

1 Who may insolvency proceedings be brought against?

Insolvency proceedings and proceedings for preventive restructuring are set out in the

Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*)

(hereinafter: ZFPPIPP).

I. INSOLVENCY PROCEEDINGS

1. Proceedings for financial restructuring - reorganisation

Compulsory settlement proceedings may be brought against:

- a legal person organised as a company or a cooperative, unless the law provides otherwise for a particular company or a cooperative when taking into account the activity it is engaged in;
- an entrepreneur; or
- any other legal person when so stipulated by the law.

Compulsory settlement proceedings also contain **special rules for compulsory settlement of a large, medium or small company**. These proceedings offer a wider selection of measures for financial restructuring of the debtor's obligations (for example, creditors' secured claims).

Simplified compulsory settlement proceedings are permitted only against a company which is regarded as a micro company according to the rules of the Companies Act (*Zakon o gospodarskih družbah*) or against an entrepreneur that meets the criteria for a micro or small company.

2. Bankruptcy proceedings

Bankruptcy proceedings against a legal entity may be brought against any legal entity unless provided otherwise by the law governing a particular legal form or a particular type of legal entity or a particular legal person. Bankruptcy proceedings against a disability company may be permitted only with the consent of the Slovenian government.

Personal bankruptcy may be brought against property of:

- an entrepreneur;
- an individual (doctor, notary, lawyer, farmer or other natural person who is not an entrepreneur and who pursues a particular activity as a profession); or
- a consumer.

Bankruptcy of succession may be brought against the property of an over-indebted testator — a deceased natural person.

II. PRE-INSOLVENCY PROCEEDINGS

Preventive restructuring proceedings

Preventive restructuring proceedings are permitted only against a capital company which is regarded as a large, medium or small company according to the rules of the Companies Act.

2 What are the conditions for opening insolvency proceedings?

Insolvency

The key requirement for opening insolvency proceedings is the existence of circumstances of insolvency. **Insolvency** is defined as a situation where:

- the debtor **has been insolvent for a lengthy period of time** because it was unable to pay all of its obligations due in that period; or
- the debtor has become **long-term insolvent** because the value of its property is less than the sum of its obligations (**over-indebtedness**), or because the loss of the debtor capital company together with the loss brought forward in the current year exceeds half of the share capital, and the losses cannot be covered by profit brought forward or from reserves.

Preliminary and main insolvency proceedings

Insolvency proceedings include 'preliminary' and 'main' insolvency proceedings. Preliminary insolvency proceedings are opened by submitting a petition for opening the proceedings (petition for opening of insolvency proceedings). During preliminary insolvency proceedings, the court decides on the conditions for opening the proceedings. The main proceedings are opened by a Decision in which the court decides on the opening of insolvency proceedings (opening of insolvency proceedings).

Parties to preliminary and main insolvency proceedings

In preliminary proceedings, procedural acts may be performed by a petitioner of the proceedings, a debtor against whom the petition was lodged for opening the proceedings when the debtor is not the petitioner, and a creditor who can demonstrate that it is likely to have a claim against the debtor against whom the petition for opening the proceedings was lodged, provided that that creditor communicates its intention to participate in the preliminary proceedings.

In the main insolvency proceedings, procedural acts may be performed by any creditor who makes a claim in the proceedings against the insolvent debtor and by the insolvent debtor (in compulsory settlement, simplified compulsory settlement and personal bankruptcy).

Opening and notice of proceedings

On the same day that a court issues a Decision on opening proceedings, it publishes that Decision on the webpages used for publishing court documents, documents from participants and other information in insolvency proceedings. The court informs creditors about the opening of the proceedings by a notice, which must be published on the same day and at the same time as it publishes the Decision on opening proceedings. In this Decision, it publishes important information about the proceedings. The legal consequences of opening proceedings start on the day of publication of the notice of the opening of bankruptcy proceedings.

Petitioner of proceedings

A petition for opening **compulsory settlement proceedings** may be lodged only by an insolvent debtor or personally responsible shareholder of a debtor company. The petition for opening **compulsory settlement proceedings against a large, medium or small company** may also be lodged by creditors who jointly own at least 20 % of all financial claims. For example, these can be banks which are regarded as well-informed entities and have the required information, infrastructure and staff to put forth a plan for financial restructuring of the insolvent debtor.

Compulsory settlement proceedings take place with the intention to allow an insolvent debtor to become financially solvent in the short and long term by implementing suitable measures of financial restructuring. To allow the debtor to engage in business normally (and provide the liquidity required for current business operations) during the period of uncertainty while the compulsory settlement proceedings are ongoing, the forced disposal of the debtor's assets is not permitted. As a counterbalance to this 'advantage' and with the intention of preventing the debtor from abusing it, its business operations are restricted during the course of the proceedings to regular business only.

A petition for opening **simplified compulsory settlement proceedings** may be lodged only by an insolvent debtor. In these proceedings, only unsecured ordinary claims are subject to restructuring. A simplified compulsory settlement does not have any effect on priority or secured claims, nor on claims for taxes and contributions.

A petition for opening **bankruptcy proceedings** may be lodged by a debtor, a responsible shareholder of a debtor, a creditor, or the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia (*Javni jamstveni, preživninski in invalidski sklad Republike Slovenije*). A creditor must demonstrate the likelihood that its claim against the debtor will be successful and that the debtor is more than two months late in paying the claim. The Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia must demonstrate the likelihood that workers' claims exist against the debtor of the proposed bankruptcy proceedings and also that the debtor is more than two months late in paying these claims.

Preventive restructuring proceedings are conducted with the intention of allowing the debtor, who is likely to become insolvent within one year, to implement certain measures to restructure his financial obligations, and other measures of financial restructuring necessary to eliminate the causes of the possible insolvency, on the basis of an agreement on financial restructuring. A petition for opening preventive restructuring proceedings may only be lodged by a debtor. The petition for opening preventive restructuring proceedings must be agreed upon by creditors who own at least a 30 % share of all the financial claims against the debtor. The debtor must attach to the petition a notarised copy of the creditors' statement consenting to the opening of the proceedings.

Webpages for publication of insolvency proceedings

For all insolvency proceedings, the following must be published on the webpages for public publications in insolvency proceedings:

information about individual compulsory settlement proceedings, bankruptcy proceedings, compulsory liquidation, simplified compulsory settlement, preventive restructuring, and bankruptcy of succession;

court decisions issued in proceedings (except for certain exceptions set out in law);

notices on the opening of proceedings, notices on hearing dates and other notices and calls for voting which are issued by a court according to the law;

records of hearings and sessions of the creditors' committee;

reports of administrators and of insolvent debtors in compulsory settlement proceedings;

lists of verified claims;

submissions of parties in proceedings and other court documents which must be published in accordance with ZFPPIPP; and

all public auction notices in bankruptcy proceedings and invitations to submit offers concerning the realisation of bankrupt estates.

