

COMITE MARITIME INTERNATIONAL

International Working Group on Cross-Border Insolvency QUESTIONNAIRE

REPLY OF THE CROATIAN MARITIME LAW ASSOCIATION

SECTION I

CROSS-BORDER MARITIME INSOLVENCY ISSUES

Part 1 General Insolvency Principles Applicable to Foreign Creditors

1. *Has your country adopted any specific rules on cross-border insolvency (such as the UNCITRAL Model Law or any specific domestic, bilateral or multilateral instrument)? If so, please provide a general description based on the topics discussed in this questionnaire.*

Croatia has not adopted any specific rules on cross-border insolvency (not UNCITRAL Model Law nor i.e. Convention on Insolvency Proceedings of 23 November 1995, nor European Convention on Certain International Aspects of Bankruptcy of 09 June 1990 (signed by 8 countries, ratified by 1 country) and is not a party to the specific bilateral instrument. However, it has a regulation on the cross-border insolvency within the Croatian Insolvency Act¹ (Official Gazette No. 44/96, 29/99, 129/00, 123/03, 82/06, 116/10 and 25/12) in the Section "Cross-Border Insolvency", Articles 301 - 335, which contain a) the provisions on the international jurisdiction of the court of the Republic of Croatia b) the general provisions c) the provisions on preconditions and the procedure on the recognition of the foreign decision on the commencement of the insolvency proceeding d) provisions on the effect of the recognition of the foreign decision on commencement of the insolvency proceeding e) provisions on commencement of the special insolvency proceeding as a result of a recognition of the foreign decision on commencement of the insolvency proceeding f) provisions on denial of recognition of the foreign decision on commencement of the insolvency proceeding and g) provisions on foreign compulsory settlement or foreign insolvency plan).

Also, it has to be taken into consideration that on the 01 July 2013 (the date of Croatian entering into the European Union) the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) shall come into force and be equal part of the Croatian legal system.

2. *Do your laws recognize the standing of a foreign creditor or other person (such as a foreign flag authority of a locally domiciled shipowner or a foreign administrator of insolvency proceedings) to start or oppose an insolvency proceeding in respect of a local ship operator or in respect of assets located locally? If so, describe in detail those rights or restrictions upon such rights of such foreign entities which differ from those of local creditors, insolvency administrators or public authorities.*

Within the scope of the domestic insolvency procedure initiated and executed in Croatia (outside the cross-border insolvency procedure regulated also by the Insolvency Act) the foreign creditors are equally competent to commence the insolvency procedure against the locally domiciled debtor (respectively the shipowner as well) as the domestic ones.

¹ The Croatian word "*stečaj*" literally translated to English is "*bankruptcy*" ("*insolvency*" is in Croatian language (and in Croatian Insolvency Act) one of the reasons for commencement of the insolvency proceeding). So please have in mind that in the continuation of this Questionnaire, although the word "*insolvency*" shall be used, the more suitable translation from Croatian would be "*bankruptcy*".

With respect to the cross border insolvency proceeding, the provisions of the Article 301 of the insolvency Act (*'Exclusive Jurisdiction'*) regulate that the Croatian courts are exclusively competent for the execution of the insolvency proceeding against the debtor whose centre of business activities is in the territory of the Republic of Croatia. There is a legal presumption that the debtor's centre of business activities is in place where it has its registered seat. If it is to be proved that such centre is abroad – although its registered seat is in Croatia – the Croatian court shall have exclusive jurisdiction to execute the cross-border insolvency procedure against the debtor if the insolvency proceeding cannot be initiated against that debtor in the country where it has its registered seat on the basis of debtor centre of business activities. The Paragraph 2 of the same Article regulates that such procedure (initiated in Croatia) comprises all of the debtor's assets, regardless of whether such assets are located in Croatia or in some other country (the so called *'main insolvency proceeding'*).

The Article 302 of the Insolvency Act regulates the competence of the Croatian court in case of so called *'special insolvency proceeding'*. In that case the Croatian court has no jurisdiction on the basis of main insolvency proceeding but has jurisdiction for execution of the insolvency proceeding against the debtor if the debtor has a business unit in Croatia (without the quality of a legal person) or assets and the insolvency procedure shall be executed only with respect to the assets located in Croatia (which is the main difference in relation to the main insolvency procedure).

