

REORGANIZATION AS A BUSINESS PHILOSOPHY

ABSTRACT: The most common problems faced by business societies are the inability to pay or carry out the obligations to third parties, i.e. their creditors. When an economic entity is unable to settle its obligations, creditors and third parties cannot regularly collect their receivables and then bankruptcy occurs.

Changes in business conditions in the world, especially if business conditions deteriorate, will raise the issue of opening and efficiency of bankruptcy proceedings. The condition for initiating a pre-bankruptcy proceedings is insolvency, where, as a rule, debts are greater than the value of the debtor's assets. Today, the economic entity, in accordance with the provisions of the applicable Law on business societies, is responsible for all its obligations with its assets. So, when it becomes unable to pay, it has mainly two alternatives, bankruptcy or possibly, the possibility of reorganization if its creditors deem it to be more expedient. The aim of bankruptcy is to remove those economic entities which do not achieve even the minimum of profitability doing their business and which are incapable of normal work and business. The overhaul of the bankruptcy debtor is a newer institute of our bankruptcy law. It includes the transformation of debtors at several levels such as legal-organizational, management and financial. The Institute of Restructuring is based on the debtor's contract

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with creditors, giving him/her an opportunity to recover economically and avoid bankruptcy, i.e. deletion from the registry of legal entities, and it enables more favourable settlement of receivables.

Keywords: *reorganization, bankruptcy, plan, economy, subject.*

1. Reorganization of the debtor in bankruptcy - new institute of our Bankruptcy Law

Bankruptcy is seen in our environment as a definitive end of the company, but also an opportunity for creditors to collect part of their receivables. From the economic and legal aspect of bankruptcy proceedings, the economic and legal efficiency of the duration of bankruptcy proceedings, costs, efficiency and the amount of collection of receivables, financial reporting regulations and bankruptcy audits should be operational. If there is a justified economic condition, priority should be given to the reorganization in order to preserve the assets of the bankrupt debtor, preserve business partners, save jobs, and the restructured economic entity gets the opportunity to resume operations after the restructuring. Bankruptcy proceedings are a court case that by its nature is conducted exclusively before the court, not before the governing body (Kljakić & Kukrić, 2017, p. 42).

The most important normative act regulating the nature of this matter is the Law on Bankruptcy (Bankruptcy Law, 2009). Continuous review and harmonisation of all bankruptcy regulations, as well as constant work to find new and better bankruptcy solutions, is a good basis for creating favourable conditions for doing business in one country. All amendments to the Bankruptcy Law have been made with the clear aim of improving the efficiency of judicial, creditor, bankruptcy authorities.

In order for bankruptcy to have a purpose, it must be implemented in a timely and efficient manner, with the aim of exerted influence on management, as well as sanctioning them if they avoid opening bankruptcy in any way, in order to preserve assets and creatively implement restructuring and a pre-prepared restructuring plan.

The continued activity of legislation, especially from the beginning of this century to the present day, has forced the practice to respond to the same, to bring its views and interpretations of these acts closer to the participants in bankruptcy proceedings and thus facilitate their implementation.

The final outcome of bankruptcy proceedings is the cessation of operations of a business entity that has significant and often immeasurable consequences

when it comes to business banks or insurance companies. However, there is usually no complete information about the consequences of bankruptcy, often the truth is withheld or publicly ignored what actually happened. Especially the consequences should not be ignored on employees, management, but also the entire community and the state. The unavailability of information in this area is particularly noticeable, because mostly, in the process of scientific research into the consequences and causes of bankruptcy, a closed door is encountered.

The idea of introducing this institute first emerged in the countries with the most developed economies. Thus, the institutionalisation of the reorganization in today's sense, first done in 1978, was the first to be done, when the Bankruptcy Reform Act was enacted and the institute of reorganization was set up in chapter 11 of the Bankruptcy Reform Act. (Bankruptcy Law, 2009. art. 2). This Law has served as the starting point for regulating this institute. Since this area of bankruptcy law is still in the development phase, we note that modern bankruptcy legislation pays great attention to the regulation of this institute. To that end, we must commend the activities of a domestic lawmaker aimed at the foundation and elaboration of this institute in the Law, in order to adapt existing solutions to the needs of the practice.

