

Resurrection of personal insolvencies in Slovakia?

Vladimír Kordoš and Filip Takáč explain the necessity of an amendment regarding personal insolvencies



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In November 2016, the Slovak Parliament passed an amendment to the Act on Insolvency and Restructuring (“IARA”).

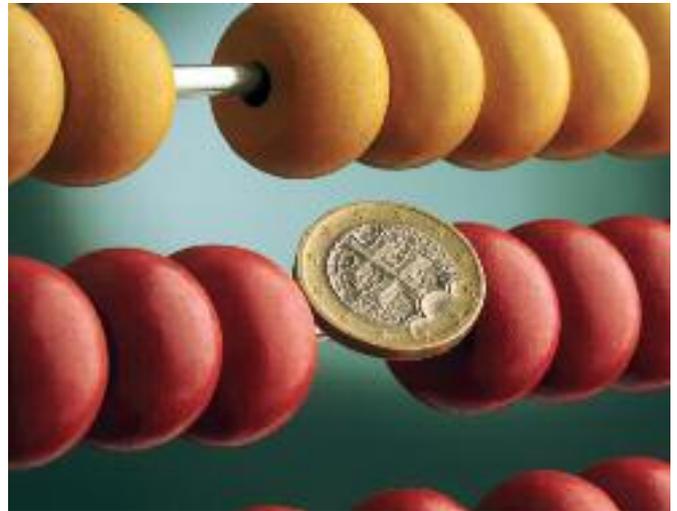
One of its major aims is to address defects in the law of personal insolvencies, which are a huge social and economic problem in Slovakia. Since the IARA first took effect in 2005, the number of persons who have filed for personal insolvency is lower than in other EU countries even though, at first glance, the conditions seem favourable. The amendment came into force on 1 March 2017.

Before the amendment, debt relief for natural persons was carried out in two phases:

- (i) total liquidation of the debtor’s assets; and
- (ii) a 3-year period during which the debtor transferred a part of their income to creditors, following which debt relief was finally approved.

Personal bankruptcy under the IARA was problematic for several reasons:

- Debt relief was only possible once the first phase – liquidation of assets – was concluded, which generally took a year or more.
- Debt relief was then granted only after an additional 3-year period.
- The law disadvantaged those in dire financial circumstances by requiring advance payment of €663.88 for costs and trustee and the demonstration



of assets worth at least €1659.70.

- The court determined the amount the debtor had to pay to creditors during the 3-year period before approval of debt relief, which could be up to 70% of the debtor’s net income. However, the law did not require the debtor to notify the liquidator of any increase in income during the 3-year period. That meant that the system could be abused if, at the beginning of the proceeding, the debtor could demonstrate a lower income than he really had.

The advance payment could not be waived and, together with the need to demonstrate sufficient assets, it proved an insurmountable obstacle for many ordinary people.

Particulars of the new amendment

The amendment does away with the IARA’s two-phase process, and introduces two new options for those seeking personal bankruptcy, modelled on foreign legal systems’ approaches:

- a) Liquidation of the debtor’s assets and quick debt relief, referred to as *insolvency proceedings* (Fresh Start); or
- b) Restructuring of the debtor’s obligations with a *payment schedule* (No Fresh Start).

In both cases, the debtor is automatically relieved of debt – as of the day the bankruptcy petition is filed in insolvency, or as of the day the payment schedule is approved and claims become unenforceable towards the debtor in the case of a repayment

schedule. Debt relief through either method can only be requested once every 10 years.

The amendment includes provisions for the mandatory legal representation of the debtor during either type of bankruptcy proceedings. The debtor may be represented by the Centre for Legal Aid (“Centre”) or by an attorney designated by the Centre, or, in the case of a payment schedule, the Centre can assign an attorney chosen by the debtor. The bankruptcy petition or application for a payment schedule can only be filed if an enforcement proceeding or similar proceeding is pending against the debtor.

