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Insolvency/bankruptcy



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European Judicial Network
(in civil and commercial
matters)

1 Who may insolvency proceedings be brought against?

Pre-bankruptcy and bankruptcy proceedings may be brought against legal persons as well as against the assets of an individual debtor unless otherwise specified by law. An individual debtor for the purposes of the Bankruptcy Act (*Stečajni zakon* - 'SZ'; Narodne Novine (NN; Official Gazette of the Republic of Croatia) Nos 71/15, 104/17, 36/22 and 27/24) is a natural person subject to income tax from self-employed activity under the provisions of the Income Tax Act (*Zakon o porezu na dohodak*) or a natural person subject to corporate income tax under the provisions of the Corporate Income Tax Act (*Zakon o porezu na dobit*).

2 What are the conditions for opening insolvency proceedings?

a) Pre-bankruptcy proceedings may be opened if the court establishes the existence of imminent insolvency, i.e. the applicant can demonstrate, with sufficient certainty, that the debtor will be unable to meet their existing liabilities on the date on which they fall due.

Insolvency is deemed to be imminent if, at the time of submitting the proposal, the circumstances due to which the debtor is deemed permanently insolvent have not yet arisen and if:

– in the Register of the order of priority of payment liabilities kept by the Financial Agency (*Financijska agencija*), the debtor has one or more registered unsettled liabilities for which there was a valid basis for payment and which should have been collected, without further approval by the debtor, from any of their accounts, or

– the debtor is more than 30 days late with the payment of salaries to employees pursuant to an employment contract, labour regulations, a collective agreement or special regulations, or another document governing the obligations of employers towards employees, or

– the debtor fails to pay within 30 days contributions and taxes for the salaries referred to in the previous subparagraph, counting from the date when they were required to make salary payments to the employees.

b) Bankruptcy proceedings may be initiated if the court establishes the existence of grounds for bankruptcy, i.e. insolvency or overindebtedness.

The debtor may also propose the initiation of bankruptcy proceedings if they can demonstrate, with sufficient certainty, that they will not be able to fulfil their pre-existing liabilities as they fall due (imminent insolvency).

Imminent insolvency as grounds for bankruptcy is subject accordingly to the provisions on imminent insolvency as grounds for pre-bankruptcy.

Insolvency exists if the debtor is continuously unable to settle their outstanding financial liabilities. The fact that the debtor has settled or may be able to wholly or partly settle the claims of some of the creditors does not qualify the debtor as being solvent.

The debtor is deemed insolvent:

- if, in the Register of the order of priority of payment liabilities kept by the Financial Agency, they have one or more registered unsettled liabilities, due for more than 60 days, for which there is a valid basis for payment and which should have been collected, without further approval by the debtor, from any of their accounts
- if they have not paid three consecutive salaries to their employees under an employment contract, labour regulations, a collective agreement or special regulations or another document governing the obligations of employers towards employees.

Overindebtedness is deemed to exist if the assets of the debtor, as a legal person, no longer cover their existing liabilities.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The bankruptcy estate includes the total assets owned by the debtor when the bankruptcy proceedings were opened and the assets acquired by the debtor during the bankruptcy proceedings. The bankruptcy estate is used to settle the costs of the bankruptcy proceedings and claims of the debtor's creditors and claims whose settlement has been secured by certain rights over the debtor's assets.

The free use of assets from the bankruptcy estate by persons previously authorised to represent the debtor according to the law, or by the individual debtor after the opening of bankruptcy proceedings, has no legal effects, save for use that is governed by the general rules upholding the principle of trust in public registers. The consideration is returned to the counter party from the bankruptcy estate if it has increased the value of the bankruptcy estate.

If the individual debtor has gained an inheritance or bequest prior to the opening of or during bankruptcy proceedings, only the debtor is entitled to accept or renounce the inheritance or bequest.

If a debtor forms a co-ownership or any other legal relationship or partnership with a third person, the distribution of assets is conducted outside the bankruptcy proceedings. A separate settlement from the debtor's share may be requested for the settlement of liabilities stemming from such relationship.

4 What powers do the debtor and the insolvency practitioner have, respectively?

a) Pre-bankruptcy proceedings – the requirements for appointment of a trustee are the same as for the appointment of a liquidator. The trustee will be appointed by the court by means of a decision on the initiation of pre-bankruptcy proceedings. The trustee's duties cease on the date a restructuring plan becomes final, on the date of the opening of bankruptcy proceedings or by virtue of a decision of creditors.

The trustee in pre-bankruptcy proceedings is required to:

1. examine the business operations of the debtor
2. examine the list of assets and liabilities of the debtor
3. examine the credibility of registered claims
4. contest claims if, on the basis of the statements issued by creditors or some other reasons, they have doubts about their veracity
5. supervise the business operations of the debtor, in particular their financial operations, establishment of liabilities towards third parties, issuing of payment insurance instruments and business activities in the sale of goods or services, while ensuring that the debtor's assets are not harmed

6. file a complaint to the court if the debtor acts in breach of the provisions of Article 67 of the SZ
7. assist the debtor in drafting or negotiating a restructuring plan
8. take partial control over the assets or affairs of the debtor during negotiations, except for the part thereof which the debtor may freely dispose of in accordance with the provisions of the SZ
9. issue orders and certificates pursuant to Articles 69 and 71 of the SZ
10. ensure that the costs of the pre-bankruptcy proceedings are settled fully and on time
11. submit a report to the court on the progress of the pre-bankruptcy proceedings, using a standard form
12. conduct other activities pursuant to the SZ.

From the date of submission of the proposal to initiate pre-bankruptcy proceedings until the adoption of the decision to initiate pre-bankruptcy proceedings, the debtor may only make payments that are necessary for their regular business operations. In this period, the debtor may not settle liabilities that were incurred and became due prior to the opening of the pre-bankruptcy proceedings other than gross payment liabilities towards the debtor's employees and former employees arising from an employment relationship where the claims became due up to the date when the pre-bankruptcy proceedings opened, severance pay up to the amount provided for by law and collective agreements, damage claims due to injury sustained at work or work-related illness, and claims based on employee salaries increased by the amount of base contributions and other substantive rights of employees in accordance with employment contracts and collective agreements that became due following submission of the proposal to open pre-bankruptcy proceedings, as well as other payments necessary for regular business operations as laid down by a special law.