If the debtor has no business unit in Croatia (without the quality of a legal entity) but only assets, the insolvency procedure is possible to commence in the following cases:

1. when in a country where the debtor's centre of business activity is at, the insolvency proceeding against the debtor cannot be opened because of the conditions set out in the insolvency law of that country, although the reason for the insolvency proceeding exists,
2. when pursuant to the legislation of a country where the debtor's centre of business activity is at the insolvency proceeding comprises only the debtor's assets in that country,
3. when the insolvency proceeding in Croatia is proposed on the basis of Article 334 of the Act (which regulates the right of any creditor to initiate the insolvency procedure in Croatia - regardless the fact that the main insolvency procedure is commenced in another country - if the conditions for denial of the foreign decision on the commencement of the insolvency procedure are met.

In that case the court shall allow the opening of the insolvency proceedings in Croatia if that is required by the principle of equitable settlement of all the creditors. Also, such insolvency proceeding includes only the debtor's assets located in Croatia).

4. when a commencement of a separate insolvency proceeding in Croatia is proposed under the proposed procedure for the recognition of foreign decision on commencement of insolvency proceeding.

The Insolvency Act in the Article 327 regulates the competence of the foreign insolvency administrator, as in more details explained under below Answer 20 of this Questionnaire.

3. *Do your laws have a procedure for supervising the activities in your country of a foreign insolvency administrator?*

One of the most important principles of the Insolvency Act regarding the cross-border insolvency is the cooperation between the domestic and foreign insolvency administrator. That principle is contained in the provisions of the Article 307 of the Insolvency Act which regulates that the insolvency administrator of the main insolvency procedure commenced before Croatian courts and the insolvency administrator of the insolvency procedure commenced against the same debtor in an another country shall

cooperate and are mutually bound to provide each other all of the legally admissible notifications that may be of importance for execution for those procedures.

The Par. 2 of the same Article states that the insolvency administrator of the main insolvency procedure opened in Croatia is obliged to file the claim filed in that insolvency procedure in the foreign insolvency procedure upon creditor's request and if authorized to do so by that creditor.

4. *If an administrator is unwilling to pursue a claim by the insolvent ship operator, can foreign creditors apply to an insolvency tribunal for a transfer of the subject matter of the claim from the estate of the insolvent ship operator to a creditor or group of creditors?*

Important principle of the insolvency procedure in Croatia (especially regarding commencement of the insolvency procedure) is the principle that the insolvency proceedings are never initiated by the court but only by the proposition of an authorized person (creditor (foreign or domestic) or even debtor himself) – as regulated by the Article 7 of the Insolvency Act (or, as in the case of cross-border insolvency proceeding - also on the basis of the foreign decision on the commencement of the insolvency proceeding, as regulated by the rules for the cross-border insolvency proceeding, as explained under Answer 23 of this Questionnaire (pursuant to the Article 310 of the insolvency Act the proposal for the recognition of decision of the foreign court or other competent body on commencement of the insolvency proceeding may be filed by the foreign insolvency administrator or the creditor).

The court is not competent to solely decide whether to commence or not the insolvency procedure since that has to be done by the authorized person. However, once the proceeding is commenced, the court conducts it *ex officio* and establishes all of the facts relevant for the procedure.

So if the insolvency procedure is pending, the willingness for pursuing claims is outside of scope of competence of the insolvency administrator to decide on but his actions are strictly determined by the (compulsory) provisions of the Croatian Insolvency Act. That means that Croatian insolvency law does not regulate the situation like this since it would not be legally possible.

5. *Do your laws permit foreign creditors to apply to a court for supervisory orders if they consider the administrator is acting inefficiently or wrongly? If so, describe the procedure generally.*

The Insolvency Act in the Article 32 regulates that – in order to protect the creditors' interests in the insolvency proceeding – the insolvency judge may establish creditors' committee before the first creditors' hearing before court. Here please note that – regardless of that insolvency judge's right (which in most cases is not exercised by the insolvency judge) – the creditors' committee is usually established by the decision of the creditors themselves and usually on the first creditors' assembly and if by that time the insolvency judge exercised his right to establish the creditors' committee, the assembly can exclude all or some of the creditors from the creditors' committee appointed by the insolvency judge and appoint other or additional members of the creditors' committee (which is a logical legal solution since the main obligations of the creditors' committee are to represent the creditors' interests and to supervise and direct the insolvency administrator's performance). Here please note that the Insolvency Act does not contain rules which would result with different material position of the foreign creditors within the insolvency procedure – for better or for worse. The creditors in the insolvency procedure have an active position and decide on the important matters during that procedure.

