UDC: 34(497.6)
Review paper
Received: March 15, 2024
Accepted: March 29, 2024
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LEGAL CHARACTERISTICS OF THE RESTRUCTURING PROCEDURE IN THE REPUBLIC OF SRPSKA

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Abstract: *Restructuring is a rather extensive and specific legal institute. In everyday speech, it means to rearrange something. In the legal sense, restructuring can be understood in many ways. In the economic sense, it is about technical-technological changes within the business entity. In the second context, restructuring is any form of change within a business entity, while in the third context, it is a status change specified by business regulations. In addition to the above, restructuring is possible in bankruptcy proceedings, i.e. before the grounds for bankruptcy have been established, then simultaneously with the initiation of bankruptcy proceedings and later through a specified plan by which the debtor will be restructured in a way that even though the grounds for bankruptcy have been met and bankruptcy is started, and the debtor will stay in economic life. The purpose of this paper is to give an explanation of and key differences between all the institutes above. In this paper, we will also make suggestions about the need for a clear demarcation in terms of understanding restructuring, so as not to create doubts in the legal and economic life of the Republic of Srpska.*

Keywords: *The Republic of Srpska, restructuring, status changes, law, debtor, bankruptcy.*

INTRODUCTION (STYLE: HEADING 1)

When a business entity wants to achieve economic expansion, such as “conquering” new markets, they resort to various forms of restructuring/reorganization. In legal and economic theory and literature, it is noticeable that restructuring is most often connected to mergers or acquisitions, which results in the external growth of a business entity, i.e. the acquisition of ownership of another business entity (Mašić, et. al. 2010). Namely, when we talk about acquisitions, we mean corporate management (Isaković, S. 2011). In

terms of positive - legal regulations, status changes that encourage the growth of business entities are mergers and acquisitions. Restructuring in its general sense is understood as a measure that a business entity will undertake. First of all, the measure can be of a financial nature through recapitalization, when the company will increase its financial power by bringing in fresh capital, or will take on debt by taking a loan from a commercial bank, issue securities, transfer claims to basic roles, etc. Another possibility is organizational changes. These are status changes, management changes in the business entity and, finally, technical - technological changes. Management changes imply that the business entity introduces a production chain for new products, which is usually conditioned by new technologies in this process (Marković - Bajalović, D. 2011). On the other hand, certain authors divide all these changes, which imply restructuring, into a status change or an organizational change in a business entity, while others are those that are by nature of obligation law. The first ones mentioned are those that are specified and legally determined by economic regulations in a certain country, and the others, as the name itself suggests, are obligatory - legal. This does not mean that only the mentioned regulations are directly applied, but other indirect legal regulations also come into consideration. On the other hand, other legal regulations, such as bankruptcy or financial consolidation regulations, allow the business entity to restructure, even if the bankruptcy grounds are met. Not all bankruptcy reasons apply equally to both of the aforementioned legal institutes. In the continuation of this paper, we will elaborate on the institutes above in terms of restructuring, as well as the terminology used to denote these institutes.

1. THE GOAL OF THE PAPER

In this paper, the goal is to explain the term restructuring in the context of economic and other subsidiary legal regulations, both theoretically and practically. At first glance, the term restructuring seems clear and sufficient to explain any form of change in a certain business entity. However, the problem arises when we use it in certain stages in the context of valid legal institutes. We are talking here about the changes in the sense of restructuring as organizational changes aimed at expanding activities, conquering new markets, monopolistic agreements, or restructurings that are applied in pre-bankruptcy proceedings, restructuring in bankruptcy, etc.

2. METHODOLOGY

In this paper, restructuring will be determined in different stages of application in the context of valid legal institutes. In this context, the method of synthesis and comparative analysis will be used, which will observe the mutual differences and the conformity of the restructuring by the legal regulations in the Republic of Srpska. The descriptive method will ensure the nomothetic characteristic of this institute. In this paper, we will use the statistical method, as well as the method of induction and deduction.

