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REFORMING OF THE FOOTBALL CLUB OSIJEK INTO JOINT STOCK SPORTS COMPANY

PREOBLIKOVANJE NOGOMETNOG KLUBA OSIJEK U SPORTSKO DIONIČKO DRUŠTVO

ABSTRACT

Up to 2006 and adoption of the new Sports Act the only organizational form of clubs was sports club-association, whereas now it is possible, and for some clubs, which have gained mandatory legal conditions, also obligatory, to reform into a completely new organizational form of the society of capital – joint stock sports company. Football club Osijek is recorded in the Register of Professional Sports Clubs since 2007. The Committee for Professional Sports Clubs has confirmed that the conditions for insolvency have been met, that is the conditions for mandatory reforming in accordance with the regulations of the Sports Act have been acquired, and based on the aforementioned the reforming of the Club into joint stock sports company has been accessed.

This paper aims to show and analyze the process of the mandatory reforming of the Football club Osijek into joint stock sports company, draw attention to some specificities of the process and give assessment of the condition and possibilities for development in the new organizational form of the Club. The paper shows the foreseen reforming process, afterwards it analyzes differences between the foreseen process and the process that has been carried out.

SWOT analysis has been carried out for the assessment of the conditions and possibilities for the development of Football club Osijek as a joint stock sports company. Through the analysis main components of the model have been identified and showed: strengths, weaknesses, opportunities, that is possibilities and threats.

Based on the analysis of the reforming process and SWOT analysis, business strategy, which will make use of the strengths and minimalize the weaknesses and capitalize opportunities and minimalize threats in the best way, can be planned and identified. In the context of economic environment of east Croatia the role of the first joint stock sports company in the City of Osijek is being considered and the issue of minimalizing existent weaknesses and at the same time increasing

strengths of the joint stock sports company, that is how to make use of the opportunities in the best way possible, while decreasing objective threats from the surroundings.

Key words: football club, joint stock sports company, SWOT analysis

SAŽETAK

Do 2006. i donošenja novog Zakona o sportu jedini ustrojbeni oblik klubova je bio sportski klubudruga za natjecanje, dok je sada moguće, a za neke sportske klubove za koje su stekli obvezni zakonski uvjeti i obvezno, preoblikovanje u posve novi organizacijski oblik društva kapitalasportsko dioničko društvo. Nogometni klub Osijek nalazi se u Registru profesionalnih sportskih klubova od 2007. Povjerenstvo za profesionalne sportske klubove, potvrdilo je da su ispunjeni uvjeti za pokretanje stečaja, odnosno da su se stekli uvjeti za obvezno preoblikovanje sukladno odredbama Zakona o sportu, te se temeljem navedenoga pristupilo preoblikovanju Kluba u Sportsko dioničko društvo.

Cilj ovog rada je prikazati i analizirati postupak preoblikovanja NK Osijek iz Udruge u Sportsko dioničko društvo. Ukazati na neke specifičnosti postupka te dati ocjenu stanja i razvojnih mogućnosti za novi ustrojbeni oblik Kluba. U radu je prikazan predviđeni proces preoblikovanja, potom su analizirane razlike predviđenog i realiziranog postupka preoblikovanja.

Za ocjenu stanja i razvojnih mogućnosti NK Osijek kao sportskog dioničkog društva, provedena je SWOT analiza kojom su identificirane i prikazane glavne komponente modela: snage, slabosti, prilike odnosno mogućnosti i prijetnje.

Temeljem analize procesa preoblikovanja i SWOT analize može se planirati i identificirati poslovna strategija kojom će se na najbolji način iskoristiti snage i minimalizirati slabosti te kapitalizirati prilike i minimalizirati prijetnje. U kontekstu gospodarskog okruženja istočne Hrvatske razmatra se uloga prvog sportskog dioničkog društva u gradu Osijeku, te kako minimalizirati postojeće slabosti uz istovremeno povećanje snaga sportskog dioničkog društva, odnosno kako što bolje iskoristiti šanse uz istovremeno smanjenje objektivnih prijetnji iz okruženja.

