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REGIONAL ROUND TABLE on CROSS BORDER JUDICIAL COOPERATION in CIVIL and COMMERCIAL MATTERS

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JURISDICTION and RECOGNITION of INSOLVENCY PROCEEDINGS

Miodrag Đorđević, Ph. D.
Supreme judge of the Supreme Court of the Republic of Slovenia

1. INTRODUCTION

Classic bankruptcy law is today replaced by insolvency law that can be defined as the set of legal rules determining the contents of relations related to substantive judicial proceedings laws appearing when debtor comes into financial troubles threatening (violating) creditor's interest to get (full) repayment of its claims from such debtor. Namely, the essence of the bankruptcy is to distribute the property of insolvent debtor among his creditors in as just and orderly manner as possible.

The problem appears at international bankruptcy if the debtor has property in several countries since bankruptcy proceedings always use national laws of individual states. International bankruptcy raises the question of its impact on debtor's property in another state when the bankruptcy is initiated in debtor's domestic state. The main problem of the international bankruptcy law is the issue of recognition of bankruptcy effects in individual states; the issue is whether bankruptcy proceedings have universal or territorial effect.

The main target of the European Economic Community (EEC) i.e. of the European Union (EU) is to establish internal market. For the market to function it is important to successfully determine cross border insolvency proceedings. The European convention on insolvency proceedings should have contributed to the set target and after lengthy preparations, it had been adopted in 1995, however it has never come into force. Even before it had collected the sufficient number of ratifications, the legal jurisdiction for the international judicial proceedings law in European Union has been changed by Amsterdam Agreement (Official Journal C 340, November 10, 1997) which came into force on May 1, 1999 and this enabled the text of the convention in the form of Regulation of European Union 1346/2000 on

insolvency proceedings to come into force on May 31, 2002(Official Journal L 160, June 30, 2000).

The Regulation 1346/200 in material sense means ‘codification’ of European Convention on insolvency proceedings from year 1995. It brought the long awaited (preparations have started already in 1960) unification of insolvency proceedings effects in member states, however, only the unification of the rules of international bankruptcy law, i.e. rules on jurisdiction, law implementation and state’s recognition of decisions issued by another state. The insolvency law itself, (for example provisions determining commencement of the bankruptcy proceedings) remain different in member states. Also, it is very difficult to unify substantive bankruptcy laws due to substantial difference between member states.

2. LAW ON ENFORCED SETTLEMENT, BANKRUPTCY AND LIQUIDATION

(“ZPPSL – Zakon o prisilni poravnavi, stečaju in likvidaciji”;
Official Journal of the Republic of Slovenia, No. 67/1993 – 58/2003)

Relations concerning international element are in the Republic of Slovenia determined by the Private International Law and Procedure Act (in Slovenian language: “ZMZP – Zakon o mednarodnem zasebnem pravu in postopku”; Official Journal of the Republic of Slovenia, No. 56/1999). The international element in bankruptcy proceedings may be either in the fact that the property bankruptcy debtor is situated abroad (as well), or in the fact that the foreigner may (also) appear as the participant of bankruptcy proceedings (especially as creditor). However, Private International Law and Procedure Act does not contain rules concerning jurisdiction for bankruptcy proceeding itself. This is not necessary since in the Chapter 7 (in Articles 184. – 187) of the Law on Enforced Settlement, Bankruptcy and Liquidation, the collision of laws and disputed jurisdictions are laid out.

2.1. International jurisdiction

In the first paragraph of Article 184 of the Law on Enforced Settlement, Bankruptcy and Liquidation, the exclusive jurisdiction of the Slovenian court is determined for proceedings of enforced settlement, bankruptcy or liquidation against debtor who is domiciled, i.e. resident in the territory of the Republic of Slovenia. The actual (true) domicile of the debtor is decisive and not his business operation territory or the area where his property is situated.

2.1. Property included in bankruptcy proceedings

In the second paragraph of Article 184 of the Law on Enforced Settlement, Bankruptcy and Liquidation the principle of universality is laid out since it determines that the decision of the Slovenian court is pertinent to all debtor’s property which exists in the Republic of Slovenia or abroad.

According to the Law on Enforced Settlement, Bankruptcy and Liquidation the bankruptcy has extraterritorial impacts since it stretches out to debtor’s property abroad, however, for such an impact it is necessary to achieve the recognition of decisions stipulated in the first paragraph of Article 184 of the Law on Enforced Settlement, Bankruptcy and Liquidation according to laws of the foreign country where debtor’s property is situated.

Due to certain exclusive international jurisdiction of the Slovenian court in the Republic of Slovenia it is not possible to achieve recognition of decisions of foreign court that commenced proceedings for enforced settlement, bankruptcy or liquidation against debtor domiciled or resident in the territory of the Republic of Slovenia (the first paragraph of Article 97 of the Private International Law and Procedure Act). According to provisions of the Private International Law and Procedure Act it is possible to achieve only the recognition of decisions of the foreign court issued in proceedings for enforced settlement, bankruptcy or liquidation against the debtor with domicile or residency in the territory of the foreign court (the first paragraph of Article 185 of the Law on Enforced Settlement, Bankruptcy and Liquidation).

2.2. Impacts of the recognition of foreign court decision in bankruptcy proceedings

The consequence of the recognition of the foreign court decision in bankruptcy proceedings is that for foreign debtor and foreign liquidator (the first paragraph of Article 186 of the Law on Enforced Settlement, Bankruptcy and Liquidation) and for debtor's property situated in the Republic of Slovenia (Article 187) the same legal status appears as if the proceedings were held in Slovenian court and by Slovenian Law. By recognition, the contents of the foreign decision is adjusted to Slovenian bankruptcy law which means that liquidator in the Republic of Slovenia has the authorizations of the liquidator according to the Law on Enforced Settlement, Bankruptcy and Liquidation and based on this no new liquidator, or liquidating committee, are to be appointed (the second paragraph of Article 186 of the Law on Enforced Settlement, Bankruptcy and Liquidation).

The Law on Enforced Settlement, Bankruptcy and Liquidation determines that consequences of the foreign bankruptcy appear after the recognition of the foreign court decision. In addition, the moment of the effectiveness of foreign court decisions is conditioned by the announcement of the recognition of the decision in the Official Journal of the Republic of Slovenia (the second paragraph of Article 185 of the Law on Enforced Settlement, Bankruptcy and Liquidation). This applies for the appearance of legal consequences arising from the commencement of bankruptcy proceeding. They will appear on the day when the announcement of the commencement of bankruptcy proceeding will be fixed on the announcing table of the court (the first paragraph of Article 103 of the Law on Enforced Settlement, Bankruptcy and Liquidation).

3. COUNCIL REGULATION (European Community) No 1346/2000 of May 29, 2000 ON **INSOLVENCY PROCEEDINGS**

This regulation represents very effective legislative document that is not exposed to slowness or ineffective cooperation of national legislatures which characterize unification procedures i.e. harmonization of the member state laws by means of conventions and directives. That was rather obvious in the European convention on insolvency proceedings from 1995.

