
# 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

Jens Lowitzsch (Ed.)

Developed by Inter-University Centre Split/Berlin,
Institute for Eastern European Studies, Free University of Berlin

# XII. Slovenia

*Pavle Flere*

# 1. Introduction

## a) Historical background

After establishing its independence in 1991, in Slovenia the Yugoslav Statute on Coercive settlements, Bankruptcy and Liquidation[616], which came into force in 1989, was still applicable. Under the Yugoslav type of socialism, insolvency proceedings were considered to be an anomaly, owing to the fact that working people might lose their jobs. Not surprisingly, the insolvency procedures were underdeveloped and of a very rudimentary nature. Despite the fact that the Yugoslav regulation did not contradict the new legal order, the newly introduced Company Act compelled the adoption of a new Statute on Coercive Settlements, Bankruptcy and Liquidation (hereinafter: SCSBL).[617] In addition, by 1993 some significant deficiencies in the 1989 Act could be noticed in practice. Namely, coercive settlements did not regulate certain types of financial reorganizations, transformations of companies etc., and therefore were unsatisfactory. However, these methods were sometimes performed in legal practice. Thus, the aim of the legislation was to legally frame these methods.[618] In 1997 the Act was amended, and thus the position of creditors was improved, new methods of financial reorganization were introduced and new rules for the appointment of trustees were adopted. When the most recent amendments of the SCSBL came into force in 1999, Art. 3(2, 3) SCSBL, which regulated ex officio commencement of insolvency proceedings by the courts, was deleted due to vehement critique of scholars and practitioners.

[616] Official Gazette of RS no. 84/89.

[617] Official Gazette of RS no. 67/93; first amendment in 1997, Official Gazette of RS no. 39/1997; second amendment in 1999, Official Gazette of RS no. 52/99.

[618] See S. Prelič, Bankruptcy Law, Maribor 2000, Univerza v Mariboru, Pravna fakulteta, 1999, p. 40. (in Slovenian)

### b) Insolvency Practice

One of the main problems of Slovenian judicial practice is the limited capacity of courts and huge delays in processing cases, which are even more pronounced in insolvency proceedings, where the timely reaction of the Courts is of fundamental importance.[619] More than half of bankruptcy proceedings last for more than 6 months, about a quarter between 6 months and a year, around 20% between 1 and 2 years and around 15% more than 2 years, with no indication of change.[620] There are many explanations for the time delays the judicial proceedings. They vary from incompetence of judges to deficient legislation.[621] In the last 7 years the number of submitted petitions for bankruptcy proceedings has been stable at an average of around 700 petitions every year.[622] In

[619] Art. 11/2 SCSBL states: "Bankruptcy proceedings are to be fast." Similarly, Art 13 SCSBL states: "The time limitation for lodging an appeal is 8 days, if this Act does not provide otherwise." Furthermore, in insolvency proceedings the appeal is not of suspense nature, meaning that an appeal does not hinder enforceability of the order or decision.

[620] Statistics can be downloaded from the web page of the Slovenian Ministry of Justice (http://www.gov.si/mp/index.php?vie=content&gr1=stt&gr2=sdnStt). In 2006 only 290 cases (38.6%) were solved in less than six months, in 2005 492 (46.3%), in 2004 372 (45.2%), in 2003 348 (46.7%), in 2002 315 (49.7%), in 2001, 266 (45.6%); in 2006, 160 (21.3%) took between six months and one year, in 2005 225 (25.9%) in 2004 202 (24.5%), in 2003 197 (26.4%), in 2002 78 (12.3%), in 2001 128 (21.8%); in the year 2006 141 cases (18.8) lasted from one year to two years, in 2005 117 (13.5%), in 2004 123 (14.9%), in 2003 102 (13.7%), in 2002, 78 (12.3%), in 2001 100 (17%). In 2006, 160 (21.3%) of cases lasted more than two years, in 2005, 125 (14.4%), in 2004, 127 (15.4%), in 2003, 98 (13%), in 2002, 129 (20.4%), in 2001, 94 (16%).

[621] See the Supreme Court's Analysis of Judicial Delays. Slovenia belongs to the group of countries (together with Azerbaijan, Georgia, Hungary, Latvia and Uzbekistan), whose insolvency legislation and practice have low levels of compliance with international standards and best practices. See, M. Uttamchandani, Insolvency Law and Practice in Europe's Transition Economies, Butterworth's Journal of International Banking and Financial Law, 2004, p. 452.

[622] Thus, in 2006, 703 petitions were submitted; in 2005, 697 petitions were submitted, in 2004, 1,000 petitions were submitted In 2003, 760 petitions were submitted; in 2002, 764, and in 2001, 543 were submitted. The only exemption was year 2004, when 1,000 petitions were submitted.

2006, 6.3% of the petitions were withdrawn, 45.8% were rejected because the debtor's assets were insufficient for payment of the expenses of the bankruptcy proceedings and 15.7% were rejected for other reasons. Since 2004 the number of petitions, rejected owing to insufficient assets for payment of the expenses of the proceedings, has been stabile at around 50% of the total filed.

The situation is not much different for the case of coercive settlements procedures. After an increase of 168% to 137 petitions filed in the year 2000, the situation has not been volatile[623] with an average of 120 petitions for coercive settlements filed per year. However, the problem is that there were 185 unresolved petitions pending before the courts in 2006, since 65 petitions remained unresolved from previous years. In comparison to bankruptcy proceedings coercive settlement proceedings are less prone to contribute the increase of the judicial delays in Slovenia. Thus, similarly to previous years in 2006 56 cases (46.7%) were completed in less than six months, 53 cases (44.1%) were completed in between six months and one year. Lastly, in 2006 only 11 cases (9.2%) lasted more than one year.

### c) Status of the Reforms

Even though the reform of Slovenian insolvency law took place fairly recently (the SCSBL was lastly amended in 1999), it does not seem that reform achieved substantive results. Namely, the Slovenian legislation is still focused on the punishment of the over-indebted or illiquid debtor by its elimination from the market. However, modern insolvency laws and good practices focus mainly on retaining the debtor economically active by utilization of different types of reorganization methods. Moreover, the prevailing opinion is that Slovenian coercive settlement proceedings are deficient. For instance, coercive settlement legislation does not prevent critical suppliers (telephone and utility companies) from cutting off supply to discharge old debts, neither does it permit priority

[623] In 2001 105, 2002 136, 2003 134, 2004 128, 2005 126 and in 2006 106 petitions. It is expected that in 2007 (based on the statistics for the first half of the year ) the number will not change radically.

reorganization financing etc.[624] Furthermore the introduction of insolvency of physical person (consumer insolvency) was discussed.[625] Slovenian scholars are largely influenced by German theory and practice. Therefore, it is expected that further reforms of Slovenian insolvency legislation will be based on the German model.

