

**INSOL INTERNATIONAL
Eight World Congress
Vancouver (Canada)
21st – 24th June 2009**

**Session C4
»Consumer Credit Counselling:
What is required and does it work?«**

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The Slovenian Insolvency Act (Overview)

Act on financial operations, insolvency proceedings and involuntary liquidation proceedings (i.e. the Insolvency Act) has been enacted by the Law No. 6413/2007, published in Official Gazette No. 126 (31 December 2007). The Insolvency Act is in force from 15 January 2008.

Slovenia has initially introduced the German Bankruptcy Act and the Austrian Bankruptcy Act (German Concurs-Ordnung from 1898 and Austrian Concurs-Ordnung from 1914). Bankruptcy was regulated with Bankruptcy Act from 1993 (amended in 1997) that governed compulsory settlement, bankruptcy and liquidation. Bankruptcy's primary goal was the liquidation of bankrupt's property as a collective enforcement procedure aiming at the satisfaction of the creditors. Starting from 1999 the reorganization approach (based on Chapter 11 of the United States Bankruptcy Code) was adopted. The main purpose was to keep the debtor's enterprise as an ongoing business concern.

The Insolvency Act aims at the modern legislation, adapted to the provisions of *the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings* and implementing *the Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganization and winding-up of insurance undertakings* and *the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and winding-up of credit institutions* (Article 2 – EU Regulations), i.e. with the standards that enjoy priority in all European insolvency matters.

For all other cross-border cases the consequences are determined by provisions of the Insolvency Act adapted to *the UNCITRAL Legislative Guide on Insolvency Law* and *the UNCITRAL Model Law on Cross-Border Insolvency* (Chapter VIII – International Insolvency Proceedings). General rule (of multilateral conflict of laws) is that the law of the state opening the proceedings is pertinent for the insolvency proceedings and its effects (Article 479). Special (detailed) provisions refer to

situations where a foreign court or a foreign trustee (insolvency administrator) seeks support in another state in connection with insolvency proceedings or where parallel insolvency proceedings are pending or required at home or abroad.

Slovenian insolvency law requires certain conditions related to the financial status of the business of the debtor to be met before insolvency proceedings can be opened. These conditions (i.e. valid reasons for insolvency) are defined as »illiquidity«. They include a longer-term inability of the debtor to meet all of his existing obligations to pay in that (longer) period on the date of their maturity (Article 14.1.1 in connection with Article 11.1) and a permanent inability of the debtor to meet all of his matured obligations to pay (Article 14.1.2 in connection with Article 11.2).

Insolvency proceedings include compulsory settlements (i.e. reorganization proceedings) and bankruptcy proceedings (Article 5.1). Bankruptcy proceedings include legal person's bankruptcy, personal (consumer's) bankruptcy and bankruptcy of the legacy (Article 5.2).

The Insolvency Act created a new and uniform law. In this respect »bankruptcy« has been kept as a general legal term, due to reasons of tradition and also because its main purpose is the collective satisfaction of the creditors by realization of the assets of the debtor or by a reorganization plan especially by the maintenance of the business of the debtor.

Personal Bankruptcy Proceedings (Mean Features)

Debtors eligible to personal (consumer's) bankruptcy proceedings are natural persons (Article 381.1). These debtors are natural persons aiming at an economic (commercial) goal (Article 7.2) or at a private goal (Article 7.7) who lose their status of business or private person upon commencement of the personal bankruptcy proceedings (Article 387.1). These debtors are also consumers (Article 7.8).

The main objectives of personal (consumer's) bankruptcy are the repayment of the debts (but not through the repayment plan) and the discharge of the debts. Honest debtors who are natural persons (individuals) have the possibility of being discharged from debts after the insolvency proceedings has been terminated. The discharge has been designed to avoid debtors being bounded by their creditors for the rest of their lives and to give debtors possibility for fresh start (new options of earning money legally). The probation period for the discharge of the debts is from two to five years (Article 400.5). The next (new) discharge of the debts is allowed after expiration of ten years period (Article 399.3).

