

L A W
ON BANKRUPTCY AND LIQUIDATION OF BANKS AND INSURANCE UNDERTAKINGS¹

I. BASIC PROVISIONS

Article 1

This Law governs the terms and procedure of bankruptcy and liquidation of banks, insurance undertakings and financial leasing providers.

Article 2

Bankruptcy proceedings shall be initiated over a bank or an insurance undertaking when a competent court issues a decision on initiating the bankruptcy proceedings, on the basis of the decision of the National Bank of Serbia on the fulfilment of conditions for the initiation of bankruptcy proceedings over a bank or an insurance undertaking.

Bankruptcy proceedings over a bank or an insurance undertaking shall also be conducted at the proposal of a liquidator upon determining that the assets of the liquidation debtor are insufficient to settle all claims of creditors.

Article 3

Liquidation proceedings shall be initiated over a bank or an insurance undertaking when a competent court issues a decision on initiating the liquidation proceedings, on the basis of the decision of the National Bank of Serbia on the fulfilment of conditions for the initiation of liquidation proceedings over a bank or an insurance undertaking.

II. BANKRUPTCY PROCEEDINGS

1. Initiating Bankruptcy Proceedings

Article 4

Simultaneously with the issuance of the decision to revoke the operating license of a bank, the National Bank of Serbia shall issue the decision on the fulfilment of conditions for the initiation of bankruptcy proceedings.

Notwithstanding paragraph 1 of this Article, if the resolution process is initiated over the bank whose operating license has been revoked, the National Bank of Serbia shall issue the decision on the fulfilment of conditions for the initiation of bankruptcy or liquidation proceedings in the following cases:

1) when, in accordance with the law governing banks, the transfer of assets and liabilities was carried out by applying resolution instruments, and the National Bank of Serbia assesses that the resolution objectives are fulfilled through the transfer;

2) when, in accordance with the law governing banks, it is determined in the course of the resolution process that it is necessary to provide additional assets for funding the resolution, and these assets are not available;

3) when the National Bank of Serbia assesses that the resolution objectives can no longer be accomplished.

¹ The consolidated text was composed based on the Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, No 14/2015), as well as Article 25 of the Law on Financial Collateral (RS Official Gazette, No 44/2018).

Based on the decision to revoke the operating license for carrying out insurance activities, the National Bank of Serbia shall simultaneously issue the decision on the fulfilment of conditions for the initiation of bankruptcy proceedings over an insurance undertaking.

The decision on the fulfilment of conditions for the initiation of bankruptcy proceedings over a bank or an insurance undertaking shall be final and shall become enforceable when submitted to the competent court.

Article 5

An administrative dispute may be filed against the decision issued by the National Bank of Serbia on the fulfilment of conditions for the initiation of bankruptcy proceeding referred to in Article 4 hereof, in accordance with the law governing banks.

In the administrative dispute against the decision referred to in paragraph 1 of this Article, the court may not resolve the administrative issue for which the law governing banks, the law governing insurance and this law stipulate the competence of the National Bank of Serbia.

The action against the decision referred to in paragraph 1 of this Article may challenge only the legality of the decision concerned and demand indemnification, unless claimed in a separate process.

If the decision of the National Bank of Serbia is annulled in an administrative dispute, and the National Bank of Serbia issues a new decision on the fulfilment of conditions for the initiation of bankruptcy proceedings in the repeated process, the legal consequences of the initiation of bankruptcy proceedings shall run from the first day when the announcement on opening the bankruptcy proceedings is placed on the notice board of the competent court.

Article 6

The decision on the fulfilment of conditions for the initiation of bankruptcy proceedings referred to in Article 4 hereof shall be submitted to the bank or the insurance undertaking, to the Deposit Insurance Agency established by a separate law (hereinafter: Agency) and to the competent court. Not later than the following business day from the day of the receipt of this decision, the competent court shall issue the decision on the initiation of bankruptcy proceedings over a bank or an insurance undertaking (hereinafter: bankruptcy debtor).