Stemming from the previously mentioned deficiencies of the Slovenian insolvency legislation, a working group under the auspices of Faculty of Law of University of Maribor has prepared a proposal of a new Statute on Financial Operations, Insolvency Proceedings and Coercive Liquidations.[626] The proposal follows the principles and solutions of 2004 UNCITRAL Legislative Guide on Insolvency Law.[627] Therefore, it introduces quite a few new institutions, for instance consumer bankruptcy, bankruptcy of succession estate/legacy etc.[628] In addition, the aim of the proposal is to contribute to the transparency of the Slovenian insolvency legislation. Thus, it merges different statutes, i.e. Statute on Financial Operations and SCSBL into one statute.

[624] See http://www.ebrd.com/country/sector/law/cla/slov.pdf

[625] See for more on this topis L. Ude, Bankruptcy of Physical Persons (Bankruptcy on the Assets of the Physical Persons, Who are not Entrepreneurs), Podjetje in delo, 1997, p. 1352 (in Slovenian)

[626] Predlog zakona o finančnem poslovanju in postopkih zaradi insolventnosti ter prisilnem prenehanju.

[627] See http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf

[628] See for more on the Proposal Š. Ivanjko, Expected Novelties on Financial Operations and Insolvency Proceedings, Republika Slovenija/ Ministrstvo za Finance, Davčna uprava Republike Slovenije, Portorož 13-14 junij 2007 (in Slovenian).

## 2. Commencement of Insolvency Proceedings

### a) Principles of Procedure and Legal Protection

The SCSBL is based on seven principles: 1) equality and proportional satisfaction of the creditors (par condicion creditorum); 2) universality of the debtor's assets or the principle of the universality of creditors; 3) limitation of the debtors rights; 4) of realisation of the debtors estate; 5) of covering; 6) subsidiary of bankruptcy and 7) autonomy of the creditors. Pursuant to Art. 15 SCSBL, the Statute on Civil Procedure applies to insolvency proceedings unless the SCSBL provides otherwise.[629] This is particularly the case for the determination of jurisdiction, finality of judgments, exclusion of judges, language of hearing etc.[630] Since the insolvency proceedings have their peculiarities, the SCSBL adapted certain procedural institutions. For instance, the rules on personal service of documents are in almost every case replaced by the publication of documents in the Official Gazette, or by the posting of the documents on the bulletin board in the court that has jurisdiction over insolvency proceedings.[631] The SCSBL has derogated the rules of serving the judicial documents by enacting different rules for notification of creditors about the hearings, and by determining the creditors' meeting to be a special body.[632]

The role of the courts in insolvency law is emphasised with the wide powers vested in the case of bankruptcy. However, unlike Germany

[629] See J. Šinkovec, Commentary on SCSBL, Oziris, p. 45 (in Slovenian).

[630] However, the rules on costs from the Statute of Civil Procedure are not applicable to insolvency proceedings. Therefore, the rule that the losing party should bear the costs of litigation is not applicable in insolvency proceedings, but every party should bear its costs in line with non-contentious proceedings, unless the law provides otherwise. See, Judgement VSM, Cpg 117/95.

[631] See N.Plavšak, S. Prelič, Commentary on SCSBL, Gospodarski vestnik, Ljubljana, p. 156 (in Slovenian).

[632] For instance, the plan of financial organization and the proposal for a stay of procedure are served to the creditors' meeting and not to each creditor individually (Art. 46 SCSBL and Art. 35 SCSBL)

there is no indication of a tendency towards "privatisation" of the insolvency process.[633] Pursuant to Art. 32 Act on Civil Procedure the circuit courts have the jurisdiction over insolvency procedures and all procedures connected to the insolvency process.[634] In insolvency procedures the courts mainly issue decisions, or, when giving instructions to the trustee[635], orders (Art. 12 SCSBL). However, if an issue of a substantive matter arises, the Court will direct the parties to trial (Art. 134, 144 SCSBL). Time limitations for appeal against an order are short, namely three days.[636] Furthermore, appeal against the order is decided by inferior courts (the same court that issued the order), whereas appeal against decision is decided by appellate courts. The time limitation, which starts running from the day of announcement in the Court, for lodging an appeal against the decision is 8 days, unless the Statute states otherwise (Art. 13 SCSBL). The only exception to this time limitation is an appeal against a decision to end bankruptcy procedure owing to the lack of estate for satisfying the expenses of the procedure. Furthermore, the time limitation for this decision starts running from the day of publication in the Official Gazette (Art. 99 SCSBL). In addition, the insolvency process excludes scrutiny of the appellate courts' decisions by Superior Court (Art. 11 SCSBL).

[633] See Eger, Bankruptcy Regulations and the new German Insolvency Law from an Economic Point of View, European Journal of Law and Economics, 2001, p. 42.

[634] This is an exclusive jurisdiction for insolvency proceedings, which means that the parties can not agree on an alternate jurisdiction for these types of suits. In addition, the same Court will have exclusive jurisdiction to decide on separation and separate satisfaction suits, as they are the suits "connected to bankruptcy proceedings". See Šinkovec, Tratar, Commentary on The Act on Civil Procedure, p. 167 (in Slovenian).

[635] See N.Plavšak, S. Prelič, Commentary on SCSBL, Gospodarski vestnik, Ljubljana, 2000, p. 145 (2000).

[636] The SCSBL foresees a 3 day time limitation in Art. 71, 76 and 182 for instruction of trustees; the general 8 day time limitation in Art. 14 is redundant.