From the date when the proposal to open pre-bankruptcy proceedings is submitted until the decision on opening pre-bankruptcy proceedings is issued, the debtor cannot alienate or encumber their assets except on the basis of prior approval by the trustee, or the court if no trustee has been appointed.

b) Bankruptcy proceedings – the liquidator in bankruptcy proceedings is selected at random from the list of liquidators for the territory covered by the competent court or from the list of highly qualified liquidators, unless provided otherwise in the SZ. Based on this selection, the court appoints the liquidator in the decision on opening bankruptcy proceedings. By way of exception, if a trustee was appointed in the pre-bankruptcy proceedings that preceded the bankruptcy proceedings or if a provisional liquidator was appointed in the bankruptcy proceedings, the court appoints the trustee, or the provisional liquidator, as the liquidator.

The liquidator is vested with the rights and obligations of the corporate bodies of the debtor, unless otherwise specified in the SZ. If the debtor continues to conduct their business operations during the bankruptcy proceedings pursuant to Article 217(2) of the SZ, the liquidator manages the business operations.

The liquidator represents the debtor. The liquidator manages only those operations of an individual debtor which concern the bankruptcy estate and represents the debtor with the powers of a legal representative.

The liquidator is obliged to act conscientiously and in an orderly manner, and in particular

1. to put the accounting records in order up to the date of opening of the bankruptcy proceedings
2. to compile a preliminary cost estimate of the bankruptcy proceedings and to deliver it to the committee of creditors for approval
3. to establish a committee for the inventory of assets
4. to compile an initial balance of the debtor's assets
5. to manage with due diligence the conclusion of the initiated, but unfinished operations of the debtor and the operations necessary for preventing harm to the debtor's assets
6. to ensure the realisation of the debtor's claims

7. to conscientiously conduct the debtor's business operations referred to in Article 217(2) of the SZ
8. to deliver to the Croatian Pension Insurance Institute and the Croatian Institute for Health Insurance the documents related to the labour-law status of insured persons
9. to realise or collect with due diligence the property and rights of the debtor that form part of the bankruptcy estate
10. to submit to the Financial Agency requests to sell the real estate, movable property, rights and assets of the debtor through an online judicial auction and requests to record the real estate, movable property, rights and assets of the debtor in the Record of real estate and movable property sold in enforcement proceedings
11. to make an advance payment to the Financial Agency for the costs of carrying out the sale through an online judicial auction and the costs of recording data in the Record of real estate and movable property sold in enforcement proceedings, which represents the cost of the proceedings
12. to prepare distribution to creditors and execute distribution after approval
13. to deliver a final account to the committee of creditors
14. to make subsequent distributions to creditors
15. following the conclusion of the bankruptcy proceedings, to represent the bankruptcy estate in accordance with the SZ.

The liquidator must submit written reports on the course of the bankruptcy proceedings and on the balance of the bankruptcy estate, on a standard form at least once every 3 months.

5 Under which conditions may set-offs be invoked?

If, at the time of the opening of bankruptcy proceedings, the creditor, in accordance with the law or contract, was entitled to set-off, the opening of bankruptcy proceedings has no effect on that right.

If, at the time of the opening of bankruptcy proceedings, there are one or more claims that are to be offset under a suspensive condition, or are not due or are not intended to be performed in the same way, the set-off will occur when the necessary conditions have been met. What does not apply to set-off is the rule stipulating that outstanding claims become due upon opening of bankruptcy proceedings, and that non-pecuniary claims or claims for an unspecified monetary amount are set at the monetary value at which they are estimated at the time when the bankruptcy proceedings open. If the claim that should be used for set-off becomes unconditional and due before the set-off is possible, set-off is excluded.

A set-off is not excluded for claims denominated in different currencies or units of account provided that such currencies or units of account can be easily exchanged at the place of settlement of the claim used for the set-off. Conversion is carried out according to the exchange rate valid at the place of settlement at the time when the statement on set-off is received.

A set-off is inadmissible:

1. if the liability of the creditor towards the bankruptcy estate has occurred only after the opening of the bankruptcy proceedings
2. if the claim has been ceded to the creditor by another creditor only after the opening of the bankruptcy proceedings
3. if the creditor has acquired their claim by assignment in the last six months prior to the opening of the bankruptcy proceedings, or if pre-bankruptcy proceedings had not been opened in the last six months prior to the day of the opening of the bankruptcy proceedings, and the creditor knew, or ought to have known, that the debtor had become insolvent, or that a proposal to open pre-bankruptcy proceedings or bankruptcy proceedings had been submitted against the debtor. By way of derogation, the set-off is allowed if the claim was assigned with regard to the fulfilment of an unfulfilled contract or if the right to fulfil the claim has been re-acquired by

successful challenge against a legal transaction of a debtor.

4. if the creditor has acquired the right to set-off by voidable legal act.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

If, at the time of the opening of bankruptcy proceedings, the debtor and their counter party to the contract have not performed or have not fully performed a bilaterally binding contract, the liquidator may perform the contract instead of the debtor and demand that the other party perform the contract. If the liquidator refuses to perform the contract, the other party may realise its claim due to default only as a bankruptcy creditor. If the other party to the contract calls on the liquidator to submit their observations on their right to choose, the liquidator must immediately, and no later than after the reporting hearing, notify the other party via registered mail whether they intend to demand the performance of the contract. By way of derogation, if the other party would sustain significant damage by the time of the reporting hearing and it has informed the liquidator thereof, the liquidator is required to notify the other party within 8 days via registered mail of whether they will demand the performance of the contract. If they fail to do so, the liquidator will not be authorised to demand performance of the contract.

If the performances owed are divisible, and if the other party has partially fulfilled their performance obligations at the time of the opening of bankruptcy proceedings, then that party is entitled to exercise their right to consideration corresponding to the partial performance as a bankruptcy creditor even if the liquidator has demanded the fulfilment of the remaining part. The other party is not entitled, due to failure to execute their right to consideration, to demand return of the value added to the debtor's assets by their partial performance.

If a reservation has been entered in a land register for the purpose of securing the claim for acquisition or revocation of rights over one of the debtor's properties, or over one of the rights entered in favour of a debtor, or for securing the claim for a change of content or the priority of such right, the creditor may settle their claim as a creditor from the bankruptcy estate. This also applies had the debtor assumed all other liabilities towards the creditor which they afterwards failed to fulfil in full or in part. This provision applies by analogy to reservations in the shipping register, register of ships under construction or the airplane register.

If, prior to the opening of bankruptcy proceedings, the debtor has sold their movable property with the retention of title and has delivered the property into the possession of the buyer, the buyer may demand the performance of the purchase and sale contract. This also applies if the debtor has assumed further liabilities towards the buyer which they have not fully fulfilled or which they have only partially fulfilled. If, prior to the opening of bankruptcy proceedings, the debtor has bought an immovable property with the retention of title and has received it in possession from the seller, the liquidator has the right of option in accordance with Article 181 of the SZ.