Limitation of legal capacity of the debtor in bankruptcy (Article 386 of the Slovenian Insolvency Act)

(1) The initiation of personal bankruptcy proceedings shall involve a limitation of the legal capacity of the debtor in bankruptcy such that:

1. he is not able to conclude contracts and execute other legal operations or acts the subject of which is the disposal of his assets which belong to the bankruptcy estate,
2. he cannot without the consent of the court:
 - raise a loan or credit or give a guarantee,
 - open a new transaction account or any other cash account,

– renounce inheritance or other property rights.

(2) A legal transaction or other legal action of the debtor in bankruptcy which is contrary to the first paragraph of this Article shall have no legal effect.

(3) The second paragraph of this Article shall not apply to legal transactions and legal actions referred to in point 1 of the first paragraph of this Article if the other party to the contract has not been aware, and could have not been aware, of personal bankruptcy proceedings initiated against the debtor.

(4) It is considered, and evidence to the contrary shall not be admissible, that the other party to the contract has been aware of personal bankruptcy proceedings initiated against the debtor if the contract has been concluded, or other legal transaction has been carried out later than within eight days following the publication of the notice of the initiation of personal bankruptcy proceedings pursuant to the first paragraph of Article 122 of this Act.

Special rule on the legal consequences of the initiation of personal bankruptcy proceedings against a sole proprietor or private person (Article 387 of the Slovenian Insolvency Act)

(1) Once the personal bankruptcy proceeding is initiated against a sole proprietor or private person, the debtor in bankruptcy shall lose the status of sole proprietor or private person, and such status may no longer give rise to liabilities regarding taxes, contributions and other compulsory charges to the sole proprietor or private person.

(2) The court shall inform the agency on the finality of the resolution of the initiation of personal bankruptcy proceedings against a sole proprietor or a private person within three working days following the day when the resolution on the initiation of personal bankruptcy proceedings becomes final.

(3) The agency shall ex officio, on the basis of the notification referred to in the second paragraph of this Article, cancel the sole proprietor or private person from the register.

(4) The cancellation referred to in the third paragraph of this Article shall take effect from the moment of coming into effect of legal consequences of initiation of bankruptcy proceedings under Article 244 of this Act.

The Republic of Slovenia (Consumer Acts)

The Consumer Credit Act has been enacted by the Law No. 3301/2000, published in Official Gazette No. 70 (8 August 2000). This Act is in force from 23 August 2000. The last amendments have been enacted by the Law No. 5507/2007, published in Official Gazette No. 111 (5 December 2007). These amendments are in force from 20 December 2007.

The Consumer Protection Act has been enacted by the Law No. 815/1998, published in Official Gazette No. 20 (13 March 1998). This Act is in force from 28 March 1998. The last amendments have been enacted by the Law No. 6416/2007, published in

Official Gazette No. 126 (31 December 2007). These amendments are in force from 15 January 2008.

These two Acts are not completely in line with *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC* (i.e. the Consumer Credit Agreements Directive). For that reason the Republic of Slovenia (Member State of the European Community) will need to adopt (and publish) the provisions necessary to comply with this Directive (i.e. the provisions relating to consumer credit counselling) before 12 May 2010.

The Republic of Slovenia should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their own credit market. Those measures may include the provision of information to, and the education of, consumers, including warnings about the risks attaching to default on payment and to over-indebtedness.

Despite the pre-contractual information to be provided (i.e. comprehensive information before he concludes the credit agreement), the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Where appropriate, the relevant pre-contractual information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation.

But on the other hand the Republic of Slovenia has adopted *the Consumer Counselling Public Service Concession Regulation*. This regulation has been enacted by the Law No. 4433/2006, published in Official Gazette No. 103 (6 October 2006). It is in force from 7 October 2006.

The Consumer Protection Against Unfair Commercial Practices Act has been enacted by the Law No. 2826/2007, published in Official Gazette No. 53 (15 June 2007). This Act is in force from 16 June 2007. It is in line with *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market* (i.e. Unfair Commercial Practices Directive).

