

CHSHCEE Newsletter Slovak Republic



Discharging debts

The amendment to Act No. 7/2005 Coll. on Bankruptcy and Restructuring, as amended (hereinafter referred to as the “ABR”), effective from 1 March 2017, has implemented into Slovak law a new instrument for discharging the debts of natural persons.

Pursuant to the latest amendment, debts may be discharged by one of two procedural methods stipulated in the fourth part of the ABR. The first option is discharge by bankruptcy and the second option is discharge in the form of a repayment schedule. The debtor is able to choose the procedural method subject to fulfilling legal requirements. In case both discharge methods apply, it must be demonstrated that enforcement or similar proceedings are held with respect to the debtor. At the same time, the mandatory representation of the debtor by the Legal Aid Centre or by an Attorney-at-Law designated by the Legal Aid Centre was introduced in order to prevent surreptitious actions and an unnecessary decrease in the insolvency assets due to the costs of representation. Only the debtor is authorised to file for bankruptcy or file an application for a repayment schedule. The court decides on the discharge by issuing one decision together with a declaration of bankruptcy or by introducing a repayment schedule. The ABR precisely determines which receivables may be settled in bankruptcy proceedings or by introducing a repayment schedule, which receivables are excluded from settlement and which receivables remain unaffected. In case debts are discharged by bankruptcy being declared, the debtor benefits from the right to exclude part of his/her dwelling from bankruptcy proceedings, which – pursuant to the Order of the Government of the Slovak Republic No. 45/2017 Coll. implementing certain provisions of the ABR – is set at EUR 10,000. The debtor is entitled to use no more than EUR 250 per month from this amount from a separate bank account. It is necessary to draw attention to the fact that the discharge by bankruptcy also brings with it another consequence: termination of undivided co-ownership of spouses (hereinafter referred to as the “UCS”). UCS assets form part of the bankruptcy assets. The other spouse has a right vis-à-vis the bankruptcy assets to have the untouchable value of the dwelling released from the bankruptcy assets, in case a dwelling of the debtor belonging to the UCS was included in the bankruptcy assets.

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In our opinion, discharge by introducing a repayment schedule may be more advantageous for the debtor due to the fact that the debtor will not lose all his/her property which would be subject to bankruptcy, but the debtor would be obliged to meet the repayment schedule over a period of five years. The legislator determines the conditions which must be met when determining the repayment schedule. The repayment schedule must satisfy receivables of at least up to 30%. Under the repayment schedule, the receivables of creditors must be satisfied by at least 10% more than they would be satisfied in bankruptcy proceedings. The repayment schedule becomes ineffective if a declaration of bankruptcy is issued regarding the assets of the debtor. The legal certainty of creditors may be negatively affected by a repeated discharge of the debtor who is entitled to seek a repeated discharge by bankruptcy or by the introduction of a repayment schedule after ten years have elapsed since bankruptcy was declared or a repayment schedule was introduced.

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