Article 7

In the decision on the initiation of bankruptcy proceedings from Article 6 hereof, the competent court shall set the time frame that cannot be shorter than 30 or longer than 90 days from the day of the publication of the notification on the initiation of bankruptcy proceedings in the RS Official Gazette during which creditors may file their secured and unsecured claims.

2. Bodies of Bankruptcy Proceedings

Article 8

Bodies of bankruptcy proceedings are the bankruptcy judge, the bankruptcy administrator and the board of creditors.

The Agency shall act as the bankruptcy administrator, in accordance herewith.

At the proposal of the Agency, the bankruptcy judge shall select and remove the members of the board of creditors, taking into account the size of their claims.

The board of creditors is comprised of five members, and exceptionally, at the substantiated proposal of the Agency, of more than five members.

3. Legal Consequences of the Initiation of Bankruptcy Proceedings

3.1. Basic Rule

Article 9

Legal consequences of the initiation of bankruptcy proceedings shall run from the day the announcement on opening the bankruptcy proceedings is placed on the notice board of the competent court.

3.2. Insured Deposits of the Bank in Bankruptcy or Liquidation

Article 10

The Agency shall pay out the insured deposits of the bank over which bankruptcy or liquidation proceedings have been initiated, in accordance with the law governing deposit insurance.

3.3. Insured Amounts of Claims of Clients of the Banks Members of the Investor Protection Fund

Article 11

The Agency shall pay out the insured amounts of claims of the clients of the bank – member of the Investor Protection Fund, over which bankruptcy proceedings have been initiated, up to the level of the insured claims, in accordance with the law governing the capital market.

3.4. Set-off Finality

Article 12²

The set-off of mutual obligations and claims is permitted and shall be conducted in accordance with the law governing contracts and torts.

The set-off of mutual obligations and claims shall be conducted until the draft for the main distribution.

The set-off of mutual obligations and claims is proposed by the bankruptcy administrator or the creditor, who shall submit a set-off statement thereof, delivered via a competent court. In case the set-off is carried out, the creditor shall withdraw the corresponding claim.

3.5. Transfer of Portfolio of Insurance Undertakings

Article 13

Within 30 days from the day of initiation of bankruptcy proceedings and by means of a public invitation, the Agency shall start the procedure to transfer the complete insurance portfolio or a part thereof, depending on the available assets of the bankruptcy debtor and payout ranks, in accordance with this Law.

Along with the transfer of the insurance portfolio to the assuming insurance undertaking, the corresponding funds shall also be transferred, whereby the Agency shall determine the availability of assets subject to the transfer.

The National Bank of Serbia shall give consent to the selection of the insurance undertaking that shall assume the insurance portfolio within 15 days from the day of the receipt of the notification from the Agency. When making the decision on giving such consent, the National Bank of Serbia shall assess the capacity of the proposed insurance undertaking to assume the insurance portfolio.

Transfer of the insurance portfolio is carried out by entering into an agreement that is concluded between the bankruptcy debtor and the insurance undertaking assuming the portfolio, within two business days from the day the consent from paragraph 3 of this Article is obtained.

² Article 12 shall cease to be valid as of 1 January 2019.

The Agency shall notify the insured and other beneficiaries about the conclusion of the agreement referred to in paragraph 4 of this Article by advertising in public media within two business days from the day the agreement is concluded.

The provisions of the law governing insurance shall accordingly apply to the transfer of the insurance portfolio.

3.6. Refutation of Legal Actions

Article 14

The Agency and the creditors have the right to refute legal affairs and legal actions by which the bankruptcy debtor privileged the creditors, within the meaning of the law governing bankruptcy of companies, with the exception of legal affairs and legal actions undertaken by the National Bank of Serbia and the Agency in relation to a bank resolution process, in accordance with the law governing banks.

