

# Croatian Glossary of Insolvency Terms

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## Generic Insolvency Terms

(1) “**Administrative claim or expense**”: claims that include costs and expenses of the proceedings, such as remuneration of the insolvency practitioners and any professionals employed by the insolvency practitioners, expenses for the continued operation of the debtor, debts arising from the exercise of the insolvency practitioners’ functions and powers, costs arising from continuing contractual and legal obligations and costs of proceedings;

Croatian = *troškovi stečajnog postupka*

(2) “**Assets of the debtor**”: property, rights and interests of the debtor, including rights and interests in property, whether or not in the possession of the debtor, tangible or intangible, movable or immovable, including the debtor’s interests in encumbered assets or in third-party-owned assets;

Croatian = *imovina dužnika*

(3) “**Avoidance provisions**”: provisions of the insolvency law that permit transactions for the transfer of assets or the undertaking of obligations prior to insolvency proceedings to be cancelled or otherwise rendered ineffective and any assets transferred, or their value, to be recovered in the collective interest of creditors;

Croatian = *odredbe o pobijanju pravnih radnji stečajnog dužnika*

(4) “**Bankruptcy**”: the insolvency of an individual debtor.

Croatian = *stečaj*

*Note:* in Croatia at the moment<sup>1</sup> individual debtors (other than sole traders and sole proprietorships), i.e. consumers cannot declare bankruptcy. See also (13).

(5) “**Claim**”: a right to payment from the estate of the debtor, whether arising from a debt, a contract or other type of legal obligation, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, secured or unsecured, fixed or contingent.

Croatian = *tražbina*

*Note:* Croatian Bankruptcy Act defines ‘claim’ as ‘*tražbina*’, elsewhere (e.g. in accounting) ‘claim’ is commonly translated as ‘*potraživanje*’

(6) “**Commencement of proceedings**”: the effective date of insolvency proceedings whether established by statute or a judicial decision;

Croatian = *otvaranje postupka*

*Note:* Here is not defined here what kind of procedure was instigated. Some modalities are:

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<sup>1</sup> The parliamentary initiative to allow consumers to declare bankruptcy is in motion.

- "commencement of insolvency proceedings" = *otvaranje stečajnog postupka*
- "commencement of preliminary insolvency proceedings" = *otvaranje prethodnog stečajnog postupka*
- "commencement of pre-bankruptcy settlement procedure" = *otvaranje postupka predstečajne nagodbe*

(7) "**Court**": a judicial or other authority competent to control or supervise insolvency proceedings;

Croatian = *sud*

(8) "**Creditor**": a natural or legal person that has a claim against the debtor that arose on or before the commencement of the insolvency proceedings;

Croatian = *vjerovnik*

Main types of creditors are:

*Izlučni vjerovnik* = **a creditor with the right of separation**. A person who, on the basis of their property or obligatory right may request that an asset (object or right) be exempt (separated) from the insolvency estate since it does not belong to the debtor. A creditor with the right of separation may become an insolvency creditor if the debtor disposed before the commencement of the proceedings the item whose separation is requested.

*Razlučni vjerovnik* = **secured creditor**. A person, i.e. creditor, entitled to separate satisfaction of claims from certain parts of the bankruptcy estate. A secured creditor differs from a creditor with the right of separation in a way that their right refers to the parts of the debtor's assets that enter the estate, while the right of the creditor with the right of separation refers to the items that are not the debtor's assets and do not form the estate. A secured creditor may become an insolvency creditor in regard to the remaining part of the claim that cannot be satisfied separately from the item over which it has the secured right.

In practice, secured creditors in Croatia are habitually banks with mortgages on real estates of the debtor.

*Vjerovnik stečajne mase* = **creditor of the insolvency estate**. A person, i.e. creditor, which has a claim against the debtor, related to the costs of the bankruptcy proceedings and other claims over the estate. Such creditors have a priority over the creditors in bankruptcy, i.e. their claims are satisfied from the bankruptcy estate left over after the claims of the secured creditor, if any, have been settled.