3.1. Idea of insolvency proceedings

Types and naming of procedures treated as *insolvency proceedings* and *winding up proceedings* are different in individual member states, as a consequence of different approaches to insolvency, i.e. liquidation by their law. In attachments A and B procedures are

listed for member countries where this Regulation applies. Procedures treated as insolvency and winding-up proceedings according to the law order of the Republic of Slovenia are not mentioned in the list yet, however in the Accession Agreement between the Republic of Slovenia and European Union it was determined that proceedings to which this Regulation applies, bankruptcy proceedings, shortened bankruptcy proceedings, enforced settlement proceedings, enforced settlement in bankruptcy and court liquidation (liquidation of legal entity by court), that is procedures as determined by the Law on Enforced Settlement, Bankruptcy and Liquidation.

3.2. Idea of the liquidator

Similar applies for persons and bodies treated as liquidators in individual member states. They are listed in Attachment C. Persons and bodies that are treated as liquidators according to the law order of the Republic of Slovenia are not mentioned in the list yet, however in the Accession Agreement between the Republic of Slovenia and European Union it was determined that persons and bodies for which this Regulation applies, are settlement senate, liquidator of enforced settlement, bankruptcy senate, bankruptcy liquidator, creditor's committee, liquidation senate as bankruptcy senate and liquidator as bankruptcy liquidator.

3.3. Authorizations of the liquidator

Liquidator nominated by court competent for the enforcement of main insolvency proceedings is competent in another member state to the extent as granted by the law of the state where the main proceedings has been started. However, during the exercise of his authorizations in another member state, he must take into account its domestic law (primarily regulations concerning the sale of debtor's property) The aforesaid means that the liquidator's authorizations are to be determined on the basis of *lex fori concursus*, while the mode of their enforcement is determined on the basis of the national law of the member state where these authorizations are exercised.

Liquidator nominated by court competent for the enforcement of main insolvency proceedings may demand return of debtor's property which has been transferred to another member state, as long as the auxiliary insolvency proceeding has not been commenced against the same debtor and after the termination of impacts of the main insolvency proceeding concerning debtor's property situated in the member state where the auxiliary proceeding commenced. He may also dispute debtor's legal actions.

3.4. Idea of the court

Idea of the court is very wide since any judicial or other body in the member state, which is competent to commence insolvency proceedings or to bring decision during such proceedings, is considered as the court.

The court competent to commence main insolvency proceedings is also competent to bring provisional and temporary measures in order to secure effectiveness of proceedings. The competent court in the main insolvency proceeding may also bring such measures concerning the property that is situated in another member state (as long as in such state no auxiliary insolvency proceeding has been started against the same debtor).

3.5. Idea of member state in which debtor's property is situated

The Regulation determines which is the member state in which the debtor's property is situated. For tangibles, it is the member state in whose territory the tangible is situated. For tangibles and rights that are registered in public registry, it is the member state that is competent for keeping the registry. For claims, it is the member state in whose territory is the center of main debtor's interests.

3.6. Range of the Regulation

The Regulation is completely obligatory and directly applicable in all member states except in the Kingdom of Denmark.

The Regulation is used for insolvency proceedings against debtors disregarding whether they are private persons or legal entities and whether they have the status of trade, or not. However, it is not used for insolvency proceedings against insurance companies, credit institutions (banks and saving institutions), investment funds and societies for management of investment funds. Insolvency proceedings against these are determined in other legal acts (directives) of the European Community:

- Directive 2001/17/EC on reorganization and winding-up of insurance undertakings,
- Directive 2001/24/EC on reorganization and winding-up of credit institutions,
- Directive 93/22/EC on investment services in the area of securities,
- Directive 98/26/EC on final settlement at payments and settlement systems of securities.
- Directive 2002/47/EC on agreements in financial insurance.

3.7. Conditions for the use of the Regulation

The Regulation is used provided the following four conditions are met:

- If one of the insolvency proceedings listed in attachment A has commenced in the member state;
- If such insolvency proceeding has commenced against the debtor who has the center of his main interests in one of the member states;
- If such insolvency proceeding has legal impact in other member states as well;
- If insolvency proceeding has started after May 31, 2002 (in the Republic of Slovenia after May 1, 2004).

3.8. Principle of universality and territory

The basic principle in the Regulation is universality (uniqueness) of insolvency proceedings, in accordance with which an insolvency proceeding started in one member state has an impact in (all) other member states, i.e. in accordance with which the bankruptcy proceeding started in one of the member states concerns all debtor's property disregarding in which member state it is situated.

Principle of the territory is also applied since in addition to insolvency proceedings with universal impact (of the main insolvency proceedings), it is also possible to commence more insolvency proceedings with limited territorial impacts (auxiliary insolvency proceedings). Territorial impact comprises the fact that auxiliary insolvency proceeding concerns and impacts only that part of debtor's property that is situated in the member state where the proceeding is enforced. The commencement of the auxiliary insolvency proceeding results in the exclusion of the direct impact of insolvency proceeding on such part of debtor's property that is situated in the territory of the member state where the auxiliary insolvency proceeding is enforced.

3.9. Main (primary, universal) insolvency proceedings

The Regulation determines international jurisdiction only, while for the territorial and actual jurisdiction national regulations of the member states apply (according to the first paragraph of Article 11 of the Law on Enforced Settlement, Bankruptcy and Liquidation the bankruptcy proceeding is enforced by the court where the debtor is domiciled). Main insolvency proceedings are commenced by competent court in the member state in which the center of main debtor's interests is situated. The goal of such proceedings is to cash all debtor's property disregarding in which member state it is situated.

The center of debtor's main interests is a pertinent circumstance for decision of the court of the member state that commences the main insolvency proceeding. Otherwise, the court of the member state, by rule, uses its own national (formal and substantive) law (*lex fori concursus*).

The center of debtor's main interests (this should be understood in the widest sense of the word, so that it comprises any activity, not only business, industrial or professional, but other general economical activities which characterize private persons (consumers)), is the place in which he regularly takes decisions on his interests, so that such place is known to third persons as well. Unbiased, functional criterion is decisive (place where he actually manages and supervises undertaking), and not the formal criteria (place of the domicile registration). The answers to questions, whether in a certain member state insolvency proceedings can be commenced and what are the consequences of such proceedings in other member states, should be looked for in accordance with the internal law of concerned member state.

The point of the center of main debtor's interests is to prevent the debtor to evade the legal order of the certain state that may be uncomfortable for him and that in such a way he impedes realization of creditors' claims. Additionally, different understanding of this term between individual member states cannot end in disputes on (international) jurisdiction. Hence, for the determination of the center of the main debtor's interests, other member states are bound by the decision of the court of that country which has taken such decision first.

The proposal for the commencement of the main solvency proceeding must contain and show where is the center of main debtor's interests. In case the disproving evidence is missing, the legal presumption applies that the center of debtor's main interests is where he is domiciled (business societies or legal entities).

