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**OVERVIEW OF  
CROATIAN BANKRUPTCY  
SYSTEM**

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The subjects of this overview are creditor rights and bankruptcy system in Croatia. Generalizations and summarization are necessary in some cases.

This overview is modeled to cover some of the major insolvency topics articulated by the World Bank, United Nations Commission on International Trade Law - UNCITRAL and INSOL International. Recognizing that, Croatian Bankruptcy Law need to comply with the core principles and best practices of international standards that external actors are most likely to apply when determining whether or not to invest in Croatia.

The Croatian Bankruptcy Law is harmonized with European Union standards and international model laws on insolvency. The first Bankruptcy Law in Croatia was delivered in 1857. The present insolvency system is based on the Bankruptcy Law dating from 2006 and it is related to the Companies Law and the Obligatory Relations Law. The Companies Law regulates the questions of the status of companies, such as the establishment of an enterprise, the nature of its business, its headquarters, its own internal regulations etc. It is important to point out, however, that this law does not regulate commercial contracts. In Croatia, this area is regulated by the Obligatory Relations Law.

The Companies Law regulates the issues of partnership, limited partnership, joint stock companies, limited liability companies, economic interest groupings and silent partnerships. These companies in Croatia possess the same features as in other legal systems, which make them comparable to those in other countries.

The Bankruptcy Law addresses the liquidation and reorganization of a debtor and it is consistent with market-based economy.

In particular, the law is far more creditors oriented than the American system and it is similar to the German and Austrian bankruptcy codes.

The bankruptcy procedure shall be instituted in order to jointly satisfy the creditor's claims by the realization of the debtor's assets and their distribution amongst the creditors. During bankruptcy proceedings the reorganization of the debtor may be instituted in order to regulate the debtor's legal status and its relations to its creditors, especially in order to preserve its operations.

The bankruptcy procedure may be instituted against a legal entity as well as against the assets of an individual debtor, who is the sole proprietor or tradesman. Croatia has not yet drafted a consumer bankruptcy law.

Judicial power is autonomous and independent, and judicial office is in general permanent. Judges are appointed by the Judicial Council whose

members are elected among distinguished judges, lawyers and professors of law.

A bankruptcy proceeding is conducted exclusively by the Commercial Court.

## 1.1. GENERAL INFORMATION ABOUT BANKRUPTCY PROCEDURE

The reasons for bankruptcy are insolvency and overdebteness. In general, a debtor shall be considered insolvent if it is not able to pay its monetary obligations during sixty days period. A debtor shall also be considered insolvent if its debts exceed its existing obligations.

Bankruptcy proceedings shall be initiated by a proposal filed by a creditor or the debtor.

A creditor with a legal interest in initiation of the bankruptcy proceedings shall be entitled to submit a proposal for commencing bankruptcy proceedings if it makes the existence of its claim and any of the reasons for initiating the bankruptcy proceedings plausible.

A debtor may propose the opening of a bankruptcy procedure in case of insolvency or overdebteness (if shows that debtor will not be able to pay the existing obligations when they become due). The management is bound to submit a proposal in case of the existence of any of the reasons for bankruptcy.

### 1.1.1. The bankruptcy procedure progress

#### 1. Proposal for commencing a bankruptcy proceeding

- bankruptcy proceedings shall be initiated by a proposal filed by creditor or debtor at The Commercial Court (debtor's employers can be creditors who can initiated proposal for commencing a bankruptcy proceeding because of outstanding claim, salary, severance pay etc.)

#### 2. Preliminary proceedings

- establishing debtor's financial situation
- existence of the reason for bankruptcy

3. Decision making- bankruptcy judge decides about initiation and/or conclusion of the bankruptcy
4. Initiation and bankruptcy proceeding conduction
  - o transfer of authority from debtor's bodies to trustee
  - o decisions on further debtor's operations (should be suspended or continued)
  - o opening of bankruptcy proceeding shall be deemed as a special justified reason for cancellation of employment contract
  - o the creditors in bankruptcy shall report their claims, who are examined, and then - liquidation (or Bankruptcy plan-reorganization)
  - o distribution - payment of creditors in adequate percentage, according to their claims, classified into priorities (ranks).
5. Closing of bankruptcy procedure- deleting from the register-when deleted the debtor ceases to exist.