The rent and lease of real property or premises does not cease by the opening of bankruptcy proceedings. This also applies to rental and lease relationships that the debtor has concluded as a lessor related to objects which were, for insurance purposes, transferred to a third person who financed their acquisition or production. Rights that relate to the time prior to the opening of bankruptcy proceedings, as well as to damage incurred by the early termination of the contract, may only be exercised by the other party in the capacity of a bankruptcy creditor.

The liquidator may cancel rent or lease of a real property or premises that the debtor has contracted as a lessee regardless of the contracted term and subject to the legal notice period. If the liquidator declares cancellation, the other party, as a bankruptcy creditor, may seek compensation due to early termination of the contract. If, at the time of the opening of the bankruptcy proceedings, the debtor has not taken over the real property or premises, the liquidator and the other party may withdraw from the contract. If the liquidator withdraws, the other party may, as a bankruptcy creditor, demand compensation for damages due to early termination of the contract. Each party is required, at the request of the other party and within 15 days, to inform the other party of their intent to withdraw from the contract. In the event of failure to do so, the party loses its right to withdrawal.

If the debtor, as the lessor of the real property or premises prior to the opening of the bankruptcy proceedings, held claims relating to rental and lease relations for a future period of time, this has a legal effect in so far as it

relates to the rent or lease, for the current calendar month at the time of the opening of bankruptcy proceedings. If the bankruptcy proceedings are opened after the fifteenth day of the month, the holding of claims also has legal effect for the next calendar month and relates specifically to the settlement of rent and lease. Claims held on the basis of enforcement are equivalent to contractual claims.

The liquidator may, on behalf of the debtor as the lessor, cancel the lease or rental relationship within a legal notice period regardless of the contracted notice period.

A third party to whom the liquidator has alienated the real property or the premises which were leased by the debtor, and who therefore enters into a lease or rental relationship instead of the debtor, may cancel that contract within a legally defined notice period.

If the debtor is the lessee, the other party to the contract may not cancel the lease contract after the proposal to open bankruptcy proceedings has been submitted:

1. due to delay in payment of rent or lease incurred prior to the opening of the bankruptcy proceedings
2. due to deterioration of the debtor's financial situation.

The opening of bankruptcy proceedings does not result in the termination of employment contracts or service contracts with the debtor. The opening of bankruptcy proceedings is a special justifiable reason for the cancellation of the employment contract. After the opening of the bankruptcy proceedings, the liquidator, on behalf of the debtor (as employer), and the employee may cancel the employment contract, regardless of the contracted term of the contract and regardless of legal or contractual provisions on the protection of employees. The notice period is 1 month unless the law provides for a shorter term. If employees consider that the cancellation of their employment contract is not in accordance with the law, they may seek protection of their rights pursuant to the Labour Act (*Zakon o radu*).

The liquidator may, based on the approval of the court, conclude new fixed-term employment contracts without the restrictions that are laid down in the general rules on labour for fixed-term employment contracts in order to finish the business operations already started and to prevent possible damage. The liquidator specifies salaries and other benefits from employment, based on the court's approval and in accordance with the law and collective agreement. The salaries and benefits from employment to which employees became entitled after the opening of bankruptcy proceedings are settled as liabilities of the bankruptcy estate.

The employees' right of participation ceases with the opening of bankruptcy proceedings. Agreements with the workers' council are not binding on the liquidator.

The debtor's orders related to the assets that form part of the bankruptcy estate cease to be valid upon opening of the bankruptcy proceedings. If the person receiving an order has not been aware of the bankruptcy proceedings through no fault of their own and continues with their activities, the order is considered to be still in force. The claims of a person receiving the order in relation to such continued activities are settled as bankruptcy creditor's claims. The person receiving the order must, for the purpose of remedying damage, continue with their activities after the opening of bankruptcy proceedings until the liquidator assumes the activities. The claims of the person receiving the order related to such activities are settled as claims of creditors from the bankruptcy estate.

Offers made to the debtor or offers made by the debtor cease to be valid on the day of the opening of bankruptcy proceedings unless they have been accepted before that day.

With regard to business contracts with which someone has committed to perform certain services on behalf of the debtor and with regard to the authorisation of the debtor in relation to the assets that enter into the bankruptcy estate and where such authorisation ceases to be valid with the opening of bankruptcy proceedings, the person receiving the order must, for the purpose of remedying the damage, continue with the performance of activities even after the opening of bankruptcy proceedings until the liquidator assumes the performance of activities. The claims of the person receiving the order related to such activities are settled as claims of creditors from the bankruptcy estate.

Contractual provisions which, in advance, exclude or limit the application of the provisions of the SZ are without

legal effect.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

a) Pre-bankruptcy proceedings – no enforcement, administrative or security proceedings may be brought against the debtor from the day of the opening of pre-bankruptcy proceedings until their closure. Any such proceedings that are pending are stayed on the day of the opening of the pre-bankruptcy proceedings. The stayed proceedings are continued at the proposal of the creditor:

- following the conclusion of a pre-bankruptcy agreement – in relation to claims or the part of claims contested in the pre-bankruptcy proceedings

- following a final decision discontinuing the pre-bankruptcy proceedings.

These provisions do not apply to proceedings not affected by the pre-bankruptcy proceedings or to proceedings for settling claims that were incurred after the opening of the pre-bankruptcy proceedings.

In proceedings before a court in which the stay of the proceedings was ordered due to the opening of pre-bankruptcy proceedings and in which, subsequently, a final decision has been given confirming the pre-bankruptcy agreement that covered the creditor's claim, the court will continue the proceedings and dismiss the action or discontinue the enforcement or security proceedings, except in relation to claims or the part of claims contested in pre-bankruptcy proceedings.

b) Bankruptcy proceedings – after the opening of the bankruptcy proceedings, individual creditors may not seek enforcement or security against the debtor in respect of those parts of their assets that form part of the bankruptcy estate, or against other assets of the debtor. Creditors that are not bankruptcy creditors are not authorised to demand enforcement or security against future claims of individual debtors on the basis of their employment relationship or other service, or their claims on that basis in bankruptcy proceedings, except enforcement or security for settlement of maintenance claims and other claims that may be settled from the part of the debtor's income from employment from which the claims of other creditors may not be settled. Such enforcement and security proceedings pending at the moment of the opening of bankruptcy proceedings are interrupted. Once these proceedings continue, the enforcement court halts proceedings.