3.10. Auxiliary (secondary, local, partial) insolvency proceedings

The competent court in member state, where **debtor's subsidiary** (establishment) is situated, commences the auxiliary insolvency proceeding. It is considered to be any place of business

operations where debtor executes permanent activity using human resources and material assets. This means that auxiliary insolvency proceeding cannot be commenced if in certain member state only debtor's property is situated and debtor does not execute any business activity (although the purpose of such procedure is to cash debtor's property situated in this member state). It is not necessary that it is literally subsidiary, however the mere fact that part of debtor's property is situated in a certain member state (for example bank account) is also not sufficient. Organized activity is required in the form of organizing the people who assist the debtor in execution of the required business activity.

The liquidator of the main insolvency proceeding may propose the commencement of auxiliary insolvency proceedings, or it may be proposed by some other person or body that is justified by national law of that member state to propose the commencement of such procedure. It concerns winding-up proceedings listed in attachment B; in the Republic of Slovenia it concerns winding-up proceedings, shortened winding-up proceedings and court winding-up (winding-up of the legal entity by the court).

3.11. Relation between main and auxiliary insolvency proceedings

Auxiliary insolvency proceedings may be commenced prior to commencement of main insolvency proceeding or after it. Before the commencement of main insolvency proceeding, its commencement may be proposed by local creditors and creditors of the local subsidiary (establishment). If the law of the state, where the center of main debtor's interests is situated, does not permit the commencement of the main insolvency proceeding, the commencement of auxiliary insolvency proceeding may be proposed by other creditors as well. This limitation is prescribed in order to limit auxiliary insolvency proceedings starting prior the main insolvency proceeding to necessary cases only. Such procedure is namely independent. In case that later in the member state where the center of debtor's main interests is situated, the main insolvency proceeding starts, then the auxiliary insolvency proceeding becomes consecutive.

Auxiliary insolvency proceedings may be started **after the commencement of the main insolvency proceeding** as well. Since the member states, where debtor's subsidiary (establishment) is situated, must recognize decisions brought in the main insolvency proceedings and since the main insolvency proceeding impacts the property of subsidiary (establishment), then the liquidator in the main insolvency proceeding should propose the commencement of the auxiliary insolvency proceeding which would facilitate or enable effective management of debtor's property. This will happen when it is difficult to manage all debtor's property due to its complexity, or in case of considerable difference between the law of the member state where the main insolvency procedure is enforced and the law of the member state where the auxiliary insolvency proceeding is enforced.

By commencement of the main insolvency proceeding, the liquidator achieves that main insolvency proceeding is to be liquidated by local liquidator who knows local circumstances and how to use local law. For the commencement of the auxiliary insolvency proceeding, local debtors would be also interested since they would like to prevent the use of the foreign insolvency proceedings law and to exclude the competence of the foreign liquidator.

3.12. Reconciliation of insolvency proceedings

The goal of the insolvency proceedings is to cash in whole, or partly, debtor's property and this is the task of the liquidator of individual insolvency proceeding. Hence, the reconciliation

of the enforcement of all simultaneous insolvency proceedings is necessary which is achieved by cooperation of liquidators and their information exchange.

Creditors, in any insolvency proceedings enforced in the member state, have the right to file their claims against debtor. For the claims filed at their insolvency proceedings, liquidators are obliged to file them also in other insolvency proceedings against the same debtor (which means that the claim filed in one of insolvency proceeding will be taken into account in other insolvency proceeding as well).

Since (different) insolvency proceedings are enforced in different member states, it is necessary to secure equal treatment of creditors. This is achieved by the fact that every creditor retains what he received in any insolvency proceeding, however he can not participate in repayments in other insolvency proceeding until other creditors with the same waiting order are repaid to the same extent.

3.13. Substantive rights of third persons

With respect to establishment, validity and contents of impacts to substantive rights (as well as in substantive insurances which are important for loan insurance), by rule, the law of the state where the assets subject to these rights are situated (*lex rei sitae*) is applied. Namely, the commencement of insolvency proceeding in a member state does not impact substantive rights (rights in rem) on the insured assets, since they are situated in other member states at the moment the insolvency proceeding starts. Hence, the owner of the substantive right may exercise his separation right for the assets that are the subject of insurance. However, this Regulation excludes influence of insolvency proceeding to substantive rights but not the influence on debtor's property in other member states.

The obligation right to acquire substantive right is equalized to the substantive right and it is filed in public registry and acts against the third (for instance, option, right of buy).

3.14. Real estate contracts

The law of the member state where the real estate is situated is applied for the contract that gives the right to acquire or use the concerned real estate.

3.15. Employment

In respect to continuation or termination of employment and in respect to rights and obligations of employees and employers, laws valid for employment are applied. In respect to other issues (for instance, possible rights in priority payments of employee's claims and their waiting order), *lex fori concursus* is used.

4. THE IMPACT OF THE REGULATION

The Regulation contains primarily judicial proceedings rules, while substantive law rules for concrete insolvency proceedings are determined by each member state separately and in accordance with its national legislature.

4.1. Validity period of the Regulation

The Regulation became the part of the legal order of the Republic of Slovenia only after Slovenia entered European Union (see 6. item of the explanation of the decision of the Constitutional Court, working number Up-328/04 and U-I-186/04 dated July 8,2004). Hence it cannot be used for insolvency proceedings commenced before May 1, 2004. Collision norms from the Regulation cannot be used for such debtor's legal actions which were executed before May 1, 2004 although insolvency proceedings against debtor commenced prior this date.

4.2. Direct use of the Regulation

Since the Republic of Slovenia became full member of the European Union on May 1, 2004 to which it assigned the right to exercise the part of its sovereign rights, it is obliged to use legal acts of European Union in accordance with the legal order of European Union. According to the explicit provision of the second paragraph of Article 249 of the Agreement on establishment of European Community (Agreement on European Community; Official Journal C 325, December 24,2002 and Official Journal of the Republic of Slovenia, No. 27/2004 – International contracts, No. 7), the Regulation is legal act which is obligatory as a whole and is used directly in all member states. This means that member states do not transfer the Regulation to their internal legal order if the Regulation was passed and announced. Hence, users (courts of member states) are obliged to enforce the Regulation in concrete cases (in addition to local regulations). If it shows that local legal norm is in collision with the norm from the Regulation, then the court in such concrete case cannot use the norms of local law due to the principle of superiority i.e. primary status of the Law of the European Community to the local law (see 10. item of the explanation of the mentioned decision of the Constitutional Court).

4.3. Enforcement of the Regulation

4.3.1. Recognition and enforcement of decisions

Decision on commencement of the insolvency proceedings issued by the court of a member state must be recognized without any formalities in (all) other member states.

Other decisions (decisions concerning the development and conclusion of insolvency proceeding; decisions arising directly from insolvency proceeding or in connection with insolvency proceeding; other decisions) are recognized without formalities and enforced according to provisions of the Regulation of European Community 44/2001 on jurisdiction and enforcement of court decisions in civil and commercial disputes (Official Journal L 012, December 16, 2001) which has replaced Brussels' Convention and took into account that recognition and enforcement of the decision may be denied exclusively if it opposes the public order.

