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The International Comparative Legal Guide to:

Corporate Recovery and Insolvency 2013

7th Edition

A practical cross-border insight into corporate recovery and insolvency work

Published by Global Legal Group, in association with CDR, with contributions from:

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Chapter 32

Serbia

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1 Issues Arising When a Company is in Financial Difficulties

1.1 How does a creditor take security over assets in Serbia?

A creditor may take security over a debtor's assets under Serbian law in several ways.

Mortgage

If a creditor intends to create a security interest over a debtor's immovable assets, it may establish a mortgage over such asset under the Mortgage Act. A mortgage may be established by way of (i) an agreement (contractual mortgage), (ii) a court settlement (judicial mortgage), (iii) a mortgage statement, (iv) operation of the law (*ex lege*), and (v) a court decision. The mortgage is perfected only when it has been registered with the competent register of immovable assets, i.e. Cadastre of Real Estate.

Registered Pledge

A creditor may establish a security interest over a debtor's movable and intangible assets under the Secured Transactions Act (a so-called "registered pledge"). Such a pledge is perfected at the moment of its registration with the Pledge Register, kept with the Commercial Registers Agency. The pledge is usually established under a pledge agreement entered into between a pledgor (debtor or a third party) and a pledgee.

A pledgor's movable asset may be a specified item (*individualno određena stvar*); further, it may be a generic item (*stvar određene po vrsti*), if under the pledge agreement it can be specified. A pledge may be created over a pledgor's commodities held in a warehouse. Generally, the Secured Transactions Act does not recognise the possibility of a floating charge, though there have been insufficiently tested attempts in practice to introduce this concept contractually.

A pledge may be established over a pledgor's future items or rights (including receivables). In such a case, a pledge may be registered in advance; yet, it will be perfected only when the pledgor has acquired such item or right.

Pledges over receivables, bank accounts, proceedings under insurance policies or bank guarantees may also be registered with the Pledge Register.

A number of regulatory restrictions apply to pledges of receivables and bank accounts; therefore these collaterals may not be available in all situations. A pledge over receivables may be created if the pledgor's bank accounts are not blocked at the moment of the pledge registration. The debtor will pay any outstanding amount directly to the pledgor, until it has been notified of the pledge. As of that moment, the debtor should pay all amounts directly to the pledgee, unless the pledgee instructs otherwise. A pledge over bank accounts will be capped at the bank account balance as at the moment of pledge registration.

Pledges over IP rights, aircrafts and boats are registered in individual, specially designated registers.

A pledge over shares (*akcije*) issued by a joint stock company is registered with the Central Securities Depositary and Clearing House and perfected at the moment of its registration. The pledged shares are deposited on a subaccount held within the pledgor's securities account – a pledge account – and may not be traded until the pledge has been released (unless the shares are traded as a consequence of the pledge enforcement). An enforcement procedure over pledged shares (*akcije*) of joint stock companies is only regulated by bylaws of the Central Securities Depositary and Clearing House, and still lacks a stable legal framework. The amendments to several laws regulating capital markets are underway and expected to be adopted by the end of 2013. The amendments will regulate in more detail the pledge over shares and its enforcement.

Pledge under General Civil Law Rules

Under general civil law rules, a possessory pledge over movables may be established even without registering such pledge with any competent register. Yet, it is not the market standard for a creditor to establish such a pledge.

A pledgee holding such a pledge will have priority over a pledgee holding a registered pledge only if it: (i) proves it had acquired possession over such movables before perfection of a registered pledge; and (ii) established the pledge by way of a duly notarised agreement.

Assignment

In Serbia, a creditor may collateralise its claims by means of an assignment. To establish this type of security, a debtor (assignor) will assign its receivables to a creditor (assignee). Following the assignment, the creditor must safeguard the assigned receivables with the care of a prudent businessperson (*dobar privrednik*) or diligent owner (*dobar domaćin*). Once the creditor (assignee) has collected the assigned receivables, it may keep the amount necessary to recover its secured claims, but must pay the debtor (assignor) the amount exceeding the secured claims.

