The Insolvency Law of Central and Eastern Europe

Twelve Country Screenings of the New Member and Candidate Countries of the European Union and Russia: A Comparative Analysis

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XI. Slovakia

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5. Summary and Perspectives

1. Introduction

The Law on Liquidation and Reorganisation[599] which became effective on 1 January 2006 is a completely new regulation of insolvency law in Slovakia. It replaced the Law on Bankruptcy and Compositon of 1991 which was criticised i.a. due to lack of flexibility of proceedings, the strong position of the court and of the administrator and to the duration of proceedings. The BRC regulates the debtor's insolvency, satisfaction of his creditors by realisation of his property or in the course of a reorganisation procedure. The reorganisation procedure is not a subordinated part of the liquidation procedure, but a separate procedure aimed at continuing the debtor's enterprise by restructuring of his debts. The institut of compulsory composition laid down in the previous law of 1991 was abolished, whereby new institutes of imminent illiquidity as a ground for commencement and discharge of debt for phyisical persons were introduced.

a) Historical Background

The insolvency law was reintroduced into the legal system of (Czecho)Slovakia in 1991 in the form of the Law on Bankruptcy and Composition. The model for the new law was the Law of the Republic Czechoslovakia No. 34/1931 on Bankruptcy, Composition and Rescission. Before the insolvency law was completely re-codificated in 2005, a number of amendments to the previous law have been adopted, i.a. an amendment of 1998 by which the so-called pre-bankruptcy procedure introduced in 1996 was abolished due to its inefficiency. The pre-bankruptcy procedure had to be conducted by the debtor and the creditors prior to the commencement of the bankruptcy procedure.[600] The position of the provisional administrator was introduced instead. The provi-

[599] Law no. 7/2005 Z.z., hereinafter referred to as BRC.

[600] The out-of-court pre-bankruptcy procedure was aimed at reorganisation of the debtor without negative consequences of a court proceeding.

sional administator traced the debtor's property and examined his books. He was appointed by the court if it could be assumed under the given circumstances that the debtor was over-indebted or if this was necessary for tracing and protection of the debtor's property.

b) Employment Relationships in Insolvency

The problem of employment relationships in insolvency was first addressed in the course of transposition of the EU Directive 80/164 in order to gradually harmonise the national regulation with the regulation of other EU member states. The respective provisions are contained in the Law on Social Insurance.[601] Under the Law on Social Insurance, the employers are obliged to make contributions to the so-called guarantee insurance fund which is administered by the social insurance office.[602] In the case of an insolvency, the employment agency makes payments to employees according to § 102 of the Law on Social Insurance for up to three months.[603] Pursuant to § 234 of the Law on Social Insurance, the employer, the provisional administrator or insolvency administrator is obliged to inform the employees or their representatives within five days and the competent social insurance office within eight days about the insolvency. The employees must apply for the payment to the competent social insurance office within 60 days after the insolvency of the employer occured or after the employment relationship was terminated according to § 184 para. 6 of the Law on Social Insurance. If no application is submitted within the term, the claim extinguishes.

[601] Law no. 461/2003 Z.z., effective since 1 January 2004.

[602] Until 1 January 2004, the guarantee fund has been administered by the competent employment agency.

[603] The competent social insurance office is obliged to inform the tax authorities about the payments from the guarantee insurance fund.

c) Insolvency Practice

The relatively large number of insolvency petitions shows that the insolvency law re-gained importance also in Slovakia. At the end of 2000, the number of pending proceedings amounted to 6,358 (2,008 new petitions and 1,547 completed proceedings). In the last years, the number of petitions has increased (2003, 1,258; 2004, 2,184; 2005, 3,907; 2006, 177), whereby the efficiency has improved (2003, 2,005; 2004, 1,865; 2005, 2,426; 2006, 3,492) and the duration of proceedings reduced. On 31 December 2006, only 3,170 proceedings were pending, while, of 3,492 proceedings terminated by the court, 1,404 proceedings were discontinued due to lack of assets and 1,665 terminated on other grounds.[604]

2. Commencement of Insolvency Proceedings

a) Principles of Procedure and Legal Protection

The Slovak insolvency law is based on the principle that the debtor's financial situation should be put on an orderly basis and, at the same time, the creditors should be satisfied. The insolvency proceeding is a collective proceeding which has two aims:

(1) prevention of further accumulation of debt by the debtor through commencement of the proceeding;
(2) just distribution of proceeds from the realisation of debtor's property among the creditors.

The provisions of the Code of Civil Procedure are subsidiary applicable to the insolvency proceeding as a proceeding sui generis. The BRC contains provisions on legal protection by the court (§§ 196 et seq.