Ključne riječi: nogometni klub, sportsko dioničko društvo, SWOT analiza

1. Introduction

Development of modern sports, in the way they are familiar to us today, began in the late 19th century and in the beginning of the 20th century, when football, grass hockey, tennis, athletics, wrestling, swimming, aviation, automobilism and other sports started spreading from England around Europe⁸⁷. In the same time it was noticed that the modern sport in Croatia has started its development, mostly due to Franjo Bučar⁸⁸.

The process of industrialization had a positive influence on the development of sport in eastern Slavonia; therefore the first football game in this part of the country was played in 1880 in Županja, mainly due to the English workers, that worked in forest exploitation there. Not long after the establishment of the first football club in Croatia (Zagreb, 1903), SK Slavija was founded in 1910 in Osijek. Afterwards numerous clubs in Croatia and Slavonia were established, as well as vocational alliances and first official competitions have started.

From the very beginning football represented extremely significant, not only sports, but also social activity, therefore it was necessary to form the rules of the game and other regulations by which the competitions in national and later in international competitions will be conducted. In the beginning and up to the 1980s the state didn't intervene significantly into autonomy of international and national football organizations, not only in the rules of the sports game and competition

88 Franjo Bučar: Zagreb, 25.11.1886.-Zagreb, 26.12.1946.

⁸⁷ Jajčević, Z. (2010): 225 godina športa u Hrvatskoj, Streljački savez Osječko-baranjske županije, Osijek. page 59

organization, which was expected, but also in the part that had all elements of social, legal and economic relationships between clubs, players, associations and society as a whole. That relationship was thoroughly changed when football, and all of the sports, became through commercialization extremely significant social and economic phenomenon, in which the state had to legally intervene. 89

The most significant and far-fetched confirmation of this fact was the court verdict in the Bosman⁹⁰ case, in which the Belgium and then the European court have been authorized for the decision making in the labor dispute between a professional athlete and a football club, that is national and European football association (UEFA), which was by then in the area of exclusive autonomous football right. After Bosman won the trial, football players and other athletes were subjected to the labor law of the European Union, just like all other workers. Through this verdict, among others, football gained the official attribute of economic function, therefore it needed to adjust its regulations according to the law regulations, which govern market relations. ⁹¹

In the Republic of Croatia the sports system is regulated by the Sports Act⁹². Sport is marked as a special social value and it is protected by the Constitution of the Republic of Croatia⁹³. Therefore Article 8 states that "the state shall encourage and support care for physical culture and sports".

2. Sports Act

Sports Act was adopted in July 2006 and it regulates the sports system and activities, professional work in sports, competitions, sport financing, surveillance and other matters of significance for sports. Also the first Article of the Act states that "Sporting activities hereunder are activities of interest for the Republic of Croatia". Unlike the former Law on Sports⁹⁴, the new Sports Act Adoption of national sports program and establishment implements a whole range of changes. of the national sports council is planned, sports system for children and youth is regulated, conditions for carrying out professional work in sports is appointed, a range of sports facilities is planned, state anti-doping agency is founded and the biggest novelty in the new Sports Act is the implementation of the joint stock sports company as a possible organizational form of sports clubs. Before the implementation of the new Sports Act, only legal form in which a club could compete was sports association founded in accordance with the Law on Associations, which was allowed to form trade associations through which they could carry out economic activities. But the limitations in the disposal of profit for these trade associations were not stimulating, because all of the profit gained had to be "invested" in the sports activity of the club. The new Sports Act enables taking part in the competitions in the form of a joint stock sports company, but also carrying out economic activities and its stock holders can dispose the gained profit in accordance with the Corporations Act and Sports Act.

Joint stock sports company can come into existence by founding a new company or reforming sports clubs-associations for competitions into joint stock sports companies. Reforming of sports clubs-association for competitions into joint stock sports companies can be mandatory or voluntary. In accordance with the regulations football club Osijek has carried out mandatory reforming process.

⁸⁹The significance of sports as a social and economic phenomena is emphasized in the White paper on sports, which sports as the ever growing social and economic phenomena, which contributes to strategic goals of solidarity and prosperity of the European Union, it attracts European citizens to regularly take part in sports activities, it creates important values such as collective spirit, solidarity, tolerance and fair play and it contributes to personal growth and fulfillment. According to the public opinion polls of the Europarometar in November 2004 approximately 60% of the European citizens participate regularly in sports activities in or outside approximately 700 000 clubs, which are members of numerous associations and unions.

