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Bankruptcy Law: Testing of Model Solutions

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This report summarizes major issues raised by FILE's key stakeholders (Judges, Trustees, debtors, creditors, investors, experts, and other parties active in bankruptcy proceedings) during the bankruptcy team's work on pilot cases and/or other bankruptcy intervention cases. This report should be read in conjunction with the Report on Hypothetical Solution Models prepared by FILE and delivered to USAID on May 31, 2005 (the "May Report"), which describes the most common situations in bankruptcy in detail and offers model solutions, applying both theoretical and practical knowledge and experience of the Federation and RS bankruptcy laws (collectively, the "Bankruptcy Law").

The majority of the issues described and solutions identified arose through pilot case activities or other bankruptcy cases in which FILE has intervened. The basic grounds for testing all solution models given in this report were identified in pilot cases that adhered to the following criteria:

- To challenge and educate the stakeholders and professionals involved;
- To demonstrate efficiency of the system;
- To have significant positive impact and to build confidence in bankruptcy;
- To encourage wider implementation of the law and resolve multiple issues (political, social, economic, business, foreign investment) that will improve the BiH investment environment;
- To be used as a good learning tool in training programs;
- To be replicable and lead to synergy of the legal framework and practices; and
- To be referred to in resource materials as examples of practical resolution of problems in implementation.

The purpose of this report is to demonstrate that these solution models are tested in practice and that they help key practitioners and participants in bankruptcy to build confidence and be directly involved in the implementation of the new bankruptcy system. This Report should be used as an addendum to the May Report, since the issues identified and solutions described herein are more thoroughly explained in the May Report, where practitioners can also find legal references that should help them learn more about how to overcome obstacles in bankruptcy proceedings. For ease of reference, a copy of the May Report is attached as Annex 1 hereto.

This report serves as an exemplary tool that may be used to address particular problems in a bankruptcy proceeding and to offer solutions for the proper conduct of such proceedings. The solutions offered, as well as other resource materials developed by FILE, could also be applied to similar issues in other bankruptcy cases.

This report is subject to continuous improvement and updating since reality and practical implementation of the Bankruptcy Law produces many more issues that should be addressed. Certainly, such activity could be carried out only with the assistance of local partners and their feedback on obstacles and solutions in the implementation of the Bankruptcy Law. FILE succeeded in maintaining good and productive relations with local partners and developing a professional network among them that serves for mutual

exchange of experiences and practices. This was achieved not only through formal regular meetings, training sessions, work group discussions, and newsletters, but also through intensive involvement in two pilot cases and other periodic interventions in bankruptcy cases throughout BiH.

The involvement of FILE in pilot cases and model interventions is useful and valuable for both local practitioners and the bankruptcy team. This is the best way to test the bankruptcy system and the provisions of the law in action from the beginning of the proceedings through the different stages to its conclusion.

These Solution Models are subject to updates and changes due to significant input from stakeholders that is expected in the following period. Accordingly, FILE will be continuously present in Commercial Divisions at BiH's Courts to monitor, shepherd, and register all issues identified during bankruptcy proceedings, not only as an observer, but also as an active partner willing and able to offer its unique contribution to bankruptcy reform in this country.

All references to specific report provisions found below refer the reader to the relevant provision(s) of the May Report. Each issue identified and explored by the bankruptcy team is identified by number and by the company(ies) to which it applied, and is then briefly described. The solution is then provided either in accompanying text or by reference to the relevant provision of the May Report.

1. **Issue.** Paying the debt to the petitioner who filed the bankruptcy.
 - a) **Company:** Podgradci, Gornji Podgradci; Hranaprodukt, Samac
 - b) **Description:** Petitioner withdraws the petition in the course of the preliminary proceeding because the debtor paid the requested amount in full or in part or made some other outside bankruptcy arrangement (*e.g.*, another privatization tender)
 - c) **Solution:** See B.1.d. The claim has been paid (accord and satisfaction)

2. **Issue.** Proving that the debtor's insolvency is probable.
 - a) **Company:** Debtor filed petition – *e.g.*, Svila, Celinac; Alatnica, Banja Luka; Energoinvest, Doboje; Jelsingrad, Kotor Varos; or petition filed by creditor – *e.g.*, Podgradci, Gornji Podgradci; Hranaprodukt, Samac
 - b) **Description:** The most common way of proving the debtor's insolvency in practice is by providing a certificate that all the debtor's bank accounts are frozen for a period longer than 30-60 days. A creditor who wants to file a bankruptcy against a debtor can prove the probability of its claim but may encounter difficulties in proving the probability of the debtor's insolvency. How will the principal creditor prove the probability of the debtor's insolvency if the debtor pays from time to time part of its obligations to selected creditors (according to its own criteria)?
 - c) **Solution:** See B.2.a. Probability of debtor's insolvency.