[604] Statistics under http://www.justice.gov.sk/wfn..aspx?pg=r3&htm=r3/stkk.htm

BRC). The proceeding is generally governed by the Code of Civil Procedure, unless the BRC provides otherwise (§ 196 BRC). Sole judge makes decisions and performs procedural activities in the proceeding under the BRC. This is generally a written proceeding, but the court can set down a hearing, if necessary. Recommencement of a terminated proceeding, restoration to previous condition due to failure to observe the deadline and postponement of execution are not possible (§ 197 para. 2-4 BRC). The court issues an order, against which an appeal can be lodged if the pre-conditions of § 198 para. 1 BRC are fulfilled. The court order and other documents are pronounced by publishing in the official gazette according to § 199 para. 1 BRC. The court can also issue interim injunctions in the insolvency proceeding (§ 203 BRC). The pre-condition is that the measure is necessary for determination or protection of the debtor's property. The person obliged by the interim injunction can lodge an appeal within 30 days after the delivery of the text of the interim injunction.[605]

b) Scope and Applicability

According to § 2, the BRC is not applicable to the following:

- the state,
- state budget organisations[606]
- organisations substantially funded by the state[607],
- municipalities and associations of municipalities as well as
- other persons, for which the state is liable,

[605] For the calculation of the term, the actual delivery and not the publication in the commercial gazette is relevant, § 203 sentence 3 BRC.

[606] Pursuant to § 21 para. 1 of the Law on the Budget Rules of the Public Administration no. 523/2004 Z.z., state budget organisations are state or municipal legal entities whose revenues and expenditure are part of the public budget. They work independently on the basis of a budget, which is assigned to them within the public budget. Thus, all state organs are state budget organisations.

[607] According to § 21 para. 3 of the above Law, organisations substantially funded by the state are state or municipal legal entities, if less than 50% of their production costs are covered by their revenues and the difference is paid from the public budget.

- the Slovak National Bank,
- funds securing deposits and
- the Investment Guarantee Fund.

A new regulation in the BRC is the institute of consumer insolvency. The court can conduct the so-called "small bankruptcy proceeding" according to §§ 106, 107 BRC concerning physical persons who are not entrepreneurs on the basis of the court order on commencement, if two of the following three pre-conditions are fulfilled:

- the value of the debtor's property presumably does not exceed SKK 5,000,000;
- the turnover of the debtor in the last business year does not exceed SKK 10,000,000;
- the debtor presumably has not more than 50 creditors.

The court can reduce the terms stipulated by law in the order on the commencement of consumer insolvency. Further, a representative of the creditors' meeting is elected instead of a creditors' committee.

If certain pre-conditions stipulated by law are fulfilled, the debtor can apply for remission of outstanding debt after termination of the insolvency proceeding (§§ 166 et seq. BRC). However, the remission of outstanding debt is not possible if the insolvency proceeding was discontinued because the debtor's property was insufficient even for covering the expenses incurred in the course of the proceeding. The application for remission of outstanding debt can be submitted with the insolvency petition, but, in any case, before the court order on termination of the proceeding, and must not be contrary to the honourable intention of the debtor to satisfy his creditors to the best of his ability. According to § 167 para. 2 BRC, the court will approve the remission of outstanding debt immediately after the termination of the insolvency proceeding, if the debtor has performed his duties during the insolvency proceeding with due care. In particular, the debtor is obliged to make all appropriate efforts to gain income by means of work as an employee or a self-employed person and to inform the administrator about his revenues and expenditure as well as other relevant facts (§ 168 para. 2 BRC). In the order, the court appoints an administrator and determines legal transactions which the debtor can perform only upon approval of the administrator within the three-year trial period according to § 168 para. 1 BRC.

The amount which the debtor must transfer to the administrator for satisfaction of the creditors at the end of each trial year is also determined in the court order. This amount cannot exceed 70% of the debtor's net income. According to § 169 para. 1 BRC, the claims against the debtor can only be enforced during the trial period under the conditions determined in the court order. However, this concerns only the claims which have not been satisfied in part or in full during the insolvency proceeding. New claims which have arisen after the insolvency proceeding can be enforced if the debtor has assets. § 171 para. 2 BRC stipulates that the court orders the remission of outstanding debt after the trial period without an application if all pre-conditions determined by law are fulfilled.

c) Grounds for Opening Insolvency Proceedings

According to § 3 para. 1 BRC, the debtor is deemed insolvent in the case of illiquidity or over-indebtedness. The state authorities have extended the definition of illiquidity and over-indebtedness in the Order of the Ministry of Justice.[608] According to the BRC and ODIO, illiquidity is established if:

- a person has more than one creditor,
- a person cannot settle more than one debt within 30 days after the debts have become due; and
- the debts of a person are not covered by his funds in 30 days after the debts have become due.

The following assets are considered as funds: cash, claims in connection with bank accounts and bank deposits as well as claims for money and enforceable instruments. All claims which are owned by the creditor 90 days prior to the petition filing are considered in order to establish illiquidity of the debtor.