#### 1. 1.2. Reporting claims-settlement presumptions

- o for the settlement of the claim from the debtor it is necessary to report the claim (with all the evidences-documentation) to the trustee of the bankruptcy generally within 15-30 days term from the announcement day of the decision of the initiation of the bankruptcy procedure in the Official Gazette (see Articles 96., 173-182, Bankruptcy Law )
- o without the prior report , there is no settlement , regardless debt existence dispute
- o first rank of high priority claims employees claims , and former employees claims arise in gross amount till the bankruptcy proceedings initiation day , severance pay, and compensation of damage caused by injury on work or professional disease , have been settled first
- o in second rank of high priority claims come under all other claims (f.e. suppliers..) except low priority claims (interests on claims arise from initiation of bankruptcy procedure - see Article 72 of Bankruptcy Law)

#### 1.2. SECURED CLAIMS AND ENFORCEMENT

Most common types of security in real and personal property in business financing are mortgage on the real estate and pledges on shares or on the bank account.

Most loans to business are secured and in banking this is obligatory in many cases.

In bankruptcy proceedings, the real property estate against which secured claims (a separate right) exist shall be sold by the bankruptcy judge upon the proposal of the trustee, in accordance with the provisions on enforcement against the real estate.

If a separate creditor has initiated the procedure for the execution over the real estate before the trustee in bankruptcy has proposed the sale of this real estate, it shall be sold within the execution proceedings initiated by the creditor by a judicial sale.

The process of creating, registering and enforcing collateral (secured claims) has shown to be very efficient.

### 1.3. UNSECURED CLAIMS AND ENFORCEMENT

Creditors satisfy their unsecured claims by selling the debtor's assets and their distribution according to the bankruptcy law.

Claims reported after the period of reporting (claims that are overdue) can be examined at a separate examination hearing. Claims reported three months after the first examination hearing will be rejected (art. 176 Bankruptcy Law, further in the text :BL).

If the claims are refuted, the court shall direct the creditor to institute legal proceedings to establish the refuted claim in the time determined by the court decision. Such legal action might last a year or two, and it would not be overly too expensive.

### 1. 4. LIQUIDATION

In Croatia, an insolvent business is liquidated by a judicial proceeding typically commenced by creditors (mostly unsecured). The Bankruptcy Law applies to liquidations as a single state code. Liquidation of an insolvent debtor is a court supervised proceeding.

The trustee who is in charge of liquidation is appointed by a court, but at the first meeting of the creditor's assembly the creditors may elect another trustee.

#### 1. 5. REORGANIZATION - BANKRUPTCY PLAN

In judicial proceeding, reorganization is typically commenced by the debtor or the unsecured creditor. The Bankruptcy Law applies to reorganization (bankruptcy plan). It is single code. In the same way as liquidation, reorganization is a court supervised proceeding. A trustee is appointed by the court as in liquidation. Because liquidation and reorganization are parts of the same bankruptcy proceeding, the trustee is the same person in both processes. The decision on the confirmation of a reorganization plan may require supervision of the implementation of the plan. If supervision has been provided for, after the conclusion of the bankruptcy proceedings the debtor's fulfillment of his obligations to the creditors shall be supervised. The supervision shall be executed by the trustee, the creditor's committee and the bankruptcy judge. The bankruptcy judge shall issue a decision on concluding the bankruptcy proceedings as soon as the decision on confirmation of the bankruptcy plan becomes perfected.

The duties of the trustee in bankruptcy and creditor's committee members shall terminate upon issuance of the decision concluding the bankruptcy proceedings. The debtor shall again be free to dispose of the estate.

#### 1. 6. NON-BANKRUPTCY WORKOUTS AND RESTRUCTURINGS

In Croatia there are no special non-bankruptcy workouts and restructuring procedures and laws. However, there are many possibilities based on the Law on Mediation, Law on Arbitration, Obligatory Relations Law and Companies Law which can be applied.

The parties can reach the out - of - court settlement or use an arbitration clause in their contracts. Non - judicial rehabilitation mainly depends on the will and skills of parties involved.

## **2.0. LEGAL FRAMEWORK FOR CREDITORS RIGHTS**

## 2.1. THE CREATION AND ENFORCEMENT OF SECURITY IN REAL PROPERTY

Creditors who have a separate claim (secured creditors) against real estate, fixtures or rights that are inscribed in a public register (land register, register of vessels, intellectual property and similar) have the right to separate satisfaction according to the provisions of the Law on enforcement procedure (art.81.BL). The creditors who have claims secured by a lien on an object which is part of the bankruptcy estate that has not been entered in a public register have the right to separate satisfaction of their claim, interest and costs from the value of the object. Separate creditors (approximate equivalent of secured creditors) shall report their claims to the trustee noting which part of the bankruptcy estate corresponds to their claim.

During the examination hearing the reported claims shall be examined. Secured claims shall not be subject to inquiry.

The bankruptcy judge shall issue a decision on the established claim.

The real property shall be sold by the court in bankruptcy proceedings or in enforcement proceedings. Separate creditors may not sell the real property without the intervention of the court. The decision on the sale of property shall be recorded in the land register.

