement of the bankruptcy procedure costs. The IPs' professional standards were also detailed, especially the one concerning the sale of the debtor's assets. A code of ethics for trustees was also published. The enactment of the regulations, the professional standards and the Code of Ethics have finally completed the legal framework regulating insolvency in the country.

The most important changes consist of:

- the setting up of a Chamber of Trustees as a professional association of licensed trustees;
- the elaboration of the principle of urgency, with the introduction of time limits for taking procedural actions leading to the bankruptcy procedure, which is now supervised by a bankruptcy judge, as opposed to the former solution that proved quite inefficient in the absence of a specialised court;
- bankruptcy counselling can now be obtained from an appellate authority which deals with complaints and appeals, and can act against decisions made previously during the bankruptcy proceedings.
- the procedure for examining and approving the creditors' claims was also shortened, by granting competence to the board of creditors and the creditors'assembly; and
- the conditions for the opening of bankruptcy proceedings and the creation of conditions for proposing a simpler reorganization plan were redefined, which was followed by the reduction of costs of the proceedings.

Very soon after the Law's enactment (in December of the same year), the Law on Amendments to the Bankruptcy Law was changed. A group of MPs proposed that the amendment be removed and improved amendments added, which restricted the right of the bankruptcy trustee to be appointed to more than three bankruptcy proceedings.

The Law Amending the Law on Bankruptcy, published in July 2007, and enacted on the eighth day after the publication in the "*Official Gazette*", was changed again, bringing in penal provisions similar to misdemeanor provisions in other laws.

The third revision of the Bankruptcy Law, or the Law on Amendments of the Bankruptcy Law, published in the "*Official Gazette*" in April 2011 and entered into force on the eighth day after its publication, changed certain duties of the bankruptcy trustee, and aimed at accelerating bankruptcy proceedings.

In fact, the greatest change introduced in this report is the duty of the trustees to enter all the changes and decisions made by the authorities dealing with

bankruptcy proceedings in the registry for e-bankruptcy, which is kept in the Central Registry. The Ministry of Economics was supposed to prescribe the form and manner of keeping the insolvency register. That was what happened, and the Rule-book on the form, content and manner of keeping the registry of e-bankruptcy was published in November 2011. This created the conditions and the possibility for creditors and other stakeholders to monitor the electronically-opened bankruptcy proceedings.

For the fourth update of the Bankruptcy Law, published in May 2013, it can also be said that it contains most important amendments to the bankruptcy law.

The first segment amended the opening of bankruptcy proceedings. Prior general proceedings were implemented, and are now mandatory whenever the opening of bankruptcy proceedings is made by a constituent.

In addition to the general prior proceedings, two more separate preliminary proceedings were introduced. The first are the previous proceedings used when the opening is initiated by a debtor, while the second apply when wishing to implement pre-insolvency reorganisation.

This report developed the conditions, the ways and manner of opening insolvency proceedings without conducting preliminary investigation.

Now there is a possibility for appointing a bankruptcy trustee by using the method of random selection whenever a proposal for the opening of bankruptcy proceedings is made by the debtor. However, there is an exception to this rule when a creditor is the one who submits the proposal for opening bankruptcy proceedings: he can suggest the appointment of a certain trustee from the list published by the Ministry of Economics.

Another significant change that this revision brought is its providing much shorter deadlines up to which the judicial authorities of the bankruptcy proceedings should take certain procedural actions and bring a verdict. The bankruptcy judge's power to deal with complaints in litigation, arising from challenging the claims, and with legal actions in specific opened insolvency proceedings, is also enforced.

With this reform, the provisions regarding the composition, work and vote of the board of creditors were changed, by removing all inconsistencies observed in the case law.

Regarding the disposal of the bankruptcy estate, a new kind of sale was set: public electronic auction without starting price.

After this review, the possibility of the reorganisation of a debtor company should be mentioned, when a reorganisation plan was submitted, thus avoiding the legal consequences of bankruptcy proceedings The creditors have the right to submit comments and the plan can be accepted within 60 days, after voting..

Because this novelty brought such big changes, certain bylaws were also published in October 2014, about the expert training and the ways to acquire a certificate of expertise on preparing a reorganisation plan, as well as on the method and implementation of electronic asset sales and determining the bankruptcy trustee's fee. Rules for compiling the bankruptcy file, for keeping the register of trustees, for the form and content of the creditors' claims and for regulating the manner of appointing a trustee by the method of electronic election were also set up.

All the new amendments to the Bankruptcy Law were published in November 2013, article 23, for instance, which regulates the exam procedure in order to become an authorised trustee. In December 2014 the previous bylaw concerning the exam expired.

Also in June 2014 new amendments and changes to the bankruptcy law were published, which made it possible for this law to fall into compliance with the Law for locking the bankruptcy proceedings, partially regarding the provisions on the right to build a certain structure and the determination of the legal status of the property built, which all create the bankruptcy estate of the debtor.

2014: Concerning the conclusion of bankruptcy proceedings opened according to the law in force before 1997

This law was published in January 2014 and entered into force in March 2014. Its purpose is only the regulation of bankruptcy proceedings opened under the laws applicable before 1997. In fact this law allows for separate, undeniably extra-judicial proceedings, according to which buildings included in the bankruptcy estate, which were not sold or had no legal status, are to get that status, thus increasing their value and at the same facilitating the purchasing procedure and the registration in the public records. This law regulates the sale of such property by public auction, conducted electronically, without starting price. If the property is not sold its worth is distributed to the creditors, based on the distribution plan prepared by the bankruptcy trustee.

Finally, with this law, the deadlines which judges are obliged to observe while deciding upon civil cases in the Bankruptcy procedure, whether initiated or extended, were shortened.

To conclude, it can be said that the reform is still going on, and the goal is, on the one hand, to create conditions for the creditors to achieve a greater return on their claims through the incorporation of best practices as soon as possible, and, on the other hand, to allow the debtor company to overcome its financial difficulties through reorganisation, whenever possible, in order to avoid the legal consequences of bankruptcy proceedings. ■

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