4.3.2. Announcement of insolvency proceeding commenced in other member state

Slovenian court must announce the commencement and conclusion of insolvency proceeding held in other member state by announcing it on the announcement table of the court, in Official Journal of the Republic of Slovenia, in court registry and in cadastre (in case debtor possesses subsidiary, i.e. establishment in the Republic of Slovenia, or if his property is registered in the public registry of the Republic of Slovenia). The consequence of the announcement is to enable Slovenian creditors to propose in time the commencement of the

auxiliary insolvency proceeding and in doing so to prevent the enforcement of foreign insolvency law and to exclude the competence of the foreign liquidator.

4.3.3. Informing known creditors on commencement of insolvency proceeding

Slovenian court must inform about commencement of insolvency proceeding held in the republic of Slovenia all those known creditors that reside, or that are domiciled, in other member states (disregarding their citizenship). The delivery of notice among member states is done on the basis of the Regulation of the European Community 1348/2000 on delivery of court and out-of-court written notices in civil and commercial issues. Namely, it is not possible to expect that creditors will be acquainted with announcements published in official journals of all member states. In order to provide legal protection of creditors, i.e. in order to secure them equal treatment, it is better that announcement on the commencement of insolvency proceeding is published in the Official Journal of the European Union.

Slovenian court must stipulate in the notice the period for filing claims, legal consequences of late filing, address of the organ where the claims are to be filed and information that claims are to be filed by priority and separate creditors as well.

4.3.4. Language in which creditors file their claims

Foreign creditor may file his claim in the official language of the member state in which he resides, or in which he is domiciled. However, the claim filing must be addressed in Slovenian language. The court that enforces insolvency proceeding may demand from the creditor to submit translation of the claim filing in Slovenian language.

5. LAW ON INSURANCE

(“ZZavar”; Official Journal of the Republic of Slovenia, No. 13/2000 – 50/2004)

Law on insurance has determined the field of insurance in the Republic of Slovenia in a systemic and complete manner and it took into account order and regulations of the European Community. The law has enabled the founding of subsidiaries of foreign insurance undertakings, as well as insurance agents and brokers; it removed limitations in founding subsidiary companies of foreign insurance undertakings; it removed limitations that insurance undertakings must reinsure surpluses in insurances of acquired dangers at the re-insurance undertakings domiciled in the Republic of Slovenia: it determined the criteria for acquiring qualified shares and conditions performing the function of the member of the management. The law means the reconciliation with the criteria of European directives as far as minimal capital and evaluation, reconciliation, type, dispersion and localization of assets serving as the collateral for insurance-technical reservations are concerned. The law implemented the requirement for separate execution of transactions concerning life and property insurance, news concerning the independence and the authorizations of the supervisor of the insurance market in the form of the Agency for insurance supervision and new provision on bankruptcy of the insurance undertaking as well.

5.1. Enforced winding-up of insurance undertakings

5.1.1. Implementation of provisions for enforced winding-up

For enforced winding-up of insurance undertaking appropriate provisions of Companies Act (in Slovenian language so called “ZGD”) are used.

5.1.2. Reasons for the commencement of enforced winding-up

Agency for insurance supervision issues the decision on the commencement of the enforced winding-up:

- If, on the basis on the financial report and business operation conditions of the insurance undertaking with enforced management, it assesses that during the period enforced management the financial situation has not improved, so that insurance undertaking cannot achieve the minimal capital and that there are no conditions for the commencement of the bankruptcy proceeding;
- If the shareholders’ meeting denies the proposed decision to increase the basic capital of insurance undertaking by new financial investments or if the first sale of shares, executed on the basis of the decision brought by shareholders’ meeting on the increase of the basic capital of the insurance undertaking by new financial investment, is not successful;
- If the permission for execution of insurance business was taken from insurance undertaking;
- If the permission for execution of insurance business was terminated and the insurance undertaking has not started, within the period of three months from the receipt of valid decision on permission termination, the procedure for reforming or termination of insurance undertaking, or with the procedure to regain the permission for the execution of insurance business;
- If the permission for performing such function was legally taken from the member of the management of insurance undertaking, or if the member of the management was relieved from his post, or if the member of the management does not perform his function as the member of the management for more then six months and if the supervising board within three months does not nominate new member of the management in accordance with this law and consequentially the insurance undertaking does not have at least two members of the management.

5.1.3. Informing competent supervising organs of member state on commencement of the enforced winding-up proceeding

Agency for insurance supervision is exclusively competent to commence the enforced winding-up proceedings for *insurance undertakings domiciled in the Republic of Slovenia with subsidiary established in another member state*. This Agency must as soon as possible inform competent supervising organ of such member state on its issued decision.

For enforced winding-up proceedings and all other issues connected with the procedure the law of the Republic of Slovenia is used.

5.1.4. Impact of decision for commencement of the enforced winding-up proceeding

According to this law, the decision for commencement of proceedings has the same impact as the decision on winding up of insurance undertaking, for the insurance undertaking in the member state with subsidiary in the Republic of Slovenia issued by competent organ of a member state where the insurance undertaking is domiciled, and without special recognition procedure and enforcement it has direct and immediate impact within the territory of the Republic of Slovenia when it becomes executable in the member state.

5.1.5. Publishing of the text of decision about commencement of the enforced winding-up proceedings in the Official Journal of the European Community

Agency for insurance supervision must publicly publish its decision about the commencement of enforced winding-up proceeding of insurance undertaking domiciled in the Republic of Slovenia and with the subsidiary in another member state. Text of the decision (which must stipulate name and address of the organ that will enforce the winding-up proceeding; the law used in proceeding; names of liquidators; deadline for filing claims and legal consequences in case creditor does not file the claim) must be published in the Official Journal of the European Community as well. The text of the decision about the commencement of the enforced winding-up proceeding is published in Slovenian language.

5.1.6. Informing known creditors about the commencement of the enforced winding-up proceeding

Liquidator must also immediately and individually inform, in Slovenian language, all known creditors of the insurance undertaking who are resident or domiciled within territories of member states about the issuance of the decision for the commencement of the enforced winding-up proceeding for insurance undertaking domiciled in the Republic of Slovenia and with subsidiary in a member state. This is done by special form with the following title in all official languages of the European Communities: "Invitation for claim filing and its deadlines" For informing creditors, the provisions of the Law on judicial proceedings (in Slovenian language "ZPP") is used, namely provisions on personal delivery.

The notice must stipulate the name and the address of the organ enforcing the winding-up proceeding and of the organ to which claims are to be filed; period in which creditors must file their claims and the consequences of the late filing; legal lesson on rights and obligation of creditors in enforced winding-up proceeding, primarily whether creditors with privileged claims and creditors whose claims are secured by substantive rights must also file their claims or not; explanation about the impact of the commencement of enforced winding-up proceeding on insured contracts, especially about the date of termination of their validity and about the consequences to the rights and obligations of insurance takers and insurance givers.

5.1.7. Filing of creditors' claims

Creditor files the claim to liquidated assets in the official language of member state where he has residency or domicile. This is done on a special form with the following title: "Filing of the claim" in Slovenian language.