If the real property estate was not sold at the first hearing for sale for the determined amount, it may be sold at a lower amount at subsequent hearings (art.164.BL)

The creditor is entitled to interest until payment in full is made.

After the trustee has received money, the amount necessary to compensate the sales costs shall be paid to the bankruptcy estate and the remainder shall be used to satisfy the separate creditor without delay (art.169.BL).

## 2.2. SECURITY IN PERSONAL PROPERTY

Creditors who have received some fixture or interest from a debtor as collateral for their claim, or the creditor who has the statutory right of retention have the same status as creditors who have a separate claim against the real estate.

The trustee may sell a fixture on which the right to separate satisfaction exists by direct bargain if the object is in his possession. He may collect on or in some

other way reduce the claim that has been pledged by the debtor in order to secure a certain interest (art.165.BL).

Before the trustee transfers an object to a third person, he shall inform the separate creditor and give him an opportunity to propose the reduction to cash that would be more favorable to the creditor.

The alternative method of reduction to cash can be for the creditor to take over the object.

### 2.3. UNSECURED CLAIMS

The majority of claims in bankruptcy proceedings are unsecured. The creditors report their claims to the trustee and it shall be considered established if it has not been refuted during the examination hearing.

Creditors can satisfy their claims by the realization of the debtor's assets and their distribution amongst creditors according to provisions of the Bankruptcy Law.

Therefore, in general, after the bankruptcy proceedings have been initiated, no creditor is entitled to demand enforcement against the debtor on the parts of estate that comprise the whole bankruptcy estate. Separate creditors and creditors of the bankruptcy estate however are in a different position.

### 3.0. LIQUIDATION

### 3.1. PRINCIPAL LAWS GOVERNING LIQUIDATION

#### 3.1.1. Liquidation of an insolvent business

The Croatian legislator uses term bankruptcy proceeding also in the meaning of liquidation of an insolvent business and Bankruptcy Law sets the provisions for liquidation of the debtor's assets.

Bankruptcy Law applies to Liquidation (of an insolvent business) in Croatia, which is connected with the Companies Law and the Obligatory Relations Law. According to Croatian law, liquidation of an insolvent business is part of the Bankruptcy procedure as well as Reorganization.

During the liquidation of a legal entity, the commencement of a bankruptcy procedure is permitted until the distribution of the assets has been completed. In this report we shall present the liquidation of an insolvent business.

#### 3.1.2. Liquidation as a methodology of settling accounts and divisions among company members according to the Company Law

After the occurrence of reason to discontinue the company, a liquidation procedure is initiated unless the company members have agreed upon a different method of settling accounts and divisions or unless an act of bankruptcy has taken place.

Liquidation is usually carried out by company members as liquidators. Liquidators may be appointed by the court for important reasons. The court may appoint persons who are not company members to be liquidators. After debts of the company have been settled, the liquidators shall divide the remaining assets among the members in proportion to their shares in the company's capital.

### 3.2. COURTS WHICH ADMINISTER LIQUIDATION

Commercial courts administer liquidation of an insolvent business. Commercial courts are the first instance tribunals for disputes involving commercial transactions or commercial entities. These courts are also responsible for matters related to trading companies, bankruptcy and liquidation, as well as all other commercial issues, domestic or foreign.

### 3.3. COMMENCEMENT OF LIQUIDATION

Bankruptcy proceedings shall be initiated by a proposal filed by a creditor or the debtor.

A creditor with a legal interest shall be entitled to submit a proposal if it makes the existence of its claim plausible.

The bankruptcy judge will pass a decision instituting the preliminary procedure in order to determine the existence of conditions for the opening of the bankruptcy procedure, or will reject the petition.

### 3.4. PARTIES TO LIQUIDATION

#### Debtor in bankruptcy

The bankruptcy procedure may be instituted against a legal entity as well as against the assets of an individual debtor who is the sole proprietor or a tradesman. We do not have consumer bankruptcy yet.

#### Creditors in bankruptcy

The creditors in bankruptcy are personal creditors of the debtor who have legally based claims against the debtor at the time of the opening of the bankruptcy proceedings.

### 3.5. LIQUIDATION ESTATE

#### Bankruptcy Law use term Bankruptcy estate

The bankruptcy estate shall encompass the total assets of the debtor at the time of opening of legal proceedings and the assets obtained during the proceedings (bankruptcy estate).

The bankruptcy estate shall be used to cover the costs of the bankruptcy proceedings and to satisfy the debtor's and/or creditors claims that have been secured by some rights on the debtor's assets.

### 3.6. ADMINISTRATIVE POWERS

#### Bodies of the Bankruptcy procedure

The bodies of bankruptcy proceedings are the following: bankruptcy judge, trustee in bankruptcy the creditors' assembly and creditor's committee.

