

**ACT AMENDING THE FINANCIAL OPERATIONS,
INSOLVENCY PROCEEDINGS AND COMPULSORY
DISSOLUTION ACT**

Ministry of Justice of the Republic of Slovenia

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MINISTRY OF JUSTICE OF SLOVENIA LEGISLATION

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ACT AMENDING THE FINANCIAL OPERATIONS, INSOLVENCY PROCEEDINGS AND COMPULSORY DISSOLUTION ACT

Article 1

Point 4 of the third paragraph of Article 17 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Uradni list RS [Official Gazette of the Republic of Slovenia] No. 126/07) shall be amended to read as follows:

»4. "personal identification number if the debtor is entered in the central population register, and tax number if the debtor is entered in the tax register."

A new seventh paragraph shall be added, reading as follows:

"(7) Identification data on the debtor and other data on insolvency proceedings shall be kept pursuant to Article 122a and published pursuant to Article 122 of this Act:

1. to ensure the security of legal transactions and
2. to enable creditors full identification of the debtor in order to register claims in insolvency proceedings in time and exercise other rights in such proceedings."

Article 2

In the second paragraph of Article 21 the words "which the debtor has to charge and pay pursuant to regulations, and" shall be deleted.

Article 3

In Article 98, a new fourth paragraph shall be added, reading as follows:

"(4) The administrator shall submit his reports, lists of tested claims and other written documents of the administrator to the court in electronic form, signed with a secure electronic signature verified by a certificate of qualification. The minister responsible for justice shall prescribe more detailed rules concerning the submission of administrator's written documents."

Article 4

In point 7 of the second paragraph of Article 110, the full stop shall be replaced by a comma and new points 8 and 9 shall be added, reading as follows:

»8. data on the insurance covering the administrator's liability referred to in point 5 of the second paragraph of Article 108 of this Act and
9. e-mail address of the administrator."

Point 3 of the third paragraph shall be amended to read as follows:

»3. date of birth if the administrator has neither a personal identification number nor a tax number."

Point 5 of the third paragraph shall be amended to read:

»5. if the administrator performs the competencies and tasks of an administrator in the legal form of a sole proprietor, private person or company also the data entered in the business register:

- business name, head office and business address,
- registration number".

New paragraphs (6) and (7) shall be added to read as follows:

"(6) The list of administrators to be published according to the fourth paragraph of this Article and data, resolutions and other written documents to be published according to Article 122 of this Act may not contain data referred to in points 2 to 4 of the third paragraph of this article.

(7) The ministry responsible for justice shall be held liable for the correctness of data contained in the list of administrators to be sent to the agency for publication under the fourth paragraph of this Article. The agency shall ensure that the list of administrators submitted for publication by the ministry responsible for justice is published on the websites for publications in insolvency proceedings referred to in Article 122 of this Act."

Article 5

The second paragraph of Article 117 shall be amended to read as follows:

"(2) If the administrator performs the competencies and tasks of an administrator in the legal form of a sole proprietor, private person or company, also such legal form and the data referred to in point 5 of the third paragraph of Article 110 shall be indicated in the resolution on the appointment.

Article 6

In point 1 of the first paragraph of Article 122 at the end of the first indent the following words shall be added: "with the exception of the personal identification number and tax number of the insolvent debtor who is a consumer,".

In point 2 of the first paragraph the words "all resolutions issued in such a proceeding, except" shall be replaced by the words "resolution on the initiation of the insolvency proceeding and all resolutions issued in the main insolvency proceeding, except:"

The third paragraph shall be amended to read as follows:

" (3) The websites for publications in insolvency proceedings shall be arranged in such a way as to enable anyone free insight into data published therein, namely:

1. by the date of publication,
2. by reference number of the insolvency proceeding or court conducting the proceeding,
3. if the insolvent debtor has the status of a legal person, sole proprietor or private person: by any identification data by which he is entered in the court or business register and by tax number,
4. if the insolvent debtor has the status of a consumer, sole proprietor or private person: by a combination of the following conditions, whereby the system returns data on the reference number of the insolvency proceeding only if all conditions are met:
 - a combination of personal identification number and surname and forename,
 - a combination of tax number and surname and forename or
 - a combination of name and surname, address of permanent residence and date of birth,
5. if the insolvent debtor has the status of a consumer, sole proprietor or private person, also solely by personal identification number or tax number, whereby the system only returns the information whether an insolvency proceeding has been initiated against the person complying with this condition, without any data on the reference number if a proceeding has been initiated."

