

THE LAW¹

AMENDING THE LAW ON BANKRUPTCY SUPERVISION AGENCY

(‘Official Gazette of the Republic of Serbia’, No 104/2009 of 16 December, 2009)

Article 1

In the Law on Bankruptcy Supervision Agency (‘Official Gazette of the Republic of Serbia’, No 84/04), in Article 2(1), the word ‘law’ shall be replaced by the words ‘this Law and the law governing bankruptcy’.

Paragraph 2 shall be amended as follows:

‘The Agency shall operate in accordance with regulations governing public agencies.’

Article 2

Article 3 shall be amended as follows:

‘The Agency shall discharge the following professional and regulatory functions, in accordance with this Law, the law governing bankruptcy and other regulations arising from these laws (hereinafter referred to as: regulations governing bankruptcy):

- 1) Issuing and renewing licences to practise as a bankruptcy administrator;
- 2) Undertaking professional supervision of bankruptcy administrators (hereinafter: professional supervision), revoking licences to practise as a bankruptcy administrator, and taking other measures provided for in this Law and the law governing bankruptcy;
- 3) Issuing binding instructions to bankruptcy administrators, where necessary, with a view to standardizing the application of regulations governing bankruptcy;
- 4) Keeping the List of bankruptcy administrators;
- 5) Proposing national standards for administering the bankruptcy estate and the code of ethics for bankruptcy administrators.

In addition to functions referred to in Paragraph 1, the Agency shall:

- 1) Organise and conduct the bankruptcy administrator licensing examination;
- 2) Monitor the implementation of regulations governing bankruptcy;
- 3) Collect and process data relevant for the conduct of bankruptcy proceedings;
- 4) Perform such other tasks aimed at improving and developing the bankruptcy administrator profession;
- 5) Discharge other functions in accordance with the regulations governing bankruptcy and the Statute of the Agency.

The Agency shall perform the activities from paragraph (1), sub-paragraphs 1), 2) and 4), and paragraph (2), sub-paragraph 1), of this Article, as entrusted tasks.’

¹ The Law Amending the Law on Bankruptcy Supervision Agency came into force on 24 December, 2009; Applicable from 31 January, 2010

Article 3

After Article 3, the following headings and Articles 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h and 3i shall be added, which shall read as follows:

'Undertaking Professional Supervision

Article 3a

In carrying out professional supervision the Agency shall examine whether the bankruptcy administrator complies with regulations governing bankruptcy.

Professional supervision referred to in paragraph (1) of this Article shall include:

- 1) Reviewing and analyzing reports, records and other data that the bankruptcy administrator is required to submit under the regulations governing bankruptcy or upon the request of the Agency;
- 2) Undertaking direct supervision by visiting the bankruptcy administrator's office to inspect acts, business books, databases, bank statements, correspondence, and other documents;
- 3) Taking statements from the bankruptcy administrator and persons employed or retained by him, as well as from persons employed with the debtor or otherwise engaged in the bankruptcy proceeding, unless such persons are under a statutory or other regulatory obligation to keep confidential such business or other secret;
- 4) Performing other activities that the Agency may deem necessary for conducting professional supervision.

If it is determined during the course of professional supervision that the bankruptcy administrator has not complied with regulations governing bankruptcy, the Agency shall take one or more measures against him, as prescribed under the law governing bankruptcy, such as: reprimand, public reprimand, fine, licence revocation.

Authorised Persons and Bodies to Perform Professional Supervision

Article 3b

Persons and bodies authorised to perform professional supervision shall be the Supervisor, the Disciplinary Panel and the Director of the Agency.

The duties of a Supervisor may be performed by a person employed in the Agency and meeting the following requirements:

- 1) Having a university degree;
- 2) Having at least three-year working experience;
- 3) Having passed the bankruptcy administrator licensing examination.

The Regulation on Internal Organisation and Systematisation of Posts within the Agency may prescribe other conditions that the Supervisor must meet.

