

## Key Features of the New Insolvency Proceedings Rules in Serbia



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The Amendments and Supplements to the Insolvency Act introduces changes aimed to allow for more efficient realisation of insolvency creditors' claims.

### General amendments and supplements to the insolvency proceedings

On 2 August 2014, the Serbian parliament amended and supplemented the insolvency proceedings by adopting the Amendments and Supplements to the Insolvency Act (the Act). The Act was adopted to bring changes to the insolvency proceeding that would allow for more efficient realisation of insolvency creditors' claims. Such aim is hoped to be achieved through elimination of vague and incomplete provisions that proved to be problematic in practice.

Improvements of insolvency proceedings in terms of efficiency and realisation of claims brought by the Act are generally at the technical level and do not change the essence or mechanics of realisation of insolvency claims within insolvency proceedings.

### The creditors' committee and assembly

Whereas participation in an assembly is now based on the appraisal of security assets (which must be conducted only authorised persons and not be older than 12 months), participation in the committee is now open to insolvency creditors irrespective of the amount of their claim, thus protecting the interests of minority insolvency creditors.

### Transparency

The Act introduces (i) the insolvency court's electronic notice board (for publication of all court-rendered legal acts), (ii) the insolvency court's public portal (for publication of insolvency proceedings filings by all proceedings participants) and (iii) the obligation of the agency authorised to keep a directory of insolvency receivers to publicise the insolvency receiver's quarterly reports.

### Broader competencies of the insolvency receiver

The insolvency receiver now has a duty to challenge actions of insolvency debtor that are to its detriment. If successful, the challenge will result in an increase in value of insolvency estate as challenged actions are rescinded.

## Introduction of collateralised creditors

Collateralised creditors (založni poverioci) are introduced as a new type of creditor of insolvent debtor, but not as insolvency creditors. Those creditors do not hold a monetary claim towards insolvency debtor but are secured by a security interest provided by insolvency debtor.

## Assignment of insolvency claims

Insolvency claims now may explicitly be assigned by an assignment agreement concluded until a decision on the main distribution of the insolvency estate is rendered. The insolvency debtor must be notified about such agreement (ie, assignment).

## Equitable subordination

The Act introduces a new payment priority rank, the fourth payment priority rank, which is the least prioritised as it is subordinated by three higher payment priority ranks. Such payment rank is reserved for claims (or portions of unsecured claims) fulfilling the following criteria:

- (i) established within two years prior to the opening of insolvency proceedings;
- (ii) arise from loan agreements or other arrangements that have a similar economic effect as loans; and
- (iii) in favour of affiliated persons whose principal business activity is not providing loans or credits.

## Cross-border insolvency

Cross-border insolvency has been amended by introduction of a new primary criteria for jurisdiction establishment. Now, the criterion used for establishing court jurisdiction over certain insolvency case is the centre of main interests of the insolvency debtor, rather than its registered corporate seat.

## Reorganisation

### Content of the reorganisation plan

The Act envisages additions to content of the reorganisation plan in the form of:

- (i) information about persons who are to become, on the basis of the reorganisation plan, shareholders of an insolvency debtor;
- (ii) information about affiliated persons; and
- (iii) appraisal of insolvency debtor's property rendered within six months prior to submission of the reorganisation plan.

### Independent supervisor for implementation of the reorganisation plan

An independent supervisor for implementation of the reorganisation plan, under the Act, may not be a person employed by the insolvency debtor or affiliated person.

### Voting for the reorganisation plan

Creditors with separation rights may not vote for the reorganisation plan; however, the reorganisation plan may not contain elements that would diminish their security interest.

### Opinion of the competition authorities

Under the Act, the opinion of competition authorities is no longer required for adoption of reorganisation plan if the insolvency debtor is classified as a small enterprise (such opinion is required if the insolvency debtor is classified as a medium or large enterprise).

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