New paragraphs (9) to (11) shall be added to read as follows:

"(9) Resolutions or other written documents referred to in point 2 to 8 of the first paragraph of this Article to be published shall not contain the personal identification number or tax number of the insolvent debtor who is a consumer.

(10) The court conducting the insolvency proceeding shall be responsible for the correctness of data contained in the resolution or other written document that is submitted to the agency by the court for reasons of publication under the first paragraph of this Article.

(11) The Agency shall provide for:

1. the publication on the websites for publications in insolvency proceedings of written documents submitted for publication by the court, and
2. the arrangement of these websites in accordance with the third paragraph of this Article."

Article 7

After Article 122 a new Article 122a shall be added reading as follows:

"Article 122a

(keeping and transmission of data in insolvency proceedings)

(1) The information centre of the Supreme Court of the Republic of Slovenia (hereinafter: Information Centre) shall manage software providing:

1. the keeping of records on cases in insolvency proceedings,
2. the transmission of data on individual insolvency proceedings for publication under point 1 of the first paragraph of Article 122 of this Act, and

3. the transmission of written documents for publication according to points 2 to 8 of the first paragraph of Article 122 of this Act.

(2) The Information Centre may transmit data referred to in point 1 of the first paragraph of Article 122 of this Act on insolvency proceedings against a consumer in computerised form to:

1. persons of EU Member States who require such data for the maintenance of their computerised records on debtors,
2. banks, insurance companies or other financial institutions of EU Member States requiring such data for the management of credit risk or the application of rules laid down in Articles 158, 245, 246 and 386 of this Act,
3. administrators of credit rating systems referring to customers of banks, insurance companies or other financial institutions in EU Member States requiring such data for the management of the credit risk of the system members, and
4. the Tax Administration of the Republic of Slovenia requiring such data for the implementation of tasks related to the collection of taxes and other compulsory levies.

(3) For the transmission of data referred to in the second paragraph of this Article, points 3 to 5 of the third paragraph of Article 122 of this Act shall apply *mutatis mutandis*.

(4) In transmitting data in computerised form under the second paragraph of this Article the Information Centre is not allowed to transmit both identification numbers of the insolvent debtor referred to in point 4 of the third paragraph of Article 17 of this Act, but may only transmit either the personal identification number or the tax number, depending on the choice made by the beneficiary referred to in the second paragraph of this Article.

(5) The Information Centre may communicate data referred to in point 1 of the first paragraph of Article 122 of this Act on insolvency proceedings against a legal person, a sole proprietor or private person in computerised form to:

1. persons referred to in the second paragraph of this Article,
2. external credit assessment institutions of EU Member States:
 - recognized by a competent supervisory body of a EU Member State as qualified for external credit assessments pursuant to regulations governing the management of credit risks of banks, insurance companies or other financial institutions and
 - requiring such information for external credit assessments,

3. the agency for producing consolidated information on economic trends.

(6) Data on insolvency proceedings submitted in computerised form under the second or fifth paragraph of this Article may only be used for purposes referred to in point 1, 2, 3 or 4 of the second paragraph or point 2 or 3 of the fifth paragraph of this article or for the purpose referred to in the seventh paragraph of Article 17 of this Act.

(7) Persons referred to in points 1 to 3 of the second paragraph and point 2 of the fifth paragraph of this Article shall pay compensation for the transmission of data in computerised form pursuant to the second and fifth paragraph of this Article.

(8) The minister responsible for justice shall lay down, on the proposal of the Information Centre, detailed rules on the transmission of data in computerised form under the second and

fifth paragraph of this Article and determine by tariff the compensation referred to in the seventh paragraph of this Article."

Article 8

In Article 124, a new fourth paragraph shall be added to read as follows:

"(4) The court shall issue the original resolution or order in electronic form signed with a secure electronic signature of a judge authenticated by a certificate of qualification. The minister responsible for justice shall prescribe more detailed rules for the issue of an original resolution or order in electronic form. "

Article 9

In Article 128, a new fourth paragraph shall be added to read as follows:

(4) The higher court shall rule on the appeal against the resolution with a panel of three judges."

