CROATIA

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1.0. INTRODUCTION AND OVERVIEW

The subjects of this Country Report are creditor rights and insolvency system in
Croatia. Topics, outlines, and length of this report have been designed by The World
Bank- Global Judges Forum, so the report has been, defined accordingly. The report
will be used in the development of comparative practices guide, which makes
generalizations and summarization necessary in some cases.

The first Law on Bankruptcy in Croatia was delivered in 1857. The present insolvency
system is based on the Law on Bankruptcy dating from 2000 and it is related to the
Companies Law and the Obligatory Relations Law. The Companies Law regulates the
questions of the status of companies, such as the establishment of an enterprise, the
nature of its business, its headquarters, its own internal regulations etc. It is important
to point out, however, that this law does not regulate commercial contracts.
In Croatia, this area is regulated by the Obligatory Relations Law.
The Companies Law regulates the issues of partnership, limited partnership, joint stock
companies, limited liability companies, economic interest groupings and silent
partnerships. These companies in Croatia possess the same features as in other legal
systems, which make them comparable to those in other countries.
The Law on Bankruptcy addresses the liquidation and reorganization of a debtor and it
is consistent with market-based economy. In particular, the law is far more creditors
oriented than the American system and it is similar to the German and Austrian
bankruptcy codes. The bankruptcy procedure shall be instituted in order to jointly
satisfy the creditor’s claims by the realization of the debtor’s assets and their
distribution amongst the creditors. During bankruptcy proceedings the reorganization
of the debtor may be instituted in order to regulate the debtor’s legal status and its
relations to its creditors, especially in order to preserve its operations.
The bankruptcy procedure may be instituted against a legal entity as well as against the
assets of an individual debtor, who is the sole proprietor or tradesman. Croatia has not
yet drafted a consumer bankruptcy law.
The reasons for bankruptcy are insolvency and overdebtrness. In general, a debtor shall
be considered insolvent if it is not able to pay its monetary obligations during a 60 day
period. A debtor shall also be considered insolvent if its debts exceed its existing
obligations.
A debtor may propose the opening of a bankruptcy procedure if shows that it will not
be able to pay the existing obligations when they become due.
Judicial power is autonomous and independent, and judicial office is in general
permanent. Judges are appointed by the Judicial Council whose members are elected
among distinguished judges, lawyers and professors of law.
A bankruptcy proceeding is conducted exclusively by the Commercial Court.

1. Secured Claims and Enforcement

Most common types of security in real and personal property in business financing are
mortgage on the real estate and pledges on shares or on the bank account.

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Most loans to business are secured and in banking this is obligatory in many cases. In bankruptcy proceedings, the real property estate against which secured claims (a separate right) exist shall be sold by the bankruptcy tribunal upon the proposal of the trustee, in accordance with the provisions on enforcement against the real estate. If a separate creditor has initiated the procedure for the execution over the real estate before the trustee in bankruptcy has proposed the sale of this real estate, it shall be sold within the execution proceedings initiated by the creditor by a judicial sale. The process of creating, registering and enforcing collateral (secured claims) has shown to be very efficient.

1.B Unsecured Claims and Enforcement

Creditors satisfy their unsecured claims by selling the debtor’s assets and their distribution according to the bankruptcy law. Claims reported after the period of reporting (claims that are overdue) can be examined at a separate examination hearing. Claims reported three months after the first examination hearing will be rejected (art. 176 Law on Bankruptcy, further in the text: LoB). If the claims are refuted, the court shall direct the creditor to institute legal proceedings to establish the refuted claim in the time determined by the court decision. Such legal action might last a year or two, and it would not be overly too expensive.

1. C Liquidation

In Croatia, an insolvent business is liquidated by a judicial proceeding typically commenced by creditors (mostly unsecured). The Law on Bankruptcy applies to liquidations as a single state code. Liquidation of an insolvent debtor is a court supervised proceeding. The trustee who is in charge of liquidation is appointed by a court, but at the first meeting of the creditor’s assembly the creditors may elect another trustee.

