

EBRD INSOLVENCY LAW ASSESSMENT PROJECT - 2009

CROATIA

The assessment is based on the Bankruptcy Law of Croatia 1996 as amended to 7 July 2006

GENERAL INSOLVENCY LAW ASSESSMENT

The assessed compliance score for the general insolvency law assessment was 87%, indicating High compliance.

The Croatian insolvency law assessment was very high on all categories apart from reorganisation. In this regard, the law is deficient in that reorganisation is only available after bankruptcy proceedings have been commenced, there is no prohibition on essential services being terminated, no provision is made for the financing of an attempted reorganisation and the law does not restrict voting by connected parties.

INSOLVENCY OFFICE HOLDER ASSESSMENT

The assessed compliance score for the Insolvency Office Holder Assessment in this area was 77%, indicating Medium compliance.

This year the assessment included a special part (part F) on the law relating to insolvency office holders (trustees, administrators etc.). The assessment in this area was based upon the EBRD Insolvency Office Holder Principles (the 'principles') that were developed in 2007. It is an important area for assessment since in almost every insolvency case the respective laws of the countries that are assessed require the appointment of an office holder to administer the case. This area was therefore selected to be assessed in depth and rated separately.

The insolvency officeholder provisions of Croatia are adequate with the principle reservations that there are no provisions for standards of professional and ethical conduct nor any relating to the regulation or discipline of insolvency practitioners who fail to perform adequately.

KEY		COMPLIANCE RATING
Y	Substantial compliance	90% ++ very high compliance
Y/?	Compliance with reservations	80% - 89% high compliance
N/?	Doubtful compliance	70% - 79% medium compliance
N	Non compliance	60% - 69% low compliance
N/A	Not applicable	below 60% very low compliance

Note: In this survey, the term insolvency office holder refers to those professionals who act as liquidators, trustees, receivers whether appointed by the courts or the creditors. It does not include representatives of regulatory bodies.

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 enterprises?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>3</p> <p>3</p> <p>3</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 a single creditor of a debtor enterprise?</p>	<p>Y</p> <p>Y</p>	<p>39</p> <p>39</p>	

<p>3. COMMENCEMENT CRITERIA</p> <p>3.1 Does the law specify the 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 debts as they fall due?</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 may become unable to pay its debts at some future time?</p> <p>3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?</p> <p>3.6 Does the law provide any specific means to enable a creditor to establish the insolvency referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>4</p> <p>4</p> <p>4</p> <p>4</p> <p>39, 42</p> <p>4</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>5</p> <p>17, 179</p> <p>5</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>2</p> <p>213</p>	
<p>6. INTERIM RELIEF</p> <p>6.1 Does the law provide for interim relief to protect the assets of the debtor on the application of a creditor?</p>	<p>Y</p>	<p>44</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> <p>i) an early consideration of the case;</p> <p>ii) a fair and proper process of notice and hearing of a disputed case;</p> <p>iii) the right to appeal?</p> <p>7.2 Does the law provide that the court/tribunal <u>must</u> 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>Y</p>	<p>7, 42</p> <p>7</p> <p>11</p> <p>42</p> <p>39, 204</p>	<p>Provided that advance fee for covering bankruptcy proceeding costs is paid by petitioning creditor.</p>

<p>7.4 Does the law provide for effective notification of the commencement of proceedings to:</p> <p>i) the public generally;</p> <p>ii) all known creditors individually;</p> <p>iii) all relevant regulatory authorities?</p>	<p>Y</p> <p>N/?</p> <p>Y</p>	<p>9</p> <p>8, 64</p> <p>65</p>	<p>Article 64 only provides for creditors to be notified by public notice in the Official Gazette of the Republic of Croatia and public announcement at the Court</p>
<p>8. AUTOMATIC STAY ON OPENING PROCEEDING</p> <p>8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:</p> <p>i) all enforcement action or proceedings against the debtor's assets are stayed;</p> <p>ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed;</p> <p>iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended?</p> <p>8.2 Does the law provide that the court/tribunal should make orders to this effect upon or shortly after the opening of the case?</p> <p>8.3 Do the prohibitions above extend to:</p> <p>i) a secured creditor;</p> <p>ii) a third party who owns property that is used, occupied or in the possession of the debtor;</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>N</p>	<p>98</p> <p>98</p> <p>98</p> <p>98</p> <p>98</p> <p>98</p>	<p>Pursuant to the Article 98 secured creditors may resume or initiate enforcement procedure.</p> <p>Once the bankruptcy is publicized, all courts are obliged to suspend all enforcement proceedings related to the debtor's assets.</p>