Article 10

In point 2 of Article 133 the full stop shall be replaced by a comma and the word "and" shall be added.

A new point 3 shall be inserted to read as follows:

»3. in another register which is kept by law and regulates the legal form of the debtor (hereinafter: primary register), if the debtor has the status of a private person or legal entity who is subject to entry in the primary register."

Article 11

Article 134 shall be amended to read as follows:

"Article 134
(Deciding on entries in the register)

(1) The court shall, on the next working day following the occurrence of the legal fact referred to in Article 133 of this Act, notify thereof:

1. if the debtor has the position of a company or other legal entity which is the subject of entry in the court register: the register court with territorial jurisdiction to decide on entries in the court register regarding such a subject, or
2. if the debtor has the position of a person referred to in point 2 of Article 133 of this Act: the agency as the administrator of the business register, and
3. if the debtor has the position of a person referred to in point 3 of Article 133 of this Act. also the administrator of the primary register. .

(2) The court shall send the notification referred to in the first paragraph of this Article to the electronic address of the register court, agency or administrator of the primary register for receiving notifications on insolvency proceedings and attach to it its resolution that serves as the basis for the occurrence of the legal fact which is the subject of the notification.

(3) The Information Centre shall publish on its internal website intended for notifications to courts e-mail addresses referred to in the second paragraph of this Article.

(4) The agency and the administrators of primary registers shall inform the Information Centre on decisions or changes of electronic addresses referred to in the second paragraph of this article.

(5) The register court, agency or administrator of the primary register shall decide *ex officio* on the entry of a legal fact referred to in Article 133 of this Act on the basis of a notification referred to in the first paragraph of this Article."

Article 12

In point 5 of the second paragraph of Article 141 the words "of the tax paid for a resolution on the initiation of compulsory settlement proceedings, and" shall be deleted.

Article 13

In Article 147, a new fifth paragraph shall be added, reading as follows:

"(5) Notwithstanding the fourth paragraph of this Article, the court shall reject the petition for a compulsory settlement without simultaneously initiating an insolvency proceeding if the debtor fails to supplement the petition for instituting a compulsory settlement proceeding within the time period referred to in the first paragraph of this Article by depositing an initial advance referred to in Article 141 of this Act."

Article 14

After the second paragraph of Article 177, new paragraphs (3) and (4) shall be added to read as follows:

"(3) If the person entering an objection against the conduct of the compulsory settlement proceeding fails to attend the hearing for the objection proceeding against the conduct of the compulsory settlement proceeding, it shall be deemed that he has withdrawn the objection against the conduct of the compulsory settlement proceeding.

(4) If the debtor fails to attend the hearing for the objection proceeding against the conduct of the compulsory settlement proceeding, the court shall conduct the hearing in his absence."
The current third paragraph shall become the fourth paragraph.

Article 15

The second paragraph of Article 229 shall be amended to read as follows:

"(2) Simultaneously with the entry of the initiation of the bankruptcy proceeding, the following shall be entered in the register:

1. the word "bankrupt" shall be added to the business name,
2. for persons who are authorised representatives, the following shall be entered:
 - the expiry of powers of representation of the debtor's representatives referred to in the first paragraph of Article 245 of this Act,
 - identification data on the administrator referred to in the third paragraph of Article 110 of this Act as the new representative,
 - if the administrator performs the competencies and tasks of an administrator in the legal form of a sole proprietor, private entity or company, also such circumstances and data referred to in point 5 of the third paragraph of Article 110 of this Act."

Article 16

In point 2 of the second paragraph of Article 232 the words "the duty paid for a resolution on the initiation of a bankruptcy proceeding and".

Article 17

The following text shall be added at the end of the title of Article 233: "and supplement to an incomplete petition".

New paragraphs (3) to (8) shall be added to read as follows:
"(3) If at the time he files a bankruptcy petition, the petitioner fails to deposit an advance referred to in the first paragraph of this Article or it does not comply with the first paragraph of Article 232 of this Act, the court shall oblige the petitioner by resolution (hereinafter: resolution on petition supplementation) to deposit an advance or remedy the deficiencies of the petition within 15 days following receipt of the resolution on petition supplementation.

