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PROCEDURAL MEASURES IN THE REORGANIZATION OF BANKRUPTCY DEBTOR IN SERBIAN LEGISLATION

Summary

The Proceedings of reorganization of the Bankruptcy Debtor represent a new start in this matter. After applying such proceedings, the Bankruptcy Debtor can continue his/her activities. The Reorganization Plan is the basic document of that Reorganization. The Bankruptcy Proceedings Act of the Republic of Serbia regulates many forms of Reorganization. Some of them are the main part of the Plan and include all possibilities for the continuation of the work of the Bankruptcy Debtor as well as solutions for payment of the Creditors' claims. Some of these forms include: keeping of all property of the Bankruptcy Debtor, sale of his/her property or transfer of the property for the settlement of the Creditors, closing some of the departments of the Bankruptcy Debtor or the change of Debtor's activities, etc. As a rule, the Reorganization Plan consists of several forms of Reorganization. The Creditors decide on the Reorganization Plan, but the application of the Plan depends also on the status of the Bankruptcy Debtor.

***Key words**: Reorganization, Reorganization Plan, forms of Reorganization, Bankruptcy Debtor, Creditors.*

1. Introduction

The reorganization of Bankruptcy Debtor provides for the possibility of his business continuation, even after the commencing of bankruptcy Proceedingss against him. In the Reorganization Proceedings the Organizational or Bankruptcy Plan is submitted, as a principal act in this matter substantively decisive in answering the qustion whether the Bankruptcy Debtor will continue his work or the Bankruptcy Proceedingss against

him go on.[1] That decision is rendered by the Creditors. The Reorganization Plan gives a vast range of possibilities for defining Bankruptcy status of the Debtor, following the initiation of Bankruptcy Proceedingss if there is no possibility of the Debtor to sustain and where the Reorganization Proceedingss are successfully carried out. The possibility of Bankruptcy Debtor to sustain depends first of all on the Reorganization Plan provisions, i.e. on versatile reorganization measures (this term is used in domestic bankruptcy legislation), but they must be justified and an opportunity must exist for their realization in the Reorganization Proceedingss.

According to bankruptcy legislation of Serbia, the Reorganization Proceedings instituted against Bankruptcy Debtor are provided for, which is also the case with legislations of neighboring republics (Bosnia and Herzegovina,[2] Republic of Srpska[3] and Croatia)[4], so that this matter is being regulated in a significantly different manner. The biggest similarities of the Serbian Bankruptcy legislation when compared to mentioned legislations are the Measures regarding the Reorganization Plan. The Bankruptcy Proceedingss Act of Serbia (hereinafter referred to as BPA)[5] regulates the Reorganization Proceedings for the Bankruptcy Debtor, enabling him to continue his work and other activities, so that "erasing" from the Register can be avoided. The fact is that the basic purpose of these Proceedingss is settling of Creditors' claims. However, such a target can be achieved through the Reorganization Proceedingss and a proper and true identification of Measures or Reorganization Forms which means that in establishing the plan contents, one should pay attention to how the Bankruptcy Debtor will be able to respond to the Reorganization Plan and also to Creditors' claims and other Proceedingss' subjects.

In our Bankruptcy legislation as well as in that of the neighboring republics, the organization has a double meaning that refers to Debtor's work continuation and also to Creditors' settlement. When these two targets are at

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[1] Dika M., Insolvencijsko pravo, Zagreb 1998, p. 75.

[2] Zakon o stečajnom postupku Federacije BIH (Code on Bankruptcy Proceedings of Federation BiH, Sl. novine Federacije BiH no.29/2003).

[3]Zakon o stečajnom postupku Republike Srpske (Code on Bankruptcy Proceedingss of Republic of Srpska, Sl. glasnik R. Srpske no. 67/02,77/02,4/03,96/03).

[4] Stečajni zakon Republike Hrvatske (Bankruptcy Code of Republic Croatia, Narodne novine no. 44/96, 29/99, 129/2000).

