Croatia

Pavo Novokmet and Andrej Skljarov

Žurić i Partneri

Legislation

1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

The principal piece of legislation that applies to insolvencies and reorganisations is the Bankruptcy Act (Official Gazette of the Republic of Croatia (OG) No. 71/15), which entered into force on 1 September 2015. The Bankruptcy Act regulates two basic types of insolvency proceedings: pre-bankruptcy proceedings and bankruptcy proceedings. Supplemental legislation that also applies to certain aspects of insolvencies and reorganisations consists of but is not limited to the Act on Financial Operations and Pre-Bankruptcy Settlement (OG No. 108/12 - 71/15), the Civil Procedure Act (OG No. 53/91 - 89/14), the General Administrative Procedure Act (OG No. 47/09), the Enforcement Act (OG No. 173/12 - 93/14), the Act on the Secrecy of Employees’ Claims in Case of Bankruptcy of the Employer (OG No. 86/08 - 83/15), the Companies Act (OG No. 111/93 - 68/13), Civil Obligations Act (OG No. 35/05-78/15).

Bankruptcy proceedings can be initiated if a debtor is either insolvent or over-indebted. A debtor is insolvent if he is continuously unable to pay his outstanding monetary obligations. Insolvency is considered to have occurred if the debtor has outstanding and unconditional monetary obligations registered within the registry of the Financial Agency (FINA), a state-governed financial mediation company, which have not been settled for more than 60 days; or if the debtor did not pay three consecutive salaries to employees.

A debtor that is a legal entity shall be considered to be over-indebted if his obligations are greater than its assets.

Furthermore, imminent insolvency of the debtor, as a basis for the initiation of pre-bankruptcy proceedings over the debtor, exists if the competent commercial court determines that the debtor will be unable to fulfill its outstanding monetary obligations upon their maturity. The debtor shall be considered to be imminently insolvent if he or she has one or more unsettled monetary obligations registered within the registry of the FINA, or if the debtor has delayed the payment of salaries to employees or employment-related contributions or taxes for more than 30 days.

Courts

2 What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

The commercial court of debtor’s registered seat has exclusive jurisdiction in pre-bankruptcy and bankruptcy proceedings. The High Commercial Court of Republic of Croatia decides on appeals filed in first instance proceedings.

Historically, competence of the commercial courts was shared with the FINA and other courts in Croatia, especially in relation to pre-bankruptcy. However, the Bankruptcy Act concentrates competence in pre-bankruptcy and bankruptcy matters solely with commercial courts, starting with those proceedings initiated in September 2015.

Excluded entities and excluded assets

3 What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?

Bankruptcy and pre-bankruptcy proceedings cannot be initiated over the Republic of Croatia, funds that are financed from the state budget, the Croatian Health Insurance Institute, the Croatian Pension Insurance Institute, and local and regional self-governments units. The respective proceedings cannot be initiated over legal entities whose main activity is the production of weapons or the provision of services to the military, without the prior consent of the Minister of Defence.

Pre-bankruptcy proceedings cannot be initiated over a financial institution, credit union, investment company, investment fund management company, credit institution, insurance and reinsurance companies, leasing company, institution for payments and institution for electronic money.

When the implementation of bankruptcy or pre-bankruptcy proceedings over a certain legal entity is excluded, as described above, the shareholders and the founders of the respective entity are jointly liable for its obligations. However, this provision does not apply to limited companies.

Certain creditors may have rights over certain assets held by the creditor, by virtue of law or by virtue of contract, excluding those assets from insolvency proceedings. Such creditors are obliged to file a notification of their rights in prescribed deadlines for the application of claims in insolvency proceedings.

Public enterprises

4 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

Except for the special regime of the legal entities mentioned in question 3, in case of the insolvency of government-owned enterprises, no special procedure is to be followed and all the general provisions of the Bankruptcy Act shall be applied.

Protection for large financial institutions

5 Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

The Bankruptcy Act provides for the possibility to institute pre-bankruptcy proceedings over an imminently insolvent debtor, as described in question 1 above. These proceedings are less formal, more time-effective and more flexible than bankruptcy proceedings. Consequently, with this solution the Bankruptcy Act provides a certain amount of protection for debtors that are considered 'too big to fail', allowing them to restore their liquidity or solvency through an open dialogue with their creditors, without conducting bankruptcy.

There are also specific rules and procedures applicable in case of financial difficulties or bankruptcy of certain institutions. For example, the Credit Institutions Act (OG No. 159/13, 19/16) provides for specific procedures to be conducted in cases of financial difficulties of banks, as well as additional rules related to their bankruptcy.
Secured lending and credit (immoveables)

6 What principal types of security are taken on immoveable (real) property?  
The most common means of proprietary security over real estate are a pledge (mortgage) or the 'fiduciary ownership' (transfer of the ownership of immoveable property to the creditor who remains the owner until the claim is settled). Both mentioned types of security must be registered with competent land registries. Creditors whose security was registered earlier will have priority in the process of the settlement of their claims out of the value of the real estate, once it is sold in enforcement proceedings.