1. D Reorganization

In judicial proceeding, reorganization is typically commenced by the debtor of the unsecured creditor. The Law on Bankruptcy applies to reorganizations. It is single code. In the same way as liquidation, reorganization is a court supervised proceeding. A trustee is appointed by the court as in liquidation. Because liquidation and reorganization are parts of the same bankruptcy proceeding, the trustee is the same person in both processes. The decision on the confirmation of a reorganization plan may require supervision of the implementation of the plan. If supervision has been provided for, after the conclusion of the bankruptcy proceedings the debtor’s fulfillment of his obligations to the creditors shall be supervised. The supervision shall be executed by the trustee, the creditor’s committee and the bankruptcy court.

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1. E. Non-Bankruptcy Workouts and Restructurings

In Croatia there are no special non-bankruptcy workouts and restructuring procedures and laws. However, there are many possibilities based on the Obligatory Relations Law and Companies Law which can be applied. The parties can reach the out-of-court settlement or use an arbitration clause in their contracts. Non-judicial rehabilitation mainly depends on the will and skills of parties involved.

2.0. LEGAL FRAMEWORK FOR CREDITORS RIGHTS

2.1. The Creation and Enforcement of Security in Real Property

Creditors who have a separate claim (secured creditors) against real estate, fixtures or rights that are inscribed in a public register (land register, register of vessels, intellectual property and similar) have the right to separate satisfaction according to the provisions of the Law on enforcement procedure (art.82.LoB).

The creditors who have claims secured by a lien on an object which is part of the bankruptcy estate that has not been entered in a public register have the right to separate satisfaction of their claim, interest and costs from the value of the object. Separate creditors (approximate equivalent of secured creditors) shall report their claims to the trustee noting which part of the bankruptcy estate corresponds to their claim.

During the examination hearing the reported claims shall be examined. The bankruptcy tribunal shall issue a decision on the established claim.

The real property shall be sold by the court in bankruptcy proceedings or in enforcement proceedings. Separate creditors may not sell the real property without the intervention of the court. The decision on the sale of property shall be recorded in the land register.

If the real property ESTATE was not sold at the first hearing for sale for the determined amount, it may be sold at a lower amount at subsequent hearings (art.164.LoB)

The creditor is entitled to interest until payment in full is made. After the trustee has received money, the amount necessary to compensate the sales costs shall be paid to the bankruptcy estate and the remainder shall be used to satisfy the separate creditor without delay (art.169.LoB).

2.2. Security in Personal Property
Creditors who have received some fixture or interest from a debtor as collateral for their claim, or the creditor who has the statutory right of retention have the same status as creditors who have a separate claim against the real estate. The trustee may sell a fixture on which the right to separate satisfaction exists by direct bargain if the object is in his possession. He may collect on or in some other way reduce the claim that has been ceded by the debtor in order to secure a certain interest (art.165.LoB).

Before the trustee transfers an object to a third person, he shall inform the separate creditor and give him an opportunity to propose the reduction to cash that would be more favorable to the creditor. The alternative method of reduction to cash can be for the creditor to take over the object.

2.3. Unsecured Claims

The majority of claims in bankruptcy proceedings are unsecured. The creditors report their claims to the trustee and it shall be considered established if it has not been refuted during the examination hearing. Creditors can satisfy their claims by the realization of the debtor’s assets and their distribution amongst creditors according to provisions of the Law on Bankruptcy. Therefore, in general, after the bankruptcy proceedings have been initiated, no creditor is entitled to demand enforcement against the debtor on the parts of estate that comprise the whole bankruptcy estate. Separate creditors however are in a different position.

3.0. LIQUIDATION

3.1. Principal Laws Governing Liquidation

3.1.1. Liquidation of an insolvent business

Bankruptcy Law applies to Liquidation (of an insolvent business) in Croatia, which is connected with the Companies Law and the Obligatory Relations Law. According to Croatian law, liquidation of an insolvent business is part of the Bankruptcy procedure as well as Reorganization.