iii) a supplier under retention of title terms?	N	79	Provided that a written agreement verified by notary public exists pursuant to the Article 462/3 of the Civil Obligations Act
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		
9. OFFICE HOLDERS			
9.1 Does the law provide for the appointment of an independent functionary to either i) take full control of the debtor's business and assets; ii) supervise the debtor's business and assets?	Y Y	10, 24, 25 24	
9.2 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?	Y	20, 21	
9.3 Does the law provide for the appointment of a functionary through the court or the creditors?	Y	10, 17, 22, 23, 54	Initially, the court will appoint the insolvency administrator who may be replaced by the decision of creditors.
9.4 Does the law provide for the possible removal and replacement of a functionary?	Y	17, 23, 27	
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's estate?	Y	67, 68	

<p>10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?</p> <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>Y</p> <p>Y/?</p> <p>Y</p>	<p>68</p> <p>145, 150</p> <p>145</p>	<p>It requires the trustee to request the court to order the debtor to turn over assets.</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>Y</p> <p>Y/?</p>	<p>43, 106, 150</p> <p>43</p>	<p>It applies to certain persons such as former employees.</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>Y</p>	<p>127</p>	

ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;	Y	132	
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?	Y	129, 130, 131	
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?	Y	127 - 132	
12.3 Does the law also provide for lesser criteria to avoid or set aside transactions where the other party to the transaction is connected to the debtor?	Y	128, 129, 130, 131, 136	
12.4 Does the law provide for recovery from the third party where transactions have been set aside?	Y	141	
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 made subsequent to the opening of proceedings without proper authority?	Y	100, 129	
PART C – CREDITORS	YES / NO	ARTICLE	COMMENTARY
13. CLAIMS OF CREDITORS			
13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified in writing of any requirement to lodge claims?	Y	54	
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?	Y	70	

13.3 Does the law provide for set-off?	Y	103	
13.4 Does the law allow creditors to claim at any time before a dividend is paid?	Y/?	176	
13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed?	Y	178	
14. INVOLVEMENT OF CREDITORS			
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?	Y	23, 32 various	
14.2 Does the law require meetings of the creditors and/or creditors' committee?	Y	37, 38	
14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?	Y	34, 38, 61	
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?	Y	34, various	
15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS			
15.1 Does the law provide that the costs involved in the administration of an insolvency case rank in priority to claims of unsecured creditors?	Y	85, 205	

15.2 Does the law clearly state the priority for the payment of creditors claims?	Y	71, 205	
15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?	Y	70, 290	
PART D - REORGANISATION PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
16. REORGANISATION PROCEEDINGS			
16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?	N/?	213	Plan only appears to exist after bankruptcy commenced
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?	Y	266, 280	
16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of: i) the supply of essential services including gas, electricity and telecommunications to the debtor; ii) other essential contracts to which the debtor is a party?	N N		
16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?	Y	228, 231	

16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?	Y	214	
16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?	Y	216, 217	
16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?	N		
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?	Y	241	
17. REORGANISATION FINANCING			
17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?	N		
17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?	N/A		
18. APPROVAL OF REORGANISATION PLAN			
18.1 Does the law prescribe the percentage of creditors (number, value or both) required to approve a plan of reorganisation?	Y	240	
18.2 Can unsecured creditors representing more than 50% but no more than 75% by value of claims approve a plan?	Y/?	240	Yes, if such plan does not infringe on the rights of secured creditors.