Secured lending and credit (moveables)

7 What principal types of security are taken on moveable (personal) property?  
As is the case with real estate, the right of pledge as well as fiduciary ownership can be constituted on moveables. A pledge can be constituted on every moveable property, in whole or on its ideal part, which has monetary value and can be sold. Similarly to moveable property, a pledge can be constituted on claims if they are suitable for the settlement of the creditor’s claim. Pledge on moveables should be publicly registered in order to produce legal effects on third parties. The FINA is competent to hold the registry for the registration of security rights over moveables.

Unsecured credit

8 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?  
Unsecured creditors should apply their claims into bankruptcy and expect pro-rata distribution of funds achieved during the course of bankruptcy, based on their repayment rank. After bankruptcy is opened, no formal actions for purpose of collection or obtaining security are allowed outside bankruptcy.

As a general rule, in order to collect their claims, unsecured creditors have to initiate enforcement proceedings according to the provisions of the Enforcement Act. Depending on enforcement title and the object of execution, enforcement proceedings can be initiated before the FINA, a court or a notary public. Normally, these proceedings are not difficult or time-consuming, as the bodies deciding on the creditor’s enforcement applications must act in limited time frames prescribed by the applicable legislation. However, should the debtor file an appeal, the procedure could be significantly prolonged. If the creditor does not dispose with an enforceable debt of any kind, the procedure could turn into a litigation, which typically takes three to five years.

A court is authorised to issue a decision granting proprietary security to an unsecured creditor before a final and enforceable judgement is obtained, if certain prerequisites are met. The creditor should obtain at least a non-final judgment or payment order against the debtor, and should show that, without the requested decision, any collection would probably be unsuccessful or severely hindered.

Foreign creditors may initiate enforcement proceedings, and any other legal action aimed at settling or securing their claims, with the same rights as domestic creditors, provided that they have fulfilled the formalities of obtaining the Croatian personal identification number, issued by the Tax Administration.

Voluntary liquidations

9 What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?  
Liquidation proceedings are prescribed in the Companies Act. They are started with a shareholders’ resolution on liquidation of the company, which is registered with the court registry.

The main purpose of liquidation is termination of the company and the distribution of all of its assets, after all the company’s liabilities towards the creditors are settled. The appointed liquidators shall give notice to the company’s creditors to file their claims. Such a notice is published three times at intervals of between 15 and 30 days in the company’s journals. The creditors should file their claims with the company within six months of the publication of the last notice. The company must directly inform all of the known creditors.

Assets of the company that remain after fulfillment of all liabilities shall be distributed to the shareholders in proportion to their shares in the company’s capital, unless other criteria are established in the corporate documents of the company. If in any given moment, on the basis of the claims filed, the liquidators establish that the company’s assets do not suffice to settle all the creditors’ claims inclusive, they shall immediately suspend the liquidation and propose the initiation of bankruptcy proceedings.

After the company’s assets have been distributed among the shareholders, the liquidators shall submit to the shareholders’ meeting the final liquidation financial statements and the report on the completed liquidation.

The liquidators shall file for the company’s deletion from the commercial court register. Upon the deletion, the company ceases to exist.

Involuntary liquidations

10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?  
Involuntary liquidation is not recognised by Croatian law as a separate legal institute.

Voluntary reorganisations

11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?  
Voluntary reorganisation can be achieved through pre-bankruptcy. The debtor can initiate pre-bankruptcy proceedings if he is considered immovably insolvent, as described in question 1. Pre-bankruptcy is always voluntary, as it is initiated directly by the debtor or by a creditor with the consent of the debtor.

The application for the opening of pre-bankruptcy proceedings must be accompanied by the debtor’s financial statements not older than three months, the description of the debtor’s negotiations with the creditors (if any), evidence of the total assets, evidence the total revenue for the past business year and the number of employees in the previous month, as well as the restructuring plan. The restructuring plan is the basis for the pre-bankruptcy settlement that will be proposed to the creditors in the respective proceedings.

Pre-bankruptcy proceedings produce legal effects as of the day when the court’s decision on the opening of the proceedings has been published on the court’s online notice board. Some of the essential legal effects of opening pre-bankruptcy proceedings are the following:

- All creditors are obliged to apply their claims within the deadline determined in the decision on the opening of the proceedings.
- The debtor can only make payments related to the ordinary course of business.
- Initiation of litigation, enforcement or administrative proceedings or proceedings aimed at securing claims against the debtor is prohibited, while all ongoing proceedings that shall be suspended.
- The FINA suspends the seizure of funds on the debtor’s accounts, except with respect to the claims concerning salaries, severance payments and temporary injunctions issued in criminal proceedings.

