

Article by the Principal Deputy High Representative, Donald Hays: “Bankruptcy is not a taboo”

This week the Federation Parliament is scheduled to discuss amendments to the Bankruptcy Law. These amendments, which the Federation Government has agreed to, will make the existing Bankruptcy Law work as it was supposed to work, and that means giving companies that get into difficulties a way out of their problems that doesn't involve closing down completely and laying off all their workers.

There has been a huge amount of confusion about this. For many people, the very word “bankruptcy” is a taboo. It spells disaster.

The reality is that bankruptcy can mean restructuring, saving jobs and restructuring over the long run can mean more jobs.

If you want to make an omelette you have to break eggs, and if you want to revive the economy you have to restructure companies.

Why do companies have to restructure? Because only competitive companies organized along modern lines can generate profits and guarantee jobs for their employees.

The amendments to the Bankruptcy Law to be considered in the Federation Parliament this week will help BiH companies restructure, and in the long term that means more jobs not fewer jobs.

Here's how.

The Law on Bankruptcy originally passed by the Federation Parliament is based on a fundamentally flawed principle: that bankruptcy should primarily safeguard benefits to employees, employee rights and ensure continued employment.

I salute the intention of this; the problem, however, is that it has been entirely counterproductive. What is clear, and the experience of all the other transition countries bears this out, is that you don't safeguard workers' interests by keeping obsolete companies alive, with excessive numbers of workers most of whom are underemployed.

There are two outcomes to this approach. The state attempts with your money to keep the factories going; but when that money e money runs out (and it will) the factories close. Or the factories simply close. Either way, the workers lose.

But if you allow a company to go into bankruptcy and settle a portion of its outstanding loans and liabilities (with workers' unpaid salaries included in that settlement, but with a cap on the number of months to be paid), you allow the company to survive as a going concern. It can then restructure – lay off some workers, strengthen its viable components, develop new products and markets – and pay its remaining liabilities when it has moved back into profit. When it recovers it can start to rehire.

Short-term job loss; long-term job creation.

Which is better – a company making the necessary adjustments, including temporarily downsizing, with a view to full recovery and expansion; or a company that simply ceases to exist?

You don't have to be a rocket scientist to see that the first option is better than the second one, and it is the first option that the amendments to the Bankruptcy Law offer to BiH companies and their workers.

Drafting amendments to this law has been an inclusive process

– and that's as it should be. The labour unions have worked with the government and their position has been taken into account. The basic premise is the same for the unions as it is for every other sector of society – we have to move forward with transition, even when the reforms are painful, because only if we move forward will we start to get the benefits of the process, in terms of restructured companies, a recovering economy and in the long run more jobs.

The amendments to the Bankruptcy Law are a central element in attracting more investment to BiH. We desperately need that investment, to upgrade plant and products, to boost marketing and training and research and development. BiH is competing for investment funds with other countries in the region. It is only now beginning to compete effectively, and passage of the amendments to this law will be a major contribution in putting BiH firmly in the forefront of the international investment market.

This law makes sense for investors; it makes sense for the government and for companies as a whole. Most of all it makes sense for the workers of this country. I earnestly urge the Federation parliamentarians to support the adoption of these amendments next week – if they do, they will be voting for a future in which competitive companies can start offering more and more BiH citizens a fair day's pay for a fair day's work.