With certain exceptions, practically all claims which creditors submit are subject to debt relief. The amendment defines three types of claims:

- claims satisfied in insolvency or under a payment schedule, such as ordinary claims established before the insolvency, future claims of warrantors and co-debtors, etc.
- claims excluded from satisfaction, such as claims from bills of exchange, contractual fines, accessories to claims exceeding a certain amount, monetary claims of affiliated parties, etc.; and
- claims not subject to debt relief, such as legal aid granted to the debtor by the Centre, alimony, etc.

Under the IARA, secured creditors were required to lodge their secured claims. But the amendment puts secured claims in principle aside, as claims unaffected by the debt relief.

Insolvency

In insolvency, all of the debtor’s assets are liquidated and sold, and the proceeds distributed among the recognized creditors.

When filing a petition in bankruptcy, a debtor now only has to pay €500 in advance for costs and trustee. A debtor who meets certain requirements can ask the Centre for Legal Aid to pay the fee for them. Thus, personal insolvency is now more accessible

to people of lesser means. It’s an alternative for persons with few assets and low income whose debts will in most cases greatly exceed the value of their assets.

As of the day a petition for bankruptcy is filed, the right to dispose of debtor’s assets is transferred to the trustee. However, the debtor may continue to use the assets in the usual way.

The amendment introduces the so-called unenforceable value of the home. The unenforceable value of the home is part of the value of the residence which the debtor specifies as their living quarters (€10,000). If the market value of the home exceeds the unenforceable value, the home will be sold and the unenforceable value paid to the debtor, with the money deposited in a special bank account which can be used to pay creditors only with the debtor’s consent.

Under the amendment, creditors can lodge claims until the trustee publishes the payment plan in the Commercial Bulletin. In addition, the debtor’s affiliated parties have a preferential right to buy the debtor’s assets. This means that the debtor’s property does not necessarily have to change hands.

Payment schedule

A payment schedule is a good alternative for persons of relative means and reasonable income, with assets burdened by security rights, who are unable to fulfill their financial obligations on time. It is best for those who become aware of the impending insolvency in time.

In addition to meeting general requirements, a debtor’s application for a payment schedule must be supported by tax declarations for the last five years, an overview of the debtor’s income and expenses for the last five years, and a projection of the debtor’s anticipated income and expenses for the next five years.

If the application meets all requirements, the court will offer the debtor protection from creditors. It will appoint a trustee to draft a payment schedule within 45 days from receipt of the

advance payment specified by the court. The schedule will take into consideration several circumstances, such as the ratio of debts to assets, reasons for the debtor’s inability to pay, performance of unaffected claims, and the debtor’s income, health, family, social, and other circumstances.

The period of satisfaction for unsecured creditors is five years, with satisfaction not lower than 30%, and at least 10% higher than the satisfaction that would be achieved in insolvency.

The trustee publishes the proposed payment schedule in the Commercial Bulletin, including the dates and amounts of proposed payments. Creditors and the debtor may file objections to the proposal within 90 days of publication. The proposal, together with the objections and the comments of the trustee and debtor on the objections, are examined by the court, which determines the final payment schedule.

If the court finds that the debtor’s circumstances do not support the proposed payment schedule, the proceeding is suspended and the court instructs the debtor about the possibility of filing for insolvency.

Finally, the amendment addresses the procedural rules of personal bankruptcy in detail, which should clarify the legal relationships of particular subjects during bankruptcy proceedings.

Time will tell whether the number of personal bankruptcies will rise, but it is believed that the very first year will see up to 15 to 20 thousand new cases, i.e., 40-50 cases for each trustee. The wording and provisions of the amendment indicate that its stated aim – to make personal bankruptcies more accessible – has been fulfilled. Personal bankruptcy will now be accessible even to members of the poorest social groups. ■



THE WORDING AND PROVISIONS OF THE AMENDMENT INDICATE THAT ITS STATED AIM HAS BEEN FULFILLED



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