THE WORLD BANK

GLOBAL JUDGES FORUM

COMMERCIAL ENFORCEMENT AND INSOLVENCY SYSTEM

PEPPERDINE UNIVERSITY SCHOOL OF LAW
MALIBU, CALIFORNIA
19-23 MAY 2003

S L O V E N I A

Miodrag DORDEVIC
Supreme Court Justice

TABLE OF CONTENTS Page No

1.0 INTRODUCTION

The Compulsory Settlement, Bankruptcy and Liquidation Act provides the conditions for commencing proceedings for compulsory settlement and bankruptcy as well as the financial reorganization of companies subject to insolvency proceedings which enables implementation of statutory reorganization, rationalization of business activities and the establishment of sound capital links with other companies (including the dismissal of surplus workers).

2.0 INSTITUTIONAL FRAMEWORK FOR INSOLVENCY

2.1 Bankruptcy Proceedings

Bankruptcy proceedings are initiated against those debtors with a long history of insolvency or being heavily encumbered by debts. Bankruptcy proceedings cannot be initiated against debtors with only one creditor. The proposal for commencing bankruptcy proceedings may be filed by creditors, the debtor itself or a personally liable shareholder.

According to this Act debtors are independent entrepreneurs, commercial companies, cooperatives, state-owned companies and other legal and natural persons determined by special acts.

Insolvent debtors or debtors heavily encumbered by debts may suggest compulsory settlement to creditors before the initiation of bankruptcy proceedings. Once bankruptcy proceedings have been initiated, an insolvent estate is formed comprising the whole of the debtor's property. In the case of partnership this also includes the personal property of personally liable partners.

Bankruptcy proceedings cannot be initiated against debtors whose property value is not sufficient to cover the costs of the proceedings. Bankruptcy proceedings are heard by the competent court in the town where the company in question is located.

Bankruptcy proceedings are conducted by a bankruptcy senate, bankruptcy administrator and board of creditors.

The bankruptcy senate is composed of three members (one of whom is the senate president) with the following powers:

- deciding on the initiation of bankruptcy proceedings,
- deciding on any bankruptcy administrator or board of creditors' objections to the senate president's decisions,
- providing for the implementation of urgent measures to be carried out during bankruptcy proceedings,
- approving compensation and the bankruptcy administrator's fees,
- overseeing the appointment and dismissal of the bankruptcy administrator,
- approving partition of the bankruptcy estate,
- issuing a decision on the termination of bankruptcy proceedings, and
- performing other activities.

The bankruptcy administrator represents the debtor and has the following powers:

- updating of books up to the date of the initiation of bankruptcy proceedings,
- preparation of the program for bankruptcy proceedings and assessment of costs,
- appointment of an inventory committee,
- preparation of a bankruptcy balance sheet,
- administration of the debtor's business activities,
- recovery of the debtor's claims,
- realization of the debtor's bankruptcy estate, and
- preparation of draft partition and draft final bankruptcy balance.

In order to protect the interests of creditors the bankruptcy senate may establish a board of creditors with the following powers:

- discussion of the bankruptcy administrator's report,
- review/audit of books and documentation held by bankruptcy administrator,
- formulating objections concerning the work of the administrator and senate president,
- proposing the administrator's dismissal and the appointment of a new administrator,
- commenting on the realization of debtor's bankruptcy estate,
- commenting on the continuation of business activities and conclusion of new business activities,
- commenting on inventory deficits, and
- performing other activities.

Creditors' claims must be filed with the senate within two months of the commencement of bankruptcy proceedings being published in the Official Gazette of the Republic of Slovenia.

After obtaining the opinions of the board of creditors and the administrator and on the basis of expert opinion the senate may proceed with the sale of the debtor (where a legal person) by public auction or a call for bids. The decision on the sale must contain the following: the mode of sale, price, term for payment, amount and modes of paying deposits, modes of transfer and payment guarantees.

All data concerning the initiation and termination of bankruptcy proceedings is entered in the court register.