*Stečajni vjerovnici* = **insolvency creditor**. A personal creditor of the debtor who has a claim against the debtor at the time of commencement of the proceedings. Insolvency creditors' claims are settled after those of the secured creditors and the creditors of the bankruptcy estate, if any, according to the payment priority order.

Therefore, creditors with claims that arose **before** the commencement of the insolvency proceedings are **insolvency creditors** ('*stečajni vjerovnici*'), while creditors with claims that arose **after** the commencement of the insolvency proceedings are **creditor of the insolvency estate** ('*vjerovnici stečajne mase*').

(9) “**Creditor committee**”: a representative body of creditors formed to represent the interests of all creditors;

Croatian = *odbor vjerovnika*

(10) “**Debtor in possession**”: a debtor in reorganisation proceedings, which retains full control over the business, with the consequence that the court does not appoint an insolvency practitioner or only with very limited powers.

There is no “debtor in possession” model in Croatia. However, debtor can retain his position during insolvency proceedings (the model is called ‘*osobna uprava*’), but only under strict supervision of an appointed insolvency practitioner and with limited control over business. This is rarely practiced.

(11) “**Discharge**”: the release of a debtor from claims that were, or could have been, addressed in the insolvency proceedings;

Croatian = *otpis duga*

(12) “**Disposal**”: every means of transferring or parting with an asset or an interest in an asset, whether in whole or in part;

Croatian = *otudjenje*

(13) “**Insolvency**”: when a debtor is generally unable to pay its debts as they mature or when its liabilities exceed the value of its assets;

Croatian = *insolventnost*

*Note:* Insolvency (‘*insolventnost*’) is in Croatia regarded as a situation in which a debtor is unable to pay his due liabilities for a longer period of time (60 days), as opposed to **illiquidity** (‘*nelikvidnost*’), which is a condition of temporary inability to fulfil obligations. As such, insolvency is a prime precondition for opening an **insolvency procedure**, which is in Croatia called ‘*stečaj*’. The disambiguation, therefore, follows:

**Insolvency** = *insolventnost*

**Insolvency procedure/proceedings** = *stečaj*, or *stečajni postupak*

Hence, both ‘insolvency procedure’ and ‘bankruptcy’ are in Croatia regarded as *stečaj*.

(14) “**Insolvency estate**”: assets of the debtor that are subject to the insolvency proceedings;

Croatian = *stečajna masa*

(15) “**Insolvency proceedings**”: collective proceedings, subject to court supervision, either for reorganisation or liquidation;

Croatian = *stečaj*, or *stečajni postupak*; please see (13).

(16) “**Insolvency practitioner**”: a person or body, including one appointed on an interim basis, authorized in insolvency proceedings to administer the reorganisation or the liquidation of the insolvency estate;

Croatian = *stečajni upravitelj*

(17) “**Liquidation**”: terminal process where the assets of the debtor are sold for disposal and distribution to creditors.

Croatian = *likvidacija*

(18) “**Party in interest**”: any party whose rights, obligations or interests are affected by insolvency proceedings or particular matters in the insolvency proceedings, including the debtor, the insolvency practitioner, a creditor, an equity holder, a creditor committee, a government authority or any other person so affected. It is not intended that persons with remote or diffuse interests affected by the insolvency proceedings would be considered to be a party in interest;

Croatian = *zainteresirana osoba*

(19) “**Post-commencement claim**”: a claim arising after commencement of insolvency proceedings;

Croatian = *tražbina vjerovnika stečajne mase*

(20) “**Preference**”: a transaction which results in a creditor obtaining an advantage or irregular payment;

Croatian = *prednost*

*Note:* Legal actions taken before the commencement of insolvency proceedings which resulted in preferential treatment of certain creditor(s) can be annulled if it is established that these actions were made with the aim to promote or demote certain parties during the insolvency proceedings. These actions are called ‘*kongruentno namirenje*’ and ‘*inkongruentno namirenje*’.