3. RESTRUCTURING IN THE CONTEXT OF ECONOMIC LAWS

Mergers or takeovers of business entities represent an inherent part of the growth strategy that enables business entities to strengthen their position on the market. Synergy achieved through merger or takeover procedures provides access to a new market as well as resources, and the outcomes of success or failure are of crucial importance not only for the business entity or several of them that are included in the process, but also for the entire economic activity in a certain country (Filipović, D. 2012). In proceedings when economic entities merge or join, stakeholders, as well as holders of shares of the companies included in the proceedings, receive stock or shares in the successor company that will issue them or they can be paid in a monetary amount in relation to the collective nominal the value of the follower company's shares. A merchant can perform economic activities, i.e. some of the activities that are economic by their characteristics, which is actually the activity that is specified as such in the regulation on the classification of activities. The framework that determines economic activities is limited by production, trade in goods and the provision of services on the market. In economic life, completely new forms of activity appear directly. Accordingly, business entities are often in a situation to restructure. It is possible to define the economic and legal reasons for the status change of economic entities, which are carried out based on the decision of the highest body in the economic entity. The reasons are to increase competition on the market, because, for example, the subject is empowered through the procedure, but other motives are also possible, such as monopolistic agreements (Jašarević, M. 2023). From the procedure itself, it cannot be inferred or assumed that the business entity wants to achieve the above, i.e. to control a certain economic space on the market. Economic motives, status change procedures have the meaning of gathering capital or focusing on the competitive ability of a business entity on the market. Positive - legal regulations determine status changes that are important for concentration, and not the dispersion of capital that is inexorably linked to mergers and acquisitions (Gorenc, V. 1988). When status changes are carried out, then there is a universal succession of assets of economic entities, which does not liquidate the entity. Restructuring of business entities has the intention of achieving changes in the capital structure, changes in operational characteristics, and changes in ownership. Mergers and acquisitions are programs for decomposing economic entities, and they are used practically in order to achieve their restructuring. Essentially, this type of change in the corporate sense is connected with a change in the business strategy of economic entities (Gorenc, V. 2001). The most common motive for changes in the status of mergers of business entities are: reduction of inefficient operations, change of development strategy and better use of resources of business companies. Many acquisition procedures look good on paper. However, no matter how attractive the acquisition offer is, the value will have an effect only after the acquisition. The results of Slehton's research, which was conducted out of 218 merger or acquisition procedures, suggest that for successful mergers or takeovers, strategic complementarity between the successor and the acquired company is necessary.

On the other hand, research by Kim and Finkelstein, which included 2,204 takeovers by commercial banks in the USA, suggests that similarities in the strategies involved in the transaction are important for business success after a merger or takeover.

4. TERMINOLOGY

In order to give a conceptual definition of the institute of restructuring/reorganization, it is important to determine the etymological meanings of this legal institute. The term restructuring corresponds to the term reorganization, which derives its existence from the Latin language and in translation has meanings such as rearrangements or restructuring of a certain economic or other organization. In addition to the above, "rehabilitation" is also used for the legal marking of this term, and regardless of that, in the linguistic sense, all the aforementioned refer to restructuring, i.e. they represent what is defined as restructuring in our legislation. For example, in the Macedonian legal system, restructuring in bankruptcy is determined as a voluntary act of the debtor, which is undertaken for the purpose of protecting business activities as well as for the purpose of settling the claims of bankruptcy creditors (Mitrovska, D. 2007). Also, the concept of rehabilitation is equally in use, and later in this paper we will see that one of the possible restructuring plans is also called a rehabilitation plan. Restructuring as a legal institute was legally transplanted from Anglo-Saxon law into the domestic legal system. In its conceptual designation, it is regulated materially - by legal regulation, but it is defined too broadly, in such a way that it can be understood ambiguously. First of all, we mean procedure, application and legal determination. Restructuring in pre-bankruptcy and bankruptcy proceedings is connected with the plan, which includes all those measures or methods that are necessary to be undertaken for the entity in the context of its survival. In this way, in a broader definition, restructuring can be understood as the survival of a business entity on the market, but also in other ways, such as the expansion of activities and economic growth. In the continuation of this work, we will shed light on all the possibilities of restructuring.

5. FINANCIAL RESTRUCTURING IN THE LIGHT OF PRE-BANKRUPTCY PROCEEDINGS

In the Republic of Srpska, a law was passed that regulates the pre-bankruptcy procedure, i.e. it is left a possibility for a legal entity to be restructured in a single procedure. It is specific in a way that it is carried out out of court in order to enable the continuation of business, but in the manner that a judicial body does not participate in the procedure, i.e. no restructuring plan is proposed. In legal theory, the question arises whether this form or model of restructuring represents a certain form of uncertainty of the law writer, because this form of restructuring is provided for by a special law? The goal of restructuring is the option of rescuing a business entity that is in business difficulties. In this way, it could recover before it finds itself in bankruptcy proceedings, and the purpose is