The motive for the existence of this institute is primarily aimed at preventing the premature shutdown of the company, because the sustainability of business entities is of great importance to one state, whether private or state economic entities. The advantage of the restructuring procedure should be given over the bankruptcy proceedings, because the reorganization process inciting hope, primarily for the survival of a legal entity that deals with financial difficulties and ultimately allows creditors to participate in the making of rational solutions to settle their claims and achieve a more favourable settlement than the one they would achieve in the bankruptcy proceedings.

Viewed from the creditors' perspective, bankruptcy proceedings often seem more acceptable than an overhaul, and the restructuring plan must not foresee a more unfavourable settlement of creditors' claims than the one they would achieve in the bankruptcy proceedings.

The reorganisation can be misused and used to prolong bankruptcy and thus damage creditors. The general view is that bankruptcy proceedings protect the interests of creditors, while the reorganisation favours the interests of debtors. In this way, another opportunity was given to the debtor contributing to the overall economic situation in one state. Reorganiis only attempted if there is a real possibility of a financial recovery (Spasić, 2007, p. 42).

The Bankruptcy Law sets the bankruptcy goal as "the most favourable collective settlement of bankruptcy creditors by achieving the highest possible

value of the bankrupt debtor, i.e. his assets.” Bankruptcy proceedings can be carried out through an overhaul or bankruptcy; practically this provision is also the starting point when conducting both proceedings. In addition to this understanding of the goal of the reorganization, there is also the legal definition of the reorganization as a reconciliation of creditors under the adopted restructuring plan, by redefining debt-religious relations, the status changes of debtors or otherwise envisioned in the restructuring plan. The Law does not discuss the explicit continuation of the business entity’s operations as one of the objectives of the reorganization. Among the reasons are that there are other mechanisms for implementing organisational changes in the economic entity, while the reorganisation is carried out in precisely established conditions, i.e. in case of bankruptcy. Therefore, unless there is a bankruptcy reason, there are no grounds for opening bankruptcy proceedings, nor even a reason for conducting an overhaul.

In this way, it has been made clear that the restructuring of the bankruptcy debtor is initiated due to the debtor’s inability to settle creditors’ claims. The opening of bankruptcy of an economic entity should be justified from the aspect of market privatization, to protect and stimulate healthy economic entities, to survive and the unburdened to continue to offend, and the ultimate goal is to eliminate bad and unproductive economic entities that are inefficient and harmful to employees, and the overall economy of a country and beyond. It is necessary to focus on the realization of set goals that lead to efficient procedure, practical and operational implementation of the restructuring plan for all participants in the bankruptcy proceedings, that the cost is minimal, time short, and the settlement of creditors to the maximum.

Today, modern bankruptcy legislation rests not on the liquidation and elimination of insolvent economic entities, but on the reorganization and continuation of the business entity’s operations (Riesenfeld, 1995). Viewed from a legal-economic point of view, an overhaul would be more favourable and acceptable as an option in most cases.

The reorganization does not have a long tradition, because in the previous socialist self-governing order it did not exist in its modern form. We see the overhaul as a comprehensive process of auditing and rehabilitation of the bankruptcy debtor’s operations, resulting in the survival of the economic entity in a more or less revised form. It is a complex economic legal process, from the moment the decision was made on whether it can be implemented at all, to reconfiguring the concept of doing business that would allow the debtor to overcome the problem and become successful.

From an economic point of view, the reorganization has a far more effective outcome than bankruptcy and liquidation, because in this case the economic entity survives, continues to operate without the burden of insolvency, indebtedness, retains jobs, preserves property, continues to do business provides income for employees, and by neatly executing obligations to the state contributes to the development of the community as a whole. This certainly indicates that this procedure should be promoted, improved by the legal framework concerning this area, made it clearer, applicable and simplified to the maximum.

Defining it often very “broadly”, as the process of demolishing old and building new activities, capabilities and organizational forms (Landesman, 1993, p. 9), the overhaul is seen as one of the key preconditions for successful implementation of the transition process.

Also, the reorganization is defined as the process of making management decisions and taking a series of actions, all in order to achieve changes to the existing structure, strategy and position of the company. It is a process aimed at seeking strategies for improving positions through eliminating weakness and crisis, creating and maintaining competitive advantages, changes in the organizational structure and efficient functioning of all systems in the company (Eric & Stošić, 2013, p. 11).

