

EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2003

SLOVENIA

The assessment is based on the Law on Compulsory Settlement, Bankruptcy and Liquidation (as amended, 1999) of the Republic of Slovenia

Although the law largely meets the assessment standards in some areas, there are some significant areas that appear to be in need of reform and improvement. They include the following:

- The vague definitions and absence of detail as to what financial condition constitutes insolvency and the threshold tests of insolvency (there is some suggestion, however, that judicial rulings have begun to provide greater clarity and predictability in these areas).
- The largely unstructured and unsupervised nature of the 'compulsory settlement' process.
- The inadequate provisions relating to the avoidance of pre-bankruptcy transactions.
- The absence of an affirmative requirement on the part of the debtor (and third parties) to deliver up assets of the debtor and to provide information concerning the assets, financial affairs etc. of the debtor.
- The absence of any requirement for direct notice to known creditors of the debtor concerning the opening of insolvency proceedings.
- No insolvency administration if assets insufficient to meet costs.
- No provision for timely and efficient conduct of a liquidation.

The assessed score indicates low compliance (see compliance rating chart below) with the core essentials of international standards on insolvency.

KEY	
Y	Substantial compliance
Y/?	Compliance with reservations
N/?	Doubtful compliance
N	Non compliance
N/A	Not applicable

COMPLIANCE RATING
very high compliance
high compliance
medium compliance
low compliance
very low compliance

PART A - COMMENCEMENT	YES / NO	ARTICLE	COMMENTARY
<p>1. APPLICATION OF THE INSOLVENCY LAW</p> <p>Does the law apply to the following enterprises engaged in commercial activity:</p> <p>1.1 natural person enterprises;</p> <p>1.2 legal person enterprises;</p> <p>1.3 state owned/controlled enterprises?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>2</p> <p>4</p>	
<p>2. COMMENCEMENT ELIGIBILITY</p> <p>Does the insolvency law permit an insolvency proceeding to be initiated by a:</p> <p>2.1 debtor enterprise;</p> <p>2.2 creditor of a debtor enterprise?</p>	<p>Y</p> <p>Y</p>	<p>3</p> <p>4, 90</p>	<p>This law provides for 2 separate processes. One is termed 'compulsory settlement and is open to a debtor (and trustee if bankruptcy is initiated before settlement). It might eventually lead to 'financial reorganisation' or to bankruptcy. The other is termed bankruptcy and is open to both debtor and creditor/s. In this assessment, most references are to the bankruptcy process. Where relevant 'B' signifies bankruptcy and 'C' signifies compulsory settlement.</p>
<p>3. COMMENCEMENT CRITERIA</p> <p>3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?</p> <p>3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?</p> <p>3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?</p> <p>3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?</p> <p>3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?</p>	<p>N/?</p> <p>Y/?</p> <p>Y/?</p> <p>N</p> <p>Y</p>	<p>2, 90</p> <p>2, 90</p> <p>2</p> <p></p> <p>91</p>	<p>By Art. 2 the law applies to a debtor 'who, for a long period of time is incapable of payment' or is 'excessively indebted'. Art. 90.3 requires a debtor to prove 'the existence of a matured claim' and that 'the debtor does not have sufficient monetary means to settle such claim'. These phrases are vague and unintelligible</p> <p>See comments above.</p>

<p>3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?</p> <p>3.7 Does the law permit a single creditor to commence proceedings?</p> <p>3.8 If the law prescribes any further criteria (other than jurisdictional and financial condition bases) for commencement of proceedings, is that criteria clear and sufficiently practicable to permit proceedings to be commenced?</p>	<p>N</p> <p>Y</p> <p>Y</p>	<p></p> <p>2, 3, 90</p> <p>2, 7, 99</p>	<p></p> <p>Proceedings will not be opened unless costs can be paid (Art.7 & 99) and there is more than one creditor (Art 2)</p>
<p>4. COURT / TRIBUNAL JURISDICTION</p> <p>4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?</p> <p>4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?</p> <p>4.3 Is the court a special bankruptcy or commercial court (or division)?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>11</p> <p>11</p>	<p></p> <p>In fact the court conducts the insolvency proceedings.</p> <p>It is a commercial court with a special insolvency division (for both compulsory settlement and bankruptcy)</p>
<p>5. REMEDIES</p> <p>5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?</p> <p>5.2 Does the law provide for the conversion from one type of remedy to the other?</p>	<p>Y</p> <p>Y</p>	<p>1, 16, 71</p> <p>34, 172</p>	<p>See comments in (2) above regarding 'compulsory settlement' (may lead to reorganisation).</p>
<p>6. INTERIM RELIEF</p> <p>6.1 Does the law provide for interim relief to protect the assets of the debtor?</p>	<p>Y</p>	<p>32, 95</p>	<p>On the initiation of the bankruptcy a creditor can propose interim relief.</p>