5.1.8. Liquidators

Agency for insurance supervision nominates with its decision two or more liquidators and determines type and volume of tasks to be performed by each liquidator. Liquidator is obliged

to report regularly and in an appropriate manner all creditors about proceedings developments.

Liquidator may nominate persons for assistance, if required, for representation in a member state where the insurance undertaking has a subsidiary. Namely, liquidator may exercise his competence directly within the territory of a member state where the insurance undertaking has a subsidiary and in doing so he has equal competence as within the territory of the Republic of Slovenia, however he must abide by laws of a member state within whose territory he is exercising his competence.

Liquidator nominated by decision of the competent supervisory organ of a member state may perform his actions in enforced winding-up proceeding in the Republic of Slovenia with the same competence he has in a member state and in doing so he must abide by laws of the Republic of Slovenia.

The nomination of liquidator in a member state is proved by certified copy of the original decision about nomination. Agency for insurance supervision may demand from the liquidator, from a member state who is performing actions in enforced winding-up proceeding in the Republic of Slovenia, a Slovenian translation of the decision.

5.1.9. Legal consequences of the enforced winding-up

On the day when the decision about enforced winding-up is issued, all competences and authorizations of the management members are terminated, as well as of members of supervisory board of the insurance undertaking and authorizations of shareholders' meeting, except for the competences on the basis of the Companies Act.

During the enforced winding-up proceeding the Agency for insurance supervision is executing the competences of the supervisory board of the insurance undertaking and shareholders' meeting, except for the competences based on provisions of Companies Act.

5.1.10. Prohibition of contracting new business

Insurance undertaking cannot contract any new business during enforced winding-up proceeding, except those necessary to cash liquidated assets and those required for transfer of insurance contracts to another insurance undertaking.

5.1.11. Appearance of the cause of winding-up

In case liquidators establish that property of the insurance undertaking is insufficient for repayment of all claims of creditors, or that insurance undertaking does not have enough liquid assets for payment of due claims of creditors, then they must immediately accordingly inform the Agency for insurance supervision.

5.1.12. Enforced winding-up of the subsidiary of the foreign insurance undertaking

If the Agency for insurance supervision commences enforced winding-up proceeding for the *subsidiary of the foreign insurance undertaking*, prior its decision issuance it must inform all competent supervisory organs of member states in which the foreign insurance undertaking

has its subsidiaries. The notice must stipulate legal consequences and actual impacts of such proceeding. In case it is not possible to postpone the decision taking due to protection of clients of the insurance undertaking, or due to other public benefits, the Agency for insurance supervision must inform the competent organ immediately after the decision issuance.

During the enforced winding-up proceeding the Agency for insurance supervision must harmonize its actions with actions of competent organs of other member states. Liquidators are obligated to harmonize their actions as well.

5.2. Bankruptcy of insurance undertaking

5.2.1. Prohibition of enforced settlement

Enforced settlement proceedings are not possible for insurance undertaking.

5.2.2. Use of provisions for bankruptcy proceedings

Provisions of the Law on Enforced Settlement, Bankruptcy and Liquidation are used for the bankruptcy proceedings for insurance undertaking.

For bankruptcy proceeding of insurance undertaking with subsidiary in a member state, appropriate provisions of this law concerning enforced winding-up of insurance undertaking are used, noting that the decision on the commencement of the bankruptcy proceedings in the form of short text is published in the Official Journal of European Communities by bankruptcy court where the creditors' claims are filed.

5.2.3. Reasons for Bankruptcy

The Agency for insurance supervision issues the decision on establishment of conditions for the commencement of bankruptcy proceeding:

- If, on the basis on the financial report and business operation conditions of the insurance undertaking with enforced management, it assesses that during the period of enforced management the financial situation has not improved, so that insurance undertaking, despite enforced management, is not capable currently to fulfill its due obligations;
- If during the supervision of the insurance undertaking it establishes that the property of the insurance undertaking is not sufficient for repayment of all claims of creditors of the insurance undertaking.

5.2.4. Commencement of bankruptcy proceeding

The Agency for insurance supervision must file at a competent court the proposal for commencement of bankruptcy proceeding the following working day after it issued written decision about the assessment of conditions for commencement of bankruptcy proceeding. The said decision must be attached to such proposal.

The court issues the decision on commencement of bankruptcy proceeding without re-testing conditions for the commencement of bankruptcy proceeding within three working days from

the filing of the proposal. There is no appeal against the decision on commencement of bankruptcy proceeding.

5.2.5. Bankruptcy liquidator

Bankruptcy liquidator is nominated by court on the basis of the proposal made by the Agency for insurance supervision. For bankruptcy liquidator the Agency for insurance supervision may propose only the person who meets conditions for performing the function of bankruptcy liquidator.

In case of appearance of reasons for relieving the bankruptcy liquidator, the court must, prior deciding on his relief, inform the Agency for insurance supervision about the reasons and request the Agency to take its stand concerning such reasons by a statement and within the period which cannot be shorter than three and longer than eight days.

5.2.6. Announcement of the commencement of the bankruptcy proceeding

Announcement about the commencement of bankruptcy proceeding for insurance undertaking must, in addition to data which must be stipulated in the announcement according to the Law on Enforced Settlement, Bankruptcy and Liquidation, also comprise warning to insured parties about legal consequences of the commencement of bankruptcy proceeding of insurance undertaking (termination of insurance contracts), then name and surname of curator, if one was nominated.

5.2.7. Termination of insurance contracts

Insurance contracts made by insurance undertaking are terminated by the end of thirtieth day counting from the day of the announcement of bankruptcy proceeding of insurance undertaking in the Official Journal of the Republic of Slovenia.

5.2.8. Opinion of the Agency for insurance supervision

When the court is deciding about cashing the liquidated assets according to the Law on Enforced Settlement, Bankruptcy and Liquidation, it takes its decision on the basis of the prior opinion of creditor's committee. Also, in case of bankruptcy of insurance undertaking, it must acquire the opinion of the Agency for insurance supervision for which provisions of the Law on Enforced Settlement, Bankruptcy and Liquidation are used in connection to the opinion of creditor's committee.

5.2.9. Informing the Agency for insurance supervision

Copies of reports of bankruptcy liquidator on the execution of bankruptcy proceeding are delivered by court to the Agency for insurance supervision as well.

5.2.10. Priority repayment of claims from insurance contracts

Claims from insurance contracts are repaid from liquidated assets as the expenditure of bankruptcy proceeding prior the execution of repayments to privileged creditors (from the second and the third paragraph of Article 160 of the Law on Enforced Settlement, Bankruptcy and Liquidation) and in the following order:

- claims pertaining to persons entitled to life insurance and accidental and health insurances where, for obligations of the insurance undertakings rules of life insurance apply, in the amount of the required coverage concerning insurance from which the claim arises and which could not have been repaid from the property of the covering fund;
- other claims pertaining to life insurance and accidental and health insurances, where for obligations of the insurance undertakings the rules of life insurance apply, which could not have been repaid from the property of the covering fund;
- claims from property insurance and other insurances in whose connection mathematical reservations have not been formed for repayment of damages for damaging events occurring before the commencement of the bankruptcy;
- claims from property insurance and other insurances in whose connection mathematical reservations have not been formed for refund of the part of the premium paid for the period after insurance termination.