(21) “**Priority**”: the right of a claim to rank ahead of another claim where that right arises by operation of law;

Croatian = *prioritet*. Please see (22).

(22) “**Priority claim**”: a claim that will be paid before payment of general unsecured creditors;

Croatian = *tražbine s prioritetom naplate*

After liquidation of the insolvency estate the creditor’s claims are paid in the following order of priority:

Liabilities of the insolvency estate	<b>1. expenses of the insolvency procedure</b> – these are:
	1.1. expenses of the Court,
	1.2. claims of the debtors’ employees (excluding management) for unpaid salaries, for the maximum amount of three monthly minimum wages
	1.3. fees of the insolvency practitioner and the members of the creditor committee
	1.4. other expenses which are defined as the expenses of the procedure by the Insolvency Act
	<b>2. other liabilities of the insolvency estate</b> – these are:
	2.1. liabilities made by actions of the insolvency practitioner

	2.2. liabilities of the attorney-at law for the legal services to the debtor during six months before the commencement of the procedure
	2.3. liabilities that arise from binding contracts which are to be fulfilled for the benefit of the insolvency estate, or which arise after the commencement of the proceedings
	2.4. liabilities that arise from the unjustified expansion of the insolvency estate
	2.5. claims of the debtors' employees that arose after the commencement of the proceedings
Claims of the insolvency creditors	<b>3. first higher order of priority:</b> claims of the debtors' employees and previous employees
	<b>4. second higher order of priority:</b> all the claims that are not classified as first higher or the lower orders
	<b>5. lower orders of priority – these are:</b>
	5.1. interests on the claims of the creditors calculated since the commencement of the procedure
	5.2. costs incurred by the creditors during their participation in the proceedings
	5.3. monetary fines for criminal acts or infringements as well as the costs resulting from the penalty for a criminal act or infringement
	5.4. claims demanding a gratuitous action by debtor
	5.5. claims for repaying a loan used for substituting the capital of some member of the company, or similar claims

(23) **“Protection of value”**: measures directed at maintaining the economic value of encumbered assets and third party owned assets during the insolvency

Croatian = *zaštita vrijednosti imovine*

(24) **“Related person”**: as to a debtor that is a legal entity, a related person would include: (i) a person who is or has been in a position of control of the debtor; and (ii) a parent, subsidiary, partner or affiliate of the debtor. As to a debtor that is a natural person, a related person would include persons who are related to the debtor by consanguinity or affinity;

Croatian = *bliska osoba*

(25) **“Reorganisation”**: the process by which the financial well-being and viability of a debtor's business can be restored and the business continue to operate, using various means, possibly including debt forgiveness, debt rescheduling, debt-equity conversions and sale of the business (or parts of it) as a going concern;

Croatian = *preustroj*

(26) **“Reorganisation plan”**: a plan by which the financial well-being and viability of the debtor's business can be restored;

Croatian = *stečajni plan, or plan preustroja*

(27) **“Sale as a going concern”**: the sale or transfer of a business in whole or substantial part, as opposed to the sale of separate assets of the business;

Croatian = *prodaja imovine dužnika kao cjeline*

(28) **“Secured claim”**: a claim assisted by a security interest taken as a guarantee for a debt enforceable in case of the debtor’s default;

Croatian = *tražbina razlučnog vjerovnika*

(29) **“Secured creditor”**: a creditor holding a secured claim;

Croatian = *razlučni vjerovnik*. Please see (8).

(30) **“Security interest”**: a right in an asset to secure payment or other performance of one or more obligations;

Croatian = *imovina opterećena razlučnim pravom*

(31) **“Set-off”**: where a claim for a sum of money owed to a person is applied in satisfaction or reduction against a claim by the other party for a sum of money owed by that first person;

Croatian = *prijeboj*

(32) **“Stay of proceedings”**: a measure that prevents the commencement, or suspends the continuation, of judicial, administrative or other individual actions concerning the debtor’s assets, rights, obligations or liabilities, including actions to make security interests effective against third parties or to enforce a security interest; and prevents execution against the assets of the insolvency estate, the termination of a contract with the debtor and the transfer, encumbrance or other disposition of any assets or rights of the insolvency estate.