to continue its business, i.e. to survive on the market. The question arises whether the introduction of pre-bankruptcy restructuring into domestic legislation was unnecessary, or is it a legally-economically justified institute? In terms of economic laws, in Bosnia and Herzegovina it is possible to carry out restructuring in the framework of which a business entity is restructured through status changes. The Republic of Srpska Bankruptcy Law allows the bankrupt debtor to apply for a bankruptcy plan (restructuring plan), after the bankruptcy grounds have been determined, i.e. after the bankruptcy proceedings have been opened. The confusion in the understanding of terms was introduced by the legislators in both entities, who also use the term restructuring plan for the bankruptcy plan. It would be advisable to use the term "bankruptcy plan" exclusively in the bankruptcy regulations to indicate the plan that can be submitted after the opening of bankruptcy proceedings. In the bankruptcy regulations, there are indications of the possibility of proposing a plan alongside the proposal for opening bankruptcy proceedings - the so-called "pre-prepared restructuring plan", but also other legal provisions, in terms of the way of implementing this plan, are absent. If this institute is fully implemented in terms of the bankruptcy law, our proposal is to label it terminologically as a pre-prepared plan, so as not to create confusion in its understanding. The legal assumptions related to the content and purpose of the restructuring procedure is to prevent the bankruptcy of the business entity in order to ensure its stability in business. Restructuring has the purpose of enabling effective restructuring at an early stage, but also avoiding bankruptcy proceedings, thereby preventing the unnecessary shutdown of business entities that can be preserved in terms of business operations. In the European Union, since 2013, the action plan has facilitated restructuring conditions and procedures for member countries, and since 2014, a Recommendation on new approaches to bankruptcy and insolvency has been adopted, which suggests the timely initiation of preventive restructuring. The goal of these regulations is to prevent the disappearance of economic entities from economic life (Jašarević, M. 2022).

6. RESTRUCTURING IN BANKRUPTCY PROCEEDINGS - PRE PACK INSTITUTE

In addition to the possibilities mentioned above, in our legal system it is possible for a business entity to be restructured even when it finds itself in bankruptcy proceedings. One of such possibilities is to propose a plan by which the business entity, which is now in the formal legal status of a bankrupt debtor, will try to restructure itself through various means and by applying certain measures. The question arises as to what it is, i.e. what are the legal and economic documents that could be used to do so. First of all, it is a bankruptcy restructuring plan. Namely, the legislator left the possibility for the debtor to submit it, but not at every moment, i.e. only when there are economic, but also legal reasons for the possibility of the bankruptcy debtor being saved or recovered. What is interesting is that it is possible to submit a restructuring plan, of course, when the reasons

for bankruptcy have been established, at the same time as the initiation of the bankruptcy procedure itself. This legal institute is known in comparative law as the pre pack institute. But what does it mean in the context of the implementation of this legal procedure. For now, it does not mean much in the law of the Republic of Srpska, because the legislator left the possibility to implement it, but did not leave any other legal options, the way in which this procedure would be implemented. However, by applying the restructuring plan, it would be possible to carry out the procedure by making a decision of the competent body within the economic entity that it wants to start the restructuring procedure. In this context, the legislator left the possibility that, in addition to the thirteen measures, status changes can also be applied, which is a specific form of restructuring, so that we can say here that it is about bankruptcy restructuring by applying the measures of the economic law in the procedure itself. The specificity of the mentioned institute is that the restructuring is carried out immediately after the adoption and confirmation of the request for the implementation of the bankruptcy procedure. This plan, which in the legal literature is also called pre-prepared, is an effective tool in the restructuring process in a way that does not waste time. This means that costs are reduced, which "results" in bankruptcy, and saving time is also saving money, because society stops sinking into debt. For the above, it is indicative that the company, i.e. its management, has further management rights.

7. RESTRUCTURING AFTER PLAN SUBMISSION

Bankruptcy regulations allow that after the initiation of bankruptcy proceedings, it is possible to propose a restructuring plan with a list of measures that will be applied in order to recover the debtor, i.e. the business entity that has reached bankruptcy. In this way, our legislator left the possibility for the economic entity to be rehabilitated and possibly preserved on the market. On the other hand, we can say that the benefit of this procedure can be multiple. On the one hand, it is to preserve the business entity and thereby partially or completely preserve the jobs of the employees of that entity, and on the other hand, the mere existence of the business entity means that the entity will pay taxes to the state, employ the population and increase competition on the market, but also to strengthen the national economy in that way.

8. TYPES OF RESTRUCTURING PLANS

The most important document in the restructuring process is the plan, which must be feasible. Three types of plans are possible, depending on the goal to be achieved, namely rehabilitation, liquidation and transfer plan. The first of the above specifically specifies the conditions for the continuation of the entity's business in such a way as to eliminate bankruptcy reasons. The rehabilitation plan is a financial rehabilitation when the subject is freed from economic problems, in such a way that it recovers, and the creditors are settled from the undetermined future income that they will achieve. The business entity