3.0 REBILITATION/COMPOSITIONS/SCHEMES

3.1 Compulsory Settlement

Compulsory settlement proceedings are administered by a senate of three judges, one of whom is the senate president. In the case of abridged liquidation proceedings, a single judge may preside. When the senate has established that the conditions for initiating a compulsory settlement has been met, it may appoint a compulsory settlement administrator. Otherwise the senate president performs this role. Rules for appointing a compulsory settlement administrator are the same rules as the rules regulating the appointment of an administrator in liquidation proceedings.

The administrator must:

- verify the state of assets and business activities of the debtor,
- verify the list of creditors and debtors of the debtor,
- verify the credibility of reported claims,
- reject any unjustified claims,
- report to the senate on any unlawful disposal of assets, and
- perform other activities.

The administrator may make use of an expert in carrying out abovementioned activities and is entitled to adequate compensation for any costs and fees (as determined by the Ministry of Justice).

The senate convenes a board of creditors composed of (a minimum of five) major creditors entitled to review the financial conditions and business activities of the debtor, participate in the preparation of a financial reorganization program, appoint and remove the administrator and suggest activities necessary for protecting the interests of creditors in compulsory settlement proceedings.

Compulsory settlement proceedings are initiated by filing a claim containing: designation of the court, name and address of the debtor and the facts and conditions necessary for initiating such proceedings, appended by the debtor's financial report, list of creditors, documentation proving the fulfillment of conditions for initiating proceedings and designation of the workers' council of the debtor. The claim is reviewed by the senate that proclaims the initiation of compulsory settlement proceedings.

From the commencement of the compulsory settlement procedure against the debtor it shall not be possible to permit the execution of payment nor the execution of security. Executions already in effect shall be ceased. This shall not apply to exemption creditors nor to those separation creditors who acquire the right to separate payment with execution due to payment or security more than two months prior to the commencement of the compulsory settlement procedure.

The creditors shall take a decision on the proposed compulsory settlement by vote. The right to vote shall be held by creditors whose claims are established and creditors whose claims are contested but they are recognized by the settlement senate as probable either partially or in their entirety. Compulsory settlement shall be adopted, if creditors representing more than 60% of all claims and holding the right to vote, vote for it. If a 60% vote cannot be obtained, the senate rejects compulsory settlement and ex officio initiates bankruptcy proceedings.

The settlement senate shall confirm compulsory settlement, if the compulsory settlement has been adopted (by majority of the creditors). A confirmed compulsory settlement shall also have legal effect against creditors who did not participate in procedure and against creditors who participated in the procedure but whose claims were contested, if they are established at a later date.

On the basis of confirmed compulsory settlement the debtor shall be excused from the obligation to pay a creditor an amount which exceeds the percentage stated in the confirmed compulsory settlement and the

payment shall be deferred in accordance with compulsory settlement. Executable titles which relate to the claims determined in the order on the confirmation of compulsory settlement shall lose their legal power with regard to the debtor. But if the debtor does not fulfill obligations from confirmed compulsory settlement, the creditor shall have the right in the executive procedure to recover a lowered claim (not only from the debtor but also directly from the guarantor who guaranteed for the debt).

All information on compulsory settlement proceedings is entered in the court register.

Each participant shares the costs of the compulsory settlement proceedings.

3.2 Financial Reorganization Program

Together with the motion to initiate compulsory settlement proceedings the debtor may file a financial reorganization program (within three months) to the senate and members of the board of creditors stipulating the conditions for settlement of the creditors' claims and determination of conditions for the dismissal of surplus workers necessary for implementation of the financial reorganization program.

In the plan of financial reorganization the debtor shall propose compulsory settlement, with the provisions that:

- the debtor classify the claims with regards to legal and business basis and other characteristics of uniformity,
- the debtor state for which classes of claims the position of the creditors shall not change even after confirmation of the plan of financial reorganization,
- the debtor make a proposal of the payment of claims in a lowered amount and the deadlines for the payment for each class of claims, and
- the debtor envisage an equal, proportional lowering of claims or the extension of the deadline for payment for all claims within an individual class, except if the holder of an individual claim within class explicitly and in written form agrees to less favorable conditions for payment of this class.

