Croatia: Consumer Bankruptcy Act Introduces Consumer Bankruptcy into the Legal System

The Croatian Consumer Bankruptcy Act (Zakon o stečaju potrošača; “ZSP”)\(^1\), which entered into force on 1 January 2016, for the first time introduces the legal concept of consumer bankruptcy into the legal system. The intention of the legislator was to release honest consumers from those obligations that remain after their assets have been sold and after the proceeds obtained therefrom have been distributed to their creditors.

**Background**

A serious economic crisis in Croatia has led to the increase of the unemployment rate and the decline of the living standard in the country. Such economic conditions have also led to the significant growth of the number of citizens who are not able to settle their obligations towards the creditors. For these reasons, the legislator decided it is the right time to adopt ZSP.

**Definitions**

(A) **Consumer**

Under ZSP a consumer is any natural person who enters into a legal transaction or acts in the market outside of his/her trade, business, craft or professional capacity. Further, the consumer is:

(i) (i)a natural person who is subject to income tax from self-employment under the relevant provisions of the Croatian Income Tax Act (Zakon o porezu na dohodak)\(^2\); and

(ii) a natural person who is subject to profit tax under the relevant provisions of Croatian Profit Tax Act (Zakon o porezu na dobit)\(^3\) providing that:

- he/she is not liable to more than 20 creditors;
- obligations arising out of his/her business activity do not exceed the amount of HRK 100,000.00 (approx. EUR 13,333.00);
- he/she does not have obligations from employment relations arising out of his/her business activity;
- pre-bankruptcy or bankruptcy proceedings have not been initiated against him/her.

(B) **Bankruptcy reason**

Consumer bankruptcy proceedings may be initiated only if the consumer becomes insolvent.

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\(^1\) Official Gazette, no. 100/2015.


It shall be deemed that the consumer is insolvent if for at least 90 consecutive days he/she is not able to fulfill one or more due financial obligations exceeding the amount of HRK 30,000.00 (approx. EUR 4,000.00).

**Extrajudicial Proceedings**

(A) **Purpose**

The purpose of conducting extrajudicial proceedings lies in concluding out-of-court agreement between the consumer and his/her creditor(s).

(B) **Mediator and counseling center**

Extrajudicial proceedings are carried out by mediators in counseling centres. In terms of ZSP, the mediator is an employee of the Financial Agency ("FINA") or other natural person who has been granted permission to perform counseling by Minister of Justice, whereas the counseling center is a specialized organizational unit of FINA or other entity who has been granted permission to perform counseling.

(C) **Authorized persons**

The extrajudicial proceedings can be initiated by either the consumer or his/her creditor(s). In the event that the proceedings are initiated by the consumer, the request for initiating the proceedings should be accompanied with a list of the consumer's assets and liabilities and also the proof that the bankruptcy reason has occurred should be submitted to the counseling centre. 4 If the proceedings are initiated by the creditor, the consumer is obliged to promptly deliver the list of his/her assets and liabilities to the counseling centre. Furthermore, along with the request for initiating the proceedings, the creditor should submit to the counseling centre documents evidencing its claim(s) and the explicit consent of the consumer for the pursuit of the extrajudicial proceedings.

(D) **Plan of settlement of obligations**

The consumer is obliged to make a plan of settlement of obligations (plan ispunjenja obveza). For each creditor such a plan should contain the following items;

(i) the amount of the obligation(s);

(ii) the percentage of reduction of the obligation(s);

(iii) the amount of payment(s);

(iv) terms of payment(s) and the manner in which such obligations shall be settled.

Creditors can provide the counseling centre with proposals on amendments to the plan of settlement of obligations in the term of 30 days from the day the invitation for creditors to participate in the proceedings has been announced on FINA’s official website. 5

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4 Since this is not clearly defined by ZSP, it could either be further defined by practice or remedied de lege ferenda.

