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Serbia's bankruptcy law

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The Law came into force on December 23 2009, and is applicable from January 23 2010. An exception is provided for application of the provisions of the special procedure in case of a long-term incapacity, which are applied starting from 90 days from the date of entry into force of the new Law, i.e. from April 23 2010.

The new Bankruptcy Law brings a number of innovations for more efficient implementation in practice:

- The additional reasons for the bankruptcy have been introduced and the current were redefined and clarified. [AC1]
- In terms of bankruptcy bodies, the most important innovation is the abolition of the bankruptcy panel (panel consisted of judges who handle the bankruptcy).
- Due to the abolition of the bankruptcy panel, as a bankruptcy body, the system of legal remedies has been changed so the second instance court decides about all appeals to previously brought decisions [AC2]
- The proceeding on appeal is differently defined.
- The Law stipulates the role of the Bankruptcy Supervision Agency for licensing bankruptcy administrators which was not clearly defined by the previous law, which created major problems in practice.
- Regulated possibility for reimbursement of claims - compensation.
- The status of excluding creditors as holders of property rights has been improved and strengthened (very important for financial institutions, creditors and banks).
- The legal process consequences of opening of bankruptcy have been regulated more detailed.
- Security measures to preserve property in case of prohibiting the execution have been regulated.
- The effect of bankruptcy on the financial lease is defined in detail (very important for leasing companies).
- The claims verification procedure is a little bit changed and regulated more detailed:
 - (i) introduction of the preclusive deadline for application;
 - (ii) a more precise investigation procedure of excluding creditors' rights;
 - (iii) specifying the procedure for registration of claims by the executive title;
 - (iv) introducing the possibility of mediation;
 - (v) revoke of the complaint to the conclusion of the claim; and
 - (vi) emphasising the obligation to respect legally-binding decisions;
- The most significant changes in regulating the order of settlement:
 - (i) introduction of priority settlement of bankruptcy costs, before all investigation lines;
 - (ii) introduction of the term and regulation of settlement of costs of the bankruptcy estate;
 - (iii) introduction of the possibility of settlement agreement after all other creditors;
 - (iv) regulation of the priority payment to the owner of sold property;
 - (v) reducing the costs of pre-financing;
 - (vi) conversion of debts and claims regulated in details;
 - (vii) the right of first refusal has been regulated;
 - (viii) more precisely and clearly defined the right to interest during the bankruptcy;
 - (ix) the effect of the bankruptcy on the obsolescence is differently regulated; and
 - (x) deadlines for defying the legal actions of the bankruptcy debtor were changed.
- Significant changes in relation to encashment and division of the property are:
 - (i) more detailed regulation of encashment and division of the property;
 - (ii) more detailed regulation of the sale of the bankruptcy debtor as a legal entity;
 - (iii) better:
 - a. protection of the rights of secured creditors;
 - b. possibility to determine measures to protect the interests of secured creditors;
 - c. application of the provisions of the Protection of Competition;
 - d. status of the property which has not been estimated during the sale is regulated; and
 - e. legal subjectivity of the bankruptcy estate is regulated.
 - (iv) the subsequent division is more detailed and more clearly regulated.
- Changes related to bankruptcy administrators:
 - (i) The method for selecting a bankruptcy administrator is regulated by the method of random selection. [AC3]
- Especially important innovation is the introduction of a special procedure in case of the long-term payment incapacity, which is intended to be a very quick, efficient and easy way to eliminate permanently insolvent companies.
- Changes in the regulations which regulate the reorganisation:
 - (i) definition of the conditions for reorganisation was carried out;
 - (ii) required content of the plan was changed, in terms of:
 - a. the class of creditors and the criteria for their formation;
 - b. the introduction of a person who will monitor the implementation of the plan;
 - c. the introduction of the assessment of settlement obligation in case of bankruptcy and reorganisation;
 - d. shortening of the period for which financial statements shall be submitted; and

e. the obligatorily indication to reduce the obligations according to the plan even when the plan was not carried out in full.