[5] Zakon o stečajnom postupku Republike Srbije (Bankruptcy Proceedingss Act of Republic Serbia, Sl .glasnik R. Srbije no.84/2004).

issue, the approach of the German Bankruptcy reorganization legislation is different. In the first place, the Bankruptcy Plan opens more possibilities for the settlement of Creditors' claims, while the relations between Debtor and Creditors may be resolved in a coercive or in a voluntary manner. Practically, this means that the German Bankruptcy Plan offers two possibilites. However, beside the Bankruptcy Plan a Rehabilitation Plan is also provided specifying, at the first place, the possibility of Debtor to continues with his/her business, but also, the possibility of transfering his/her business to third persons (commercial entity) who can complete it in a successful manner and thus settle the Creditors.[6] The parties to the Proceedings decide which plan will be accepted.[7] Otherwise, the German Insolvency Act[8] provides for a three part Bankruptcy or Insolvency Plan, as the case is in our legislation and in the ones of the neighboring countries. The first part refers to the plan contents and Creditor's rights in the Reorganization Proceedings.[9] The second part refers to the acceptance and contents of plans[10], while the third covers their surveillance and application.[11] The measures or Forms being provided in the part relating to its foundation and whose acceptance and approval depends on Creditors are up to the Applicant.[12] The German Bankruptcy legislation has strongly influenced the Bankruptcy legislations of Croatia and BIH (R. Srpska). Also, if we compare the above stated provisions of Reorganization Proceedings in the German Insolvency Act, we see that its Reorganization Proceedings structure is similar to the Bankruptcy legislation of Serbia.

Reorganization Proceedings offer various possibilities for "healing" the Bankruptcy Debtor: this concerns the Measures or the Reorganization Forms which can be executed for the purpose of Debtor's work continuation and fulfilling his/her obligations. As we said, the term "measures" is used by the Bankruptcy Proceedings Act but we call them "Forms" for various reasons. The first refers to the basic act in the Reorganization Proceedings, which is Reorganization or Bankruptcy Plan that is a more acceptable term for the stated act. The

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[6] Fialski H, Insolvency Law in the Federal Republic of Germany, 1994., p. 27.

[7] Ibidem.

[8] Insolvenzordnung, 5.10.1994. (BGBI. I P. 2866), 22.3.2005 (BGBI. I P. 837, 01.4.2004.).

[9] Insolvenzordnung, p.217-234.

[10] Insolvenzordnung, p.235-253.

[11] Insolvenzordnung, p. 254-269.

[12] Luer H.J., The Insolvency Laws of Germany, Juris Publishing 2002., p. 80.

most difficult issue is to determine the legal nature of Bankruptcy Plan, since it can be defined as an agreement of intentions, i.e. a Contract, taking in consideration the participation of all parties to the Bankruptcy Proceedings. The second reason is connected to the first one in the aspect of freedom to accept or refuse the plan, while the term "Measures" implies the imperative norms that can not be modified. Finally, third cause relates to the possibility of challeging various Reorganization Forms with the purpose of Debtor's work continuation although the BPA does not precisely refer to it. Using the term "Reorganization Forms" instead of "Reorganization Measures" does not have to imply criticizing of the legislation, but refers to the character of the Reorganization Plan itself as it has been defined by the BPA.

2. Legislative Nature of Reorganization Plan and of Bankruptcy Proceedings Status

The Reorganization Proceedings of Bankruptcy Debtor should ensure not only the continuation of Debtor's work but also the settling of Creditors' claims. Thus, the Reorganization as well as the Bankruptcy have two basic purposes. However, in the Reorganization Proceedings some issues arise that require responses before analyzing not only the Reorganization Form but the Proceedingsas well. Such issues relate to the Reorganization Plan, i.e. to its legal nature, and also to the status of Bankruptcy Proceedings in the moment of acceptance of Reorganization Plan, and moreover the status of the Bankruptcy Proceedings after the completion of Reorganization Plan, when there is no more probability to institute the Bankruptcy Proceedings. The Reorganization Plan is a particular act which must be accepted by all the parties in the Proceedings as well as by the Bankruptcy Debtor and the Creditors.[13] The Bankruptcy Judge approves the plan, if the majority of Creditors have voted for it. On other hand, a possibility should exist that Bankruptcy Debtor executes the proposed Reorganization Forms. When deciding on qualifying the Reorganization Plan as a Contract or as Court act, we shall choose the first solution, since all the above mentioned parties have to acknowledge it positively. Although the Bankruptcy Judge is the master of the Reorganization Proceedings, the Reorganization Plan is not an act of Court.

