



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

## **THE QUEST FOR COORDINATION OF PROCEEDINGS IN CROSS BORDER INSOLVENCY CASES**

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**National report for Slovakia**

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- 1. Do you have the notion in your legal system of main insolvency proceedings. Is this notion procedural or substantial? Is this notion purely international or also domestic?**

No, the Slovak Act. No. 7/2005 Coll. on Bankruptcy and Restructuring, as amended does not distinguish between main and secondary insolvency proceedings. However, regarding proceedings that have a foreign element — in respect to EU member states, the Act refers to the European Insolvency Regulation.

Upon an application of a foreign trustee, the Slovak court may acknowledge the effects of the foreign bankruptcy proceedings in Slovakia.

- 2. Do you know the notion of secondary insolvency proceedings? Is this notion purely international or also domestic?**

**Giese & Partner (Slovakia):**

N/A (please see answer to Question 1 above)

As there is no distinction between main and secondary proceedings according to Slovak law, please do kindly note that the below refer to the impact of the EIR on Slovak law and its application.

- 3. Are the material effects of the main proceedings halted when secondary proceedings elsewhere are opened? Please specify, if this is not the case, whether or not the law of the State in which main proceedings are opened shall affect certain rights of third parties or have effect in certain contractual relations, e.g. labour contracts.**

The main proceedings have universal scope. Secondary proceedings may be opened in a state where the debtor has any assets. The effects of secondary proceedings are limited to the assets located in this particular state.

- 4. Shall the creditors have the right to lodge claims in any of the insolvency proceedings (main and secondary)?**

Bankruptcy

Yes, according to Slovak law, the creditors shall have the right to lodge their claims with the bankruptcy trustee within 45 days as of the bankruptcy has been opened („*vyhlásenie konkurzy*“).

Restructuring

The creditors' claims shall be lodged with the restructuring trustee within 30 days as of the restructuring has been permitted by the court („*povolenie reštrukturalizácie*“).

**5. Are the dividends in all proceedings pooled? In other words, are dividends obtained in proceeding X deducted from dividends to be obtained in other proceedings?**

In Slovakia, the creditors having secured their claims towards the debtor (e.g. mortgage) prior the bankruptcy (“secured creditors”) shall be satisfied with the proceeds from the liquidation of the assets that secure these claims.

In case that the proceeds exceed the secured creditors’ claims, the remaining part of the proceeds shall serve for satisfaction of all other creditors (i.e. these creditors not having secured their claims).

**6. If by liquidation of assets in any secondary proceedings it is possible to meet all claims, shall the liquidator transfer any remaining assets to the liquidator in the main proceedings?**

Yes.

**7. Does the so-called “dominance” of the main proceedings creates a leading role for the liquidator, appointed in the main proceedings, to coordinate all insolvency proceedings pending against the same debtor?**

In principal yes, in the spirit of the EU Regulation. However, the cooperation and communication between the “main” and “secondary” trustee remains “complex” and “cumbersome” in some cases.

**8. How do you think the above mentioned issues have been tackled by the new EU Regulation on Transnational Insolvency? If yes, in which way defective or useful?**

We are of the opinion that the cooperation issues between the main and secondary trustee have been addressed in the new Regulation on Transnational Insolvency in a proper way. It seems that the Regulation introduced necessary rules in respect of their communication and cooperation. Furthermore, it is helpful that the new Regulation refers also to basic elements of the communication of both trustees towards the relevant courts.

However, it seems that the New Regulation did not exactly constitute the leading role of the “main” trustee, which may cause obstacles in cases where trustees will not share the same opinion (e.g. towards courts).

**9. How do you think the above mentioned issues have been tackled by the UNCITRAL Model Law on Cross-Border Insolvency? If yes, in which way defective or useful?**

The UNCITRAL Model Law on Cross-Border Insolvency does introduce certain cooperation rules between the main and secondary insolvency trustee. However, we are of the opinion that the new EU Regulation addresses this matter in a more detailed and useful form.

**10. Are there other salient aspects of the EU Regulation on Transnational Insolvency or the UNCITRAL Model Law on Cross-Border Insolvency that are key to answer the need and quest for coordination in cross borders insolvency proceedings?**

Much appreciated element of the new EU Regulation on Transnational Insolvency is that it addressed the introduction of the insolvency registers in each of the EU member states and its interconnection which would certainly raise the transparency of the proceedings and improve the creditors' awareness on any important and relevant information.

**11. Are there other devices that the EU Regulation on Transnational Insolvency or the UNCITRAL Model Law on Cross-Border Insolvency should have regulated or adopted to enhance further coordination in cross borders insolvency proceedings?**

N/A.

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