This solution was confirmed and affirmed both in practice and in the domestic and international public, which rated it as one of the most modern and high quality solutions when it comes to bankruptcy laws in general (Dukić-Mijatović & Kozar, 2019, p. 22).

Bankruptcy creditors are protected when it comes to a bankrupt debtor operating in the majority state capital. However, it said bankruptcy proceedings are not being conducted against the Republic of Serbia, territorial autonomy and local self-government units, funds or organizations of pension, disability, social and health insurance, legal entities founded by the Republic of Serbia. This means that bankruptcy creditors can claim their claim to the legal entities under which bankruptcy proceedings are conducted from the Republic of Serbia, i.e. units of territorial autonomy and local self-government (Dukić-Mijatović & Kozar, 2019, p. 22).

1.1. Restructuring trends in Serbia

Since 2000 various activities have been undertaken in our country in the area of enterprise reform and improvement of corporate restructuring. As the implementation of these processes is related to a number of outstanding

issues, wanderings and resistance, it has had its own reflection on characteristic tendencies and achieved results.

Although due to numerous specificities it is very ungrateful to make certain generalizations, nevertheless, it seems that the experience from the restructuring process in our country after 2000, has been compared with the characteristic trends in this area in the world.

At one point, unlike most transition countries where intensive restructuring processes took place in our country, this process was quite muted. In the area of restructuring in Serbia, both in terms of public enterprises and in terms of enterprises slated for privatisation, modest results have been achieved.

According to data from the National Bank of Serbia from the beginning of 2013, 717 public enterprises operated in our country (National Bank of Serbia [NBS], 2021).

As for state-owned enterprises, according to the IMF, “more efforts are needed in Serbia to strengthen corporate governance and ensure professional leadership in these enterprises”. Let’s remind ourselves of the promise made to the IMF that Serbia will complete this process by July 2020 year. But let’s remember that reforms have begun since 2014 and Serbia, according to an IMF analysis of 2018, found itself at the very back of the list of Central and Eastern European countries, governed by state capital enterprises. As much as we ask for data on the value of EPS, such data is still not transparent. Mind you, Serbia has committed to changing its legal status by the end of 2020, which in the current conditions of the crisis in the country and beyond is almost impossible. However, if something happens in this area, there will be no substantial changes, i.e. change in legal status, while other changes will not occur (Danas, 2020).

The largest number are businesses at the municipal level (mainly public-utility enterprises), as well as smaller infrastructure public enterprises at the republic and provincial levels. In the area of restructuring of state-owned enterprises after 2000, the company has been in the midst of restructuring its operations since 2000, certain but modest positive effects were achieved. Namely, in a number of these companies, the process of organizational restructuring was conducted, mainly through non-core activities. Some companies have changed the legal form from public companies to joint stock companies and the process of corporatization has begun. In this way, the results achieved vary significantly from company to company.

The organizational changes included the implementation of the so-called “safe guards”. redundancy programs, as changes in management (unfortunately, most often dictated by political parties in power). There have been significant increments made in the area of economic and financial

consolidation, through the reprogramming and acquisition of debts by the state, regulating old debts, reducing subsidies, and more. Nevertheless, public enterprises are mostly unprofitable.¹

Excess employees are constantly burdening the business of public enterprises, but nevertheless, while the economy is shrinking, the number of employees is increasing. That's how 2012 the number of employees in the economy decreased by 1.4%, while in public enterprises it increased by 0.6% (Agency for Business Registers, [APR], 2021).

In the state sector in Serbia, in the second quarter of 2019, there were 599,668 employees, down from 2018 year by 1.2%, according to data from the Republic Statistical Office. The total number of employees in the first quarter of 2020 stood at 2,186,834 persons. Compared to the same quarter of the previous year, total registered employment increased by 1.8%, or 38,886 persons (Republican Bureau of Statistics, [RBS], 2021).