### b) Scope and Applicability

The debtor in insolvency procedure can be every type of company known under Slovenian law. Since the new SCSBL has been harmonised with the new Company Law Statute, insolvency proceedings can be initiated for independent entrepreneurs, companies, cooperatives or any other legal entity or physical person, providing that some special statute regulates it (Art. 4 SCSBL). Furthermore, insolvency proceedings apply to public companies, unless some special regulation provides otherwise (Art. 4 (2) SCSBL in connection with Art. 28 Act on Public Companies). Other special statutes regulate the bankruptcy of insurance companies (Insurance Act), banks (Bank Act), investment funds (Act on Investment Funds), trusts and so on.[637] Under Slovenian law, partnerships have legal personality (Art.1 Company Act). This, however, does not change very much the position of the personally liable partners, whose estate forms the bankruptcy estate of the debtor (partnership) (Art. 6(1) SCSBL). Nevertheless, insolvency of a partnership will not necessarily result in the liability of personally liable partners, owing to the fact that they may exonerate themselves by proving with sufficient probability that the debtor's estate will suffice for compensation of the creditors (Art. 6 (2) SCSBL).[638] The position of an independent entrepreneur is similar to that of a personally liable partner. In addition, rules reserved for the partnerships are subsidiarily applicable to the entrepreneurs. However, the position of the entrepreneur is more difficult than the partner's position because insolvency proceedings of the partnership end with the winding up of the legal entity. Although, by the end of the bankruptcy proceedings, neither the partner nor the entrepreneur relieved of debts, contrary

[637] See Art. 1(2) European Council Regulation 1346/2000

[638] If a partner can prove that the partnership's assets suffice for the satisfaction of the debts, the question arises why the bankruptcy proceedings were opened at all. The answer should be sought in the fact that partner's liablity is only subsidiary in nature. Therefore, Art. 6(2) will be mainly applicable when the partner proves with sufficient probability that only part (not all) of his personal estate should belong to the bankruptcy estate. See N. Plavšak, S. Prelič, Commentary of SCSBL, Gospodarski vestnik, Ljubljana, 2000, p. 129 (in Slovenian).

to the partner the entrepreneur cannot start any business activities before compensating all creditors.[639]

### c) Grounds for Opening Insolvency Proceedings

Illiquidity and over-indebtedness are the two grounds for opening insolvency proceedings in Slovenian law (Art. 2 SCSBL). Although the SCSBL does not provide any definition of or guideline for the two terms, judicial practice has determined their scope. A company is illiquid if it is no longer capable of paying its debts as they become due for a longer period of time.[640] The debtor is not illiquid if its incapacity lasts only for a short period of time, or the debtor is unwilling to satisfy the debt even though he is capable. There are certain situations that indicate the debtor's illiquidity, i.e. the satisfaction of creditors by virtue of unusual payment transactions (assignments, set offs etc.). On the other hand, over-indebtedness is given when the liabilities of the company exceed its assets, which, at first glance, can be determined relatively easily by assessing the debtors' balance sheets. This ground is reserved only for legal entities, which means that it is not applicable to independent entrepreneurs. Testing for over-indebtedness involves complicated insolvency tests, as it is assessed from the balance sheets. Therefore, when the company is in crisis, certain insolvency tests for the improvement of the balance sheets are to be applied. First, a positive prognosis is carried out within the insolvency test, which means that the insolvency test may be based on the on going concern asset values. Liquidation values are usually much lower than those of the concern asset values. This test basically identifies whether the company will remain in business. Second, the insolvency test may improve balance sheets by capitalizing hidden reserves. Because certain assets of the company are not reflected with their commercial value in the balance sheet, the internal goodwill and written-off real estate are capitalized and presented in the balance sheet.

[639] See S. Prelič, Bankruptcy Law, Pravna fakulteta v Mariboru, 1999, p. 67 (in Slovenian).

[640] See Prelič, Bankruptcy Law, Pravna fakulteta v Mariboru, 1999, p. 49 (in Slovenian).

From the procedural point of view, over-indebtedness and illiquidity are mere rebuttable presumptions for initiation of the insolvency proceedings. Therefore, the court will not scrutinize whether the grounds are present if the petition was filed by 1) an insolvent debtor (Art. 97(4) SCSBL), 2) the creditor or personally liable creditor, and the debtor did not complain or did not declare anything within the 15-day time limitation (Art. 92(2) SCSBL), 3) the coercive settlement administrator (Art. 98 SCSBL), and if 4) the debtor proposed Composition proceedings were unsuccessful (Art. 98 SCSBL).[641] If any party files a complaint, the Court will determine the presence of grounds with the help of experts. As the main function of bankruptcy proceedings is the proper compensation of the creditor's debts, the proceedings will not be carried out if the bankruptcy estate is not sufficiently large to cover the expenses of bankruptcy proceedings, or if the satisfaction for the creditors would be negligently small (Art. 7 SCSBL). Furthermore, the proceedings will not be initiated if the debtor has only one creditor (Art. 2 (2) SCSBL).

### d) Persons Entitled and Persons Obliged to File the Petition

The creditors, the debtor and the personally liable partner are the only petitioners mentioned in Art. 3 SCSBL.[642] However, other legal acts may regulate the right to initiate insolvency proceedings. For instance, the Agency for Supervision of Insurance Companies shall file a petition for bankruptcy proceedings over an insurance company (Art. 202 (1) Act on Insurance Companies), or the Bank of Slovenia shall file a petition for bankruptcy of a bank (Art. 164 (1) Act on Banks).

The persons or bodies that file a petition on behalf of a debtor, which is a separate legal entity from its shareholders, depend on he type of company (limited liability company, stock corporation, cooperative

[641] See N. Plavšak, S. Prelič, Commentary of SCSBL, Gospodarski vestnik, Ljubljana, 2000, p. 104 (in Slovenian).

[642] Amendments in 1999 deleted Art. 3 (2) and (3) SCSBL, which were introduced by Amendments in 1997 and regulated ex officio initiation by the Court once it was informed of the grounds for opening by the Agency for payment transactions. See, N. Plavšak, Ž. Bergant, Commentary on the Act on Financial Operations of the Companies, Gospodarski vestnik, 2000, p. 825 (in Slovenian).

etc.). If the illiquidity or over-indebedtness pertain for a two- month grace period, during which the crisis should be solved, the management shall file a petition for a coercive composition or the bankruptcy (Arts. 12 and 13 Act on Financial Operation of the Companies, which has derogated Arts. 104 and 257 Company Act). Furthermore, the management, the members of supervisory board and the members of shareholders meeting are at risk if there is no prompt petition for the bankruptcy (not coercive settlement) proceedings. In fact, Art. 19 and 20 and the Act on Financial Operation of the Company presupposes compensatory damages for indemnifying creditors if the petition was not filed promptly.[643]

A petition by the creditor must include data on 1) the claim that has fallen due and all circumstance that show the debtor's lack of assets for payment of the claim (Art. 90, 91 and 2 SCSBL). The new SCSBL has made easier demonstrate the creditor's claim, as submission of the invoice or some other evidence of the claim suffices, whereas the Yugoslav SCSBL-1989 presupposed submission of a final judgment for the valid petition. Furthermore, unpaid employees are considered to be creditors, who can secure payment by petitioning for insolvency proceedings. In that case, the employees are exculpated from the payment of bail for the initiation of insolvency proceedings (Art. 93 SCSBL).

