

CORPORATE INSOLVENCY PROCEEDINGS: A CASE OF VISEGRAD FOUR

Zuzana Crhová¹, Zuzana Fišerová¹, Marie Paseková¹

¹ Department of Finance and Accounting, Faculty of Management and Economics, Tomas Bata University in Zlín, nám. T. G. Masaryka 5555, 760 01 Zlín, Czech Republic

Abstract

CRHOVÁ ZUZANA, FIŠEROVÁ ZUZANA, PASEKOVÁ MARIE. 2016. Corporate Insolvency Proceedings: A Case of Visegrad Four. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 64(1): 235–243.

Insolvency proceeding and liquidation of bankrupt companies are important topics in days of economic slowdown which affected all economies after financial crisis. This paper aims to find main differences between insolvency proceedings in the countries of Visegrad four. The main goal is to describe insolvency law in member countries and then to compare it from the point of view of main actors. This comparison can help to find which changes and ideas could be applied to improve and make more effective the Czech insolvency system. The countries of Visegrad four was selected because of their common history and similar economic development. First of all, the legal background of insolvency proceedings which is possible for legal entities in these countries is examined. Then this paper deals with insolvency proceedings from the point of view of their participants – creditors, debtors and insolvency administrator. We have found that insolvency proceedings in these countries are very similar but there is still some inspiration for the Czech insolvency system.

Keywords: Visegrad four, insolvency proceedings, creditor, debtor, insolvency administrator, reorganization, bankruptcy

INTRODUCTION

Cooperation between four countries of the former communist bloc, known as the Visegrad Four, was officially established in 1991. The Czech Republic, Slovakia, Hungary and Poland undertook a joint effort leading to better integration with the more developed western countries of Europe in preparation for joining the European Union. This goal was achieved in 2004, when the V4 countries joined the EU. In addition to continued cooperation, further cooperation with other countries has developed, especially with neighbours of the V4 in fields of culture, education, science and information exchange, all of which has led to increased stability in Central Europe. These countries were also affected by the global financial crisis of 2007, which resulted in the deterioration of economic development especially in 2008. Even now, all attempts have failed to overcome the consequences of the crisis and the GDP is still below the level before the crisis. One of the consequences of the economic slowdown, which has worsened the business environment,

is increasingly frequent business bankruptcies. The effort to establish efficient insolvency proceedings is now being undertaken in each V4 country. If the enterprise is still salvageable, the best option appears to be reorganization, which preserves jobs. With increased unemployment the economy continues to decelerate. However, if the rescue of the enterprise is no longer possible, bankruptcy proceedings are opened.

The necessity of well-functioning insolvency system is stressed with increasing numbers of insolvency proceedings in all Visegrad four countries (Tab. I).

This paper provides a comparative analysis of how insolvency proceedings in the Visegrad countries are set so as to compare the conditions for declaring a state of insolvency, possibilities for opening reorganization proceedings, obstacles during each procedure, duties and competences of the individual participants. The development of insolvency law from 1990 to the present has been outlined in all V4 countries; further, the role of

I: Number of insolvencies in V4 countries in 2010–2013

Country	2013	2012	2011	2010
Czech Republic	10,325	7,723	5,880	5,559
Hungary*	47,347	50,224	30,757	17,487
Poland	915	908	762	665
Slovakia	880	866	870	830

Source: Creditform

*numbers for corporate insolvency proceedings and voluntary liquidation

the court, the role and obligations of insolvency administrators and the position of debtors and creditors in individual V4 country legal systems has been analysed. The aim of the contribution is to find where the insolvency proceedings differ in countries, which faced a centrally planned economy for a long time and which have operated under market economy conditions for only a relatively short time compared with Western Europe. By comparison of the approach of individual systems in V4 countries, insights on insolvency process settlement methods which could be effective in the Czech environment will then be evaluated. Effectively set insolvency proceedings are one of the ways of improving the competitiveness of the country. Because insolvency proceedings in the V4 countries were considered highly inefficient in the past, the law dealing with this issue was recently amended in all four countries. However, inspiration for the Czech Republic can still be found.

Literature Review

In a healthily functioning business environment it is necessary to develop a legal basis not only for the operation of successful companies but also for the settlement of unsuccessful companies that have to be terminated. A failed company become a bankrupt or insolvent when it is no longer able to pay its liabilities or make other arrangements with creditors. Greater attention has recently been paid to this issue and many states have revised and amended their laws accordingly.