5 According to art 16 para 2 of ZSP the invitation for creditors to participate in extrajudicial proceedings shall contain: Information on the consumer's identity, time and location of the creditor's meetings at the counseling center (along with the information on creditor's identity cited in the list of consumer's assets and liabilities) and obligations settlement plan.
(E)  Duration of proceedings

Proceedings shall not last more than 30 days from the date of the creditor's meeting scheduled under the invitation to participate in the proceedings. In exceptional cases, providing there is a possibility to conclude an out-of-court agreement between the consumer and all of his/her creditors, or if the consumer and all of his/her creditors agree to it, the counseling centre may extend the respective period for an additional 30 days. After the expiry of these periods the counseling center shall issue to the consumer a certificate that an attempt to conclude an out-of-court agreement was not successful.

(F)  Failure to conclude an out-of-court agreement

It shall be deemed that conclusion of an out-of-court agreement has failed providing that, after the announcement of invitation to participate in the proceedings, any creditor of the consumer;

(i) declares that it does not wish to participate in the extrajudicial proceedings;

(ii) initiates or continues enforcement proceedings against the consumer.

In these cases the counseling centre shall issue to the consumer the certificate that an attempt to conclude an out-of-court agreement was not successful. 6

(G)  Out-of-court agreement

An out-of-court agreement concluded between the consumer and his/her creditor(s) shall produce the legal effect of an out-of-court settlement (izvansudska nagodba) and presents an enforceable document (ovršna isprava). Such agreement has no effect towards those creditors who are not a party thereto.

The creditor who is a party to an out-of-court agreement can, on the basis of such agreement, ask from the enforcement court to settle its claim before settling the claim of a creditor that is not a party thereto, providing that:

(i) the claim of the creditor who is not a party to such agreement has occurred before the conclusion of the agreement;

(ii) the creditor which is not a party to such agreement was not mentioned in the list of the consumer's assets and liabilities and has not provided a counseling center with its proposal on amendments to the plan of settlement of obligations within the term of 30 days from the announcement of the invitation to creditors to participate in the proceedings.

Judicial Proceedings

(A)  Bodies of the proceedings

Consumer bankruptcy proceedings are conducted before a municipal court on whose territory the consumer has a place of residence.

6  Art 18 para 3 of ZSP.
Another body of the consumer bankruptcy proceedings is a commissioner. The main duty of the commissioner is to sell consumer’s assets and to distribute the proceeds collected therefrom to its creditors in proportion to their claims. Furthermore, the commissioner is obliged to submit quarterly reports to the court which indicate the state of the consumer’s assets, any new circumstances that may affect the consumer’s ability to fulfill his/her obligations, the total amount of funds paid to the individual creditor, information on sold assets and other data that may affect the course of the proceedings.

(B) Register of the consumer bankruptcy proceedings

The public register of the consumer bankruptcy proceedings shall be formed by the Croatian Ministry of Justice (the "Ministry"). Such register shall contain information on initiated and closed consumer bankruptcy proceedings as well as information on release from remaining obligations. 7

(C) Authorized person

A proposal for the opening of the consumer bankruptcy proceedings can be submitted only by the consumer. Proposal can be submitted within three months from the date of issuance of the certificate that an attempt to conclude an out-of-court agreement was not successful. 8 Apart from such a certificate, the list of consumer’s assets and liabilities and the plan of settlement of obligations shall also be submitted to the court. 9

(D) Preliminary hearing

The invitation to the preliminary hearing is announced via the e-bulletin board of the courts website (e-oglasna ploča sudova) ("E-Bulletin Board") together with the list of the consumer’s assets and liabilities and the plan of settlement of obligations. 10

The purpose of the preliminary hearing is to discuss and vote on the plan of settlement of obligations. If the plan is accepted by the creditors, it is entered into the court’s record and shall produce the legal effect of a court settlement (sudska nagodba). If the plan is not accepted by the creditors, the court shall render the decision on the opening of the consumer bankruptcy proceedings.