During the liquidation of a legal entity, the commencement of a bankruptcy procedure is permitted until the distribution of the assets has been completed. In this report we shall present the liquidation of an insolvent business.

3.1.2. Liquidation as a methodology of settling accounts and divisions among company members according to the Company Law.

After the occurrence of reason to discontinue the company, a liquidation procedure is initiated unless the company members have agreed upon a different method of settling accounts and divisions or unless an act of bankruptcy has taken place.
Liquidation is usually carried out by company members as liquidators. Liquidators may be appointed by the court for important reasons. The court may appoint persons who are not company members to be liquidators. After debts of the company have been settled, the liquidators shall divide the remaining assets among the members in proportion to their shares in the company’s capital.

3.2. Courts Which Administer Liquidation

Commercial Courts administer liquidation
Commercial courts are the first instance tribunals for disputes involving commercial transactions or commercial entities. These courts are also responsible for matters related to trading companies, bankruptcy and liquidation, as well as all other commercial issues, domestic or foreign.

3.3. Commencement of Liquidation

Bankruptcy proceedings shall be initiated by a proposal filed by a creditor or the debtor.
A creditor with a legal interest shall be entitled to submit a proposal if it makes the existence of its claim plausible.
The bankruptcy tribunal shall pass a decision instituting the preliminary procedure in order to determine the existence of conditions for the opening of the bankruptcy procedure, or shall reject the petition.

3.4. Parties to Liquidation

Debtor in bankruptcy
The bankruptcy procedure may be instituted against a legal entity as well as against the assets of an individual debtor who is the sole proprietor or a tradesman. We do not have consumer bankruptcy yet.
Creditors in bankruptcy
The creditors in bankruptcy are personal creditors of the debtor who have legally based claims against the debtor at the time of the opening of the bankruptcy proceedings.

3.5. Liquidation Estate

Bankruptcy estate
The bankruptcy estate shall encompasses the total assets of the debtor at the time of opening of legal proceedings and the assets obtained during the proceedings (bankruptcy estate).
The bankruptcy estate shall be used to cover the costs of the bankruptcy proceedings and to satisfy the debtor’s and/or creditors claims that have been secured by some rights on the debtor’s assets.

3.6. Administrative Powers

Bodies of the Bankruptcy procedure
The bodies of bankruptcy proceedings are the following: bankruptcy tribunal, bankruptcy judge, trustee in bankruptcy and creditor’s committee.

The bankruptcy tribunal
The bankruptcy tribunal is composed of three judges, one of whom is the president of the tribunal. The bankruptcy judge is a member of the bankruptcy tribunal. The bankruptcy tribunal is authorized to:
1) decide on the initiation of a preliminary procedure to determine whether the conditions for the bankruptcy procedure exist and conducts the procedure
2) decide on the initiation of bankruptcy proceedings
3) appoint and replace the trustee
4) decide about complaints of the trustee
5) decide about complaints of the creditors, as well as the creditor’s committee and creditors against the orders of a bankruptcy judge
6) approve the satisfaction of the creditors
7) render the decision on closing the bankruptcy proceedings,
8) approve the costs estimate for bankruptcy proceedings etc

The bankruptcy judge
Bankruptcy judges are given a rather open-ended review of bankruptcy matters. He/she shall be competent in all matters unless the Law on Bankruptcy requires the competence of the bankruptcy tribunal or other body of bankruptcy proceedings. The bankruptcy judge serves in administrative and judicial capacity. He/she shall supervise the work of the trustee in bankruptcy and give him binding instructions and supervise the operation of the creditor’s committee.