As far as the Bankruptcy Proceedings are concerned, the legislator has not precisely determined its status in case of institutng the Reorganization Proceedings. After the acceptance and upon its acknowledgment by an absolute deci-

[13] Dika M., Insolvencijsko pravo, Zagreb 1998., p. 76.

sion, the Reorganization Proceedings may commence. The BPA has no precise stipulation in this respect, except for the duty of a company that by accepting the plan it does not have to indicate the words "In bankruptcy" in its appellation of Bankruptcy Debtor, i.e. in its business communication.[14] If we accept this stipulation, this would mean that the Bankruptcy Proceedings becomes closed or canceled. Such decision is not the most appropriate one, although the other mentioned Bankruptcy legislations define this issue in the same way. Regarding the carrying out of Reorganization Plan and if the Bankruptcy Debtor proceeds contrary to the plan contents, the Bankruptcy Judge can decide on starting new Bankruptcy Proceedings against such party. Such circumstances have been specified in the BPA[15] so the new Bankruptcy Proceedings have to be instituted due to failing to execute the Reorganization Plan. Pursuant to BPA provisions we can conclude that in case of acceptance of Reorganization Plan, the Bankruptcy Proceedings has to be cancelled or else, if the Reorganization Plan is not applied, new Bankruptcy Proceedings shall be instituted. If the Reorganization Plan is executed pursuant to the BPA and the plan's contents, the Debtor may definitely continue his/her work.

Here is a brif analysis of the Reorganization Forms and other parts of the Reorganization Proceedings. However, before that we shall review the previous solutions in our Bankruptcy legislation relating to the possibility of further functioning of Bankruptcy Debtor. The Settlement, Compounding, Bankruptcy and Liquidation Act (hereinafter referred to as SCBLA)[16] also provide for a possibility of further functioning of Bankruptcy Debtor through undertaking of some Proceedings that can result in settlement of Creditors without instituting the Bankruptcy Proceedings. This refers to compulsory settlement and to the possibility of Bankruptcy Debtor's sale, when the Bankruptcy Proceedings continues against the Bankruptcy estate, being formed from the sale price. Some Reorganization Forms, regulated by the BPA are somewhat similar to the stated solutions in former domesic Bankruptcy legislation. In its provisions on the framework of Bankruptcy Proceedings Reorganization, the BPA provides for personal management of entrepreneur[17] since this Act specifies the possibility to institute Bankruptcy Proceedings against the entrepreneur or against physical persons.

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[14] Art. 133 (6) CBP.

[15] Art. 139 CBP.

[16] Zakon o prinudnom poravnanju, stečaju i likvidaciji (Settlement Compounding, Bankruptcy and Liquidation Act, Sl. list SFRJ no.84/89, Sl. list SRJ nos. 37/93, 28/96).

[17] Art. 140.-144. BPA.

3. Reorganization Proceedings

Some attention will be paid to the Reorganization Proceedings and their basic characteristics in different phases in order to determine more precisely the nature of Reorganization or Bankruptcy Plan (we use the first term for the Plan as specified in the BPA). Beside this, the Reorganization Proceedings are arranged differently in Serbian Bankruptcy legislation when compared to the above mentioned legislations. This particularly refers to the Reorganization Plan structure, which is more clearly regulated in these legislations. Acceptance of Reorganization Plan depends on its contents or proposed Reorganization Forms. Three basic issues are set in this respect and they are interconnected with basic phases of Reorganization Proceedings. These issues are:

1) Who is to submit the Reorganization (Bankruptcy) Plan?
2) In which manner the Reorganization Plan is accepted?
3) In which manner the Reorganization Plan is executed?