The legal basis for implementing the restructuring would be the Law on Privatization and a later regulation on the procedure and manner of restructuring of privatization economic entities. Under this decree, the reorganization includes: status changes, changes in the legal form, changes in the internal organization and other organizational changes; write-off of principal debt, corresponding interest or other receivables, in whole or in part; debt relief in whole or partly to settle creditors from assets made from the sale of capital or assets of the company; and other changes, in accordance with this regulation (Regulation on the procedure and manner of restructuring of privatization entities, 2006).

The basic idea of introducing individual social enterprises into the reorganization was their easier privatization. The basic form of "restructuring" of this corporate corps was financial reorganization – which, as noted, was basically reduced to protecting the company from debt collection from an earlier period. At the same time, financial reorganization did not involve any

¹ The State Audit Institution found in public company financial statements in previous years that the loss of these 10 companies amounted to nearly 400m euros, down from 2012. Year. This was certainly contributed by the fact that the entire Serbian economy grew by 2.5% last year, and the losses of public enterprises were lower than the previous year. In addition to Srbijagas, the biggest loss was made by Serbian Railways of 68.5m euros, which is still twice as much as the previous year. On the other hand, Air Serbia and Jat Airways, respectively, doubled their losses from 2012 to 2014. 74.3 million euros. In the end, Serbia's roads also ended up with a loss of 9.2m euros, but that is as much as seven times less than a year earlier; Nova Ekonomija (2014). Najveća državna preduzeća prošle godine izgubila 400 miliona eura [Last year, the largest state-owned enterprises lost 400 million euros]. Downloaded 2021 June 15 from <https://novaekonomija.rs/vesti-iz-izdanja/najveca-drzavna-preduzeća-prošle-godine-izgubila-400-miliona-evra>

significant investment in fixed assets, but only occasional subsidies for payment of part of the earnings, energy procurement, etc. The substantial restructuring of the business was left to be realized by the new owners after privatization.

A significant number of these businesses have implemented reorganization of the workforce – reducing the number of employees through so-called “workforce restructuring”. surplus programs (based mainly on so-called passive employment policy measures, in which state-funded severance and monetary compensation were the main instrument for solving this problem). Unfortunately, severance funds were largely not in the function of new employment, but primarily ongoing consumption, and active measures of employment policy were underused.

Restructuring processes are also being conducted in a broad corps of already privatized and private enterprises. Faced with business problems (usually financial difficulties related to repayment of assumed liabilities) and these businesses are comprising their healing/ restructuring programs. In recent times, reorganization or organizational transformation programs are generally formulated (primarily pre-prepared restructuring plans).

By analyzing these plans, one can come to the conclusion that many of these programs look more like a wish list than a genuine plan of action that can lead to real improvements in business performance. Projections and plans for future business are usually overly optimistic and unrealistic.

As a rule, only cosmetic changes to the existing business and production portfolio are foreseen – no new business initiatives, markets and/or products, but also radical procedures related to property disinvestment or contraction of certain non-profit activities.

Very little attention is paid to how to make the necessary changes happen. At the same time, creditors (who adopt these plans) are forced to accept long-term payments of their receivables, hoping to recover some of their funds in this way.

The strong impact on initiating the restructuring process in the world, and in our country, has macroeconomic developments. Especially significant impact, they have had and still have, the negative effects of the global financial crisis, which strongly influence the shaping of restructuring in our country.

Similar to the practice in the world, due to declining demand, there has been a contraction in the volume of many businesses’ operations, leading to a sharp decline in the number of jobs. From 2008 until 2013, the number of employees in Serbia has been reduced by over 250.000, the most in the private sector. Namely, a large number of real and service sectors of Serbia, in times of crisis, were forced to reduce their production and reduce the number of employees (Ministry of Finance Republic of Serbia, 2021).

Reorganization is in our country, as in the world, as a rule, accompanied by numerous, often fierce resistance, especially internal stakeholders. Particularly big problems exist in companies “in restructuring” where protests by workers over unpaid wages, unrelated work, health insurance provision, abuses and/or management incompetence are common, etc.

Unable to solve their problems, employees rarely resort to radicalising strikes through blocking roads, railways, bridges, etc. In such circumstances, “all eyes” are on the state, often top state officials, who are asked for a (favourable) solution to the accumulated problems in the short term.

In this way, the demands of employees, as well as the activities of decision-makers, are often directed towards social programs and redundancy payments. This leads to a “firefighting” protest, but not a solution to the problem of the company, whose activity is shutting down and/or through liquidation.