If insolvency law did not exist, each of the debtor's creditors would be placed in a situation in which they would wish to enforce their receivables individually as soon as possible. The prisoner's dilemma arises if creditors' receivables are not secured in some way. Creditors wish to commence enforcing receivables as soon as possible, even without any information as to the existence of other creditors. A collective method of enforcing receivables – i.e. insolvency proceedings – thus has to be fixed (Schillig, 2014).

Insolvency proceedings serve two goals. First and foremost, creditor satisfaction is at issue. The second goal is macroeconomic, i.e. the endeavour to return productive assets to the productive process. These goals are fulfilled only with difficulty if insolvency proceedings are too lengthy (Paulus *et al.*, 2015).

Insolvency proceedings should in principle determine the course of exit from the market in

such a way that the action of all participants is the most effective. In the event that the company is unable to meet its obligations for whatever reason, termination will follow and the debtor may not always act effectively. The best option is to transfer decision-making authority to the creditors, whose claims are to be met from the distribution of the remaining assets, as they are the most motivated to allocate assets efficiently (Richter, 2008, pp. 131–132).

Westbrook *et al.* (2010, p. 2) are also inclined to the notion of effective insolvency proceedings, but they argue that the concept of efficiency is elusive and has to be viewed not only from the creditors' but also from the debtor's perspective. Efficiency is just one of the requirements that should be attributed to the insolvency proceedings.

Transparency is also important, including registers of trustees and registers of the progress of individual insolvency proceedings. Transparency goes hand in hand with predictability. A low ability to predict the outcome of the procedure often leads to increased costs of insolvency. A simpler and clearer system entails higher predictability.

In contrast to the efforts of most countries to make insolvency proceedings more efficient, Djankov *et al.* (2009, p. 1146) document that insolvency proceedings are in fact rather inefficient in the vast majority of cases. This inefficiency is due to high administrative costs, delays in the proceedings, and excessive use of liquidation (despite the possibility to reorganize a business in some instances). Djankov relates the state and effectiveness of the insolvency proceedings with the legal system of the country and also with the level of public administration. The quality of legal standards also significantly affects credit risk management in commercial banks. This issue is examined, for example, by Belás, Cipovová, Novák and Polách (2012) or Cipovová, Belás (2013).

According to Franken (2014), insolvency proceedings are efficient when they maximise the value of the company in bankruptcy. The selection of a suitable bankruptcy settlement method has to be made in connection with the time when the business will reach the highest value. If an alternative utilisation thereof is more favourable, its sale should take place. On the other hand, if the value of the business is maximised in its present usage, reorganisation should take place (Franken, 2014).

All of these attributes are focused on the relationship between debtor and creditor, but insolvency proceedings affect stakeholders also at a personal level. Owners of bankrupt companies are affected by the loss of the company that they have built, while employees lose their jobs (Fergusson 2009, p. 205).

METHODOLOGY

This article compares four insolvency systems in states that promote economic cooperation so as to find inspiration for Czech insolvency proceedings and to propose changes that could lead to an improvement of insolvency proceedings in the Czech Republic.

The method of literature review was used. This is focused on the regulation of insolvency proceedings in selected countries firstly. It also contains a comparison of the definition of insolvency and possible solutions to discrepancies in these definitions. The other sections are divided according to the three main figures in the insolvency proceedings. The insolvency administrator is the person who establishes the final form of insolvency proceedings and supervises the whole procedure. The debtor has limited authority but the creditors are the elemental decision makers. At the conclusion, insolvency proceedings in countries of V4 are compared. Key differences between insolvency proceedings in these countries are summarized. Suggestions for the Czech Republic are proposed on the basis thereof.

Legislation and the Possible Settlement of Insolvency

The Czech Republic

The foundation stone of insolvency law in the Czech Republic is Act No. 182/2006 Coll. on Bankruptcy and its Settlement (the Insolvency Act). The current legislation was adopted after a long critique of the previous one, which was considered the catalyst of many corruption cases for its interpretive ambiguity. The new bankruptcy law came into force in 2008 after great expectations, although not all of these were met. If the purpose was to increase clarity and transparency in insolvency proceedings, the major changes certainly achieved almost nothing. The observed parameters, such as the duration of proceedings, cost, satisfaction of creditors, etc., remained almost unchanged. The claim that the law failed in the business environment is substantiated by the fact that it has already been amended (Kislingerová *et al.*, 2013, pp. 6–9).

The above law can be applied if the debtor is in bankruptcy. Under the provisions of the Insolvency Act, bankruptcy applies to insolvency and over-indebtedness. While insolvency is a reason for initiating proceedings for legal and natural persons (non-entrepreneurs), over-indebtedness applies

only to business entities. The Insolvency Act specifies three conditions that define insolvency. The debtor must have multiple creditors, financial obligations must be 30 days overdue, and the debtor is unable to meet commitments (Hásová and Moravec, 2013, p. 6).