The Supervisor shall have an official identity card which shall be issued by the Director of the Agency.

The Disciplinary Panel shall consist of five members. Its constitution and election shall be specified in a separate act passed by the Managing Board of the Agency. The Supervisor may not be a member of the Disciplinary Panel dealing with the same case which he was assigned to supervise.

The Minister in charge of matters of bankruptcy shall specify the form and contents of the official identity card referred to in paragraph 4 of this Article.

Obligation to Allow Unimpeded Undertaking of Professional Supervision

Article 3c

The bankruptcy administrator and persons employed or retained by him shall be obliged to:

- 1) Enable the Supervisor an unimpeded performance of tasks referred to in Article 3a, paragraph (2) of this Law;
- 2) In a procedure before the Disciplinary Panel, provide all necessary data and enable access to all documents of relevance for the conduct of the proceeding.

Supervisors' Report

Article 3d

The Supervisor shall undertake the inspection of work of the bankruptcy administrator ex officio or on the complaint by a third party.

Following the inspection of the bankruptcy administrator's work, the Supervisor shall compile a report (hereinafter: Supervisor's Report) stating that there were no irregularities in the work of the bankruptcy administrator, and, in case certain irregularities are found, propose the initiation of a disciplinary procedure.

If in the course of inspection the Supervisor identifies remediable irregularities of minor significance, he shall order the bankruptcy administrator to remedy those irregularities within a due course. If the bankruptcy administrator complies with the order, the Supervisor shall state in his report that identified irregularities have been remedied and that no grounds exist for initiating a disciplinary procedure.

If the Supervisor finds that there are no irregularities in the work of the bankruptcy administrator or that the identified irregularities have been remedied as referred to in paragraph (3) of this Article, the Supervisor shall serve his report on the bankruptcy administrator and the complainant, where the inspection was initiated on the complaint of a third party.

The complainant shall have the right to complain against the Supervisor's Report referred to in paragraph (4) of this Article within three days from the receipt of the Report.

Ruling on the the complaint referred to in paragraph (5) of this Article shall be made by the Director of the Agency.

The decision referred to in paragraph (6) of this Article shall be final and may be subject to administrative dispute.

Disciplinary Proceeding

Article 3e

If the Supervisor's Report identifies irregularities in the work of the bankruptcy administrator and proposes the initiation of a disciplinary proceeding, the Supervisor shall serve such report on the bankruptcy administrator and the Disciplinary Panel, as well as on the complainant if the inspection was initiated on the complaint of a third party. The Supervisor's Report served on the Disciplinary Panel shall be accompanied by particular case files for the purpose of conducting the disciplinary proceeding.

Based on the Report referred to in paragraph (1) of this Article the Disciplinary Panel shall initiate disciplinary proceeding against the bankruptcy administrator.

In the disciplinary proceeding, the bankruptcy administrator shall be allowed to make a statement on all allegations in the Supervisor's Report and present facts and circumstances relevant for the decision of the Disciplinary Panel.

If the Disciplinary Panel determines that no irregularities exist in the work of the administrator, it shall order the suspension of the proceeding.

If the Disciplinary Panel determines that there have been irregularities in the work of the administrator, it shall render the decision imposing one or more measures referred to in Article 3a paragraph (3) of this Law.

The decisions referred to in paragraphs (4) and (5) of this Article shall be served on the bankruptcy administrator and the Supervisor performing the professional supervision, as well as to the complainant, where the investigation was initiated on the complaint of a third party.

The decisions referred to in paragraphs (4) and (5) of this Article shall be final and may be subject to administrative dispute.

The Disciplinary Panel shall act on the majority vote of its members, except in case of the decision revoking the licence which shall be unanimous.

Violation of Bankruptcy Administrator Duty

Article 3f

Violations of duty of the bankruptcy administrator may be minor or major violations.