The legal affairs and legal actions referred to in paragraph 1 of this Article may be refuted if taken within six months prior to the day of the occurrence of legal consequences of the initiation of bankruptcy proceedings, or within one year if these actions and affairs were taken with a related party.

The deadlines referred to in paragraph 2 of this Article shall start as of the day of the occurrence of legal consequences of the initiation of liquidation proceedings if the bankruptcy proceedings are conducted at the proposal of the liquidator, when the liquidator determines that the assets of the bank or the insurance undertaking in liquidation (hereinafter: liquidation debtor) are insufficient to satisfy all claims of creditors.

Within the meaning of paragraph 2 of this Article, the term “related parties” has the meaning prescribed by the law governing banks in the event of bankruptcy or liquidation of a bank or, as applicable, the meaning prescribed by the law governing insurance – in the event of bankruptcy or liquidation of an insurance undertaking.

Legal affairs and legal actions referred to in paragraph 1 of this Article shall be refuted by a lawsuit, which may be filed not later than twelve months from the day of the occurrence of legal consequences of initiation of bankruptcy proceedings.

3.7. Prohibition to Sell a Debtor as a Legal Entity

Article 15

The sale of a bankruptcy debtor as a legal entity shall not be permitted in the bankruptcy proceedings over a bank, insurance undertaking or financial leasing provider.

4. Obligations of the Agency

Article 16

Within 60 days from the day of the occurrence of legal consequences of initiation of bankruptcy proceedings, i.e. from the day of the assumption of assets and rights of the bankruptcy debtor, the Agency shall take inventory of the debtor’s property and draft the opening bankruptcy balance sheet that shall contain, in chronological order, the information on major transactions of the bankruptcy debtor that were concluded within six months prior to the initiation of bankruptcy proceedings.

Along with the inventory-taking and the opening bankruptcy balance sheet referred to in paragraph 1 of this Article, the Agency shall prepare and submit to the competent court a report containing the information about the following:

- 1) assets/property of the bankruptcy debtor, including RSD or foreign currency investments in other legal entities, arising from loan agreements, guarantees and sale and purchase agreements;
- 2) liabilities or contractual obligations of the bankruptcy debtor on account of which the property is held by third parties, including rental, lease and collateral agreements;

3) major transactions entered into by the bankruptcy debtor during the period of 180 days immediately preceding the occurrence of legal consequences of the initiation of bankruptcy proceedings;

4) actions carried out by the bankruptcy debtor on behalf of and for the benefit of other legal entities.

The inventory lists and the opening bankruptcy balance sheet referred to in paragraph 1 of this Article shall show the carrying value and the liquidation value of assets. The liquidation value of assets shall be determined by a certified court expert or a licensed certified auditor.

Based on the assessment of the collectability of claims carried out by a certified court expert or a licensed certified auditor referred to in paragraph 3 of this Article, and in relation to the existing collateral for claims, the claims on the debtors of the bankruptcy debtor are written off or reduced in the accounting records of the bankruptcy debtor, in accordance with the International Financial Reporting Standards, within the meaning of the law governing accounting.

The Agency shall update the reports on the bankruptcy estate balance and the progress of bankruptcy proceedings on a quarterly basis and post them on its website.

Article 17

The Agency shall establish the merits and volume of the claims submitted by creditors within six months from the day of the expiration of the deadline for the submission thereof.

An examination hearing, where the final list of all submitted claims will be compiled, shall be held no later than within 60 days from the day of the expiration of the deadline referred to in paragraph 1 of this Article.

Article 18

The Agency may decide to temporarily cover the costs of the bankruptcy proceedings from its own resources, while maintaining the right to recover those funds after the formation of the bankruptcy estate, to the extent sufficient to cover such costs.