Vital for the Reorganization Plan is that it can be submitted with a proposal for instituting Bankruptcy Proceedings in a precise deadline after the commencement of the Proceedings.[18] If the submitter of the Reorganization Plan deems as satisfactory for the Debtor the conditions for the execution of Reorganization Proceedings, he would provide all the evidence supporting it, including the Reorganization Forms to be undertaken in the Proceedings. We have said that the Reorganization Plan can be submitted with a proposal for instituting the Bankruptcy Proceedings. This means that we have to answer the question as to whether these Proceedingss are carried out alongside each other or the Bankruptcy Proceedings are suspended during the Reorganization Proceedings. We shall see later on that there is a particular inconsistence in the BPA relating to these two Proceedings. In the Reorganization Plan the Applicant must give all basic data on Bankruptcy Debtor and on the possibility for execution of Reorganization Proceedings; in other words on the parties who will take care in proceeding with the execution. The Legislator has specified the contents of the Reorganization Plan,[19] but did not separate significant points from the irrelevant ones, as done, for example, in the Bankruptcy legislation of Croatia or BIH (Republic of Srpska), where the Reorganization or Bankruptcy Plan is divided in two parts: the preparatory part and the basics of the execution (as the principal part).[20]

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[18] Ninety days. Art.127(2), Art.130 (1) BPA.

[19] Art. 127(3) CBP.

[20] Dika M., Insolvencijsko pravo, Zagreb 1998., p. 76.

The Reorganization Plan includes the following vital points: **a**) Information on Bankruptcy Debtor, accountancy as well as financial reports; **b**) Reorganization Forms; **c**) Pecuniary means being at the disposal of the Debtor which may be directly distributed to Creditors; **d**) Deadlines for execution of Reorganization Forms; **e**) Parties who will undertake the Reorganization Forms (i.e. experts in the field); **f**) Evaluating whether the Reorganization Proceedings will lead to the settlement of Creditors and to continuation of Debtor's work. Thus, all points are not of the same value since Reorganization Plan can be divided in two parts, which is the solution in the neighbouring republics.

Not going into detailed analysis of the Reorganization Proceedings, we mention only the basic phases and focal points of the Proceedings. The parties to Reorganization or Reorganization Plan are Bankruptcy Debtor and Bankruptcy Creditors, as well as all other parties of Proceedings, for whom the Debtor Plan is relevant. This includes various Creditors, the persons having shares in Bankruptcy Debtor's business, etc. Beside this, as the party to Reorganization Proceedings, the Bankruptcy Manager should be mentioned as well, considering that he too can submit the Bankruptcy Plan.[21] The plan is to be submitted to the Bankruptcy Judge. The discussion and voting on Reorganization Plan takes place at the hearing or hearings. Provisions of BPA are not clear whether these are particular hearings. The Bankruptcy Court sets the hearing for discussing and voting about the plan within 20 days from the date of plan receipt.[22] The hearing is to be announced.[23] The Creditors vote for the Reorganization Plan according to the amounts of their claims. Otherwise, the voting takes place by applying Creditors' classes and groups.[24] If approved, the plan is executed in accordance with the proposed Reorganization Forms. Reorganization Plan is valid for all partie to the Reorganization Proceedings.[25] The surveillance of Reorganization Plan execution is obligatory pursuant to the BPA and is done by the Bankruptcy Manager.[26] After the Bankruptcy Manager has fulfilled all obligations in accordance to the proposed Reorganization Plan, he will continue his work without any obstacles.

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[21] Art. 129(1) BPA.

[22] Art. 131 (1) BPA.

[23] Art. 131 (3) BPA.

[24] Art. 132 (4) BPA.

[25] Art. 133 (1) BPA.

[26] Art. 133 (5).