Czech insolvency law gives legal persons two options for resolving insolvency. The first is bankruptcy, the traditional liquidation of assets of the bankrupt company with the subsequent satisfaction of creditors from the proceeds. The second solution, rarely applied in Czech practice, is satisfaction of creditor claims with the restructured activities of the debtor (Hásová and Moravec, 2013, p. 93).

Slovakia

Contemporary Slovak bankruptcy law is governed by Act No. 348/2011 Zz on Bankruptcy and Restructuring. The new legislation seeks to respond to current economic developments both in its own country, as well as on a European scale. An unfortunate tendency can be observed in the number of insolvencies handled by legal entities. Efforts have also been made to move closer to Western legal modification, in which the attempt is made to preserve the company prior to its factual liquidation. This phenomenon is particularly evident in the growing number of permitted reorganizations (Richter, 2005).

According to the above-mentioned law, the debtor is bankrupt if it is in default or over-indebted. A debtor is considered to be in default when it cannot meet at least two monetary commitments 30 days past maturity to more than one creditor. A debtor who has more than one creditor and the value of its mature liabilities exceeds the value of its property is considered to be over-indebted (Richter, 2005).

Slovak bankruptcy law gives legal persons two possibilities to settle a bankruptcy. These are bankruptcy and reorganization (“restructuring” in Slovak terms). The result of the former is the sale the debtor’s remaining property and the subsequent satisfaction of the creditors with the yields. By contrast, the aim of reorganization is the satisfaction of creditors from the debtor’s further (restructured) activities (Jakubec and Kardoš, 2012).

Poland

Polish insolvency law is governed by the Bankruptcy and Recovery Law, in force since 2003. This Act was recently amended in 2009. The current modification requires using tests to determine whether the debtor is insolvent. The first test is a test of liquidity. On the basis thereof, the debtor is insolvent if it is unable to pay its debts as they become due. The second test is a test of the balance sheet, according to which the debtor is insolvent if its total liabilities exceed the value of total assets (even in the case when the obligations are paid in time). In the case of sole traders only

the test of liquidity is performed (Clifford Chance, 2010, pp. 59–60).

When the debtor is insolvent on the basis of previous tests, its state will be resolved in one of two ways. The first is a simple solution using single insolvency proceedings. This is classically conducted under the supervision of the court, which may order settlement through liquidation or rescue of the debtor's business. Moreover, a separate recovery proceeding is permitted by law. This method is relatively simple and is guided not by a court but by the debtor. The aim is to give the debtor a framework within which it is able to achieve a composition arrangement with creditors. Recovery proceedings are optional. Creditors cannot propose this method (Skibińska, 2011, p. 228).

Insolvency proceedings may be initiated either voluntarily, if a petition is filed by the debtor itself, or involuntarily in the case where the application is made by any of the creditors. Consequently, the role of the court is to decide whether the bankruptcy or restructuring will be used to solve debtor's bankruptcy (www.lexology.com).

Hungary

Legislation of insolvency proceedings in Hungary is adjusted in Act XLIL on Bankruptcy and Liquidation Proceedings of 1991. This Act has frequently been discussed in the past and efforts to reform this Act began in 2003. The aim of the reform is to set such a course of insolvency proceedings which should mainly promote a greater degree of satisfaction of creditors and shorter duration of insolvency proceedings (Széplak, 2006, pp. 41–42). The long-prepared reform entered into force in 2009.

In Hungary, a test of cash-flow is used to determine the debtor's state of insolvency. In practice, a debtor is considered insolvent if its obligations are more than 20 days overdue and it is incapable to pay them; it is unable to settle obligations arising from the court ruling; on the basis of recovery, it is found that the recovery is unsuccessful, bankruptcy proceedings were ordered by the court, the sum of the debt exceeds the sum of assets, or the 45-day deadline allowed by the court after request of debtor expired (Nagy-Koppány, Csurdi and Németh, 2013).