Webpages for the publication of insolvency proceedings are managed by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (*Agencija Republike Slovenije za javnopravne evidence in storitve*; hereinafter: AJPES). There is an incontestable statutory presumption that parties to insolvency proceedings and every other person become aware of court decisions, petitions of other parties to proceedings and other legal acts eight days after they are published. For this reason, the webpages are **public and free**.

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?

Compulsory settlement proceedings

After opening **compulsory settlement proceedings**, the debtor must retain its property. It may sell only property not needed for its business operations when the sale of such property is identified as a measure of financial restructuring in the financial restructuring plan. After opening compulsory settlement proceedings, the debtor may only take loans with the court's consent and they are capped at the total value of liquid assets required for financing regular business operations and for covering the costs of compulsory settlement proceedings.

Claims that arise in connection with the financing of the debtor's regular business operations in compulsory settlement proceedings and in preventive restructuring proceedings are paid in potential subsequent bankruptcy proceedings from the general distribution of the bankruptcy estate, before paying priority claims (namely the costs of the proceedings).

Bankruptcy proceedings

The bankruptcy estate of **a debtor who is a legal person** includes the property of the debtor in bankruptcy at the opening of proceedings, all the property obtained by realising and managing the bankruptcy estate and by contesting legal acts of the debtor in bankruptcy, and the property obtained by continuing business operations where the bankruptcy debtor continues business operations after the opening of bankruptcy proceedings in accordance with the ZFPPIPP. The bankruptcy estate also includes property obtained by lodging actions against personally responsible shareholders of the debtor in bankruptcy, except for assets which are urgently necessary for meeting basic needs.

The bankruptcy estate of **a debtor in personal bankruptcy** includes all the property which the debtor in bankruptcy obtains during the verification period, until the relief from obligations or until the closure of bankruptcy proceedings. In personal bankruptcy, the following are excluded from the bankruptcy estate:

- objects (objects for personal use (clothing, shoes, etc.), household items (furniture, fridge, stove, washing machine, etc.) which are urgently necessary for the debtor and the members of the debtor's household, objects urgently required for performing the debtor's work, awards and acknowledgements, a wedding ring, personal letters, handwritten material and other personal documents (pictures and photographs of family members etc.); and
- receivables (receivables for legal maintenance, receivables for compensation for bodily injury in accordance with disability insurance, receivables for financial social assistance, etc.).

Furthermore, the bankruptcy estate in a personal bankruptcy does not include the debtor's earnings needed to provide the minimum social income (the debtor retains at least 76 % of the minimum salary, and where the debtor supports a family member or another person the debtor must support by law, the amount prescribed per person that is supported).

In personal bankruptcy, the debtor is guaranteed the same minimum social income he would receive in a case of individual enforcement.

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

Competence and tasks of a court

The district court has competence to deal with insolvency proceedings. A single judge presides in insolvency proceedings. The Ljubljana Higher Court (*Višje sodišče v Ljubljani*) is territorially competent to decide appeals in all insolvency proceedings.

Appointing an administrator and his powers

An administrator exercises powers and performs tasks in insolvency proceedings, as set out by the law, in order to protect creditors' interests. An administrator is appointed in compulsory settlement proceedings and bankruptcy proceedings. An administrator is appointed by a court by a Decision on opening insolvency proceedings. In compulsory settlement proceedings against large, medium or small companies, the court appoints an administrator by a special Decision the day after receiving a petition for opening proceedings.

In **compulsory settlement proceedings**, an administrator supervises the business operations of the debtor. To this end, the insolvent debtor must provide all the information required for supervision and allow the inspection of its business records and documentation. In such proceedings, the legal capacity of the debtor is limited. After the opening of proceedings, the debtor may perform only regular (current) business related to its activities and to settling its obligations related to the business. After the opening of proceedings, the debtor may deal with its property only to the extent that is needed to conduct regular business and may not take loans or credits, give guarantees or sureties, or enter into a contract or perform any other act that would lead to unequal treatment of creditors or inhibit the implementation of the financial restructuring. After opening compulsory settlement proceedings, the debtor may, aside from regular contracts and subject to obtaining a court's consent, sell property that is not needed for its business if the sale of the property is specified as a financial restructuring measure in the financial restructuring plan. The debtor may take loans or credits capped at the total value of liquid assets required for financing regular business operations and for covering the costs of compulsory settlement proceedings. The court decides whether to give its consent on the basis of the opinion of the administrator or the creditors' committee.

Once **bankruptcy proceedings against a legal entity** have been opened, the powers of the debtor's representatives, a holder of procuration and other persons authorised to represent the debtor, as well as the powers of the management to manage the debtor's business terminate. The administrator acquires the powers to manage the business of the insolvent debtor during bankruptcy proceedings in accordance with the needs of the proceedings and to represent the debtor in:

procedural and other legal acts related to verifying claims, and to separation and exclusion rights;
procedural and other legal acts to contest legal acts of the insolvent debtor;
legal contracts and other acts required to realise the bankruptcy estate;
realising a waiver and other rights acquired by the insolvent debtor as a legal consequence of opening bankruptcy proceedings; and
other legal transactions which the insolvent debtor may perform under the law.

Once **personal bankruptcy proceedings** have been opened, the legal capacity of the debtor in bankruptcy is restricted by:

1. not being able to conclude contracts or perform other legal transactions or acts, which involve dealing with property included in the bankruptcy estate; and
2. not being able, without the consent of a court, to:
take loans or credit, or give guarantees;
open a bank account or another cash account; or
renounce succession or other proprietary rights.

A legal transaction or other legal act of a debtor in bankruptcy which is contrary to these rules does not have legal effect except where the other contracting party did not know and could not have known that personal bankruptcy proceedings were open against the debtor when concluding the legal transaction or performing the legal act, the subject of which was the disposition of the debtor's property included in the bankruptcy estate. As a rule, and evidence to the contrary is not permitted, the other contracting party is deemed to have known that personal bankruptcy proceedings were opened against the debtor, where the contract or any other legal transaction was concluded more than eight days after the publication of the notice of the opening of bankruptcy proceedings on the public webpages for publishing insolvency proceedings.

In **preventive restructuring proceedings**, an administrator is not involved. The debtor's legal capacity is not restricted in these proceedings. An administrator is also not involved in **simplified compulsory settlement proceedings**.

Licence for acting as administrator

The function of an administrator may be performed only by a person holding a valid licence from the minister responsible for legal affairs for performing the function of administrator in insolvency and compulsory liquidation proceedings.