Pre-Contractual Information

Consumers are entitled to receive the whole information before the conclusion of the contract (Article 6.1 of the Consumer Credit Act).

Consumer-Credit Counselling

Basic knowledge of consumer protection is part of the primary and secondary school educational programs (Article 64.1 of the Consumer Protection Act). Educational institutions in cooperation with Consumer Protection Office prepare the consumer protection educational programs (Article 64.2 of the Consumer Protection Act). Consumers organisations may be included, in cooperation with educational institutions, in the education of consumers of all ages (Article 64.3 of the Consumer Protection Act).

The Consumer Counselling Public Service Concession Regulation determines the conditions and procedure for granting the concession for performing this public service (Article 1). The objective of the concession is to provide consumers with general counselling service, to provide them with advice about consumer protection and economic interests (Article 6.1). This objective should be attained by providing consumers with adequate information about consumer protection, their rights and how to exercise them (Article 6.3).

The consumer counselling service is a budget financed non-profit public service offering confidential counselling and financial education services to consumers nationwide. This service is performed by professionally trained and certified counsellors who first of all assist consumers in providing information for protection of their rights and for exercising them.

What should be expected from Concessionary: providing general budgeting and money management advice for individuals (developing a personal financial assessment by analyzing income, expenses, assets and liabilities), providing workable solutions for their financial problems, helping consumers in preventing future debt problems. The consumer counselling should be dedicated in helping consumers having control of their finances and developing community of financially responsible individuals.

What is not expected from Concessionary: negotiating with consumer creditors to eliminate late fees, extend the term of loan(s) or lower interest rate and encouraging consumer to enter into a debt repayment plan.

The European Economic Area

The Directive of the European Parliament and of the Council on consumer rights (i.e. Consumer Rights Directive) has been proposed on 8 October 2008. The general objective of the proposal is to simplify and complete the existing regulatory framework. The substantive objective of the proposal is to contribute to the better functioning of the business-to-consumer internal market by enhancing consumer confidence in the internal market and reducing business reluctance to trade cross-border. This objective should be attained by decreasing the fragmentation, tightening up the regulatory framework and providing consumers with a high common level of consumer protection and adequate information about their rights and how to exercise them.

The proposal aims at revising *Directive 85/577/EEC on contracts negotiated away from business premises*, *Directive 93/13/EEC on unfair terms in consumer contracts*, *Directive 97/7/EC on distance contracts* and *Directive 1999/44/EC on consumer sales and guarantees*. These four Directives provide for consumer contractual rights. The proposal aims to regulate the common aspects in a systematic fashion, simplifying and updating the existing rules, removing inconsistencies and closing gaps. The provisions of the Consumer Rights Directive should be without prejudice to *Regulation (EC) No 593/2008 of the European Parliament and of the Council applicable to contractual obligations* (i.e. Rome I).

The proposal moves away from the minimum harmonisation approach (i.e. Member States may maintain or adopt stricter national rules than those laid down in four existing Directives) to embrace a full harmonisation approach (i.e. Member States cannot maintain or adopt provisions diverging from those laid down in the Consumer Rights Directive).

The Republic of Croatia

Consumers are entitled to receive the whole information before the conclusion of the contract (Article 305.2 and 305.3 of *the Credit Institutions Act* (Official Gazette No. 117/2008) and Article 77.1 of *the Consumer Protection Act* (Official Gazette No. 79/2007 and No. 125/2007)).

Banks have a staff of personal counsellors who assist individuals (consumers) in providing them with adequate credit information.

The Republic of Macedonia

The following acts have been enacted in the Republic of Macedonia: *the Consumer Protection Act* (Official Gazette No. 38/2004 and No. 77/2007) and *the Consumer Credit Protection Act* (Official Gazette No. 63/2007, in force from 1 January 2008).

The financial education and consumer credit counselling services are delivered by Consumer protection department of Ministry of Economy and by non governmental organisations (i.e. NGO).