The trustee in bankruptcy
The trustee shall be a person with the necessary expertise and business experience (who has passed a special exam for trustees)
The trustee in bankruptcy shall be appointed by the decision to open the bankruptcy procedure.
The creditors may elect another person to serve as the trustee in bankruptcy instead of the one appointed by the bankruptcy tribunal.
The trustee in bankruptcy represents the debtor.
If the debtor continues with its business during the bankruptcy procedure, the trustee shall manage these affairs.
The trustee in bankruptcy is bound to proceed with consciousness and care, and in particular has to prepare an opening balance sheet, conscientiously conduct the
debtor’s affairs, liquidate or turn into cash the assets of the debtor, prepare the
distribution to creditors and after approval execute the distribution, and deliver the
closing balance.
The trustee shall submit written reports on the course of the bankruptcy.
The work of the trustee shall be supervised by the bankruptcy judge and bankruptcy
tribunal.

Creditors’ committee
In order to protect the interest of the creditors in the bankruptcy proceedings, the
bankruptcy tribunal may establish a creditor’s committee and appoint its members or
the creditors may decide about establishing the creditor’s committee at their first
session.
If the committee has already been established by the court, the creditors shall decide
whether this committee should be retained.
The creditors committee shall supervise the trustee in bankruptcy and assist him in
conducting the bankruptcy procedures, monitor the course of the proceedings, and
inspect the books and records.

3.7. Creditors and Claims

Creditors in bankruptcy
As stated earlier, the creditors in bankruptcy are personal creditors of the debtor who
have legally based claims against the debtor at the time of the opening of the
bankruptcy proceedings.
According to their claims, the creditors shall be classified into priorities (ranks). The
lower priority creditors may be satisfied only after the higher priority creditors have
been satisfied in full. The creditors of the same priority shall be satisfied in proportion
to the amount of their claims.
We have creditors of higher and lower priority.

Creditors of higher priority
Claims in the bankruptcy proceedings made by the employees, as determined by the
Labor Law and the Law on Bankruptcy.
All other claims against the debtor, except those classified in lower priorities.

Creditors of lower priority
After the higher priority claims, the claims of lower priority shall be satisfied (interest
on claims of bankruptcy creditors starting on the day of the opening of the
proceedings, costs incurred by the creditors during their participation in the
proceedings).

Creditors with the right of exemption
A person who can prove that a specific object does not belong to the bankruptcy estate.

Separate creditors
Creditors who have a separate claim against real estate, fixtures or rights that are inscribed in the public register shall have the right to separate satisfaction. Secured creditors are the approximate equivalent of separate creditors.

Establishing claims
The creditors in bankruptcy shall report their claims to the trustee in bankruptcy in writing. A claim shall be considered established if it has not been refuted by the trustee or any of the creditors during the examination hearing. Based on this, the bankruptcy tribunal shall issue a decision on the amount and rank of an established or refuted claim.

3.8. Officers, Directors, Affiliates

My discussion of this topic refers to members of the executive or supervising bodies of the debtor. The rights of the executive officers and other legal bodies of the debtor shall be transferred to the trustee in bankruptcy on the day of the opening of bankruptcy proceedings. Members of the executive or supervising bodies are obliged to provide the bankruptcy court and trustee with all the necessary information and to give assistance to the trustee in discharging his duties. In case they do not obey, the court may subpoena them, or may even hold them in custody in some cases.

3.9. Non Judicial Liquidation

Liquidation carried out by members of the company as a method of settling accounts and distribution among company members. This is possible only if the debts of the company have been settled, and it is not possible as liquidation of an insolvent business. (See chapter 3.1.2. of these report.)

4.0. REHABILITATION / COMPOSITIONS / SCHEMES

4.1. Overview of rehabilitation schemes

The reorganization may be carried out in several ways, such as:
- retention by the debtor of all or any part of the property of the estate in order to continue its activities
- transferring of all or part of the property of the estate to one or more existing

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entities or entities that will be established,
- merger or consolidation of the debtor with one or more entities,
- selling all or part of the property of the estate subject to or free of any lien,
- distribution of all or part of the property of the estate to creditors,
- determining the method of satisfying the creditors,
- satisfaction or modification of any lien,
- diminishing or postponing the discharge of debtor’s payments,
- turning the debtor’s obligations into credit,
- issuing a guarantee or providing other collateral for the fulfillment of the debtor’s obligations,
- determining the debtor’s liability after the conclusion of the bankruptcy proceedings, etc.