The minister responsible for legal affairs will issue the licence for acting as an administrator to a person meeting the following conditions:

is a national of the Republic of Slovenia or an EU Member State, an EEA Member State or an OECD Member State and has a working knowledge of Slovenian;

has legal capacity and is in general good health;

has at least first-cycle higher education or comparable education obtained abroad that was nostrified, recognised or evaluated in accordance with the law on evaluating and recognising education, or has a licence for performing the tasks of an auditor or an authorised auditor;

has at least three years of working experience related to his or her professional education;

has an insurance policy covering his or her liability for damages of at least EUR 500 000 in a year;

has passed a professional examination to act as an administrator;

is a person worthy of public trust to act as an administrator;

has given a statement to the minister responsible for legal affairs that he/she will conscientiously and responsibly perform his/her role as an administrator, and that he/she will work towards an expeditious completion of the proceedings with the most favourable repayment terms possible to creditors in every insolvency proceeding in which he/she is appointed.

5 Under which conditions may set-offs be invoked?

Set-off of claims upon opening of compulsory settlement proceedings

Where, upon the opening of **compulsory settlement proceedings**, there is a claim of a creditor against an insolvent debtor and a counter claim of the insolvent debtor against that creditor, the claims are regarded as set off at the opening of the compulsory settlement proceedings. This rule also applies to non-monetary claims and claims not due for payment at the opening of the compulsory settlement proceedings. Opening compulsory settlement proceedings does not have any effect on secured and priority claims and exclusion rights. In insolvency proceedings against large, medium or small companies, secured claims may be subject to financial restructuring.

Set-off of claims upon opening of bankruptcy proceedings

Where, upon the opening of **bankruptcy proceedings**, there is a claim of a creditor against the debtor in bankruptcy and a counter claim of the debtor in bankruptcy against that creditor, the claims are regarded as set off at the opening of bankruptcy proceedings. This rule also applies to non-monetary claims and claims not due for payment at the opening of bankruptcy proceedings. The creditor does not notify his claim against the debtor in bankruptcy in the bankruptcy proceedings but must notify the administrator about the set-off within three months after the notice of the opening of bankruptcy proceedings is published. Where the creditor does not inform the administrator about the set-off, the creditor is liable to the debtor in bankruptcy for costs and other losses that the debtor in bankruptcy suffers because of the creditor's omission. Where the creditor's claim against the debtor in bankruptcy is conditional, there is a set-off if the creditor demands set-off and the court gives its consent to the set-off.

A claim against a bankruptcy creditor which arose before the opening of bankruptcy proceedings or which a new creditor acquired before the opening of bankruptcy proceedings on the basis of a cession from a previous creditor, cannot be set off by a counter claim of the debtor in bankruptcy against the new creditor if that claim arose before the opening of bankruptcy proceedings.

A claim against the bankruptcy creditor which arose before the opening of bankruptcy proceedings may not be set off by a counter claim of the debtor in bankruptcy against that creditor if that claim arose after the opening of bankruptcy proceedings.

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

Orders to perform a legal transaction or other legal act for a debtor terminate if the debtor had issued them before the opening of bankruptcy proceedings.

After opening bankruptcy proceedings, a payment service provider may not make any payments from monetary assets of the insolvent debtor under a Decision on enforcement or compulsory recovery. Offers given by the debtor in bankruptcy before the opening of bankruptcy proceedings terminate, except where the addressee accepted the offer before the opening of bankruptcy proceedings.

An administrator may terminate rental and lease contracts upon the opening of bankruptcy proceedings where these contracts were concluded by the debtor in bankruptcy before the opening of bankruptcy proceedings by giving one month's notice, regardless of general statutory rules and the terms of the contract. Where the debtor in bankruptcy acts on his right to terminate, the notice period starts on the last day of the month in which the other contracting party received the statement of the debtor in bankruptcy on the termination, and expires on the last day of the following month. The other contracting party has the right to damages from the debtor in bankruptcy that arose from exercising the right to terminate, contrary to general rules. The claim for damages must be notified in the bankruptcy proceedings and is paid from the distributable estate according to the law on paying creditor claims.

The opening of bankruptcy proceedings does not have an effect on a settlement agreement or on a qualified financial contract to which the rules set out in the settlement agreement apply. Where, after settling mutual rights and obligations in accordance with the rules set out in the settlement agreement, a net monetary claim of another contracting party arises against the debtor in bankruptcy, the other contracting party must notify the claim in the bankruptcy proceedings and the claim is paid from the distributable estate, in accordance with the rules of the law on paying creditor claims.

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

Impermissibility of enforcement and liens

After the **opening of insolvency proceedings** against an insolvent debtor, it is generally not permitted by law to issue a Decision for enforcement or for a lien, unless the law specifies otherwise.

After the **opening of preventive restructuring proceedings** against a debtor, it is not permitted to issue a Decision for enforcement or for a lien of a financial claim that is the subject of preventive restructuring.

Termination of opened proceedings for enforcement or a lien

Proceedings for enforcement or a lien that were opened against an insolvent debtor **before the opening of compulsory settlement proceedings** are terminated upon the opening of the latter proceedings, and may continue only on the basis of a Decision of the court conducting compulsory settlement proceedings which is stated by law to be the basis for continuing the proceedings for enforcement or a lien.

The opening of bankruptcy proceedings has the following legal consequences on proceedings for enforcement or a lien that were opened against an insolvent debtor before the start of the bankruptcy proceedings:

where, in the proceedings for enforcement or a lien on movable or immovable property, the creditor has not yet acquired the separation right before the opening of bankruptcy proceedings, the proceedings for enforcement or a lien are stayed upon the opening of bankruptcy proceedings;

where, in the proceedings for enforcement or a lien on movable or immovable property, the creditor has acquired the separation right before the opening of bankruptcy proceedings and if, the sale of property that is the subject of the separation right has not yet taken place before the opening of bankruptcy proceedings, the proceedings for enforcement or a lien are stayed upon the opening of bankruptcy proceedings;

where a creditor in proceedings for enforcement acquires a separation right before the opening of bankruptcy proceedings, and if before the opening of bankruptcy proceedings the sale of the property that is the subject of the separation right has taken place in the proceedings for enforcement, the opening of bankruptcy proceedings does not have an effect on the enforcement proceedings; and

proceedings for security by an interim or preliminary measure are stayed upon the opening of bankruptcy proceedings, and all actions performed in those proceedings are annulled.

