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PILOT TEST CASE TRIAL ANALYSIS

UNIS TADIV (KONJIC, FBIH)

USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY
ENVIRONMENT (FILE)

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USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY ENVIRONMENT (FILE)

BiH NEW BANKRUPTCY AND LIQUIDATION LAWS

Program for Bankruptcy Pilot Cases

PILOT TEST CASE TRIAL ANALYSIS

UNIS Tativ
(Konjic, FBiH)

INTRODUCTION

UNIS Tativ was founded in 1971 in Konjic (FBiH) as a state-owned company dedicated to the production of bolts, nuts, studs and special automobile parts. In 1991 the company was re-organized into a shareholder company, having only 67% state ownership. Two private investment funds and 13 individuals hold vouchers for the other 33%.

The company's production- and market-orientation has remained much as it was when the company was founded. Prior to the war it exported 50% of its production to Germany and to provide for the automobile industry in the former Yugoslavia. The company re-established this production after the war, although war damage was substantial — power supply was out of commission, buildings and machinery were badly damaged, raw materials were unavailable, and customer and supplier connections were simply cut-off.

Analysis of the company's present and persisting business situation indicates that it is undeniably insolvent. This situation is likely to deteriorate, absent a major restructuring and capital infusion. A bankruptcy reorganization, or, more likely, a liquidation with a restructuring, are obvious possibilities.

Two privatization tenders were made in June 2001 and August 2002, respectively, both unsuccessfully.

If available financial information can be relied upon Unis Tativ is undeniably insolvent yet it should have sufficient realizable assets to support the costs of a bankruptcy proceeding and provide a return to creditors, making it an acceptable Pilot Case.

PRODUCTS AND FACILITIES

The Company is continuing to produce fasteners of standard measures used in automobiles, motors, machinery and for other industrial uses, which it sells to wholesalers. Its production capacity is 5,000 tons annually. The "breakeven" level is

estimated at 3,600 tons. Although the company's operations are described as "active" as of February 2003 but at a "low level," it is not clear whether they are operating near or well-below breakeven.

The company has a complex of buildings and production facilities totaling to 15,035 m², scattered over an area of 36,918 m². The question of land ownership is unsettled, as it was in the process of registering its land ownership at the time this information was last reported.

MARKET AND SUPPLIER RELATIONSHIPS

The Company is continuing to produce fasteners of standard measures used in automobile, motor, machinery production and other industries, which it sells to wholesalers.

Local demand for the company's products is weak due to weakness in the domestic industrial sector. Its Export markets are subject to competitive pressures, but the company can service these customers by producing nonstandard goods to meet special orders.

MANAGEMENT

Experienced management remains in place and appears to be stable.

FINANCIAL STATUS

The reported balance sheet data as of 12/31/2002 showed that the Company's total liabilities were over KM 5.3 million, while its "tangible assets" (at book-value) were only slightly more than KM 12 million.

The company's production capacity is reportedly 5,000 tons annually. The "breakeven" level is estimated at 3,600 tons. Although the company's operations are described as "active" as of February 2003 but at a "low level," it is not clear whether they are operating near or well-below breakeven.

Unis Tadv could be a good Pilot Case. Its production has not ceased. There is existing market demand for its products. There is a history of long term business cooperation with major customers. It still has a good reputation and a well-known name and trade mark in the former Yugoslavia. It has a wide range of products, an experienced work force, and a full production cycle. These factors could capture the interest of potential investors.

APPLICATION OF THE SELECTION CRITERIA

The First Twelve Screening Criteria.

The first three Criteria ask whether the case would be significant and positive enough to reinforce our training plans, provide a good learning experience, and have a significant

impact towards advancing our overall goal of initiating a fully-implemented bankruptcy system in BiH.

Specifically, the Criteria are:

1. Would the process of adjudicating the proposed case serve as a good example, which would reinforce our training plans and other implementation activities?
2. Specifically, consider whether the *process* would provide a good learning experience, which would benefit, especially, the trustees, bankers, and business professionals involved.
3. Would an adjudication of the proposed case ultimately have a *significant* and positive enough impact to help build confidence in and encourage a broad implementation of the bankruptcy system?

From the perspective of these Criteria Unis Tadv would be a good case. An adjudication of the company would be likely to have a significant *positive* impact. The adjudication process probably would reinforce our training plans and other implementation activities by demonstrating the marshalling and realization of assets in an orderly way. In this way it would provide a good learning experience for the professionals we are trying to train.

The Fourth Criterion asks whether Unis Tadv can be a “government/government” bankruptcy “privatization.” The application of this Criterion yields a tentative *negative* result. Although Unis Tadv’s majority equity interest is held by the government (67%), the company’s debts for taxes and contributions make up only 23% of its total indebtedness (as of Dec.2002). The *controlling* creditor interest, thus, is not government held debt. Accordingly, the government should not be able to manage the liquidation process.