3. **Issue.** The initiator of the bankruptcy (petitioner) has no money to pay the required Court fees in advance. According to the law, the petitioner is required to make the advance payment, but the Court requests payment of the Court fees as well. The case will be rejected if the Court fees are not paid.

(See issue 4 for company reference, description and solution)

4. **Issue.** The decision of the Bankruptcy Judge to require an advance payment paid in KM and the actual payment by the party that has initiated bankruptcy petition was made in currency other than KM, which resulted in the dismissal of the case according to the older practices of some Courts.

- a) **Company:** Unis Tativ, Konjic; Livnica, Sarajevo
- b) **Description:** In the first case, the workers filed the petition and the supplier made the advance payment to secure all the Court's expenses during the preliminary proceeding. Fee payment in bankruptcy cases is an insignificant amount compared to the amount of the advance payment, but is important for the Court's administration procedure. Mettex (a foreign creditor) wired the advance payment by international money transfer from their headquarters in the Czech Republic. The transfer was made in Euros, as KMs are not truly a convertible currency. The Judge could formally dismiss the case because payment was not made in the required form and amount; moreover, the Judge notified the government gazette that they could credit the account of the Court based on this payment made in Euros for a KM bank account. The issue directly affected two parties. FILE made the necessary inquiries in the bank sector and found that a common practice in BiH is to convert the transferred amount into the currency that the bank account of the receiving party was established in, regardless of the currency used by the paying party. The amount is converted based on the exchange rate on the day the amount is debited to the bank account of the receiving party. However, additional issues may arise from overpaying or underpaying due to the local exchange rate applied. In some cases, such as paying in an auction, such underpayments might not be considered as fulfillment of a buyer's obligations and the amounts could be held by the Court for non-performance. The bankruptcy team recommends using clearly stated and detailed rules in announcements of auctions to avoid such issues arising.
- c) **Solution:** See B.3. Solving problems with Court fees when filing

5. **Issue.** Whether a Trustee employed by one of the creditors can be appointed in a particular case.

- a) **Company:** Unis Tativ, Konjic; Elektromehanika, Banja Luka
- b) **Description:** The Bankruptcy Judge's first choice was to appoint Mr. Tipura and Mr. Njezic as Trustees in Tativ and Elektromehanika, respectively, which the Judge changed due to conflicts of interest (the first is employed at the Health

- Fund, which is a creditor of Tativ's; and the second was employed by Elektromehanika before the proceeding started).
- c) **Solution:** See B.4.a. Trustees' conflicts of interest
6. **Issue.** How to proceed with a case when there is a lack of qualified or available Trustees.
- a) **Company:** Unis Tativ, Konjic; Podgradci, Gornji Podgradci; Celpak, Prijedor; Sava, Bijeljina; Energoinvest, Dobož
- b) **Description:** Bankruptcy Judges in Mostar had difficulty in finding a Trustee competent to deal with the pilot case at the Mostar Court and the Judge in Banja Luka had difficulty finding a Trustee experienced in the wood-processing industry and not subject to pressure from the local community.
- c) **Solution:** See B.4.b. Lack of qualified or available Trustees in the relevant region.
7. **Issue.** Who represents the debtor during the preliminary bankruptcy proceeding?
- a) **Company:** Podgradci, Gornji Podgradci; Unis Tativ, Konjic; Mebos, Samac
- b) **Description:** In the first case, the General Manager left the company during the preliminary proceeding. In the second company, the General Manager left the company when the workers began discussing filing a petition in bankruptcy.
- c) **Solution:** See B.7.a. Representative of the bankruptcy debtor
8. **Issue.** Challenging the secured status of a creditor at the Investigation Hearing (General Treatment of Secured Creditors in Investigation Hearing)
- a) **Company:** Unis Tativ, Konjic; Celpak, Prijedor
- b) **Description:** If the expected proceeds of the sale of the collateral will not cover the amount of the claim then the secured creditors must assess their position and decide what portion of their claim should be considered by the Bankruptcy Court as secured and what as unsecured. For the unsecured amount of the total claim, the under-secured creditors should register their claims as general bankruptcy creditors. If this is not done within three months after the hearing, such claims will not be considered by the Court.
- c) **Solution:** The creditor(s) tried to discuss their secured status at the Investigation Hearing, but the Bankruptcy Judge and the Trustee should not address this issue at the Investigation Hearing.
See C.1.a. Whether claimant is secured or not
9. **Issue.** Status of a secured creditor who acquired its security within two months before filing the bankruptcy.
- a) **Company:** Unis Tativ, Konjic
- b) **Description:** A creditor acquired security for a claim two months before the