In the plan of financial reorganization the debtor may only offer payment of claims in money unless an individual creditor explicitly and in written form consents to some other form of payment.

The method of financial reorganization refers to any business or financial method or combination of such methods (e.g. debt to equity swap or a reduction in the number of people employed by the debtor) as would guarantee that the debtor shall become capable of payment. The debtor must explain the methods of financial reorganization in the plan, particularly by:

- evaluating and explaining measures required to acquire liquid assets,
- evaluating and explaining measures required to increase the fixed assets,
- describing and evaluating measures for rationalization of production or business, and
- describing and evaluating the ways in which the company will generate income.

At the hearing the debtor shall explain economic and financial status and the plan of financial reorganization. The business management body and the person responsible for the debtor's financial business management shall make a statement that the information on the economic and financial status enclosed with the proposal for the introduction of the procedure of compulsory settlement corresponds in its entirety with the actual status. The president of the board of creditors and the trustee in compulsory settlement shall then make a statement on the plan of financial reorganization. Then the creditors shall take a decision on the proposed compulsory settlement.

4.0 LIQUIDATION

4.1 Law on Compulsory Settlement, Bankruptcy and Liquidation

If the law does not determine who shall propose the commencement of the liquidation procedure, it shall be proposed by the person (the person who affected the court ruling) or body who passed the decision on the termination of a legal person. The court shall commence the liquidation procedure ex officio, if the nullification of an entry in the court register was determined by a legally valid ruling.

The competent court in whose territory the registered office of the legal person is located shall carry out the liquidation procedure. The bodies of the liquidation procedure shall be a liquidation senate and a trustee in

liquidation. The provisions relating to the bankruptcy procedure shall also be applied accordingly in the liquidation procedure, except provisions on compulsory settlement prior to and during bankruptcy, on the board of creditors, on separation creditors, on avoiding powers, on the sale of the debtor and on the rejection of registrations of claims which arrived at the court following the expiry of the 60 days period for their registration.

If the conditions are present for bankruptcy, the liquidation procedure shall not be instituted. If at any time during the progress of the liquidation procedure, up until the concluding balance statement, it is determined that the conditions for the commencement of the bankruptcy procedure are fulfilled, the trustee in liquidation must immediately propose the commencement of the bankruptcy procedure. The bankruptcy procedure shall be carried out by the liquidation senate and the trustee in liquidation as the bankruptcy senate and trustee in bankruptcy (unless the court determines otherwise). Actions taken in the liquidation procedure shall also be valid in the bankruptcy procedure.

4.2 Law on Commercial Companies

4.2.1 Joint Stock Company (and Limited Liability Company)

In the cases of dissolution with expiration of the term for which the company is established and by an assembly decision the decision to dissolve a company and initiate liquidation proceedings shall be taken by the assembly. Liquidation proceedings shall be initiated by the company pursuant to the liquidation decree.

In the cases of dissolution, if the management does not function more than twelve months, if the court finds the registration invalid and by court order the decree of liquidation shall be issued by the court. Liquidation proceedings shall be initiated by the court.

In the cases of dissolution, if the management does not function for more than twelve months and if the capital stock decreases to below the minimum, liquidation proceedings shall be initiated by the court ex officio. The costs of liquidation shall be recovered from the company’s estate, and if this is insufficient, from the assets of the founders.

Liquidation shall be conducted by one or more liquidation administrators. The t shall be appointed from among company management members or (upon petition by the supervisory board or stockholders accounting for one twentieth of the capital stock) by the court. A liquidation

administrator may be any legal person. The body which has appointed the liquidation administrator may recall him at any time and without explanation.

The liquidation administrator shall:

- represent and act as agent for the company,
- draw up an opening balance sheet for liquidation,
- bring unfinished deals to a close,
- pay the creditors,
- invite the creditors to report their claims (within thirty days),
- enforce the company's claims,
- utilize the liquidation estate to the extent needed to pay creditors,
- prepare a draft report on the course of the liquidation procedure and the distribution of the estate, and
- propose the deletion of the company from the court register.