According to § 3 para. 3 BRC, a person is deemed over-indebted if he has more than one creditor and his liabilities exceed the value of his

[608] On the details of determination of illiquidity and over-indebtedness no. 643/2005 Z.z.; hereinafter referred to as ODIO.

property. The ODIO defines the debtor's property for the purposes of determining over-indebtedness as the assets entered in the books and registered. In the case of consumer insolvency, all assets of a physical person are deemed as debtor's property. The problem of the definition of over-indebtedness as an abstract term based merely on arithmetic calculation has not been solved by the new Law.[609] The regular examination of liquidity and survival expectations of enterprises is regulated only in so far as the board of directors of a joint-stock company is obliged to inform the shareholders' meeting once a year in the annual report on business activities and the supervisory board once a year on the expected development of assets, funds as well as returns and profits according to §§ 192, 193 of the Commercial Code.[610]

d) Persons Entitled and Persons Obliged to File the Petition

The debtor, a creditor, the debtor's liquidator and other persons determined in the BRC are entitled to file the petition. The debtor is obliged to file the petition within 30 days after he has obtained knowledge of his insolvency, unless he could not have obtained knowledge of his insolvency even if he acted with due care of an orderly merchant. This duty applies also to the management body and each member of the management body, the liquidator and the legal represetnative of the debtor. If the person who is obliged to file the insolvency petition does not perform this duty within the term stipulated by law, he is liable in relation to creditors for damages caused by breach of duty, unless he establishes that he has acted with due care of an orderly merchant. The members of the management body who are obliged to file the petition for the legal entity are liable in relation to the shareholders for damages. If the debtor has only one creditor, it is not sufficient for opening the

[609] See A. Verny, Das neue Insolvenzrecht der Slowakischen Republik (The new insolvency law of the Slovak Republic), WiRO 1996, no. 1, p. 13.

[610] This duty includes a written report on the business situation and property of the enterprise in comparison with the expected development as well as on all facts which are relevant for the business development, financial development and especially liquidity upon demand of the supervisory board.

insolvency proceeding. If the petition is filed by the other person than the debtor and the petition is rejected because no grounds for opening exist, this person is liable in relation to the debtor for damages caused by the petition, unless he establishes that he has acted with due care of an orderly merchant.

The signature on the insolvency petition must be authenticated by a notary public. If the petition is filed by a creditor, it must contain facts establishing the right of the creditor to file and the grounds for debtor's insolvency. Therefore, the creditor must attach documents proving his claim. A claim is deemed legitimate if the debtor accepted it in writing and signed this document, whereby his signature was authenticated by a notary public, or if it is based on a final court judgment. If the petition is filed by a creditor who has no domicile, location or branch office in Slovakia, the creditor is obliged to appoint his service agent, whose domicile or location is in Slovakia, in the petition. A written consent of the service agent must be attached.

The person filing the petition must transfer an advance payment for remuneration and costs of the provisional administrator to the court account before filing. If the debtor's property is insufficient for proceeding costs, the court shall reject the petition and the company must be deleted from the company register without liquidation. Pursuant to § 20 BRC, the court order on rejection of the petition due to lack of assets must be submitted to all participants of the proceeding, so that all participants (also the creditors) can lodge an appeal against this court order.

3. Institutional Framework

The same court and the same administrator conduct the liquidation and the reorganisation proceeding.

a) Courts

Under the new Law, liquidation and reorganisation proceedings are to be conducted by eight county courts (Bratislava I, Trnava, Trencín, Nitra, Žilina, Banská Bystrica, Prešov and Košice I); proper venue is determined by the domicile or location of the debtor in a certain court district. If the liquidation proceeding was commenced on the basis of the debtor's petition, the court must commence liquidation proceedings within five days or, if the court has doubts about the debtor's property, appoint a provisional administrator. If the petition is filed by a creditor, the court must submit the petition to the debtor within five days and request a statement. If the debtor does not submit a statement, the court should commence the liquidation proceeding. The court must commence the liquidation proceeding also if the debtor cannot prove his solvency. The court order on commencement contains the name of the administrator and the request to the creditors to give notice of their claims according to the BRC. The court order on commencement of the liquidation proceeding is published in the official gazette.

b) Administrator

The administrator conducts reorganisation as well as liquidation proceedings. Each county court with jurisdiction in insolvency proceedings keeps a list of administrators, from which the court appoints the administrator for an insolvency proceeding by random selection. The rights and duties of an administrators are laid down in a special Law.[611] The administrator can perform duties of a provisional administrator, an administrator in liquidation proceedings and an administrator in reorganisation proceedings.

Administrators can be physical persons or legal entities. A physical person must meet the following legal requirements to be included into the administrators' list:

- citizenship of Slovakia or another EU member state;
- full legal capacity,

[611] Law no. 8/2005 Z.z. on Administrators.

- long-term residence (main domicile) in Slovakia or another EU member state,
- clear criminal record and trustworthiness,
- professional qualification.