⁹⁰ Jean -Marc Bosman (1995)ECR I-4921;C-51/96 i C-191/97

⁹¹ More on that, Ivkošić,M. Pravni okvir transfera profesionalnih nogometaša, str .130-146.; Kačer, H. et al. (2009): (Uvod u) športsko pravo, Inženjerski biro d.d., Zagreb

⁹² Sports Act, Narodne novine (71/06, 150/08, 124/10, 124/11 i 86/12), Zagreb

⁹³ Constitution of the Republic of Croatia, Narodne novine (56/90, 135/97, 113/00, 28/01, 76/10.), Zagreb

⁹⁴ Sports Act, Narodne novine br. 111/97.,13/98. i 24/01

3. Mandatory reforming of a sports club-association for competitions into joint stock sports company

Sports club-association has to be reformed into joint stock sports company, if the conditions have been cumulatively met, that is that the club in question is a professional football, basketball or handball sports club and that the registration in the Registry of professional sports clubs has been confirmed. And also that based on the revision arises that the conditions for insolvency proceeding have been met, but it wasn't initiated. After that the minister of sports, with previous approval of the professional sports clubs committee, determines within a month that all of the conditions for the mandatory reforming have been met

3.1. Process of mandatory reforming of a sports club-association for competitions into joint stock sports company

Process of reforming begins with the composition of an elaborate, which has to contain the review of the insolvency auditor about the possessions status, rights and obligations of a sports clubassociation for competition, list and evaluation of possessions and the list of all claims towards the sports club-association for competition, stated according to the types of creditors and their height. Affirmation of the auditor about the value of claims toward the sports club-association for competition, affirmation of the auditor about the value of the usage rights of a sports facility, which can be an investment into basic capital of the joint stock sports company, overview of business activities of the club-association for competition from the last five years, with shown revenues and expenditures of the sports club-association for competition in that period of time and calculation of profit and loss of the sports club-association for competition in that period of time. List of members of the sports club-association for competition, list of authority members of the sports clubassociation for competition, description of authority and mutual relationship between authority members of the sports club-association for competition, sports results of the sports club-association for competition from the last five competition seasons at least, number of members of the national team in all of the categories, contractual values of competitor athletes with whom the sports clubassociation for competition has a contract and the number of young athletes according to categories. Elaborate has to contain a list of potential stock holders of the joint stock sports company, among which the creditors of the sports club-association for competitions are specially emphasized, based on their declaration in response to a written avocation, which has to be sent by the sports clubassociation for competition to express their interest to reform their claims into investment in the joint stock sports company. Then an evaluation of necessary additional resources for performing the functions of the joint stock sports company, evaluation of value of the right to play in a sports facility, which was determined by the authorized auditor and the statement of the local authority, which possesses the afore mentioned sports facility, about the deadline by which the sports clubassociation for competition would have the right to play. Also necessary are the amount proposition of the basic capital of the joint stock sports company, statute draft of the joint stock sports company, which has to contain a regulation that within two month of the registration of the joint stock sports company in particular registers, the joint stock sports company will adopt a decision on an increase of basic capital in order to reform the creditors' claims toward the joint stock sports company into investments.

Sports club-association for competition has to address all of the creditors-potential stock holders personally and ask them to respond in written form whether they are interested into reforming their claims intro investments in the joint stock sports company. Creditors that don't want to reform their claims into investments in the joint stock sports company remain creditors of the joint stock sports company. The committee is obligated to give their consent for the elaborate and to determine the initial amount of the basic capital. The initial amount of the basic capital is determined in a way that it represents at least 25% of the average annual expenditures of the sport club-association in the last

five years. When calculating the average annual expenditure in the five years, the year in which the expenditure was the smallest and the year in which the expenditure was the highest are not included in the calculation.