1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

A company's creditor or insolvency receiver may contest a company's transactions entered into during specified periods prior to filing for the

insolvency. Generally, there are five different types of vulnerable transactions that are exposed to such claw-back claims.

Customary Settlement

A transaction entered into by a company that provides a creditor with a customary security or settlement may be contested if:

(i) it was entered into during the six-month period prior to the insolvency petition filing; and

(ii) the company was insolvent at that moment; and

(iii) a company's creditor knew or should have known that the company was insolvent.

A transaction may be challenged if it was entered into following the insolvency petition filing, if a company's creditor knew or should have known the company was insolvent or the creditor knew an insolvency petition had been filed.

Incongruent Settlement

A transaction entered into by a company that provides a creditor with uncustomary security or settlement may be challenged if it was entered into during the 12-month period prior to the insolvency petition filing.

Directly Detrimental Transactions

A transaction entered into by a company that has a direct detrimental effect on a company's creditor may be challenged if:

(i) it was entered into during the six-month period prior to the insolvency petition filing, and the company was insolvent at that moment, and the company's counterparty knew the company was insolvent;

(ii) it was entered into following the insolvency petition filing, and the company's counterparty knew or should have known that the company was insolvent or that the insolvency petition was filed; or

(iii) it was entered into during the six-month period prior to the insolvency petition filing, and the company lost its right or claim, or its right or claim cannot be settled (as a result of such transaction).

Intentionally Detrimental Transactions

A transaction entered into by a company, with intent to damage one or more creditors, may be challenged if (i) it was entered into during the five-year period prior to the insolvency petition filing or thereafter, and (ii) the company's counterparty knew of the company's intent.

Transactions without – or for – Insignificant Consideration

A transaction entered into on terms where the company receives no consideration or one which has a value which is significantly less than the value of the consideration provided by the company may be attacked if it was entered into during the five-year period prior to the insolvency petition filing.

If a creditor of an insolvent debtor acquired a security interest over the insolvent debtor's assets during the 60-day period prior to the opening of the insolvency proceeding, such security interest shall be terminated automatically and the creditor will be deemed an unsecured creditor.

Under the Companies Act, a security created by a company to secure a shareholder (or shareholder's affiliate) loan will have no effect in the insolvency proceeding if it was created: (i) during the one-year period prior to the opening of the insolvency proceeding; or (ii) at the moment the company was insolvent. If the company repays such loan during the one-year period prior to the opening of the insolvency proceeding, such repayment will be deemed an intentionally adverse transaction and may be attacked (see above).

Special rules are applicable to insolvent banks or insurance companies.

Under Serbian general civil law, a creditor whose claim is due (regardless of when it arose) may challenge a transaction by its debtor that had an adverse effect on it. A transaction shall be deemed detrimental to the creditor if, following the settlement of such transaction, the debtor is unable to settle the creditor's claim.

1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Serbia?

Generally, directors owe a duty of care and diligence to the company. If they fail to adhere to these standards and thereby cause damage to the company, the company may claim for damages. Special restrictions, including civil and criminal sanctions exist under the Companies Act for transactions that are in conflict of interest.

A director may face severe criminal sanctions in the course of a company's insolvency proceeding, i.e. if: (i) due to malpractice, he/she causes the company's insolvency (*prouzrokovanja stečaja*); (ii) he/she fraudulently depreciates the value of the company's assets in order to avoid settlement of a creditor's claims (*prouzrokovanje lažnog stečaja*); (iii) if he/she, being aware of the company's insolvency, engages in fraudulent trading with the intention of adversely affecting the company's creditors (*oštećene poverilaca*); or (iv) he/she disposes of a company's assets (free of charge or for a consideration less than the market value) after the opening of the insolvency proceeding (*raspolaganje imovinom stečajnog dužnika posle otvaranja stečajnog postupka*).