[643] Taking into account the situation in Slovenian insolvency practice, it is worth deliberating the imposition of criminal sanctions for any damage resulting from delay in petitioning, similar to the German regulation.

## 3. Institutional Framework

### a) Insolvency Court, Judge-Chairman

Subject matter jurisdiction over bankruptcy cases is vested in the District Courts, which represent the higher division in the Slovenian two division structure of inferior courts. (Art. 63 Act on Civil Procedure). The proper venue for initiation of proceedings is the court where the company has its seat (Art. 11 SCSBL). The address of the company's seat is kept in the Company Registry (Art. 29 and 30 Company Act). The bankruptcy chamber is composed of three professional judges (Art. 73 SCSBL), which is different from the proceedings in civilian matters, where the chamber is usually composed of one professional and two lay judges. If questions of fact arise, the issue will be decided in normal civil trial before one professional and two lay judges. In addition, the principle of acceleration of insolvency proceedings requires from the chamber an immediate reaction.[644] The Judge – Chairman of the Chambers is authorized to decide on all questions involving the bankruptcy process, except for those that are explicitly reserved for the bankruptcy chambers as the most important body in the insolvency proceedings (Art. 75 SCSBL). Thus, the chambers will decide on the opening of the bankruptcy, objections of the trustee, appointments of the trustee and on ending the bankruptcy process (Art. 74 (1) SCSBL). What is more, the chairman's main task is the supervision of the trustee, which is executed by orders. The Chamber may change and set aside judicial acts of the Chairman that stem from his supervisory role of the trustee (Art. 74(2) SCSBL).[645] Their jurisdiction is original and stems directly from the SCSBL. The Chamber may even change the orders of the Chairman ex officio but cannot give him instructions that would be compulsory for him. However, the situation is different in the case of the trustee.

[644] See Dougan, N. Plavšak, L. Ude, Commentary of SCSBL, Gospodarski vestnik, Ljubljana, 1994, p. 116 (in Slovenian).

[645] This provision shows that the relationship between the two judicial bodies is not entirely hierarchical in effect. See N. Plavšak, S. Prelič, Commentary of SCSBL, Gospodarski vestnik, Ljubljana 2000, p. 306 (in Slovenian).

**b) Administrator, Trustee, Liquidator**

A trustee is appointed by the Chamber's decision on the opening of bankruptcy proceedings in order to work on the debtor's behalf (Art. 77 SCSBL). The trustee's position is subordinate to that of the Chamber and the Chairman, he shall obey the instructions given by the other two bodies, despite the fact that he may object to the Chairman's instructions (Art. 77 SCSBL). In addition, every three months the trustee shall compose a report on the bankruptcy proceedings and the bankruptcy estate, which have to be submitted to the Chairman (Art. 81 SCSBL). With the opening of bankruptcy the mandate to work on the debtor's behalf is transferred to the trustee. Besides the realisation of the bankruptcy estate (Art. 134 SCSBL) the trustee 1) shall continue the business of the debtor and continue all current transactions (Art.135 SCSBL) and 2) shall complete all necessary transactions, provided this does not delay the bankruptcy proceedings (Art. 133 SCSBL).

Settlement proceedings mostly do not require discharging of the management of its' duties especially when the insolvency is not caused by the fault of the management, but for instance by a crisis in specific branch of industry. In fact, the Administrator is not a compulsory body in the settlement (Art. 17 SCSBL). The choice whether to appoint an Administrator will be left to the Coercive Settlement Chamber. Even if an Administrator is appointed, its role will be very much different from that of the trustee. In fact, there are three groups of tasks in Administrator's scope of work: 1) auditing the debtor's financial situation, 2) auditing the claims that are notified, and 3) supervision of the debtor's operation in line with Art. 31 SCSBL.

Both trustee and administrator are extra-contractually (delict) liable for the damage caused to the participants of the proceedings (mostly creditors), e.g., if they purposefully favour some of the creditors and, consequently, impair other creditors (Art. 19(4) and 80(2) SCSBL). Furthermore, the same eligibility criteria apply to trustees and administrators, the are jointly licensed for performing tasks of Administrators,

Trustees and Liquidators.[646] The Amendment of SCSBL (Art. 78a SCSBL) in 1997 particularized the process of licensing the trustees, liquidators and administrators.[647] The Minister of Justice decides on granting or revoking the license. However, prior to granting the license an examination is necessary. Minister of Justice grants the license after obtaining the opinion of the Commission.

Trustees are entitled to reimbursement of costs, i.e. travel expenses and to a remuneration for their work. In line with Art. 83 SCSBL specifications of details for determination of reward are set in Ordinance.[648] The trustees' remuneration criteria are set in Art. 2 of the Ordinance: 1) size of the insolvency estate; 2) continuation of economic activity by the trustee, 3) number of employees after commencement of insolvency proceedings; 4) number of notified claims; 5) complexity of the insolvency proceedings according to types and forms of the bankruptcy estate and complexity of realisations of claims.

### c) Creditor's Committee

The members of the Creditors Committee are usually elected at the first hearing, which is reserved for testing of claims. Only those creditors whose claims are recognized by the trustee or those that are not recognized but where the creditors prove the existence of their claims with sufficient certainty, are eligible to vote (Art. 86 SCSBL). Creditors whose

[646] Pursuant to Art 78a SCSBL only Slovenian citizens who fluently speak Slovenian can be licensed trustees. In addition, in order to become a trustee her/she must be economist, lawyer or other professional with higher education having relevant practice. Lastly, convicts cannot be granted a licence.

[647] Before the Amendments in 1997, any person who, according to the scope and nature of the bankruptcy estate and other circumstances, was professionally qualified could be a trustee (ART 78 SCSBL).