The supervision over insolvency administrator is regulated in the Article 26 of the Insolvency Act whose provisions regulate that the supervision over actions of the insolvency administrator is performed by the a) insolvency judge, b) creditors'

committee and c) creditors' assembly and all of them may – at any time – demand the notifications or reports on the state of affairs and conducting the business operations from the insolvency administrator. Furthermore, the insolvency administrator is obliged to regularly (at least once in 3 (three) months as well as every time when the insolvency judge or the creditors' committee demand) file the written report (Article 25 of the Insolvency Act) on the progress of the insolvency procedure and the state of the insolvency estate.

In addition to that obligation, the Article 31 of the Insolvency Act entitles the creditors to order to the insolvency administrator to provide them reports on the state of affairs in regular time periods.

So the answer to this question is that the creditors are entitled to supervisory rights regardless the fact that the insolvency administrator is acting inefficiently or wrongly or not but - here again - the foreign creditors with respect to this matter have the equal position as the domestic ones.

6. *Do your laws permit foreign creditors to commence legal proceedings against administrators against administrator if they consider the administrator has acted negligently or wrongly?*

The Article 27 of the Insolvency Act regulates the situation in which the court judge shall dissolve the insolvency administrator - if after 18 (eighteen) months period starting from the date of the report hearing or from the cessation of the debtor's business he had failed to cash the debtor's assets belonging to the insolvency estate in a manner that the final division can be performed unless the encashment was not possible due to conduct of the administrative or court proceeding that is a preliminary issue for the termination of the insolvency proceeding. If the debtor's assets belonging to the insolvency estate consist mainly of the movables that can be easily cashed, the court judge shall dissolve the insolvency administrator after the 12 (twelve) months period elapses (under the same conditions regarding the start of the deadline and cashing the assets).

The Paragraph 2 of the same Article regulates that the insolvency judge shall dissolve the insolvency administrator *ex offio* or upon request of the creditors' committee or the creditors' assembly before the above mentioned deadlines (18 and 12 months) if the insolvency administrator fails to perform his duties successfully or for some other important reasons².

The Article 28 of the Insolvency Act regulates that the insolvency administrator shall indemnify all the participants if he violates any of his duties (for that purpose the insolvency administrator is obliged to obtain an insurance policy after the insolvency judge determines the value of the insurance premium taking into consideration the predictable quantity of the insolvency estate as well as the insolvency procedure's complexity).

With respect to the insolvency administrator's responsibility, here please also note that the Croatian Criminal Code (Official Gazette No. 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11) in the Article 283 regulates the criminal liability for the offender of the criminal act of abuse of the insolvency proceeding, which includes – among other persons – and the insolvency administrator.

7. *If a foreign creditor or claimant against a ship operator foresees it will suffer a loss or commercial disadvantage because of the appointment of a private receiver*

² If the insolvency administrator has not been prepared for the examination hearing for which reason the filed claims could not be examined, the precondition for dissolving the insolvency administrator due to failure to perform his duties successfully - Decision of the High Commercial Court of the Republic of Croatia No. Pž-59054 of 04 December 2001).

or the way the private receiver is acting, does such a foreign claimant have any legal remedies against the receiver, such as applying to a court for supervisory orders or to put the ship operator into bankruptcy?

The Croatian legal system is not familiar with the private receivers in a manner they exist in the United Kingdom or Canada (prior to insolvency proceeding). The Article 252 of the Companies Act (Official Gazette No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08) regulates the material responsibility of the members of the management board of the company if they act contrary to the provisions of the Companies Act and it also states that the creditors of the company are also entitled to file the claim for the damage compensation against the members of the management board if they (creditors) cannot collect their claim from the company. The same Article regulates that if the insolvency procedure is commenced over that company (debtor), during that procedure such creditors' rights towards the members of the management board realizes the insolvency administrator.

Part 2 Subject Matter or Territorial Jurisdiction

8. *Do your laws permit assertion of insolvency jurisdiction generally over any asset of an insolvent ship operator domiciled in your country, regardless of the location of the asset within or outside your country? Please comment whether this scope of jurisdiction differs between a ship of your country's registry owned by persons domiciled in your country, or a ship of another flag owned by persons domiciled in your country.*

As explained under Answer 2 of this Questionnaire, the provisions of the Article 301 of the Insolvency Act regulate that the Croatian courts are exclusively competent for the execution of the insolvency procedure against the debtor whose centre of business activities is in the territory of the Republic of Croatia. There is a legal presumption that the debtor's centre of business activities is in place where it has its registered seat. If it is to be proved that such centre is abroad – although its registered seat is in Croatia – the Croatian court shall have exclusive jurisdiction to execute the cross-border insolvency procedure against the debtor if the insolvency procedure cannot be initiated against that debtor in the country where it has its registered seat on the basis of debtor centre of business activities.