Unfortunately, infrequently, despite significant efforts, restructuring processes do not have the desired effects. Nor after 12 years of activities in restructuring a large number of companies, which in the previous period were holders of the production, export and development of local self-governments (FAP Korporacija Priboj, IMT Beograd, IMR Beograd, PIM Ivan Milutinović Beograd, Holding Industrija Kablova Jagodina, IMK 14. October Kruševac, First Petoletka Trstenik, Majevisa Backa Palanka, BIP Beograd, Mostogradnja Beograd, Jumko Vranje, Fabrika vagona Kraljevo, JP Resavica, MIN Niš, Utva avioni Pančevo, Želvoz Smederevo, Sloboda apparatus Čačak, Nevena Leskovac, Ikarbus Zemun, Budimka Požega, etc.) no corresponding results have been achieved (Ministry of Finance Republic of Serbia, 2021).

There are a number of very different cases of corporate restructuring. Consequently, several different forms of restructuring can be discussed:

- Strategic reorganization, which is aimed at changing the business portfolio, management system, cost reprogramming, etc., fundamental changes in the business and formation of new relationships.
- Financial reorganization – is aimed at solving the problem of illiquidity, different ways to reduce the level of indebtedness.
- Organizational reorganization, which involves complex activities related to changes in the organizational structures of the company and changes in the number and structure of employees.
- Management reorganization – is aimed at radical changes in the management process.
- Ownership reorganization – aimed at radical changes in the ownership structure, including ownership transfers.

- Market reorganization – aimed at redefining the market, business area, remodeling the offer, then modifying marketing strategies, and, of course, altering marketing roles in the mix of business functions.
- Technical and technological structures, removal of “bottlenecks”, modernization of equipment, application of results of scientific research activities, etc. (Ministry of Finance Republic of Serbia, 2021).

Intensive restructuring processes of the company have become one of the characteristics of modern business. Restructuring processes are also being carried out in transition countries, including Serbia. In many respects, they differ significantly from activities in the field of corporate restructuring in developed countries around the world.

Restructuring processes have become an integral and vital element of the business undertaken by a huge number of businesses around the world. The restructuring process is not limited to companies facing problems in business, reorganization is a process that can be implemented by successful businesses if they want to improve their business performance.

Since the comparison of the Institute of Restructuring and Bankruptcy, similarities are evident in the implementation of the restructuring procedure, which is being implemented in bankruptcy. However, the differences are numerous, primarily because the restructuring is decided by the Privatization Agency, while the reorganization is decided by the creditors by a vote and by the court, by their primary intention is the recovery of the bankrupt debtor (Dukić-Mijatović & Kozar, 2019, p. 22). “The Restructuring Programme obliges all competent authorities, who are obliged to commit the subject of privatization and buyer of capital to the payment of receivables in the manner provided for by the Restructuring Programme. From the outlined, we conclude that the Programme in Restructuring in relation to the Restructuring Plan has a greater legal force” (Dukić-Mijatović & Spasić, 2008). The applicable Law on Privatization (Law on Privatization of RS, 2014) does not foresee the reorganization and inability to implement forced execution against the privatization entity, as one of the legal consequences of the reorganization under Article 20ž of the previous law.

Article 20ž of the previous Privatization Law (Privatization Law, 2001) stipulated that from the day of the decision on restructuring to the date of the decision on completion of the restructuring, it cannot be against the subject of privatisation, i.e. over its property, to determine or implement forced execution or any measure of execution procedure to settle the claim. The restructuring decision had the power of executive identification. In essence, it is a kind of

delay of execution that was set for the collection of monetary receivables on the funds held in the account of the executive debtor, i.e. the postponement of security measures, for the period from the day of the restructuring decision to the day of the decision on completion of the restructuring (Kozar, 2008, p. 25; Goat Man et al., 2010, pp. 64–66), which is a deviation from the general rules and principles of urgency under the Law on Enforcement and Security (Law on Enforcement and Security, 2015) which in Article 15 stipulates that the executive procedure and the security procedure are urgent, but delaying execution at the suggestion of the executive debtor is also possible under Article 122. Law on Execution and Security, but only once during the executive proceedings, and if the executive debtor makes it probable that he would suffer irreparable or severely compensated damages as a result of the execution, which is greater than the one suffered by the executive creditor due to the delay, and if the delay justifies the particular reasons that the executive debtor proves to the public or by law certified identification (Dukić-Mijatović & Kozar, 2019, p. 22).