5. Settlement of Creditors

5.1. Cost Covering

Article 19

The bankruptcy debtor shall pay the following as costs of the proceedings out of the bankruptcy estate, before the reimbursement of bankruptcy creditors:

1) unpaid net wages of employees, in the level of minimum wages for the last year prior to the opening of the bankruptcy proceedings;

2) unpaid contributions for pension and disability insurance of employees for the last two years prior to the opening of bankruptcy proceedings;

3) monthly wages of persons employed with the bankruptcy debtor;

4) costs encumbering the assets of the bankruptcy debtor and costs of the realisation of such assets;

5) costs of bankruptcy proceedings;

6) claims of the Agency resulting from the payout of the insured amount of deposits, i.e. of the insured amount of claims, within the meaning of the law governing investor protection, together with the costs incurred by the Agency in the process of reimbursement, claims of the Agency resulting from the use of assets of the Deposit Insurance Fund, in accordance with the law governing banks, as well as claims of the Republic of Serbia on account of financing bank resolution, in accordance with the law governing banks;

7) other costs and obligations incurred after the opening of bankruptcy proceedings.

The costs referred to in paragraph 1 of this Article shall be paid by the bankruptcy debtor on a monthly basis, in line with the inflow rate of the funds.

The minister in charge of finance shall prescribe the grounds and criteria for determining the remuneration for work and compensation for actual expenses of the Agency for performing the activities referred to herein.

5.2. Payout Ranks

Article 20

Claims of creditors of the bank in bankruptcy shall be determined at the examination hearing and paid out according to the following priority ranks (payout ranks):

1) claims of creditors remaining after the payout of the insured amount of deposits within the meaning of the law governing deposit insurance;

2) claims on the basis of public revenues that were due within the last three months preceding the opening of bankruptcy proceedings, except for contributions for pension and disability insurance of employees;

3) claims of the National Bank of Serbia including the claims on the basis of loans that were granted to the bank which are not fully settled due to the difference in the value of the collaterals;

4) claims of creditors on the basis of deposits, except for deposits of banks and other financial institutions;

5) claims of other creditors, except for creditors referred to in items 6) and 7) of this Article;

6) claims of creditors on the basis of subordinated liabilities of the bank;

7) claims of creditors which are also shareholders of the bank, except for claims based on initial capital that are settled from the surplus of the distribution estate in accordance with the law governing bankruptcy of companies.

Article 21

Claims of creditors of an insurance undertaking in bankruptcy proceedings shall be determined at the examination hearing and paid out according to the following priority ranks (payout ranks):

1) claims of creditors on the basis of life insurance and reinsurance contracts, up to the level of obligations declared in the funds of mathematical reserves, in accordance with the law governing insurance;

2) claims of creditors on the basis of accident insurance contracts;

3) claims of creditors on the basis of contracts for all other types of insurance;

4) claims of creditors on the basis of reinsurance contracts for all other types of insurance;

5) claims on the basis of public revenues that were due within the last three months preceding the opening of bankruptcy proceedings, except for contributions for pension and disability insurance of employees;

6) claims of other creditors;

7) claims of creditors who are also shareholders of the insurance undertaking or, as applicable, members (the insured) of the mutual insurance undertakings.

6. Application of the Law Governing Bankruptcy of Companies

Article 22

Unless otherwise prescribed in this Law, the provisions of the law governing bankruptcy of companies shall apply to the bankruptcy proceedings over banks and insurance undertakings, except for the provisions on preliminary bankruptcy proceedings, the creditors' assembly, the national standards prescribed by the minister in charge of economy, the Bankruptcy Supervision Agency and reorganisation.

Article 23

The provisions of this Law governing the bankruptcy and liquidation proceedings over insurance undertakings shall apply accordingly to bankruptcy and liquidation proceedings against financial leasing providers.

When determining the priority ranks in bankruptcy proceedings against financial leasing providers, the provisions of the law governing bankruptcy of companies shall apply.