[648] Ordinance of the Minister of Justice for Remuneration of Trustees; Official Gazette of RS no. 16/2002. The Ordinance is very short (17 Articles). The most important provisions are Art. 2,3,10. Art. 3 sets different sizes of insolvency estates that are one of criteria for remuneration. Art. 10 stipulates the exact amounts of money that are paid to trustees.

claims amount to one fourth of all claims will automatically become members without election. The number of members of the Committee shall be odd (Art. 85 SCSBL) to prevent situations where the decision-making process will be blocked. There are three main functions of the Creditors' Committee (Art. 88 SCSBL):

1) Since in bankruptcy the principle of contradiction is subordinated to the principle of acceleration, the trustee's reports will be submitted to the Committee and not to each creditor individually. The Committee will then have the chance to discuss the content of the reports and afterwards may lodge an appeal against the work of the trustee to the Bankruptcy Chamber.
2) The Bankruptcy Chamber must obtain the opinion of the Committee before deciding on the most important issues: i.e. sale of the debtor as a legal entity or price determination before selling certain parts of the bankruptcy estate. However, the Committee's opinion is not binding on the Chamber, which means that it may act contrary to the Committee's opinion.
3) The committee and not each creditor individually has the right to lodge an appeal against the work of the Trustee or the work of the Chairman of the Chamber.
4) Reporting to other creditors about the situation of the bankruptcy estate and reporting to other creditors about the bankruptcy proceedings.

Coercive settlement creditors play a much more active role, therefore the Creditors' Committee is a compulsory body of the coercive proceedings (Art. 21 SCSBL). Since the Chamber decides on the opening of settlement proceedings before the first hearing (Art. 27 SCSBL), the members of the Committee will be appointed (and not elected) from the creditors that have the highest claims. Usually the claims of workers will represent the highest group of claims. For that reason and because employment contracts will be rescinded ex lege with the opening of bankruptcy proceedings, SCSBL requires that one of the members of the Bankruptcy Creditors' Committee shall be a representative of the Council of Workers (Art. 106 (2) SCSBL). Similarly, the interests of the employees in settlement proceedings will be secured, as one of the members of the Committee will be a representative of the Council of Workers (Art. 21 (5) SCSBL).

## 4. Insolvency Proceedings

### a) Coercive Settlement Proceedings

The Slovenian SCSBL is based on the so called "subsidiarity of bankruptcy" principle, as the bankruptcy proceedings should be initiated only exceptionally after an unsuccessful attempt of coercive settlement.[649] This, however, does not mean that initial coercive settlement proceedings are a necessary condition for initiation of bankruptcy proceedings. A petition for initiation of coercive settlement can be filed only by the debtor i.e. his representative (Art 5 (1) SCSBL). When the petition is filed outside of bankruptcy proceedings, only the representative registered in the Company Registry, i.e. the management, can file a valid petition. When the petition is filed within bankruptcy, only the trustee can file it, as all the powers of the management ceased on the day of opening bankruptcy. The petition will be scrutinized by the Court only formally, i.e. whether all documents have been submitted and not substantively, i.e. whether grounds for opening are present (Art 26 SCSBL). However, when the petition for coercive settlement is filed within bankruptcy proceedings the Chamber will scrutinize substantive grounds as well. Thus, after obtaining the opinion of the Creditors's Committee, the Bankruptcy Chamber will decide whether settlement proceedings would satisfy its purpose (Art. 172 (3) SCSBL).

If the coercive settlement petition is filed outside of bankruptcy, the bankruptcy proceedings cannot be initiated until the coercive settlement is finished (Art. 5 (2) SCSBL). Between the time of filing and the decision on opening proceedings the debtor can perform its usual business but cannot sell or encumber its estate (Art. 31 SCSBL). An encumbrance may occur only if the Chamber permits it after obtaining the opinion of the Creditors' Committee. Any encumbrances performed without the permission of the Court Chamber are without any legal effects towards the debtor's creditors.

[649] Coercive settlement proceedings are not a novelty in Slovenian law, as old SCSBL of 1989 dealt with it. Yet SCSBL 1993 introduced much needed new methods of financial reorganization.

*aa) The decision on opening coercive settlement proceedings*

The decision on opening coercive settlement proceedings will depend on the Chamber's scrutiny of the formal requirements. The Chamber will issue a decision on opening coercive settlement, the publication of which will inform all the creditors of the grounds for insolvency (Art. 29 SCSBL). The legal consequences of the opening of the settlement are very similar to those in bankruptcy.[650] Therefore, opening will have the following effects:

- all enforcement proceedings that are taking place are stayed (Art. 36 SCSBL):
- all claims that have not yet fallen due are considered to have fallen due (ART. 37 SCSBL);
- all claims that could have been set off at the opening of coercive settlement are set off i.e. monetary, non-monetary, those that have fallen due and those that have not (Art. 39 SCSBL);
- the debtor's representative can terminate all mutual contracts providing that Chambers has approved such termination (Art. 40 SCSBL).

The Coercive settlement will be initiated if the creditors whose claims amount to 60% of the voting rights vote in favour of the settlement (Art. 56 SCSBL). After successful voting the Chamber will issue a decision on confirmation. If the creditors do not vote in favour of the coercive settlement, the Court shall start bankruptcy proceedings ex officio, as the grounds (over-indebtedness and illiquidity) have not been removed.

*bb) Financial Reorganization Plan*

The introduction of the financial reorganization plan is considered in Slovenian theory to be the most important innovation in the new SCSBL.[651] However, in contrast to German law Slovenian law is not familiar with an insolvency plan with the aim of liquidation (Liquidationsplan). In Art. 49 the SCSBL defines financial reorganization

[650] See S. Prelič, Bankruptcy Law, Pravna fakulteta v Maribor, 1999, p. 170 (in Slovenian).

[651] Scholars emphasize that the reform of Slovenian law was largely influenced by Chapter XI of the U.S. Bankruptcy Code.

as every economic or financial method or combination of those methods, that ensures the debtor's capacity to satisfy its obligations. The debtor must submit the plan within a 3 month time period after filing the petition for coercive settlement (Art. 46 SCSBL). Within this period the debtor – through negotiations with the creditors – is supposed to prepare a plan that be acceptable to as many creditors as possible. The plan must include a petition for concluding the coercive settlement and a detailed explanation of financial reorganization methods (Art. 47 SCSBL). The debtor may classify creditors in different classes, depending on their legal and business circumstances.[652] However, all creditors belonging to the same class must be treated equally. The plan must include amounts and the time within which each class of creditors will be satisfied. The rule is that the debtor must offer monetary satisfaction of all claims, since all claims are converted into monetary claims by the day of filing the petition for commencement of coercive settlement (Art. 37 SCSBL). However, each creditor can opt for a different kind of satisfaction, such as, for instance, a debt to equity swap, if that was agreed during negotiations. The debtor will indicate the claims of debtors that will not change their position after confirmation of the settlement proceedings. This provision is reserved for employees and secured creditors, which have the right to separation or separate satisfaction (Art. 60 SCSBL).