<p>7. HEARING AND DETERMINATION OF PROCEEDINGS</p> <p>7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -</p> <ul style="list-style-type: none"> i) an early (timely) consideration of the case; ii) a fair and proper process of notice and hearing of a disputed case; iii) the right to appeal from a decision in a case? <p>7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?</p> <p>7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>N</p>	<p>11</p> <p>15, 92</p> <p>13</p> <p>B7, B11, C24</p>	<p>Article 11 states that bankruptcy procedure shall be 'rapid'.</p>
<p>8. IMMEDIATE EFFECTS OF OPENING PROCEEDING</p> <p>8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:</p> <ul style="list-style-type: none"> i) all enforcement action or proceedings against the debtor's assets are stayed; ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed; iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended? <p>8.2 In the absence of such a provision, does the law provide that the court/tribunal may make orders to the same effect upon or shortly after the opening of the case?</p> <p>8.3 Do the prohibitions above extend to:</p> <ul style="list-style-type: none"> i) a secured creditor; ii) a third party who owns property that is used, occupied or in the possession of the debtor; iii) a supplier under retention of title terms? 	<p>Y</p> <p>Y</p> <p>Y</p> <p>N/A</p> <p>N</p> <p>N</p> <p>N</p>	<p>B111</p> <p>B111</p> <p>109, C31</p> <p>B131</p>	<p>Secured creditors are specifically exempt from the effect of the bankruptcy of the debtor.</p>

8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?	N/A		
8.5 Does the law provide for effective notification of the commencement of proceedings to: i) the public generally; ii) all known creditors individually; iii) all relevant regulatory authorities?	Y N N	B101 C28	
8.6 Does the law provide for the appointment of an independent functionary to either i) take full control of the debtor's business and assets; or ii) supervise the debtor's business and assets?	Y/? Y/?	C31 B79, B105	In bankruptcy, yes, in compulsory settlement, no.
9. ADMINISTRATION OF AN INSOLVENCY CASE			
9.1 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?	Y/?	B78	
9.2 Does the law provide for the appointment of a functionary through the court or the creditors?	Y	77	
9.3 Does the law provide for the possible removal and replacement of a functionary?	Y	82	
PART B – ASSETS OF THE ESTATE	YES / NO	ARTICLE	COMMENTARY
10. ASSETS OF THE DEBTOR			
10.1 Does the law adequately define the assets forming the debtor estate?	Y	104	
10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?	Y	131	

<p>10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?</p> <p>10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?</p>	<p>N</p> <p>N</p>		
<p>11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY</p> <p>11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?</p> <p>11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?</p>	<p>N</p> <p>N</p>		
<p>12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS</p> <p>12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):</p> <p>i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;</p> <p>ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;</p> <p>iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?</p> <p>12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?</p>	<p>Y/?</p> <p>Y/?</p> <p>Y/?</p> <p>Y/?</p>	<p>125</p> <p>125, 126</p> <p>125, 126</p> <p>125, 126</p>	<p>These provisions are generally vague. They create doubt and uncertainty. However note that other situations and possibilities for avoidance are provided in the Civil Code. Even if there is no fraudulent intent, creditors and trustee can demand invalidation of any transaction that was performed in exchange for minimal payment or no payment at all.</p>

<p>12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?</p> <p>12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?</p> <p>12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?</p>	<p>N</p> <p>Y</p> <p>Y/?</p>	<p></p> <p>130</p> <p>C31, C32, B79</p>	<p>The Civil Code provides that a creditor can demand annulment of such transactions if the other party is a relative of the debtor, if the debtor intended to impair the creditor.</p> <p>By implication only.</p>
PART C – CREDITORS	YES / NO	ARTICLE	COMMENTARY
<p>13. CLAIMS OF CREDITORS</p> <p>13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?</p> <p>13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?</p> <p>13.3 Does the law provide for set-off?</p> <p>13.4 Does the law allow creditors to claim at any time before a dividend is paid?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p> <p>N</p>	<p>137</p> <p>B112, C37, C38, C39, C40</p> <p>117, 118</p> <p>137</p>	<p>Only by publication in the official gazette</p> <p>Set off is termed 'reconciliation'.</p> <p>Bankruptcy: Law provides that claims must be lodged within 2 months and that court shall reject any claim lodged after that date. Compulsory settlement: Claims must be lodged within 30 days after the compulsory settlement is approved by the court.</p>

