

# Slovakia: Adaptation of the EU Directive on Preventive Restructuring Frameworks



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**The current Slovak insolvency framework only allows restructuring under strict conditions. A new law on impending insolvency, based on the EU Directive 2019/1023 (“Directive”) is currently being prepared.**

The aim of the new law is simple: to prevent business bankruptcies and avoid job losses. However, the peculiarities of the existing Slovak insolvency framework suggest a broader use of the new law. So, what will happen after 17 June 2022, when the new law comes into force?

The Ministry of Justice draft gives a debtor in a state of impending insolvency the option to file for either a public or private preventive restructuring. Private preventive restructuring is a private agreement with one or more bank creditors to restructure the debtor. However, if the debtor wishes to involve one or more non-bank creditors, it must choose the public preventive restructuring process, which is monitored by a court-appointed insolvency trustee. A debtor seeking public preventive restructuring can ask the court for a moratorium to enable it to seek an agreement with its creditors. This will result in claims collection being suspended for three months, with an optional three-month extension.

Since the debtor cannot be insolvent at the beginning of the preventive restructuring process, the new law treats the impending insolvency solution as a private agreement between the debtor and the creditors. As such, though there is no other limitation on who the advisor can be, except that it requires sufficient experience, a debtor should choose an advisor the creditors will trust. The role of the advisor is to review the debtor’s financial situation and



prepare a restructuring plan. This is crucial, since it is uniquely the advisor who analyses the debtor’s situation and prepares a draft of the debtor’s restructuring plan. As such, the new law also makes the advisor responsible toward the creditors.

## ***The anticipated practical application of the new law***

Currently, a Slovak insolvent debtor has only two options: to declare bankruptcy or seek restructuring. When choosing the latter, the debtor must satisfy at least 50% of the creditors’ registered claims. This leads to a very low number of restructuring processes in Slovakia; official statistics show just 16 approved restructurings between January 2021 and October 2021.

The new law does not require this target to be achieved, but only allows a restructuring if the debtor is not yet insolvent. However, a non-insolvent debtor can initiate the preventive restructuring process, then become insolvent once the process has begun and still complete the process under the new law. Furthermore, the preventive restructuring process under the new law on impending insolvency seems simpler and

quicker than the cumbersome restructuring process under previous legislation.

These facts suggest that a debtor seeking to restructure by offering creditors a debt haircut, rather than opening a bankruptcy, will wish to explore the options offered by the new legislation. Creditors hoping to gain a percentage of receivables, rather than the usual low amounts paid in bankruptcy, will also look to the same solutions. In fact, some creditors will prefer the restructuring process under the new law, given that the prospect of a low return may still be better than bankruptcy.

## ***A personal view***

The author has had the pleasure of taking part in the formal meetings between the Slovak Ministry of Justice and stakeholders discussing the creation of the new law. These meetings have shown that the new law has captured the attention of all major stakeholders and, for that reason, should see a great deal of use in the future. ■

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