In case of socially- or state-owned capital, the property will be sold in accordance to the privatization rules.[27] Should the Bankruptcy Debtor fail to execute the Reorganization Plan, every person concerned, the Creditors first of all, can notify thereof the Court,.[28] which may order particular measures against the Bankruptcy Debtor, i.e. institute the Bankruptcy Proceedings should Bankruptcy Debtor acts contrary to the form specified by the Reorganization Plan, or contrary to the law, but also should he fail to cooperate with other parties to the Proceedings in the execution of the Plan.[29]

On the basis of the above we can answer the three stated elementary questions. The Reorganization Plan proposes three categories of the Bankruptcy Proceedings parties: the Bankruptcy Debtor, Bankruptcy Manager and Creditors of various groups. The Creditors decide on Reorganization Plan, while the Bankruptcy Debtor performs the plan under surveillance of the Bankruptcy Manager and upon Creditors' approval. Practically, it depends from these subjects whether the Bankruptcy Debtor will continue his work or whether objectives of these Proceedings will be reached to suit, above all, the Creditors.

4. Reorganization Forms

The Reorganization Forms, defined according to BPA, require explanations relating first of all to a possibility of their merging. Reorganization parties are provided with a choice of other Reorganization Forms not being specified by the BPA. This means that the Reorganization Plan Applicants are not limited by forms specified by the BPA, but may propose other ones which, however, is less probable since the Legislator provided for twenty one forms which may be appropriately combined. Now, we shall analyze only the forms specified in the BPA. However, for practical reasons, it is not recommended to individually analyze in detail every form precisely because of the possibility of their combining. The fact is that it is not possible to propose in the plan only one Reorganization Form since this can not accommodate in every case both Bankruptcy Debtor and Creditors. Here is the list of Reorganization Forms[30] and a short evaluation of each one of them by which we analyze the possibility of application of the forms, whether independent or not.

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[27] Art. 137.

[28] Art. 138 (1).

[29] Art. 138 (2).

[30] Art. 128.

Following are the Reorganization Forms specified by the BPA:

a) **Holding up the whole property of the Bankruptcy Debtor or part of the Bankruptcy estate.** The first Reorganization Form refers to the possibility of leaving to the Debtor a part or the whole property for his work continuation. However, while applying this form, the Creditors must be convinced to be able to obtain payment of their own claims in the most efficient manner. By this Reorganization Form it is possible to leave a part of property to the Debtor with which he could continue his activity. Although it is not defined how it will be dealt with the remaining part of Debtor's property, most probably it will be sold so that the obtained means would be distributed to Creditors or divided directly among them. Application of this form depends mostly on the Creditors. This means that these are in fact two Reorganization Forms since we can not treat as identical the situation when the whole property remains with the Debtor for his business continuation, and the one when only a part remains with him/her, so that the Creditors can be partially paid.

b) **Sale of Bankruptcy Debtor's property (with or without pledge right), i.e. transfer of his/her property for settling claims.** The question here relates to the significance of this form. As mentioned, the SCBLA specifies the sale of Bankruptcy Debtor so that the Bankruptcy Proceedings would still be applied against the Bankruptcy estate to be formed out of the sale price obtained. The Bankruptcy Debtor would continue to perform his activity, meaning that he would not be erased from the Economic Entities Register. However, pursuant to the BPA, while defining this Reorganization Form one can not conclude that the legislator had in mind the modeling of Bankruptcy estate against which the Bankruptcy Proceedings would be applied. This form could be interpreted in a manner so that the money obtained from sale of the part of Bankruptcy Debtor property would be used for further continuation of Bankruptcy Debtor business. However, this form provides also the possibility of sale of the whole property. We believe that this form of the Reorganization or Bankruptcy Plan must be combined with some other form defined by BPA, or with some of the forms the application of which may be set by these parties to the Proceedings.

c) **Termination or closing down of the part of Debtor's non-profitable facilities or changing of Debtor's activity.** With the approval of the Creditors, the closing down of production or other parts of Bankruptcy Debtor shall be imposed since their further existence would only create expenses. In deciding on modification of activities, the attention is to be paid to those that are prof-

itable. Of course, this Reorganization Form must be followed by an appropriate plan, regardless of whether a Bankruptcy Debtor's part will be closed down or the activity modified. In other words, this plan must prove the probability that further continuation of Debtor's work would lead to the repayment of Creditors. This means that this form is not the closing down of the party (entity), but only reducing of his productiion and dismissal of employees, so that this form is to be combined with other ones.