Under this Act, a state of insolvency can be solved with liquidation or reorganization, which is known as bankruptcy proceedings in Hungary. If a debtor finds itself in a state of insolvency, it may file a petition for commencement of liquidation. However, this proposal may also be made by any creditor if it considers the debtor's insolvency to have occurred. In the proposal, both the debtor and the creditors may choose what type of insolvency solution will be preferred. In the event of insolvency proceedings with a subsequent solution in the form of reorganization, the debtor seeks help in solving its financial problems and achieves a composition agreement with creditors. The aim of this procedure

is the reorganization of the debtor's business in such a way that allows preservation of its business activities. Generally, the reorganization procedure is very rarely used in Hungary. Therefore, the aim of the new bankruptcy law is to extend this possibility. One of the reasons is the fact that the liquidation procedure is generally very expensive, time consuming, and unfortunately still entails a very uncertain outcome for creditor that is close to zero (Clifford Chance, 2010, p. 84).

The Role of the Insolvency Administrator

The Czech Republic

The insolvency administrator is a person appointed by the court from the list of trustees led by the Ministry of Justice.

Before the first meeting of creditors, the insolvency administrator establishes a list of registered claims. He examines each claim and decides whether to accept or deny them in amount or authenticity.

When the bankruptcy is settled with reorganization, Insolvency administrator has a supervisory role. The insolvency administrator monitors compliance with the conditions approved by the court and transfers the raised funds to creditors.

Supervisory activity over the insolvency administrator is performed by the appropriate bankruptcy court. The court has significant decision-making power throughout the insolvency proceeding; it takes necessary steps to ensure the purpose of this procedure, imposes obligations on the subject of the proceedings, requires reports and explanations from the administrator and in fact gives administrators consent in the case of "non-standard" procedures (Hásová and Moravec, 2013, pp. 24–36). The insolvency administrator likewise answers to creditor bodies which are authorised to give instructions to the administrator, e.g. to monetise property or regarding the level of expenses; they can also relieve the court-appointed administrator and replace him or her with an administrator appointed by the creditors. For the performance of the post of insolvency administrator, a minimum of three years of practice has to be completed at an insolvency administrator's office; further, university education is required and insolvency administrator's examinations have to be passed.

Slovakia

The cornerstone of Slovak insolvency proceedings is the figure of the administrator, whereas it is not possible to omit his strictly regulated selection. His role is crucial especially in the case of reorganization in view of the fact that a debtor can file an insolvency proposal only in a case where an appraisal has been compiled by an appointed administrator. It is precisely here that strict requirements as to the person (qualification) of the administrator appear, as he must (besides his legal knowledge) prove knowledge of economic indicators and practical commercial skills in the

appraisal. The result of his efforts is therefore a recommendation or non-recommendation for reorganization. The court then acts according to the administrator's standpoint and permits or denies reorganization. The administrator thus has a special role which represents a necessary first stage of judicial proceedings to permit reorganization (Veterníková and Mišura, 2011, pp. 153–156).

Poland

The bankruptcy trustee appears on the scene when a debtor is declared bankrupt and the bankruptcy is to be settled by liquidation. His main responsibility is to manage the process and the realization of the debtor's assets. After this realization, he establishes a schedule and then proceeds to satisfy the creditor under the regulations stipulated in the Insolvency Act. When the state of insolvency is settled by a composition agreement with creditors, the curator is chosen by the insolvency court from the list of curators holding a bankruptcy trustee license (www.europa.eu, 2012).

In Poland, there are very strictly defined regulations governing faulty or fraudulent management of the company resulting in the bankruptcy thereof. The insolvency administrator is thus authorized to take steps to punish the debtor during the performance of his duties if he detects such behaviour (Clifford Chance, 2010, p. 61).

Hungary

In a case where insolvency is settled by reorganization, the insolvency court appoints an independent administrator. His main task is to oversee the activities of the debtor and defend the interests of the creditors. When he checks the debtor's business, he also checks the obligations that have arisen in the past and approves the commitments that need to be taken to preserve the business enterprise. He has in his power the ability to challenge certain contracts that were accepted without prior approval and initiate proceedings for the recovery of any amount that was paid in contravention of the Insolvency Act. Together with the debtor, he requests creditors to register and subsequently classify all registered claims. In the event of reorganization, he should also attend all the meetings and help to negotiate and prepare a composition agreement. His responsibility is to subsequently approve this plan. If the court has ordered liquidation of the company, a liquidator appointed by the court from the list of official liquidators enters the scene (Clifford Chance, 2010, pp. 85–87).

The Status of the Debtor

The Czech Republic

The debtor has a clear obligation to file a bankruptcy petition at the court if it finds itself insolvent. If it fails to do so, it may subsequently be punished or even prosecuted.