“Collection of creditor receivables” details the procedures of forced execution and forced collection against privatisation entities that were in restructuring on the day of the entry into force of this Law. Requests for payment of creditors’ receivables, submitted in accordance with the Law on Amendments to the Law on Privatization (Law on Amendments to the Law on Privatization, 2014), the Agency will record and determine the amount of receivables for each creditor within 60 days from the date of the decision on the privatisation model in terms of this law, and make a proposal for settlement of receivables that it will submit to creditors (Dukić-Mijatović & Kozar, 2019, p. 22).

During the financial restructuring, debt reconciliation (moratorium) is imposed. Debt reconciliation is a temporary suspension of compliance and a prohibition on the initiation of executions, i.e. delaying execution towards the company or entrepreneur regarding creditors participating in financial restructuring ² (Dukić-Mijatović & Kozar, 2019, p. 22).

The restructuring plan is a complex elaboration consisting of a preparatory and realization basis, as well as contributions. In the project, the debtor’s condition should be realistically and objectively displayed in a way that creditors can make a decision based on this plan (Regulation on

² Debt reconciliation (moratorium), is not a mandatory phase during the out-of-court financial restructuring process, and its legal effect is based on the debt relief agreement, which is concluded between creditors and debtors in writing, not on the provision of the law. Therefore, the new law differs from the previous Law on Negotiated Financial Restructuring of Companies, which prescribed the moratorium as a mandatory phase of proceedings.

procedure and manner of restructuring of privatization entities, 2005, art. 2). The bankruptcy law specifies the contents of the preparatory basis. It is recommended to specify possible settlements, this is key and it depends on whether it is accepted or not. Realization, the second phase on which the restructuring plan is based.

1.2. Frequency of restructuring in Serbia

Status changes, changes in the legal form, changes to the internal organization and other organizational changes are made in accordance with the law governing the legal position of companies. It is of great importance that creditors decide to continue doing business, otherwise there is no possibility for the debtor's survival. At some point, the question will be whether the creditors are able to make a decision or not, because it often happens that they cannot come together, that they cannot agree regardless of whether their interest is common. This is sometimes a problem, there is a good look for reorganization, but it is not accepted for the reasons above. It is very widespread to understand that the restructuring of front-line businesses includes radical changes in the scope and financial structure of assets and/or passives, as well as fundamental changes in business portfolio and marketing strategies. In one understanding, reorganizing a company involves qualitative changes in control or structure of ownership, internal organization, employee structure, or marketing focus (Useem, 1992, p. 46).

The Institute of Restructuring in our legal system exists outside the bankruptcy proceedings and privatization procedures, according to the provisions of the Law on Agreed Financial Restructuring. During the financial restructuring, debt reconciliation can be introduced, which produces a legal effect on the day of the conclusion of the debt settlement agreement (Dukić-Mijatović & Kozar, 2019. p. 25).

“The privatisation of social capital in Serbia is supported by international financial capital institutions, such as the World Bank and the International Monetary Fund (IMF). The World Bank has financially helped reorganise a number of major social enterprises in the privatisation process, such as the Bor Mining and Smelting Basin (RTB Bor). The holding company was privatised on 18 December 2018 year. Chinese company Zijin Meining bought 63% of the bor mining and smelting capital at a cost of \$350m. Mandatory investments totaling \$1.26 billion were agreed, 75% of which in the first three years. The buyer has committed to saving all 5.000 jobs, as well as investing an additional

\$200m to resolve RTB Bor's debts, whose coverage is envisioned in a pre-prepared restructuring plan" (Obradović, 2019).

The restructuring process has long been delayed, many processes should have been conducted through bankruptcy or liquidation, because there are no more grounds to prolong the unprofitable operations of these business entities through subsidies. However, reorganization cannot only be reduced to bankruptcy, liquidation and dismissal of employees while providing social programs based on so-called "bankruptcy" and bankruptcy. passive measures of employment policy (primarily redundancy payments).