A limited partnership, a general partnership or a foreign legal entity can also be included into the list. Different requirements apply to different business forms.

The main duty of the provisional administrator is to determine whether the debtor's property is sufficient for covering the proceeding costs. The liquidation administrator adminstrates the debtor's property, realises it and satisfies the creditors from the proceeds. The empowered body gives to the administrator binding instructions and recommendations on the administration and realisation of property. Under the BRC, the empowered bodies are the following:

a) creditors' committee in relation to the general assets,
b) individual secured creditor in relation to his collateral,
c) creditors' committee and individual secured creditors if realisation of the general assets as well as at least one collateral is to be conducted,
d) individual secured creditors if several collaterals are concerned,
e) the court if collaterals are concerned and the secured claim is disputed.

If the court establishes that the petition for liquidation meets all legal requirements, it issues the order on commencement within 15 days. The liquidation administrator is appointed in the commencement order, but he is not party to proceedings. He is authorised to examine and, if necessary, to dispute claims, to call meetings of creditors' bodies, to trace, to make an inventory, to administer and to realise the debtor's property. The administrator can make business decisions and perform all legal acts which are necessary for the continuation of the debtor's business. However, he is entitled to do so only if the sale of the debtor's enterprise as going concern can produce higher proceeds than the sale of assets. The administrator is entitled to an adequate remuneration. The amount of remuneration is always determined by the court. He is entitled to a lump sum remuneration for performing his duties before the first creditors' meeting as well as to a proportional remuneration from the proceeds of the sale of the debtor's property. According to § 7 para. 1 of the Order of the Ministry of Justice, the lump sum for compensation

of the costs of the provisional administrator in connection with the commencement of consumer insolvency proceedings amounts to SKK 20,000 (approx. EUR 600), in connection with the commencement of insolvency proceedings against a legal entity SKK 50,000 (approx. EUR 1,500). According to § 8 of the Order, the lump sum for compensation of the costs of the regular administrator in insolvency proceedings against a consumer SKK 50,000 (approx. EUR 1,500) and against a legal entity SKK 200,000 (approx. EUR 6,000). The proportional remuneration of the regular administrator from the proceeds is flexible and amounts to 1% to 16%.

Pursuant to § 12 para. 1 of the Law no. 8/2005 Z.z. on administrators, the administrator is liable for damages caused in the course of performing his professional duties. In addition, the administrator is obliged to insure his liability; the state is not liable for damages caused by insolvency administrators.

c) Creditors' Meeting and Creditors' Committee

aa) Liquidation Procedure

Creditors' meetings are called to collect opinions of creditors, to dismiss a member of the creditors' committee and to dismiss the administrator. In order to protect their rights in the liquidation proceeding, not secured creditors elect the creditors' committee. The adminstrator calls the first creditors' meeting within 40 days follwing the commencement. It must take place not earlier than one day and not later than five days after the term for dispute of claims expires.

The administrator calls further creditors' meetings on his own initiative or upon application of the court, the creditors' committee or of one or several creditors whose votes represent more than 10% of all votes. If the administrator initiated the meeting, he takes the chair. If the creditors' meeting was initiated by the court order, the chairman is the judge or a high-ranking judicial officer. The creditors' meeting has a quorum if at least one creditor attends the meeting. The meeting decides by simple majority. Each creditor has one vote for each Slovak crown in the amount of his claim.

The creditors' committee has three or five members which are elected at the first creditors' meeting. The creditors' committee is i.a. empowered to demand information from the administrator; the administrator is then obliged to answer all questions detailed and truthful. In addition, the creditors' committee can apply to the court for dismissal of the administrator. It can give to the administrator binding instructions on the following issues:

- realisation of the general assets and collaterals,
- sale of the debtor's enterprise if it constitutes a part of general assets,
- sale of the debtor's general assets if they should be sold to a person closely connected to the administrator, the debtor or a creditor,
- transfer of the debtor's general assets to a person closely connected to the administrator, the debtor or a creditor,
- renting of the debtor's general assets to a person closely connected to the administrator, the debtor or a creditor,
- conclusion of contracts concerning temporary transfer of funds in connection with the continuation of the debtor's business,
- conclusion of contracts concerning recurrent payments for a longer time than one month or obligations according to which the other contract party has a benefit with the value of more than 3% of the debtor's turnover in the last financial period in connection with the continuation of the debtor's business.

bb) Reorganisation Procedure

The administrator must call the creditors' meeting within 30 days after the approval of reorganisation in order to collect the opinions of creditors and to elect the members of the creditors' committee. Also in the reorganisation proceeding, the meeting must take place not earlier than one day and not later than five days after the term for dispute of claims expires. The creditors' meeting is called by publication of a notice in the official gazette. The administrator chairs the meeting. The costs of calling and conducting the creditors' meeting bears the debtor. The meeting has a quorum if at least threee creditors with voting rights attend the meeting.