(iii) limitations of due date of the reorganisation;

(iv) the possibility to control the percentage of equity acquired through conversion of debt;

(v) special treatment of related entities;

(vi) different regulation of voting on more plans;

(vii) effects of the adopted plan on the bankruptcy;

(viii) duty to inform about the implementation of the plan has been introduced; and

(ix) the possibility of filing the reorganisation plan prepared in advance was introduced.

The stated changes and innovations shall have a direct impact in practice and are aimed at improving the security and speed of the settlement of creditors, first of all the excluding creditors, which are mostly financial institutions, lenders, banks that have claims which are secured by mortgages and mortgages rights.

Also, for the first time the position of the financial lease has been defined in the bankruptcy. Setting rules of the international bankruptcy, which represent changes in the new Law, the possibility to efficiently charge their claims through cross border procedures has been given to the financial institutions, creditors and banks.

Special bankruptcy procedure, whose implementation will be time limited until December 31 2011, shall have for the aim and effect the automatic removal from the registers of all indebted companies more than two or three years, which will prevent the indebted companies to enter into business relationships with other companies in the market and thus to increase legal certainty for all market participants, including financial institutions, creditors and banks.

All stated changes in the Bankruptcy law will improve the position of the financial institutions, creditors and banks, security of investments and business environment in Serbia.

Financial and corporate

Recommended firms

Tier 1

Jankovic Popovic & Mitic in association with CHSH
Karanovic & Nikolic

Tier 2

CMS Reich-Rohrwig Hasche Sigle
Harrisons Solicitors
Moravcevic Vojnovic Zdravkovic in cooperation with Schoenherr
Prca & Partners
Spasic & Partners
Wolf Theiss

Tier 3

Drazic Beatovic & Partners
Bojovic Dasic Kojovic (BDK)
Jokovic Stojanovic & Partners
Zivkovic & Samardzic

Tier 4

Gide Loyrette Nouel
IKRP Rokas & Partneri
Law Office Milosevic
Ninkovic Law Office
Studio Legale Sutti
Tomic Stevic Dulic (TSD)

“Serbia in the past 12 months has probably had the toughest time I have ever seen,” says one partner.

In an attempt to get the market moving again the government initiated a large privatisation plan. One lawyer says: “Law firms have had to focus on their M&A practices in parallel with the privatisation.”

There is, however, speculation from lawyers that this is not the answer to the country’s problems. “There has been some unrest that the government are selling too much and they don’t know how much to sell,” says one partner. “And also, there has also been a problem in trying to find buyers.”

The government has also launched a series of initiatives in project finance to help raise some much needed capital, but many of these projects have been delayed indefinitely or aborted altogether. “Often deals went some way down the road but then they were pulled due to a lack of financing,” says one partner. “There was one significant project on a road but it has been a total disaster.”

Those optimists in the jurisdiction believe that there is good news on the horizon in Serbia saying that foreign investors are beginning to make noises that they are interested in a return to the market. “There are a few things coming up this year,” says one partner. “People feel the investors just cannot wait anymore.”

Of those sectors in the market which are deemed a safe investment from lawyers are the pharmaceutical, food and energy. “Investors are looking at opportunities,” says one partner. “They are being a lot more aggressive and considering their options.”

Tensions between the domestic and international law firms have risen over the past year as the work has been scarce and the local law firms have questioned the legality of their international counterparts. One domestic partner says: “I would like to say that the [international] firms are not allowed to practice here in Serbia. They are not regulated by the Serbian bar and therefore are not liable for the advice they give.”

But an international partner says: “There is a lot of jealousy among other firms and if what we’re doing is illegal then who cares? Before we came along there were solo practitioners working for the government. Now you have professional law firms.”

Another international lawyer adds: “Local law firms are very frustrated. They feel it is their market but they should simply get over it and work harder.”

Another consequence of the financial turmoil has seen the rise of individual law firms and offices in the jurisdiction. “Due to the lack of work, a lot of lawyers left their law firms to go and create their own offices,” says one partner. “They all thought they could go and get more business by themselves.”

