

# Slovenia

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## Recent legislative developments in Slovenia

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In the aftermath of the financial crises, legislative activity in Slovenia over the past year has been marked by attempts to increase the efficiency of insolvency and execution proceedings and to foster the respective creditors' positions. Furthermore, the legislature continued to transpose EU Directives into the Slovenian legal system.

### Amendments of the law on insolvency proceedings to provide efficiency, more legal certainty and strengthen the position of creditors

In response to an increasing number of bankruptcy proceedings driven by the financial crisis and taking into account the past experience of implementing the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (hereinafter the Insolvency Act), the new amendments to the Insolvency Act (hereinafter the Amended Insolvency Act) have been adopted. The newly Amended Insolvency Act has introduced a number of changes aimed at, among other things, increasing the efficiency of insolvency proceedings and the execution proceedings related thereto, as well as professionalisation and stricter supervision of receivers. The most important changes did away with uncertainties in the previous law as to the treatment of close-out netting arrangements and strengthen the position of creditors by enabling capital increases and decreases without shareholders' consent.

Pursuant to the old Insolvency Act, the enforceability of close-out netting arrangements was, in certain instances, highly questionable. The Amended Insolvency Act, relying on the 2006 Model Netting Act prepared by the Isda (International Swap and Derivatives Association) eliminates any uncertainties in the previous law by clearly defining

both the qualified financial contract and the close-out netting arrangement and expressly providing that close-out netting arrangements are now enforceable.

Another distinctive feature of the newly Amended Insolvency Act aimed at further strengthening the position of creditors in compulsory settlement proceedings is the provision enabling the management and/or creditors' board to decide on increases as well as on simplified decreases in share capital instead of shareholders. In the case of a capital increase, shares can be subscribed by creditors, shareholders or any other third person.

### Amendments of the law on execution to increase the efficiency and strengthen the position of creditors

The general intention of the respective amendment of the Execution of Judgments in Civil Matters and Insurance of Claims Act (hereinafter Amended Execution Act) is to increase the efficiency of the execution by simplifying and shortening execution proceedings. The Amended Execution Act improves the position of creditors in the execution proceedings by facilitating a creditor's obligation to provide information regarding a debtor's assets. Necessary information regarding the bank accounts and employer of the debtor from now on will have to be obtained ex officio by the execution court via the use of public registers.

Provisions on execution on the basis of a bill of exchange present a revolutionary step in further protecting the interests of creditors in execution proceedings. This type of security is widely used by Slovenian banks and companies, but its effect was diminished in practice by the fact that, in execution proceedings, bills of exchange were treated as any other evidence demonstrating the existence of a receivable (e.g. invoice). Thus, before the respective amendments, the creditor holding a bill of exchange as a security was forced to undertake a lengthy execution proceeding, which diminished the possibility of getting paid once the execution proceedings were completed.

Pursuant to the Amended Execution Act, in the execution proceedings a bill of exchange is treated as an enforceable judgement, meaning that once the execution decision is issued on the basis of a bill of exchange, money on the bank account of the debtor will be immediately transferred to the bank account of the creditor (i.e. prior to the finality of the execution decision).

### Amendments of the tax laws to exempt certain international debt securities from payment of withholding tax

Pursuant to the Tax Procedure Act, Corporate Income Tax Act and Personal Income Tax Act, certain international debt securities, in particular quoted Eurobonds, are now exempt from payment of the 20% withholding tax.

### Amendments of the law on companies to transpose an EU Directive into national law

The recent amendments of the Company Act (hereinafter Amended Company Act) is aimed at implementing Directive 2007/36/EC of July 11 2007 on the exercise of certain rights of shareholders in listed companies (hereinafter 2007 Directive). With the aim of fostering the equal treatment of shareholders, ensuring the provision of adequate information to shareholders and offering further protection for minority shareholders, a number of provisions have been adopted in relation to the convocation of the general meeting, providing adequate information to shareholders prior to the general meeting, participation in the general meeting by electronic means, the right to put items on the agenda, as well as in relation to proxy voting.

### Amendments of the law on payment services to transpose an EU Directive into national law

The Payment Services and Systems Act (hereinafter Payment Act) has been subject to amendments in 2009 and 2010. In both instances, the reasons behind the respective amendments were the transposition of EU Directives into the Slovenian legal system. Furthermore, the amendments of the

Payment Act in 2009 also brought about important changes in the treatment of bills of exchange. Namely, previously, for a bill of exchange to be drawn, an issuer must have issued an order to the bank to draw a bill of exchange in the form of a separate document.