A person or body corporate criminally convicted (for corporate crimes [*krivična dela protiv privrede*]) may be disqualified from acting as a director or supervisory board member for a fixed period of five years upon conviction.

2 Formal Procedures

2.1 What are the main types of formal procedures available for companies in financial difficulties in Serbia?

Under the Insolvency Act, a company in financial distress may avail of different formal procedures: (i) bankruptcy (*bankrotstvo*); or (ii) reorganisation (*reorganizacija*).

Companies that have not yet been privatised can undergo a restructuring process pursuant to the Privatisation Act which would allow them a special type of automatic stay (i.e. a temporary immunity from enforcement proceedings). This privilege is not available to the private sector. Restructuring proceedings can be indefinitely extended in practice, although the Privatisation Act generally provides for a maximum term of two years.

Voluntary workouts with creditors can be formally carried out pursuant to the Companies (Arranged Financial Restructuring) Act of 2011, provided that such workout is supported by at least two banks that are also acting creditors (see question 7.1).

2.2 What are the tests for insolvency in Serbia?

The Insolvency Act stipulates tests to assess if a company is insolvent.

A company is permanently unable to pay debts (cash-flow insolvency) (*trajnija nesposobnost plaćanja*) if it cannot settle its debts within 45 days of them falling due or if it suspends all payments for 30 consecutive days.

A company is over-indebted (balance-sheet insolvency) (*prezaduženost*) if the value of the company's assets is less than that of its liabilities. The Insolvency Act does not specify (for the aim of this test) if this calculation encompasses (i) all of a company's liabilities, or (ii) just short-term liabilities and liabilities that are due.

2.3 On what grounds can the company be placed into each procedure?

A company may be placed into each procedure on four grounds; two of them are described above (see question 2.2). The remaining two are as follows:

There is a prospect of the company being unable to pay its debts (*preteća nesposobnost plaćanja*) if it demonstrates the likelihood (to the satisfaction of a court) that it will be unable to settle its debts as they fall due. This should allow a company to (even before it has actually become insolvent) initiate an insolvency proceeding by filing the insolvency petition accompanied with a pre-packaged reorganisation plan.

An insolvency proceeding may be initiated if a company fails to follow a reorganisation plan or if it was adopted unlawfully or fraudulently. In this case, a company will automatically be placed into a bankruptcy proceeding (with no recourse to a reorganisation proceeding).

2.4 Please describe briefly how the company is placed into each procedure.

A company, its creditor(s) and a liquidation receiver may file an insolvency petition (*predlog za pokretanje stečanog postupka*) with a court having jurisdiction.

A company may file an insolvency petition on any of the grounds described above (see question 2.3). A company's creditors may file an insolvency petition in the case of a company's (i) permanent inability to pay debts, or (ii) failure to follow a reorganisation plan or if the reorganisation plan was adopted unlawfully or fraudulently. A liquidation receiver (*likvidacioni upravnik*) will file an insolvency petition where, in a liquidation proceeding commenced under the Companies Act, it determines that the value of a company's assets is less than that of its liabilities.

During the 30-day period following the insolvency petition (i.e. the pre-insolvency proceeding (*prethodni stečajni postupak*)), the court assesses if grounds for insolvency exist and (if so) will open an insolvency proceeding (*otvaranje stečajnog postupka*). Exceptionally, a court will skip the pre-insolvency proceeding and immediately open the insolvency proceeding if: (i) the debtor files an insolvency petition; or (ii) a creditor files an insolvency petition and the debtor acknowledges the existence of an insolvency event; or (iii) a creditor files an insolvency petition after it failed to collect its claims through an enforcement proceeding.

A reorganisation may be initiated in two ways.