Involuntary reorganisations

12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?  
Involuntary reorganisation can be achieved in bankruptcy. Bankruptcy proceedings can be initiated by the creditors over a debtor that is insolvent (see question 1), regardless of the debtor’s consent, although the debtor can initiate bankruptcy as well. The creditor is obliged to prove probability of his claim and probability of debtor’s insolvency.

Aside from the creditors and the debtor, the FINA can also initiate bankruptcy. It is obliged to do so if the debtor has unpaid monetary obligations registered within the registry of the FINA for a period exceeding 120 days. Bankruptcy proceedings produce legal effects as of the day when the decision on the opening of the proceedings has been published on the court’s online notice board.

Some of the essential legal effects of opening bankruptcy proceedings are the following:

- Authorities previously held by debtor’s corporate bodies are transferred to the bankruptcy administrator (as well as the authorities of a natural person to dispose of his assets if the debtor is a natural person).
Litigation proceedings involving bankruptcy estate are assumed by the bankruptcy administrator on behalf of the debtor.

Initiation of new enforcement proceedings over the bankruptcy estate is generally prohibited, whereas any ongoing enforcement proceedings shall be suspended.

The bankruptcy administrator is authorised to choose whether to continue the debtor's existing contracts that have not been completely fulfilled.

Opening of bankruptcy is a justified reason for termination of debtor's labour agreements.

Legal actions of the debtor that are taken prior to the opening of bankruptcy proceedings that undermine the satisfaction of the creditors (creditors' damage), or put certain creditors in a favourable position (preferential treatment of creditors), may be contested by the bankruptcy administrator or other creditors.

Creditors are obliged to submit their claims within the deadline determined at the opening of the proceedings.

### Mandate or commencement of insolvency proceedings

13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?

Initiation of bankruptcy is mandatory, if insolvent or over-indebtedness, as defined in question 1, occurs. The following persons are obliged to submit a proposal for the opening of bankruptcy:

- an authorised representative of the company under the law, such as a director or a liquidator;
- a member of the supervisory board of the debtor, if the debtor does not have an authorised representative, if that person could have known about the existence of bankruptcy reasons and the lack of authorised representatives of the company; and
- a shareholder of a limited liability company if the company lacks an authorised representative and the supervisory board, if that person could have known about the existence of bankruptcy reasons and the lack of authorised representatives of the company.

Persons listed above are obliged to file for bankruptcy within 21 days after insolvency or over-indebtedness occurs. They are personally liable to creditors for any damage they caused by not submitting a proposal for the opening of bankruptcy proceedings according to the mentioned provision. Management board members and liquidators could also face criminal responsibility; failure to initiate bankruptcy is a felony, with the prescribed penalties of a monetary fine or imprisonment of up to two years.

Any legal actions undertaken during insolvency or over-indebtedness are under increased risk of being subsequently contested by the bankruptcy administrator or creditors.

### Doing business in reorganisations

14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?

During pre-bankruptcy proceedings, the debtor can only make those payments that are necessary for his or her ordinary course of business, and in relation to supplies made after the opening of pre-bankruptcy. Suppliers of the debtor should respect the arm's length principle. Otherwise, their actions may be annulled as detrimental to other creditors, as explained in question 35.

During bankruptcy, the bankruptcy administrator assumes management of the debtor, as explained in question 12. In the case of pre-bankruptcy proceedings, directors retain their representation powers; however, they must abide with the aforementioned rule of conducting only those payments that fall within the scope of the ordinary course of business.

The court is authorised to permanently supervise the bankruptcy administrator and the pre-bankruptcy trustee, having the power to revoke them from their position.

In bankruptcy, the court can constitute a committee of creditors for the purpose of assistance to the bankruptcy administrator and supervision of his work. The creditor's assembly, a permanent body of all creditors in the proceedings, has the same authority as the committee of creditors but it also has additional powers of reaching various resolutions with respect to the bankruptcy proceedings.

### Stay of proceedings and moratoria

15 What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

As a general rule, both during pre-bankruptcy proceedings and bankruptcy, there is no possibility of initiation of litigation, enforcement, administrative proceedings or proceedings against the debtor that are related to claims that arose prior to the opening of proceedings, whereas all ongoing proceedings shall be suspended.

Creditors with the right of separate settlement (such as pledge holders) generally preserve their right of separate settlement directly from the object of security.

### Post-filing credit

16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

In pre-bankruptcy proceedings the debtor could obtain secured or unsecured loans only upon consent of the pre-bankruptcy trustee.