III. LIQUIDATION PROCEEDINGS

Article 24

The competent court shall issue the decision on the initiation of liquidation proceedings over a bank or an insurance undertaking not later than the following business day from the day of the receipt of the decision issued by the National Bank of Serbia on the fulfilment of conditions for the initiation of liquidation proceedings over the bank or the insurance undertaking.

Article 25

The provisions of the law governing bankruptcy of companies and the provisions of this Law governing bankruptcy proceedings shall also apply accordingly to liquidation proceedings, except for the provisions governing the board of creditors, secured and excluding creditors, refutation of legal actions, and priority ranks.

The Agency may carry out transfer of the whole or a portion of the insurance portfolio in the course of liquidation proceedings by applying the provisions of Article 13 hereof accordingly.

Article 26

The bodies of the liquidation proceedings are the liquidation judge and the liquidation administrator.

The Agency shall act as the liquidation administrator, in accordance herewith.

Article 27

If, in the course of liquidation of a bank or an insurance undertaking, the Agency establishes that the conditions for initiating bankruptcy proceedings are fulfilled, it shall promptly submit the proposal to a competent court for the initiation of bankruptcy proceedings over the bank or the insurance undertaking in liquidation.

In the event referred to in paragraph 1 of this Article, actions conducted in liquidation proceedings shall be valid in bankruptcy proceedings as well.

Article 28

With the consent of the National Bank of Serbia, the voluntary liquidation proceedings shall be conducted over an insurance undertaking whose assembly has made the decision to dissolve it.

The chairperson of the executive board of the entity referred to in paragraph 1 of this Article, whose assembly has made the decision to dissolve it, shall submit the request to the National Bank of Serbia to obtain consent for voluntary liquidation proceedings not later than the following business day from the day that decision is adopted.

In addition to the request referred to in paragraph 2 of this Article, the chairperson of the executive board shall submit evidence that assets in possession of the insurance undertaking are sufficient to settle the claims of all creditors, along with other documents.

The National Bank of Serbia shall decide on the request referred to in paragraph 2 of this Article within 60 days from the day of the receipt of that request.

The decision referred to in paragraph 4 of this Article is final.

The National Bank of Serbia may prescribe in more detail the contents of the documents referred to in paragraph 3 hereof.

Article 29

If the National Bank of Serbia consents to the voluntary liquidation of an insurance undertaking, such proceedings shall be conducted in accordance with the law regulating companies.

Legal consequences of the voluntary liquidation proceedings shall run as of the day that the decision of the National Bank of Serbia referred to in Article 28 hereof is delivered to the insurance undertaking.

If the National Bank of Serbia rejects the request referred to in Article 28 paragraph 2 hereof, it shall initiate forced liquidation or bankruptcy proceedings over the insurance undertaking, in accordance with this Law.

The provisions of regulations governing insurance, which relate to the conditions for performing the function of a member of the management of an insurance undertaking, shall apply accordingly to the liquidator of the insurance undertaking in voluntary liquidation proceedings.

The National Bank of Serbia shall carry out offsite and onsite supervision of voluntary liquidation proceedings of the insurance undertaking, in accordance with the regulations governing insurance.

If, during the supervision referred to in paragraph 5 of this Article, the National Bank of Serbia determines that the rights of creditors are threatened, it shall issue a decision on forced liquidation of the insurance undertaking.

The assembly of the insurance undertaking shall adopt the report on the conducted liquidation, the closing balance sheet of liquidation proceedings and the report of a licensed certified auditor on the balance sheet, as well as the proposal for the distribution of the liquidation remainder, after having obtained consent of the National Bank of Serbia.

Article 30

In case of liquidation of a mutual insurance undertaking, the assets of that undertaking shall be used for the reimbursement of deposits to the founders and distribution among the members (the insured), commensurately with the size of their contribution paid in the last three years.