Croatian = *zastoj*

(33) **“Suspect period”**: the period of time by reference to which certain transactions may be subject to avoidance. The period is generally calculated retroactively from the date of the application for commencement of insolvency proceedings or from the date of commencement;

Croatian = *razdoblje mogućeg pobijanja pravnih radnji*

(34) **“Unsecured creditors”**: creditors without a security interest;

Croatian = *stečajni vjerovnici*

(35) **“Pre-insolvency Voluntary In-Court Proceedings”**: negotiations that are regulated by the insolvency law and generally will involve negotiations between the debtor and all of its creditors aiming at a consensual modification of the claims of participating creditors under the control of the court which appoints an insolvency practitioner.

Croatian = *sudska predstečajna nagodba*

*Note*: this type of procedure does not exist in Croatia. Therefore, ‘*sudska predstečajna nagodba*’ is merely a linguistic translation of the term ‘Pre-insolvency Voluntary In-Court Proceedings’ without legal parallel in Croatian legal system. Please see (36).

(36) **“Pre-insolvency Voluntary Out-of-Court Proceedings”**: negotiations that are regulated by the insolvency law and generally will involve negotiations between the debtor and some or all of its creditors aiming at a consensual modification of the claims of participating creditors under the supervision of the court where an insolvency practitioner is appointed.

Croatian = *izvansudska predstečajna nagodba*

*Note:* the type of procedure described above (36) does not exist in Croatia. '*Izvansudska predstečajna nagodba*' is merely a linguistic translation of English term 'Pre-insolvency Voluntary Out-of-Court Proceedings' without legal parallel in Croatian legal system.

However, there is a procedure of "**Pre-insolvency Out-of-Court Settlement**" (*predstečajna nagodba*), which are negotiations that are regulated not by the Insolvency Act, but by **The Financial Operations and Pre-Bankruptcy Settlement Act** (= *Zakon o financijskom poslovanju i predstečajnoj nagodbi*), which involves negotiations between the debtor and its creditors aiming at a consensual modification of the claims of participating creditors, **without** direct supervision of the court, and where an insolvency practitioner is **not** appointed.

(37) "**Voluntary restructuring negotiations**" that are not regulated by the insolvency law and generally will involve negotiations between the debtor and some or all of its creditors aiming at a consensual modification of the claims of participating creditors.

Croatian = *mirenje*



## Core terms

### Insolvency proceedings

Insolvency ('*insolventnost*') is in Croatia regarded as a situation in which a debtor is unable to pay his due liabilities for a longer period of time (60 days), as opposed to **illiquidity** ('*nelikvidnost*'), which is a condition of temporary inability to fulfil obligations. As such, insolvency is a prime precondition for opening an **insolvency procedure**, which is in Croatia called '*stečaj*'. The disambiguation, therefore, follows:

**Insolvency** = *insolventnost*

**Insolvency procedure/proceedings** = *stečaj*, or *stečajni postupak*

Hence, both 'insolvency procedure' and 'bankruptcy' are in Croatia regarded as *stečaj*.

#### ***What are the aims of bankruptcy proceedings under Croatian law?***

Bankruptcy proceedings are instituted in order to jointly satisfy the creditors' claims by the realization of the debtor's assets and their distribution among the creditors. Alternatively, during the insolvency proceedings the restructuring of the debtor can be performed.

#### ***What are the conditions for initiating bankruptcy proceedings?***

Bankruptcy proceedings may be initiated only if the existence of reasons for bankruptcy stipulated by law is established. The reasons for bankruptcy are illiquidity, insolvency and over-indebtedness.

A debtor will be considered illiquid if he is more than 60 days late in fulfilment of his obligations which amount to more than 20% of his liabilities as stated in the yearly financial reports for the previous year. Furthermore, he will be considered illiquid if he is more than 30 days late with the payments of the employees' wages.