5.2.11. Special provisions for repayment of claims from those types of insurance for which it is necessary to form mathematical reservations

5.2.11.1. Use of provisions

These provisions are used for life insurances and for accidental and health insurances for which similar probability tables and calculations are used as for life insurance (this is for those accidental and health insurances where for obligations of insurance undertakings rules of life insurances apply).

5.2.11.2. Termination of insurance contracts

Contracts for life insurance and accidental and health insurances, for which for obligations of insurance undertakings rules of life insurance apply, are terminated on the day of commencement of bankruptcy proceeding for insurance undertaking.

5.2.11.3. Right to separate repayment from the property of covering fund

On the day of the commencement of bankruptcy proceeding, persons entitled to life insurance and accidental and health insurance payments, where for obligations of the insurance undertakings the rules of life insurance apply, get the separation right for the property of covering fund for repayment of their claims arising from such insurances.

Persons entitled to life insurances and accidental and health insurances payments, for which for obligations of insurance undertakings rules of life insurance apply, have the right to have their claims paid from the property of covering fund before other claims that are to be covered by the same covering fund, in the amount that is equal to required covering related to insurance from which the claim arises. Other claims are repaid from the remaining balance of the property of covering fund after the payment of privileged claims. If the property of the covering fund is not sufficient for complete repayment of other claims, then such claims from the property of covering funds are to be paid proportionally.

If the property of the covering fund is not sufficient for complete repayment of claims arising from life insurances and accidental and health insurances, where for obligations of the insurance undertaking the rules of life insurance apply, then claims are paid in the amount equally proportional to required covering of insurance from which the claim arises and in the same relation as between total value of the property of covering fund and required covering for all insurances made by insurance undertaking for the same insurance type for which the covering fund was established.

In order to assess the amount of claim and the total amount of the required covering, the balance on the day of the commencement of bankruptcy proceeding is decisive.

5.2.11.4. Separate account for cash assets in bankruptcy

During the organization of payment transactions liquidator must, in addition to opening the general account of the bankruptcy debtor, open separate account for each covering fund as well.

Bankruptcy liquidator must execute all transaction involving cash assets acquired by cashing the property of the covering fund through separate bank account of the covering fund. Every order for the payment from the separate account of the covering fund must be approved, not only by bankruptcy liquidator, but by curator as well.

5.2.11.5. Curator

In order to protect interests of those entitled to payments from life insurance and accidental and health insurances, where, for obligations of the insurance undertakings, rules of life insurance apply, on the basis of the proposal of the Agency for insurance supervision, bankruptcy court, with its decision for commencement of bankruptcy proceeding, nominates a curator. A person may be nominated as a curator provided he meets conditions for nomination as bankruptcy liquidator and has appropriate knowledge and experience in insurance. Concerning the fees for curator and his authorizations and obligations, the same rules, as used for bankruptcy liquidator, are applied.

Bankruptcy liquidator must enable to curator introspection into business books and other records and documentation of the insurance undertaking to the extent as required to assess the property of covering fund, filing of debtors' claims and realization of other authorizations of a curator according to this law.

When the Law on Enforced Settlement, Bankruptcy and Liquidation determines that it is necessary to acquire the opinion, i.e. consent of debtors' committee concerning the property of covering fund, it is necessary to acquire the opinion, i.e. the consent of a curator as well.

5.2.11.6. Filing and testing of claims

Deadline for filing of claims arising from life and accidental insurances, where, for obligations of insurance undertaking rules of life insurance apply, is three months from the publishing of announcement about the commencement of the bankruptcy proceeding in the Official Journal of the Republic of Slovenia. Curator must file claims in the name and on the account of those entitled and inform them accordingly. Entitled persons may file their claims themselves as well.

Claims filed by curator, are treated in bankruptcy proceeding as established and for them provisions concerning testing of claims in the Law on Enforced Settlement, Bankruptcy and Liquidation do not apply. When the claim was filed by entitled person as well, application of the claim of the entitled person is taken into account and tested only in such part which exceeds the claim filed by curator in the name and on the account of the entitled person.

6. DIRECTIVE 2001/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of March 19, 2001 ON THE REORGANIZATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

The purpose of the '**Directive on the reorganization and winding-up of insurance undertakings**' is to enable that commencement of winding-up proceeding, i.e. bankruptcy proceeding of insurance undertaking is published in the Official Journal of European Community and that supervisory organs of insurance undertakings in states of European Community are informed as well, in order to prohibit discrimination and unequal treatment of creditors of insurance undertakings during their winding-up, i.e. bankruptcy proceedings, disregarding their domicile, i.e. residency. Its purpose is also to secure that individual actions during winding-up and bankruptcy proceedings that become final (come into effect) in member states in which insurance undertaking acquired operating permission, have simultaneous effect in (all) other member states of the European Community. In respect of this, member states are required that individual actions during winding-up proceedings, i.e. bankruptcy proceedings of insurance undertakings are reconciled and thus enable equal treatment for everyone participating in these proceedings, disregarding from which member state they originate.

The Republic of Slovenia has harmonized its legislature with Directive (which was as secondary legal source in European Union addressed to member states), with the Law on changes and supplements of the Law on insurance ("Zzav-B"; Official Journal of the Republic of Slovenia, No. 50/2004 dated May 6, 2004). For example, in its Article 160 it determines that on the day of the accession of the Republic of Slovenia to European Community, provisions of the law concerning member states of European Community are used for all states signatories of the Agreement on European Economic Area.

7. LAW ON BANKING

("Zban"; Official Journal of the Republic of Slovenia, No. 7/1999 –42/2004)

The Law on banking (in Slovenian language "Zban") determines conditions for establishment, business operation, supervision and termination of banks and saving institutions. However, on the basis of legislature reviews and effectiveness of supervision, it was necessary to change and supplement it (In Slovenian language, so called "Zban-A" and "ZBAN-B"). It was also necessary to take into account recommendations of the mission of the European Committee (peer review), of the World Bank and of the International Monetary Fund. Shortcomings in enforcement of law regulations and supervision of banking sector that appeared in practice were eliminated. Also, it was harmonized with the law of European Community, partly also with changed domestic laws (for instance Companies Act).

7.1. Enforced winding-up of the bank

7.1.1. Use of provisions for enforced winding-up

For enforced winding-up of the bank appropriate provisions of Companies Act are used, (in Slovenian language so called “ZGD”).