- filing. The bank began enforcement proceedings to obtain security several months before the bankruptcy was filed, but its right to security was entered into the Public Register only 50 days before the bankruptcy was filed because of delays in applicable Court procedures.
- c) **Solution:** See C.1.b. Termination of the status of a secured creditor.
10. Issue. Right of the Bankruptcy Judge to allow a disputed claim
- a) **Company:** Celpak, Prijedor; Alatnica, Banja Luka; Unis Tativ, Konjic; Energoinvest, Doboj
- b) **Description:** At the Investigation Hearing, the Trustee objected to the validity of a claim. The claimant, however, is not satisfied with the Trustee's action and insists that the Bankruptcy Judge allow the claim by Court decision.
- c) **Solution:** See C.1.e. Role of the Judge at the Investigation Hearing
11. Issue. What is a basis for challenging a claim?
- a) **Company:** Alatnica, Banja Luka; Elektromehanika, Banja Luka; Celpak, Prijedor
- b) **Description:** At the Investigation Hearing, the Trustee challenged a claim without stating the reasons for challenging it. The creditor whose claim was challenged is in a dilemma -- what is the basis of future litigation over the claim in the civil proceeding?
- c) **Solution:** See C.1.f Techniques for challenging claims
12. Issue. Right of a Trustee to allow a disputed claim after the Investigation Hearing.
- a) **Company:** Celpak, Prijedor
- b) **Description:** A creditor failed to provide documentation establishing its claim to the Court. For that reason, the Trustee objected to the validity of the claim. The creditor, however, does have valid documentation, and would like to know how to rectify the situation.
- c) **Solution:** See C.2.a. Informal resolution with Trustee
13. Issue. From what moment does the deadline of 30 days for filing a civil proceeding begin to run?
- a) **Company:** Unis Tativ, Konjic
- b) **Description:** The Health Fund objected to the Trustee's decision, but it was not within 30 days from the moment of the hearing at which this creditor's claim was challenged.
- c) **Solution:** See C.2.b. Filing suit and proving the claim
14. Issue. The Bankruptcy Trustee should prepare a list of the assets forming the bankruptcy estate where debtor possesses property without clear title of ownership.

- a) **Company:** Alatnica, Banja Luka; Elektromehanika, Banja Luka; Precizni liv, Banja Luka; Mehanicki proizvodi, Banja Luka
 - b) **Description:** During the privatization process, the subdivision of huge industrial and trade holdings was not properly conducted and title still belongs to non-existent legal entities.
 - c) **Solution:** See D.1.a. Establishing title to the debtor's property
15. Issue. Who can perform a credible valuation and what standards of valuation should be applied?
- a) **Company:** Energoinvest, Doboj; Unis Tativ, Konjic; Livnica, Sarajevo; Alatnica, Banja Luka; Celpak, Prijedor
 - b) **Description:** In BiH, Court expert witnesses who are employed to accomplish this task are not appraisers and the Depreciated Replacement Cost New (DRCN) is widely accepted as the standard of value. By definition, the DRCN standard of value is a market value that does not assume sale of the property and is conducted based on the market prices of the basic elements of each asset. The Court's expert witnesses are not trained for such work and in the overwhelming majority of cases significantly over-value the assets of the bankruptcy estate, thus creating unreasonable expectations and undermining the bankruptcy itself.
 - c) **Solution:** See D.1.b. Valuation of the debtor's property
16. Issue. Most creditors would like to have their own representative on the impaneled Creditors' Committee. Obviously, so high a number is unmanageable.
- (See issue 17 for company reference, description and solution)
17. Issue. A major conflict of interest emerged for the chairman of the Supervisory Board of Unis Tativ, Mr. Halil Gagula, who, at the same time, represented a worker in a dispute against the company and had to defend the company against the worker's claim.
- a) **Company:** Celpak, Prijedor; Unis Tativ, Konjic
 - b) **Description:** Celpak had over 1,500 workers when the bankruptcy proceeding was opened and the workers insisted on having three of their representatives on the impaneled Creditors' Committee.
 - c) **Solution:** See D.3. Model for Impaneling Creditors' Committee (a. Number of Members; b. Conflicts of Interest; c. Recommending Members)
18. Issue. Transformation of a secured creditor into an unsecured creditor.
- a) **Company:** Unis Tativ, Konjic
 - b) **Description:** The creditor (Bank) filed its claim as a secured claim in the bankruptcy proceeding. This secured creditor is interested in voting in the Creditors' Assembly, but under these circumstances, as a secured creditor, it

