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**BOSNIA-HERZEGOVINA**

# PILOT TEST CASE TRIAL ANALYSIS:

## SAVA (BIJELJINA)

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

Contract #PCE-I-00-98-00015-00, Task Order #821 of the GBTI IQC

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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**

**SAVA  
(Bijeljina RS)**

**INTRODUCTION**

SAVA is a processor and preserver of fruits and vegetables. In 2002 SAVA employed 231 workers and produced the following processed products: Fruit Compotes, Marmalades, Jams, Canned Vegetables and Frozen Food.

The Company is located in Bijeljina, North-East Republic of Srpska, where it is prominent in the region, which is well-known for its agriculture. Until 1988, SAVA was functioning as a part of UPI, Sarajevo, a large state owned enterprise. Since then it has operated independently. Currently State participation in the Company's equity capital is 56.80%.

The Company has operated below capacity and at an operational loss for the last 4 years. By the end of 2002 its accumulated losses comprised 12.14 Million KM. These accumulating losses have progressively decreased equity capital from 18.76 Million KM in 2000 to 7.87 Million KM as of end of 2002.

At the time of this analysis no relevant data for 2003 was available. If we simply extrapolate from the known trends, the Company's equity now may be close to nil or even negative.

One problem is that the Company's equipment is outdated, having been acquired in 1981 and having been fully depreciated. In 2002 the company operated at only 18% of its capacity. However, the Company's equipment is capable of supporting more fully utilized operations, on a larger scale.

The biggest creditors of the Company are the R. S. Ministry of Finance and the "Pavlovic International Bank." Short term liabilities exceed by 2 times the long-term ones (6.46 Million KM vs 2.92 Million KM). The Company does not have a complete record of the real property (land and buildings) mortgaged as collateral for loan(s) to its banks.

In order to facilitate a prospective privatization of the Company on or about December 26, 2003, its Board of Directors offered to convert 5.6 Million KM in debt owed to the State into shares in SAVA. We do not have information on the final status of this proposal. However, prior information indicated that such a debt-equity conversion was impossible under the present R. S. public revenue laws. This impedes any normal privatization of the Company and would tend to put off those few interested investors who otherwise might want to acquire the Company's assets and step up its operations.

Because of its financial problems, the Company is undeniably a candidate for bankruptcy – most likely for a liquidation with a quick auction sale of all of its assets on a “going-concern” basis, although a “financial reorganization” might be an equally viable solution.

SAVA would be a good choice as a Pilot Case in either context, notwithstanding the current legal problems about selling it and the pending and unresolved liabilities towards workers. The following information provided to FILE by the Strategic Privatization Project appears salient:

- SAVA is insolvent, but its total assets exceed the value of its total liabilities;
- SAVA's current financial problems are irresolvable out of court because of the number of creditors involved and the magnitude of its debts;
- SAVA can not be privatized without significant financial and debt reorganization, which is not possible in a non-bankruptcy procedure;
- The foreign investor most interested in taking over and stepping up SAVA's operations is also one of its biggest creditors (Pavlovic Bank).

In order to consider this case as a potential “Pilot Case” more information is needed. FILE personnel should meet with all sources of relevant information before making any definitive conclusion about this Company's viability as a “Pilot Case.”

### **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?

SAVA would be a big case, which would have significant impact not only for the Bijeljina region, but also for the Republic of Srpska, generally, where almost none of the strategic majority state owned enterprises have been privatized, or restructured to operate at efficiently. The company used to provide significant number of jobs for the local community directly and indirectly which could exist again once the assets of the Company were redeployed. At the same time, to the extent the system is ready to handle it (capable trustees, courts, judges, attorneys, etc., all in place, trained and certified), the process of adjudicating SAVA in bankruptcy would reinforce our other training. If done well, with a good result, and not too many mishaps, it also could be one which would be described as a “good example.”

However, there quite likely would be numerous demands made by the interested parties, most notably the employee group, and the representatives and attorneys of these parties, all of whom would be advocating diverse, perhaps even irreconcilable, interests. Given the size of the company, the magnitude of the claims against it, and the divergent interests, concerted action towards an orderly bankruptcy resolution might not occur. The Bankruptcy Judge might be forced to make difficult rulings that would be certain displease someone. In the end, SAVA could be classified as a specific case that could be cited as a good example of how a bankruptcy case should be conducted.

The application of these first three Criteria to SAVA yields a positive result. So far, we can only say that SAVA might be a good choice for a Pilot Case but it might not be because of other factors (political, social).