Proceedings for enforcement or a lien which were initiated against the debtor before the **opening of preventive restructuring proceedings** for enforcement or for securing a financial claim, which is the subject of preventive restructuring, are terminated upon the start of preventive restructuring proceedings. The enforcement court decides on terminating proceedings for enforcement or a lien upon the debtor's petition.

Principle of consolidating bankruptcy proceedings

A creditor may notify his claim for performing an obligation that arose from the relationship with the debtor in bankruptcy until the opening of bankruptcy proceedings only in bankruptcy proceedings against that debtor and in accordance with the rules of the proceedings (rules on notifying and verifying claims, directions to litigation (lodging a lawsuit) concerning disputed claims, etc.)

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

Where a creditor had lodged a lawsuit for establishing a claim before the opening of bankruptcy proceedings, the litigation is stayed on the basis of the rules of the Civil Procedure Act (*Zakon o pravdnem postopku*). A creditor who had lodged a lawsuit before the opening of bankruptcy proceedings must notify his claim in the bankruptcy proceedings.

On the day a Decision on verifying claims is published, the grounds for which a lawsuit was stayed as a consequence of bankruptcy proceedings terminate. If a creditor's claim is recognised, its legal interest to pursue the lawsuit on that claim ends and the lawsuit proceedings are stayed. The creditor is paid an equal proportionate share to the other creditors whose unsecured ordinary claims were recognised in the bankruptcy proceedings.

If a creditor's claim in bankruptcy proceedings is contested by the administrator, the creditor must petition for the stayed lawsuit to continue within one month after the Decision on verifying claims is published. In that case, the creditor in the lawsuit need only seek to establish the existence of the claim. If a creditor's claim was contested by another creditor, the creditor must expand its lawsuit to include the creditor contesting the claim as a new defendant, within one month after the Decision on verifying claims is published. Where its claim was established in the lawsuit, the creditor is paid an equal proportionate share to the other creditors whose unsecured ordinary claims were recognised in the bankruptcy proceedings.

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

In the main insolvency proceedings, procedural acts may be performed by any creditor in the proceedings that seeks to establish its claim against the insolvent debtor. As a general rule, every creditor (as a party) has a right in insolvency proceedings to appeal against any court's Decision except where the law provides that an appeal against a particular Decision may be lodged only by certain parties. The appeal must be lodged within 15 days. The 15-day period for persons on whom a Decision must be served in accordance with the ZFPPIPP starts running from the day of serving the Decision; for other persons, the 15-day period starts running from the day the Decision is published.

In insolvency proceedings, a creditor may also perform procedural acts through the creditors' committee which, as a body of creditors for the account of all creditors that are parties to the proceedings, is authorised to perform procedural acts set out by law. A creditors' committee is established in compulsory settlement proceedings; in bankruptcy proceedings, it is established only where creditors request it.

Compulsory settlement proceedings

Creditors' committee

In compulsory settlement proceedings, the court establishes a creditors' committee, which, in order to exercise its rights and powers, has the right to inspect the debtor's business records (i.e. inspection of the operations and financial situation of the debtor) for the purpose of protecting the creditors' interest and to provide proposals and opinions required to protect creditors in the proceedings. In compulsory settlement proceedings, a creditors' committee may, for the purposes of financial restructuring of the insolvent debtor, adopt a decision under certain legislative conditions on increasing the share capital by cash injections or contributions in kind, which are the subject of creditors' claims against the insolvent debtor.

Legislative amendments at the end of 2013, made in order to facilitate efficient financial restructuring of large and medium companies, included special rules for compulsory settlement against such companies, which significantly strengthened the position of creditors. The rules of those proceedings are used for small companies as well, pursuant to the legislative amendment in 2016. For the correct performance of the administrator's tasks in compulsory settlement proceedings, wider experience and training is needed and, for this reason, when appointing an administrator, the rule on appointment according to the automatic appointment sequence order does not apply, and instead the court selects an administrator according to its own assessment. Where creditors themselves propose the opening of compulsory settlement proceedings against an insolvent debtor in accordance with the new legal provision, the court appoints the administrator that was suggested by the petitioners. According to the new system, the creditors' committee may also appoint a representative of the creditors. This allows the creditors' committee to more efficiently follow the business of the debtor company and the management processes in implementing measures of financial restructuring that come under its powers (for example, measures on business restructuring for optimising business costs or for increasing the efficiency of the business). The powers of the creditors' committee were further expanded to include the possibility for the creditors' committee to amend the financial restructuring plan.

Legal remedies of an individual creditor in compulsory settlement proceedings

Every creditor or administrator may lodge an objection against the conduct of the compulsory settlement proceedings:

where the debtor is not insolvent and can pay all of its obligations in full and on time;

where the insolvent debtor can fulfil its obligations in a greater proportion or within a shorter period than offered by the proposal for compulsory settlement;

where it is unlikely that the realisation of the financial restructuring plan will allow the debtor to become solvent in the short or long term;

where it is unlikely that the creditors will, by confirming the compulsory settlement as proposed by the debtor, have more favourable conditions for the payment of their claims than if bankruptcy proceedings had been opened; or

where the insolvent debtor acts contrary to the rules restricting its business during compulsory settlement proceedings or is more than 15 days late in paying employees' salaries in the minimum amount or in paying taxes and contributions which the debtor must calculate and pay at the same time as paying employees' salaries.

Every creditor who is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where the insolvent debtor can pay the creditor's claim in full. A lawsuit to establish a voidable claim must be lodged within six months after the deadline expires for paying the claim, as set out in the confirmed compulsory settlement. Every creditor who is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where it was obtained fraudulently. A lawsuit to establish a voidable claim must be lodged within two years after the Decision on confirming compulsory settlement becomes final.

Bankruptcy proceedings

Creditors' committee

In bankruptcy proceedings, a creditors' committee has the right to inspect all the documentation held by the administrator in the bankruptcy proceedings and to inspect the documentation the administrator must keep concerning the proceedings. In bankruptcy proceedings, the creditors' committee may provide its: opinion on completing necessary business operations of the debtor in bankruptcy;

consent on continuing business operations of the debtor in bankruptcy;

opinion on the administrator's proposed plan on the course of bankruptcy proceedings;

opinion on a Decision to sell property;

consent where a starting or reserve price is less than half the value of property, as assessed on the basis of liquidation value;

opinion regarding the administrator's assessment of the costs of the bankruptcy proceedings and its amendment; and

opinion on completing bankruptcy proceedings.

In **simplified compulsory settlement** and **preventive restructuring proceedings**, a creditors' committee is not formed.

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

In bankruptcy proceedings, an administrator is the legal representative of the debtor in bankruptcy and as such is authorised to manage the bankruptcy estate and to realise it.