d) Revision (modification) or cancelling of Contracts not favorable for the Debtor. Practically, this Reorganization Form represents a Bankruptcy Proceedings phase, after their instituting. The Bankruptcy Manager decides which contract of Bankruptcy Debtor should remain in force. Modification of contract can take place during the Reorganization Proceedings if impeding the proper execution of obligations provided. This form is not independent in the application but requires defining the status of other contracting party status, i.e. its compensation rights.

e) Repayment of debts in installments and postponement of payment. This measure represents a compulsory settlement, but the debt reduction is not provided. It is the same as the one of compulsory settlement enabling the continuation of Debtor's work with the payment of debts when the debt reduction does not take place. In case of compulsory settlement, the relevant conditions and presumptions for its taking place could be defined in following manner: **a**) the party is not able to complete its obligations or is insolvent; **b**) there is a proposition for instituting the Proceedings for applying compulsory settlements; **c**) reaching accord of the qualified Creditor's majority on settlement agreement, and **d**) the settlement has to be confirmed by the competent Court. These elementary characteristics of compulsory settlement can be indicated when defining this reorganization form, but fractional claims' reduction may not be applied. This form can also be combined with the first ones stated in point 1 (of 3).

f) Modifications of the maturity deadlines, of interests or other conditions relating to debts or credits. This Reorganization Form is "leaned" to the previous one, since it represents its partial modification. Conditions of payment and of interest rates are modified with Creditors' approval so that the Bankruptcy Debtor is thus enabled to pay off the claims in an easier way. Probably the forms given under points 5) and 6) should have been defined as one. This means that this measure is but another element of the compulsory settlement, since such elements relate to the reduction of Bankruptcy Debtor' debts and their payment when due.

g) **Writing off (exoneration) of debts of the Bankruptcy Debtor.** This form as well should be combined with other ones, since primarily the Creditors' interest must be considered and settled by claims repayment or in another way. The fact that exoneration of Bankruptcy Debtor's debts is unavoidable, some other form should be introduced that can relate either to the shares issuance of the Bankruptcy Debtor to Creditors, or that may transfer the whole or a part of Debtor's property to them. In any case, we can not speak of application of only one Reorganization Forms.

h) **Modification or execution of the pledge right**. The modifications connected to the pledge right of the Debtor, as well as their execution, depend on other parties in this relation and on the status of Debtor's property.

i) **Transformation of unsecured credit into the secured one.** First of all, in case of this form the Legislator has not defined whether the credits have been given or have been taken by the Bankruptcy Debtor. The case of Bankruptcy Debtor being a credit donor would be more appropriate. If the Debtor is the beneficiary of the credit the question is whether he is capable to undertake such Reorganization Form. The Bankruptcy Debtor must prove his ability to ensure the credit given to a third person, which would of course depend from this person's solvency.

j) **Giving in pledge the debt-free property if owned by the Bankruptcy Debtor**. As to be able to pay off the Creditors faster and in a more efficient manner, the Bankruptcy Debtor can pledge his debt-free property in order to obtain the payment means. Of course, the conditions have to be satisfacory as far as obtaining means from third persons is concerned. Otherwise, the creditors themselves do not have to appreciate this reorganization form if they can, by applying other forms, be paid off with higher amounts and more efficiently. This form is more convenient to the Bankruptcy Debtor than to the Creditors.

k) **Transformation of debts into shares or into stock capital**. Here we have new issuance of shares if Debtor's capital increases, if position of new stock holders must be defined as well as the relation of the Debtor against whom the Bankruptcy Proceedings were addressed, with these new shareholders. The capital enlargement can be considered only if it suits the Creditors, since the basic purpose of issuing new shares is the proper settlement of Creditors. This measure by itself does not have to represent a "new beginning" for the Debtor.