In bankruptcy proceedings, the bankruptcy administrator is the authorised representative of the company and as such he could acquire loans, provided that other bodies of the bankruptcy provide their approval. Having in mind the legal nature and the purpose of bankruptcy (settlement of creditors), such loans could be contemplated as a part of a bankruptcy plan, submitted to the creditors for the purpose of continuation of the creditor's business through restructuring. Such loan would be regarded as an expense incurred by the bankruptcy estate, and would have settlement priority in relation to bankruptcy creditors.

During liquidation, the liquidator is only allowed to take legal actions necessary for the closure of the business of the company, collection of receivables, cashing in the remaining assets and paying the creditors. If obtaining a loan could be regarded as a step in fulfilling the above goals, a loan could be obtained.

### Set-off and netting

17 To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Liquidation is neutral with regard to set-off.

If the creditor had the right to set-off at the time of the initiation of bankruptcy, he shall be allowed to exercise such right and the initiation of the bankruptcy proceedings shall have no effect on the creditor's right. However, should the claims on which the set-off is based be conditional or not yet due at the moment of initiation of the bankruptcy proceedings, the set-off may be conducted only in the moment when the required conditions are met.

If the claim to be offset becomes due or unconditional prior to the time that the set-off could be conducted, a set-off shall be excluded. The set-off is explicitlly forbidden where the creditor's obligation arose after the opening of bankruptcy proceedings or within the period of six months before the opening of bankruptcy and the creditor knew or should have known that the debtor became insolvent or that pre-bankruptcy or bankruptcy was initiated. Set-off is also forbidden if the prerequisites for set-off were achieved by a voidable legal action. Also, set-off is excluded if the creditor acquired his or her claim after the opening of bankruptcy proceedings.

With respect to the pre-bankruptcy settlement procedure, previous regulation provided for set-off to be conducted at the time of establishing of the applied claims, while the new regulation contained in the Bankruptcy Act does not explicitly regulate this matter. Since no pre-bankruptcy
proceedings have been conducted under the new rules, practice regarding set-off in pre-bankruptcy is yet to develop.

Sale of assets

18 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets ‘free and clear’ of claims or does some financial responsibility pass with the assets? In practice, does your system allow for ‘stalking horse’ bids in sales procedures and does your system permit credit bidding in sales?

Each alienation of assets done by the debtor is allowed in pre-bankruptcy proceedings only upon consent of the pre-bankruptcy trustee, while such actions of the debtor in bankruptcy proceedings regularly conducted if creditor’s assembly decided not to continue debtor’s business or if allowed by the bankruptcy plan, as explained under question 14. Regarding liquidation proceedings, since the purpose of such proceedings is the sale of the assets and the payment of the creditors and shareholders of the liquidated company, sales are naturally allowed.

If assets of the bankruptcy estate are sold as a whole, the purchaser acquires assets as they stand under the provisions of general law. Therefore, if the respective assets are ‘free and clear’ they shall be acquired in such state. However, if pledges are constituted over respective assets, generally assets will be transferred with such pledges, unless otherwise determined by the respective sale purchase agreement.

Assets are sold ‘free and clear’ if the sale of an individual asset is made to satisfy a pledge holder, which is typically done through a public auction.

In cases of sale of debtor’s assets as a whole, the rule is made according to the rules agreed by the creditors, while applying the provisions of the Enforcement Act. Since the creditors are free to determine the rules of the sale, there is no obstacle to instituting a ‘stalking horse’ bids system.

According to rules of the Enforcement Act, when apply in the sale of assets in bankruptcy proceedings, creditors are allowed to purchase the assets themselves. Nevertheless, since the rules for set-off of claims shall apply in such scenario, and since the creditor’s obligation to pay the price of the assets arose after the opening of the bankruptcy proceedings, set-off shall be forbidden, as explained in question 17. Therefore, the price of the assets will effectively be paid by the creditor who purchased them. Exceptionally, if a creditor holds a first-rank right of separate satisfaction over the assets in question, he or she can make the payment by redacting his or her claim.

Intellectual property assets in insolvencies

19 May an IP licensor or owner terminate the debtor’s right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor’s agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

No special provisions of the Bankruptcy Act regulate granted IP rights in bankruptcy and pre-bankruptcy proceedings. In bankruptcy, the bankruptcy administrator has the authority to choose which contracts shall be executed and which shall be terminated, as stated in question 12.

Rejection and disclaimer of contracts in reorganisations

20 Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

Since in pre-bankruptcy proceedings the debtor continues his or her business operations under the supervision of the pre-bankruptcy trustee and the court, contractual obligations can be rejected or disclaimed only under general provision of the Civil Obligations Act. Therefore, if a debtor breaches a contract in force, he shall be liable pursuant to general rules of Croatian contract law.