The bankruptcy administrator **manages the bankruptcy estate**, in particular, by leasing the property of the debtor in bankruptcy and increasing the monetary assets of the debtor in bankruptcy. The administrator may also conclude an in-court or out-of-court settlement for which it needs the opinion of the creditors' committee and the consent of the court. After the opening of bankruptcy proceedings, property of the debtor in bankruptcy may be rented or leased only if, by doing so, the sale of property is not delayed. A rent or lease contract may be concluded only for a specific duration and for no longer than one year. The administrator may, with the consent of the court, set up a priority purchase right for the property that is the subject of the lease to the benefit of the lessee.

The administrator is bound by the law with regard to investing the monetary assets of the debtor in bankruptcy. Monetary assets may be invested only in debt securities issued by the Republic of Slovenia or another EU Member State, the Central European Bank, the Bank of Slovenia or a central bank of another EU Member State, or in debt securities (except subordinate securities) issued by a bank with a registered office in the Republic of Slovenia or a credit institution with a seat in another EU Member State. Bank cash deposits may be made only with a bank with a registered office in the Republic of Slovenia or with a credit institution with a registered office in another EU Member State.

Within the framework of **realisation**, the bankruptcy administrator may sell the property of the debtor in bankruptcy, seek its claims, and perform any other legal act for realising its proprietary rights. A contract for the sale of property of the debtor in bankruptcy may be concluded by way of a public auction or a binding call for offers. Only exceptionally may a contract be concluded on the basis of direct negotiations with a buyer. The sale starts with a (first) decision of a court on sale. The court issues a decision on sale upon a petition of the administrator and on the basis of an opinion of the creditors' committee. Where property on which a separate creditor has a priority repayment right (established lien) is sold, the opinion of that separate creditor is also required. In the decision in which the court decides for the first time on selling particular property, the court also decides on:

1. the method of sale;

2. the starting price at a public auction or reserve price in a binding call for offers; and
3. the amount of deposit.

Where a public auction or a call for offers for the sale of particular property on the basis of the first decision on sale is not successful, the court may in the subsequent decision on sale:

1. either:

- decide again that the sale is to take place by way of a public auction or a binding call for offers; and
- stipulate a lower starting or reserve price than in the first decision; or

2. decide to carry out a non-binding call for offers for sale on the basis of direct negotiations.

The court stipulates the reserve price in proceedings for accepting binding offers on the basis of the assessed value of the property. In the first decision on sale, the reserve price may not be lower than half the value of the property, as assessed on the basis of its liquidation value. In a subsequent decision on sale, the court may stipulate a starting or reserve price which is less than half the value of the property, as assessed on the basis of its liquidation value, when the creditors' committee or a separate creditor gives its consent.

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?

In bankruptcy proceedings, creditors must notify their claims against the debtor in bankruptcy which arose before the opening of bankruptcy proceedings, except those which do not need to be notified by law. A creditor who is responsible for the obligation of the debtor in bankruptcy as a jointly and severally liable co-debtor, guarantor or pledger must notify in the bankruptcy proceedings his potential claim of recourse which had not yet arisen before the opening of the bankruptcy proceedings under a deferred condition that the creditor would acquire the claim of recourse against the debtor in bankruptcy on the basis of the payment of the claim to be made after the opening of the bankruptcy proceedings. Where other jointly and severally liable co-debtors or guarantors are also responsible for the performance of the creditor's claim, in addition to the debtor in bankruptcy, the creditor may notify and seek to establish the full amount of the claim in the bankruptcy proceedings until it is fully paid under a resolutive condition, which is realised when the creditor's claim is paid by another jointly and severally liable co-debtor or guarantor. Where the creditor misses the deadline for notification, its claim against the debtor in bankruptcy ceases and the court dismisses the late notification of the claim.

In bankruptcy proceedings, **it is not necessary to notify priority claims** for the payment of salaries and salary compensation of employees whose work becomes unnecessary because of the opening of bankruptcy proceedings, for the period from the opening of bankruptcy proceedings until the notice period ends, and severance pay of workers whose employment contracts were terminated by the administrator because their work became unnecessary because of the opening of the bankruptcy proceedings or during those proceedings. Certain claims, relating to calculation and payment of taxes, are also not notified.

Where a **claim is secured by a separation right**, the creditor must notify this secured claim in the bankruptcy proceedings by also notifying the separation right. If, according to the situation at the opening of bankruptcy proceedings, an ownership right of the debtor in bankruptcy is registered on real estate and that ownership right is restricted by a registered mortgage or maximum mortgage whose entry was in effect from before the opening of the bankruptcy proceedings, it is considered that the mortgage or the maximum mortgage and the claim thereunder are registered in the bankruptcy proceedings on time. Creditors must notify their **exclusion rights** which arose before the start of bankruptcy proceedings within three months after the notice on the opening of bankruptcy proceedings was published. Where a creditor misses the deadline for notifying exclusion rights, the exclusion right does not terminate. If the administrator sells the property which is the subject of an unnotified exclusion right, the creditor holding the exclusion right loses the exclusion right but may request a payment of money obtained from the sale of that property, minus the costs incurred in the sale. The creditor holding the exclusion right does not have the right to demand recovery of damages. The creditor loses the exclusive right and the right to the payment of money if it does not notify the right until the plan on the first general distribution is published.

The obligations of the debtor in bankruptcy that arise after the opening of bankruptcy proceedings (with certain exceptions) are considered **costs of proceedings**. They are separated into:

- current costs (for example, salaries and other compensation to parties performing services necessary for the bankruptcy proceedings, including taxes and contributions to be calculated and paid by the debtor together with those payments, costs of the administrator; costs for electricity, water, heating, telephone and other costs related to the use of the business premises for bankruptcy proceedings, insurance premiums for insuring the property in the bankruptcy estate, costs of publications, legal costs of the debtor in bankruptcy to contest claims, costs for accounting, administrative and other services needed in bankruptcy proceedings, etc.); and
- occasional costs (payment of creditors' claims that arose during compulsory settlement proceedings, performance of obligations on the basis of mutually defaulted bilateral contracts, performance of obligations to complete urgent legal transactions and for continuing the business, costs for evaluating property and other acts concerning the sale, etc.).

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

By notifying a claim, the creditor obtains the right to perform procedural acts in the main insolvency proceedings. Claims must be notified within the prescribed deadline. Only claims that arose before the opening of insolvency proceedings are notified.

In compulsory settlement proceedings, notification and verification of claims take place especially to assess the procedural legitimacy of a creditor to vote on a compulsory settlement. Claims must be submitted within 30 days after the day on which the notice of the opening of proceedings was published on the webpages of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). Failure to notify or late notification do not result in the creditor losing the claim itself, but do result in the loss of its voting right.