Subsequently, its position is influenced by the way in which the state of insolvency will be settled. If the court decides to settle the insolvency by liquidation, the debtor's position becomes very limited, as the management of the company is assumed by the administrator. In the case of reorganization the debtor is entitled to retain decision-making power, but its steps are overseen by the insolvency administrator and creditors' committee. While the activity of the company is preserved, the debtor prepares a reorganization plan which it subsequently communicates with the creditors' committee and the insolvency administrator (Hásová and Moravec, 2013, p. 16).

Slovakia

The position of the debtor is also conditioned by the manner in which the bankruptcy is to be settled. Bankruptcy proceedings impose on the debtor the obligation to file an insolvency proposal. Non-fulfilment of this obligation is understood to be a contravention of protection of the creditors and is punishable by law. In a case where a legal person – debtor is unable to repay its debts and the company management is aware of this state, it is obliged to file a proposal for declaration of bankruptcy or a proposal to permit reorganization. If a member of the board of directors does not commence bankruptcy proceedings within 30 days from the moment when they become aware – in their position in the company – of its bankruptcy, the company continues to be responsible to the creditors for damages incurred to them as a result of such conduct. At the same time, the debtor in bankruptcy proceedings is obliged to coaction with the administrator when gathering property and meeting liabilities. Where reorganization is concerned, the debtor is granted the more initiative position, which is, however, strongly subordinate to the administrator's jurisdiction. The debtor primarily retains limited authority to handle property and continue to manage the business (Jakubec and Kardoš, 2012).

Poland

The debtor is required to file an insolvency petition within two weeks from the time when the conditions for declaring bankruptcy have occurred. Bankruptcy law presumes very good knowledge of the balance sheet and all obligations by the debtor. Therefore, in the case of a balance sheet test, not only overdue obligations, but also liabilities close to maturity should be taken into account (Clifford Chance, 2010, pp. 59–61). Directors of the debtor company is liable for damages that are incurred to creditors due to the fact that the bankruptcy petition was not duly filed. A debtor, who in anticipation of imminent bankruptcy pays more attention to certain creditors over others, may be punished (www.lexology.com).

Hungary

The debtor company does not have a statutory responsibility to file an insolvency petition in court, but the management of a limited company or a company limited by shares is to convene a meeting of members or a shareholders' meeting as soon as possible after finding that it faces a state of insolvency or is unable to pay its obligations.

If the court commences bankruptcy proceedings, the debtor is automatically guaranteed a withdrawal period known as a moratorium. This could be anywhere from 90 to 365 days, but which may subsequently be extended for an additional 180 to 365 days, but only with the consent of the lenders. During the moratorium, the debtor company is strictly limited to make payments. The only exception is employee wages, VAT and social security payments. The power to conduct other payments shifts into the hands of the bankruptcy trustee (Clifford Chance, 2010, p. 85).

The Rights and Obligations of Creditors

The Czech Republic

Creditors have the right to request opening of insolvency proceedings in the event that their overdue debts are not paid by the debtor and creditors reasonably believe that the debtor has arrived in a state of insolvency. A creditor who files a proposal might be requested by the insolvency court for an advance payment for the costs of the insolvency proceedings, the amount of which may be up to CZK 50,000. If the deposit is not paid, the proceedings could be suspended; the deposit for insolvency proceeding expenses can also be enforced by the court. Both in the cases of the creditor's proposal and that of the debtor's, commencement of insolvency proceedings depend on a court ruling and the placement or non-placement of a deposit.

After the commencement of insolvency proceedings, the court declares the deadline for registration of debts. This deadline is fixed at 2 months by the Insolvency Act, whilst the deadline is 30 days in personal bankruptcies. After the end of this period, no further applications are considered. The creditors are therefore obliged to monitor the status of the debtor in insolvency register (Hásová and Moravec, 2013, p. 16).

Creditors have a high degree of decision-making power. They could select a bankruptcy settlement method, whilst the court decides in a case of non-fulfilment of legal conditions. They can participate in the creditor committee. As part of the creditors' committee, they may express (based on votes) whether they agree with or disapprove of settlement by reorganization.

Slovakia

As of 2012, conditions for filing a creditor's insolvency proposal have been relaxed. Prior to

this, a creditor could file a proposal for declaring a debtor bankrupt only if the debtor was over 30 days in delay with fulfilling at least two monetary commitments towards more than one creditor and at least one of these creditors demanded payment of their receivables from the debtor. Newly, a creditor has to file a proposal to declare bankruptcy, in which it states its receivable from the debtor and substantiates this with confirmation from an auditor or court-appointed expert that the receivable has a substantiated origin of emergence. In the proposal, the creditor will also state other creditors of the debtor who have receivables due from the debtor over 30 days due and, as the case may be, will note further facts bearing testimony to the debtor's financial insolvency. The proposal has to be supplemented with a receipt for payment of a deposit for the expenses of a preliminary administrator, 1, 600 E for debtor-legal entities. A practical impact of the legal amendment is an increase in the number of creditors who enforce their receivables from debtor-legal entities by means of filing a proposal for declaration of bankruptcy (Pálinkás and Ranič, 2012).