A debtor will be considered insolvent if it is not able to pay its monetary obligations as they become due. The fact that a debtor has paid, or is able to pay, partially or in full, claims of certain creditors does not by itself mean that the debtor is solvent. A debtor will be considered insolvent if it has unsettled liabilities with the bank that carries out payment transactions for it in the period exceeding 60 days, and such liabilities should have been settled, based on a valid basis, from any of the debtor's accounts and without the debtor's consent. The fact that the debtor had funds in its other accounts in this period that could have been used for settling those debts does not mean it is solvent.

Debtor can recommend commencement of the proceedings even if he is solvent and regularly fulfils his obligations at the time being, if he establishes that in the future he will not be solvent.

### Pre-insolvency proceedings

The Act on Financial Operations and Pre-Bankruptcy Settlement (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) entered into force on 1 October 2012. The Act regulates financial operations of companies, periods for settlement of monetary debts, status of companies in case of illiquidity and insolvency and pre-bankruptcy settlement procedure. It was expected that the Act will not only improve previous inefficient restructuring model (many bankruptcy proceedings have lasted for more than 10 years) but that its enactment will solve the problem of illiquidity and insolvency of many Croatian companies as well.

The new model introduced by the Act allows debtors to accept a restructuring plan and agree to a pre-bankruptcy settlement with creditors. The initiative for the procedure lies with the debtors, i.e. illiquid or insolvent companies, that are required to initiate the pre-bankruptcy settlement procedure within 60 days as of becoming illiquid (if restructuring efforts would have failed) or latest within 21 days as of becoming insolvent. The proceedings are initiated before and primarily run by the Croatian Financial Agency ("FINA"). Noncompliance with an obligation to initiate the pre-bankruptcy proceedings exposes a debtor to misdemeanour fines (monetary fines for the company and the responsible person within the company). The duration of the pre-bankruptcy procedure is limited and the procedure has to be completed within 120 days.

## **Voluntary restructuring negotiations**

The debtor is not authorised to require the commencement of a reorganisation procedure. However, the creditors' assembly may decide to instruct the bankruptcy administrator to execute the reorganisation plan, upon approval of which the reorganisation of the debtor may be performed.

## **Reorganization**

In addition to the possibility of liquidating the debtor through bankruptcy proceedings by selling all of his or her assets, an alternative is to reorganise the debtor instead of terminating its existence. The tool for accomplishing this is the bankruptcy plan.

A precondition for the restructuring of the debtor is that all creditors and the debtor approve and implement the bankruptcy plan that must subsequently be confirmed by the decision of the judge.

In the same way as liquidation, reorganisation is a court-supervised proceeding. The bankruptcy administrator is appointed by the court as in liquidation. Because liquidation and reorganisation are parts of the same bankruptcy proceeding, the administrator is the same person in both processes. The decision to confirm a reorganisation plan may require supervision of the implementation of the plan.

The bankruptcy judge shall issue a decision concluding the bankruptcy proceedings as soon as the decision confirming the bankruptcy plan is made.

The debtor shall then be free again to dispose of the estate.

## **Commencement of insolvency proceedings and Effects of the commencement**

### ***What are the consequences of initiating bankruptcy proceedings?***

The initiation of the bankruptcy proceedings enters into force on the date of putting up the announcement on opening of bankruptcy proceedings on the notice board of the court. On that day, all rights of the bodies of the legal person will be terminated and transferred to the trustee in bankruptcy. The bank accounts of the debtor will be closed and the rights of the persons that were authorized to dispose of the debtor's assets in such accounts will cease.

The trustee in bankruptcy will open a new bank account for the debtor and appoint persons who will be authorized to dispose of the funds in these accounts. The funds from the closed accounts will be transferred to the new accounts.

After initiating bankruptcy proceedings, the phrase "In bankruptcy" will be affixed to the company or name of the debtor, with the numbers of the debtor's new accounts.