4.2. Courts Which Administer Reorganizations

The commercial court - the bankruptcy tribunal administers reorganizations according to the Law on Bankruptcy

4.3. Commencement of a Reorganization

The trustee and the debtor shall be entitled to file a plan with the bankruptcy tribunal. The debtor may file a plan along with the petition to bankruptcy. The trustee can be instructed by the creditors to prepare a plan.

4.4. Participants and their Roles

The trustee and the debtor are entitled to file a plan with the bankruptcy tribunal. The debtor may file a plan along with the petition in bankruptcy. The trustee can be instructed by the creditors to prepare a plan. The trustee’s role is in the counseling capacity, shall cooperate with the creditor’s committee, if it is established, in the preparation of the plan. If this has not been provided otherwise by the plan, the debtor is relieved of the rest of its obligations to these creditors by satisfying the creditors in bankruptcy in accordance with the plan.

4.5 Reorganization Estate

Since the reorganization plan (referred to as the bankruptcy plan according to the Law on Bankruptcy) is part of bankruptcy procedure, the reorganization estate is considered to be the bankruptcy estate, including the total assets of the debtor at the time of opening of the proceedings and the assets obtained during the proceedings.
If it is assumed that the creditors shall be satisfied from the revenues of the debtor’s continued operations, whether conducted by the debtor or a third person, the review of the estate should be attached to the bankruptcy plan. The review should provide at least parts of the estate along with their value and the obligations that should be fulfilled if the plan becomes valid.

4.6 Administrative Powers

The bankruptcy tribunal determines the hearing at which the bankruptcy plan shall be discussed and voted on. The bankruptcy tribunal can reject the bankruptcy plan *ex officio* in some cases, e.g.: if the regulations regarding the rights to the submission of the plan have not been respected, if there is obviously no possibility for this plan to be accepted by the creditors or to be confirmed by the court.

If the bankruptcy plan has been accepted by the creditors and the debtor, the bankruptcy tribunal shall decide whether to confirm the plan. Prior to this, the bankruptcy tribunal shall hear the trustee, the creditor’s committee, if it has been established, and the debtor.

4.7 Creditors and Claims

In establishing their rights, the plan classifies the participants into separate groups. According to the plan, creditors with different legal status shall be classified into separate groups according to the following categories: 1. creditors with the right to separate satisfaction, if the plan effects their rights; 2. other creditors.

All participants classified in the same sub-group shall be granted equal treatment by the bankruptcy plan. Each group of creditors with voting rights shall vote separately on a bankruptcy plan.

The plan is considered to be accepted if the majority of the creditors in each creditor group have voted and if the sum of the claims of the voters that have voted for the plan doubles the sum of claims of the creditors that have voted against the plan. The confirmation of a plan is binding against all participants.

Based on the final decision on the confirmation of a plan, the creditors in bankruptcy whose claims have been established may initiate an enforcement procedure against the debtor.

4.8. Officers, Directors, Affiliates

In Croatia, reorganization is part of bankruptcy proceedings. As was stated sad, after opening of the bankruptcy proceedings, the rights of executive and other bodies of the debtor are transferred to the trustee. His role in reorganization is described in chapter 4.4 and 4.9 of this report.

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The supervision of the fulfillment of the plan shall be executed by trustee, creditors committee and bankruptcy court if it is so provided by the decision on confirmation of a plan.

After the decision on confirmation of the (reorganization) plan has become final, the bankruptcy tribunal shall issue a decision on concluding the bankruptcy proceedings. The debtor has all the power which he had before the bankruptcy proceedings, which includes the right to establish executive and other bodies according to the Companies Law.

4.9. Reorganization plan and Process

The trustee and the debtor are entitled to file a plan. The trustee can be instructed by the creditors to prepare a plan which has to be voted on during hearing. If the plan is accepted by the creditors and the debtor, the bankruptcy tribunal shall decide whether the plan can be confirmed. By satisfying the creditors in accordance with the plan, the debtor is relieved of the rest of his obligations.