A company may file an insolvency petition accompanied by a pre-packaged reorganisation plan (*unapred pripremljeni plan reorganizacije*). In this case the company may avail of an expedited proceeding that would likely end with the adoption of the plan (if the company has worked out the plan together with the creditors). The whole procedure should end within 30 days (this may be extended by 30 days).

If an insolvency proceeding is opened, a reorganisation plan may be filed within 90 days following the date of opening (this may be extended by 60 days). A reorganisation plan may be proposed by (i) a company, (ii) an insolvency receiver, (iii) a secured creditor having at least 30 per cent of the secured claims (compared to all claims), (iv) an unsecured creditor having at least 30 per cent of unsecured claims (compared to all claims), and (v) company shareholders owning at least 30 per cent of the share capital.

2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

A decision opening an insolvency proceeding (*rešenje o otvaranju stečajnog postupka*) will be served on the (i) company, (ii) petitioner, (iii) collection enforcement organisation, (iv) companies register, (v) other registers, and (vi) any persons deemed necessary by the court. Notice of the insolvency proceeding shall be published on the court notice board, in one high-circulation newspaper and in the Official Gazette of the Republic of Serbia.

The decision contains, *inter alia*:

- an invitation to creditors to file their claims;
- an invitation to debtors to settle their debts;
- the date, time and venue of the examination hearing (*ispitno ročište*); and
- the date, time and venue of the first creditors' meeting.

The initiation of the insolvency proceeding and all legal consequences arising therefrom will be effective from the day the insolvency proceeding notice is published on the court notice board.

2.6 Are "pre-packaged" sales possible?

Serbian insolvency law does not expressly provide for pre-packaged sales. However, a debtor may sell its entire or core assets through a pre-packaged reorganisation. Before such sale, the debtor must prepare a pre-packed reorganisation plan and submit it to a court, where it must be approved by the creditors (see the answer to question 2.4).

3 Creditors

3.1 Are unsecured creditors free to enforce their rights in each procedure?

Unsecured creditors (*stečajni poverioci*) cannot enforce their claims outside the context of an insolvency proceeding.

Once an insolvency proceeding is opened, an automatic stay (*zabrana izvršenja i namirenja*) enters into effect. The automatic stay prohibits the commencement and continuation of any enforcement proceedings or any other enforcement measure against the debtor or the property of the insolvent estate for the purpose of settling the claims.

3.2 Can secured creditors enforce their security in each procedure?

As a general rule, secured creditors cannot enforce their collaterals outside the context of an insolvency proceeding for the reasons explained above (see question 3.1). A secured creditor has priority over the proceeds from the sale of the collateral only. However, the sale process (including the timing of the sale) is under the control of the receiver.

A secured creditor may, however, request exemption from, and revocation of, the automatic stay regarding its collateral. The insolvency judge may approve such request if (i) the insolvent

debtor or insolvency receiver are not adequately safeguarding the collateral, (ii) the value of the collateral is depreciating, and there are no other means of maintaining the value of the collateral, or (iii) the value of the collateral is less than the secured claim and the collateral is not crucial for any eventual reorganisation of the insolvent debtor.

3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

A creditor may set-off its claims owed to an insolvent debtor against the insolvent debtor's claims toward it if: (i) the creditor acquired the right to set-off those claims before the insolvency petition filing; and (ii) the creditor filed its claim and a declaration of intention to set-off.

A creditor will acquire the right to set-off its claim against the debtor's claim if the claims are: (i) mutual (*uzajamne*); (ii) to be compensated in money or in other replaceable objects of the same type (*istorodne*); and (iii) due (*dospele*). These conditions must be met before the insolvency petition filing.