In bankruptcy proceedings, the notification and verification of claims is the basis upon which the distribution of the bankruptcy estate is determined. In such proceedings, the creditors must notify their claims within three months from the day on which the notice of the opening of bankruptcy proceedings was published on the webpages of AJPES.

In personal bankruptcy, the creditor does not lose the claim if it was notified after the deadline, but the administrator places it on the list of additional claims. A creditor against whom a lawsuit contesting legal acts of the debtor in bankruptcy was lodged must, within one month after the day the lawsuit was served, notify in the bankruptcy proceedings its claim as a conditional claim which will arise if the lawsuit is granted by a final decision. A creditor must submit its claim for recovery of damages because of the administrator's termination of a lease contract or a bilaterally defaulted contract, within one month after receiving a statement of the debtor in bankruptcy exercising its termination or withdrawal rights.

Content of a claim

A notification of a claim in insolvency proceedings must contain:

1. the amount to be recognised as a claim in the proceedings; and
2. a description of the facts from which the eligibility of the claim arises and evidence thereof, including submitted documentation.

A notification of a claim in bankruptcy proceedings must also contain information on the bank account to which payment of the claim is to be made. Where the creditor initiated a lawsuit or other proceedings before the opening of bankruptcy proceedings, it must also include information about the court or other competent authority before which proceedings are taking place, and the reference number of the case.

A request for verifying a claim must contain:

1. the amount of the principal of the claim;
2. where the creditor in insolvency proceedings seeks interest in addition to the principal: the capitalised amount of any interest calculated for the period from maturity until the opening of insolvency proceedings; in the case of priority claims of the administrator: the calculated capitalised amount of interest;
3. where the creditor in insolvency proceedings, in addition to the principal, seeks expenses incurred by enforcing the claim in court or other proceedings initiated before the opening of insolvency proceedings: the amount of these costs;
4. where the creditor seeks to establish that the claim is a priority claim: an express petition that the claim be regarded as a priority claim upon distribution; and
5. where the creditor seeks to establish that the claim is a conditional claim: an express description of circumstances the occurrence of which means the realisation of a deferred or resolutive condition to which the claim relates.

In insolvency proceedings, a creditor may submit multiple claims by a single application.

Procedure for verification of claims

The procedure for verification of claims has three phases:

1. Statement of the administrator on submitted claims

The administrator makes a statement on recognising or contesting claims by preparing a *basic list of verified claims (osnovni seznam preizkušenih terjatev)*. In the list, for each claim the administrator states whether it is recognised or contested. The court publishes the list on webpages used for publications in insolvency proceedings. Creditors may object to any errors about the notified claims on the basic list within 15 days after its publication by lodging an *objection to the basic list (ugovor proti osnovnem seznamu)*. Where the creditor's objection is justified, the administrator must issue a correction of the basic list.

2. Statement of creditor on notified claims of other creditors

Every creditor who has notified his claim in the proceedings on time may object to claims of other creditors by lodging an *objection contesting a claim (ugovor o prerekanju terjatve)*. The creditor must lodge the objection contesting a claim in compulsory settlement proceedings within 15 days and in bankruptcy proceedings within one month after the publication of the basic list of verified claims. In personal bankruptcy proceedings and compulsory settlement proceedings, such an objection may be lodged also by the insolvent debtor as a party to the proceedings. The administrator enters statements of creditors and of the debtor on contested claims in the *supplemented list of verified claims (dopolnjeni seznam preizkušenih terjatev)*. Any errors for failing to address an objection lodged are claimed in an objection to the supplemented list.

3. Court's Decision on verifying claims

The court decides on verifying claims by a *decision on verifying claims (sklep o preizkusu terjatev)*. On the basis of this decision, the administrator prepares a *final list of verified claims (končni seznam preizkušenih terjatev)*, which the court publishes together with the *Decision on verifying claims*.

In the decision on verifying claims, the court decides on objections, on verified and contested claims and on claims likely to be demonstrated and on who must seek action in other proceedings (i.e. lawsuits) to establish their claim. The deadline for submitting the lawsuit is one month.

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

The bankruptcy estate is the property of the debtor in bankruptcy, which is realised to cover the expenses of the proceedings and to pay creditors' claims. The law differentiates between 'bankruptcy estate' and 'special bankruptcy estate'. Special bankruptcy estate is property which is the subject of a separation right or monetary assets obtained by realising that property. For all property that is the subject of a separation right, it is necessary to establish a separate bankruptcy estate and to manage this property separately from the property that is part of the general bankruptcy estate and property belonging to other special bankruptcy estates.

The realised part of a bankruptcy estate is a distributable estate and is intended for paying creditors' claims. The general distributable estate is the monetary assets generated by realising the general bankruptcy estate, minus the costs of bankruptcy proceedings. The special distributable estate is the monetary assets generated by realising the special bankruptcy estate, minus the costs of that realisation.

Regarding priority payment in bankruptcy proceedings, creditors' claims that arose before the opening of the proceedings are classified as follows: secured claims, the payment of which is secured by a separation right that includes the right to priority payment of the claim from specific property; and unsecured claims, among which priority claims are paid first, then ordinary claims, followed by subordinate claims and finally corporate rights.

Secured claims are claims the payment of which is secured by a separation right. A separation right is any right that includes the right to a priority payment of the claim from specific property. The most common separation right is a lien. In bankruptcy proceedings, secured claims are paid as a priority from the money obtained by selling the property which was the subject of the separation right.

Unsecured claims are claims that are not secured by a separation right. These claims are subordinate to the repayment of secured claims in terms of payment from the property that was the subject of the separation right. Payments from the remaining property are paid in the order of (1) priority claims, (2) ordinary claims and (3) any subordinate claims.

Priority claims are those (unsecured) claims which, by law, must be paid as a priority, before the payment of ordinary (unsecured) claims (for example, salaries and salary compensation for the last six months before the opening of insolvency proceedings, severance pay to workers, unpaid contributions, etc.). Where bankruptcy proceedings start because compulsory settlement proceedings were not successful, claims that arose during the compulsory settlement proceedings have absolute priority and are paid before the payment of priority claims;

ordinary claims are unsecured claims that are neither priority nor subordinate claims;

subordinate claims are unsecured claims which are paid only after paying all unsecured claims against the debtor on the basis of a legal relationship between the creditor and the debtor if the debtor becomes insolvent. In a compulsory settlement, subordinate claims may be converted into an ownership share. If they are not transferred as a contribution in kind, a confirmed compulsory settlement has the effect of terminating them.

Corporate rights (shares or business shares) do not have the characteristics (legal nature) of an obligational right, and give shareholders or stockholders a right to a proportional part of the remainder of the bankruptcy estate.