4.10. Fast-track/prepackaged reorganization procedures

Not applicable

4.11. Insolvency treatment of State-owned Enterprises

Generally there is no special treatment for state-owned enterprises. However, there are some exceptions. The bankruptcy proceedings may not be instituted against legal entities registered for the manufacture of arms and military equipment or provision of services to the Army of the Republic of Croatia without the prior consent of the Ministry of Defense.

If the Ministry of Defense refuses to give its consent, the Republic of Croatia shall be severally and jointly liable for the obligations of the debtor.

4.12. Insolvency treatment for banks and financial institutions

The Law on Banks (2002) and Law on Bankruptcy (2000) applies to insolvency treatment for banks and financial institutions. In the last decade there have been a few bankruptcy proceedings on banks but not a single reorganization. Bank creditors, the bank itself and the National Bank of Croatia may initiate bankruptcy procedure which is very similar to the bankruptcy procedure over an insolvent company.

A major difference is in the types of claims of higher priority of which there are six.
State agency for insurance of deposits covers deposits of citizens in the approximate amount of 15,000,000 USD serving as a state guarantee for their deposits. For the rest of the amount, citizens are creditors of higher priority.

5.0. INSTITUTIONAL FRAMEWORK FOR INSOLVENCY

5.1. The Role of Governing Institutions/Judicial Authorities

Bankruptcy proceedings shall be conducted exclusively by Commercial courts. Commercial courts are the first instance tribunals for disputes involving commercial transactions or commercial entities. Their jurisdiction includes cases involving shipping, navigation, aircraft, patent, trademark, title, copyright and unfair trade practice. These courts are also responsible for matters related to trading companies, bankruptcy and liquidation, as well as all other commercial issues, domestic or foreign. Panels of professional judges and lay assessors hear cases that are heard before these courts. The High Commercial Court hears appeals from decisions of commercial courts.

The bankruptcy tribunal shall decide on the initiation of bankruptcy proceedings and appoint the trustee.

The trustee in bankruptcy shall be an individual person with the necessary expertise and business experience (who has passed a special exam for trustees).

The list of trustees in bankruptcy is determined by the president of the Commercial Court for the period of four years, after the opinion of the local Chamber of Commerce and local Chamber of Craftsmen has been given.

5.2. Specialization among courts/judges and tribunals

There is no specialized Bankruptcy Court or court division. Commercial Courts have jurisdiction over insolvency proceedings. Bankruptcy cases are heard by Bankruptcy Judges but in general they have no exclusive bankruptcy cases. Not all judges at commercial courts are involved in insolvency proceedings. There exists a specialization amongst members of the court.

5.3. Organization of the Court

According to the Judiciary Act, presidents of courts administer the operation of courts in accordance with law and prescribed rules of procedure.

Presidents of courts are appointed for a five-year-term by the Minister of Justice following the judiciary council opinion.

Court presidents are responsible for most day-to-day aspects of court administration. They are assisted by the department presidents and the court clerk.
The law defines judicial administration to include activities that serve to improve the performance of judicial powers such as the financial means and facilities necessary for the operation of courts, continuing education and training of judges etc. The Ministry of Justice monitors the implementation of internal court rules of operation and working methods, analyzes performance of court personnel etc. The Supreme Court also participates in judicial administration through its power to discuss important issues of judicial practice.

5.4. Court Operations

In general, all court operations are regulated by provisions of the Law on Bankruptcy. The Law on Civil Procedure shall be applied as pertinent to bankruptcy proceedings. The court determines hearings, declares court decisions and various orders, supervises the work of the trustee and gives them binding instructions.