Furthermore, the plan must include evaluation and explanation of 1) the measures necessary for acquiring liquid assets (for instance by selling parts of the estate or by taking credit), 2) the measures necessary for increasing initial capital (for instance issuing new shares in order to perform debt to equity swap transactions), 3) the rationalization of production or business operations (for instance reducing costs or the number of employees) and 4) the means for creating revenues (for instance submitting market research for certain products). The Chamber must invite creditors to vote within 30 days after the financial reorganization plan has been submitted (Art. 52 SCSBL). Only those creditors

[652] Classification of the creditors into different classes is not obligatory. In fact, the classification of the creditors is considered to be an exception in Slovenian insolvency proceedings. This rule, of course, does not include the class of secured creditors and employees.

that have duly given notice of their claims will have the right to vote. Creditors that have rights of separation or the right of separate satisfaction do not have voting rights, as the confirmation of coercive settlement proceedings has not effect on them. The creditors' voting right will depend on the value of the claim together with the value of the interest rates (Art. 56 SCSBL).

The Court Chamber must confirm the coercive settlement with a decision (Art. 58 and 59 SCSBL). The most important effect of the confirmation is decreased or delayed satisfaction of the claims. The confirmation affects only relations between an illiquid debtor and its creditors, not those between creditors and debtors guaranteeing the debtor's debts (Art. 60 (1) SCSBL). Furthermore, the confirmed coercive settlement will not affect employees' right to payment of the last three months' salary before commencement of proceedings.

### b) Effect of the Opening of Insolvency Proceedings on Pending Court Proceedings and Contracts

All court proceedings (trials, executions, enterings into registry ) are stayed by the day of opening (not filing the petition) of the insolvency proceedings (Art. 205 Act on Civil Proceedings). The Court will issue a ruling on the stay of proceedings which will be of a merely declaratory nature, as the proceedings were stayed ex lege before the ruling was issued.[653] If the insolvent debtor is a creditor in the trial, the trial will be continued when the trustee or administrator is appointed. However, in case the insolvent debtor is a debtor in the stayed trial, the court will continue the proceedings only if the claim is not recognized during insolvency proceedings or unless he was not directed to civil trial in order to determine the non existence of the claim.[654] Exceptions to this rule are reserved for creditors with rights to separation, which were not noticed in the insolvency proceedings. Thus, for the right of separation,

[653] See J. Šinkovec, B. Tratar, Commentary on the Act on Civil Proceedings, Oziris, Ljubljana, p. 438 (in Slovenian).

[654] See V. Rijavec, Court Proceedings in Connection with Insolvency, Pravna praksa, 2000, p. 10.

notification in insolvency proceedings is not a necessary condition for the continuation of the trial.

Similarly, by the day of opening of insolvency, all execution proceedings for satisfaction of the creditors' claims (regardless of the form of the claim: i.e. monetary or non-monetary claims) towards the debtor's estate must be stayed. However, claims that stem from the expenses of the insolvency proceedings or duties to pay taxes may be satisfied in execution proceedings (Art. 111 Act on Execution and Securing of the Claims). In addition, all proceedings for issuing interim measures on the debtor are stayed. The situation is slightly different for proceedings of entries in the Registry (for instance, the Land Register), which can be permitted if the conditions for entry were satisfied before the opening of insolvency, and if the petition for entry was filed before the insolvency proceedings were opened.

Pursuant to Art. 104 and 6 SCSBL, the insolvency estate will be composed from the estate that is owned by the debtor when insolvency proceedings were opened. The insolvency estate of legal entities (partnerships have legal personality in Slovenia) can be composed from stocks, bonds and other securities owned by the debtor, money that was acquired by the execution, money from damages from termination and avoidance of pre-petition transactions and any estate acquired during insolvency proceedings. In addition, any estate that is acquired by the debtor during insolvency proceedings or before the proceedings are ended also forms the insolvency estate. Furthermore, the estate of a personally liable partner will belong to the insolvency estate. It is argued that, unlike legal entities any estate of the independent entrepreneur acquired after commencement of the insolvency proceedings will not form part of the insolvency estate.[655] Although insolvency practice for independent entrepreneurs is scarce, there is a clear tendency for insol-

[655] See H. Jenull, Insolvency of Independent Entrepreneur, Podjetje in delo, Ljubljana, 2000, no. 3, p. 483 (in Slovenian). The author of the article came to this conclusion by using the a contrario method for interpreting Art. 104 SCSBL.

vent entrepreneurs in Slovenia to hide or sell their machines or other chattels by antedating contracts.[656]

In order to prevent the automatic set off of the claims, SCSBL has a special regime for mutual contracts, which are not ex lege rescinded with the opening of insolvency proceedings if neither the insolvent debtor nor the creditor has fulfilled their obligations from the contract, or if neither has fulfilled their obligations in entirety: i.e. the obligation was only partially fulfilled (Art. 120 SCSBL). However, the trustee will always have the option to terminate the contract within three months after the opening of insolvency. Even though the creditor cannot terminate the contract, his expectancy is not impaired, as he has the right to demand from the trustee a declaration within three months if it will exercise the option (Art. 121 SCSBL). The trustee's silence is considered as declaration of rescission of the contract. A special regulation is reserved for rental contracts, as they can be rescinded by the trustee every 1st day of the month. A creditor, who is impaired by the trustee's exercise of this option, can be indemnified in insolvency proceedings similarly to all other unsecured creditors (Art. 122 SCSBL). Leasing contracts will be treated as rental contracts only if the purpose of the contract is not to transfer ownership. However, if the purpose of the leasing contract is to transfer ownership, the contract will not be treated as a rental contract but similarly to all other mutual contracts from the Art. 121 SCSBL.[657]

However, the commencement of coercive settlement does not have the same effect on contracts as does bankruptcy. Thus, mutual contracts are not ex lege rescinded by the mere opening of the settlement. Yet the representative of the debtor can request permission from the Settlement Chamber to terminate the contract. The Chamber will grant permission

[656] Furthermore, not all of the debtor's personal property will belong to the insolvency estate. Certain chattels of the estate, for instance, the entrepreneur's clothes, furniture, washing machine, pension, welfare entitlement etc. are exempted from execution proceedings (Art. 79, 92 and 101 Act on Execution and Security).