After the initiation of the bankruptcy proceedings, creditors entitled to seek that parts of the debtor's assets be exempt from the bankruptcy estate (*izlučni vjerovnici*) may, for the purpose of exercising their rights, initiate enforcement and security proceedings against the debtor in accordance with the general rules of enforcement proceedings. Stayed enforcement and security proceedings that the creditors have initiated prior to the opening of bankruptcy proceedings will continue and be executed by an enforcement court in accordance with the rules of the enforcement proceedings.

After the opening of the bankruptcy proceedings, creditors with the right to seek separate satisfaction (*razlučni vjerovnici*) are not authorised to initiate enforcement or security proceedings. The enforcement and security proceedings pending at the moment of the opening of bankruptcy proceedings are stayed. The stayed enforcement and security proceedings are continued by the court that conducts the bankruptcy proceedings by application of the rules on realisation of the items for which there is a right to separate satisfaction in the bankruptcy proceedings.

After the opening of the bankruptcy proceedings, entry in public registers is allowed if the prerequisites for entry have been met before the legal consequences of the opening of bankruptcy proceedings took effect.

Enforcement for the settlement of claims from the bankruptcy estate that are not based on legal acts of the liquidator is not allowed for 6 months after the opening of the bankruptcy proceedings.

This provision does not apply to:

1. liabilities of the bankruptcy estate from a bilaterally binding contract which the liquidator has undertaken to perform

2. liabilities from a permanent contractual relationship after the expiry of the first deadline by which the liquidator could have cancelled the contract

3. liabilities from a permanent contractual relationship if the liquidator has received consideration in favour of the bankruptcy estate.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

a) Pre-bankruptcy proceedings – from the day of the opening of pre-bankruptcy proceedings until their closure, civil proceedings may not be brought against the debtor. Any such proceedings that are pending are stayed on the day of the opening of the pre-bankruptcy proceedings. The stayed proceedings are continued at the proposal of the creditor:

- following the conclusion of a pre-bankruptcy agreement – in relation to claims or the part of claims contested in the pre-bankruptcy proceedings

- following a final decision discontinuing the pre-bankruptcy proceedings.

These provisions do not apply to proceedings not affected by the pre-bankruptcy proceedings or to proceedings for settling claims that were incurred after the opening of the pre-bankruptcy proceedings.

In proceedings before a court in which the stay of the proceedings was ordered due to the opening of pre-bankruptcy proceedings and in which, subsequently, a final decision has been given confirming the pre-bankruptcy agreement that covered the creditor's claim, the court will continue the proceedings and dismiss the action or discontinue the enforcement or security proceedings, except in relation to claims or the part of claims contested in pre-bankruptcy proceedings.

b) Bankruptcy proceedings – the liquidator will take over the lawsuits, including arbitration proceedings, concerning assets forming part of the bankruptcy estate which were ongoing at the time of the opening of bankruptcy proceedings, acting in the name and on behalf of the debtor. Lawsuits relating to claims that are lodged in the bankruptcy proceedings cannot be continued until they have been examined at the review hearing.

The lawsuits pending at the time of the opening of bankruptcy proceedings against the debtor will be taken over by the liquidator in their name where they relate to:

1. exclusion of assets from the bankruptcy estate

2. separate settlement

3. liabilities of the bankruptcy estate.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

a) Pre-bankruptcy proceedings – creditors of the debtor in pre-bankruptcy proceedings are the personal creditors of the debtor who, at the time of the opening of pre-bankruptcy proceedings, have pecuniary claims against the debtor. The rules of the SZ laying down the right to vote in bankruptcy arrangements are applied accordingly to the creditors' right to vote on the restructuring plan.

The creditors express their vote in writing on the prescribed voting form. The voting form must be submitted to the court no later than the beginning of the voting hearing and must be signed and certified by an authorised person. If, by the beginning of the hearing, the creditors do not submit the voting form or they submit a voting form from which it cannot be determined unambiguously how they voted, they are deemed to have voted against the restructuring plan.

The creditors present at the hearing vote using the prescribed voting form. If creditors entitled to vote do not

vote at this hearing, they are deemed to have voted against the restructuring plan.

Each group of creditors entitled to vote votes separately on the restructuring plan. The rules on classification of participants in bankruptcy arrangements are applied accordingly to the classification of creditors in pre-bankruptcy proceedings.

The creditors are deemed to have accepted the restructuring plan if the majority of all creditors have voted in favour of it and, if, in every group, the sum of all claims of the creditors who voted in favour of the plan is at least double the sum of the claims of the creditors who voted against the acceptance of the plan.

Creditors who have a joint right or whose rights formed a single unified right until the emergence of the grounds for pre-bankruptcy count as one creditor in the voting. The holders of separate rights or rights of usufruct are treated accordingly.

b) Bankruptcy proceedings – committee of creditors – the court may, in order to protect the interests of creditors in bankruptcy proceedings, prior to the first hearing of creditors, establish a committee of creditors and appoint its members.

Creditors with the claims in the highest amount and creditors with small claims must both be represented in the committee of creditors. Also, a representative of the debtor's former employees must be represented in the committee of creditors unless they as creditors participate in the proceedings with insignificant claims.

Creditors with the right to seek separate satisfaction (*razlučni vjerovnici*) and persons who are not creditors, but who might contribute to the work of the committee with their expert knowledge, may be appointed members of the committee of creditors.

The committee of creditors must have an odd number of members, nine at the most. If the number of creditors is less than five, all creditors are awarded the powers of the committee of creditors.

The committee of creditors must oversee the liquidator and aid them in pursuit of business activities, as well as monitor operations pursuant to Article 217 of the SZ, examine the books and other records related to the business, and order verification of turnover and the amount of cash. The committee of creditors may authorise individual committee members to carry out individual activities within its sphere of responsibilities.

Within its sphere of responsibilities, the committee of creditors will in particular:

1. examine reports by the liquidator on the course of the bankruptcy proceedings and on the condition of the bankruptcy estate
2. review business ledgers and the entire documentation that has been taken over by the liquidator
3. lodge objections with the court against acts of the liquidator
4. grant approval of the cost estimates for the bankruptcy proceedings
5. give the court an opinion on liquidation of the debtor's assets, at the request of the court
6. give the court an opinion on the continuation of ongoing business operations or on the activities of the debtor, at the request of the court
7. give the court an opinion on recognition of justified losses that were established in the inventory of assets, at the request of the court

(3) The committee of creditors must notify the creditors on the course of the proceedings and on the condition of the bankruptcy estate.

The assembly of creditors

The court convenes an assembly of the creditors. The right of participation is granted to all bankruptcy creditors, all bankruptcy creditors with the right of separate settlement, the liquidator and the individual debtor.