Article 31

In order to settle the obligations in respect of the incurred, but not reported damages, as well as the damages in dispute, the funds for the settlement of those damages shall be provided and provisioned in the closing balance sheet of the insurance undertaking in liquidation, in accordance with the rules on the criteria and manner of calculating provisioned damages.

The funds referred to in paragraph 1 of this Article shall be an integral part of the liquidation estate.

Article 32

If, upon the conclusion of liquidation proceedings, certain funds are left over, such funds shall be distributed to the shareholders of the liquidation debtor in accordance with the shareholding rights and in the amount commensurate with the share in the capital of the liquidation debtor.

The claims of creditors that were not registered by the date of the distribution of liquidation estate, except for the claims for the settlement of obligations referred to in Article 31 hereof, shall be settled after the conclusion of liquidation proceedings by the parties to whose benefit the remaining part of the liquidation estate after the main distribution has been paid in, and only up to the value of assets that have been taken over.

Creditors shall file lawsuits in respect of the reimbursement of claims referred to in paragraph 2 of this Article against entities to whose benefit the remaining part of the liquidation estate has been paid in, not later than within two years after the conclusion of liquidation proceedings, or the liquidation estate in case the proceedings are continued over a portion of that estate after the conclusion of liquidation proceedings.

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 33

Bankruptcy and liquidation proceedings over banks initiated according to the Law on Rehabilitation, Bankruptcy and Liquidation of Banks (SFRY Official Gazette, Nos 84/89 and 63/90 and FRY Official Gazette, Nos 37/93, 26/95, 28/96, 16/99, 44/99 and 53/01), the Law on Enforced Settlement, Bankruptcy and Liquidation (SFRY Official Gazette, No 84/89 and FRY Official Gazette, Nos 37/93 and 28/96), the Law on Bankruptcy Procedure (RS Official Gazette, No 84/04) and the Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, Nos 61/05, 116/08 and 91/10), shall continue in accordance with the provisions of the Law on Bankruptcy (RS Official Gazette, Nos 104/09, 99/11 – other law, 71/12 – CC and 83/14), this Law, with the exception of Article 20 hereof and in conformance with Article 17 of the Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, Nos 61/05, 116/08 and 91/10).

If the National Bank of Serbia revoked the operating license of a bank, and a competent court did not issue a decision on the initiation of bankruptcy or liquidation proceedings, as applicable, until the moment of entering into force hereof, the bankruptcy or liquidation proceedings shall be conducted according to the provisions hereof.

Article 34

Bankruptcy and liquidation proceedings over insurance undertakings initiated according to the Law on Enforced Settlement, Bankruptcy and Liquidation (SFRY Official Gazette, No 84/89 and FRY Official Gazette, Nos 37/93 and 28/96), the Law on Companies (RS Official Gazette, No 125/04) and the Law on Bankruptcy Procedure (RS Official Gazette, No 84/04) and the Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, Nos 61/05, 116/08 and 91/10), shall continue in accordance with the provisions of the Law on Bankruptcy (RS Official Gazette, Nos 104/09, 99/11 – other law, 71/12 – CC and 83/14) and of this Law.

If the National Bank of Serbia revoked the operating license of an insurance undertaking, and a competent court did not issue a decision on the initiation of bankruptcy or liquidation proceedings, as applicable, until the moment of entering into force hereof, the bankruptcy or liquidation proceedings shall be conducted according to the provisions hereof.

Article 35

The bankruptcy and liquidation proceedings of thrifts, initiated under the Law on Bankruptcy Procedure (RS Official Gazette, No 84/04), shall continue according to the provisions of the Law on Bankruptcy (RS Official Gazette, Nos 104/09, 99/11 – other law, 71/12 – CC and 83/14) and of this Law.

Article 36

On the day this Law comes into effect, the Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, Nos 61/05, 116/08 and 91/10) shall cease to apply.

Article 37

This Law shall come into effect on 12 February 2015 and shall apply as of 1 April 2015.