Before payments are made to creditors, the amount needed for paying the costs of the bankruptcy proceedings is excluded from the bankruptcy estate (distributable estate). Creditors are paid in the following order: separation creditors, who have their claim secured by a separation right (for example, a mortgage), are the first to be paid from the property that was the subject of the security (special distributable estate). Creditors of claims under contracts or other legal transactions that were concluded by the debtor in bankruptcy in the period from the opening of compulsory settlement proceedings until the opening of bankruptcy proceedings, in accordance with the rules on restricting business in compulsory settlement proceedings set out in the law, are paid first from the general distributable estate. Then creditors with privileged claims (workers) are paid, and finally other creditors - creditors of unsecured ordinary claims and creditors of subordinate claims. Any remainder from realised property is distributed among the shareholders.

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

Compulsory settlement proceedings

A compulsory settlement agreed to by a creditors' vote must also be confirmed by a court. In a decision on confirming compulsory settlement, the court:

1. decides whether or not to confirm compulsory settlement;
2. establishes the content of the confirmed settlement by stating:
 - the percentage of payment of the creditors' claims;
 - deadlines for their payment; and
 - the interest rate on creditors' claims in the period from the opening of compulsory settlement proceedings until the end of the deadline for their payment;
3. decides which claims have been verified in the compulsory settlement proceedings; and
4. orders the debtor to pay creditors' claims, as verified in compulsory settlement proceedings, in the proportions, within the deadlines and at the interest rates set out in the confirmed compulsory settlement.

The absolute priority rule applies in the proceedings. The implementation of financial restructuring of the debtor's business in compulsory settlement proceedings means that:

shareholders of the debtor may retain only that part of the share capital of the debtor that corresponds to the remainder of the debtor's property that they would receive if bankruptcy proceedings were opened against the debtor;

creditors must be given more favourable conditions for the payment of their claims than if bankruptcy proceedings had been initiated against the debtor, taking into account the order of priority and other rules for paying priority, ordinary and subordinate claims and secured claims in bankruptcy proceedings; and the operations of the debtor's business or the viable part of it continue.

Financial restructuring is carried out by the debtor asking creditors to agree to have their ordinary claims reduced or their payment deferred. The debtor must offer all creditors an equal percentage of payment of their ordinary claims, equal deadlines for their payment and the same interest rate from the opening of compulsory settlement proceedings until the expiry of the deadline for their payment. Where the debtor is a capital company, the debtor may ask the creditor to choose either:

to agree to a reduction and a deferral of the due date of its ordinary claims; or

that the claims be transferred to the debtor as a contribution in kind on the basis of a share capital increase of the debtor (*debt to equity swap*).

A compulsory settlement does not affect priority claims or excluded rights. Subordinate claims terminate. Secured claims may only be restructured voluntarily in a compulsory settlement. In **compulsory settlement proceedings concerning large, medium or small companies**, secured claims may be restructured by deferring maturity or reducing the interest rate in the sense that a decision of a 75 % majority also applies to those creditors holding a separation right who did not vote for the compulsory settlement. In these proceedings, an exclusion of a viable part of the business of the debtor for another company (*spin-off*) is possible as a measure of financial restructuring. It is also permitted to restructure separation rights into a joint separation right (an 85 % majority is required).

Bankruptcy proceedings against legal person

Bankruptcy proceedings are conducted with the intention of realising the bankruptcy estate and paying the creditors. As a general rule, a contract for the sale of property of the debtor in bankruptcy may be concluded on the basis of a public auction or a binding call for offers. A public auction may be organised by increasing the starting price or by reducing the starting price. In bankruptcy proceedings, the business or an activity of the company may be retained by selling the company at a public auction as a business unit or by selling its viable parts (*sale of a business as a going concern*).

Before payments are made to creditors, the amount needed to pay the costs of the bankruptcy proceedings is excluded from the bankruptcy estate. Creditors are paid in the following order: separation creditors whose claim was secured by a separation right (for example, a mortgage) are paid first from the property that was the subject of the security; then creditors of claims under contracts or other legal transactions that were concluded by the debtor in bankruptcy in the period from the opening of the compulsory settlement proceedings until the opening of bankruptcy proceedings are paid, in accordance with the rules on restricting business in compulsory settlement proceedings as set out by the law; then creditors with privileged claims (workers) are paid, and then other creditors — creditors of unsecured ordinary claims and creditors of subordinate claims. Any remainder from the realised property is distributed among the shareholders.

Personal bankruptcy

Just as in bankruptcy proceedings related to legal entities, personal bankruptcy proceedings are conducted for proportional and simultaneous payment of all creditor claims. Creditors are therefore paid from the debtor's property proportionally and at the same time. The bankruptcy estate includes all the property of the over-indebted person at the opening of bankruptcy proceedings, unless it is excluded from enforcement according to the provisions of the Civil Enforcement and Security Act (*Zakon o izvršbi in zavarovanju*). Given that a natural person, unlike a legal person, does not cease to exist at the end of bankruptcy proceedings, claims of creditors that were not paid in bankruptcy proceedings do not terminate. As opposed to creditors' claims in bankruptcy proceedings of a legal entity, the execution of claims in personal bankruptcy proceedings does not terminate upon the closure of bankruptcy proceedings. A decision on the closure of personal bankruptcy proceedings which includes a list of unpaid recognised claims is a means for unpaid creditors to seek enforcement of these claims.

To be relieved of its obligations, the debtor in bankruptcy is given an opportunity to lodge a petition before the decision on the closure of personal bankruptcy proceedings is issued, asking for relief from his obligations that arose before the opening of the personal bankruptcy proceedings which will not be paid pursuant to those proceedings. Where the debtor in bankruptcy lodges a petition for relief from obligations and where the proceedings for relief from obligations after the completed verification period are successfully resolved for him, the part of his obligations that otherwise could be enforced on the basis of a decision on the closure of bankruptcy proceedings would be waived, and consequently the right of creditors to enforce it in court would terminate. Even where the relief from obligations is favourable for the debtor, the relief does not affect the following types of debtor obligations:

1. priority worker rights;
2. claims against the debtor in bankruptcy based on legal maintenance, compensation for damages arising from a reduction of basic activities or reduced or lost ability to work, and compensation for lost maintenance because of death of the person who was providing it;
3. claims for monetary penalties or recovery of pecuniary advantage obtained by a criminal act pronounced in criminal proceedings;
4. claims under a conditional sentence that is conditional on the return of pecuniary advantage obtained from a criminal offence or on redress for damages caused by a criminal offence;
5. claims for fines or recovery of pecuniary advantage obtained from a minor offence pronounced in minor offence proceedings;
6. claims for the recovery of unlawfully obtained property; and
7. claims for the provision of redress for damages caused intentionally or through gross negligence.