After it gets the approval regarding the elaborate and determined basic capital of the joint stock sports company, the sports club is obligated to send out a registration and share payment invitation. Registration and share payment invitation is sent out in four cycles. In the first cycle the invitation is sent to the local authority in which the center of the sports club-association for competition is located. If the shares haven't been registered and paid during the first cycle, the rest of the shares can be paid by the members of the sports club-association for competition. If during the second cycle all of the shares still haven't been registered and paid, the rest of unregistered shares can be paid by the members of the sports club-association for competition, which have already registered and paid shares in the second cycle proportionally to their payment in the second cycle. The rest of the unregistered shares are offered in the public invitation for registration and share payment, and in this cycle members of the sports club-association for competition, which already registered and paid shares in the last two cycles, can also take part, as well as those that didn't take part in any of the cycles. If all of the shares haven't been registered and paid after the fourth cycle, the committee can allow the issue an invitation for registration and share payment in fifth cycle it all of the creditors of the sports club-association for competition. If all of the shares haven't been registered and paid even after the fifth cycle it is considered that the reforming of the sports club-association for competition did not succeed.

The authority of the sports club-association for competition is obligated, after the finished procedure of registration and share payment, to issue a decision on termination of the association and joint stock sports company is legal successor of the sports club-association for competition, which was reformed.

If the sports club-association for competition doesn't carry out the reforming process into joint stock sports company or if the reforming didn't succeed, the ministry, upon the proposition of the committee, by official duty, issues a requirement to initiate an insolvency proceeding and the sports club-association for competition suffers the consequences in accordance with the rules of national sports association. ⁹⁵

4. Overview of the reforming process of football club Osijek into joint stock sports company.

Resolution on the entry of football club Osijek in the Registry of professional sports clubs was issued by the Ministry of science, education and sports on March 22nd, 2007, by which the football club Osijek fulfills the requirements for the entry in the Registry, that is the club has more than 50% of senior drive players with professional football playing contract at the time the Registry of professional sports club came into force.

After issuing the resolution on the entry in the Registry, football club Osijek required the approval of the auditor selection committee. Dr.sc. Slavko Majić was appointed as the authorized auditor.

After the report of the auditor and previous approval of the professional sports clubs committee, the Ministry of science, education and sports issued on November 5th, 2008 a decision on fulfillment of the requirement for mandatory reforming of the football club Osijek from association into joint stock sports company.

In the process of making the elaborate, as one of the key actions, interviews with the creditors of the club have been carried out. Most of the creditors responded in written form a bout their intention to reform their claims into basic capital for the future joint stock sports company. The Republic of Croatia acted in the same way; it transferred its claims on the local authority, the City of Osijek.

⁹⁵ More on that: Ivkošić, M./Ceronja, P., Pravni modeli provođenja postupka obveznog preoblikovanja športskog kluba - udruge u športsko dioničko društvo, Zbornik PfZ, br. 59(1), 2009, str. 125-150.

The reforming process itself cannot be carried out with active participation of the local authority in which the center of the club which is being reformed is located. City council of the City of Osijek, after the preposition of the Major, taking its social responsibility into account and protecting the interests of the city capital and also the social significance of the football club Osijek, has issued a decision that the City of Osijek will be included in the reforming process as follows: ⁹⁶

1. By giving the rights to football club Osijek to play on, that is to use, the sports facility Stadium Gradski vrt during a period of 25 years with estimated value on playing (usage) rights on 131,162.50 kn per month, that is 1,573,950.00 kn annually. Estimated value of playing (usage) in the amount of 39,348,750.00 the City of Osijek will reform into its investment in the basic capital of the joint stock sports company.

Mutual right and obligations between the City of Osijek and football club Osijek regarding giving the right to play, as well as right and obligations regarding the usage of the stadium Gradski vrt will be regulated by a special Contract, which will be concluded after the mandatory reforming process of the football club is finished.

- 2. By reforming accrued, unpaid debt of the football club Osijek towards the City of Osijek in the amount of 7,212,887.42 *kn (with interest)* determined on December 31st 2011 into an investment into basic capital of the joint stock sports company.
- 3. By taking over, without charge, a debt of the football club Osijek toward the Republic of Croatia in the amount of **15,492,443.72 kn** (with interest) ⁹⁷ determined on December 31st, 2011 and reforming the afore mentioned amount into its investment into basic capital of the joint stock sports company.

Basic capital of the club is estimated on the amount of 5,931,500.00. Nominal value of a stock is 100 kn and in total 59 315 stocks have been issued. By using the legal right the City of Osijek has paid 10 000 stocks in the first cycle as the only subscriber. In the following three cycles the members of the club and other physical and legal entities have paid in total 193 stocks. After the committee has approved the fifth cycle, the remaining 49 122 stocks have been assorted among the creditors of the club, based on the interest that was shown, and in that way all of the basic capital has been payed.