The liquidation administer shall only be entitled to continue the company's activity by signing new contracts under authorization from the body which issued the decree of liquidation. If the liquidation administrator establishes that the company's estate is insufficient to fully satisfy the claims of all creditors (inclusive of the interest), he shall promptly halt the liquidation proceedings and initiate bankruptcy proceedings.

After the company's debts have been satisfied the remaining estate shall be distributed among stockholders (shareholders) in proportion to their shares. Unpaid shares must be paid before distribution.

Once the company has been removed from the court register the action of the liquidation administrator may not be contested but he may be asked to recover damages caused to creditors during liquidation proceedings to a value of five times the payment he has received for the services rendered. If such amount is insufficient to cover the loss, all stockholders (shareholders) shall be held jointly and severally liable to the value of the shares paid out of the liquidation estate. This shall not apply to damage caused by the liquidation administrator to the stockholders (shareholders). The liability for such damage shall fall under general regulations on liability for damages.

During the liquidation proceedings stockholders (shareholders) may present their claims arising from legal transactions with the company. The company's estate may not be distributed among the stockholders

(shareholders) before a period of six months has elapsed from the last notice (of the decree of liquidation).

4.2.2 The General Partnership

Liquidation shall be executed in the cases of dissolution:

- with the expiration of the period for which the general partnership was established,
- by decision of the partners,
- by the death or termination of a partner,
- by denunciation (by a partner),
- by court order, or
- if the number of partners falls to less than two (except in the case of continuation of the company with a single partner).

The liquidation shall be performed by all the partners in the capacity of liquidators, unless it has been entrusted to individual partners or third persons by decision of the partners or by the partnership agreement. Upon a petition by a person having a legal interest the court may, on establishing that valid reasons exist, appoint liquidators. In this case the court may appoint liquidators from among persons other than the partners. Liquidators may be recalled.

Liquidators shall bring the current business transactions to a close, collect accounts receivable, realize the remaining assets and pay out the creditors. Liquidators may conclude new business transactions for the purpose of bringing the current transactions to a close.

Liquidators shall represent the company. If there are several liquidators, they may only perform the activities related to the liquidation jointly, except it determined that they may also act individually. Limitations on the authority of liquidators shall have no legal effect on third persons. In their relation to partners liquidators shall be bound to respect the unanimously adopted decisions of the partners concerning the conduct of business affairs. Liquidators shall draw up the opening and final liquidation account.

After the debts have been paid the liquidators shall distribute the remaining assets among the partners in proportion to their capital shares determined on the basis of the final liquidation account. If a dispute over the distribution of the company's assets arises between partners, liquidators shall postpone the distribution until the final settlement of the

dispute. If the company's assets are insufficient to meet its obligations and pay out the capital shares of partners, the partners shall provide the needed amount in the proportion in which they are obliged to cover the loss. If one of the partners is unable to provide the amount he is obliged to pay, it shall be provided at the expense of other partners in proportion to their capital shares.

If no specials provisions are given, the provisions on the liquidation of a joint stock company shall apply accordingly to the liquidation of a general partnership.

5.0 LEGAL FRAMEWORK FOR CREDITOR RIGHTS

5.1 Law of Property Act

Real rights are: ownership, lien, land debt, easement, right of encumbrance and right of superficies.

Land register permission (registration clause) is an explicit, unconditional declaration by a person whose right is being transferred, altered, encumbered or extinguished permitting an entry in the land register. The signature on the land register permission must be certified.

5.1.1 Lien

The pledger may establish a lien for insurance of his own debt or the debt of another. A lien may also be established for insurance of future and conditional claim. The subject of a lien can be things, right and securities provided they can be disposed of and have a pecuniary value. If an object is pledged to two or more lienors, the order in which they are repaid in full is determined by the time when the lien was created.

A mortgage (a lien on an immovable) encompasses the immovable as a whole. Each co-owner may establish a mortgage on their ideal share without the consent of the other co-owners. The contractual establishment of a mortgage on an entire immovable which is the object of the co-owners requires the agreement of all the co-owners. If an immovable is jointly owned, a mortgage can only be established on the immovable as a whole.