A special rule applies to the netting of a claim(s) arising under financial framework agreements (e.g. an ISDA Master Agreement). A creditor is entitled to set-off, i.e. net its claims against the debtor under a framework agreement, under the following conditions: (i) the transaction under the framework agreement has been entered into prior to the insolvency petition filing; (ii) the creditor has become entitled to set-off/net its claims under the framework agreement by the time an insolvency proceeding is opened at the latest; (iii) netting has been exercised either (a) automatically, or (b) by serving notice on the insolvent debtor within three days of an insolvency proceeding opening; and (iv) the right to set-off/netting has been triggered by (a) the existence of grounds for insolvency, (b) filing an insolvency petition, or (c) opening an insolvency proceeding over the debtor.

Insolvency set-off shall not be permitted if: (i) an unsecured creditor acquired or became entitled to the claim in question during the six-month period prior to the insolvency petition filing, provided the creditor knew or should have known that the debtor is insolvent or over-indebted (unless the claim in question relates to the settlement of non-performing contracts or has arisen out of a successful challenge to an insolvent debtor's transaction); or (ii) the creditor became entitled to set-off its claim through a vulnerable transaction.

4 Continuing the Business

4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

Control over an insolvent debtor is shared between:

- an insolvency judge (*stečajni sudija*);
- an insolvency receiver (*stečajni upravnik*);
- the creditors' committee (*odbor poverilaca*); and
- the creditors' meeting (*skupština poverilaca*) (not applicable to insolvent banks and insurance companies).

The insolvency judge decides, *inter alia*, whether to: (i) initiate an insolvency proceeding; (ii) open an insolvency proceeding; (iii) appoint an insolvency receiver; or (iv) administer an insolvent estate, etc.

As of the date of opening the insolvency proceeding, the insolvency receiver will exercise all directors' and other corporate body powers. The insolvency receiver manages the day-to-day business; however, he may enter into transactions of special importance (*radnje od izuzetnog značaja*) (i.e. borrowing credit or taking out a loan, acquisition of high-value assets, etc.) only if the insolvency receiver notifies the insolvency judge and if the creditors' committee approves such transactions.

During the implementation of a reorganisation plan, an insolvent debtor's directors and other corporate bodies will continue to manage and represent the company.

4.2 How does the company finance these procedures?

Initially, the person that files the insolvency petition is required to advance the procedural expenses. An insolvency petition will be dismissed if the expenses have not been advanced pursuant to the court order. The expenses of an insolvency proceeding will be settled to the fullest extent (if there are available funds) before settlement of insolvency lines (see question 5.2). If the value of an insolvent debtor's asset is less than the procedural expenses, the insolvency proceeding will automatically be terminated; exceptionally, the insolvency proceeding may be continued if the insolvent debtor or its creditor (i) requests continuance of the insolvency proceeding, and (ii) secures funds for settlement of these expenses.

During implementation of a reorganisation plan, a company will continue its business and all costs shall be financed from revenue.

4.3 What is the effect of each procedure on employees?

Employment contracts will not be automatically terminated once an insolvency proceeding is opened; the insolvency receiver may cherry-pick the employment contracts that will be terminated. Employee claims that arise from the opening of the insolvency proceeding shall be settled in accordance with the insolvency lines (see question 5.2).

Employee claims that arise after an insolvency proceeding has been opened, will be settled as liabilities of the insolvent estate (see question 5.2).

If there are no funds in the insolvent estate to settle employee claims, such settlement is guaranteed under the Labour Act; the Solidarity Fund (financed from the budget of the Republic of Serbia) will settle those claims. In this case, the law caps the amount of claims that may be settled from the Solidarity Fund.

The termination of employment contracts and hiring of new employees may be foreseen as a reorganisation measure under the reorganisation plan.

4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

If a contract is not fully performed by the date the insolvency proceeding opens (so-called *executory contract*), the insolvency receiver may decide to (i) suspend the performance of the contract, or (ii) honour and request the counterparty to honour the contract. In the case under (ii), the counterparty would have a claim against the insolvent estate if the insolvency receiver opts to suspend the performance (after it had requested the counterparty to continue performance) (see question 5.2). All powers of attorney and other statutory or contractual authorisations to directors to manage and represent the company will be deemed revoked.

