



# Bankruptcy Law in the Republic of Serbia

Richard Turton Award-winner, Jelena Marjanovic, evaluates the progress made since the new Serbian Bankruptcy Law was introduced in 2005

## The 'New Law'

Following a lengthy period of isolation and conflict, plus political, social and economic crises, Serbia began a much needed transformation of its Bankruptcy Law ('the old law') in 2000. By mid 2002, a draft law was the topic of considerable debate and was evaluated positively by the World Bank and EBRD. Finally on 2 February 2005, the Law on Bankruptcy Procedures (the 'new law') was implemented.

## New institutions established

Three key institutions were established by the new law: a regulator – the Bankruptcy Supervision Agency (BSA); a new profession – Licensed Bankruptcy Administrators; and the Bankruptcy Unit of the Serbian Privatisation Agency (PABU).

- **The BSA** is modelled along Canadian lines and is charged with issuing, suspending, renewing and revoking licences; setting the professional exam which all candidates must pass as a precondition of acquiring a licence;

maintaining a directory of licensed Bankruptcy Administrators; supervising the operations of Bankruptcy Administrators; and collecting and processing data relating to bankruptcies.

- **Licensed Bankruptcy Administrators** must now meet clear criteria to be eligible to take appointments. They are: possession of a degree, three years of work experience, entrepreneurship status (unlimited personal liability), success in BSA exams and subsequently acquisition of a BSA practice licence. To date, some 326 licences have been awarded, with approximately 80% of eligible candidates applying for a licence.
- **The PABU** is appointed by law to act as Bankruptcy Administrator of majority State or Socially Owned Enterprises (SSOE). Though the PABU only takes on SSOE cases, its role in applying the new law and developing the profession of Licensed Bankruptcy Administrators in Serbia, is significant.

## 1,345 bankruptcy cases in Serbia

Obtaining accurate statistics of the number of bankruptcy cases in Serbia is still difficult. However, as at 30 June 2006 some 1,345 bankruptcy cases were on foot at the

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16 Commercial Courts in Serbia<sup>1</sup> and more than 50% of them were with the Belgrade Commercial Court (50% of companies are registered in Belgrade). Of the 1,345 cases, some 770 were opened before the new law. As to the new law cases, most had been open for less than six months.

By law only Licensed Bankruptcy Administrators may now deal with bankruptcy cases. Despite this, only 900 or so cases are being dealt with by either Licensed Bankruptcy Administrators or parties such as the PABU which are appointed by law and are regulated by the BSA. Of these 900 cases, slightly more than 60% are in the private sector. It seems therefore, that some old law cases are being administered by non-licensed persons.

### Little reorganisation to date

Latest reports from the BSA show that there are only 23 reorganisations on foot. Given the flexibility of the law, that number should rise. While Licensed Bankruptcy Administrators may formulate and lodge plans, the low number of reorganisations might be explained by a variety of reasons such as debtors not having operated for years or products being obsolete. As to creditors, they too may promote plans but generally they display considerable passivity as well as ignorance of the law.

### 40% of bankruptcy cases are state or socially owned enterprises

The PABU is led by a director, supported by operational teams of managers (all licensed) and backed up by assistants (mostly licensed). The PABU leverages itself by engaging agents (almost 160, or nearly 50% of all Licensed Bankruptcy Administrators in Serbia) who work under the management and supervision of the PABU. The PABU contracts out other professional support as may be required.

### 343 PABU cases

By the end of February 2007, the PABU had 343 bankruptcy cases of which 312 were active. Of this, nearly 60% were old law cases transferred to the PABU. PABU's case load is now increasing at a rate of 10 new law cases per month, though it is likely that this will increase in the near term as privatisation in Serbia is brought to a close.

Most PABU companies have not been operational for some time. In their heydays they employed nearly 20,000 people; hence cases are mostly straight asset sales.

While there are nearly 200 Commercial Court Judges in Serbia, analysis reveals that although 91 handle PABU cases, 16 deal

with more than 50% of all PABU cases, suggesting that a degree of judicial specialisation is developing.

### PABU sales: 75 million Euros in 24 months

By the end of February 2007, the PABU had organised 451 sales, of which 336 were successful, generating approximately €75 million. There is, however, scope for improvement. For example, though nearly 1,000 parties have participated in sales, most transactions only involved one interested buyer. Similarly, in most cases the final selling price was lower than the bankruptcy valuation. More effort is needed in promoting and attracting potential buyers, and also assessing the merit of such "valuations".

### Measured progress in PABU case closures

By the end of February 2007, the PABU had 101 cases in which all the assets had been sold (realisations close to €45 million). Of this, some 33 had been concluded, with the remainder awaiting judicial rulings to bring them to closure.

It is an indictment of previous practices that most of the PABU's 30 suspended cases are old law cases transferred to the PABU, which has then subsequently found that the costs of the previous bankruptcy administration exceeded the value of the available assets.

### Issues being overcome

As might be expected, a number of issues have arisen and are being addressed. They include:

- **Problems of inheritance** – these are associated with the failures of the past which cannot be resolved, but instead must be dealt with, including:
  - Assets not well maintained. This should perhaps be expected given that enterprises had not functioned normally in years and illegal appropriation of assets was common place – in many cases perpetrated by management or company personnel;
  - Deficient records. The majority of debtors did not use, nor have, computers. Updated bookkeeping and other records existed in only a small number of cases. Worse, there are cases where important documentation appears to have been destroyed or perhaps never existed;
- **Stakeholder inertia** – this is associated with passivity, resistance and lack of familiarity by stakeholders of the law or willingness to accept change.

They include:

- Creditor passivity. Stakeholder participation is generally low, particularly amongst state creditors and other socially-owned enterprises;
- Poor buyer demand. For the most part, buyers are still local, with limited competition and low prices being realised;
- Responsive communications. Courts, the BSA, Bankruptcy Administrators, and creditor bodies must respond and communicate more quickly so that proceedings can proceed faster.
- **Issues of Law** – deficiencies maybe bridged by:
  - Improved creativity and timeliness by both Bankruptcy Administrators and the Judiciary in developing and approving solutions to problems;
  - Issuing explanatory guidelines from the Higher Commercial Court or the BSA;
  - Amending secondary legislation. This usually requires only ministerial approval; and
  - Amending primary legislation. This option is under debate at present, and because it would require the ratification of parliament, it is an avenue to be pursued as a last resort.

### Conclusions

Results to date suggest that the solutions adopted by Serbia are working. Insolvencies of SSOEs in particular are being closed and a cadre of skilled and motivated Licensed Bankruptcy Administrators is being built up. However, challenges remain, in particular, the existence of unlicensed persons dealing with 'old law' cases. This undermines the new law and process of bankruptcy in general, contributes to public confusion and engenders resistance and passivity to progress, all of which are still being encountered.

#### Footnotes

<sup>1</sup> BES – Baseline Assessment Report, USAID, July 2006.

Note: the Commercial Court in Pristina is not included.

Jelena Marjanovic is the winner of the 2006 Richard Turton Award. This article is an abridged version of a paper to be published shortly as part of the award. The views and opinions expressed in this paper and any errors or omissions are those of the author.



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