#### 3.6.1. Bankruptcy judge

1. Decide on the initiation of preliminary procedures to determine the existence of grounds for bankruptcy and conduct such procedures,
2. Decide on the commencement of bankruptcy proceedings,
3. Appoint and dismiss bankruptcy trustees, supervise their work and provide them with binding instructions, pursuant to this Act,
4. Oversee the work of the creditor committees,
5. Specify the operations already under way which must be concluded during the bankruptcy proceedings, pursuant to this Act,
6. Approve the preliminary estimate of costs of bankruptcy proceedings and set the rate of compensation for bankruptcy trustees,
7. Approve the payment of creditors,
8. Make decisions on the conclusion and suspension of bankruptcy proceedings,
9. Decide on all other matters relevant to bankruptcy proceedings, with the exception of those matters decided upon by other bodies involved in bankruptcy proceedings as specified by Law on Bankruptcy.

### 3.6.2. The trustee in bankruptcy

The trustee shall be a natural person with university qualifications, obtained state certificate for a trustee and who is on the list of trustees in bankruptcy. The trustee in bankruptcy shall be appointed by the decision to open the bankruptcy procedure, having in mind her/his necessary expertise and business experience.

The creditors may elect another person to serve as the trustee in bankruptcy instead of the one appointed by the bankruptcy judge.

The trustee in bankruptcy represents the debtor.

If the debtor continues with its business during the bankruptcy procedure, the trustee shall manage these affairs.

The trustee in bankruptcy is bound to proceed with consciousness and care, and in particular has to prepare an opening balance sheet, conscientiously conduct the debtor's affairs, liquidate or turn into cash the assets of the debtor, prepare the distribution to creditors and after approval execute the distribution, and deliver the closing balance.

The trustee shall submit written reports on the course of the bankruptcy.

The work of the trustee shall be supervised by the bankruptcy judge .

### 3.6.3. Creditor's committee

In order to protect the interest of the creditors in the bankruptcy proceedings, the bankruptcy judge may establish a creditor's committee and appoint its members or the creditors may decide about establishing the creditor's committee at their first session.

If the committee has already been established by the court, the creditors shall decide whether this committee should be retained.

The creditor's committee shall supervise the trustee in bankruptcy and assist him in conducting the bankruptcy procedures, monitor the course of the proceedings, and inspect the books and records.

#### 3.6.4. Creditor's assembly

The creditor's assembly is called by the bankruptcy judge. All the creditors with the right of separate settlement, all bankruptcy creditors, bankruptcy trustee and individual debtor shall be entitled to participate in it. The time and the place of the assembly sessions and its agenda shall be publicly announced.

It shall be considered that the decision has been made at the creditor's assembly if the total sum of the claims of the bankruptcy creditors who voted for certain decision exceeds the sum of the claims of the creditors who voted against the decision.

Creditor's assembly is authorized to: establish a creditor's committee, i.e. change its composition or dissolve it (make all decisions in the jurisdiction of the creditors' committee), appoint a new bankruptcy trustee, decide on the continuation of the debtor's business activities and on the manner of cashing debtor's assets, decide on the reorganization.

The creditor's assembly is entitled to request from the bankruptcy trustee the information and reports on the status and management of the operations.

If any of the decisions of the creditor's assembly are contrary to the bankruptcy creditors mutual interest, the bankruptcy judge can under certain circumstances annul the decision. The decision on the annulment may be appealed.

While liquidating the parts of the bankruptcy estate, the trustee shall be bound to obey the decisions made by the creditor's assembly and the instructions given by the creditor's committee. The creditor's assembly discuss and vote about trustees final account.

### 3.7. CREDITORS AND CLAIMS

#### 3.7.1. Creditors in bankruptcy

As stated earlier, the creditors in bankruptcy are personal creditors of the debtor who have legally based claims against the debtor at the time of the opening of the bankruptcy proceedings.

According to their claims, the creditors shall be classified into priorities (ranks). The lower priority creditors may be satisfied only after the higher priority creditors have

been satisfied in full. The creditors of the same priority shall be satisfied in proportion to the amount of their claims.

We have creditors of higher and lower priority.

#### 3.7.1.1. Creditors of higher priority

The claims of the first higher priority payment generally shall contain: The claims of the debtor's current and former workers emerged from employment in brut sum to the date of initiating the bankruptcy proceedings, the compensation for the damage suffered due to injury at work or a professional illness, severance pay.

The claims of the second higher payment priority shall comprise all other claims to the debtor, except for those classified as lower priority (general payment priority).

#### 3.7.1.2. Creditors of lower priority

After the higher priority claims, as claims of lower priority, the following claims shall be satisfied and in the following order: interest on claims of bankruptcy creditors, starting on the day of the opening of the proceedings, costs incurred by the creditors during their participation in the proceedings, monetary fines for criminal acts or infringements as well as costs resulting from a penalty for a criminal act or infringement, claims demanding a free performance by debtor, claims for repaying a loan used for substituting the capital of some member of the company, or similar claims.