When the insolvency of a debtor is solved via restructuring plan creditors have to approve this plan. At the Approval Meeting of the Creditors, they vote about acceptance of the plan or raise objections against the plan. If they have a feeling that the restructuring plan will be ineffective in respect of their receivables they declare it to the court. (European Commission)

Poland

Creditors have the opportunity to send the court a petition to open insolvency proceedings and note the manner in which they prefer to settle the debtor's insolvency. Alternatively, if creditors insist on solving the debtor's insolvency through reorganization, even though the court does not recommend this option, the court will take into account their wishes. After selecting reorganization, it is essential to prepare a composition agreement which is subsequently voted by creditors. After the approval of the composition agreement, creditors who disagree with this option and feel they are at a disadvantage have the opportunity to file an objection. On the other hand, the creditors have the opportunity to prepare a composition agreement themselves (Clifford Chance, 2010, pp. 59–62).

Hungary

The creditor can send the court a petition to open insolvency proceeding when requests debtor's liquidation. The creditor cannot suggest restructuring proceedings of a debtor. The creditor is obliged to report to the debtor and to the insolvency administrator any claims existing against the debtor, especially within the period specified by the court, which is usually within 40 days of the commencement of bankruptcy

proceedings. Creditors are also given a second opportunity if they miss the deadline set by the court, and the claim can still be registered within the following 180 days. These late claims, however, will be satisfied after the satisfaction of timely applications, which is the penalty for late registration (Euler Hermes, 2014).

DISCUSSION

As Cirmizi *et al.* (2008) state the essential presumption for well-functioning insolvency proceedings is to ensure that reorganization will be available for all companies capable to survive and bankruptcy for the rest of bankrupt companies at a low cost. The effective insolvency proceedings should also take into account interests of all parties involved.

The insolvency systems of the Visegrad Four countries have recently been re-codified. At present, the insolvent state of business entities in these countries should be solved in two basic ways, reorganization or liquidation. The only difference is in the naming of these ways in the different countries. In Poland, there is also the possibility of applying for out-of court reorganization, which means lower costs of proceedings. Balance sheet and liquidity tests are generally used to determine the state of insolvency. Only Hungary primarily uses liquidity tests, which, according to Westbrook *et al.* (2010, p. 65), are easier to use, especially for the creditors. They are of the opinion that a case of non-payment of the debts owed by the debtor constitutes sufficient grounds for the initiation of insolvency proceedings.

The position of the insolvency administrator will vary depending on the method chosen for settling the debtor's bankruptcy. The weaker position of the insolvency administrator is apparent in the course of the reorganization proceedings where the administrator merely supervises the debtor's steps. Where liquidation is concerned,

the administrator is responsible for the entire process. In particular, the Slovaks are trying to shift decision-making power at least partly to the hands of the administrator, who may suggest the possibility of reorganization based on his examination. The final decision, however, is in the hands of the insolvency court.

The debtor's essential obligation is to file an insolvency petition. Generally speaking, the debtor is obliged to do so as soon as possible when it is aware or ought to have known that the company is in a state of insolvency. The only exception is in Hungary, where the Insolvency Act does not require this obligation. Regulations are strictly determined in Poland in the area of penalties for failure to comply with the insolvency petition. In our opinion, it is only correct that managers may be also punished by law for damages incurred by their conduct insofar as some managers lead the company fraudulently in order to ensure personal benefit.

Based on a test of liquidity, creditors have the opportunity to initiate insolvency proceedings against debtors in all examined countries. They can also express in the filed proposal their preference as to how to settle the insolvency. This clearly confirms their authority on the choice of method of resolving the state of insolvency. It is enhanced by the privilege of subsequently voting on which settlement method will be adopted and, in the context of reorganization, by voting on approval of a composition agreement. Only registered creditors can vote, and it is therefore necessary for each creditor to check the status of debtors periodically so as not to miss the deadline for registration.

The following table (Tab. II) shows average duration, costs and recovery rate of insolvency proceedings in countries of Visegrad four according to research of Doing business. The results are based on cooperation of researchers, insolvency administrators, lawyers and insolvency judges in certain country. The same model case of bankrupt company is discussed in every country.