- would not have an opportunity to participate in the decision on liquidation or reorganization of the debtor. The bank was searching for a mechanism in the Bankruptcy Law that might provide a secured creditor with the possibility of voting at the Reporting Hearing.
- c) **Solution:** See E.2. Terminating the status of secured creditors (waiver, abandonment)
19. **Issue.** The Trustee has identified different selling techniques but does not know which to use.
- a) **Company:** Celpak, Prijedor; Livnica, Sarajevo; Jelsingrad, Kotor Varos; Bosnaexpres, Dobož
- b) **Description:** Lack of information about potential buyers and their serious interest. The Trustee has several options for a sale or joint venture, but cannot decide which selling strategy to develop.
- c) **Solution:** See G.3. Different ways of liquidating assets.
20. **Issue.** Who is allowed to draft and file the bankruptcy plan – the creditors, the debtor or some third party?
- a) **Company:** Unis Tadić, Konjic; Celpak, Prijedor; Alatinica, Banja Luka; Elektromehanika, Banja Luka; Svila, Celinac; Borja, Teslic
- b) **Description:** In all these bankruptcy cases, the Trustee was asked to develop a reorganization plan at the Reporting Hearing, while for Svila, Celinac, there is the possibility that the debtor might submit a plan along with the petition (currently, the Banja Luka Court has been awaiting the RS Government's approval to start the preliminary proceeding in this strategic enterprise).
- c) **Solution:** See H.1. Who has the right to file a proposed plan of reorganization?
21. **Issue.** May a plan be drafted without consent of the Bankruptcy Judge or some other party?
- a) **Company:** Svila, Celinac
- b) **Description:** After the RS Government's approval for bankruptcy is obtained, or the deadline for its objection expires, the debtor (who is also the petitioner) may begin to prepare a reorganization plan to be filed with the Court before the Investigation and Reporting Hearings, which could still be scheduled for the same day. This would significantly shorten the procedure. Does the debtor need the Court's consent to draft the plan?
- c) **Solution:** See H.3. Consent to drafting the plan
22. **Issue.** How is it possible that three creditors (all secured) are treated differently and classified separately in a bankruptcy plan?
- a) **Company:** Unis Tadić, Konjic