Significantly more would be achieved through offensive restructuring directions, through greater selective investments in modernization of certain production capacities that have a chance of successful market operations and promotion with renowned partners from abroad. However, money (everyone is talking about) is needed only to start healing the business, but the success of these activities depends on creating a more favorable economic environment, educated and competent management and quality restructuring programs based on successful examples from world practice.

2. Conclusion

The beginning of privatisation in Serbia did not bring expected economic growth based on improving the efficiency of the business, but only the redistribution of assets and the economic power of individuals. From this perspective, privatisation had to have negative results as a result, because in all this the approach was wrong — in the privatisation process, the state favoured its revenues, at the expense of economic development and employment levels. The biggest victims of privatisation were workers who lost their jobs and wages, as well as the sale of businesses for one dinar. After the dissolution of the SFRY, there was a need for new laws regulating all areas of the country's economic life, including bankruptcy. For this reason, it has been rapidly working to enact new legal solutions that are less or less in line with European Union legislation, which has certainly contributed to improving our legal framework in which the entities operate. It is not wrong if we interpret bankruptcy as a new opportunity to continue activities to the bankrupt debtor through a pre-prepared restructuring or restructuring plan in the basic form, which is the second goal of bankruptcy proceedings that provide economic protection of social proportions.

Significantly impaired business legal status is affected by financial imbalances, unprofitable operations, high level of indebtedness and

unsatisfactory level of ownership capital. In fact, for all the invisible boundaries that exist between these two areas, it is not easy to separate economic aspects from the legal aspects of bankruptcy.

Viewed from a legal perspective, it is desirable to maximise the economic value of the total assets of the bankrupt debtor, in order to effectively settle creditors through liquidation or reorganisation, i.e. through debt rehabilitation and the recovery of the company. The most logical and purposeful form of economic aspects of bankruptcy is according to the time of creation of the same during the period of business difficulties of the company and the economic aspects of bankruptcy after the conclusion of bankruptcy.

By analyzing the development of bankruptcy institutes in some parts of the world, we can come to the conclusion that this institute has gradually evolved to create what is now, with relatively effective models of application in bankruptcy practice. Very often, the question is how effective we are in relation to the environment and some countries that have already gone through all these steps and completed such complex procedures that can take so long, how much we can learn from them and how valuable their experiences are to us.

One of the principles of bankruptcy proceedings is the principles of equal settlement of all creditors. In this section, everything is clear, the Law on Bankruptcy says that equality, the proportion of settlement, is achieved through payment lines when bankruptcy is carried out by bankruptcy, and through classes of claims formed on the basis of payment lines when bankruptcy is carried out by reorganization. This certainly means that the Law on Bankruptcy has established some lines under which the payment of receivables is made if the property is cashed in. Regardless of all the deficiencies of our bankruptcy law according to the Doing business list, the quality of Serbia's bankruptcy law is relatively high, while indicators indicating the quality of law enforcement remain low due to problems with implementation. All this was done through a change in bankruptcy regulations, with the aim of improving the business environment and boosting the domestic economy, which should result in a better placement of Serbia on the next Doing business list.

Editing bankruptcy settlement proceedings encourages further investment, reduces space for abuses and enables the country's further economic growth. Bankruptcy reform is enabled through changes in bankruptcy regulations, as well as other sectoral regulations affecting the course of bankruptcy proceedings, as well as the introduction of good practice that would encourage stronger cooperation between bankruptcy bodies and bankruptcy creditors, transparency

of proceedings, raising the liability of the bankruptcy manager, more rational cost control and optimization of deadlines for taking certain actions.

In legal regulating bankruptcy proceedings, it is not in itself enough to ensure the smooth functioning of economic developments in one country. The application of regulations requires people to implement them, and in this sense a strong, independent and efficient judicial apparatus is needed. Our bankruptcy legislation is still in the development phase even though great progress has been made, including the part concerning the reorganization institute. The overhaul preserves legal subjectivity and ensures that the legal entity continues its economic activities seamlessly. The process of implementing the reorganization plan is very complex, and requires dedication and expertise in carrying out certain activities.