II: Duration, costs and recovery rate of insolvency proceedings in V4 countries

Country	Time (years)	Cost (% of estate)	Recovery rate (cents on the dollar)
Czech Republic	2.1	17.0	65.6
Hungary	2.0	14.5	40.2
Poland	3.0	15.0	57.0
Slovakia	4.0	18.0	54.4

Source: The World Bank

CONCLUSION

The Visegrad Four countries, i.e. the Czech Republic, the Slovak Republic, Hungary and Poland are connected by their histories, but also by their common endeavours in the economic, political and cultural fields. A similar historical development among these post-communist countries is reflected in the development of their insolvency laws. At present, the insolvency systems of the V4 countries are largely similar. All the monitored countries had to reform their insolvency laws after 1990, whilst in the given countries one can observe certain similar elements, e.g. the supervisory role of the court, the function of the insolvency administrator and the evident emphasis on continuity and preservation

of economic subjects. Other European states and the USA also apply this principle (Guitérrez, Olmo, Afozra, 2012).

A suitable inspiration for the Czech insolvency system can certainly be found in the Hungary's insolvency system, especially with respect to fixing the priorities of Hungarian insolvency judicature – satisfaction of creditors and reduction of the length of insolvency proceedings. The Insolvency Act *Act XLII on Bankruptcy and Liquidation Proceedings* was enacted in 1991; the reform thereof, which was long-prepared, came into effect in 2009.

As regards practical changes in Czech insolvency law, the position of creditors would be improved by the possibility of increasing the deadline for reporting their receivables.

Although a web application which monitors subjects in insolvency works in practice, and it is likewise possible to find all information on subjects in insolvency in the publically accessible Insolvency Register, the thirty-day deadline has transpired to be insufficient for creditors from the ranks of natural persons or smaller companies. The increase thereof or the obligation for a debtor to inform its creditors as to its insolvency when bankruptcy is declared would be a solution. This solution would probably be difficult to enforce in practice.

On the other hand, it is the creditors' duty to enforce their outstanding receivables, and therefore a variant of punishing creditors who register late with a lower rate of satisfaction for the benefit of timely creditors is an appropriate step.

Another suitable angle that should certainly be considered is the solution in which all creditors pay the costs of insolvency proceedings. In the Czech Republic insolvency petitions are often rejected before even examining whether the company is insolvent, as the fixed deposit remains unpaid. The deposit for costs of the proceedings must be paid by the participant who submits the bankruptcy petition. The amount can be up to 50,000 CZK.

In the past few years, legislation has been undergoing dynamic changes in the Czech Republic and in the V4 countries. For instance, the Czech Insolvency Act (182/2006 Sb.) has undergone more than 25 amendments since its enactment. Instead of radical changes in the Insolvency Act, it would be apposite to reflect the most pressing issues from practice (which was, for instance, effected by amendment No. 294/201, which solved the issue of joint debt-relief of married couples) and especially to allow time for the construction of a legal interpretation of individual provisions and judicature. The most suitable recommendation is thus to create a stable legislative environment with a certain constancy of viewpoints, judicature, practice, and not constant change of conditions and obligations of affected subjects. The predictability of law is crucial for the functioning of all economic subjects, both those in insolvency and those who are prospering.

Acknowledgement

This paper is one of the research outputs of the project “The model of comprehensive evaluation of the debt ratio of small and medium enterprises with regard to the risk of insolvency”, registered at Tomas Bata University in Zlín under the registration number IGA/FaME/2013/002.

REFERENCES

- CIPOVOVÁ, E. and BELÁS, J. 2012. Impacts of Selected Methods of Credit Risk Management on Bank's Performance. In: *Proceedings of the 8th European Conference on Management, Leadership and Governance 2012*. 30 November. Pafos: Academic Conferences and Publishing International (ACPI), 465–473.
- CIRMIZI, E., KLAPPER, L. and UTTAMCHANDANI, M. 2012. The Challenges of Bankruptcy Reform. *World Bank Research Observer*, 27(2): 185–203.
- CLIFFORD CHANCE. 2010. *European Insolvency Procedures: 2010 Edition*. Clifford Chance LLP.
- CREDITFORM. 2014. *Corporate insolvencies in Europe*. Neuss: Creditform.
- EPRAVO.EU. ©1999–2015. *Změna slovenského insolvenčního práva, významná pro české věřitele: Zlepšení pozice věřitele při podávání insolvenčních návrhů*. [Online]. Available at: <http://www.epravo.cz/top/clanky/zmena-slovenskeho-insolvenčního-prava-vyznamna-pro-ceske-veritele-zlepseni-pozice-veritele-pri-podavani-insolvenčních-návrhu-80506.html>. [Accessed: 2015, July 27].
- EULER HERMES. 2014. *Collection Profile: Hungary*. Euler Hermes Collection.
- EUROPA.EU. ©2010. *Poland – Bankruptcy*. [Online]. Available at: http://europa.eu/youreurope/business/start-grow/start-ups/index_en.htm#poland_en_handling-bankruptcy-and-starting-afresh. [Accessed: 2013, December 3].
- EUROPEAN COMMISSION. 2014. *Study on a new approach to business failure and insolvency – Comparative legal analysis of the Member States' relevant provision and practices (Annex 1 – List of national experts)*. INSOL Europe.
- FERGUSON, R. 2009. A Practical Guide to Insolvency. *Legal Information Management*, 9(3): 201–205.
- FRANKEN, S. M. 2014. Cross-Border Insolvency Law: A Comparative Institutional Analysis. *Oxford Journal of Legal Studies*, 34(1): 97–131.