- b) **Description:** In this case, two banks and a major supplier were classified in two separate classes. Why? The banks are in the same class (apart from the supplier) due to the fact that their debts will be fully repaid within a certain period, with forgiveness of all late charges and regular interest. At the same time, the bankruptcy plan offers other terms to the supplier.
- c) **Solution:** See H.4. Classifying the creditors
23. **Issue.** What is the deadline for exercising the right to amend a particular provision in a reorganization plan and who can take advantage of this right?
- a) **Company:** Celpak, Prijedor; Unis Tativ, Konjic
- b) **Description:** At the Hearing to Consider the Plan, the Judge made certain remarks and asked the Trustee to adjust the plan accordingly. To whom and when would all these responses be submitted and when would the plan be amended accordingly?
- c) **Solution:** See H.9. Amending the plan
24. **Issue.** The Bankruptcy Judge requires the debtor to attend a hearing in the preliminary bankruptcy proceeding. (Rescheduling the hearing until the debtor decides to attend the hearing)
- (See issue 27 for company reference, description and solution)
25. **Issue.** The bankruptcy debtor has no legal representative to represent him in the bankruptcy proceeding.
- (See issue 27 for company reference, description and solution)
26. **Issue.** If bankruptcy is filed against one debtor, who changes its form, name, and governing bodies during the preliminary proceeding, should the bankruptcy petition be dismissed because the legal person no longer exists, *e.g.*, there is no bankruptcy estate?
- (See issue 27 for company reference, description and solution)
27. **Issue.** Who can legally represent the debtor in bankruptcy proceedings when the debtor in the proceeding is changing its status: the newly appointed representative or the one who is evidenced in the company register but no longer represents the company?
- a) **Company:** Unis Tativ, Konjic; Podgradci, Gornji Podgradci
- b) **Description:** A hearing attended by the debtor in the preliminary bankruptcy proceeding is questionable. Although it has some legal basis, it is widely avoided as a Court practice in BiH as redundant. This is important in cases when the debtor does not have a legal representative any more, *e.g.*, because the mandate of

- the last acting manager expired and was not renewed. Also, it is possible that the debtor changed its legal form, name, or governing bodies during the preliminary proceeding, though in such cases the legal successor is the transformed company. There are two possibilities to resolve these issues: (1) skip the debtor's hearing and, at the hearing on opening of the bankruptcy, confirm that the debtor has been informed about the hearing but did not show interest in attending, going forward with the proceeding; or (2) have the supervisory board appoint an acting manager to attend the hearing, though the person selected must accept the position.
- c) **Solution:** See B.7. Model solutions for treatment of the debtor during the preliminary proceeding
28. **Issue.** Rejected bankruptcy petition based on debtor's hearing. There is no legal basis for such a decision.
- (See issue 32 for company reference, description and solution)
29. **Issue.** The practice of issuing a decision on opening of preliminary proceeding. There is no legal basis for such a decision.
- (See issue 32 for company reference, description and solution)
30. **Issue.** The practice of delivering the decision on opening of preliminary bankruptcy proceedings to all involved parties (Trustee, management, party that has initiated the proceeding if not management). There is no legal basis for such a delivery.
- (See issue 32 for company reference, description and solution)
31. **Issue.** The practice of publishing the decision on opening of the preliminary proceeding and calling for the creditors to submit their claims in the preliminary proceeding. There is no legal basis for such a decision.
- (See issue 32 for company reference, description, and solution)
32. **Issue.** Determination of creditors' claims and consequently right of appeal in the preliminary bankruptcy proceeding. There is no legal basis for such a decision in the bankruptcy law, which may lead to endless disputes at the investigation of claims phase of the bankruptcy proceeding.
- a) **Company:** Unis Tadv, Konjic
- b) **Description:** There is no need for a debtor hearing because the reasons and evidence for opening of bankruptcy proceedings are provided to the Judge by the Interim Bankruptcy Trustee in his report after due diligence.
- c) **Solution:** Issuing a decision on the opening of preliminary proceedings is a widely used practice in BiH that may lead to certain legal consequences when determining the time when the automatic stay goes into effect: on the day of

filing of the bankruptcy petition as provided by law, Art. 15.3, or after the decision on initiation of preliminary bankruptcy proceedings over a debtor's property. The bankruptcy law stipulates that claims are filed after the decision on opening of bankruptcy, not after a decision on opening of preliminary bankruptcy proceedings, which is not required by the law.

(This issue has been identified since the May Report as the misleading practice of Judges in issuing a decision on the initiation of the *preliminary* proceeding (on the model of a decision on opening a bankruptcy) has come to light. The preliminary proceeding, of course, is initiated by operation of law upon filing a petition by or against a debtor. On the effect of the automatic stay, please see also B.5)

33. Issue. Very few Bankruptcy Trustees are or could be engaged full time in a bankruptcy case.

(See issue 36 for company reference, description and solution)

34. Issue. A potential conflict of interest exists in cases where the Bankruptcy Trustee is employed under an employment contract with the Tax Administration Office or the Social Funds (unemployment, health, pension), as their employers are creditors in almost all bankruptcy cases.