In the basic capital the City of Osijek participates with the amount of 5,332,000.00 kn. The rest are companies, that have reformed their claims towards football club Osijek into stocks and 94 small shareholders have bought stocks in the amount of 19,300 kn.

The founding assembly of the football club Osijek joint stock sports company has been held on March 28th, 2013 in the Croatian National Theatre in Osijek. Supervisory board has been chosen unanimously: Zvjezdana Tuma Pavlov, Darko Dumančić, Ljubomir Novoselić. Ivan Jakobljević, Karlo Šatvar, Tomislav Maltešić and Dubravko Ižaković. In the first session of the supervisory board Zvjezdana Tuma Pavlov was chosen for the president of the supervisory board and Darko Dumančić was appointed her deputy. In the same session former president of the football club Osijek Zdravko Josić was appointed president of the company.

After the legal deadline of sixty days, which is underway and during which the rest of the creditors' claims will be transformed into investment in the joint stock sports company through the process of enlarging the basic capital, the reforming process will be conclude. After that a new session of the company will take place and during this session the bodies of authority in the company will be appointed, in accordance with the new partnership portions.

⁹⁷ April 16th, 2013, the exacr amount of debt 7,697,480.71 kn has been determined.

⁹⁶ Odluka o sudjelovanju Grada Osijeka u postupku preoblikovanja Nogometnog kluba Osijek u športsko dioničko društvo, Gradsko vijeće grada Osijeka, 18.travnja 2013.; Klasa: 620-08/12-01/22; Urbroj: 2158/01-01-12-9

5. SWOT analysis

One of the simplest and most expanded methods for surroundings analysis is the so called SWOT analysis. It is actually an abbreviation form the English words: strengths, weaknesses, opportunities and threats. The surroundings analysis represents a research on all important characteristics of the inner and outer surrounding to identify factor, which will determine the future of the examined subject. The final goal of the analysis is to identify opportunities, which cannot be used at the present moment because of various reasons.

5.1. Elements of the analysis

Elements of the SWOT analysis are called strategic factors. Outer surrounding is compiled of opportunities and threats which are outside of the examined subject and the management usually has no direct influence on them. In the inner surrounding we can find strengths and weaknesses which the subject can influence and adjust to the outer factors.

There is no formal list of the elements that are evaluated in the analysis and this is the whole meaning of the procedure: identifying key factors from the surroundings that influence the subject.

SWOT analysis shows us were we are at the present moment and which steps we have to undertake to seize all of the opportunities. Going through the process of the SWOT analysis we answer these questions:

- what is our organization doing right, what has to be improved (strength and opportunities)
- which are the areas that give our organization opportunities and how to preserve them (strength and threats)
- which part our organization has to change to fight the outer factors (weaknesses and threats)
- what are the goals of the organization (weaknesses and opportunities)

5.2. SWOT analysis of the football club Osijek joint stock sports company

Strengths

- football school (coaches, players, organization)
- tradition
- brand
- continuous appearance in the 1st Croatian football league

Weaknesses

- economic surrounding
- lack of stabile and sufficient financing source
- weak opportunities for spreading the fan base in the region (name of the club around the city)
- unstable steering structure
- frequent coach changes
- outdated stadium

Opportunities

- widespread player base
- development and popularity of football

- realistic possibility of achieving satisfying sports result
- player transfer profit
- reforming
- membership of the Republic of Croatia in the EU
- excellent location of the stadium
- City of Osijek as the regional center

Threats

- possibility of insolvency
- strict implementation of the UEFA rules about financial fair play and the rules on licensing
- too large duty for the majority owner (the City)
- legal changes in financing professional sports clubs