<p>13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?</p>	<p>Y</p>	<p>B144</p>	
<p>14. INVOLVEMENT OF CREDITORS</p> <p>14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?</p> <p>14.2 Does the law require meetings of the creditors and/or creditors' committee?</p> <p>14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?</p> <p>14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>B84, C21</p> <p>87</p> <p>81, 88</p> <p>88</p>	
<p>15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS</p> <p>15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?</p> <p>15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?</p> <p>15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>C10, B158</p> <p>160</p> <p>10, 160</p>	

PART D - REORGANISATION PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p>16. REORGANISATION PROCEEDINGS</p> <p>16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?</p> <p>16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?</p> <p>16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:</p> <p> i) the supply of essential services including gas, electricity and telecommunications to the debtor;</p> <p> ii) other essential contracts to which the debtor is a party?</p> <p>16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?</p> <p>16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?</p> <p>16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?</p> <p>16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?</p> <p>16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?</p>	<p>Y</p> <p>Y</p> <p>N</p> <p>N</p> <p>Y</p> <p>Y</p> <p>Y/?</p> <p>N</p> <p>Y/?</p>	<p>31</p> <p>C31</p> <p></p> <p>46, 52</p> <p>46</p> <p>47, 49, 53</p> <p></p> <p>48</p>	<p></p> <p></p> <p></p> <p>Plan to be proposed within 3 months otherwise procedure is 'halted'. If submitted in time, a hearing must be held within 30 days.</p> <p></p> <p></p> <p>The law defines minimum of repayment according to maximum payment time period.</p>

<p>17. REORGANISATION FINANCING</p> <p>17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?</p> <p>17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?</p>	<p>N</p> <p>N</p>		
<p>18. APPROVAL OF REORGANISATION PLAN</p> <p>18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?</p> <p>18.2 If so, is the approval required no more than 75% and more than 50%?</p> <p>18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?</p> <p>18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?</p> <p>18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?</p> <p>18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?</p> <p>18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be over-ruled by the court?</p> <p>18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that either a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?</p>	<p>Y</p> <p>Y/?</p> <p>N</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>N/?</p> <p>Y/?</p>	<p>56</p> <p>56</p> <p></p> <p>59, 60</p> <p>12, 13, 14, 65, 70</p> <p>58</p> <p></p> <p>34, 57</p>	<p></p> <p>The required majority is 60% of 'all claims' – not of those who attend and vote. By Art.56(3) a shareholder in some circumstances may vote as though entitled to a claim.</p> <p></p> <p>If the plan is accepted by the creditors and if there is no other procedural obstacle, the court in practice confirms the plan.</p> <p>It is stated indirectly. If the majority necessary for compulsory settlement is not achieved on first hearing, the tribunal must commence proceeding for bankruptcy.</p>

<p>19. POST APPROVAL</p> <p>19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?</p> <p>19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?</p> <p>19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?</p>	<p>N</p> <p>N</p> <p>Y</p>	<p>46, 66, 67, 68</p>	
PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p>20. LIQUIDATION</p> <p>20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?</p> <p>20.2 Does the law provide for an independent functionary to administer the liquidation?</p> <p>20.3 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?</p> <p>20.4 Does the law make provision for the timely conduct of a liquidation?</p> <p>20.5 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>N</p>	<p>105</p> <p>105</p> <p>149</p>	<p>All authorisations of the management are transferred to liquidation trustee.</p> <p>See above.</p>

<p>21. DISCHARGE/ RELEASE OF DEBTS</p> <p>21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?</p> <p>21.2 If not, is it clear what liabilities survive discharge?</p>	<p>Y</p> <p>N/A</p>		
<p>22. ENFORCEMENT & SANCTIONS</p> <p>22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?</p>	<p>Y/?</p>	<p>188</p>	<p>Limited.</p>
<p>23. CROSS-BORDER INSOLVENCY</p> <p>23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction?</p> <p>23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?</p>	<p>Y/?</p> <p>Y/?</p>	<p>185</p> <p>185</p>	<p>Decisions of foreign courts regarding insolvency proceedings of a debtor with residence (registered office) outside the jurisdiction of Slovenian courts are subject to the conditions of Slovenian law for recognition of foreign judgements.</p>