[657] An indication that a leasing contract is in effect a sales contract would be the incorporation of an option to buy the leased object for some negligible price after payment of the last "rent" (installment). See S. Prelič, Some Effects of the Insolvency Proceedings on the Leasing Contract, Current Legal Problems of Business Law/ V Conference, Rogaška Slatina, 1997, p. 613 (in Slovenian).

only if fulfillment of the contract obligations would endanger insolvency proceedings or if termination would not produce disproportionate damage (Art. 40 SCSBL).

### c) Rescission and Invalidity of Pre-petition Transactions

All the debtor's legal transactions in the last year before the opening of bankruptcy become "suspicious" and are, therefore, voidable if certain conditions are satisfied (Art. 125 SCSBL) (Action Pauliana).[658] Voidable transactions may be 1) those that have as a consequence disproportional satisfaction of other creditors, or 2) those that grant privileged status to certain creditors. Depending on the two groups of consequences, the creditors and the trustee (only they have the capacity to commence avoidance proceedings) will try to avoid the transaction by suing the benefiting creditor (or third party) or by filing an act of objection. In order for claimants to succeed, they have to prove that the benefiting party (creditors or even third parties) knew or should have known of the debtor's poor economic and financial situation, which does not include the benefiting party's knowledge of the debtor's intent to impair other creditors.[659] The knowledge of the debtor's poor financial situation must exist at the time of performance of the legal transaction; whereas subsequent discovery of the debtor's bad faith is irrelevant.[660] However, bad faith will be presumed, and the burden of proof will be shifted to the defendant to prove that it did not know and should not have known of the debtor's poor financial and economic situation if 1) the defendant has received payment of a debt that had not fallen due or 2) a voidable

[658] The voidable transaction encompasses not only classical contracts, but set-offs, assignments and all transactions that represent economic and legal entirety. Even omission of certain procedural acts (appeal in execution) could be considered as a transaction for the purposes of Art. 125 SCSBL.

[659] Rescission and Invalidity of suspicious transactions that occurred 1 year before opening of debtor's insolvency are criticised as inadequate; see http://www.ebrd.com/country/sector/law/cla/slov.pdf

[660] See M. Đorđević, Current Questions from the Area of Bankruptcy, Avoidance of Debtor's Legal Transactions, Pravosodni bilten, Ljubljana, 2003, p. 115 (in Slovenian).

transaction was performed within three months before filing the petition (Art. 125(4) SCSBL). SCSBL does not offer solutions in cases where the benefiting party has transferred acquired benefits from the voidable transaction to some third party.

Typical examples of voidable transactions are set-offs, assignments, mortgage and lien transactions, retention of title transactions and all transactions that grant creditors right of separation and separate satisfactions, including transactions without proper remuneration (Art. 126 SCSBL). Long-term relationships shall not be avoided in entirety, but only individual transactions may be avoided. The avoidance will not necessarily have any effect on the long term relationships. However, certain transactions are exempted from the avoidance regime of SCSBL. These are mainly transactions that were performed within unsuccessful previous coercive settlement proceedings. Transactions performed with the permission of the Settlement Administrator, transactions that were performed for execution of coercive settlement and legal transactions from the continuing operation of the debtor within coercive settlement are not voidable. Furthermore, payments stemming from the bill of exchange or cheques are not voidable if the benefiting party had to receive payment in order not to lose the right of recourse from other bill of exchange or cheque debtors (Art. 126 SCSBL).

The trustee or creditor can commence avoidance proceedings in a 6 month period after the opening of bankruptcy proceedings. If the proceedings have ended before, the 6 month period of avoidance may be commenced during asset distribution proceedings (Art. 129 SCSBL). If the claimant succeeds, all effects of the avoided transactions cease. If some effects could not have been corrected, the debtor shall be monetarily compensated. (Art. 96 Obligations Code). The benefiting party shall return the object received from the debtor to the bankruptcy estate. If money was received, interest rates accruing from the commencement of the avoidance proceedings (and not from the day of performance of avoidable transaction) shall be returned (Art. 194 Obligations Code).

### d) Status of Secured Creditors

From the perspective of insolvency law, creditors with the right of separation and creditors with the right of separate satisfaction are the only two groups of secured creditors in Slovenia (Art. 131 SCSBL). They are paid from the special bankruptcy estate that is formed from the collateral (real estate, chattels and receivables) that are encumbered and then sold. If creditors with the right of separate satisfaction are not satisfied in entirety from the bankruptcy estate, they may notify the rest of their claims in the insolvency proceedings but will not have preferential status (Art. 132 (2) SCSBL). However, any surplus of the special insolvency estate that remains after satisfaction of the creditors will be utilized for satisfaction of other unsecured creditors (Art. 132 (1) SCSBL). The right of separate satisfaction can be acquired by legal transaction (mostly by pledge or fiduciary transfer), ex lege or in execution proceedings. Only security devices created before the opening of insolvency proceedings give preferential status in insolvency.

The right of separation allows a creditor to claim separation of certain assets from the insolvency estate (Art. 131 (3) SCSBL). Thus, objects that are not owned by the debtor will be separated from the insolvency estate if certain creditors demand. Even though SCSBL mentions only that things (movable and immovable objects) can be objects of separation, other assets (receivables, claims) can also be separated from the bankruptcy estate. However, it is not clarified whether money could be separated from the estate.[661] A typical example of a creditor with the right of separation is a seller with retention of title. Even though this situation is not regulated by insolvency law, the prevailing opinion is that the right of separation will only exist if the trustee utilizes the option

[661] The right of separation will usually be based on the in rem right (ownership) of the creditor. However, the creditor who demands separation will not always be the owner of the object, but may sometimes even be the non-owner (the non-owner of the good rents the good to the debtor). Thus, a necessary condition for the right of separation is that the debtor is not the owner of the object. See S. Prelič, Bankruptcy Law, Pravna fakulteta v Mariboru, 1999, p. 97 (in Slovenian).

to terminate the contract.[662] Unlikely the retention of title seller, who will be the real owner with the right of separation, the fiduciary owner will not have the right of separation but the right of separate satisfaction.