#### 3.7.2. Creditors with the right of exemption

A person who may prove that a specific object does not belong to the bankruptcy estate shall not be considered a bankruptcy creditor.

### 3.7.3. Separate creditors

Creditors who have a separate claim against real estate, fixtures or rights that are inscribed in the public register shall have the right to separate satisfaction. Secured creditors are the approximate equivalent of separate creditors.

### 3.7.4. Establishing claims

The creditors in bankruptcy shall report their claims to the trustee in bankruptcy in writing.

A claim shall be considered established if it has not been refuted by the trustee or any of the creditors during the examination hearing.

Based on this, the bankruptcy judge shall issue a decision on the amount and rank of an established or refuted claim.

## 3.8. OFFICERS, DIRECTORS, AFFILIATES

This topic refers to members of the executive or supervising bodies of the debtor.

The rights of the executive officers and other legal bodies of the debtor shall be transferred to the trustee in bankruptcy on the day of the opening of bankruptcy proceedings.

Members of the executive or supervising bodies are obliged to provide the bankruptcy judge and trustee with all the necessary information and to give assistance to the trustee in discharging his duties.

In case they do not obey, the court may subpoena them, or may even hold them in custody in some cases.

## 3.9. NON JUDICIAL LIQUIDATION

Liquidation carried out by members of the company as a method of settling accounts and distribution among company members. This is possible only if the debts of the company have been settled, and it is not possible as liquidation of an insolvent business. (See chapter 3.1.2. of the overview.)

## **4.0. REHABILITATION / COMPOSITIONS / SCHEMES**

#### 4.1. OVERVIEW OF REHABILITATION SCHEMES

Croatian Bankruptcy Law use f term bankruptcy plan in meaning of reorganization.

The reorganization may be carried out in several ways, such as:

- retention by the debtor of all or any part of the property of the estate in order to continue its activities
- transferring of all or part of the property of the estate to one or more existing entities or entities that will be established,
- merger or consolidation of the debtor with one or more entities,
- selling all or part of the property of the estate subject to or free of any lien,
  
- distribution of all or part of the property of the estate to creditors,
- determining the method of satisfying the creditors,
- satisfaction or modification of any lien,
- diminishing or postponing the discharge of debtor's payments,
- turning the debtor's obligations into credit,
- issuing a guarantee or providing other collateral for the fulfillment of the debtor's obligations,
- determining the debtor's liability after the conclusion of the bankruptcy proceedings, etc.

#### 4.2. COURTS WHICH ADMINISTER REORGANIZATIONS

The commercial court - the bankruptcy judges administers reorganizations (bankruptcy plan) according to the Bankruptcy Law.

#### 4.3. COMMENCEMENT OF REORGANIZATION

The trustee and the debtor shall be entitled to file a bankruptcy plan to the bankruptcy judge. The debtor may file a plan along with the petition to bankruptcy.

The trustee can be instructed by the creditors to prepare a bankruptcy plan.

#### 4.4. PARTICIPANTS AND THEIR ROLES

The trustee and the debtor are entitled to file a bankruptcy plan to the bankruptcy judge. The debtor may file a bankruptcy plan along with the petition in bankruptcy. The trustee can be instructed by the creditors to prepare bankruptcy a plan.

The trustee's role in the counseling capacity shall cooperate with the creditor's committee, if it is established, in the preparation of the bankruptcy plan.

If this has not been provided otherwise by the bankruptcy plan, the debtor is relieved of the rest of its obligations to these creditors by satisfying the creditors in bankruptcy in accordance with the bankruptcy plan.

#### 4.5. REORGANIZATION ESTATE

Since the reorganization plan (referred to as the bankruptcy plan according to the Bankruptcy Law) is part of bankruptcy procedure, the reorganization estate is considered to be the bankruptcy estate, including the total assets of the debtor at the time of opening of the proceedings and the assets obtained during the proceedings.

If it is assumed that the creditors shall be satisfied from the revenues of the debtor's continued operations, whether conducted by the debtor or a third person, the review of the estate should be attached to the bankruptcy plan. The review should provide at least parts of the estate along with their value and the obligations that should be fulfilled if the plan becomes valid.

#### 4.6. ADMINISTRATIVE POWERS

The bankruptcy judge determines the hearing at which the bankruptcy plan shall be discussed and voted on. The bankruptcy judge can reject the bankruptcy plan *ex officio* in some cases, e.g.: if the regulations regarding the rights to the submission of the bankruptcy plan have not been respected, if there is obviously no possibility for this bankruptcy plan to be accepted by the creditors or to be confirmed by the court.