In the past, such orders were revocable, and a debtor (issuer) could easily circumvent its obligations arising out of the bill of exchange by simply revoking the order previously issued to the bank. The Amended Payment Act has done away with this practice, and it now stipulates that the bill of exchange includes an irrevocable authorisation by the issuer given to the bill of exchange holder to issue an order to the bank to draw the bill of exchange and, consequently, effect payment from the issuer's account.

## Financial and corporate

### Recommended firms

#### Tier 1

Jadek & Pensa  
Miro Senica in odvetniki  
Odvetniki Selih & partnerji  
Rojs Peljhan Prelesnik & partnerji

#### Tier 2

Filipov Petrovic Jeraj in partnerji in cooperation with Schoenherr  
Wolf Theiss

The Slovenian market has been stagnant over the past 12 months with a decrease in deal flow across many practice areas with the exception of restructuring and insolvency. Law firms have seen a notable increase in restructuring transactions as a number of companies face insolvency proceedings.

“What we have noticed is that M&A activity is still very low but it's moving forward at least at the level of domestic investors. This is not really because of the interest of the investors but because companies became insolvent and found themselves in a difficult situation,” says one partner.

The domestic lending sector has also become more stringent in its approach to financing, causing wide spread unavailability of lending. “We have large Slovenian banks trying to settle finance issues of their own so the market is quiet in terms of bank lending, but we have international firms trying to support the local companies with financing,” says one partner.

In line with the trends around the world, the construction and real-estate sectors have been the hardest hit in Slovenia, which affect-

ed the pace of economic recovery in the country.

On the project finance side, the government hopes to move forward with projects considered to be of national interest such as a national stadium, sports infrastructure and several roads. “These [projects] have a political interest as well as national interest,” says one partner.

### Jadek & Pensa

“We are very pleased, we have worked with them extensively in Slovenia and our view is that they are the best firm for institutional M&A work in the country,” says one client. “I think the team cares deeply about the success of their clients so they are commercially minded and business oriented.”

The firm is highly regarded in the market and considered to be, beyond any doubt, a pre-eminent practice. Clients also comment on the firm's extensive capabilities: “They have a broad skill set and in such a small country ... to have a firm that can do such a broad range of work is exceptional,” says one client.

Clients highlight Aleksandra Jemc as a significant practitioner. “She is very committed and willing to work quickly and turnover documents. She also pays a lot of attention to detail,” says another client. The firm also promoted Ozbej Merc to partner in 2010.

The practice is managed by Sreco Jadek and Pavle Pensa who have both been active across a range of transactions over the past 12 months. One highlight saw Jadek lead a team advising Istrabenz in relation to a debt restructuring during its insolvency proceedings. The deal presented challenges since it involved negotiation with 19 banks, none of which organised in syndicate, following the announcement of Istrabenz's insolvency. The €500 million deal closed in December 2009.

Simon Gabrijelcic and Tina Zvanut Mioc were also active, advising HSBC, Société Générale, the Royal Bank of Scotland and UniCredit as lead managers on the issue of €1.5 billion of 4.62% notes due in 2024. The deal closed in September 2009. In addition to this deal, the firm also advised the lead managers in a further deal relating to the issue of €1 billion of 2.75% notes due in 2015 which closed in March 2010.

#### Leading lawyers

Simon Gabrijelcic  
Sreco Jadek  
Aleksandra Jemc  
Pavle Pensa  
Bostjan Spec

### Miro Senica in odvetniki

Miro Senica in odvetniki's presence in the Slovenian market is strong, and the practice is among the most respected in the country. “The firm is very successful,” says one competitor. The firm's corporate work is handled by Melita Trop, who is noted by peers as the firm's key name. “She is the most important lawyer in the firm,” says one peer.

Managing partner Miro Senica teamed up with Trop to represent Mercator, an Slovenian retail company over the past year. The team advised the company on the sale by a banking group of Mercator shares that it had seized from its previous owners after being used as collateral.

Senica and a team also advised Delo on the sale of approximately 80% of newspaper company Vecer, and carried out due diligence and was involved in negotiations and drafting of a €9 million sale and purchase agreement signed in June 2010.