In bankruptcy proceedings, the bankruptcy administrator could revoke certain contracts at his or her discretion, as explained in questions 22 and 19. Any breach committed after the opening of pre-bankruptcy or bankruptcy could become the basis for a claim that would represent an expense enjoying settlement priority over the claims filed through the due procedure by creditors.

Arbitration processes in insolvency cases

21 How frequently is arbitration used in insolvency cases? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?

In pre-bankruptcy proceedings, no restrictions regarding arbitration proceedings are prescribed (in such proceedings could be initiated in any time during pre-bankruptcy proceedings and are not listed among those that should be suspended upon opening of pre-bankruptcy).

In bankruptcy proceedings, arbitration proceedings regarding bankruptcy estate shall be assumed by the bankruptcy administrator, as mentioned in question 12. No further restrictions are provided by the Bankruptcy Act, therefore, as in pre-bankruptcy proceedings the parties can agree to solve their disputes through such arbitration proceedings. The Bankruptcy Act explicitly provides for the possibility to initiate arbitration proceedings regarding contested claims during bankruptcy proceedings. However, arbitration is rarely used in insolvency proceedings in Croatia.

Successful reorganisations

22 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

The prescribed elements of the restructuring plan in pre-bankruptcy include, among other, all facts regarding the insolvency of the debtor, detailed financial calculations regarding the debtor’s liquidity, measures of financial and operational restructuring and their effects, projected future business plans and balance sheets, analysis of all the claims with respective plans on how they shall be settled as well as the costs of the restructuring.

In bankruptcy proceedings, the bankruptcy plan consists of a preliminary and an implementation basis. The preliminary basis consists of a list of measures which were taken before the opening of bankruptcy proceedings or which need to be taken in order to create the base for the realisation of the rights of participants, as well as other data on the basis and consequences of the bankruptcy proceedings that are important for the decision of creditors about the bankruptcy plan. The implementation basis consists of provisions regarding the way the legal position of the debtor and other participants in the bankruptcy proceedings is going to be changed. Different appendices may be required depending on the content of the plan regarding the settlement of claims, such as, asset overviews, or the debtor’s or creditors’ statements.

Both in pre-bankruptcy and bankruptcy proceedings, creditors are classified in groups with respect to their legal status. The Bankruptcy Act explicitly provides that the following creditors must be differentiated:

- creditors with separate satisfaction rights;
- creditors that are not considered creditors of lower priority; and
- creditors of lower priority.

Creditors of lower priority do not constitute a separate group of creditors if their claims are terminated when the plan is accepted (which depends on the content of the plan). Creditors with the same legal status could be classified in different groups based on the criteria of their economic interests. However, such classification must be founded on valid reasons and must be explained. Workers always form a separate group of creditors.

Regardless of the above rules, if the legal effects of the plan would be equal towards all creditors, no special groups shall be formed.

The restructuring plan in pre-bankruptcy is accepted if the value of the claims of creditors who accepted the plan is at least double the amount of the value of the claims of creditors who were against the plan in each creditor group, provided that the majority of all the creditors voted in favour of the plan.

The bankruptcy plan is accepted when the value of the claims of creditors who accepted the plan is at least double the amount of the value of the
claims of creditors who were against the plan, provided that at least half the creditors voted in each creditor group.

In principle, the plan should not release non-debtor parties from liability since such action would be against the purpose of reorganisation and restructuring proceedings (i.e., financial recovery of the debtor and satisfaction of all the creditors).

**Expedited reorganisations**

23 Do procedures exist for expedited reorganisations?

There are no rules for expedited reorganisations. The Bankruptcy Act provides for the possibility to implement shortened bankruptcy proceedings in cases where the debtor does not have employees and has unpaid monetary obligations registered with the registry of the FINA for an uninterrupted period of 120 days, provided that there is no legal basis for the delinquency of the debtor from the court registry. However, this fast-track procedure cannot include the reorganisation of the debtor.

**Unsuccessful reorganisations**

24 How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

A proposed reorganisation is defeated if a plan of the debtor's restructuring is not accepted. This can primarily occur if the majority needed for the acceptance of the plan, as explained in question 22, was never reached.

There are additional rules about termination of the proceedings. For example, the court shall terminate pre-bankruptcy proceedings if creditors show probable cause that the plan reduces their rights to such a degree that they would be in a better position if the plan were not implemented at all. Proceedings can also be terminated if the plan does not produce a probability that the debtor will restore liquidity by the end of the current year and in two subsequent years. The proceedings will be terminated also in the case where the plan is not confirmed in 120 days upon the filing of the request for initiation of pre-bankruptcy proceedings (increased by a supplemental 90 days deadline, if granted by the court), etc.

In bankruptcy, the court shall terminate the proceedings if the bankruptcy estate is not enough to settle the costs of the proceedings or the liabilities that exist with regard to the bankruptcy estate, or if an agreement is reached by the creditors or such a termination, etc. Essentially, upon termination of the proceedings, all legal effects of the proceedings described under points 21 and 22 above shall cease to exist.