A leasing agreement (*ugovor o lizingu*) will not automatically be terminated. At the opening of the insolvency proceeding, a lessor will request the hand-over of a leased asset. The leased asset will be handed over to a lessor, unless (i) the insolvency judge decides to sell the leased asset and pay the full lease amount to the lessor (in case of bankruptcy), or (ii) a reorganisation plan stipulates the leasing agreement (in case of reorganisation). A true lease agreement will not automatically be terminated. However, the insolvency receiver may decide to terminate it.

A fixed contract (*fiksni ugovor*) (where performance within an agreed time limit is of the essence) is terminated by law in case a debtor fails to perform within the agreed time limit. A creditor may not demand performance under fixed contracts if the respective performance deadline falls after the day of the opening of the insolvency proceedings. In that case, the creditor may only request damages as an insolvency creditor.

An order (*nalog*) issued by, and an offer received or issued by, the insolvent debtor will be terminated, unless the insolvency receiver opts differently.

Termination or amendment of an agreement may be envisaged as a reorganisation measure under a reorganisation plan.

5 Claims

5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

Both secured (*razlučni poverioci*) and unsecured (*stečajni poverioci*) creditors are required to file their claims with a court. The filing deadline is determined by court decision at the opening of the insolvency proceeding (30 to 120 days). The creditors will forfeit their claims if they fail to file them within 120 days.

The insolvency receiver (i) decides if the claims have merit, (ii) determines the claim amount(s), (iii) ranks claims through insolvency lines, and (iv) compiles a list of all claims. The final list of claims is drawn up at an examination hearing (*ispitno ročište*). The judge confirms, by way of a conclusion, the final list of claims. This conclusion is served on all creditors whose claims are contested so they may initiate a civil proceeding to prove their claims.

Creditors requesting separation of an asset (*izlučni poverioci*) file such request with the insolvency receiver. If the insolvency receiver rejects the request, the creditor may submit an official complaint to the insolvency judge. If the insolvency judge dismisses the complaint, the creditor may initiate a civil proceeding to prove its ownership. The automatic stay does not affect requests from these creditors.

5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

The expenses of an insolvency proceeding and liabilities of an insolvent estate will have priority in settlement. Only once they have been fully settled can the creditors settle their claims under the mandatory insolvency lines as follows:

i. unpaid minimum net-salaries of the insolvent debtor's employees covering the one-year period prior to opening of the insolvency proceeding and unpaid minimum pension and disability insurance benefits accrued during the two-year period prior to opening of the insolvency proceeding;

ii. all public revenues (e.g. taxes, and social contributions [other than pension and disability insurance benefits provided in the preceding point], etc.) accrued during the three-month period prior to the opening of the insolvency proceeding; and

iii. other unsecured creditor claims.

Further, the Companies Act stipulates that a company's shareholder/shareholder's affiliate may settle its unsecured claims against the company from a shareholder/affiliate loan only after unsecured creditors have settled their claims.

If a reorganisation plan is adopted and confirmed, claim settlement priority will be determined by the reorganisation plan.

A special insolvency line regime is envisaged for insolvent banks and insurance companies.

5.3 Are tax liabilities incurred during each procedure?

Generally, the opening of formal procedures does not affect the general tax regime. Insolvent debtors are required to continue paying taxes.

6 Ending the Formal Procedure

6.1 What happens at the end of each procedure?

The bankruptcy of a company will result in (i) the sale of all a company's assets, (ii) settlement of the company's creditors through realisation of the insolvent estate, and (iii) liquidation (winding up) of the company.

As an exception, a company may not be liquidated if it is sold as a legal person (not applicable to banks and insurance companies), by way of a debt-free sale of the entire company as a going concern. In such a case, the purchaser acquires the company' shares (together with its assets whilst the company's liabilities will be excluded).