18.3 Does the law provide for restrictions on voting on a reorganisation plan by connected creditors?	N		
18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?	Y	250	
18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?	Y	247, 249	
18.6 Does the law require that a reorganisation plan approved by creditors also be confirmed by a court/tribunal?	Y	244	
18.7 Does the law provide that the bona fide approval of the creditors cannot be over-ruled by the court?	Y/?	227, 244	
18.8 Does the law provide for automatic conversion of a proposed reorganisation to a case of liquidation if the plan of reorganisation is not prepared within time; a plan is not approved by creditors or is not confirmed by a court?	Y	227	
19. POST APPROVAL			
19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?	Y	256	
19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?	N		
19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?	Y	251, 258	

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 the sale of the assets of the debtor by either public auction or private sale?</p> <p>20.3 Does the law make provision for the timely conduct of a liquidation?</p> <p>20.4 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 of the debtor?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>24, 89, 145</p> <p>25, 158</p> <p>7</p> <p>98, 164</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>297</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>22.2 Does the law provide for directors or managers liable for continuing to trade when they knew that the company could not escape insolvency to be liable to the creditors?</p>	<p>Y/?</p> <p>Y</p>	<p>28, 39, 107</p> <p>39</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>301- 335</p> <p>301ff</p>	

PART F – INSOLVENCY OFFICE HOLDERS	YES / NO	ARTICLE	COMMENTARY
Please Note: In assessing Section F, the answers to questions 25.3, 25.4, 26.3 & 26.4 did not affect the results and are only for information.			
<p>24. QUALIFICATION</p> <p>24.1 Does the law contain a requirement for an office holder to be qualified?</p> <p>24.2 Do such provisions require an office holder to have particular standards regarding education, relevant experience, skills and character?</p> <p>24.3 Is there a requirement that a person seeking recognition as an office holder must undertake an educational course and/or an examination in insolvency law and practice?</p> <p>24.4 Is there statutory provision for the disqualification of a person from becoming an office holder (for example, as a result of a conviction for fraud etc.)?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>20</p> <p>20</p> <p>20</p> <p>20</p>	
<p>25. LICENSING & REGISTRATION</p> <p>25.1 Does the law require that an office holder must be registered or licensed?</p> <p>25.2 Is there an official register of office holders?</p> <p>25.3 Does the law also provide for the registration/licensing of a corporate body (legal entity) as an office holder?</p> <p>25.4 If so, does it require that the individuals in charge of the conduct of the corporate body are personally qualified?</p> <p>26. APPOINTMENT</p> <p>26.1 Does the law provide for the appointment of an office holder by an identified body (such as a court, regulatory body, creditors, the debtor)?</p>	<p>Y</p> <p>Y</p> <p>N</p> <p>N/A</p> <p>Y</p>	<p>20</p> <p>20</p> <p></p> <p></p> <p>17, 23</p>	

26.2 If a court/regulatory body may make the appointment, does the law provide any guidelines for the selection of an office holder to a case?	Y	20	
26.3 If the creditors or the committee of creditors may make the appointment, does it provide for a meeting and voting procedure to be followed?	Y	23	
26.4 If a corporate debtor may make the appointment, does the law require a resolution of shareholders or directors for the appointment?	N/A		
26.5 Does the law provide the bases upon which a person would be disqualified from appointment in a particular case (such as a conflict of interest etc.)?	Y	20	
<p>27. REVIEW OF APPOINTMENT</p> <p>Note: this is about whether the creditors agree that the particular office holder should have been appointed in the first place - not with removal for failure to properly perform duties and work</p> <p>27.1 Does the law provide a process to review an appointment of an insolvency office holder at an early stage of an insolvency case?</p> <p>27.2 Does this process permit creditors to challenge the appointment?</p> <p>27.3 Does the law provide the grounds upon which such a challenge or review may be made?</p> <p>27.4 In the event that such a challenge was successful, does the law provide for the immediate appointment of a replacement office holder?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>23</p> <p>23</p> <p>23</p> <p>23</p>	
<p>28. REMOVAL, RESIGNATION OR DEATH</p> <p>28.1 Does the law provide for the grounds upon which an office holder may be removed from office in an insolvency case?</p> <p>28.2 Does the law provide a process for such removal?</p>	<p>Y</p> <p>Y</p>	<p>27</p> <p>27</p>	