The Fourth Criterion asks whether SAVA can be a “government/government” Privatization, where it is a government owned company (“SOE”) where the *controlling* creditor interests are also government held debts. In this case the controlling creditor interests are not completely government held debts. Further diligence and more up-to-date information on SAVA’s debts is needed in order to apply this criterion. However, it appears that government decision-makers cannot be expected to provide controlling direction to the bankruptcy proceedings, exclusively, so that this factor disfavors selecting SAVA as a Pilot Case.

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. SAVA meets this Criterion.

Total liabilities are now in the vicinity of 9.39 Million KM.

Inventories are valued at 2.66 Million KM, and receivables at 2.69 Million KM. The fixed assets are booked at 12.72 Million KM. Thus, if one could take the fixed assets at “book,” one would suppose that enough assets would be available to cover bankruptcy adjudication costs and pay down other liabilities.

The application of this Criterion to SAVA, on this “first look” basis, is conclusive – the Company completely meets this criterion.

Criteria Six through Eight ask one to consider the possibility of “streamlining” the case and its likely time constraints. Those that can be “streamlined,” e.g., where pre-packaged Plans are feasible, clearly have an advantage over other cases that may be unavoidably or unexpectedly contentious or time-consuming.

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 appear to favor the selection of SAVA as a Pilot Case.

A pre-packaged Plan seems highly probable because of the multiple investors’ interest and the already started negotiations with different creditor groups. However, one problem in this case could be the demands of the workers. On the other hand, if one can be confident that the employees would have future employment, that would make for a good “trade off” for worker cooperation. Further, this current worker opposition could make the whole of the proceedings delayed.

Deadlines and time schedules could be problematic. Currently there is no one that might take the responsibility to initiate the bankruptcy procedure. The Company's creditors may step in, but the New Bankruptcy Laws have tight deadlines. Once initiated the bankruptcy proceeding could meet all time-schedules and deadlines in the adjudication process if SAVA were a Pilot Case, excluding possible delays when negotiating with the workers.

The Ninth Criterion only asks whether the debtor Company meets an appropriate insolvency test, so that a bankruptcy filing is legally appropriate. Clearly, SAVA meets this test. Its current ratio of current assets to current liabilities is a mere 0.83, and might have dropped for the last year. It belongs in bankruptcy.

The Tenth Criterion focuses on an issue which could be a critical stumbling block for SAVA, that is whether debts owed to former or redundant workers for wages are likely to be a significant obstacle to an orderly liquidation or a reorganization, given not only the amounts owed, but also the ages, attitudes and sophistication of the workers and their representatives. More information about the workers should be gathered before reaching a firm conclusion on this issue. Perhaps reemployment and future employment prospects in the aftermath of a bankruptcy adjudication can be presented in a favorable light. However, on first look, this Criterion seems to be inconclusive for choosing SAVA as a Pilot Case.

The Eleventh Criterion asks whether the debtor company's assets are heavily liened and whether or not it can service its secured obligations. SAVA has borrowed 2.43 Million KM secured by a mortgage on some of its real property and/or equipment (although there is no proper evidence on the nature and extent of this lien). These loans constitute almost one quarter of SAVA's debt. SAVA's net cash flow from operations is, and has, for several years, been, negative. Accordingly, it is safe to say that SAVA would find it difficult to service this secured debt.

At this point it is not clear whether in a bankruptcy, the secured creditors are likely to take control on some of its assets in short order, preventing an orderly liquidation and leaving nothing for general creditors. Further evaluation under this Criterion may be appropriate, but it appears to be a factor which weighs at "first look" 20% against the selection of SAVA as a Pilot Case.

The Twelfth Criterion is subjective. It asks whether an adjudication of the Company would present other unavoidably sensitive complications. In this respect, the fact that SAVA has such a significant presence in the regional economy of Bijeljina appears to constitute a "sensitive complication" which would burden the proceedings. This, too, could weigh against selecting SAVA as a Pilot Case.

## CONCLUSION

Further diligence and a more subjective examination of SAVA in light of the Criteria discussed is necessary before one can reach a firm conclusion as to whether or not SAVA could be a good Pilot Case. However, on the information available to us at this time the more likely conclusion is that SAVA is probably a good candidate for our Bankruptcy Pilot Case Program. With USAID’s agreement, FILE will begin to undertake additional diligence.

### Is SAVA 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	+2
3					X	+2
4			X			0
5			X			0
6					X	+2
7				X		+1
8				X		+1
9				X		+1
10			X			0
11			X			0
12			X			0
<i>Case Total Score</i>						<i>+11</i>