If a reorganisation plan is approved, the company will continue its business. Once the company fulfils all obligations under the reorganisation plan, all creditor claims covered by the plan will be terminated.

If a proposed reorganisation plan is not approved, the Insolvency Act draws a distinction between the two situations.

If a pre-packaged reorganisation plan was submitted (see question 2.4), non-approval by the creditors brings the formal proceeding to an end.

On the other hand, if a reorganisation plan submitted after the opening of the insolvency proceeding was not approved by creditors, the company will automatically be put into a bankruptcy proceeding.

7 Restructuring

7.1 Is a formal procedure available to achieve a restructuring of the company's debts in Serbia?

A company may restructure its debts through several procedures: judicial reorganisation under the Insolvency Act (see questions 2.1 and 2.4); non-judicial restructuring under a special law; and restructuring in a privatisation procedure.

Financial Restructuring of Companies

A company in financial distress may undergo an extra-judicial restructuring procedure under the Companies (Arranged Financial Restructuring) Act (*Zakon o sporazumnom finansijskom restruktiriranju privrednih društava*).

If a company is in financial distress (i.e. cash-flow insolvency, prospective cash flow insolvency, or balance-sheet insolvency) it may negotiate the restructuring of its liabilities towards certain creditors. A pre-condition is that two creditors must be banks and be willing to negotiate. Negotiations should commence prior to the insolvency petition filing.

The debtor and creditors will first enter into a standstill agreement prohibiting the commencement and continuation of any enforcement proceedings or settlement (initiated by these two creditors) against the debtor. This voluntary stay will allow a "breathing spell" for the debtor to negotiate a financial restructuring agreement with these creditors. Under the agreement, various restructuring measures may be implemented (e.g. amendments to the repayment terms, realisation or transfer of the debtor's assets, debt-to-equity swaps, etc.).

Restructuring in a Privatisation Procedure

The Privatisation Act provides for the possibility of restructuring a state-owned entity prior to its privatisation in order to facilitate the privatisation process. The restructuring procedure is conducted by the Privatisation Agency (see question 2.1).

7.2 If such a procedure is available, is a debt for equity swap possible and how are existing shareholders dealt with?

A debt for equity swap is possible in the restructuring procedures referred to in question 7.1.

To perform a debt for equity swap, the cooperation of the existing shareholders is needed. Under the Serbian Companies Act, a debt for equity swap procedure starts with a shareholders meeting decision, adopted by a majority of the votes cast.

7.3 Can dissenting creditors be crammed down?

Under the Insolvency Act a reorganisation plan cannot "cram down" entire classes of creditors who did not approve the plan. However, cramming down within classes is allowed.

For the purpose of voting on a reorganisation plan, creditors are ranked into classes pursuant to mandatory insolvency lines (see question 5.2). In addition, secured creditors represent a special class. Yet, a sponsor of the reorganisation plan has flexibility to create additional classes of creditors and the insolvency judge may approve or (even) order such permissible gerrymandering.

A reorganisation plan is approved if each creditor class votes in favour of its adoption; a creditor class approves the plan by a favourable vote of its members who hold more than 50 per cent of the amount of claims in that class. If just one creditor class does not approve the reorganisation plan, the plan will not be adopted.

It should be noted that, in case the reorganisation plan is adopted by all creditor classes and approved by the court, it will bind dissenting members within the class.

7.4 Is consent needed from other stakeholders for a restructuring?

Generally, no stakeholder's consent is needed for a restructuring other than the creditors' and the shareholders'.

The consent from the Privatisation Agency is needed for a restructuring of state-owned entities in a privatisation procedure.

8 International

8.1 What would be the approach in Serbia to recognising a procedure started in another jurisdiction?

The provisions on international insolvency law regulating recognition of a foreign proceeding and reliefs thereof are, in principle, aligned with the UNCITRAL Model Law on Cross-Border Insolvency.

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