Should the debtor fail to perform the plan, creditors whose claims are approved in the plan are authorised to initiate enforcement proceedings against the debtor based on such final plan, and ultimately push the debtor into bankruptcy.

**Insolvency processes**

25 During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called?

What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

Delivery of notices and decisions is performed through publishing of the relevant documents on the court's notice board, which is available online.

Typically, two main hearings are held during pre-bankruptcy, the hearing for the examination of claims and the hearing on voting on the restructuring plan. Notices are given to creditors regarding each phase of the proceedings, such as decisions on the opening of pre-bankruptcy proceedings, on accepting or disputing individual claims, on appeals, on the confirmation of the pre-bankruptcy agreement, on the termination of the proceedings, etc.

In bankruptcy proceedings, several hearings are usually held. First, a hearing is held for the statement of the debtor regarding the initiated proceedings. A hearing is held in order to determine whether the conditions for initiation of proceedings are met. The hearing during which the bankruptcy administrator explains his report to the creditors is usually held immediately after the hearing during which all of the applied claims are examined. A separate hearing is also held for the purpose of discussion and voting on the bankruptcy plan, if proposed. Notifications regarding all these hearings and their outcomes as well as other material and procedural information are available to creditors on the mentioned court website during the entire bankruptcy procedure.

All of the information regarding administration of the bankruptcy estate is available to creditors through reports and plans published during the course of the proceedings (i.e., the pre-bankruptcy restructuring plan, the bankruptcy plan, the report of the bankruptcy administrator). The bankruptcy administrator is obliged to provide quarterly on the economic position of the bankruptcy debtor (the court can request additional reports). Importantly, all of these documents are available online.

Regarding the release of liabilities owed by third parties, explanation was given under question 22.

**Enforcement of estate's rights**

26 If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

In pre-bankruptcy proceedings the debtor is authorised to pursue claims regarding its assets.

In bankruptcy proceedings, only the bankruptcy administrator is authorised to pursue claims of the bankruptcy estate based on principles explained in questions 21 and 22. Creditors are entitled to initiate certain actions in favour of the bankruptcy estate, as explained in question 27.

**Creditor representation**

27 What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Pre-bankruptcy does not envisage any committees or boards of creditors, so creditors only take action individually or as a group (through a general vote).

As for bankruptcy proceedings, the Bankruptcy Act authorises the court to constitute a committee of creditors for the general purpose of protection of the creditors' rights. This committee can also be constituted by the decision of creditors reached on the creditors' assembly, a permanent body of creditors in bankruptcy proceedings.

The selection of the members of the committee of creditors is generally within the discretion of the body that constitutes the committee. However, the Bankruptcy Act prescribes that creditors with highest and lowest value of claims must be represented, as well as a representative of employees, unless employees participate in the bankruptcy with only insignificant claims. Outside experts can be appointed into the committee of creditors, if their expertise is deemed useful for the committee's operation.

The principal authorities of this committee are the assistance to the bankruptcy administrator, but also supervision of his work. The committee can review the bankruptcy administrator's reports and the business books of the debtor that were assumed by the bankruptcy administrator, file complaints on the work of the bankruptcy administrator, and give various opinions on the debtor's business when asked by the court.

**Insolvency of corporate groups**

28 In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

The Bankruptcy Act contains special rules regarding bankruptcy proceedings over affiliated companies. The court conducting bankruptcy proceedings over the debtor has an authority to check if bankruptcy proceedings over debtor's affiliated companies have been initiated. If this is the case, the court, with the exclusive jurisdiction to continue the proceedings for all affiliated companies shall be the court competent for the company that has a dominant influence over the affiliates. If there is no such company, competence is granted to the court to which the motion for initiation of bankruptcy was submitted first.

The competent court shall summon a hearing where it shall be decided whether joint bankruptcy proceedings can be opened. If proceedings are opened over affiliated companies, in such proceedings there will be only one creditors' assembly and creditors' committee and one bankruptcy
Employment-related liabilities in restructurings

32 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Pre-bankruptcy proceedings do not affect employment agreements. The opening of bankruptcy is a legitimate reason to terminate a debtor’s employment agreements irrespective of provisions stipulated in the agreements or applicable legislation, with a termination notice period of one month. An employee who considers that the termination was not valid can claim his or her rights according to general provisions of the Labour Act (OG No. 93/14).

Liquidation proceedings should represent a valid cause for regular termination of employment contracts under the Labour Act, since the employer is closing all its business activities.

Pension claims

33 What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

In pre-bankruptcy proceedings, the employees have no obligation to apply their claims arising from the employment agreement, but rather, the person who applied for opening of pre-bankruptcy should include data about those claims in the application. All the debtor’s payments based on the employment agreements shall be deemed as ordinary course of business, as described in question 14.