5.5. Judicial decision-making

Bankruptcy proceedings shall be declared by a court decision and order. An order shall direct the official person or a body in charge of bankruptcy proceedings to perform individual actions. The bankruptcy tribunal shall:
- decide on the initiation of a preliminary procedure to establish if the conditions for the bankruptcy procedure exist and then conduct the procedure,
- decide on the initiation of bankruptcy proceedings,
- appoint and replace the trustee according to the provisions of this Law,
- decide on complaints of the trustee in bankruptcy against the decisions and instructions of a bankruptcy judge,
- decide on complaints of the creditors, as well as the creditors committee and creditors’ assembly against the decisions of a bankruptcy judge,
- determine which pending transactions must be concluded during the bankruptcy proceedings according to this Law,
- approve the satisfaction of the creditors,
- render the decision on closing the bankruptcy proceedings,
- perform other tasks provided for by this Law.

The bankruptcy tribunal may, by virtue of its office and on the basis of a complaint or a proposal, alter the decisions of the bankruptcy judge or of the trustee in bankruptcy, if it establishes that they are contrary to the law and inappropriate. The authority of the bankruptcy tribunal and the bankruptcy judge is described in chapter 3.6. Administrative Powers

5.6. Appellate process

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Generally, a decision may be appealed. The time limit for appealing a decision is eight days. An appeal against a decision shall not stay the execution. A complaint against a court order may be lodged within three days from its announcement. The bankruptcy tribunal shall decide on a complaint and issue an order that cannot be appealed. A complaint does not stay the execution of an order. A motion for a new trial or a revision cannot be submitted in the bankruptcy procedure. The trustee in bankruptcy, creditor’s committee, or the creditors, may lodge an appeal with the bankruptcy tribunal against the decision of the bankruptcy judge. The High Commercial Court hears appeals from decisions of commercial courts. This court may dispose of appeals by confirming or reversing the decisions of the lower court. Either of these actions is final and no appeal can be made to a higher court. Alternatively, the court can modify the lower court’s decision. If this happens, the decision may be appealed to the Supreme Court.

5.7. Institutional Integrity

Judges shall be appointed and relieved of duty by the State Judicial Council. The Council has a president and fourteen members, who are elected for an eight year term among distinguished judges, lawyers and law professors. Council members are nominated and appointed by the parliament for an eight year term. According to the Constitution, judicial office is in permanent. A judge can only be discharged at his own request, upon becoming permanently incapacitated, upon being sentenced for a criminal offense, or by decision of the State Judicial Council that a serious disciplinary violation has occurred. Croatian laws regulate court operations and decisions, the conduct of judges and court staff. They include the Law on Civil Procedure, the Judiciary Act and some others. The Croatian Judges Association has adopted a separate Code of Judicial Ethics.

6.0. REGULATORY FRAMEWORK FOR INSOLVENCY

6.1. The Existence of the Regulation System

The system of regulation is incorporated in the provisions of the Law on Bankruptcy.

6.2. The Role and Function of the Regulatory Body

According to the bankruptcy law, among regulatory bodies is the bankruptcy tribunal, the bankruptcy judge, the creditors’ committee and the creditors’ assembly.

The work of the trustee is supervised by the bankruptcy tribunal and the bankruptcy judge who are entitled to demand a report or any information regarding the course of the proceedings.

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The bankruptcy tribunal can appoint and replace the trustee, decide on complaints of the trustee against the orders of a bankruptcy judge, and approve the cost estimate for bankruptcy proceedings.

6.2.1. The bankruptcy tribunal determines the amount of the remuneration for the trustee work and compensation for his actual expenses. It may order the dismissed trustee to return whatever he has earned during the proceedings.

6.2.2. The bankruptcy judge supervises the work of the trustee and gives him binding instructions. He examines the final account submitted by the trustee. The trustee may conclude a new temporary employment contract and determine the salaries and other income based on employment only with the consent of the bankruptcy judge.

6.2.3. The creditors’ committee supervises the trustee, orders the examination of revenues and cash balance, considers reports of the trustee, inspects the books and records, and can bring complaints to the bankruptcy tribunal about the work of the trustee.

6.2.4. Creditors’ assembly (consisting of all creditors) can demand reports form the trustee, but it can also elect another trustee instead of the one appointed by the court. The bankruptcy tribunal can approve or reject the appointment of a new trustee. The decision can be appealed.