The decisions are made by simple majority.

The creditors' committee has three or five members who are elected in the first meeting. If the court approved the reorganisation on the basis

of the petition of a creditor, this creditor is always a member of the committee. If several creditors filed the petition, they elect a representative for the committee. The administrator calls the first meeting of the committee within three days following the election. Further meetings are called by the administrator or a member of the committee, if necessary. The committee has a quorum if at least a simple majority of members is present. Each member has one vote; decisions are made by simple majority.

4. Insolvency Proceedings

a) Effect of Commencing the Insolvency Proceeding

If the court establishes that the petition for liquidation meets all legal requirements, it decides on the commencement of the liquidation proceeding within 15 days following the receipt of the petition. The commencement has the following effects:

(1) The debtor is obliged to restrict his activities to transactions in the usual course of business; if he does not fulfil his duty, transactions remain valid, but can be contested in the liquidation proceeding.
(2) No new execution proceedings can be opened in relation to the debtor's property, pending execution proceedings are suspended.
(3) No execution proceedings can be commenced in relation to collaterals, pending proceedings are generally suspended. However, there are exceptions of this rule for certain specific rights in rem.

After the commencement, the administrator generally administers the debtor's property. Other effects which serve the protection of the debtor's property are the following:

- The debtor's transactions diminishing his property are null and void in relation to insolvency creditors.
- Immature claims become due with the commencement of the liqui-

dation proceeding. If the proceeding is terminated, the previous status of claims will be reinstated.
- If the BRC does not provide otherwise, all pending court proceedings against the debtor's estate are suspended. However, this does not apply to tax disputes, customs disputes, disputes on alimony claims and criminal proceedings which also concern compensation for damages.
- The debtor can reject gifts or inheritance only upon approval of the administrator.
- All powers of attorney, general commercial powers and not accepted contract offers expire.
- The matrimonial common property regime of the debtor expires; the court must divide property among the spouses.

aa) Commencement of the Liquidation Proceeding

The creditors must give notice of their claims within 45 days following the commencement; they must submit two exemplars of the documents and attachments to the administrator and one exemplar to the court. If the deadline is not observed or the notice is given only to the administrator or only to the court, the claim is not registered for the liquidation proceeding. The notice must be given for each claim separately.
The notice must contain the following data:
- firm name and location of the creditor and the debtor,
- legal ground of the claim,
- priority order of the claim,
- amount of the claim (if applicable, divided in the main claim and the accessory claim),
- division of the accessory claim according to the legal ground.

The notice must be filled in a special form; it must include the date and be signed by the creditor.[612] If the formal requirements are not met, the claim will be not registered.
If the creditor gives notice of a secured claim, the notice must include the name of security, priority rank and legal grounds of the security, the

[612] The forms are available on the webpage of the Ministry of Justice, but only in Slovak.

description of the collateral and the secured amount. If these data are not included, the security expires when the term for the notice expires. If a creditor gives notice of several claims, he is obliged to submit, additionally, the so-called "general list" of all data from notices on individual claims. If the "general list" is not submitted or is not filled in a prescribed printed form or does not contain the date and signature or does not include data from all individual notices, none of his claims will be registered. Documentary evidence for the information on claims filled in the form must be attached. If a claim of which notice was given was obtained by assignment, documentary evidence on assignment must be submitted. If the claim is submitted by a creditor who is obliged by law to keep books, he must also submit his statement on the registration of the claim on his books.

The administrator is entitled to dispute the claim in respect of the legal ground, enforceability, security, priority rank of security, amount and priority rank of the claim. The debtor and other creditors can offer suggestions concerning disputable claims to the administrator. A creditor whose claim or security are disputed is entitled to file an action for a declaratory judgment against the administrator with the competent court within 30 days.The court judgment is effective in relation to all parties to proceedings. The creditor is liable if his data are incorrect. If the notice of an unjustified claim was given, the court can impose on the creditor a fine amounting to 0.1-0.2% per diem from the submission of the notice to the res judicata of the court judgment on the action for a declaratory judgment.

bb) Commencement of the Reorganisation Procedure

Parties to reorganiation proceedings are the debtor, the person who filed the petition and creditors if they have given notice of their claims according to the law. Moreover, other persons whose rights and duties will be decided upon in the proceeding are also parties to reorganisation proceedings. The BRC differentiates between the beginning of the reorganisation proceeding and the approval of reorganisation. These two terms and the respective legal effects are often confused. With the beginning of the reorganisation proceeding, the court proceeding begins having the effects laid down in § 114 BRC (see below), whereby, with the approval of reorganisation, the administrator is appointed and the

order of creditors' satisfaction is determined. After the debtor or a creditor have filed a petition for reorganisation with the competent court, the court has to decide on this petition within 15 days. If the petition is incorrect or incomplete, the court can reject it without a request for correction. If the petition meets all requirements and a positive expert's report on reorganisation was submitted, the court decides on the commencement within 15 days following the receipt of the petition. The court order is published in the official gazette. According to § 114 para. 1 BRC, the commencement of the reorganisation proceeding has the following effects:

