

**The World Bank  
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## **FRAUDULENT OR PREFERENTIAL TRANSFERS**

### **COMMENCEMENT OF A BANKRUPTCY PROCEEDING**

A case is commenced by filing with a bankruptcy court of a petition by creditors, the debtor or a general partner.

An entity must prove the existence of a reason for bankruptcy. The creditor must also prove with an authentic document the existence of matured claim.

A bankruptcy proceeding is commenced by the court order only if the debtor is for a long period not paying debts as debts become due or if the debtor is excessively indebted.

The court shall dismiss a petition filed if the assets are insufficient for the expenses of bankruptcy proceeding or if the assets are of an unreasonably small value.

The announcement of the commencement of a bankruptcy proceeding on the court announcement board shall constitute the legal consequences.

### **REGISTRATION OF THE CLAIMS**

Creditors must register their claims with the bankruptcy panel within two months after the date of the announcement of the commencement of a bankruptcy proceeding in the Official Gazette of the Republic of Slovenia.

Creditors shall register their claims in written form and file a proof of their claims.

Trustee and creditors may make an objection to a claim.

If such objection to a claim is made the bankruptcy panel shall order a creditor to commence a court or other procedure to establish an objected claim within 15 days. If such objection is made to a claim with executory title the bankruptcy panel shall order a trustee or other creditor to commence a procedure within 15 days to determine that an objected claim is not established.

If such objection to a claim is made the bankruptcy panel shall determine the proportionate amount of such claim as a reservation for creditor.

### **BANKRUPTCY ESTATE**

Claims shall be proportionally paid out of the *distribution estate* (bankruptcy estate minus costs of bankruptcy procedure).

### **SPECIAL BANKRUPTCY ESTATE**

The commencement of the bankruptcy proceeding shall not influence the right to special payment (lien, right to payment, retention right and other separation rights) from certain assets of the debtor (*separation estate*) neither shall it influence the right (exemption rights) to exempt things which do not belong to the debtor (*exemption estate*). So the claims of the separation creditors and exemption creditors shall be paid out 100% and not proportionally. But separation rights received by execution or security during the last two months prior to the date of the commencement of a bankruptcy proceeding shall cease to be in effect.

### **REGISTRATION OF THE CLAIMS OF SEPARATION AND EXEMPTION CREDITORS**

Separation and exemption creditors must also register their claims with the bankruptcy panel within two months after the date of the announcement of the commencement of a bankruptcy proceeding in the Official Gazette of the Republic of Slovenia.

Separation creditors shall list in the registration the portion of the assets of the debtor to which their claim relates and the amount to which their claim shall not be covered by the separation right. Exemption creditors shall list in the registration the assets (things) to which their claims relates.

Trustee and creditors may make an objection to a separation or exemption right.

If such objection to a separation or exemption right is made the bankruptcy panel shall order a separation or exemption creditor to commence a civil procedure within 15 days to exercise his/her right. If such objection is made to a separation or exemption right entered in land register or with executory title the bankruptcy panel shall order a trustee or other creditor to commence a civil procedure within 15 days to determine that the objected right is not established.

If such objection to a claim or separation right is not made the bankruptcy panel shall determine the existence of the claim and order the bankruptcy debtor to pay the determined claim from the portion of his/her assets for which the separation right was established. If such objection to a exemption right is not made the bankruptcy panel shall order the bankruptcy debtor to deliver to the creditor things to which the exemption right pertains.

If the portion of the assets of the debtor for which a separation right is received is not sufficient to cover an entire claim of a separation creditor, the separation creditor shall have the right to establish the unpaid portion of a claim as a bankruptcy creditor. A surplus which remains following payment of a claim of a separation creditor from the special bankruptcy estate shall be placed in the distribution estate.

## **AVOIDABLE TRANSFERS**

**The creditors and the trustee may avoid any legal action that was made within one year before the date of the commencement of the bankruptcy proceeding if such action**

**led to unequal or decreased payment to the bankruptcy creditors or**

**led to more favourable position to an individual creditor** (enables such creditor to receive more than such creditor would receive or creates a separation right for such creditor),

**if such creditor had a reasonable cause to believe that the debtor was in poor economic and financial situation at the time of the legal action.**

**The legal action shall also refer to an omission of an action as a result of which the debtor lost of a certain material right or incurred a certain material obligation.**

**It shall be presumed that the creditor had or should have a reasonable cause to believe that the debtor was in poor economic and financial situation**

**if payment was made for unmatured debt,**

**if payment was not made in the ordinary course of business or**

**if payment was made within three months before the date of the filing of the bankruptcy petition (or before the date of the filing of the compulsory settlement petition if such a petition was filed prior to the bankruptcy petition) or after the date of the filing of such petition.**

**The creditors and the trustee may also avoid any legal action that was made within one year before the date of the commencement of bankruptcy proceeding if such action was made gratuitous or if the debtor received less than a reasonably equivalent value in exchange for such action.**

**The legal action shall also refer to an omission of an action as a result of which the debtor lost a certain material right or incurred a certain material obligation.**

**The trustee and the creditors have the capacity to sue to recover, for the benefit of the estate, the property transferred or the value of such property from the subject for whose benefit such action was made. A lawsuit shall be filed within six months after the date of the announcement of the commencement of a bankruptcy proceeding in the Official Gazette of the Republic of Slovenia. The trustee may only file the lawsuit upon approval of the president of the bankruptcy panel.**

**The creditors and the trustee may also exercise the avoiding powers through an established objection in the court or administrative procedure without time limitation.**

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