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

Compulsory settlement proceedings are closed by a final decision of the court confirming compulsory settlement.

Every creditor whose claim is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where the insolvent debtor can pay the ordinary claims of such creditors in large part or in full. A lawsuit seeking a voidable claim must be lodged within six months after the expiry of the deadline for paying the claim, as set out in the confirmed compulsory settlement.

Every creditor affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement when it was obtained fraudulently.

A lawsuit for establishing a voidable claim must be lodged within two years after a Decision on confirming compulsory settlement has become final.

The court that issued the decision confirming compulsory settlement is competent to decide on the lawsuit.

In a decision in which a court annuls the confirmed compulsory settlement, the court may order the debtor to pay any unpaid part of claims which was affected by the confirmed compulsory settlement, within a period stipulated by the court, which cannot be longer than one year after the decision becomes final.

Closure of bankruptcy proceedings against a legal person

Bankruptcy proceedings against a legal person are closed by a decision on the closure of bankruptcy proceedings. The court issues this Decision on the basis of the administrator's final report, which is prepared after the administrator has completed all acts set out by the law and on the basis of the opinion of the creditors' committee. The administrator must submit the final report to the court within one month after completing final distribution.

Where property belonging to the debtor in bankruptcy is found after a court has issued a decision on the closure of bankruptcy proceedings, then bankruptcy proceedings against the debtor may be opened with respect to the property found later, at the request of a creditor who was entitled to perform procedural acts in the bankruptcy proceedings against the debtor and whose entitlement to participate was not terminated before the end of bankruptcy proceedings, or at the request of a shareholder of the debtor in bankruptcy.

Closure of personal bankruptcy

Personal bankruptcy is closed by a decision on closure of bankruptcy proceedings.

If **relief from obligations was granted** to a debtor in personal bankruptcy, every creditor whose claim is affected by the final decision on relief from obligations may ask the court to annul the relief from obligations that was the subject of the Decision, when the debtor obtained the decision on relief from obligations by hiding or falsely presenting information about his property or through some other fraud. A lawsuit must be lodged within three years after the decision on relief from obligations becomes final (Article 411 of ZFPPIPP). Creditors who — after the decision on relief from obligations was made final — find property of the debtor which the debtor possessed before the relief from obligations was granted (and hid) may also seek annulment of the relief from obligations by requesting the opening of bankruptcy proceedings with respect to such property. In this case, the lawsuit for annulling the relief from obligations does not have to be brought within the three-year deadline.

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

Every creditor must bear its own costs for participating in **insolvency proceedings**.

In **compulsory settlement proceedings that were opened on the debtor's petition**, the costs of the proceedings and any other expenses are borne by the debtor.

In **compulsory settlement proceedings against large, medium or small companies that were opened on a petition from creditors**, the initial costs of the proceedings are paid by the petitioner of the proceedings. In these proceedings, the petitioner also bears the costs of the administrator's fees. The debtor against whom proceedings are brought bears the costs incurred for the following payments:

- under contracts concluded with qualified legal and financial advisers concerning legal and financial services that are needed to prepare the report on the financial situation and operations of the debtor, the financial restructuring plan and other documents that must be submitted as part of the proposal for compulsory settlement;
- under a contract with an auditor on auditing the report on the financial situation and operations of the debtor; and
- under a contract with an authorised valuer to review the financial restructuring plan.

In **bankruptcy proceedings**, the costs of the proceedings and expenses during the proceedings are charged to the bankruptcy estate before claims are paid from the distributable estate. Where a petition to open bankruptcy proceedings is lodged by a creditor, the creditor must make a deposit to cover the initial costs of the bankruptcy proceedings, while retaining the right to recover the advance paid in accordance with the rules on paying the costs of bankruptcy proceedings.

In **preventive restructuring proceedings**, the debtor must repay its proportionate share of the costs of the creditors who participated in the proceedings which, according to generally established business practice, are usually covered by the debtor. The debtor and creditors agree on the recovery of these costs in the agreement on financial restructuring.

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

Conditions for voidability

Creditors and the bankruptcy administrator have the right to contest a legal act of the debtor. A lawsuit or an objection is lodged against the person for whose benefit the voidable act was performed.

Any legal acts can be contested (including omissions) that result in unequal or reduced payment of bankruptcy creditors or in placing a particular creditor in a more favourable position (giving advantages to creditors, referred to as the **objective element of voidability**). When contesting, the applicant must prove that the party for whose benefit the voidable act was performed knew, or should have known, about the debtor's poor financial situation (the **subjective element of voidability**). The law provides for statutory presumptions when it deems that this condition is satisfied and cases where it is not possible to contest legal acts. The law also sets out the content of the application and the method of seeking voidability in detail.

Period in which voidable acts may be committed

Legal acts that may be contested in bankruptcy proceedings are those that were committed in the period from the last year before the submission of a petition to launch bankruptcy proceedings until the opening of bankruptcy proceedings. An unpaid legal act (or legal acts of disproportionately low counter value) can be contested when committed in the period starting 36 months before the submission of the request to launch bankruptcy proceedings and ending upon the opening of bankruptcy proceedings. A lawsuit for voidability must be lodged within 12 months after a decision on opening bankruptcy proceedings becomes final.

Which acts cannot be contested

It is not possible to contest legal acts performed by the debtor in bankruptcy during compulsory settlement proceedings, in accordance with legal rules applicable for conducting the debtor's business in the proceedings; legal acts performed by the debtor in bankruptcy to pay creditor claims in the proportions, within the deadlines and at the interest rates set out in a confirmed compulsory settlement; and payments for bills of exchange or cheques if the other party had to receive a payment in order for the debtor in bankruptcy not to lose the right of recovery against another person obligated under the bill of exchange or cheque.

Legal acts performed by the debtor to pay creditor claims or to perform other obligations in accordance with a confirmed agreement on financial restructuring cannot be contested either.

Special features in personal bankruptcy

The period of voidability for unpaid legal acts and for legal acts performed by the debtor in bankruptcy for the benefit of a closely associated person is five years in personal bankruptcy. This rule includes contracts with closely associated natural persons as well as legal persons who are associated with the debtor in bankruptcy or closely associated natural persons. These are legal persons in which a debtor in bankruptcy or the persons with whom the debtor is closely associated own individually or together at least a 25 % share of subscribed capital, or have a 25 % share of voting rights, or the right to appoint and recall persons authorised to represent the legal person, or these persons are authorised to represent the legal person or for the benefit of companies associated with them.

Last update: 23/05/2018

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.