#### Leading lawyers

Miro Senica  
Melita Trop

### Odvetniki Selih & partnerji

Odvetniki Selih & partnerji is highly regarded by both clients and peers. “We see them as one of the three best law firms in Slovenia for syndicate business so whenever we need some kind of activity like this we engage with them. For this we need quality and we are prepared to pay the price and it makes sense to,” says one client.

A leading figure at the firm to be singled out by clients is Nina Selih who is praised for her exceptional skill and knowledge, “She is very professional and always polite. I explain what I need, I get a response and they are prepared to meet our timeframe,” says a client.

“The quality is no question, we get what we expect. It is not just a question of knowledge but she is able to understand the entire framework,” says a client.

Selih and senior associate Mia Kalas took the lead in advising a bank in connection with state guaranteed eurobonds. The deal, with a value of €100 million, closed in June 2010. On another deal, Kalas is advising a Slovenian motorway construction company in a €70 million financing deal.

On the M&A side, Selih and Kalas led a team in advising a group of UK and US funds on the acquisition of a stake in a Slovenian international sales and media group of companies. The cross-border deal involved a target with subsidiaries in 15 jurisdictions, and closed in April 2010.

**Leading lawyers**

Nina Selih

**Rojs Peljhan Prelesnik & partnerji**

“They are very professional and have a high standard of knowledge behind them. They have good international connections and we use them whenever you have some international business quality should be of a higher standard,” says one client.

The firm has a large presence in the market and is recognised by competitors for its work in pharmaceutical industry in particular. The firm is praised for its experienced teams; Ales Rojs and Grega Peljhan are both described as distinguished lawyers in the market. In speaking of Rojs, one client says: “He is a strong representative to have on your side, he is direct which is useful for negotiations.”

Grega Peljhan is also praised by clients. “He’s very polite and goes step by step ... Peljhan negotiates politely and knows exactly what he is doing. He finds a way of getting the optimised solution in the end,” comments one client.

Peljhan has been active, together with Bojan Sporar, in representing UniCredit Bank, BNP Paribas, Bayerische Hypo-und Vereinsbank, ING Bank and WestLB in connection with the financing and structuring of the acquisition of UPC Telemach Group. The transaction involved a €73 million financing agreement, hedging arrangements and structuring of the collateral package. The deal reached financial close in August 2009 with the collateral related work extended to close in February 2010.

On a further deal, Peljhan represented UBS, Erste Group Bank, Raiffeisen Zentralbank Österreich as joint lead managers in the issue of €500 million in aggregate principal amount of floating rate notes issued by Abanka Vipava and guaranteed by the Republic of Slovenia. The deal closed at the end of 2009.

**Leading lawyers**Grega Peljhan  
Ales Rojs**Filipov Petrovic Jeraj in partnerji in cooperation with Schoenherr**

The Austrian-headquartered firm expanded its practice with the hire of Luka Fabiani who joined the firm from a local competitor in November 2010.

Led by Tomaz Petrovic, the firm has been involved on a range of deals over the past 12 months. One highlight saw Petrovic represent

the Slovenian segment of Volkswagen on its merger with Porsche.

The firm has also been active in relation to restructuring and insolvency work. Jernej Jeraj and Zagreb-based Matthias Wahl acted on behalf of Prevent Group in advising Prevent Dev as the largest stakeholder and business partner of the Slovenian Prevent Group. The deal also involved advising on the insolvency proceedings of Present Pur.

The firm continues to be a respected contender in the market with visibility across a range of transactions.

**Wolf Theiss**

Austria’s Wolf Theiss is a respected international firm and recognised as having a strong practice in the region. The practice is led by Markus Bruckmueller and is highly regarded in the market for its regional presence.

Bruckmueller has been visible on a number of transactions including leading a team in advising BNP Paribas and Credit Suisse on the public offer of Telekom Slovenije’s €300 million eurobond issue to be listed on the Luxembourg Stock Exchange. The deal represents the first time a Slovenian company, outside the banking sector, has issued eurobonds. The deal reached financial closing at the end of 2009.

Sokol Nako has also been active leading a team in representing Kelag, partly owned by RWE, in connection with its acquisition of Interenergo, a Slovenian energy company that is active in several jurisdictions.

**Leading lawyers**

Markus Bruckmueller

**Other notable firms**

**Law Office Tos and Partners** is managed by Andrej Tos, who has been visible on a range of transactions. Tos acted on behalf of Artos Skupina in connection with a complex restructuring which included the takeover of Uni Gran Mer, a Macedonian white marble quarry owner.