### e) Realisation of the Debtor's Property

The debtor's assets may be sold at auction, by public tender or directly by contract of sale to the buyer. The holder of a pre-emptive right must be invited to the auction. Before selling the assets to the buyer that offered the highest price, the trustee must offer the assets to the holder of the preemptive right of purchase for the highest price (Art. 149 SCSBL). Public policy reasons demand that the debtor's business should remain active if possible, and that the trustee should therefore try to sell the debtor's assets as a functional unit, which can be sold only at public auction (Art. 150 SCSBL). Before the public auction the bankruptcy chamber will call an expert to evaluate the actual value of the debtor's assets. However, before determining the starting price for the auction, the chamber will obtain the opinion of the trustee and the creditors' committee (Art. 151 SCSBL). The starting price for the first auction must not be lower than half the price determined by the expert. Exceptionally the starting price for the second and all other auctions may be lower, if the first auction was not successful.

One of the peculiarities of Slovenian legislation is the possibility of sale of the debtor enterprise as a legal entity (Art. 147 SCSBL). This type of realisation is a legacy of the old SCSBL (1989), which did not recognize a dichotomy between the company and the enterprise (the enterprise was the carrier of the legal personality). However, the debtor enterprise will be sold free of liabilities. Strictly speaking, there is no legal continuity between the debtor and the successor. Yet business continuity does in effect exist as the new legal entity will retain the name of the company, its know how etc. The buyer enters in the com-

[662] For more on the "destiny" of expended and extended forms of retention of title clauses in the buyer's insolvency. See R. Vrenčur, In rem Security Devices and Insolvency Proceedings, p 159. Osmo posvetovanje s področja gospodarskega prava, Portorož, 1999 (in Slovenian).

pany register as the first incorporator of the company. The debtor enterprise is sold without the goods separated from the debtor's estate by virtue of rights of separation. Money acquired by sale of the debtor will become part of the insolvency estate and will be utilized for the satisfaction of the debtors. However, the creditors' rights of separate satisfaction will remain intact, unless agree otherwise. The sale of the debtor as a legal entity will be carried out only after obtaining the opinion of the creditors' committee and the expert's opinion if a higher price is expected to be paid by the buyer (Art. 146 SCSBL). The transfer of stockholders' and stakeholders' rights will be done only after payment of the full price by the buyer, or if the buyer has submitted an irrevocable bank guarantee.

### f) International Insolvency law

Slovenian courts have exclusive jurisdiction for adjudicatation of insolvency proceedings of the debtor with a seat (company) in Slovenia or with permanent residence in Slovenia (entrepreneur) (Art. 184 SCSBL). However, it should be stressed that regime of SCSBL will be applicable only for judicial acts of the States that are not EU members.[663] Naturally stipulation of jurisdiction (prorogatio fori) in contract will not be valid. The provisions reserved for international insolvency proceedings are applicable for bankruptcy and coercive settlements alike. Recognition of foreign court decisions deciding on the insolvency of the company with the seat in Slovenia or independent entrepreneur with residence in Slovenia will be refused. If Slovenian court decides on debtor's assets in a foreign country the judicial decision will be subject of recognition and enforcement of the respective countries' courts. Unlike Art. 25 of the Council Regulation on insolvency proceedings, there is no ex lege recognition and enforceability of the foreign judgments before Slovenian courts. Foreign judicial decisions con-cerning insolvency proceedings of the foreign debtor, which owns assets in Slovenia, will be scrutinized by Slovenian law (Act on Private International Law and Jurisdiction).

[663] See P. Oberhammer, T. Domej, International Insolvency Law within the Common Market, Podjetje in delo, 2003, p. 5 (in Slovenian).

Therefore, foreign judicial acts concerning sale and realisation of Slovenian real estate will not be recognized. The recognition proceedings do not compel creation of a new creditors' committee or appointment of Slovenian trustee (Art. 185 SCSBL). In addition, by recognition of foreign judgments in Slovenia foreign trustees will have the same rights as Slovenian trustees.

Unlike Council Regulation on insolvency proceedings, SCSBL is not familiar with the notions of main and secondary insolvency proceedings. It is noteworthy that provisions of SCSBL are not based on UNCITRAL Model Law on Cross-Border Insolvency. Thus, it is not surprising that Slovenian provisions do not regulate situations: 1) when interim measures are granted between the time of filing of petition for recognition and the time when decision for recognition was granted, 2) direct communication between Slovenian courts and foreign trustees, 3) protection of foreign creditors and 4) coordination of concurrent insolvency proceedings.

### g) Criminal Offences in Connection with Bankruptcy

False bankruptcy (Art. 232 Criminal Code) is the only criminal offence in connection with insolvency proceedings in Slovenia so far with jail from 6 moths to 5 years as the criminal sentence prescribed. It encumbers entering into fictitious transactions, recognizing nonexistent debt, destroying or altering the debtor's books in a way that it is not possible to determine debtor's financial situation. Prerequisite is that the bankruptcy proceedings are opened or at least that the petition for opening bankruptcy is rejected for lack of sufficient assets. Any person entitled to file petition can commit this offence. Proving causation is very difficult, since causal connection between the offender's acts with the aim of worsening the situation of the debtor and bankruptcy grounds must be proven.[664]

[664] See, L. Jovanovič, Payment of Tax Claims in the Case of "Escape to Bankruptcy", Pravna praksa, no. 25/2001, p. 16. (in Slovenian).

## 5. Summary and Perspectives

The Statute on Coercive Settlements, Bankruptcy and Liquidation is the main Statute governing insolvency proceedings in Slovenia. Even though currently there are no reforms activities planned, it is strongly recommended that such a reform be pursued. Determinations of grounds for commencement of insolvency proceedings do not cause many problems in practice despite being unclear. The explanation of this situation should be sought in the fact that Slovenian insolvency practice is familiar with on going concern asset values even though they are not included in the definitions of the SCSBL. Coercive settlement proceedings have been unstructured in the past and did not achieve satisfying results. One of the main deficiencies of Slovenian insolvency law is seen in the tendency that the insolvency proceedings aim at punishing the debtor for poor business result.[665] However, the underlying idea of modern insolvency proceedings is that the debtor should be helped to stay active by utilization of methods for financial reorganisations. Since the general reform of Slovenian laws follow the German model (Property Law Code, Company Law Act etc.) it is recommended that Slovenia should follow German insolvency law. Thus, it is worth deliberating introduction of imminent illiquidity as third ground for initiation of insolvency proceedings. In addition, similar reforms were made in Poland, Croatia etc.

[665] S. Ivanjko's lecture on current problems and perspectives of Slovenian insolvency proceedings (Maribor, 20th April 2005).