- GUTIÉRREZ, C. L., OLMO, B. T. and AFOZRA, S. S. 2012. Firms' performance under different bankruptcy systems: a Europe–USA empirical analysis. *Accounting & Finance*, 52: 849–872. Doi: 10.1111/j.1467-629X.2011.00407.x.
- HÁSOVÁ, J. and MORAVEC, T. 2013. *Insolvenční řízení*. Praha: C.H. Beck.
- JAKUBEC, M. and Kardoš, P. 2011. Platobná neschopnost slovenských podnikatelských subjektů v závislosti od hospodářského cyklu a legislativních změn. In: *Faktory prosperity podniků v lokálním a globálním prostředí 2011*. VŠE Praha, October. Praha: Oeconomica, 99–107.
- KUGIEL, P. 2012. The Development Cooperation Policies of Visegrad Countries – An Unrealised Potential. *The Polish Quarterly of International Affairs*, 21(4): 101–121,4.
- LEXOLOGY. ©2006–2015. *Company Insolvency in Poland: Lexology Navigator Q&A*. [Online]. Available at: <http://www.lexology.com/library/detail.aspx?g=17013bb6-4b89-440d-b3f1-11f7f99ef9dc>. [Accessed: 2015, July 27].
- NAGY-KOPPÁNY, K., CSURDI, A. and NÉMETH, É. 2013. *Restructuring & Insolvency 2014*. ©Law Business Research Ltd.
- PAULUS, C. G., POTAMITIS, S., ROKAS, A. and TIRADO, I. 2015. Insolvency Law as a Main Pillar of Market Economy – A Critical Assessment of the Greek Insolvency Law. *International Insolvency Review*, 24: 1–27.
- RICHTER, T. 2008. *Insolvenční právo*. Praha: Aspi.
- RICHTER, T. 2005. *Slovenská rekonstrukce insolvenčního práva: několik lekcí pro Českou republiku (a jedna sázka nadivokou kartu)*. Working paper edn. Praha: Charles University.
- SCHILLIG, M. 2014. Corporate Insolvency Law in the Twenty First Century: State Imposed or Market Based? *Journal of Corporate Law Studies*, 14: 1–39.
- DJANKOV, S., HART, O., MCLIESH, C. and SHLEIFER, A. 2008. Debt Enforcement around the World. *Journal of Political Economy*, 116(6): 1105–1149.
- SKIBIŃSKA, W. 2011. Insolvency of companies in Poland. *Zeszyty Naukowe Uniwersytetu Szczecińskiego. Finanse. Rynki finansowe. Ubezpieczenia*, (43): 227–239.
- SZÉPLAKI, V. 2006. Reform of the Hungarian corporate insolvency regulation and its financial stability aspects. *MNB Bulletin*, 1(2): 41–47.
- THE WORLD BANK. ©2014. *Resolving Insolvency*. [Online]. Available at: <http://www.doingbusiness.org/data/exploretopics/resolving-insolvency>. [Accessed: 2014, December 16].
- VETERNÍKOVÁ, M. and MISURA, J. 2011. Bankruptcy Trustee in Insolvency Proceedings as an Entrepreneur and as a Subject of the Proceeding. *Studia Commercialia Bratislavensia*, 4(13): 153.
- WESTBROOK, J. L. 2010. *A global view of business insolvency systems*. Martinus Nijhoff Publishers.

Contact information

Zuzana Crhová: crhova@fame.utb.cz
Zuzana Fišerová: fiserova@fame.utb.cz
Marie Paseková: pasekova@fame.utb.cz