Minor violation of duty within the meaning of this Law shall be considered to be minor omissions and irregularities in the work of a bankruptcy administrator or violations of insolvency regulations that do not have a significant adverse effect on or consequences for the bankruptcy estate, creditors, or third parties.

Major violation of duty within the meaning of this Law shall be considered to be major omissions and irregularities in the work of a bankruptcy administrator or violations of insolvency regulations that have a significant adverse effect on or consequences for the bankruptcy estate, creditors, or third parties. The major violation of duty shall also be considered to be any failure to comply with the instructions of the Supervisor, as well as a repetitive or continuing denial of cooperation with authorised persons from the Agency, or disallowing the Agency to undertake professional supervision.

Imposition of Measures

Article 3g

If minor violation of the bankruptcy administrator duty was committed, the Disciplinary Panel may impose a reprimand, public reprimand, or a fine. The fine may range from RSD 10,000 to RSD 100,000 and in case of repetitive minor violation up to RSD 200,000.

In case of committing a major violation, the Disciplinary Panel may impose such measures as a public reprimand, fine or licence revocation. The fine may range from RSD 100,000 to RSD 1,000,000.

Licence Revocation and Striking off the List Outside of Disciplinary Proceeding

Article 3h

The Director of the Agency shall decide to revoke the licence and strike a bankruptcy administrator off the List of bankruptcy administrators if the bankruptcy administrator:

- 1) Files a request for striking off the List of Bankruptcy Administrators;
- 2) Ceases to hold the citizenship of the Republic of Serbia;
- 3) Is deprived of contractual capacity by a final decision;
- 4) Is charged, by absolute judgement, with criminal offence that makes him untrustworthy to act as a bankruptcy administrator or a criminal offence carrying a penalty exceeding five years' imprisonment.

The Director of the Agency shall render a decision to strike the bankruptcy administrator off the List in case of death.

The decisions referred to in paragraphs (1) and (2) of this Article shall be final and may be subject to administrative dispute.

Article 3i

The provisions of the law governing administrative proceeding shall accordingly apply to the procedure of professional supervision, unless otherwise prescribed by this Law.

The Minister in charge of matters of bankruptcy shall specify the manner of conducting professional supervision of bankruptcy administrators, upon the proposal of the Agency.'

Article 4

Article 4 is hereby deleted.

Article 5

In Article 7, the comma character after the word 'Board' shall be replaced by the word 'and' and the words 'Supervisory Board' shall be deleted.

Article 6

In Article 8 paragraph (2), the words 'four years' shall be replaced by the words 'five years'.

In paragraph (3), after the item 1) the sub-item 1a) shall be added, which shall read as follows:

'1a) Passes annual work programme;'

Item 3) shall be amended as follows:

'3) Adopts financial report;'

Item 5) is hereby deleted.

Article 7

The heading of Article 9 and the Article 9 shall be deleted.

Article 8

Article 10 shall be amended as follows:

'The Director of the Agency shall be appointed and discharged from duty in accordance with the law governing public agencies.

The Managing Board shall determine in a separate act the criteria and bases concerning the required professional competences of candidates for the position of the Director of the Agency.'

Article 9

In Article 12, paragraphs (2) and (3) shall be deleted.

Article 10

After Article 12, a heading and a new Article 12a shall be added, which shall read as follows:

'Publicity of Work of the Agency

Article 12a

The Agency shall publish the following on its website:

- 1) Annual work programme and financial plan of the Agency for the subsequent year, which shall be passed in accordance with the law governing public agencies, within 15 days from the day of being passed;
- 2) Annual report and financial report, both adopted in accordance with the law governing public agencies, within 15 days from their adoption;
- 3) Other data relevant for the conduct of bankruptcy proceedings.'

Article 11

By-laws that are passed under the authority of this Law shall be passed within 30 days from the day of entry into force of this Law.

Article 12

This Law shall enter into force on the eighth day following the date of its publication in the 'Official Gazette of the Republic of Serbia', and shall begin to apply on the thirtieth day following the date of its entry into force.