(4) The court shall issue the resolution on petition supplementation within eight days following the day of filing the bankruptcy petition.

(5) If the petitioner fails to supplement the petition within the time limit referred to in the first paragraph of this Article, the court shall reject the bankruptcy petition within eight (8) days following the expiry of the time limit.

(6) If the legal entity has no resources for depositing the advance referred to in the first paragraph of this Article, it is entitled to free legal aid in the form of exemption from advance payment under the law governing free legal aid.

(7) If free legal aid has been granted for deposit of the advance referred to in the first paragraph of this Article, the court conducting insolvency proceedings shall decide by a resolution on the initiation of a bankruptcy proceeding that the following payments be made from the budget of the court:

1. the amount of lump sum compensation for publications shall be paid to the agency in accordance with the fifth paragraph of Article 122 of this Act and
2. an amount equal to the sums of amounts referred to in point 2 and 3 of the first paragraph of this Article shall be paid to the benefit of the transaction account of the debtor in bankruptcy.

(8) If the value of the realised bankruptcy estate exceeds the amount of payments referred to in the seventh paragraph of this Article, the court conducting the bankruptcy proceeding shall decide that these payments be returned to the benefit of the court's budget according to the rules on the payment of the costs of bankruptcy proceedings."

Article 18

After the second paragraph of Article 239, new third and fourth paragraphs shall be added to read as follows:

"(3) If the creditor fails to attend the hearing for the initiation of bankruptcy proceedings, he shall be considered to have withdrawn the bankruptcy petition.

(4) If the debtor fails to attend the hearing for the initiation of bankruptcy proceedings, the court shall conduct the hearing in his absence."

The current paragraphs (3) and (4) shall become paragraphs (5) and (6).

In the fifth paragraph, which shall become the seventh paragraph, the word "fourth" shall be replaced by the word "sixth".

Article 19

Article 251 shall be amended to read as follows:

"Article 251

(service of documents to the administrator in court and other procedures)

After the initiation of bankruptcy proceedings all papers in court and other procedures which should be served on the debtor in bankruptcy as a client or on another party to the proceedings shall be served on the administrator:

1. in the case referred to in point 5 of the third paragraph of Article 110 of this Act: at the business address of the legal form by which he performs the competencies and tasks of an administrator, entered in the register according to the second indent of point 2 of the second paragraph of Article 229 of this Act.

2. In other cases: at his address entered according to the second indent of point 2 of the second paragraph of Article 229 of this Act."

Article 20

The second paragraph of Article 300 shall be amended to read:

"(2) If the administrator negates the claim, the creditor shall file a complaint referred to in the first paragraph of this Article against the debtor in bankruptcy."

In the third paragraph the word "expert" before the word "also" shall be deleted.

In the fourth paragraph after the word "complaint" the words "against everyone who negated the claim" shall be inserted.

Article 21

In point (1) of the second paragraph of Article 383 the words "Article 227" shall be followed by a comma , and the words "and point 2 of Article 231" shall be replaced by the words "point 2 of Article 231 and Articles 236 to 238."

In point 3 of the second paragraph after the words "fifth paragraph of Article 298," the words "seventh paragraph of Article 299" shall be added.

New paragraphs (3) and (4) shall be added to read as follows:

"(3) In personal bankruptcy proceedings, point 2 of the seventh paragraph of Article 233 of this Act shall apply *mutatis mutandis* in such a way that the amount is transferred to the benefit of the fiduciary cash account of the administrator referred to in Article 388 of this Act.

(4) In personal bankruptcy proceedings, the third and fourth paragraphs of Article 234 of this Act shall apply *mutatis mutandis* in such a way that the presumption of insolvency may be challenged by any creditor by way of an objection to remission of liabilities on account of the obstacle referred to in point 4 of Article 399 of this Act."

Article 22

A new Article 383a shall be added after Article 383, reading as follows:

"Article 383a

(filing of personal bankruptcy petition and record with the court)

(1) The debtor may file a personal bankruptcy petition also for the record with the court with material and territorial jurisdiction over the petition.