will fully or partially retain management rights, but under a special regime, i.e. control by judicial authorities and administrators in the proceedings. After the restructuring plan has been implemented, the company acquires the right to freely dispose of its assets. The second is the transfer plan, which has the specificity of determining the way in which the property would be transferred to some other persons. It is about property in the possession of the debtor. This plan can be implemented in two possible ways: by selling or by transferring the shares. This type of plan is also possible in status change procedures (Radović, V. 2017). The third liquidation plan is the one according to which the liquidation of the business entity, i.e. the debtor, is carried out. In this context, the question arises, what is the difference between this plan and bankruptcy? Namely, in the bankruptcy procedure, the liquidation plan will not be drawn up, but the difference is also in the method of cashing out the amount covered by the bankruptcy. According to the liquidation plan, the creditors will not be settled from the mass included in the bankruptcy. The measures for the implementation of the reorganization plan can be most generally, from the legal aspect, divided into methods of status changes or organizational changes of the debtor and methods of obligation law content. The methods of organizational changes of the debtor are implemented according to the rules of the law governing the legal position of companies (laws on companies), and the contents of the obligation character are regulated by the Law on Obligations. This is where other laws come into play, depending on the type of relationship regulated by the plan. It is also possible to make a general division from the point of view of the time frame of the effect of certain measures into those that affect the long term and the short term. Also, we can divide the measures into those that directly affect the material and financial position of the debtor (increasing liquidity, reducing liabilities, etc.) and, on the other hand, measures that affect the organization, production program, activity and business activity in general. These divisions are conditional, because a large number of different measures can be said to fall into both categories. Of course, the measures can be divided according to the specific legal or economic business in question (change of debtor-creditor relations, management of property, capital, position of employees, investments, development, production program, etc.). The grouping of measures into certain categories can serve well for the purpose of their easier and simpler presentation and overview of the breadth of the area covered by the restructuring process, but the essence and main advantage is reflected in the great possibility of combining individual measures in order to obtain the best result. Rarely, only one measure or a certain type of measure will be used, but it depends primarily on the specific situation in which the debtor is and on the causes that led to the opening of bankruptcy proceedings. A meaningful combination of measures in the restructuring plan should enable creditors to settle their claims from the income that the debtor begins to realize during the implementation of the plan. It goes without saying that very serious planning is necessary and the most accurate assessment of income and expenditure and the effects that certain measures will have, and all of this makes it a mandatory and integral part of the restructuring plan proposal. Therefore, the possibilities offered by the

restructuring plan will depend on the fact that the bankruptcy trustee, i.e. the debtor will offer, and what the majority of creditors will ultimately accept. Whether the reorganization plan will be carried out depends, first of all, on its content and the proposed measures, which should enable the debtor's continued work. So, the possibility of the debtor's survival and the settlement of the creditors depends, first of all, on the restructuring proposal, i.e. on the measures that are diverse, but they must be justified, i.e. there must be a chance to implement them in the restructuring process. If the measures do not correspond to the factual situation, it is possible to restart the bankruptcy proceedings, after which the bankruptcy of the company is inevitable. For example, in the Montenegrin legal system there are 19 measures with the possibility of proposing others that do not contradict the law. All creditors have the right to vote on the bankruptcy plan and a simple majority is required for its adoption. However, if the reorganization plan is not adopted in the manner prescribed by law, the court remains available to open bankruptcy proceedings against the debtor. As it was said, the enumeration of measures is not exhaustive, because the implementation of other legally permissible measures that may be important for the implementation of the plan, as well as their combination, is allowed.

CONSLUSION

From all of the aforementioned, it can be concluded that restructuring in everyday speech has its multiple definitions. In this work, we have singled out all those that are legally determined as a restructuring procedure. As we mentioned, it can be implemented as any form of change within the entity, but also in relation to other economic entities or the legal position of the entity itself on the market. Financial restructuring involves recapitalization, debt payments and settlement of claims, all with the aim of rescuing a certain business entity that is in trouble and has a certain market perspective. Privatization in a business entity brings capital, technical knowledge, modernization of business and professional internal procedures, and raising the competitiveness of business because the private owner is interested in preserving his invested capital. Through the process of restructuring the obligations of business entities, liquidity and financial stability of the company are established, and the company's liabilities are reduced by a certain amount and the principal amount is increased. The whole process of analysis and proposing procedures for business consolidation and restructuring is carried out on the company's business data, which have been checked through the performed audit. It is possible to restructure obligations by writing off late interest, compensating claims, unblocking accounts with commercial banks, where blocking is an obstacle to obtaining any funds, release of collateral (mortgage on real estate above the amount of the remaining debt, which would ensure the company in the following period the main condition for securing long-term funds from the bank needed for the future development of the business entity). Analogous to that, we said that it is also possible in proceedings that are brought under bankruptcy. These are all those listed above with their specificities. In this paper, we have

given a complete review of all the mentioned models in order to use them in a theoretical or practical sense to dispose of them as befits restructuring.

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