The debtor's authorization referring to the assets that enter the bankruptcy estate terminate upon the opening of the bankruptcy proceedings. Disposal of properties of the bankruptcy estate by earlier representatives of the debtor after opening of the bankruptcy proceedings have no legal effect, except those disposals to which the general provisions on the protection of trust in public registers apply.

## **Actors in insolvency / pre- insolvency proceedings**

What is the role of participants in bankruptcy proceedings?

Participants in bankruptcy proceedings are as follows: person who initiated the proceedings, persons whose rights or legal interests are decided upon within the proceedings and the body authorized by law.

A petitioner is a participant in the bankruptcy proceedings authorized to initiate the proceedings. A petitioner may be a creditor or the very debtor.

Bankruptcy proceedings may be conducted against a legal person and over the assets of an individual debtor. Sole traders and craftsmen are considered individual debtors. A creditor is a person that has a monetary or non-monetary claim against the debtor.

A creditor with the right of separation is a person who, on the basis of their property or obligatory right may request that an asset (object or right) be exempt (separated) from the bankruptcy estate since it does not belong to the debtor. A creditor with the right of separation may become a creditor in bankruptcy if the debtor alienated, before the bankruptcy proceedings were initiated, the item whose separation is requested, i.e. creditor of the bankruptcy estate if the separation object was alienated by the interim, i.e. bankruptcy, trustee.

A secured creditor is a person, i.e. creditor, entitled to separate satisfaction of claims from certain parts of the bankruptcy estate.

A secured creditor differs from a creditor with the right of separation in a way that their right refers to the parts of the debtor's assets that enter the bankruptcy estate, while the right of the creditor with the right of separation refers to the items that are not the debtor's assets and do not form the bankruptcy estate.

A secured creditor may be a creditor in bankruptcy in regard to the remaining part of the claim that cannot be satisfied separately from the item over which it has the secured right.

A creditor of the bankruptcy estate is a person, i.e. creditor, which has a claim against the debtor related to the costs of the bankruptcy proceedings and other claims over the bankruptcy estate. Such creditors have a priority over the creditors in bankruptcy, i.e. their claims are satisfied from the bankruptcy estate left over after the claims of the secured creditor, if any, have been settled.

A bankruptcy creditor is a person, i.e. personal creditor of the debtor who has a legal-property (monetary) claim against the debtor at the time of initiating the bankruptcy proceedings. Bankruptcy creditors' claims are settled after those of the secured creditors and the creditors of the bankruptcy estate, if any, according to the payment priority order.

The basic rule of the Bankruptcy Act is that the creditors of lower priority may be satisfied only after the higher priority creditors are satisfied in full.

Members of the debtor are the participants in the proceedings whose claims may be settled from the leftover bankruptcy estate after the following persons' claims are satisfied: secured creditors, creditors of the bankruptcy estate and bankruptcy creditors of higher and lower priority. Those are the persons who had shares in the debtor (shareholders, members of a limited liability company, sole debtor, etc.) but their right over the share (right to profit and right to vote) was denied during the bankruptcy because the trustee in bankruptcy took over the rights of the bankruptcy debtor's bodies.

## **Claims: Types, Ranking and Treatment**

The bankruptcy judge should, in his or her decision on initiation of the bankruptcy proceedings, invite creditors to report their claims to the bankruptcy administrator in a specified period. The term for registration of claims cannot be shorter than 15 days and no longer than 30 days. The term shall begin with the expiration of an eight-day period as of the publication in the official gazette.

The creditor may transfer his reported claim to a third party, upon which the transferee acquires the status of a bankruptcy creditor from his predecessor. Transfer of the claim has to be proven with a public or notarised document or both or the bankruptcy creditor may verify the transfer with a statement.

Creditors and the bankruptcy administrator may contest other creditors' claims, in which case the bankruptcy judge should refer them to litigation in order to determine the contested claim.