If the bankruptcy plan has been accepted by the creditors and the debtor, the bankruptcy judge shall decide whether to confirm the bankruptcy plan. Prior to this, the bankruptcy judge shall hear the trustee, the creditor's committee, if it has been established, and the debtor.

#### 4.7. CREDITORS AND CLAIMS

In establishing their rights, the bankruptcy plan classifies the participants into separate groups. According to the bankruptcy plan, creditors with different legal status shall be classified into separate groups according to the following categories: 1. creditors with the right to separate satisfaction, if the plan affects their rights; 2. creditors in bankruptcy that are not of lower priority, 3. creditors in bankruptcy of certain lower ranks.

All participants classified in the same sub-group shall be granted equal treatment by the bankruptcy plan. Each group of creditors with voting rights shall vote separately on a bankruptcy plan.

The plan is considered to be accepted if the majority of the creditors in each creditor group have voted and if the sum of the claims of the voters that have voted for the plan doubles the sum of claims of the creditors that have voted against the plan.

The confirmation of a plan is binding against all participants.

Based on the final decision on the confirmation of a bankruptcy plan, the creditors in bankruptcy whose claims have been established may initiate an enforcement procedure against the debtor.

#### 4.8. OFFICERS, DIRECTORS, AFFILIATES

In Croatia, reorganization is part of bankruptcy proceedings. As was stated sad, after opening of the bankruptcy proceedings, the rights of executive and other bodies of the debtor are transferred to the trustee. His role in reorganization is described in chapter 4.4. and 4.9. of this overview.

The supervision of the fulfillment of the bankruptcy plan shall be executed by trustee; creditors committee and bankruptcy judge if it is so provided by the decision on confirmation of a bankruptcy plan.

After the decision on confirmation of the (reorganization) bankruptcy plan has become final, the bankruptcy judge shall issue a decision on concluding the bankruptcy proceedings.

The debtor has all the power which he had before the bankruptcy proceedings, which includes the right to establish executive and other bodies according to the Companies Law.

#### 4.9. REORGANIZATION (BANKRUPTCY) PLAN AND PROCESS

The trustee and the debtor are entitled to file a bankruptcy plan. The trustee can be instructed by the creditors to prepare a bankruptcy plan which has to be voted on during hearing. If the plan is accepted by the creditors and the debtor, the bankruptcy judge shall decide whether the bankruptcy plan can be confirmed. By satisfying the creditors in accordance with the bankruptcy plan, the debtor is relieved of the rest of his obligations.

#### 4.10. INSOLVENCY TREATMENT OF STATE-OWNED ENTERPRISES

The bankruptcy procedure may not be instituted against the Republic of Croatia, funds that are financed from the budget of Republic of Croatia, pension or invalidity funds of employers, sole proprietors or individual farmers, Croatian agency for health insurance and against the local government or administration.

Generally there is no special treatment for state-owned enterprises. However, there are some exceptions. The bankruptcy proceedings may not be instituted against legal entities registered for the manufacture of arms and military equipment or provision of services to the Army of the Republic of Croatia without the prior consent of the Ministry of Defense. If the Ministry of Defense refuses to give its consent, the Republic of Croatia shall be severally and jointly liable for the obligations of the debtor.

#### 4.11. INSOLVENCY TREATMENT FOR BANKS AND FINANCIAL INSTITUTIONS

The Law on Banks (2002) and Bankruptcy Law (2006) apply to insolvency treatment for banks and financial institutions. In the last decade there have been a few bankruptcy proceedings on banks but not a single reorganization. Bank creditors, the bank itself and the National Bank of Croatia may initiate bankruptcy procedure which is very similar to the bankruptcy procedure over an insolvent company.

A major difference is in the types of claims of higher priority of which there are six.

State agency for insurance of deposits covers deposits of citizens in the approximate amount of 15 000, 00 U\$ serving as a state guarantee for their deposits. For the rest of the amount, citizens are creditors of higher priority.

### **5.0. INSTITUTIONAL FRAMEWORK FOR INSOLVENCY**

## 5.1. THE ROLE OF GOVERNING INSTITUTIONS/JUDICIAL AUTHORITIES

Bankruptcy proceedings shall be conducted exclusively by Commercial courts.

Commercial courts are the first instance tribunals for disputes involving commercial transactions or commercial entities. Their jurisdiction includes cases involving shipping, navigation, aircraft, patent, trademark, title, copyright and unfair trade practice. These courts are also responsible for matters related to trading companies, bankruptcy and liquidation, as well as all other commercial issues, domestic or foreign. The decisions are rendered by individual judges (generally).

The High Commercial Court has been established for the territory of the Republic of Croatia and hears appeals from decisions of commercial courts. Panels of professional judges hear cases that are heard before that court. The sessions of chambers are not open to the public.