Jankovic Popovic & Mitic in association with CHSH

Jankovic Popovic & Mitic in association with CHSH (Cerha Hempel Spiegelfeld Hlawati) has been at the top of the tree for some time and this year has been no different with the market praising the law firm and specifically managing partner Nikola Jankovic. “We found Mr Jankovic very useful,” says one client. “Our deal was extremely complicated which involved many aspects of contractual law and rights issues that had to be clarified and he did it very well.”

The firm has been involved with several deals involving several key practice areas including M&A, banking and project finance largely thanks to its association with Austrian law firm CHSH that is well known for its M&A department on its home patch. One partner says: “I think they have become a very good law firm since they became associated with a leading Austrian law firm in CHSH.”

The firm’s highlight of last year was on advising the state-owned gas company Srbijagas Novi Sad on its joint venture with Gazprom. The deal was one of the largest mergers in Serbia, valued at €1.5 billion, and involved a bilateral state agreement between

the Russian Federation and the Republic of Serbia.

On the banking side the firm, led by Julijana Jevtic and Dusan Djordjevic, advised the Serbian government on the restructuring of the Zastava Group in relation to the joint venture with Fiat Automobiles.

Leading lawyers

Nikola Jankovic
Nenad Popovic

Karanovic & Nikolic

Karanovic & Nikolic has maintained a strong firm over the past 12 months during the difficult financial period. The key to the success of the firm is that it has been able to find the blend between the local angle and the international approach. One partner says: "Patricia Gannon has given quality to the firm. Being Irish, she has brought the Western influence and professionalism to the firm."

One of the firm's key areas is the energy sector where it deals with oil, gas, electricity and renewable energies. The firm's clients are also drawn from a range of different professions including developers, contractors, owners and financiers.

One lawyer says: "They are a good overall local firm. The two managing partners there Dragan Karanovic and Dejan Nikolic are reliable and give good, solid advice."

Leading lawyers

Patricia Gannon
Dragan Karanovic
Dejan Nikolic

Harrison Solicitors

Managing partner Mark Harrison and his law firm Harrison Solicitors is one of the leading international firms in the jurisdiction, principally down the international contacts the firm has acquired since it was founded. It is the only England-based law firm in the jurisdiction, and has offices in London and Montenegro as well as Belgrade.

The firm is no stranger to handling the big deals, and its stand-out transaction last year was described by the Serbian Minister of Economy as the "deal of the decade". Led by Aleksandar Preradovic, the firm advised Fiat Group Automobiles on the joint venture with Serbian automotive industry Zastava and the government of Serbia in a deal valued at €700 million.

One client says: "Aleksandar Preradovic and Ines Matijevic-Papulin were awesome. They were hard working and always got results."

On the banking side, the firm is now advising OTP Bank in connection with a large credit facility agreement with Pevec Beograd commercial chain. "They were excellent," says one client. "They were quick to grasp ideas and were good on honing in on the issues."

The prospects for the firm look promising as it is involved with several large privatisation deals including the transaction advising the Ministry of Finance on the sale of Telekom Srbija in a deal that could exceed €1.5 billion

Leading lawyers

Mark Harrison
Ines Matijevic-Papulin
Aleksandar Preradovic

Moravcevic Vojnovic Zdravkovic in cooperation with Schoenherr

Moravcevic Vojnovic Zdravkovic in cooperation with Schoenherr has maintained the independence of a local law firm while managing to work with the well respected Austrian firm Schoenherr. "Because we were doing quite few cross-border deals they were able to help us in all the countries we were involved in," says a client.

The firm has had an array of different mandates varying from renewable energy financing to restructuring a large American television company. The firm has also had number of new hires; one of the only law firms in the jurisdiction to increase its headcount.

The firm's stand-out deal this year was advising German energy company RWE Power in the financing and construction of a 700MW thermal power plant in Obrenovac, Serbia. The transaction is expected to be valued at €1 billion. Led by Matija Vojnovic and Slaven Moravcevic, the duo continues to advise RWE on potential hydro power generation projects in both Serbia and Bosnia.