After liquidation of the insolvency estate the creditor's claims are paid in the following order of priority:

Liabilities of the insolvency estate	<b>1. expenses of the insolvency procedure – these are:</b>
	1.1. expenses of the Court,
	1.2. claims of the debtors' employees (excluding management) for unpaid salaries, for the maximum amount of three monthly minimum wages
	1.3. fees of the insolvency practitioner and the members of the creditor committee
	1.4. other expenses which are defined as the expenses of the procedure by the Insolvency Act
	<b>2. other liabilities of the insolvency estate – these are:</b>
	2.1. liabilities made by actions of the insolvency practitioner
	2.2. liabilities of the attorney-at law for the legal services to the debtor during six months before the commencement of the procedure
	2.3. liabilities that arise from binding contracts which are to be fulfilled for the benefit of the insolvency estate, or which arise after the commencement of the proceedings
	2.4. liabilities that arise from the unjustified expansion of the insolvency estate
Claims of the insolvency creditors	<b>2.5. claims of the debtors' employees that arose after the commencement of the proceedings</b>
	<b>3. first higher order of priority:</b> claims of the debtors' employees and previous employees
	<b>4. second higher order of priority:</b> all the claims that are not classified as first higher or the lower orders
	<b>5. lower orders of priority – these are:</b>
	5.1. interests on the claims of the creditors calculated since the commencement of the procedure
	5.2. costs incurred by the creditors during their participation in the proceedings
	5.3. monetary fines for criminal acts or infringements as well as the costs resulting from the penalty for a criminal act or infringement
	5.4. claims demanding a gratuitous action by debtor
	5.5. claims for repaying a loan used for substituting the capital of some member of the company, or similar claims

Types of claims are directly related to the types of creditors. Main types of creditors are:

*Izlučni vjerovnik* = a creditor with the right of separation. A person who, on the basis of their property or obligatory right may request that an asset (object or right) be exempt (separated) from the insolvency estate since it does not belong to the debtor. A creditor with the right of separation may become an insolvency creditor if the debtor disposed before the commencement of the proceedings the item whose separation is requested.

*Razlučni vjerovnik* = secured creditor. A person, i.e. creditor, entitled to separate satisfaction of claims from certain parts of the bankruptcy estate. A secured creditor differs from a creditor with the right of separation in a way that their right refers to the parts of the debtor's assets that enter the estate, while the right of the creditor with the right of separation refers to the items that are not the debtor's assets and do not form the estate. A secured creditor may become an insolvency creditor in regard to the remaining part of the claim that cannot be satisfied separately from the item over which it has the secured right.

In practice, secured creditors in Croatia are habitually banks with mortgages on real estates of the debtor.

*Vjerovnik stečajne mase* = creditor of the insolvency estate. A person, i.e. creditor, which has a claim against the debtor, related to the costs of the bankruptcy proceedings and other claims over the estate. Such creditors have a priority over the creditors in bankruptcy, i.e. their claims are satisfied from the bankruptcy estate left over after the claims of the secured creditor, if any, have been settled.

*Stečajni vjerovnici* = insolvency creditor. A personal creditor of the debtor who has a claim against the debtor at the time of commencement of the proceedings. Insolvency creditors' claims are settled after those of the secured creditors and the creditors of the bankruptcy estate, if any, according to the payment priority order.

Therefore, creditors with claims that arose before the commencement of the insolvency proceedings are insolvency creditors (*'stečajni vjerovnici'*), while creditors with claims that arose after the commencement of the insolvency proceedings are creditor of the insolvency estate (*'vjerovnici stečajne mase'*).

## **Insolvency estate: scope, acquisition and disposal**

After commencement of the bankruptcy proceedings, only the bankruptcy administrator is entitled to seek the fulfilment of the claims belonging to the bankruptcy estate. In a bankruptcy procedure the creditors are not entitled to seek fulfilment.

The applicant is, when initiating the bankruptcy procedure, obliged to pay the additional court fee for establishment of the fund to cover bankruptcy expenses that cannot be settled from the bankruptcy estate or advance payments for conduct of the bankruptcy proceedings or both.