(See issue 36 for company reference, description and solution)

35. Issue. The choice of knowledgeable, experienced Bankruptcy Trustees is limited. For example, out of 36 Trustees on the provisional list of the Sarajevo Court, only 12 are willing to deal with bankruptcy; the rest are available on a very limited basis or are engaged in other businesses and are not interested in handling bankruptcy cases. Each one of the Trustees in Sarajevo is handling a minimum of two bankruptcy cases and some three at one time. This will be rectified with the certification of Bankruptcy Trustees and their subsequent training by FILE.

(See issue 36 for company reference, description and solution)

36. Issue. Could a Trustee who is on the provisional list of Trustees in one Canton/Court be appointed as a Trustee on a case in another Canton/Court?

- a) **Company**: Unis Tadv, Konjic; Livnica, Sarajevo; Celpak, Prijedor; Podgradci, Gornji Podgradci; Energoinvest, Doboj; Elektromehanika, Banja Luka; Sava, Bijeljina
- b) **Description**: The choice of knowledgeable, experienced Bankruptcy Trustees in BiH is limited. Nearly all Bankruptcy Trustees today are employed in companies or organizations and act as Bankruptcy Trustees after work hours or whenever they can find spare time to complete their bankruptcy obligations. Exceptions to this rule include pensioners and the few Trustees (five to 10 in BiH) who are also

- operating professional consulting service companies. In addition, there is the potential conflict of interest. The practice in BiH is that the Court minimizes the bankruptcy costs and tries to select a Trustee within the region where the debtor is located. In the case of Unis Tadv, Konjic, that was half-way between Sarajevo and Mostar, justifying the use of a Trustee from either Court.
- c) **Solution:** See B.4.a. Trustees' conflicts of interest, and B.4.b. Lack of qualified or available Trustees in the relevant region.

37. Issue. Obstruction of Trustee's ability to enter in possession of company after bankruptcy was opened.

- a) **Company:** Unis Tadv, Konjic; Energoinvest, Doboj
- b) **Description:** Dissatisfied workers blocked the entrance to the company, which resulted in obstructing the Trustee's functions. The Trustee is regarded as an officer of the Court.
- c) **Solution:** The decision issued was based on a similar case that required Court police to escort the Trustee and put him in possession of the property. The Order provided that those who blocked the Trustee's access were subject to criminal charges in accordance with the law. In addition, the bankruptcy team recommends that the Interim Trustee, before the bankruptcy opening, take the time to explain the bankruptcy proceedings and the various options to management, labor, creditors, and other key players. The Trustee must visit the company at once and address each of these groups at separate meetings to explain bankruptcy, discuss future prospects, and patiently answer all their questions.

(This issue has been formulated and clarified since the May Report as a result of the work of the BLT with representatives of labor.)

38. Issue. Execution of a Court enforcement Order based on workers' claims resulted in freezing the bank accounts of Unis Tadv despite the automatic stay provided in the preliminary bankruptcy proceeding by the law.

(See issue 41 for company reference, description and solution)

39. Issue. A decision on introducing interim measures preserving the future bankruptcy estate (Art. 15.2 of the Bankruptcy law) requiring management to ask for the Court's consent for every action in companies that are operating.

(See issue 41 for company reference, description and solution)

40. Issue. Prohibiting all enforcement measures during the preliminary proceeding (automatic stay).

(See issue 41 for company reference, description and solution)

41. Issue. Sale of debtor's property in the preliminary bankruptcy proceeding and applying the Court's rule requiring prior consent.

- a) **Company:** Unis Tadv, Konjic
- b) **Description:** Requiring management to ask for the Court's prior consent for every decision during the preliminary proceeding is burdensome, especially when production is still ongoing and it is of crucial importance to have operative decisions made on time. The Court ban on sale should not apply for current operations and contracts that were in effect before the filing of bankruptcy. The rule prohibiting sales without consent should apply only to the sale of assets and signing of new contracts that might result in future obligations of the debtor. The transformation of assets from one form into another (cash > raw materials, salaries, energy, etc. > goods > cash) is not a sale or alienation if the result for the current operations is positive, i.e., every transaction or activity that would lead to a decrease in the bankruptcy estate should be avoided.
- c) **Solution:** The automatic stay is an extremely important provision and should be included in the decision because enforcement Judges would rather refer to a Bankruptcy Judge's decision than to this provision of the law.
see B.5. Solutions to problems related to the automatic stay in the preliminary proceeding.