(E) Opening of the proceedings

The court shall render a decision on the opening of consumer bankruptcy proceedings providing that:

(i) it has determined the existence of the bankruptcy reason; and

(ii) the plan of settlement of obligations was not accepted during the preliminary hearing. 11

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7 See below at section I.
8 See above at Extrajudicial Proceedings, section E
9 See above at Extrajudicial Proceedings, section D
10 Creditors whose claims are not listed on the list of the consumer’s assets and liabilities nor were considered while the plan of settlement of obligations was made can be settled only providing those creditors have asked for the list of the consumer’s assets and liabilities to be amended within 30 days from the announcement of the invitation to the preliminary hearing.
The legal consequences of the opening of the consumer bankruptcy proceedings shall set in as of the announcement of such a decision by the court on the E-Bulletin Board.

(F) Cases in which the proceedings are not conducted

If the court finds that consumer’s assets are not sufficient for settling the costs of the proceedings or are of an insignificant value, it shall pass the decision on opening and closing of the consumer bankruptcy proceedings and at the same time appoint the commissioner and determine the behaviour-checking period\(^\text{12}\) of 5 years.

(G) Cases in which the proceedings are conducted

Consumer bankruptcy proceedings are conducted over the assets of the consumer acquired until the initiation of the proceedings and over the assets that the consumer shall acquire until the expiry of the behaviour checking period (except for the assets which cannot be subject to enforcement in accordance with the act regulating the enforcement proceedings).

Unless otherwise stipulated under ZSP, in the proceedings the provisions regulating the following areas of the Croatian Bankruptcy Act (Stečajni zakon; “\textit{SZ}\(^\text{1}\)”) shall be adequately applied:

(i) bankruptcy creditors, secured creditors and exempted creditors;
(ii) creditors of the bankruptcy estate;
(iii) legal consequences of the opening of the bankruptcy proceedings;
(iv) selling the bankruptcy estate and selling property encumbered by security; and
(v) settlement of bankruptcy creditors, except for the provisions on termination of the bankruptcy proceedings.

(H) Conclusion of the proceedings

Before the conclusion of the proceedings the commissioner is obliged to compose a final settlement list (\textit{završni diobni popis}). Creditors can object such a list within 15 days period from announcement thereof on the E-Bulletin Board.

(I) Behaviour-checking period and release from remaining obligations

By rendering the decision on conclusion of the proceedings the court shall determine the duration of the behaviour-checking period.\(^\text{13}\)

\(^{11}\) A decision on opening of the consumer bankruptcy proceedings shall, \textit{inter alia}, contain information on consumer’s identity, information on the commissioner’s identity, date, hour and minute of opening of the consumer bankruptcy proceedings and an invitation to the creditors to report their claims to the commissioner within 60 days from the day of rendering of such a decision.

\(^{12}\) See below at section I.

\(^{13}\) According to ZSP the behaviour-checking period can last from 1 up to 5 years.
During the behaviour-checking period the right to dispose of the consumer’s assets is transferred to the commissioner under the statement given by the consumer before the court. Thereunder, the commissioner is authorized to sell consumer’s assets and distribute them to his/her creditors in accordance with the final settlement list.

After the behaviour-checking period has expired the court shall pass the decision on release from remaining obligations. 14

The court’s decision on release from remaining obligations has legal effects with respect to all creditors, including those who did not report their claims in the consumer bankruptcy proceedings.

After the decision on release from remaining obligations has become final the commissioner’s service and any limitations on the consumer’s right to dispose of his/her assets shall be terminated.

Conclusion

The adopted ZSP for the first time introduces the legal concept of the consumer bankruptcy into the legal system.

The main idea is that creditors can benefit from the increased collection of their claims, whereas consumers can be released from those obligations that remain after their assets have been sold and after the proceeds obtained therefrom have been distributed to their creditors.

According to the Ministry somewhere between 10,000 and 20,000 of the indebted citizens might take advantage of this opportunity.

14 In certain cases the court shall not release the consumer from remaining obligations (e.g. malpractice or dishonesty of the consumer, etc.).