

# Recent changes to Slovak insolvency legislation

ALLEN &amp; OVERY

**On January 1, 2012, an amendment to the Bankruptcy Act was enacted. The amendment will significantly alter the dynamics of, and the relationships among the parties to, insolvency proceedings. One particular group that should brace for some major interference in its rights, both positive and negative, is the creditors.**

## What are the main changes?

### 1.1. Creditors can more easily achieve a debtor's bankruptcy

Creditor bankruptcy petitions are streamlined by making it easier for creditors to demonstrate satisfactions of conditions for bankruptcy (i.e. that the debtor is unable to pay its debts as they are due) by supporting the petition not only with an enforceable court resolution or an acknowledgement of debt signed by the debtor with an officially certified signature, but also with any other execution title (in Slovak: *exekučný titul*) or a confirmation by an auditor or court sworn valuer that the creditor accounts for the claim against the debtor.

### 1.2 Creditors of related party claims and claims under contractual penalties will be badly off in comparison to any other creditors

In bankruptcy, any claims that belong or belonged to persons who are or were related parties (in Slovak: *spriaznené osoby*) (please note that the definition of a related party is quite broad) of the debtor (bankrupt) (the related party claims) will be satisfied as subordinated claims, i.e. only once all other unsubordinated claims have been satisfied. The security provided for these claims will be disregarded and their creditors will have no voting rights or the right to be elected into the creditors' committee. In the restructuring, when creating the restructuring plan, the related party claims

cannot be given equal or better method of satisfaction than any other claims included in the plan. There will be no voting rights (except for the right to vote at the creditors' meeting approving the plan) or the right to be elected into the creditors' committee attached to these claims. The same regime also applies to contractual penalties.

### 1.3 Late filings of claims enabled but only as unsecured, filing generally simplified

In bankruptcy, it is possible to file claims even after the end of the "basic" 45-day filing period. However, any claims filed late will be satisfied only as unsecured claims, and there will be no voting rights attached to them. At the same time, the paperwork associated with the filing of claims will be simplified.

### 1.4 Creditors gained the right to contest the claims of other creditors

In addition to the bankruptcy trustee (in Slovak: *správca konkurznej podstaty*), all creditors who filed their claims will be able to contest the filed claims of other creditors (including due to their voidability). Once a claim has been contested by another creditor, the creditor of the claim will lose his voting right, unless the court restores it at a later stage.

### 1.5 Creditors of third party security are entitled to file their claims against the

### bankrupt security provider

Secured creditors are able to file their claims into bankruptcy against a bankrupt security provider, even though they have no direct claim against it (a so-called "third party security" situation). If they do not do so, their security right will cease to exist during the realization of the bankrupt's assets within bankruptcy.

### 1.6 A security provider can avoid realization of value of the assets subject to security

Third parties that are securing the bankrupt's obligations to their assets will be able to avoid the realization of those assets by satisfying the obligation of the bankrupt. If the value of the assets securing the bankrupt's obligation is lower than the amount of the secured obligation, they can redeem themselves by paying the amount equal to the value of those assets.

### 1.7 Operation of the business in bankruptcy by the trustee

The trustee is not obliged to compensate the relevant separate bankruptcy estate (in Slovak: *oddelená podstata*) if its assets used to operate the business are diminished or have deteriorated. However, if the trustee wishes to operate the bankrupt's business, it must ensure that the operation of the business does not result in a material deterioration of those assets.

### 1.8 Creditors can now vote on

### turning the restructuring into bankruptcy

On request by a creditor whose votes constitute at least 10% of all votes at a creditors' meeting, the creditors will be able to decide to convert restructuring into bankruptcy at any time during the restructuring with a majority of votes of the attending creditors.

### 1.9 Creditors' groups voting for restructuring plan changed

In the restructuring plan, a separate group will be created for (i) each secured creditor (unless the secured creditors agree otherwise), and (ii) creditors holding subordinated claims, creditors holding related party claims and creditors holding claims arising out of contractual penalties.

### 1.10 New balance sheet insolvency test

The definition of overindebtedness (in Slovak: *predženie*) will be amended, though it may be as late as January 1, 2013, that this change goes into effect. When deciding whether a debtor is overindebted, it will be necessary to see if the debtor's net assets are negative, but also take into consideration any future activities of the debtor and the income that these activities may generate. The obligation of debtors to file the bankruptcy petition will be narrowed only to those cases when they are overindebted.

Please note that the new rules (except for the new balance sheet insolvency test which is not yet effective) shall apply only to insolvency proceedings which commence after January 1, 2012.



*Renátus Kollár*  
Partner, Allen & Overy



*Matúš Kudlák*  
Associate, Allen & Overy