In bankruptcy proceedings, employees’ claims have a higher priority than all other creditors’ claims. Therefore, all other second-rank creditors’ claims are settled only if the claims of employees are completely settled. This applies to former employees as well.

The Act on the Securement of Employees’ Claims in Bankruptcies constituted the Agency for Securement of Employees’ Claims in Case of Employees’ Bankruptcy (the Agency) as the public authority competent for settlement of employees’ claims in case of bankruptcy proceedings initiated over their employer.

The Agency is obliged to settle gross amounts of employees’ claims arising from employment contracts, together with all pension-related claims. Certain limitations regarding the maximum amounts of employees’ claims that may be settled, claims that may be reported as well as preconditions for submitting respective request are prescribed. After the Agency settles the respective claims, they are transferred to the Agency by virtue of law, and it can claim them during the bankruptcy proceedings.

Environmental problems and liabilities

34 In insolvency proceedings where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator, secured or unsecured creditors, the debtor’s officers and directors, or on third parties?

The Bankruptcy Act does not contain any specific provisions regarding environmental problems and liabilities, which would apply in cases of insolvency. However, the Environment Protection Act (OG 80/13/78/15) contains provisions that prescribe that the costs of reparation of environmental damages at the site held by a bankrupt company can, under certain conditions, be treated as expenses of the bankruptcy estate.

Liabilities that survive insolvency proceedings

35 Do any liabilities of a debtor survive an insolvency or a reorganisation?

Pre-bankruptcy proceedings do not affect the right of separate satisfaction of secured creditors, creditors with the right of exclusion of assets, employees’ claims, security measures in civil trial proceedings and tax proceedings for determination of abuse of rights.

In case of termination of pre-bankruptcy or bankruptcy proceedings, all liabilities of the debtor shall survive and the creditors shall be entitled to pursue their claims under general legal provisions.

Naturally, all the obligations of the debtor that were not written off by the pre-bankruptcy settlement or the bankruptcy plan shall survive insolvency proceedings.
Distributions

36 How and when are distributions made to creditors in liquidations and reorganisations?

In pre-bankruptcy proceedings, distributions shall be done after the conclusion of a final pre-bankruptcy settlement, in accordance with the executed settlement.

In bankruptcy proceedings, distributions shall be made after the bankruptcy proceedings expenses and other bankruptcy estate expenses have been settled, as stated in question 31. Upon the conclusion of the hearing for the report of the bankruptcy administrator, the bankruptcy assets shall be closed in and distributed according to the decisions of the creditors' assembly and the creditors' committee. Creditors of the same rank are settled on a pro rata basis.

Distributions in liquidation proceedings are explained in question 9.

Transactions that may be annulled

37 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

The Bankruptcy Act does not contain provisions regarding annulment of transactions during pre-bankruptcy proceedings. Therefore, such transactions could be annulled under general provisions of the Civil Obligations Act, which allow actions aimed at annulling transactions that are detrimental to creditors.

In bankruptcy proceedings legal actions of the debtor that are taken prior to the opening of bankruptcy proceedings that undermine the right to even satisfaction of the creditors' (creditors' debts), or actions that put certain creditors in a more favourable position (preferential treatment of creditors), may be contested by the bankruptcy administrator and other creditors by a lawsuit. Any omission of the debtor that caused the debtor to lose a certain right or that caused a claim against the debtor shall be considered as a voidable action as well.

Depending on the type of legal action being contested, the debtor's intentions or relationship with the concerned third party, the Bankruptcy Act prescribes different periods and conditions for challenging respective actions. These periods may last from one month up to 10 years prior to the opening of bankruptcy proceedings. The claim for the annulment of the action is submitted against the person in whose favour the respective action was taken. If the request for annulment is accepted by the court, the respective action loses its effects with respect to the bankruptcy estate and the counterparty must return all benefits that came from such action to the bankruptcy estate.

Proceedings to annul transactions

38 Does your country use the concept of 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

As stated in question 37, suspect periods can range from one month to 10 years. Voidable transactions can be disputed by the bankruptcy administrator and the creditors as well. The Bankruptcy Act expressly prescribes the possibility of annulling a debtor's legal actions whenever bankruptcy is open over the debtor.

Directors and officers

39 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

As explained in question 13, corporate officers and directors most common types of companies in Croatia (limited liability company and joint stock company), although they are not liable for their corporation's obligations, may be liable to the creditors for the damage they caused by not submitting a proposal for the opening of bankruptcy proceedings. Furthermore, according to the Companies Act, in conducting business the directors and members of the supervisory board must employ the care of a diligent and conscientious businessman.