7.0. CROSS-BORDER INSOLVENCY

7.1. Recognition of Foreign Cases, Representatives

It is the general principle that the bankruptcy proceedings and its effects shall be determined according to the laws of the country in which the bankruptcy proceedings have been initiated (art.303 LoB).

However, there is exclusive international jurisdiction of the court of the Republic of Croatia for conducting bankruptcy proceedings against a debtor that has the center of his business activities in Croatia (art.301 LoB).

The trustee in bankruptcy proceedings in Croatia and the trustee in bankruptcy proceedings in a foreign country against the debtor shall cooperate and are obliged to exchange all legally permitted information that can be of importance for conducting both proceedings.

7.2. Recognition of Foreign Creditors and Claims

Regarding foreign creditors and claims including separate rights (secured creditors) and exempted rights on objects that are situated in the country where a decision on
recognition of bankruptcy has been recognized, the laws of the country where the proceedings have been recognized shall be applied.

7.3. The Recognition of Foreign Judgments or Orders

The proposal for recognizing the decision of a foreign court on opening the bankruptcy may be filed by a foreign trustee, creditor or a debtor (art.310 Lob). The prerequisites for the recognition of foreign decision are the following 1) that it has been issued by a court or a body which has international authority according to Croatian laws, 2) that a decision can be executed according to the law of the state where the decision has been issued and 3) that the recognition is not contrary to the public order of Croatia (art.311 LoB).

There are three types of effects of recognition of foreign decision. 1) recognition after the bankruptcy proceedings in Croatia have been opened (art.318 LoB), 2) recognition without the consequence of opening the bankruptcy proceedings in Croatia (art. 319 LoB) and 3) opening of the bankruptcy proceedings in Croatia as a consequence of recognition (art.325 LoB).

7.4. Return of Assets to a Foreign Representative

The decision on the recognition of a foreign decision on opening bankruptcy proceedings has the same effects on the same persons to whom it applies (including a foreign representative) according to the domestic court’s decision (art. 315 LoB).

7.5. Conflict of Law Issues

There are no special provisions in the Law on Bankruptcy on conflict of law issues. The general rules on Croatian law regarding the recognition of foreign court’s decisions shall be applied accordingly (art.308 LoB)

7.6. Bankruptcy Treaties and Conventions

The Republic of Croatia is in process of accession to the European Union. In the near future we expect that many EU treaties and conventions will be adopted in Croatia.

8.0. PROPOSED OR PENDING LEGISLATION

The present Law on Bankruptcy is about to be changed in the near future. Proposed changes are under way and have already been adopted by the Government which will propose the passing of the law to the Parliament.

In general, it is the aim of the new provisions to provide a simpler and faster procedure.
The bankruptcy judges are about to overtake all the authority from the bankruptcy tribunal which is going to be dissolved as a body in bankruptcy procedure. There are deadlines for making key decisions and closing bankruptcy proceedings even a minority of bankruptcy estate has not been sold yet. In that case a bankruptcy judge may make a decision to transfer an unsold bankruptcy estate to creditors according to their established claims which have not been realized. It is obligatory for the bankruptcy judge to determine special creditors’ assembly session six months after the opening of the bankruptcy proceedings. Creditors’ assembly should decide about some of the most important questions regarding bankruptcy proceedings; it accepts a trustee report, his replacement and appointment of another trustee, makes decision on liquidation or starting reorganization process, suspension or temporarily continuation on debtor’s operations.

There are new provisions regarding partial distributions. If cash enters provide such possibility, the trustee has to make partial distribution at least two months after the general hearing has been held. Next partial distribution shall commence every three months if cash enters provide for it.

The length and complexity of bankruptcy proceedings have been beyond the initial expectations due to disorderly documentation and relations which are often encountered on opening the bankruptcy proceedings. The bankruptcy proceedings are further prolonged by a considerable number of complaints, which arise the course of the procedure. Therefore faster and simpler procedure seems to be necessary. Whether the proposed one will be effective, remains to be seen.