7.1.2. Reasons for the commencement of the winding-up

National Bank of Slovenia issues the decision on commencement of the enforced winding-up:

- If, on the basis on the financial report and business operation conditions of the bank during enforced management, it assesses that during the period of enforced management the financial situation has not improved, so that the bank, despite enforced management, has not achieved minimal capital and that there conditions have not been met to commence bankruptcy proceeding;
- If shareholders’ meeting denies the proposed decision on the increase of basic capital of the bank with new investments, or if the first sale of shares on the basis of shareholders’ meeting decision on the increase of the basic capital of the bank with new investments has not been successful and there are no conditions to realize buying of bank shares and no conditions for commencement of bankruptcy proceeding;
- If the permission for performing bank services was taken from the bank;
- If the permission for performing such function was legally taken from the member of the management of the bank, or if the member of the management was relieved or recalled from his post, or if the member of the management does not perform his function as the member of the management for more then six months and if the supervising board within three months does not nominate new member of the management in accordance with this law and consequentially the bank does not have at least two members of the management;
- If the permission for execution of banking business was terminated and the bank has not started business operations within the period of six months from the issue of permission, i.e. since it terminated performing banking services for more than one year, and the shareholders’ meeting did not, within two months from the issuance of the decision by which the National Bank of Slovenia established that the permission was terminated, does not make a decision with which the activity of the bank changes in such a way that a bank does not perform banking services any more.

7.1.3. Liquidators

With the decision on commencement of enforced winding-up, the National Bank of Slovenia nominates two or more liquidators and determines the type and extent of tasks performed by each liquidator. Liquidator is obliged to appropriately and regularly report to all creditors about developments during the winding-up proceeding.

7.1.4. Legal consequences of enforced winding-up

By the day of the issuance of the decision on enforced winding-up, all competences and authorizations of members of management and members of supervisory board of the bank are

terminated and the same applies to authorizations of shareholders' meeting except for the authorizations arising from the provisions of the Companies Act.

During enforced winding-up proceedings the competences of the supervisory board and authorizations of shareholders' meeting are executed by the National Bank of Slovenia, except for competences arising from provisions of the Companies Act.

7.1.5. Prohibition to contract new business

During the winding-up proceeding the bank cannot contract any new business, except those transactions necessary for the cashing of liquidated assets.

7.1.6. Appearance of the reason for winding-up

In case liquidators establish that the property of the bank is not sufficient for the repayment of all claims of bank's creditors, or if the bank does not have enough liquid assets to pay claims of creditors that are due on the basis on the contract for deposits, i.e. some other claim of the creditor, then they must immediately inform accordingly the National Bank of Slovenia.

7.1.7. Special provisions for the bank with subsidiary in another member state and for the bank in another member state with subsidiary in the territory of the Republic of Slovenia

7.1.7.1. Direct impact of decisions of the organs of member states

By this law, decision on the commencement of proceeding has the same impact as the decision on termination of the bank for the *bank in the member state with subsidiary in the Republic of Slovenia* that is issued by competent organ of member state where the bank is domiciled. Without any special procedure of recognition and enforcement it has immediate direct impact in the territory of the Republic of Slovenia at the moment it comes into effect in member state.

7.1.7.2. Informing of competent supervisory organs of member states on commencement of enforced winding-up proceeding

If the bank domiciled in the Republic of Slovenia has a subsidiary in another member state, then the National Bank of Slovenia will inform competent supervisory organ of another state where that subsidiary is situated about its intention to bring the decision on commencement of enforced winding-up proceeding. The notice must stipulate legal consequences and actual impacts of issued decision. In case that the issuance of the decision can not be postponed due to protection of interests of bank's clients or other public benefits, then the National Bank of Slovenia will inform supervisory organ immediately after the decision has been issued.

7.1.7.3. Publishing of the text of the decision on commencement of enforced winding-up proceeding in the Official Journal of European Communities

The National Bank of Slovenia must publish the decision on commencement of enforced winding-up proceeding for the bank in the Republic of Slovenia in the Official Journal of European Communities. The text of the decision is published in Slovenian language. The text

of the decision must stipulate name and address of the organ that will enforce the enforced winding-up proceeding; names of liquidators; deadline for claims filing and legal consequences if creditor does not file his claim. The text of the decision must be also published in two national newspapers of member states in which the bank's subsidiary is situated.

7.1.7.4. Filing of claims of creditors from member state

Creditor files his claim for liquidated assets in Slovenian language or in the official language of member state where he is resident or domiciled. Liquidator may demand from the creditor to submit the claim application translated in Slovenian language.

7.1.7.5. Liquidator

Liquidator nominated by the decision of the National Bank of Slovenia on the basis of this law may be also authorized for the execution of his competences within the territory of member state where the bank's subsidiary is situated. He can nominate by himself persons for assistance, if appropriate, for representation in member state where the bank's subsidiary is situated.

Liquidator nominated by decision of competent supervisory organ of the member state may perform actions during enforced winding-up proceedings in the Republic of Slovenia with the same competences he has in the member state, except those which mean the use of enforced measures provided he respects the legislature of the Republic of Slovenia.

Nomination of the liquidator is proved by certified copy of original decision about the nomination. The National Bank of Slovenia may demand from the liquidator from member state who is performing actions in enforced winding-up proceeding in the Republic of Slovenia, the translation of such decision in Slovenian language.

7.1.8. Enforced winding-up of subsidiary of the foreign bank

In case the National Bank of Slovenia commences the winding-up proceeding for the subsidiary of the foreign bank even before the issuance of the decision, it must inform accordingly competent supervising organs of member states where the foreign bank has its subsidiaries. In the notice it must stipulate legal consequences and actual impacts of such proceeding. In case it is not possible to postpone the taking of such decision due to the protection of the interests of clients of the bank, or due to other public benefits, then the National Bank of Slovenia must inform supervising organ immediately after the issuance of such decision.

During the enforced winding-up proceeding, the National Bank of Slovenia must reconcile its actions with actions of competent organs of other member states. Liquidators are also obliged to reconcile their actions.

7.2. Bankruptcy of the bank

7.2.1. Prohibition of enforced settlement

It is not possible to commence enforced settlement for the bank.

7.2.2. Use of provisions for bankruptcy proceedings

If not determined otherwise by this law, provisions of the Law on Enforced Settlement, Bankruptcy and Liquidation (in Slovenian language “ZPPSL”) are used for bankruptcy of the bank.

In case the bank is performing services in connection with securities, according to the law determining the securities market, for legal relations with these services special provisions on bankruptcy of securities brokerage associations are used.

7.2.3. Reasons for bankruptcy

The National Bank of Slovenia issues decision about the establishment of conditions for the commencement of bankruptcy proceedings:

- If, on the basis on the financial report and business operation conditions of the bank during enforced management, it assesses that during the period of enforced management the financial situation has not improved, so that the bank, despite enforced management, is not capable currently to fulfill due obligations;
- If during the supervision of the bank it establishes that the property of the bank is not sufficient for repayment of all claims of bank’s creditors.

7.2.4. Take-over bank

With the decision about the establishment of conditions for commencement of bankruptcy proceeding, the National Bank of Slovenia nominates the bank that will take over the business of the bank in bankruptcy proceeding in connection with the payment of guaranteed deposits (take-over bank). Take-over bank has the right to reimburse actual costs incurred by payment of guaranteed deposits.

