

# Country Reports

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Updates from Slovakia and Italy



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### Slovakia: Proposal of new rules for restructuring

**Restructuring under “Slovak standards” generally means that a large company in debt makes arrangements with its banks (secured creditors), hires a responsible and effective trustee, and gets court approval for a huge debt haircut.**

This “standard” raised public concern in 2014, when the Váhostav – SK, a.s. (“Váhostav”) construction company, with about 1500 employees, and alleged to have government connections, underwent restructuring.

In the Váhostav case, unsecured creditors were awarded only 15% of their receivables. After public and media pressure, the government lost its nerve, adopted *ad hoc* legislation, and offered to repay the creditors at least 50% from the state budget.

Despite adoption of the *ad hoc* amendment of the Bankruptcy and Restructuring Act (“BRA”), the essential problems of restructuring proceedings remained untouched. The necessity of additional BRA amendment was soon underlined by the restructuring of another large company, a network of Carrefour supermarkets in Slovakia, in which approved unsecured creditors took a 97% debt haircut.

Slovak legislation often forces unsecured creditors to decide whether they want a higher satisfaction of their claims over a longer period, or less money a bit earlier. To keep their businesses alive, small entrepreneurs

generally have no choice but to accept the faster plan, with lower satisfaction of their claims.

The new proposal for BRA amendment will certainly improve conditions for creditors. The proposal requires plans to be drawn up so as to ensure the highest possible creditor satisfaction. Unsecured creditors are guaranteed at least 20% more than they would receive in a bankruptcy proceeding. The proposal also introduces new reasons for courts to reject plans:

- (i) unsecured creditors’ satisfaction in an approved restructuring plan must be at least 50%, and
- (ii) payment must be accomplished within five years.

Higher rates of satisfaction or longer payment periods for unsecured creditors are possible only if particular creditors agree to a bigger haircut. The question is whether this is in line with the plan’s requirements of feasibility and sustainability.

An important provision forbids the debtor from distributing profits or any other equity to its shareholders before the unsecured creditors’ claims are satisfied in full. But a slightly different provision is present in current legislation, and debtors have found ways to avoid it by, for example, shifting their profits to related persons.

The proposal also tries to bring transparency to the appointment and remuneration of restructuring trustees. Currently, the trustee is selected by the debtor, and remuneration is by mutual agreement, so that it can be said that the trustee represents

the debtor’s interests. The trustee has expansive rights even before the first creditors’ meeting, including the right to contest the creditors’ claims. The contested creditors then lose their voting rights and have absolutely no influence over the restructuring. The proposal’s solution is to randomly assign trustees electronically. Then, the remuneration contract for the preparation of the restructuring plan should be annexed to the plan. This should guarantee the transparency and independence of the administrator.

The most likely outcome of these changes to restructuring proceedings in Slovakia is a lower interest of companies in restructuring. The aim of restructuring is to keep the company and its business alive. We fear that if the BRA amendment is passed as proposed, restructuring will lose its rationale and attractiveness.



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