(2) At a hearing for filing a personal bankruptcy petition the court shall:

1. instruct the debtor on the legal consequences of the initiation of personal bankruptcy proceedings and the possibility of remission of liabilities, and
2. place on record the debtor's personal bankruptcy petition, the report on the value of the debtor's assets in accordance with the fifth paragraph of Article 384 of this Act and a proposal for remission of liabilities.

(3) At a hearing for filing a personal bankruptcy petition the court shall instruct the debtor on his liability to pay an advance for covering initial costs of bankruptcy proceedings referred to in the first paragraph of Article 233 of this Act and the possibility of being granted free legal aid in the form of exemption from advance payment.

(4) If the debtor declares that he has no resources required for depositing the advance to cover the initial costs of bankruptcy proceedings referred to in the first paragraph of Article 233 of this Act, the court shall provide him with an application form for free legal aid and instruct him on the procedure related to submission of the application.

(5) If the authority competent for free legal aid grants free legal aid in the form of exemption from payment of the advance for covering the initial costs of bankruptcy proceedings referred to in the first paragraph of Article 233 of this Act, the court shall issue, within three (3) working days following receipt of the decision referred to in the fifth paragraph of this Article, a resolution on the initiation of a personal bankruptcy proceeding.

(6) If the authority competent for free legal aid refuses the application for free legal aid in the form of exemption from payment of the advance for covering the initial costs of bankruptcy proceedings referred to in the first paragraph of Article 233 of this Act, the court shall issue, within three (3) working days following receipt of the decision referred to in the fifth paragraph of this Article, a resolution on the rejection of a personal bankruptcy petition.

(7) No free legal aid may be granted for legal advice and representation of a debtor in a personal bankruptcy proceeding proposed by the debtor. The first sentence of this paragraph

shall not apply to legal advice and representation of debtors in a remission of liabilities procedure if an objection against the remission of liabilities has been filed."

Article 23

At the end of point 4 of Article 399 the following words shall be inserted before the full stop: "or if he is able completely to fulfil his liabilities with regard to his financial situation."

Article 24

After the second paragraph of Article 405 new paragraphs (3) and (4) shall be added to read as follows:

"(3) If the person filing the objection to the remission of liabilities fails to attend the hearing on consideration of an objection to the remission of liabilities, he shall be considered to have withdrawn the objection to the remission of liabilities.

(4) If the debtor fails to attend the hearing on consideration of the objection to the remission of liabilities, the court shall conduct the hearing in his absence."

The current paragraphs (3) and (4) shall become paragraphs (5) and (6).

Article 25

The fourth paragraph of Article 413 shall be amended to read as follows:

"(4) The time limit referred to in the third paragraph of this Article shall run:
1. concerning the data referred to in points 1 to 3 of the second paragraph of this Article:
–if an appeal against the resolution on remission of liabilities has not been lodged: from the expiry of the time limit for the appeal,
– in other cases: from the day the court receives the decision on the appeal issued by the court of second instance,
2. concerning data referred to in point 4 of the second paragraph of this Article: from the day the resolution on annulment of remission of liabilities becomes final."

In the last paragraph the number "4" shall be replaced by the number "5".

Article 26

In the first paragraph of Article 427 point 1 shall be followed by a new point 2 reading as follows:

»2. if it does not operate at the business address entered in the court register, or".

The current point 2 of the first paragraph shall become point 3.

The second paragraph shall be amended to read as follows:

"(2) Unless the legal entity proves otherwise, it shall be considered that the following reasons exist:

1. the reason referred to in point 1 of the first paragraph of this Article for cancellation of a company, if it failed to submit to the agency in two consecutive financial years its annual report for the purpose of publication under the first or second paragraphs of Article 58 of

ZGD-1, or data included in the annual report for the purposes referred to in the first paragraph of Article 59 of ZGD-1,

2. the reason referred to in point 2 of the first paragraph of this Article for cancellation of a legal person subject to entry in the court register if the address entered in the court register is the business address:

- at which it does not receive official mail or is unknown at this address,
- at which an object is located which is owned by another person who has not granted authorisation to the legal entity for operation at such address, or
- that does not exist."