Directors who violate their duties shall be jointly and severally liable to the company for any resulting damage. In the event of a dispute, they bear the burden of proof as to whether or not they have employed the required standard of care.

Groups of companies

40 In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

The Bankruptcy Act does not contain provisions regarding such responsibilities of parent or affiliated corporations. According to the Companies Act, if a controlling company causes a controlled company to enter into a transaction or to undertake or refrain from undertaking any act that is disadvantageous for such controlled company, without compensating such disadvantage by the end of the financial year or granting to the controlled company an entitlement to any measures serving as compensation for this, such controlling company shall be liable for any damage incurred by the controlled company.

Insider claims

41 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

The Bankruptcy Act does not contain provisions regarding such restrictions on claims. However, according to the Companies Act, if at a time when the company is in crisis and when prudent businessmen would have increased the company's equity capital, a shareholder instead grants a loan to the company, he can claim repayment of the loan during bankruptcy proceedings only as a lower-ranking creditor in bankruptcy.

Furthermore, a third party, at a time referred above, grants a loan to the company and if a shareholder has provided security or assumed a guarantee for repayment of the loan, the third party can only file a claim in bankruptcy proceedings to the extent that he or she has not been satisfied after using the security or guarantee. These provisions apply mutatis mutandis other legal acts of a shareholder or a third party, which in economic terms correspond to the granting of a loan.

Creditors' enforcement

42 Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

As mentioned in question 31, creditors with the right of exclusion of certain assets will not be affected with the legal effects of the opening of pre-bankruptcy or bankruptcy proceedings, provided that they notified the court in the prescribed deadline for the application of claims on their right.

Regarding the creditors with secured rights, in bankruptcy proceedings such creditors shall be allowed to enforce their rights within bankruptcy proceedings with appropriate application of the Enforcement Act provisions. However, in pre-bankruptcy proceedings, creditors with secured rights are allowed to initiate enforcement proceedings over the respective assets only if they waived their right to participate in the pre-bankruptcy proceedings as ordinary creditors.

Corporate procedures

43 Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

See question 9.

Conclusion of case

44 How are liquidation and reorganisation cases formally concluded?

Regarding liquidation, see question 9.

Pre-bankruptcy proceedings are formally concluded by a court decision confirming a pre-bankruptcy settlement. Bankruptcy proceedings are formally concluded by the court decision on the confirmation of the bankruptcy plan followed by the decision on the conclusion of bankruptcy proceedings. Both proceedings, however, could be terminated by court decisions for various reasons, as explained in question 24.
International cases

45 What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

Croatian commercial courts have exclusive jurisdiction for conduction of bankruptcy proceedings over a debtor whose centre of business operation is on the territory of the Republic of Croatia. If bankruptcy proceedings are initiated against the same debtor in Croatia and in another state, bankruptcy administrators in these proceedings shall cooperate and shall be obliged to exchange all legally permitted information that can be of importance for the proceedings.

Foreign creditors in liquidations and reorganisations have the same rights as domestic creditors.

Foreign judgments or orders can be recognised under general provisions of the Act Concerning the Resolution of Conflicts of Laws with the Provisions of Other Countries in Certain Matters (OG No. 53/91, 88/01) and under the provisions of the Bankruptcy Act. The decision of a foreign court on initiation of the bankruptcy proceedings and of the approval of bankruptcy plan may be filed by a foreign bankruptcy administrator or by a creditor of the debtor. The Croatian court shall recognise such decision if it is reached by a foreign body that has international jurisdiction under Croatian law, if the decision is enforceable under foreign law and if the recognition is not against the rules of Croatian public policy.

Croatian bankruptcy law is harmonised with European legal sources and generally follows some of the principles set forth in the UNCITRAL Model Law on Cross-Border Insolvency.

COMI

46 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

As mentioned in question 45, the centre of business operation of the debtor is the legal standard that should be used to determine exclusive jurisdiction of Croatian courts. The registered seat of the debtor shall be presumed as the centre of business operation. If the debtor has its registered seat or registered subsidiary (or in some cases just assets) on Croatian territory, but the debtor proves that the debtor's centre of business operation is in a foreign country where bankruptcy proceedings cannot be initiated, the Croatian courts shall have exclusive jurisdiction nevertheless.

Other than the general legal standard of the centre of business operation, no additional tests or criteria are prescribed.

Cross-border cooperation

47 Does your country’s system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

Regarding cross-border cooperation, see question 45. If the provisions prescribed by the Bankruptcy Act and other applicable legislation on the recognition of foreign decisions are met, the courts have no authority to refuse to recognise such decisions or to cooperate with foreign entities.

Cross-border insolvency protocols and joint court hearings

48 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

We are not familiar with any practice showing that courts have entered into cross-border insolvency or bankruptcy protocols and joint court hearings with courts in other countries.