- The debtor is obliged to restrict his activities to transactions in the usual course of business, other transactions must be approved by the administrator. If the debtor conducts transactions without approval, they remain valid. However, these transactions are null and void in relation to creditors of a liquidation proceeding conducted within two years after the end of the reorganisation proceeding.
- No new execution proceedings in connection with claims notice of which was given in the reorganisation proceeding can be opened in relation to the debtor's property, pending execution proceedings are suspended.
- No execution proceedings can be commenced in relation to collaterals of secured claimd notice of which was given in the reorganisation proceeding, pending proceedings are suspended.
- The other party of the contract with the debtor is not entitled to terminate the contract or to rescind from the contract on the ground of delay of payment by the debtor if the debtor was obliged to perform before the petition for reorganisation. Termination or rescission are not valid.
- Contract clauses which entitle one party to terminate the contract or to rescind in the case of reorganisation or liquidation are null and void.
- A claim notice of which is given in the reorganisation proceeding can not be set off.

b) Rescission and Invalidity

Pursuant to §§ 57 et seq. BRC, the administrator can rescind antecedent transactions of the debtor if certain pre-conditions stipulated by law are fulfilled. The legal consequence of an effective rescission is that the transaction in question is null and void. A general pre-condition for rescission is that the transaction should be detrimental for the satisfaction of one or several creditors.

A rescission is possible in the following cases:

- transactions without or for an inequivalent consideration,
- preferential transactions to the benefit of individual creditors,
- transactions detrimental for individual creditors,
- transaction between two insolvency proceedings if the period between termination of the first and commencement of the second proceeding is less than six months.

The rescission must be declared in relation to the person with whom or to whose benefit the transaction was conducted.

c) Reorganisation

aa) Expert's Opinion on Reorganisation and Approval

If imminent illiquidity or insolvency of the debtor is established, he can instruct the administrator to prepare an expert's opinion on reorganisation. The expert's opinion should determine whether pre-conditions for the debtor's reorganisation are fulfilled. However, the obligation to file the petition for liquidation is not postponed in this case. If one or several creditors and the debtor agree upon the necessary cooperation, the creditors can also instruct the administrator to prepare an expert's opinion on reorganisation. The administrator first examines the financial situation and business status of the debtor. On the basis of these findings, he recommends the reorganisation or not. If the administrator advocates reorganisation, he proposes an appropriate method of reorganisation in the expert's opinion. The administrator can recommend reorganisation only if the following legal requirements are fulfilled:

(1) the debtor performs entrepreneurial activities,

(2) imminent illiquidity or actual insolvency of the debtor,
(3) well-founded presumption that at least a substantial part of the debtor's enterprise can be retained and
(4) a higher rate of debt recovery is to be expected upon approval of reorganisation than in the case of a liquidation proceeding.

After the beginning of the reorganisation proceeding, the court has to decide whether to approve the reorganisation within 30 days according to § 116 para. 1 BRC. The approval is the second stage of procedure, where the actual reorganisation begins. Pursuant to § 118 para. 1 BRC, the approval of reorganisation becomes effective when it is published in the official gazette. The publication has the effect that no liquidation proceeding can be commenced against the debtor.

According to § 116 para. 2 BRC, the court approves the reorganisation only if:

(1) the expert's opinion on reorganisation fulfils all requirements prescribed by law,
(2) the content of the expert's opinion is unambiguous and understandable,
(3) the expert's opinion was drawn up by an administrator who is included in the list and has his office in the court district where the proceeding is to be conducted,
(4) the expert's opinion has been drawn up not earlier than 30 days before the petition for reorganisation was filed, and
(5) the administrator recommends reorganisation in the expert's opinion, and it can be concluded from the expert's opinion that the pre-conditions for the recommendation are fulfilled.

The effects of reorganisation which applied with the beginning of the reorganisation proceeding remain after the approval.

bb) Registration of claims and Preparation of the Reorganisation Plan

The debtor, the person who filed the petition for reorganisation and the creditors who gave notice of their claims according to the law participate in the reorganisation proceeding. Moreover, other persons whose rights and duties will be decided upon in the proceeding are also parties

to reorganisation proceedings. The creditors must give notice of their claims to the administrator and to the court within 30 days following the approval of reorganisation (see above a) aa)).