At the reporting hearing or any subsequent hearing, the assembly of creditors is authorised to:

1. establish a committee of creditors, if it has not already been established, or to alter its composition or to dismiss the committee
2. appoint a new liquidator
3. decide on the continuation or discontinuation of the debtor's activities and on the manner and terms for liquidation of the debtor's assets
4. order the liquidator to draw up a bankruptcy arrangement
5. adopt any decisions falling within the jurisdiction of the committee of creditors
6. decide on other issues relevant for the implementation and closure of bankruptcy proceedings pursuant to the SZ.

The assembly of creditors has the right to ask the liquidator to submit notifications and reports on the state of affairs and business operations. If no committee of the creditors has been established, the assembly of creditors may order verification of turnover and cash amounts managed by the liquidator.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

On the opening of bankruptcy proceedings, the rights of the debtor as a legal person expire and are transferred to the liquidator. On the opening of bankruptcy proceedings, the rights of an individual debtor to administer and dispose of assets that form part of the bankruptcy estate are transferred to the liquidator.

After the bankruptcy proceedings have been opened, the liquidator must immediately take over possession and administration of the entire assets of the bankruptcy estate.

The liquidator may, on the basis of an enforcement decision on the opening of bankruptcy proceedings, request the court to order the debtor to hand over assets and to lay down enforcement measures for forcible execution of the order.

The liquidator may, once the decision on the opening of bankruptcy proceedings becomes final, request the court to order third persons who have possession of assets from the bankruptcy estate to surrender those assets. Together with the said request, the liquidator must produce a document showing ownership of the assets. The court takes a decision on the liquidator's proposal after hearing the persons who have possession of assets from the bankruptcy estate.

The liquidator compiles a list of individual assets from the bankruptcy estate. The individual debtor and persons previously authorised to represent the debtor by law must cooperate with the liquidator on this matter. The liquidator must gather the necessary information from the said persons unless this would cause the proceedings to be unduly delayed.

The liquidator compiles a list of all of the debtor's creditors of which they are aware from the debtor's business ledgers and business documentation, other information from the debtor, lodgement of claims or otherwise.

The liquidator compiles a systematic overview, with respect to the time of the opening of bankruptcy proceedings, stating and comparing the assets from the bankruptcy estate and the debtor's liabilities and their assessment.

The bankruptcy estate inventory, the list of creditors and the overview of assets and liabilities must be presented in the court registry no later than 8 days prior to the reporting hearing.

The debtor's duty under commercial and tax law to keep ledgers and furnish accounts remains unaltered by the opening of bankruptcy proceedings. The liquidator must perform such duties relating to the bankruptcy estate.

The liquidator must, no later than 15 days prior to the reporting hearing, deliver to the court a report on the economic standing of the debtor and the reasons for such standing, which will be published on the courts' electronic bulletin board no later than 8 days before the reporting hearing.

After the reporting hearing, the liquidator must, without delay, realise the assets forming part of the bankruptcy estate, unless this is contrary to the decision of the assembly of creditors.

The liquidator must realise the assets from bankruptcy proceedings in accordance with the decisions taken by the assembly of creditors and committee of creditors.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

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The liquidator must, no later than 15 days prior to the reporting hearing, deliver to the court a report on the economic standing of the debtor and the reasons for such standing, which will be published on the courts' electronic bulletin board no later than 8 days before the reporting hearing.

After the reporting hearing, the liquidator must, without delay, realise the assets forming part of the bankruptcy estate, unless this is contrary to the decision of the assembly of creditors.

The liquidator must realise the assets from bankruptcy proceedings in accordance with the decisions taken by the assembly of creditors and committee of creditors.

12 What are the rules governing the lodging, verification and admission of claims?

a) Pre-bankruptcy proceedings – lodgement of claims is made to the competent unit of the Financial Agency on a standard form accompanied by copies of the documents from which the claim arises or which prove the claim.

The Ministry of Finance – Tax Administration (*Ministarstvo financija – Porezna uprava*) may lodge claims arising from tax, surtax, contributions to compulsory insurance which must by law be taken from earnings and salaries, as well as other claims that they are authorised to collect on the basis of special regulations, apart from claims arising from tax and surtax on income from employment and contributions from the basic amount for persons insured under an employment relationship.

In pre-bankruptcy proceedings, the debtor's employees and former employees and the Ministry of Finance – Tax Administration may not lodge claims from an employment relationship, severance pay up to the amount provided for by law or collective agreement and claims on the basis of compensation of damages due to injury sustained at work or work-related illness; these claims cannot be the subject of a pre-bankruptcy agreement. If the applicant has failed to declare these claims in the proposal to open pre-bankruptcy proceedings or if they have stated them erroneously, the debtor's employees and former employees and the Ministry of Finance – Tax Administration have the right to lodge an objection.

Creditors entitled to seek separate satisfaction (*razlučni vjerovnici*) are required to notify the competent unit of the Financial Agency, within the deadline for submitting a claim, of their rights, the legal basis for separate satisfaction and the part of the debtor's assets to which their right of separate satisfaction applies and to make a declaration on whether they waive the right to separate settlement or not.

Creditors entitled to seek that parts of the debtor's assets be exempt from the bankruptcy estate (*izlučni vjerovnici*) are required to notify the competent unit of the Financial Agency, within the deadline for submitting a claim, of their rights, the legal basis for the right of exemption and the part of assets of the debtor to which their right of exemption applies.

In their notification, both these types of creditors (*razlučni vjerovnici* and *izlučni vjerovnici*) must issue a statement on their consent or refusal of consent to suspension of settlement from the assets to which their right to separate satisfaction applies, or suspension of the segregation of assets to which their right of exemption applies, for the purposes of implementing the restructuring plan.

A pre-bankruptcy agreement must not interfere with the right of creditors to separate settlement from assets to which the right of separate settlement applies, unless otherwise provided in that agreement. If the pre-bankruptcy agreement does expressly provide otherwise, it must specify which part of the rights of these creditors is to be reduced, for how long settlement will be deferred and what other provisions of the pre-bankruptcy agreement apply to those rights.

If the creditor fails to lodge a claim but the claim has been stated in the proposal to open pre-bankruptcy proceedings, such a claim is deemed lodged.

The debtor and the trustee, if appointed, must state a position on the creditors' lodged claims. This observation is submitted to the competent unit of the Financial Agency on a standard form, containing the following information for each claim:

1. the number of the claim from the table of lodged claims
2. information for identification of creditors
3. the amount of the claim lodged
4. the statement by the debtor and the trustee, if appointed, recognising or contesting the claim
5. the contested amount of the claim
6. the facts supporting the non-existence of the contested claim or part of the claim.