The acquisition of a mortgage on the basis of a legal transaction requires an entry in the land register made on the basis of a document containing

the land register permission. A legal transaction on the establishment of a mortgage may be concluded in the form of a directly executable notarial protocol which shall be noted in the land register and shall also take effect against any subsequent acquirer of ownership of the pledged immovable.

If by his actions the pledger reduces the value of a mortgaged immovable or in some other ways worsens its state, the mortgagee may ask the court to instruct the mortgagor to cease such actions. If the mortgagor fails to do this, he may request a compulsory collection of the claim secured with the mortgage even before the claim falls due.

If the debtor fails to pay a claim within the deadline, the creditor may demand in a suit that the pledged immovable be sold. If the mortgage was created on the basis of a directly executable notarial protocol, the creditor may demand that the notary establish that the claim was matured and sell the pledged immovable and repay the creditors or propose execution.

A pignus (a lien on a movable) is created on the basis of a valid contract of pledge when a pledger delivers the pledged movable into the direct possession of the lienor.

If pledged property is spoiled or if it loses its value in some other way and there is a risk of it becoming insufficient to secure the creditor's claim, the court may (upon a request from the lienor or the pledger and after hearing the other party) order the property to be sold and determine the conditions of the sale. The sale shall be carried out by public auction or at an exchange price or market price if there is one.

If a secured claim is not settled at maturity, the lienor may ask the court to issue a decision ordering the pledged property to be sold and the payment to be made. The lienor and the pledger may agree in a contract of pledge that the pledged property can be sold out of the court. An agreement must be concluded in writing. If the secured claim is not settled at maturity, the lienor may sell the pledged property at a public auction or at an exchange price or a market price if there is one. The sale may be carried out as from eight days after the day on which the lienor notified the debtor of the secured claim, as well as the pledger if it is not the same person, of his intention to do so. The lienor must inform both in good time of the date and place of the sale. The lienor receives payment of his entire claim from the proceeds of the sale, together with interest and costs, and must deliver any surplus to the pledger.

A non-possessory lien is a lien on a movable where the pledged property is not delivered into the direct possession of the lienor nor is it delivered into the direct possession of a third person on behalf of the lienor but remains in the possession of the pledger or a third person on his behalf. It is created with an agreement in the form of a directly executable notarial protocol.

Inventories in a precisely determined place can also be subject to a non-possessory lien.

If the debtor fails to settle the secured claim at maturity, the pledger must deliver the pledged movable into the direct possession of the lienor. With the delivery of the pledged movable into the direct possession of the lienor a lien is acquired on the movable (pignus), whereby an agreement on an out-of-court sale is presumed to exist. If the pledger fails to deliver the pledged movable to the lienor, the lienor may propose execution for the delivery of the property or execution by means of a sale.

If a uniform identification of the movable property is possible, a register of non-possessory liens may be set up with a special regulation.

For the purpose of securing a claim a lien may be established on another claim the object of which is a charge (**pledged claim**). A lien is created at the moment when the debtor of the pledged claim receives notification from the pledger that the claim is pledged. The pledger must deliver to the lienor a document and other proof of the pledged claim.

A lien may also be established **on a security** or on other property rights.

5.1.2 Land Debt

A lend debt is the right to demand repayment of a specific cash sum from the value of an immovable ahead of other creditors with an inferior ranking. It is created on the basis of a unilateral legal transaction, with an entry in the land register and the issuing of a land letter.

A land debt can be established by the owner of the immovable or by a mortgagee who, in agreement with the owner of the encumbered immovable, changes his mortgage into one or more land debts. The encumbrance of an immovable under land debts must not exceed the encumbrance under the mortgage.

A unilateral legal transaction on the establishment of a land debt must be done in the form of a notarial protocol.

A land letter is issued to the founder by the court that keeps the land register for the encumbered immovable after the land debt has been entered in the register. A land letter is a negotiable instrument to order. The founder is deemed to be the first holder of the land letter. A land debt is transferred together with the land letter. A land debt is independently pledgeable.