The bankruptcy judge shall decide on the initiation of bankruptcy proceedings and appoint the trustee.

The trustee shall be a natural person with university qualifications, obtained state certificate for a trustee and who is on the list of trustees in bankruptcy.

The list of trustees in bankruptcy is determined by the Minister of Justice.

## 5.2. SPECIALIZATION AMONG COURTS/JUDGES AND TRIBUNALS

There is no specialized Bankruptcy Court or court division. Commercial Courts have jurisdiction over insolvency proceedings. Bankruptcy cases are heard by bankruptcy judges but in general they have no exclusive bankruptcy cases. Not all judges at commercial courts are involved in insolvency proceedings. There exists a specialization amongst members of the court.

## 5.3. ORGANIZATION OF THE COURT

According to the Judiciary Act, presidents of courts administer the operation of courts in accordance with law and prescribed rules of procedure.

Presidents of courts are appointed for a four-year-term by the Minister of Justice following the judiciary council opinion.

Court presidents are responsible for most day-to-day aspects of court administration. They are assisted by the department presidents and the court clerk.

The law defines judicial administration to include activities that serve to improve the performance of judicial powers such as the financial means and facilities necessary for the operation of courts, continuing education and training of judges etc.

The Ministry of Justice monitors the implementation of internal court rules of operation and working methods, analyzes performance of court personnel etc.

The Supreme Court also participates in judicial administration through its power to discuss important issues of judicial practice.

#### 5.4. COURT OPERATIONS

In general, all court operations are regulated by provisions of the Bankruptcy Law.

The Law on Civil Procedure shall be applied as pertinent to bankruptcy proceedings.

The bankruptcy judge determines hearings, declares court decisions and various orders, supervises the work of the trustee and gives them binding instructions.

#### 5.5. JUDICIAL DECISION-MAKING

Bankruptcy proceedings shall be declared by a court decision and order. An order shall direct the official person or a body in charge of bankruptcy proceedings to perform individual actions.

The bankruptcy judge shall:

- decide on the initiation of a preliminary procedure to establish if the conditions for the bankruptcy procedures exists and then conduct the procedure,
- decide on the initiation of bankruptcy proceedings,
- appoint and replace the trustee according to the provisions of this Law,
  
- determine which pending transactions must be concluded during the bankruptcy proceedings according to this Law,
- approve the satisfaction of the creditors,
- render the decision on closing the bankruptcy proceedings,

- perform other tasks provided for by Bankruptcy Law

The authority of the bankruptcy judge is described in chapter 3.6. Administrative Powers.

## 5.6. APPELLATE PROCESS

An order can not be appealed.

A decision may be appealed (generally). The time limit for appealing a decision is eight days. An appeal against a decision shall not stay the execution.

A motion for a new trial cannot be submitted in the bankruptcy procedure.

The High Commercial Court hears appeals from decisions of commercial courts.

This court may dispose of appeals by confirming, reversing or modifying or the decisions of the lower court.

These actions are final and no appeal can be made, but a revision can be submitted to the Supreme Court extraordinary.

## 5.7. INSTITUTIONAL INTEGRITY

Judges shall be appointed and relieved of duty by the State Judicial Council.

The Council has a president and fourteen members, who are elected for an eight year term among distinguished judges, lawyers and law professors.

Council members are nominated and appointed by the parliament for an eight year term.

According to the Constitution, judicial office is in permanent. A judge can only be discharged at his own request, upon becoming permanently incapacitated, upon being sentenced for a criminal offense, or by decision of the State Judicial Council that a serious disciplinary violation has occurred. Exceptionally, when first appointed, a judge is appointed for five years. After the judge has been re-

appointed he/she holds the office permanently, that is until his/her seventieth birthday.

Croatian laws regulate court operations and decisions, the conduct of judges and court staff. They include the Law on Civil Procedure, the Judiciary Act

and some others. The Croatian Judges Association has adopted a separate Code of Judicial Ethics.

## **6.0. REGULATORY FRAMEWORK FOR INSOLVENCY**

### **6.1. THE EXISTENCE OF THE REGULATION SYSTEM**

The system of regulation is incorporated in the provisions of the Bankruptcy Law.

## 6.2. THE ROLE AND FUNCTION OF THE REGULATORY BODY

According to the bankruptcy law, regulatory bodies are the bankruptcy judge, the creditors' committee and the creditors' assembly.

The work of the trustee is supervised by the bankruptcy judge who is entitled to demand a report or any information regarding the course of the proceedings. The bankruptcy judge can appoint and replace the trustee.

6.2.1. The bankruptcy judge determines the amount of the remuneration for the trustee work and compensation for his actual expenses. It may order the dismissed trustee to return whatever he has earned during the proceedings.