42. Issue. Cantonal registration Courts should treat any Order of a Bankruptcy Court as urgent.

(See issue 43 for company reference, description and solution)

43. Issue. Transformation or changes in the legal person of the debtor on opening of bankruptcy may lead to unnecessary complications and is illegal.

- a) **Company:** Unis Tadv, Konjic
- b) **Description:** The delay in pre-registration of a debtor by a Cantonal registration Court after bankruptcy is opened makes it impossible to open a new bank account and blocks the actions of the Trustee. This is a major concern when creditors have frozen all the debtor's bank accounts before filing of the petition. It is a major roadblock if the Trustee has decided to continue production and proposes to creditors to reorganize the company, leading to the loss of valuable time, incurring of additional bankruptcy costs, and loss of clients or markets, which could result in eliminating the possibility of reorganization in advance.
- c) **Solution:** The bankruptcy law ensures an automatic stay for the debtor on opening of bankruptcy and stops all previous activities against the debtor, including actions of the registration Court. The complication is related to the change of identity of the debtor, which formally means that a bankruptcy has not been opened against the shareholding company. This is an undesirable consequence of the registration Court's failure to understand the general provisions of the bankruptcy law. We advised the Bankruptcy Judge to order the

Registry Court to annul all registrations that took place after the opening of bankruptcy, except those related to the bankruptcy proceeding itself (adding “in bankruptcy” to the name of debtor).

(This issue was not directly addressed in the May Report, but please consult B.5.a and B.5.b on the automatic stay.)

44. Issue. The Health Fund failed to certify the health books of the workers for the period when social security was not paid, thus making these services unavailable to the workers, but still claimed that the social security should be paid.

(See issue 45 for company reference, description and solution)

45. Issue. Challenging claims by creditors at the Investigation Hearing. The Bankruptcy Law allows creditors to challenge other creditors’ claims. However, only those creditors whose claims have been examined and accepted by the Trustee have such right to challenge other creditors’ claims.

- a) **Company:** Unis Tativ, Konjic; Uniglas, Samac; Livnica, Sarajevo
- b) **Description:** The services of the Health Fund are regarded as “health insurance services,” *i.e.*, an employee cannot receive services during a period when not insured. The Health Fund nevertheless insisted on payment, despite its violation of its own rules (certification of health books), as a result of which the workers of Tativ were not allowed to use health services. The Trustee disputed the claim on these grounds.
- c) **Solution:** At the Investigation Hearing, it would be appropriate for the Trustee first to state which claims he accepts and which he disputes, and then the Judge could grant the right to the creditors with verified claims to challenge other creditors’ claims. The current practice of first discussing the claim by the Trustee and then by the creditors (regardless of their status) should be changed. See C.1.c. Challenges by the Trustee and C.1.f. Techniques for Challenging the Claims.

46. Issue. Voiding of security interest (lien).

- a) **Company:** Unis Tativ, Konjic
- b) **Description:** The Trustee should conduct a thorough and detailed analysis of the liens, but the secured status of a creditor is not subject to challenge at the Investigation Hearing, only the amount of the claim. However, if some secured claims are voidable, the Trustee might warn such creditors in advance so they consider registering their claims as general bankruptcy creditors within the three month deadline after the hearing.
- c) **Solution:** Such claims and all other claims that have been submitted by post or have not been discussed at the Investigation Hearing should be investigated at a second Investigation hearing

See C.3. Determining the status of secured creditors.

47. Issue. The Court's experts and appraisers do not follow applicable standards and methodology when valuing a bankruptcy estate.

- a) **Company:** Unis Tativ, Konjic; Alatnica, Banja Luka; Celpak, Prijedor; Energoinvest, Doboj; Elektromehanika, Banja Luka
- b) **Description:** The bankruptcy team identified this issue, which is widespread in BiH, where no traditions, methods, laws, or regulations exist governing appraisal procedures. The bankruptcy team has provided methodological help to the local experts, who adopted our approach and successfully fulfilled this task. The appraisal of the bankruptcy estate is a crucial, decisive point in bankruptcy proceedings. The creditors use the results of such an appraisal at the Reporting Hearing to choose between the liquidation and reorganization of the debtor.
- c) **Solution:** See D.1.b. Valuation of the debtor's property.