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Czech Republic:
The 2017 Amendment to the Insolvency Act and its possible effects on statistics

As has been pointed out in previous issues of Eurofenix, an extensive amendment to the Insolvency Act took effect on 1 July 2017 (2017 Amendment).

The 2017 Amendment brought several substantial changes to a number of aspects pertaining to insolvency proceedings, including most notably the security of future or contingent claims (e.g. bank guarantees), the assessment of a company's insolvency and its discharge from debts. Looking at the statistics concerning insolvency proceedings in 2017 and comparing them with the data from 2016* one might make a couple of remarks regarding the 2017 Amendment.

Number of insolvency petitions

From 2013 to 2016, the number of insolvency petitions gradually diminished at a rate of about 8% annually on a year-to-year basis. Whereas in 2013 37,613 insolvency petitions were filed, in 2016 only 29,493 were submitted. In 2017, however, the fall was steeper as only 23,135 petitions were registered with insolvency courts.

Types of insolvency proceedings

Under the Czech Insolvency Act, three basic methods for resolving a debtor's insolvency exist: liquidation (*konkurs*), reorganisation and discharge of debts (*oddlužení*). As in 2016, the discharge from debts accounted for almost 90% of all insolvency proceedings in 2017.

Creditors' insolvency petitions

The data reveals that the decrease in the number of petitions concerns both creditors' as well as debtors' insolvency petitions. As regards creditors' insolvency petitions, readers might be reminded that the 2017 Amendment *inter alia* did touch upon the position of creditors by making the preconditions for submitting insolvency petitions stricter, particularly with respect to ascertaining the creditors' claims.

Debtors' insolvency petitions

As mentioned above, most of the insolvency proceedings are of the type of discharge from debts, whereas only a minority of them are initiated on the basis of the creditor's insolvency petition. Therefore, the fall in the number of debtors' insolvency petitions is presumably attributable to changes related to the discharge from debts proceedings as the most "popular" type of insolvency proceedings.

The 2017 Amendment stipulates that debtors themselves are in principle no longer eligible to file a motion for discharge from debts, they must be assisted by legal professionals (mainly attorneys or authorised entities). Moreover, the fees for the preparation of motions for discharge from debts are subject to regulation. This legislative move is targeted against dubious legal entities which in many instances would charge disgracefully large fees. Nevertheless, anecdotal experience suggests that nowadays only a limited number of legal professionals are willing to assist debtors, because the authorised entities are overloaded with too many debtors' cases to treat.

Against this background, it is not surprising that the statistics show a sharp fall in the number of proceedings dealing with the discharge from debts. In 2016, insolvency courts dealt with 26,596 motions for discharge from debts, with confirmations in 22,084 proceedings. In 2017, the influx of new proceedings for the discharge from debts sharply decreased to 21,007 cases, and only 18,428 confirmations were issued.

The ratio between discharge from debts in the form of a sale of a debtor's assets and that of a repayment plan stayed more or less the same. Less than 3% of all cases were solved in the former way, whereas more than 97% were in the latter. ■

**As concerns the data, the author refers to statistics provided by the Ministry of Justice of the Czech Republic, based on the request submitted pursuant to the Freedom of Information Act.*

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US Chapter 15:
Delaware court sends U.S. creditor packing… to Italy

In the Chapter 15 proceedings of Energy Coal S.p.A., the Delaware Bankruptcy Court required a U.S. creditor to recover its claim in Italy.

Because there is no uniform global insolvency law, and every country has its own insolvency law, The United Nations Commission on International Trade Law (UNCITRAL) developed the UNCITRAL Model Law on Cross-Border Insolvency (1997) to facilitate cooperation and uniform outcome in cross-border insolvencies. 43 countries have adopted the model law, and the U.S. version is Chapter 15, which is similar to the "foreign main" proceedings in Italy. Founded on principles of comity, the U.S. courts assist the foreign insolvency court in cross-border insolvencies. A key benefit of Chapter 15 to foreign debtors is the use of the "automatic stay" which enjoins creditor action against U.S. assets. Another important benefit is the foreign debtor's ability to obtain discovery and assert claims against U.S. companies.

MacEachern Energy LLC ("U.S. Vendor") was a vendor owed at the level of 2.2 million euros by Energy Coal S.p.A. ("Energy Coal"), an Italian company doing business in the U.S. U.S. Vendor also owed money to Energy Coal, creating a right of set off of mutual debts. In April, 2015, Energy Coal filed for insolvency protection in Italy, under the Italian Insolvency Law, the Concordato Preventivo. In October, 2015, Energy Coal also filed for Chapter 15 proceedings in the U.S. in order to obtain the U.S. "automatic stay", aiming to forbid