The bankruptcy debtor's timely response to financial difficulties and his firm decision to sustain the business, which from his point of view is the goal of submitting the plan. In order to achieve all of this, a strong professional staff from the appropriate area is required to first analyze the causes of financial difficulties, the current state of operations and the completeness of the reorganization process.

Today, the reorganisation processes are conducted in a broad corps of already privatised companies. Many companies, in the face of problems in business, comprise their healing programmes, i.e. reorganization. Analyzing the plans comes to the conclusion that many of these programs look more like a wish list than a genuine plan of action that can lead to real improvements in business performance. Projections and plans for future business are usually overly optimistic and unrealistic. All of these plans, as an unwritten rule, envision only cosmetic changes to the existing business and production portfolio – no new business initiatives, markets and/or products, but also radical procedures related to property disinvestment or contraction of certain non-profit activities. Very little attention is paid to how to make the necessary changes happen. The reorganization is in our country, as well as in the world, as a rule, accompanied by numerous resistances, especially internal *stakeholders*. Particularly big problems exist in companies “*in reorganization*” due to unrelated work experience, unsecured health insurance, abuse and/or incompetence of management, political influences of individuals, etc.

Much has been invested in the reorganisation process, however, despite all these efforts, there are modest results that are far from desired. However, it is unrealistic to single out cases for any reason, each case is a story for itself. Because if we look at the work of our companies, we can conclude that a large number of them have just undergone bankruptcy proceedings, i.e.

the restructuring procedure so that it can continue to operate, so bankruptcy proceedings do not mean the end of the existence of an economic entity

It is of great importance that creditors decide to continue doing business, otherwise there is no possibility for the debtor's survival. Bankruptcy proceedings are carried out by a court determined by the law governing the jurisdiction of the courts. The jurisdiction of the court is prescribed by the Law on Regulation of Courts, among other things, the Commercial Court in the first instance judges bankruptcy disputes. The court that initiates bankruptcy against the debtor, or the restructuring procedure, is responsible for performing all other actions in the proceedings.

A quality and well-prepared restructuring plan, in situations where it can be implemented, increases the opportunity for the company to recover and return to the path of business success. The Institute of Pre-prepared restructuring plan is regulated according to the reputation of developed legal systems and by internationally recognised legal standards. The deadlines for adopting the plan are relatively short and precisely defined, so the procedure should take several months in optimal case. The company, backed by creditors, gets the opportunity to permanently resolve the most sensitive issues relevant to its financial survival.

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REORGANIZACIJA KAO POSLOVNA FILOZOFIJA

REZIME: Najčešći problemi sa kojima se privredna društva suočavaju su nemogućnost plaćanja ili izvršavanja obaveza prema trećim licima tj. svojim poveriocima. Kada privredni subjekt nije u mogućnosti da izmiri svoje obaveze, poverioci i treća lica ne mogu redovnim putem da naplate svoja potraživanja i tada dolazi do stečaja.

Promene uslova poslovanja u svetu, pogotovo ako se uslovi poslovanja pogoršavaju, aktuelizovaće pitanje otvaranja i efikasnost stečajnih postupaka. Uslov za pokretanje predstečajnog postupka je insolventnost, gde su dugovi, po pravilu, veći od vrednosti imovine dužnika. Danas, privredni subjekat, u skladu sa odredbama važećeg Zakona o privrednim društvima, za sve svoje obaveze odgovara svojom imovinom, tako da u situaciji kada postane nesposoban za plaćanje ima uglavnom dve alternative, bankrotstvo ili eventualno, mogućnost reorganizacije ako njegovi poverioci procene da je to celishodnije. Cilj stečaja je da se pod uticajem ekonomskih zakona tržišta uklanjaju iz privrednog života oni privredni subjekti koji svojim poslovanjem ne postižu ni minimum rentabilnosti i koji su nesposobni za normalan rad i poslovanje. Reorganizacija stečajnog dužnika je noviji institut našeg stečajnog prava, transformacije dužnika i to pravno-organizacione, upravljačke i finansijske. Institut reorganizacije zasniva se na ugovoru dužnika sa poveriocima, pružajući mu priliku da se ekonomski oporavi i izbegne bankrotstvo tj. brisanje iz registra pravnih lica, a omogućava povoljnije namirenje potraživanja.

Ključne reči: reorganizacija, stečaj, plan, privreda, subjekt.

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