l) **Taking another (new) credit**. For this form it is not clear whether the claims transformation or Debtor's obligations are transformed into credit or

not. Namely, while transforming obligations into credit, the warranty issue is posed or that of guaranty for the execution of Debtor's obligations.[31] The pledge undertaken has not been formally provided as a particular Reorganization right, but it is indispensable that these two forms be simultaneously applied in order to protect first of all the Creditors.

m) **Obtaining new investment.** This Reorganization Form is close to the form under point 11) but only in respect of capital increase through share issuance. But, the acceptance of new investment can be done in another manner. As we see, this form requires other parties' participation if the obtaining a new investment is not considered as credit, which is not to be understood as the same thing. If any of the existing solvent parties intends to invest in the Bankruptcy Debtor, he would have to propose an investment program, which is a decision to be taken by the Creditors. In a way, a part of the Bankruptcy property is thus sold although this form can also be applied together with some other form.

n) **Cancelling or objecting of legally faulty claims by Creditors for the Bankruptcy Debtor.** While examining the Creditors' claims in the Bankruptcy Proceedings, the above action takes place relating to their objecting or cancelling. In the Reorganization Proceedings this form when combined with other ones is reasonable as Debtor's intention is to reduce his obligations.

o) **Settling the claims due.** This form requires additional explanations of the BPA. Namely, in the Bankruptcy Proceedings the matured and not matured claims have to be settled. This is a basic rule. However, in the Reorganization Proceedings it is not very clear what this form refers to. Does it refer only to the payment of due claims with fulfillment of particular conditions, or to the priority payment of all claims, so that those not due would in the majority of instituted reorganization proceedings be paid by applying some other Reorganization Form? Of course, and first of all, the Creditors will decide on this form too.

p) **Cancelling of Employment Contracts with the Bankruptcy Debtor.** This form represents also one of the actions undertaken in the Bankruptcy Proceedings, where the Bankruptcy Manager decides about employees whose employment contract have to be cancelled. If the Applicant of the Reorganization Plan evaluates that this form would enhace Debtor's continuation of work and if the Creditors agree, this may be possible with the combined application of some other Reorganization Form.

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[31] Eraković A., Stečajni zakon s komentarom i primjerima, Zagreb 1997., p. 143.

q) **Concession of not indebted property as the way of settlement of claims.** The not indebted property of the Debtor and property not pledged or inscribed as a guaranty for any other debt can be given for the claim settlement. The term "concession" may lead to some confusion. The problem is not about temporary concessions nor about claims warranty, but about the transfer of the Debtor's property part not being indebted by third person's rights or by other Creditors.

r) **Modifications and additions to the Statute and other acts of Bankruptcy Debtor, relating to incorporation and management.** If among other things in the Reorganization Proceedings the status of the Bankruptcy Debtor is changed, that shall lead to modification of the incorporation act and of other acts of Debtor. It is necessary to define every status modification since many forms in fact relate precisely to the stated matter. This is particularly true in the case of closing down of not profitable parts or facilities of Bankruptcy Debtor or in case of transfer of the whole or the parts of Debtor's property, the appearance of new parties to whom Debtors' property would be transferred, the new share issuance, etc.

s) **Merging or joining of Bankruptcy Debtor with other legal entities or natural persons.** In this measure it has not been defined when a new legal entity is formed, nor the rights of suche entity, or when the merging (joining) with the existing legal entty is taking place. Of course, here one should define precisely the execution of obligations due by legal entities to the Creditors and also the consequences of non-execution.

t) **Transfer of the whole or a part of the Bankruptcy Debtor's property to one or several existing or newly formed legal entities or commercial companies.** One of the Reorganization Forms refers also to the transfers of part or the whole property of the Debtor to one or several existing or newly founded legal entities, according to the BPA. One should specify this form, since it can create some misunderstandings, considering that such property transfer could lead to termination of business of the Bankruptcy Debtor. The property transfer can not be seen only as a transfer of means but also as transfer of all rights and obligations of the Bankruptcy Debtor. Other legal entities to whom the stated property (in the given sense) is transferred should create conditions for settling of Creditors' claims. However, this Reorganization Form provides as well that property part can be transferred. Therefor it should be defined which obligations have to be assumed by mentioned other legal entities and which have to stay with the Bankruptcy Debtor.[32]