The Fifth Criterion provides a critical, objective financial test, asking simply whether there are sufficient assets (liquid or realizable at reasonable market values) to pay the costs of the proceedings, pay the priority and secured creditors, and still allow for the payment of a dividend or other consideration to the general creditors.

Based on “book value” and realistic estimates of actual market values it appears that there are sufficient assets to pay for the costs of the proceedings and still pay a substantial part of the Company’s liabilities, by liquidating some of the Company’s realizable assets.

Even if an adjudication of Unis Tadv would result in a large, complex proceeding, with high expenses, one can be fairly confident that Unis Tadv’s’ assets should be sufficient to carry the costs of the proceedings. Accordingly, the Company seems to clearly meet the test of this Criterion.

Criteria Six through Eight ask one to consider the possibility of “streamlining” the case and its likely time constraints. Specifically these Criteria ask:

6. Can the case be adjudicated under a pre-packaged Plan?
7. If a pre-packaged Plan is impracticable, are deadlines/time schedules flexible and favorable?
8. Irrespective of whether or not a pre-packaged Plan is feasible, it is necessary to consider whether the proceedings can be executed in a timely and efficient manner so that a final adjudication and asset or dividend distribution and/or Plan consummation can be accomplished within six to 18 months.

The application of these Criteria weighs *for* the selection of Unis Tativ as a Pilot Case. No bankruptcy has been filed to date, although the possibility of a bankruptcy filing has been discussed openly since at least September 2003.

There appears to be a possibility that a pre-packaged Reorganization Plan could be put together. In any case deadlines and time schedules should not be so pressing as to cause significant problems with a bankruptcy adjudication.

The Ninth Criterion only asks whether the debtor Company meets an appropriate insolvency test, so that a bankruptcy filing is legally appropriate. Clearly, Unis Tativ meets this test: Current Assets were KM 1.7 million and Current Liabilities were KM 4.2 (as of Dec.31, 2002). The Company is insolvent on the face of its balance sheet.

The Tenth Criterion focuses on the question of whether debts owed workers for past-due wages are likely to be a significant obstacle to an orderly liquidation. In the case of Unis Tativ, the application of this Criterion is inconclusive. On the one hand it appears that there is significant worker debt (43% of total debt), which means that there probably would be significant labor opposition interfering with the bankruptcy process. However, more information is needed before reaching a firm conclusion about this Criterion.

The Eleventh Criterion asks whether the debtor company's assets are heavily liened and whether or not it can service its secured obligations. The full extent of the liens against Unis Tativ's property is not known. However, some buildings (production facilities and warehouse) and part of its equipment are mortgaged to several banks. Whatever the extent of these secured debts may be, it is certain that Unis Tativ cannot service the outstanding secured obligations.

Further evaluation under this Criterion may be appropriate, but it appears to be another factor which weighs, at the same time, against and *for* the selection of Unis as a Pilot Case.

The Twelfth Criterion is subjective. It asks whether an adjudication of the Company would present other unavoidably sensitive complications. There do not appear to be any specific complications, other than those already mentioned above, which apply under this twelfth Criterion. Accordingly, we will consider that Unis Tativ meets this Criterion.

CONCLUSION

Unis Tadv meets majority of the first twelve “screening” Criteria for the selection of appropriate bankruptcy Pilot Cases.

Unis Tadv could be a good choice as a Pilot Case. The proceedings could be efficiently managed. The costs of the proceedings would not be likely to exceed the realizable value of its assets, so that a net return to creditors would be likely.

Further, its production is on-going and there is still some market demand for the company’s products. Because of these factors, the Company’s reputation, trade marks, range of products; and experienced work force there is a good possibility it can attract the interest of potential investors.

Is Unis Tadv a good candidate for the Bankruptcy Pilot Case Program?

| Criterion to be evaluated | Degree at which the Case meet the Criterion | | | | | Score points |
|---------------------------|---|---------------|---------------------------------|-------|------------------|--------------|
| | Does not meet at all | Does not meet | Neither meets nor does not meet | Meets | Completely meets | |
| 1 | | | | | X | 2 |
| 2 | | | | X | | 1 |
| 3 | | | | X | | 1 |
| 4 | | X | | | | -1 |
| 5 | | | | X | | 1 |
| 6 | | | | X | | 1 |
| 7 | | | | X | | 1 |
| 8 | | | | X | | 1 |
| 9 | | | | X | | 1 |
| 10 | | | X | | | 0 |
| 11 | | | X | | | 0 |
| 12 | | | | X | | 1 |
| <i>Case Total Score</i> | | | | | | 9 |