On expiry of the time limit to state a position on lodged claims, the debtor and the trustee, if appointed, can no longer oppose the claims which they have recognised.

A creditor may contest a lodged claim of another creditor.

Contestation of claim is submitted to the competent unit of the Financial Agency on the standard form and must contain the following information:

1. information for identification of the creditor who is contesting the claim
2. the reference number of the contested claim from the table of lodged claims
3. information for identification of the creditor who lodged the contested claim
4. the amount of the lodged claim being contested
5. a statement by the creditor contesting the claim
6. the contested amount of the claim
7. the facts supporting the non-existence of the contested claim or part of the claim.

The Financial Agency compiles a table of lodged claims and a table of contested claims on a standard form.

b) Bankruptcy proceedings – lodgement of claims is made to the liquidator on a standard form in duplicate accompanied by copies of the documents from which the claim arises or which prove the claim.

The liquidator will draw up a list of all claims of the debtor's employees and former employees up to the opening of bankruptcy proceedings, which must be reported in gross and net amounts; two copies of the lodgement of claims must be submitted for signature.

The claims of lower priority creditors are lodged only at the special invitation of the court. The lodgement of such claims should indicate that they are of low priority and the ranking to which the creditor is entitled.

Creditors entitled to seek exemption (*izlučni vjerovnici*) must inform the liquidator of their right of exemption and the legal basis for such right, and indicate the assets to which this right applies, or indicate in their notification their right to compensation for the right of exemption.

Creditors entitled to separate satisfaction (*razlučni vjerovnici*) are required to inform the liquidator of their right to separate satisfaction and the legal basis for such right, and to indicate the assets to which that right applies. If such creditors also lodge a claim as bankruptcy creditors, they must indicate in their lodgement the part of assets of the bankruptcy debtor to which their right to separate satisfaction applies and the amount by which their claim will foreseeably not be settled by that separation right.

Creditors entitled to separate satisfaction who do not accordingly inform the liquidator of that right do not lose the right to separate settlement. By way of exception, creditors entitled to separate satisfaction do lose their right to separate settlement and are not entitled to seek compensation of damages or any other compensation from a bankruptcy debtor or creditor if the object of the right to separate satisfaction has been realised in the bankruptcy proceedings without them, and the right of separation was not entered in a public register or the liquidator had no knowledge of it or could not have known of it.

The lodged claims are examined with regard to their amounts and order of priority at the review hearing.

The liquidator must respond specifically as to whether they recognise or contest each lodged claim.

The claims contested by the liquidator, individual debtor or one of the bankruptcy creditors have to be reviewed separately. The rights of exemption and the rights to separate satisfaction are not subject to examination.

A claim is deemed established if, at the review hearing, it is recognised by the liquidator and not contested by a bankruptcy creditor, or if a declared contestation is rejected. If an individual debtor contests a claim, this does not prevent establishment of the claim.

The court compiles a table of claims that have been examined in which, for every lodged claim, it enters the amount in which the claim has been established, its order of priority and the person who contested the claim. Contestations of claims by an individual debtor are also entered in the table. The establishment of a claim is also indicated by the court on bills of exchange and other documents on debt.

On the basis of the table of examined claims, the court renders a decision determining the amount and ranking of the established or contested individual claims. By virtue of this decision, the court also decides on referral to bring a lawsuit for establishing or contesting the claims.

If the liquidator has contested the claim, the court will refer the creditor to bring a lawsuit against the debtor for establishment of the contested claim.

If one of the bankruptcy creditors has contested a claim that was recognised by the liquidator, the court will refer that creditor to bring a lawsuit for establishment of the contested claim. In such a lawsuit the person opposing the claim acts in the name and on behalf of the debtor.

If the claims of the debtor's employees and former employees have been contested, the lawsuit for establishing contested claims is brought in accordance with the general provisions in the proceedings before court and special provisions for proceedings in labour disputes.

If there is an enforcement order for the contested claim, the court will refer the contesting party to bring a lawsuit in order to prove the merits of their contestation.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The settlement of creditors is done on the basis of cash flow. Junior creditors are not taken into account in partial distribution. The distribution is carried out by the liquidator. Prior to every distribution, the liquidator must obtain the consent of the committee of creditors or a court, if no committee of creditors has been established.

The highest-ranking senior claims include claims of the employees and former employees of the debtor incurred up to the day of the opening of bankruptcy proceedings from an employment relationship, claims relating to the budget, institutes or funds in accordance with special regulations in the amount of the corresponding part of the total cost of wages or remuneration, severance pay in the amount provided for by law or collective agreement and claims arising from compensation for damages due to injury sustained at work or work-related illness.

Second-ranking senior claims include all other claims against the debtor except claims ranked as junior.

After the settlement of senior claims, the claims ranked as junior are settled in the following order:

1. interest on claims of bankruptcy creditors since the opening of bankruptcy proceedings
2. costs of individual creditors incurred by their participation in the proceedings
3. fines issued for criminal offences or infringements and costs resulting from criminal or infringement proceedings
4. claims demanding the free provision of services of a debtor
5. claims for repayment of loans to replace capital of a member of a company or corresponding claims.

Outstanding claims become due upon the opening of bankruptcy proceedings.

Claims related to a resolutive condition which enters into force upon the opening of bankruptcy proceedings are considered as unconditional claims until such condition enters into force.

The costs of the bankruptcy proceedings and the other obligations of the bankruptcy estate are settled first from the bankruptcy estate. The liquidator settles the claims in the order of their maturity.

Prior to the distribution, the liquidator will draw up a list of claims that will be taken into consideration for the

distribution (distribution list). The claims of the debtor's employees and former employees from an employment relationship incurred up to the day of the opening of bankruptcy proceedings are taken into consideration in the gross amount. The list must contain the sum of claims and the available amount from the bankruptcy estate to be distributed among creditors.

A creditor entitled to separate satisfaction to whom the debtor is also personally liable, should within 15 days from announcement of the distribution list at the latest, submit evidence to the liquidator that they have waived the right to separate settlement – and for what amount – or that there has been no separate settlement. If they fail to submit evidence in due time, their claim will not be taken into consideration in the partial distribution.

Claims with a suspensive condition are taken into consideration at their full amount during a partial distribution. The portion related to these claims is reserved during the distribution.

During the final distribution, claims with a suspensive condition are not taken into consideration if the possibility of fulfilment of the condition is so remote that at the time of the distribution it has no material value. In this case, the amounts reserved for satisfaction of this claim during the previous distributions are included in the estate from which the final distribution is to be made.