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[32] Ibidem.

u) **Issuance of new stock values or cancelling of stocks already issued by the issuers – Bankruptcy Debtors to one or more existing or newly formed legal entities – commercial companies.** This form can create misunderstandings too, or cause the question as to whether the Debtor's rights and obligations are transferred in order to settle Creditors' claims, or some other disposition is at issue. If we accept the first point, we can not claim that transfer of all Debtor's rights and obligations is at issue. On the other hand, when applying this form, if other person is an already existing legal entity, then question of his warranty is posed. However, we shall treat it as utilization by Bankruptcy Debtor of his property.

v) **Resorting to other Reorganization Forms.** The Legislator has provided also the possibility of resorting to other Reorganization Forms to be proposed by the person in of reorganization plan. This means that several forms can be combined underlining the autonomy of intentions in the Reorganization Plan. However, one should be cautious, when choosing particular reorganization form, due to unified participation of Creditors in the plan acceptance and in its realization. A question can be posed about the reorganization forms that can be provided by the applicant of the Reorganization Plan that have not been already provided by the Legislator. This can figure only as an addition to other forms and would depend on the Bankruptcy Debtor or on his/her status and particularities.

The stated Reorganization Forms, as defined in the BPA, and those that the parties themselves can propose during the Proceedings must represent a basis for the realization of the Reorganization Proceedings. We believe that the Legislator has precisely defined the most of the existing Reorganization Forms. On the other hand, however, that could be done in a simpler manner, by defining a smaller number of forms or by suppressing several forms into one for their easier implementation. The Reorganization Forms are much more clearly regulated in the Bankruptcy legislation of Croatia which provides the possibility for the Proceedings parties or the plan Applicant to propose yet another form not specified by the Legislator. It has to be said that Reorganization Forms proposed by the plan depend on the nature of claims or debts and not only on the Bankruptcy Debtor (his status, form, activity, etc.) and on the Creditors' decision motivated mainly by the possibility of claims settlement.

5. Conclusions

The Debtor Reorganization Proceedings depend on forms being undertaken, i.e. on the content of the Reorganization Plan. The parties to the Proceedings prefer that the Debtor continues his work, although the Bankruptcy

Proceedings are instituted against him.[33] The Reorganization Proceedings are specific because they are carried out even during the Bankruptcy Proceedings. The Reorganization Proceedings of the Bankruptcy Debtor are a new institution, both in our legal science and in Serbian Bankruptcy legislation, intended to replace in a more efficient manner the institution of compulsory settlement.[34] The Reorganization Forms are various and some of them provide for a right to separate settlements of Creditors. However, all Reorganization Forms could be (even though the BPA specifies twenty one of them, not counting the possibility of proposing others as well) grouped in several sets, such as: transfer of Debtor's property to Creditors, sale to Creditors, postponement of claims payment, joining of Debtor with other newly formed and existing entities, and also property transfer to these entities. These forms are the basis of all stated ones. Other forms represent their additions and modifications without which the above stated ones could not be realized and without which the Reorganization Proceedings would not be efficient.

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PROCESNE MERE U REORGANIZACIJI STEČAJNOG DUŽNIKA U SRPSKOM ZAKONODAVSTVU

Procesi reorganizacije stečajnog dužnika predstavljaju novi početak za stečajnog dužnika. U vezi sa tim otvaraju se mnoga pitanja budućeg funkcionisanja stečajnog dužnika, kao i njegovog odnosa sa poveriocem, a isto tako i u vezi sa planom reorganizacije. O svemu tome, autor raspravlja u ovom članku, predstavljajući odgovarajuća rešenja iz srpskog zakonodavstva.

Ključne reči: reorganizacija, plan reorganizacije, stečaj, dužnik, poverilac, Srbija

[33] Dika M., Insolvencijsko pravo, Zagreb 1998., p. 75.

[34] Ibidem.

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