Each claim of which notice has been given is examined by the administrator and compared with the books, other documents and the list of claims. The administrator considers also statements of the debtor and other persons and investigates the grounds for claims independently. If the administrator establishes that a claim on which notice has been given can be disputed in respect of the grounds, priority, enforceability, amount, securigy or rank, he is obliged to dispute this claim. He can dispute the claim only within 30 days following the expiry of the term for giving notice. The debtor or a creditor who has given notice of his claims can suggest to the administrator that he should dispute a certain claim. If the administrator disputes a claim, the creditor is entitled to file an action for a declaratory judgment with the competent court within 30 days following the expiry of the term for dispute. If the claim was successfully disputed, it will not be considered in the reorganisation proceeding.

The reorganisation plan is a list, which contains information on establishing, alteration and expiry of rights and obligations as well as the proportion and form of satisfaction of participants of the plan, who are creditors or debtor's shareholders. The plan consists of an explanatory and a binding part. The debtor and the administrator or the creditor and the administrator prepare the plan. It must be submitted to the creditors' committee within 90 days following the approval of reorganisation. This term can be prolonged for 60 days by the creditors' committee upon an application with good grounds. If the term expires without result, the court commences the liquidation proceeding. If the creditors' committee approves the reorganisation plan, it is presented to the creditors' meeting. The creditors' meeting can accept the reorganisation plan if:

- the absolute majority in each group of secured creditors with registered claims amounting to more than 1% of all registered secured claims of the given group, providing their votes at the same time and in the given group constitute more than 2/3 of the votes of creditors that are voting in the given group based on the amount of their registered claims vote for the plan;

- the absolute majority in each group of not secured creditors with registered claims amounting to more than 1% of all registered not secured claims of the given group, providing their votes at the same time and in the given group constitute more than 1/2 of the votes of creditors that are voting in the given group based on the amount of their registered claims vote for the plan;
- the absolute majority in each group of shareholders based on the number of votes vote for the plan;
- the absolute majority of the attending creditors based on the registered amount of their registered claims vote for the plan.

The approved reorganisation plan is confirmed by a court order upon application of the author of the plan which is to be submitted within 10 days following the creditors' meeting. The minutes of the creditors' meeting and the approved plan are to be attached to the application. If one of the creditors' groups not achieve the required majority for the plan approval, the author of the plan can attach a request for overruling to his application to the court. It is possible in the following cases:

(1) if the participants of the reorganisation plan from the dissenting group are not placed in an obviously worse position in the case of approval than in the case of rejection of the plan; the court bases its decision on this issue on the expected satisfaction of the dissenting creditors in a liquidation proceeding;
(2) if the majority of groups, each by absolute majority, votes for the approval of the plan; and
(3) if the attending creditors with the absolute majority of votes based on the registered amount of the registered claims voted for the approval of the plan.

If the consent of the debtor is required for the approval of the plan and he refuses to consent, the author of the plan can apply to the court to overrule this decision of the debtor if the debtor will not be placed in an obviously worse position than in the case of plan rejection. If there are no legal grounds for rejection of the plan, the court confirms the approval of the plan within 15 days following the receipt of the application by a court order. By this court order, the reorganisation proceeding is terminated. The order shall be immediately published in the official gazette. The plan confirmed by the court shall not be published, with

the exception of provisions on a new credit. The court rejects the reorganisation plan if:

(1) the provisions concerning the requirements for the reorganistion plan, the procedure of preparation of the plan or other provisions of the LRR on reorganisation plan were substantially violated and this was detrimental for a participant of the plan;
(2) the approval of the reorganisation plan was achieved by fraud or by special benefits to a participant of the plan;
(3) the plan was not approved by the creditors' meeting or by the debtor; this provision does not apply if the court has overruled their decisions; or
(4) the reorganisation plan stands in a substantial contradiction to the joint interests of creditors.

When the court order on rejection becomes final, the court terminates the reorganisation proceeding, commences the liquidation proceeding and adjudicates the debtor as bankrupt by a court order. The provisions of the reorganisation plan become effective in relation to all participants of the plan when the court order on confirmation is published in the official gazette; the provisions of the plan on a new credit are effective ergo omnes. The rights of creditors who did not register their claims within the term to enforce their claims and securities are null and void with the publication of the court order on confirmation. All effects of the commencement of the reorganisation proceeding do not apply after the publication; suspended proceedings are terminated.

d) Status of Secured Creditors

The BRC differentiates between secured[613] and not secured claims. In insolvency proceedings, secured creditors are satisfied from the proceeds of the sale of collaterals and not secured creditors from the proceeds of the sale of the remaining assets. If the proceeds from the sale of collaterals are insufficient to satisfy the claims of secured creditors in

[613] A claim is deemed as secured if a security is attached to it. Possible securities under the law are i.a. pledge, retention, assignment and transfer of ownership as a security for a debt.

full, the remaining amount of claims is satisfied from the proceeds of the sale of general assets. The administrator prepares the distribution plan for the proceeds of the sale of collaterals and submits it to individual secured creditors. If a secured creditor does not approve the distribution plan, he can submit objections on the distribution plan to the court which makes a final decision.

e) Realisation of Debtor's Property

The administrator is obliged to make an inventory of the debtor's property within 30 days following the commencement of the liquidation proceeding. This inventory must be based on the inventory prepared by the debtor, additional information provided by the debtor and other persons and on his own investigations. Two separate inventories for collaterals and general assets must be made. Under the BRC, realisation of debtor's property is defined as accumulation of money in Slovak crowns from the insolvency estate[614] in order to satisfy the creditors. The realisation is aimed at achieving the highest possible proceeds within a shortest possible time period at the lowest possible cost. The administrator can organise the realisation of debtor's property as:

- a public tender,
- a public auction organised by a commissioned auctioneer,
- sale of property by a commissioned broker,
- sale of property at an auction, tender or by public offering, or
- other appropriate procedure.