## **Means and Claims by court, insolvency practitioner or debtor in (pre-) insolvency**

Within the limitations and powers prescribed under the Bankruptcy Act, the Commercial Court with territorial competence according to the debtor's registered office has exclusive jurisdiction for implementation and adoption of all decisions in bankruptcy proceedings. The High Commercial Court has been established for the territory of Croatia and hears appeals from decisions of commercial courts.

Certain decisions passed by the commercial court may be implemented by other courts pursuant to the order of the competent commercial court.

With the decision on commencement of the bankruptcy proceeding, the judge shall appoint a bankruptcy administrator who is authorised to represent the debtor, undertake all required and necessary actions for the debtor's welfare and conduct the business activity if the assembly of creditors so decides.

Upon commencement of proceedings, the creditors with duly lodged claims constitute the creditors' assembly, which supervises activities and may revoke or appoint a new bankruptcy administrator. Moreover, the creditors' assembly may establish the creditors' board, which directly supervises and assists the activities of the bankruptcy administrator, if the judge has failed to appoint it.

After the adoption of the bankruptcy plan, as explained earlier, the reorganisation and further business operation of the debtor shall be commenced based on such plan. The decision on the confirmation of a bankruptcy 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 fulfilment of his obligations to the creditors shall be supervised.

The Bankruptcy Act does not prescribe any preferential treatment of the creditors that supply goods or services after the filing. However, claims of creditors supplying goods and services to the bankruptcy estate after initiation of the bankruptcy procedure shall have first priority rank for the settlement.

Pursuant to the Croatian Civil Procedure Act performance of legal effects of the bankruptcy proceeding causes a stay of all legal proceedings, enforcement or security of claims on the debtor's assets. Proceedings regarding the assets included in the bankruptcy estate, including arbitration proceedings, should be taken over by the bankruptcy administrator.

The person or legal entity that, pursuant to its real or personal rights, has proven that certain assets are not part of the bankruptcy estate is not in the position of a bankruptcy creditor (creditors with the right of exemption). Due to his right of segregation, he may enforce his claim irrespective to the bankruptcy proceeding.

## Literature and online resources

All links provided below were accessed and functioning on 9.5.2014.

**Croatian National Bank**, Unofficial translations of the Croatian legislation,  
<http://www.hnb.hr/propisi/epropisi.htm>

**Croatian Chamber of Economy**, Registry of movable and immovable assets sold in insolvency procedures in Croatia, <http://ovrha.hgk.hr/ocevidnik-web/>

**English-Croatian Business Dictionary**, 3rd Edition, Faber&Zgombić Plus, 2001.

**HEKON: Croatian-English Dictionary of Economics**, Prolingua, 2008.

**High Commercial Court of the Republic of Croatia**, Web Bankruptcy Portal,  
<http://www.sudacka-mreza.hr/web-stecaj.aspx>

**Ministry of Foreign and European Affairs**, Unofficial translations of the Croatian legislation,  
<http://www.mvep.hr/zakoni/Default2.aspx?pregled=svi>

**Ministry of Justice**, Republic of Croatia: Key information on Bankruptcy,  
<http://www.mprh.hr/bankruptcy>

**Restructuring & Insolvency 2013**, Bruce Leonard (ed.), Cassels Brock & Blackwell LLP.

**Supreme Court of the Republic of Croatia**, Unofficial translations of laws of the Republic of Croatia in English language, <http://www.vsrh.hr/EasyWeb.asp?pcpid=286>

**Vidan, Hrvoje**: On the Financial Operations and Pre-Bankruptcy Settlement Act,  
<http://www.lexology.com/library/detail.aspx?g=02a21e88-e5c2-4ac3-ad73-c827004388cd>

**Vukelić, Mario**: Overview of Croatian Bankruptcy System, 2007. <http://www.sudacka-mreza.hr/user-folders/OVERVIEW OF CROATIAN BANKRUPTCY SYSTEM.pdf>



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