The creditors excluded from the partial distribution and who subsequently fulfil the conditions stipulated in Articles 275 and 276 of the SZ are paid an amount equal to other creditors from the balance of the bankruptcy estate during the next distribution. Only then will it be possible to continue with the settlement of the claims of other creditors.

The final distribution will commence as soon as the realisation of the bankruptcy estate is completed. The final distribution may be initiated only upon the consent of the court.

If the claims of all creditors can be settled in the full amount in the final distribution, the liquidator will transfer any remaining surplus to the individual debtor. If the debtor is a legal person, the liquidator will assign to each person that has an interest in the debtor the part of surplus that this person would be entitled to in the event of winding-up proceedings outside of bankruptcy proceedings.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

a) Pre-bankruptcy proceedings – if the creditors accept the restructuring plan, the court will, by virtue of a decision, acknowledge the approval of the restructuring plan and confirm the pre-bankruptcy agreement, unless:

- one of the creditors establishes, with sufficient certainty, that the restructuring plan reduces the rights below what they would reasonably be expected to receive in the absence of the restructuring
- it does not appear likely from the restructuring plan that its implementation will allow the debtor to become solvent within the period up to the end of the current year and within the two subsequent calendar years
- the restructuring plan has not defined the settlement of amounts that the creditors would receive if their claim were not contested or
- the restructuring plan has proposed capitalisation of claims of one or more creditors and the members of the debtor have not issued a decision consenting to such activity in accordance with the Companies Act (*Zakon o trgovačkim društvima*).

If the conditions for confirmation of a pre-bankruptcy agreement have not been met, the court will, by virtue of a decision, determine that the confirmation of the pre-bankruptcy agreement is withheld and stay the proceedings.

A confirmed pre-bankruptcy agreement has legal effect towards the creditors who did not participate in the proceedings and the creditors who participated in the proceedings, and their contested claims are established subsequently.

A debtor who made a profit from liabilities that are written off under a confirmed pre-bankruptcy agreement

must retain such acquired profit until the expiry of the term for fulfilling all liabilities arising from the pre-bankruptcy agreement.

Where a creditor writes off a debtor's claim in accordance with a confirmed pre-bankruptcy agreement, the amount of the written-off claim is recognised as tax-deductible expenditure of the creditor.

b) Bankruptcy proceedings – immediately after the final distribution has been concluded, the court issues a decision closing the bankruptcy proceedings that is delivered to the authority that manages the register in which the debtor is registered. On being struck off the register, a debtor that is a legal person ceases to exist and a debtor that is a natural person is deprived of their status as an individual trader, entrepreneur or self-employed person.

15 What are the creditors' rights after the closure of insolvency proceedings?

Bankruptcy creditors may, after closure of the bankruptcy proceedings against an individual debtor, continue with the unlimited pursuit of their remaining claims.

Bankruptcy creditors may enforce their claims against the debtor by virtue of a decision setting out the establishment of their claims, provided that the claims have been established and have not been contested by the debtor at the review hearing. A claim that was unsuccessfully contested is equivalent to an uncontested claim.

On a proposal by the liquidator or any of the creditors, or acting *ex officio*, the court will order the continuation of proceedings for the purposes of subsequent distribution if, after the final hearing:

1. the prerequisites are fulfilled for reserved amounts to be distributed to the creditors
2. amounts that have been paid from the bankruptcy estate are reabsorbed into the bankruptcy estate
3. assets are found that form part of the bankruptcy estate.

The court will order continuation of proceedings for the purposes of subsequent distribution regardless of the fact that the proceedings have been closed.

The court may refrain from subsequent distribution and transfer the amount available for distribution to creditors or transfer the object that has been found to the individual debtor if it deems it appropriate in view of the insignificant amount involved or the small value of the object and the costs of continuing the proceedings for subsequent distribution. The court may make continuation of proceedings for subsequent distribution conditional on an advance payment settling the costs of those proceedings.

After implementation of the subsequent distribution, the court will issue a decision on the closure of bankruptcy proceedings.

After the subsequent distribution has been ordered, the liquidator will distribute, according to the final list, the amount that may be freely disposed of or the amount received from realisation of the part of the bankruptcy estate that was subsequently found. The liquidator renders the final account to the court.

The creditors from the bankruptcy estate whose claims the liquidator has learned of:

1. during partial distribution, after the part for distribution has been determined,
2. during final distribution, after the final hearing has been closed,
3. during subsequent distribution, after the list for that distribution has been published,

may demand settlement only from the remaining balance of the bankruptcy estate following the distribution.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Each creditor bears their own costs of the proceedings in pre-bankruptcy and bankruptcy proceedings, save as otherwise provided in the SZ.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Legal acts undertaken prior to the opening of the bankruptcy proceedings that disrupt the uniform settlement of bankruptcy creditors (causing harm to creditors) or that favour certain creditors over others (preferential treatment of creditors) may be contested by the liquidator on behalf of the debtor, and the creditors in bankruptcy, in accordance with the provisions of the SZ. Omissions that caused the debtor to lose a right or on the basis of which the pecuniary claims against them were founded, maintained or secured are deemed equivalent to such legal acts.

A legal act that provides or allows a creditor security or satisfaction in a manner and at a time that is congruent with the substance of their rights (congruent settlement) and that was undertaken within the last three months prior to the filing of a proposal to open bankruptcy proceedings may be contested if, at the time of the act, the debtor was insolvent, and the creditor knew of this insolvency.

A legal act that provides or allows a creditor security or satisfaction in accordance with the substance of their rights may be contested if it was undertaken after the filing of the proposal to open bankruptcy proceedings and if the creditor, at the time of the act, knew of the insolvency or of the proposal to open bankruptcy proceedings.

The creditor is deemed to have known of the insolvency or of the proposal to open bankruptcy proceedings if they knew or ought to have known of circumstances from which it must have been apparent that there was insolvency or that a proposal to open bankruptcy proceedings had been filed.

Persons who were in a close relationship with the debtor at the time of the act are deemed to have known of the insolvency and of the proposal to open bankruptcy proceedings.

A legal act that provides or allow security or satisfaction to a creditor that did not have the right to make a claim, or had no right to make a claim in that manner or at that time, may be contested:

1. if it was undertaken within the last month prior to the filing of the proposal to open bankruptcy proceedings or after the proposal had been filed, or
2. if it was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the debtor was insolvent at the time, or
3. if the act was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the creditor knew at the time the act was undertaken that it would cause harm to the bankruptcy creditors.

A creditor is deemed to have known that the act would cause harm to other creditors if that creditor knew, or ought to have known, of circumstances from which it must have been apparent that creditors would sustain harm. Persons who were in a close relationship with the debtor at the time of the act are deemed to have known that harm would be caused to the bankruptcy creditors.