The administrator transfers all assets and rights of the insolvency estate to the purchaser according to § 92 para. 2 BRC. Obligations of the insolvency estate are transferred to the purchaser only if they arose after commencement of the liquidation proceeding in connection with the continuation of the debtor's business and if this are obligations in kind from employment contracts. The same applies if only a part of the debtor's enterprise is sold.

[614] Seizure of the debtor's cash in hand, receipt of payments settling the debtor's claims and sale of the debtor's enterprise or its parts are the methods of fund accumulation.

f) International Insolvency Law

After the accession of Slovakia to the European Union in 2004, the Council Regulation (EC) 1346/2000 on insolvency proceedings is directly applicable in relation to other member states. The Regulation has also been partly incorporated into the BRC.

International insolvency law provisions applicable in relation to Denmark and the states outside the EU are contained in the BRC. According to § 174 BRC, it regulates the effects of national proceedings on foreign assets of the debtor and recognition of foreign proceedings. If no bilateral treaty is ratified, decisions of foreign courts in insolvency proceedings are recognised on the basis of the principle of reciprocity. If a foreign authority opened a foreign insolvency proceeding, the Slovak court can recognise the effects of the foreign insolvency proceeding for the territory of Slovakia upon application of the administrator based on the principle of reciprocity. The foreign administrator must prove that he is appointed to conduct the foreign insolvency proceeding, that the proceeding has been opened and there is a legal ground for recognition of the foreign proceeding. The Slovak court rejects the application of the foreign administrator if another foreign insolvency proceeding or a national insolvency proceeding is being conducted against the same debtor in Slovakia. If the foreign proceeding is recognised, the Slovak court can recognise further effects of the foreign proceeding or restrict the effects without an application of the foreign administrator.

g) Criminal Offences in Connection with Bankruptcy

The new Slovak Criminal Code[615] (hereinafter referred to as CC) became effective on 1 January 2006. In several provisions, the CC refers to the BRC. Under § 242 para. 1 CC, a person who impedes the reorganisation, liquidation or discharge of debt proceedings by breach of duty based on BRC or by giving false information on assets and debts in the petition is subject to criminal liability. This offence is punished with

[615] Law no. 300/2005 Z.z.

imprisonment from 6 months to 5 years. Such acts as feigning of insolvency with the intention to damage the creditors (also called asset stripping) and concealment or delay of insolvency are punishable under this provision. If the offender causes substantial damage by his acts or commits the offence for personal benefit, the offence is punished with imprisonment from three to ten years.

Under § 243 para. 1 CC, a person who impedes the liquidation proceeding because he conceals, does not let register and value or does not return property from insolvency estate or conceals, falsifies or destroys documents and information on the ownership rights and financial assets of the debtor is subject to criminal liability. This offence is punished with imprisonment for up to two years. If the offender causes relatively serious damage by his acts, the offence is punished with imprisonment from six months to five years. If substantial damage is caused, the punishment is three to eight years imprisonment. If the damage is extensive, the punishment is four to ten years imprisonment.

According to § 241 para. 1 CC, an administrator or a creditor who obtains or accepts a benefit in connection with the voting on the reorganisation plan is subject to criminal liability. The offence is punished by imprisonment from 6 months to 3 years. Under § 213 para. 2 CC, an administrator in liquidation who appropriates for himself property owned by other persons entrusted to him and causes damages by that is guilty of a criminal offence. The offence is punished by imprisonment from one to five years.

5. Summary and Perspectives

The new BRC became effective on 1 January 2006. An important stage of development of insolvency law in Slovakia was already the Order of the Ministry of Justice no. 643/2005 Z.z. on determination of illiquidity and over-indebtedness of the debtor containing important details about the insolvency trigger. Since the BRC has been amended quite recently

and the formal requirements under the BRC are high, there is still little practical experience with the Law. According to our information sources, only three reorganisation proceedings were approved in Slovakia between 1 January 2006 and 15 January 2007. Nevertheless, the new reorganisation proceedings open up new possibilities for enterprises in financial distress to recover solvency without negative consequences for the creditors. The legal development in Slovakia is in line with other EU member states, and the result is a modern and market-conform commercial law.