Article 27

The second paragraph of Article 428 shall be amended to read as follows:

"(2) If the court, state body or a person with public authority in a procedure conducted by such person in accordance with its competencies establishes that circumstances exist as referred to in point 2 of the second paragraph of Article 427 of this Act, it shall notify the register court thereof within one (1) month after having established such circumstances and attach to the notification proof of such circumstances."

Article 28

The second paragraph of Article 435 shall be deleted.

The third paragraph, which shall be renumbered as second paragraph, shall be amended to read as follows:

"(2) If cancellation proceedings are initiated on the basis of a presumption of the reason for cancellation referred to in point 2 of the second paragraph of Article 427 of this Act, and the legal entity has entered an objection to the resolution on the initiation of cancellation proceedings by which to enforce the reason referred to in point 1 of the first paragraph of this Article, such objection shall be permitted only if the legal entity:

1. either demonstrates the probability that it operates at the business address entered in the court register and is entitled to operate at that address either as the owner of immovable property at that address or on the basis of a contract of lease or other legal transaction by which the owner of the immovable property has permitted the use of immovable property at that address,
2. or enters a proposal for the entry of the changed business address in the court register at the same time and in addition to the documents that are the basis for the entry of changes of the business address in the court register also attaches proof.
 - that it owns the object at the new business address, or
 - that the owner of the object at the new business address has permitted the legal entity to operate and accept official mail at that address."

Paragraphs (4) and (5) shall be renumbered as paragraphs (3) and (4).

In the sixth paragraph, which shall become the fifth paragraph, the word "fifth" shall be replaced by the word "fourth".

In the seventh paragraph, which shall become the sixth paragraph, the word "sixth" shall be replaced by the word "fifth".

Article 29

A new second sentence shall be added in the sixth paragraph of Article 442 reading as follows: "If the active shareholder's position of shareholder dissolves prior to the dissolution of the legal entity, the shareholder shall be liable for liabilities referred to in the first sentence of this paragraph that have been incurred by the time of dissolution of the shareholder's position."

In point 1 of the seventh paragraph the words "upon the dissolution" shall be replaced by the wording "in the last two years prior to dissolution."

Article 30

In point 3 of Article 489 two new indents shall be inserted before the last indent to read as follows:

"– within the time limit referred to in the eighth paragraph of Article 371 of this Act, failing to submit the plan of distribution of special distribution estate consisting of elements referred to in the ninth paragraph of Article 371 of this Act,
– within the time limit referred to in the eleventh paragraph of Article 371 of this Act, failing to pay creditors the amounts contained in the plan of distribution of special distribution of estate".

Article 31

The third paragraph of Article 499 shall be deleted.

TRANSITIONAL AND FINAL PROVISIONS

Article 32

The minister responsible for justice shall issue the regulations referred to in the new fourth paragraph of Article 98 of this Act and the new fourth paragraph of Article 124 of this Act within a period of one (1) month, and the regulation referred to in the new eighth paragraph of Article 122a within three (3) months following the entry into force of this Act.

The Government of the Republic of Slovenia shall harmonise the regulation referred to in the seventh paragraph of Article 122 of the Act with this Act within one (1) month following the entry into force of this Act.

Article 33

Amended Articles 427, 428 and 435 of the Act shall apply in any procedure of cancellation from the court register without liquidation in which the existence of a reason for cancellation has not yet been finally determined by the time this Act enters into force.

The amended sixth and seventh paragraphs of Article 442 of this Act shall apply to companies cancelled from the court register without liquidation after the entry into force of this Act.

Article 34

For the assessment of remuneration of an administrator in an insolvency proceeding initiated before 1 October 2008, the regulations referred to in point 2 and 3 of Article 114 of this Act shall start to apply on the entry into force of this Act.

Article 35

The new fourth paragraph of Article 98, the new points 8 and 9 of the second paragraph of Article 110 and amendments to Article 122 shall apply from 1 July 2009.

The new Article 122a of this Act shall apply from 1 October 2009.

Administrators shall communicate the data referred to in new points 8 and 9 of the second paragraph of Article 110 of this Act to the ministry responsible for justice by 1 July 2009.

Article 36

This Act shall enter into force on the fifteenth day following its publication in *Uradni list Republike Slovenije*.

No 450-01/09-2/25

Ljubljana, 19 May 2009