A legal act of the debtor that directly results in harm to the bankruptcy creditors may be contested:

1. if it was undertaken within three months prior to the filing of the proposal to open bankruptcy proceedings, if the debtor was insolvent at the time of the act and if the other party knew of the insolvency or
2. if it was undertaken after the proposal to open bankruptcy proceedings had been filed and if the other person knew, or ought to have known, at the time of the legal act, of the insolvency or of the proposal to open bankruptcy proceedings.

Any legal act of the debtor that results in the loss of any of the debtor's rights, or that prevents the assertion of any of debtor's rights, or any act on the basis of which a pecuniary claim against the debtor may be kept valid or enforced, is treated the same as an act resulting in direct harm being caused to the creditors.

A legal act undertaken by the debtor during the last 10 years prior to the filing of the proposal to open bankruptcy proceedings, or thereafter, with the intention of causing harm to creditors, may be contested if the other party knew of the debtor's intent at the time of the act. Knowledge of intent is presumed if the other party knew that the debtor was under threat of insolvency and that this act would cause harm to the creditors.

The creditor is deemed to have known that the debtor was under the threat of insolvency and that such an act would harm the creditors if that creditor knew, or ought to have known, of circumstances from which it must have been apparent that the debtor was insolvent and that such an act would cause harm to the creditors.

Contracts for pecuniary interest entered into by the debtor and persons close to the debtor may be contested if they cause direct harm to the creditors. Such a contract may not be contested if it was concluded more than 2 years prior to the filing of the proposal to open bankruptcy proceedings or if the other party proves that, at the time of the conclusion of the contract, it had no knowledge of the debtor's intentions to cause harm to the creditors.

A legal act of the debtor without compensation or with insignificant compensation may be contested unless it was undertaken 4 years prior to the filing of the proposal to open bankruptcy proceedings. In the case of an occasional gift of insignificant value, the act may not be contested.

A legal act by which a member of the company makes a claim for repayment of a loan used for substituting capital, or some similar claim is void:

1. if it provides security and if the act was undertaken within the last 5 years prior to the filing of the proposal to open bankruptcy proceedings or thereafter
2. if it guarantees the settlement and if the act was undertaken in the last year prior to the filing of the proposal to open bankruptcy proceedings or thereafter.

A legal act by which the stake of the silent partner of the company is returned to them, in full or in part, or by which their share of the incurred loss is waived, in full or in part, may be contested if the contract on which such an act is based was concluded during the last year prior to the filing of the proposal to open bankruptcy proceedings against the company or thereafter. The same applies if the silent partnership is wound up in accordance with the contract.

In the case of congruent settlement, payments by the debtor settled by means of bill of exchange may not be reclaimed from the recipient if, according to the law on negotiable instruments, the recipient would, should they refuse to accept the payment, lose a claim towards other debtors.

A legal act is deemed to have been undertaken at the time when its legal effects have occurred.

If an entry in a public ledger, register or log is required for the legal validity of a legal act, the legal act is deemed to have been undertaken as soon as the other pre-conditions for validity are fulfilled, the debtor's statement of intent to make such an entry becomes binding, and the other party files a request for entry of a legal change. This provision also applies to requests for an advance entry to secure the right to a legal change.

If a legal act is subject to a condition or a deadline, the time when it was undertaken is taken into consideration, not the time when the condition occurs or the deadline expires.

A legal act for which a writ of execution has been obtained and a legal act undertaken within the enforcement process may be contested.

If the debtor has accepted for their performance a consideration of the same value, which has become directly part of their assets, the legal act underlying this performance may be contested only under the condition of intentional harm.

The liquidator may, on behalf of the debtor, contest legal acts of the debtor on the basis of the court's approval.

The complaint is filed against the person towards whom the contested act was undertaken.

The liquidator may file a complaint to contest legal acts within a year and a half from the day of the opening of bankruptcy proceedings.

Every bankruptcy creditor may bring an action to contest legal acts for their own account and at their own expense if:

- the liquidator has not brought an action to contest the legal acts within the time limit stipulated in Article 212(3) SZ – within 3 months from expiry of the time limit stipulated in Article 212(3) SZ
- the liquidator withdraws an action for contesting the legal acts – within 3 months from the publication of the final decision confirming withdrawal of the action on the courts' electronic bulletin board
- they have previously requested a statement from the liquidator and the liquidator has stated that it will not bring an action to contest the legal acts – within 3 months from publication of the liquidator's statement on the courts' electronic bulletin board
- they have previously requested a statement from the liquidator and the liquidator has not stated within 3 months whether or not they will bring an action to contest the legal acts – within 3 months from publication of the call to make such a statement.

If the request to contest legal acts has been granted, the contested legal act will have no legal effect against the bankruptcy estate, and the other party is required to return to the bankruptcy estate all material benefits acquired through the contested transaction, unless otherwise specified by the SZ. An enforcement proposal based on the decision accepting the request to contest legal acts may be filed by the liquidator in the name and on behalf of the debtor or the bankruptcy estate, and by a bankruptcy creditor on their own behalf and in favour of the bankruptcy debtor or bankruptcy estate.

A person accepting performance without compensation, or with insignificant compensation, must return what they have received only if they have been enriched by it, unless they knew, or ought to have known, that such performance would cause harm to the creditors.

A final decision given in an action to contest legal acts is applicable to the bankruptcy debtor, the bankruptcy estate and all bankruptcy creditors, unless otherwise specified by the SZ.

If the court has accepted the request to contest a legal act, the opposing party is required to return to the bankruptcy estate all material benefits acquired through the contested transaction. Once these benefits have been returned to the bankruptcy estate, the creditors who are plaintiffs are entitled to preferential settlement from those benefits in proportion to the amount of their established claims.

The legal acts of the debtor may be contested by submitting an objection within a lawsuit without any time limit.

A legal act may be contested even against the heir or other universal legal successor of the opposing party.

A legal transaction may be contested against other legal successors of the opposing party:

1. if the legal successor, at the time of acquisition, knew of the circumstances on which the voidability of the acquisition of their legal predecessor is based
2. if the legal successor, at the time of acquisition, was a person in a close relationship with the debtor, unless they prove that at the time they did not know of the circumstances on which the voidability of the acquisition of their legal predecessor is based
3. if what was acquired was transferred to the legal successor without compensation, or with insignificant compensation.

A legal act undertaken after the opening of the bankruptcy proceedings that remains valid according to the rules on protection of trust in public registers may be contested according to the rules on contesting legal acts undertaken before the opening of the bankruptcy proceedings.

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