5.3. Commentary

It cannot be argued that the most significant value of the football club Osijek joint stock sports company is its football school, which was founded, in the form as it exists today, in 1982. It has produced numerous members of the national team and world known players, among which the most famous one is definitely Davor Šuker, the best goal scorer of the World Cup in France 1988. Today ten coaches work in the school and they take care of around 300 selected football players that compete in five categories and ten teams. 98 When we talk about the strengths it is important to emphasize the tradition of the Club and it continuous appearance in the Croatian football league from its beginning until today. 99 Football club Osijek joint stock sports company shares the same destiny as most of the football clubs in Croatia, therefore the weaknesses are similar to those that can be found in other clubs. Unlike some other clubs, this Club, although it is located in the city which is a regional center, has a fans and members mostly from the city and its suburban areas. That situation can hardly be altered, because, when it comes to football, there are other centers in eastern Croatia (Vinkovci, Vukovar, Slavonski Brod), which also have local fans, whereas the rest of the people give their attention to the national clubs GNK Dinamo and HNK Hajduk. In the case of the football club Osijek the opportunities haven't been exploited enough, which also has to change by the establishment of the joint stock sports company and entry of Croatia in the European Union. Firstly the investment cycle of the stadium construction using the European Union funds has to be initiated, which will enable positive changes in the number of spectators during games, sponsors' interest and thus raising the quality of the players, that will achieve significantly higher price in football transfers. New stadium as the regional sports-cultural center should become also a venue for concerts and other big sports and similar manifestations.

Unless the process of positive changes is initiated in time, weaknesses and threats can prevail, among which the biggest is definitely financial instability, which in the case of an account blockage of the company would inevitably lead to insolvency, because due to the reforming of the association into joint stock sports company all of the regulations, which regulate the business of companies, are adequately applied.

6. Conlusion

Until the present moment the reforming process from a sports association for competition into joint stock sports company has been implemented by football clubs HNK Hajduk (Split), HNK Cibalia (Vinkovci), NK Istra 1961 (Pula), HNK Rijeka (Rijeka) and NK Osijek (Osijek), whereas the reforming of the football club HNK Šibenik (Šibenik) is in process. All of the afore mentioned

⁹⁸ Source: data recorded in the football club Osijek

⁹⁹ First Croatian football league was founded in 1992. First championship was held during war. Football club Osijek won 3rd place among 12 other clubs.

clubs have undergone mandatory reforming process. The first club that succeeded in the process is HNK Hajduk, which finished it in 2008 and it was recorded in the Commercial court registry in Split on December 23rd, 2008 as the first joint stock sports company in the Republic of Croatia. Common to all of the clubs is the fact that due to the reforming insolvency has been avoided, that is the club and it competitive status in the 1st Croatian football league has been preserved. All of the clubs have been supported by the state and local authority, which transformed their claims into basic capital of the club, enabled stadium usage and took over the control over the football clubs. Interest of the local community by all means enabled basic conditions for the activity of professional football clubs in their regions, as the main actuators of sports as a whole and economy in the city and region. However there is a realistic risk that the large and expensive professional machinery, with ongoing and investment upkeep of the stadiums which are owned by the cities, will become a big burden on the insufficient budgets of local communities. Furthermore the city as the main owner by appointing the authority takes on immediate responsibility in managing the club and protecting the capital of the investors in the joint stock sports company. In this way the city became an owner of another company, which represents an exception, because it's not a communal activity, which is the main role of each local authority. By not degrading the public interest that the football club Osijek joint stock sports company and other professional football clubs have and by taking into account all other priorities, it should not be expected that the cities will direct its financial and personnel potentials on functioning of football clubs. This represents a realistic threat in future functioning of the football club Osijek joint stock sports company, especially if we take into account the realistic economic surrounding and the system for financing sports on the state level, which doesn't provide almost any funds for sports in the local community.

After the entry in the Commercial court registry in Osijek Football club Osijek joint stock sports company will be able to do business normally, after many years of account blockage. We can expect that at least in the first year the funds needed for functioning of the Company on all levels will be provided. It is necessary to use this time to find investors, which will recognize the potentials of the football club Osijek joint stock sports company, as well as their business interest. We can see that this is realistic on the example of HNK Rijeka joint stock sports company and NK Istra 1961 joint stock sports company, in which after the reforming significant parts are owned by the foreign capital.

It is up to the new management and the owner to make use of the possibilities that are also given through the acceptance of the Republic of Croatia in the European Union, by using the European funds to build the need stadium infrastructure, which would be, next to the already existent advantages, one of the main requirements for the improvement and survival of the football club Osijek joint stock sports company as the most significant regional sports collective.

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