7.2.5. Commencement of bankruptcy proceeding

The following day after issuance of written text of the decision on establishment of conditions for commencement of bankruptcy proceeding, the National Bank of Slovenia must file the proposal for commencement of bankruptcy proceeding at the competent court. The said decision must be attached to such proposal.

The court is issuing the decision on commencement of bankruptcy proceeding without re-testing of conditions for commencement of bankruptcy proceeding within three working days from the filing of the proposal. There is no appeal against the decision on commencement of the bankruptcy proceeding.

7.2.6. Use of provisions in bankruptcy proceeding for the bank with subsidiary in the member state

In case of commencement of bankruptcy proceeding for the bank with subsidiary in the member state, appropriate provisions of this law on enforced winding-up of the bank are used, provided that court where the creditor’s claims are filed publishes the summary of decision on

commencement of bankruptcy proceeding in the Official Journal of European Communities and in two national newspapers of member state where the bank has its subsidiary.

7.2.7. Informing known creditors about the commencement of bankruptcy proceeding for the bank which has a subsidiary in the member state

Liquidator must individually inform about bankruptcy proceeding, in Slovenian language, all known creditors of the bank which have had business transactions with the subsidiary of the bank in the member state and which are resident or domiciled in the member state. This is done by form that has the following title in all official languages of European Communities: "Invitation for claims filing, Deadlines to be followed".

The notice must stipulate the name and the address of the organ which will enforce bankruptcy proceeding; period in which creditors must file their claims to bankruptcy senate and consequences of late filing; information on rights and obligations of creditors concerning the commencement of bankruptcy proceeding.

7.2.8. Bankruptcy liquidator

On the basis of the proposal of the National Bank of Slovenia, the court nominates the bankruptcy liquidator. The National Bank of Slovenia may propose only the person that meets conditions for performing the duties of bankruptcy liquidator.

In case the reasons for relief of the bankruptcy liquidator arise, before it decides on it relief, the court must inform the National Bank of Slovenia about the reasons for such relief and invite it to take a stand on mentioned reasons within the period which cannot be shorter from three and longer than eight days.

7.2.9. Payment of guaranteed deposits

The bank in bankruptcy and the take-over bank must within ten days after the commencement of bankruptcy proceeding establish the balance of all guaranteed deposits on the day when the decision on commencement of bankruptcy proceeding for the bank was issued. Appropriate written minutes must be sent to the National Bank of Slovenia that must confirm it within ten days after receipt at latest and then send it to the court that is enforcing the bankruptcy proceeding.

The National Bank of Slovenia must secure liquid assets to take-over bank for the payment of guaranteed deposits within three months at latest, counting from the day of commencement of bankruptcy proceeding for the bank. Guaranteed deposits in foreign currencies are paid in Slovenian tolar counter values calculated by the middle rate of the National Bank of Slovenia on the day of the commencement of bankruptcy proceeding.

7.2.10. Opinion of the National Bank of Slovenia

When the court is deciding about caching of liquidated assets according to provisions of the Law on Enforced Settlement, Bankruptcy and Liquidation and in the case of the bankruptcy in the bank, it brings decision based on prior opinion of creditors' committee and it must also acquire the opinion of the National Bank of Slovenia for which provisions on opinion of

creditors' committee in the Law on Enforced Settlement, Bankruptcy and Liquidation are used.

7.2.11. Informing the National Bank of Slovenia

The court delivers copies of reports of bankruptcy liquidator on developments in bankruptcy proceeding to the National Bank of Slovenia as well.

7.2.12. Claims arising from guaranteed deposits

By the day of the commencement of the bankruptcy proceeding for the bank, the National Bank of Slovenia takes over, in its name and on its account, obligations for payment of guaranteed deposits of the bank in bankruptcy. The payment of the guaranteed deposits is executed by take-over bank for which the National Bank of Slovenia secures liquid assets for this purpose.

The claim of the National Bank of Slovenia arising from the liquid assets it secured for payment of guaranteed deposits are paid for from liquidated assets as the expenditure of bankruptcy proceeding prior repayments of privileged creditors (from the second and the third paragraph of Article 160 of the Law on Enforced Settlement, Bankruptcy and Liquidation). The claim of the take-over bank for the reimbursement of actual costs incurred by payment of guaranteed deposits is paid in the same manner.

8. DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 April 2001 ON THE REORGANIZATION AND WINDING UP OF **CREDIT INSTITUTIONS**

The subject of the '**Directive on the reorganization and winding-up of credit institutions**' are credit institutions and their subsidiaries established in another member state. The purpose of the Directive is to secure uniformity of credit institution and its subsidiaries in cases when it is necessary to take one or more re-organizational measures or commence the winding up procedure. For such decisions only organs, i.e. courts, of member states in which the operating permission was issued to credit institutions are competent. However, the directive demands, for such measures, prior informing of competent supervisory organs in the member state where the bank has its subsidiary. The purpose of the Directive is to secure direct impact of decisions of organs of member states on winding-up of the bank in the territory of the member state where the bank has its subsidiary as well; securing that the commencement of winding-up, i.e. bankruptcy proceeding for the bank with subsidiary in another member state, in the form of the summary text is published in the Official Journal of the European Communities and in two national newspapers of the member state where the bank has its subsidiary – all with the goal to prohibit discrimination and unequal treatment of bank's creditors in winding-up, i.e. bankruptcy proceeding, disregarding their domicile, i.e. residency.

The Republic of Slovenia harmonized its legislature with the Directive (which was as secondary legal source of European Union addressed to member states), with the Law on changes and supplements of the Law on banking (In Slovenian language "Zban-C"; Official Journal of the Republic of Slovenia, No. 42/2004 dated April 23, 2004).

Thus the Law on changes and supplements of the Law on banking determines that foreign decisions (also the decision on commencement of winding-up or bankruptcy proceeding for the bank of the member state which has subsidiary in the Republic of Slovenia) have direct impact within the territory of the Republic of Slovenia and thus despite the first paragraph of the Article 185 of the Law on Enforced Settlement, Bankruptcy and Liquidation that determines that for the decisions of foreign courts the recognition procedure is foreseen.

9. LITERATURE

- Professor Marko Ilešič, Ph. D.: »Bankruptcy with international element«, Judicial Bulletin (Ljubljana), No. 3-4/1991, page 71
- Matjaž Tratnik, Ph. D.: »Regulation 1346/2000 European Communities on insolvency proceedings«, Enterprise and work (Ljubljana), No. 8/2002, page 1862
- Matjaž Tratnik, Ph. D.: »Simplification of international private law in European Union«, European law and practice (Ljubljana), No. 2/2003, page 24
- 'Reporter' of the Parliament of the Republic of Slovenia, No. 25/2004 (11.3.2004), EPA 1171-III, page 67
- 'Reporter' of the Parliament of the Republic of Slovenia, No. 40/2004 (31.3.2004), EPA 1210-III, page 3
- Špela Herman: »Insolvency proceedings in European Union«, European law and practice (Ljubljana), No. 2/2004, page 37
- Matjaž Jan: »Regulation of European Communities on proceedings in case of insolvency«, European law and practice (Ljubljana), No. 6/2004, attachment - page I