28.3 Does the law enable an office holder to resign/retire from office in an insolvency case?	Y	27	
28.4 Does the law provide what is to happen in the event of the death of an insolvency office holder?	N		
29. REPLACEMENT			
29.1 In any case in which an office holder is removed, retires or dies, does the law provide for the immediate appointment of an office holder to replace the former office holder?	Y	23, 27	
29.2 In any such case does the law provide for the new office holder to take immediate control of the assets of the debtor in the possession of the former office holder?	Y	23	Within three days.
29.3 In any such case does the law provide for the new office holder to take immediate control of the books, records etc. of the former office holder that are related to the insolvency case?	Y	23	Within three days.
29.4 In the case of the retirement or removal of an office holder, does the law require the former office holder to co-operate with the new office holder in the transfer of the insolvency case?	Y/?	23	
30. STANDARDS OF PROFESSIONAL & ETHICAL CONDUCT			
30.1 Does the law provide for rules of ethical conduct for office holders?	N		
30.2 Does the law provide for professional work standards for office holders?	N		
30.3 Is compliance with these standards obligatory?	N/A		

<p>31. REPORTING & MONITORING</p> <p>31.1 Does the law provide that an insolvency office holder must provide regular reports to the court or regulator on the progress of the insolvency case?</p> <p>31.2 Does the law provide that an insolvency office holder must provide regular reports to the creditors on the progress of the insolvency case?</p> <p>31.3 Does the law provide for the appointment of a committee of creditors?</p> <p>31.4 Does the law require the committee of creditors to monitor the work of the office holder?</p> <p>31.5 Does the creditors' committee have any sanctions over the insolvency practitioner such as the ability to approve remuneration?</p>	<p>Y/?</p> <p>Y/?</p> <p>Y</p> <p>Y</p> <p>N/?</p>	<p>26, 31</p> <p>26, 31</p> <p>32, 33</p> <p>34</p> <p>29, 34</p>	<p>Only a requirement to produce accounts if so ordered</p> <p>The creditor's committee may only file complaints to the court.</p>
<p>32. REGULATORY & DISCIPLINARY FUNCTIONS</p> <p>32.1 Does the law provide for a regulatory body to have appropriate regulatory powers in respect of insolvency office holders?</p> <p>32.2 Does the regulatory body have the ability to investigate the conduct of an insolvency office holder?</p> <p>32.3 Does the regulatory body have the ability to impose disciplinary sanctions over insolvency office holders?</p> <p>32.4 Do these sanctions go further than simple removal of a license?</p>	<p>N</p> <p>N</p> <p>N</p> <p>N/A</p>		<p>There is provision in the latest amendments for subsequent subordinate legislation to regulate registration.</p>

<p>33. REMUNERATION & EXPENSES</p> <p>33.1 Does the law provide for the entitlement of insolvency office holders to be remunerated for their work and to recover expenses properly incurred in the conduct of an insolvency case?</p> <p>33.2 Does the law provide the means by which any entitlement may be approved (for example, by a court, creditor's resolution)?</p> <p>33.3 Does the law provide the basis upon which the remuneration of an office holder may be calculated?</p> <p>33.4 Does the law provide for a process by which the quantum of the office holder's remuneration may be appealed?</p> <p>33.5 Does the law provide for priority for the payment of remuneration ahead of creditors' claims?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>Y</p>	<p>29</p> <p>29</p> <p>29</p> <p></p> <p>205</p>	<p>Governmental Ordinance regulates the basis for determination of remuneration by competent judge.</p>
<p>34. RELEASE</p> <p>34.1 Does the law provide for the eventual release of an insolvency office holder at the conclusion of the case?</p>	<p>N</p>		
<p>35. INSURANCE</p> <p>35.1 Does the law provide that an insolvency office holder must maintain insurance to protect third parties against negligence, breach of duty or fraud by the office holder?</p>	<p>Y</p>	<p>28</p>	