One client says: "I thought they were excellent. When things were getting a little crazy, they would come up with new ideas and take a whole new approach to tackle the issue."

The firm is also familiar with the M&A market and advised Procter and Gamble on the acquisition of Sara Lee's worldwide air care business, Ambi Pur. The firm is also advising Sony Corporation on its restructuring in several CEE (central and eastern European) countries.

One partner says: "I think they have done very well this year. They are three young lawyers who run the show, but they have all done remarkably well".

Leading lawyers

Slaven Moravcevic
Matija Vojnovic
Relja Zdravkovic

Spasic & Partners

Darko Spasic has led his law firm to a successful year with an array of different deals from restructuring deals to acquisitions. Spasic is one of the most experienced lawyers in Serbia with nearly 30 years in the market and has been the head of over 90 large M&A projects over the years.

"Darko was simply brilliant on our deal together," says one client, "it is clear that he is an experienced lawyer."

On one deal, Spasic led a team advising IFC, the European Bank of Reconstruction and Development (EBRD), Swed Fund and DEG on its €120 million capital shares investment into Komercijalna Banka. Working alongside Clifford Chance and Harrison's Solicitors, it was the first use of convertible preference capital in a Serbian bank.

In another highlight the firm advised investment fund New Frontier South East Holding on its purchase of Saga, a Serbian computer company. The deal involved a complicated payment structure with the price varying in instalments of securities over a certain period of time.

Leading lawyers

Darko Spasic

Wolf Theiss

Austrian firm Wolf Theiss' impact into the Serbian market has been as powerful as its brand. Led by Miroslav Stojanovic and Bojana Bregovic in corporate and finance respectively, the firm has brought a Western influence to the market which is noted by some competitors. "They have taken on the best young lawyers in the country and trains them to be the best," says one.

The firm has been at the centre of many of the nation's cross-border deals. On one mandate the firm advised Russian company Gazprom Neft on its post privatisation issues of Naftna Industrija Srbije (NIS), of which they were the majority share holders. Work involves the transformation of NIS into an open joint stock company and subsequent listing on the stock exchange. The privatisation was one of the largest in Serbia valued in the region of €700 million.

One lawyer who was praised in the market was Natasa Lalovic-Maric, particularly for her work in the M&A sector this year. She, along with Stojanovic, is representing Omya on the

acquisition of a Serbian mining company.

Leading lawyers

Bojana Bregovic
Natasa Lalovic-Maric
Miroslav Stojanovic

Other ranked firms

CMS Reich-Rohrwig Hasche Sigle had a steady year, particularly on the government's privatisation deals.

One competitor says: "They are a good law firm with some excellent lawyers. They are well respected here by their international peers."

The market believes that **Bojovic Dasic Kojovic (BDK)** showed signs of improvement this year and has entered the rankings in the third tier as a result. Many of its peers commend the firm for having an excellent practice, and note that it is showing signs of initiative and guile throughout its deals. "We give all our extra work to them," says one competitor. "I would be more than happy to sing their praises."

The firm had a chain of high-profile clients including international banks such as Barclays. On one deal the firm advised private-equity house CVC on a fully leveraged acquisition of Apatinska Brewery in Serbia and Niksicka Brewery in Montenegro. The deal, led by Tijana Kojovic and Uros Popovic.

"They are great for a little law firm," says one peer. "They have great individuals there."

Ninkovic this year advised clients on contractual work and entry agreements. Clients include Betfair, who is establishing its business into the Serbian market through local bookmakers and betting shops. The online betting company is being advised on the local laws surrounding the market.

One client says that the firm has a particular focus on the academic side of deals.

Other notable firms

Law Office of Tomislav Sunjka is based the northern city of Novi Sad and covers an array of different practice areas.

One of the firm's highlights this year saw it advise Agrovjvodina-Autouniverzal on a €3 million increase of shareholder's capital, squeeze-out of minority shareholders and the change of its legal form from a joint-stock company to a limited liability company.

The team also advised Agropanonka MTZ Finke on the €2 million restructuring of a company within its group.