The owner of an encumbered immovable must pay the land debt on maturity to the entitled holder of the land letter. A land letter is an executable title.

5.1.3 Transfer as Security

A fiduciary transfer (a transfer of title as security) is a form of security of a claim where movable property remains in the direct possession of the transferor or a third person on his behalf. An agreement between parties must be concluded in the form of a directly executable notarial protocol.

If a secured claim is not paid at maturity, the transferor must deliver the movable property into the direct possession of the fiduciary.

The transferor may exercise a right of exclusion in bankruptcy and composition (compulsory settlement) on the fiduciary transferred movable property. In the event of the bankruptcy or composition (compulsory settlement) of the transferor the fiduciary has a separation right in respect of the fiduciary transferred movable property.

A fiduciary assignment (an assignment of a claim as security) is a form of security of a claim where the assignor assigns a claim to an assignee.

If the secured claim is not paid at maturity, the assignee may be repaid from the assigned claim. He must hand over any excess to the assignor.

5.2 Execution Law

The following measures may be allowed as means for the protection of claims until their payment:

- liens upon immovable property,
- liens upon movable property,

- preliminary injunctions, and
- interlocutory injunctions.

The court shall grant **a preliminary injunction** on the basis of the decision of a domestic court or other authorized body prescribing the payment of a money claim which has not yet become enforceable, if the creditor proves presumptively that the enforcement of the claim would otherwise be rendered impossible or considerably impeded.

The court shall grant **an interlocutory injunction to secure a money claim**, if the creditor proves presumptively that the claim against the debtor exists or is about to arise. In addition the creditor shall prove presumptively the existence of a danger that the enforcement of his claim is likely to be rendered impossible or considerably impeded due to the alienation, concealment or another sort of disposal of property by the debtor. The creditor shall be free from proving the danger, if he proves presumptively that the injunction for which he is applying will not result in any considerable damages to the debtor. A danger shall be deemed to exist, if the claim is to be enforced in a foreign country[1].

5.3 Law on Compulsory Settlement, Bankruptcy and Liquidation

The commencement of the bankruptcy procedure shall not influence the right to special payment from certain assets of the debtor (lien, right to payment, retention right and other *separation rights*) neither shall it influence the right to exempt things which do not belong to the debtor (*exemption rights*). 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 day of commencement of the bankruptcy procedure shall cease to be in effect.

Separation and exemption creditors must also register their claims with the bankruptcy senate within a period of two months from the day on which the announcement of the commencement of the bankruptcy procedure was published 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

[1]According to the prevailing case law from the point of view of the ruling court (not of the creditor).

registration the portion of the assets (subject) to which their claims relates.

If the portion of the assets of the debtor for which a separation right is received (special bankruptcy estate) 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 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 partition (distribution) mass.

6.0 CROSS-BORDER INSOLVENCY

6.1 Law on Compulsory Settlement, Bankruptcy and Liquidation

The court in the Republic of Slovenia (RS) has exclusive jurisdiction in the procedures of compulsory settlement, bankruptcy and liquidation against a debtor with registered office or permanent residence in the territory of RS. The ruling of the court shall refer to all the assets of the debtor in RS or abroad.

Rulings of foreign courts issued in a procedure of compulsory settlement, bankruptcy or liquidation against a debtor with registered office or permanent residence in the territory of the foreign court shall be recognized in RS under the conditions determined for the recognition of foreign court ruling pursuant to the law of RS. The resolution on the recognition of a ruling of a foreign court shall be published in the Official Gazette of RS.

In the case of recognition of a ruling by a foreign court the provisions of Slovenian Law on Compulsory Settlement, bankruptcy and liquidation shall be used accordingly for the legal position of the foreign debtor and the foreign trustee in bankruptcy. In the procedure for the recognition of a foreign court ruling neither a new trustee in bankruptcy nor a board of creditors shall be determined in RS. The periods and deadlines determined in the laws and other regulations of RS shall begin to run following the publication of the ruling on recognition.