6.2.2. The bankruptcy judge supervises the work of the trustee and gives him binding instructions. He examines the final account submitted by the trustee. The trustee may conclude a new temporary employment contract and determine the salaries and other income based on employment only with the consent of the bankruptcy judge

6.2.3. The creditors' committee supervises the trustee, orders the examination of revenues and cash balance, considers reports of the trustee, inspects the books and records, and can bring complaints to the bankruptcy judge about the work of the trustee.

6.2.4. Creditors' assembly (consisting of all creditors) can demand reports from the trustee, but it can also elect another trustee instead of the one appointed by the court. The bankruptcy judge can approve or reject the appointment of a new trustee (unless the person appointed does not meet the conditions prescribed by Bankruptcy law). The decision can be appealed.

## **7.0. CROSS-BORDER INSOLVENCY**

### 7.1. RECOGNITION OF FOREIGN CASES, REPRESENTATIVES

Croatian Bankruptcy Law is fair and internationally harmonized, and corresponds to European Regulation on insolvency proceedings and UNCITRAL Model Law on Cross-Border Insolvency.

It is the general principle that the bankruptcy proceedings and its effects shall be determined according to the laws of the country in which the bankruptcy proceedings have been initiated (art.303 BL). It shall be presumed, until proven otherwise, that the debtor's centre of business activities is in the place registered as the place of its head office.

However, there is exclusive international jurisdiction of the court of the Republic of Croatia for conducting bankruptcy proceedings against a debtor that has the center of his business activities in Croatia (art.301 BL).

The trustee in bankruptcy proceedings in Croatia and the trustee in bankruptcy proceedings in a foreign country against the debtor shall cooperate and are obliged to exchange all legally permitted information that can be of importance for conducting both proceedings.

## 7.2. RECOGNITION OF FOREIGN CREDITORS AND CLAIMS

Regarding foreign creditors and claims including separate rights (secured creditors) and exempted rights on objects that are situated in the country where a decision on recognition of bankruptcy has been recognized, the laws of the country where the proceedings have been recognized shall be applied.

## 7.3. THE RECOGNITION OF FOREIGN JUDGMENTS OR ORDERS

The proposal for recognizing the decision of a foreign court on opening the bankruptcy may be filed by a foreign trustee, creditor or a debtor (art.310. BL).

The prerequisites for the recognition of foreign decision are the following:

- 1) that it has been issued by a court or a body which has international authority according to Croatian laws,
  
- 2) that a decision can be executed according to the law of the state where the decision has been issued and
- 3) that the recognition is not contrary to the public order of Croatia (art.311. BL).

There are three types of effects of recognition of foreign decision:

- 1) recognition after the bankruptcy proceedings in Croatia have been opened (art. 318. BL),
- 2) recognition without the consequence of opening the bankruptcy proceedings in Croatia (art. 319. BL) and
- 3) opening of the bankruptcy proceedings in Croatia as a consequence of recognition of a foreign decision on opening of the bankruptcy proceedings (art. 325. BL).

#### 7.4. RETURN OF ASSETS TO A FOREIGN REPRESENTATIVE

The decision on the recognition of a foreign decision on opening bankruptcy proceedings has the same effects on the same persons to whom it applies (including a foreign representative) according to the domestic court's decision (art. 315 BL).

#### 7.5. CONFLICT OF LAW ISSUES

There are no special provisions in the Bankruptcy Law on conflict of law issues. The general rules on Croatian law regarding the recognition of foreign court's decisions shall be applied accordingly (art.308 BL).

### **8. SUMMARY**

The Croatian Bankruptcy Law corresponds to European Union standards and international model laws on insolvency (UNCITRAL). It is similar to the German and Austrian bankruptcy codes.

A bankruptcy proceeding is conducted exclusively by the Commercial Courts.

The reasons for bankruptcy are insolvency<sup>27</sup> and overdebtness. The Bankruptcy law provide for reorganization of the insolvent debtor as an alternative to liquidation.

The reorganization process of the insolvent debtor and the liquidation process of the insolvent debtor is a court supervised proceeding.

The bodies of bankruptcy proceedings are bankruptcy judge, trustee in bankruptcy, creditor's assembly and creditor's committee.

The trustee shall be a natural person with university qualifications, obtained state certificate for a trustee.

According to their claims, the creditors shall be classified into priorities. The lower priority creditors may be satisfied only after the higher priority creditors have been satisfied in full.

The Bankruptcy law establishes clear rules pertaining to the insolvency court's jurisdiction in insolvency cases with foreign elements.

There are provisions in the system for cross-border insolvency proceedings.

The Bankruptcy law allows domestic courts to recognize foreign claims, and does not treat creditors differently on the basis of nationality or residence.