The Paragraph 2 of the same Article regulates that such procedure (initiated in Croatia) comprises all of the debtor's assets, regardless of whether such assets are in Croatia or in some other country (*the main insolvency procedure*).

When the debtor's registered seat is outside Croatia and the centre of the debtor's business activities is in Croatia, the Croatian court on which territory the debtor's registered seat is at shall have the exclusive territorial jurisdiction for the execution of the insolvency procedure.

From these provisions it is clear that the main criteria for the jurisdiction for the insolvency proceeding under the Croatian legislation is the centre of the debtor's business activities (not i.e. the citizenship of the shareholder of the company nor the location of the assets (here please see the Answer 2 of this Questionnaire).

Part 3 Notice to Foreign Creditors

9. *Do any legal or procedural requirements have to be followed to ensure the insolvent ship operator or the insolvency administrator identifies all known foreign creditors?*

The obligation of the insolvency administrator to identify all creditors (domestic or foreign) is regulated in the Article 152 of the Insolvency Act which states that the insolvency administrator is obliged to – with respect to the time of commencement of the insolvency proceeding - compose a systematic review which will contain the list and the comparison of the assets belonging to the insolvency estate as well as the debtor's obligations and their evaluation (for determination of the debtor's obligations it is

necessary for the insolvency administrator to compose a list of all debtor's creditors for whom he learned from the debtor's books and business documentation or in some other way). The Article 153 of the Act regulates that such lists have to be displayed in the court the 8 days before the report hearing the latest.

As for the debtor, the Paragraph 2 of the same Article states that the insolvency judge may – after composing of mentioned review – may order to the debtor to respond on the completeness of the review.

Additionally, the Article 106 of the Act states that the debtor's obligation to provide all the information relevant for the procedure to the insolvency judge, insolvency administrator and, upon the court's order, the creditors as well as to cooperate with the insolvency administrator and upon the court's order - at any time.

10. *Do your laws require administrators of insolvency proceedings to give notice of the proceedings to foreign creditors? As a general practice, how is such notice given to foreign creditors?*

The Article 64 of the Act regulates that the creditors are notified by the announcement published on the insolvency court's bulletin board and in the Official Gazette (the same rule applies to all of the decisions of the insolvency court during the insolvency proceeding).

The Article 65 of the Act regulates that the decision on commencement of the insolvency proceeding shall be delivered to: 1) the proposer of the commencement of the insolvency procedure, 2) the debtor, 3) the tax authorities, 4) the state attorneys 5) the legal entities that perform debtor's payment transactions and 6) the authorities that govern public registers. The same Article regulates that the insolvency judge may order to the insolvency administrator to deliver the decision on commencement of the insolvency proceeding to all of the debtor's creditors and debtors whose address is known.

The Insolvency Act also regulates the obligation of the domestic insolvency judge in the procedure of recognition of the foreign decision on commencement of the insolvency procedure to deliver the written report on the filed proposal for recognition with the information from the announcement to the creditors with known residence or registered seat, foreign debtor and foreign insolvency administrator (in the procedure as described under Answer 23 of this Questionnaire).

11. *Do your laws require administrators of insolvency proceedings to give notice of time bars for filing of claims to foreign creditors? As a general practice, how is such notice given to foreign creditors?*

As explained in the previous Answer of this Questionnaire (and as regulated in the Article 64 of the Act) the decision on commencement of the insolvency proceeding is delivered – among other recipients - to the authorities that govern public registers which are then obliged to register an entry on the commencement of the insolvency proceeding.

The Article 338 of the Maritime Code (Official Gazette No. 181/04, 76/07, 146/08, 61/11) regulates that the entry of personal relationships, particularly with respect to restrictions on disposal of property rights, results with a legal consequence that the persons in whose favor a right is entered with the register of shipping, cannot claim that these relations were not known to them (i.e. minority, an extension of parental rights or guardianship, the commencement of the insolvency proceeding etc.).

Registration (and clearance) of such entries executes the port authority which keeps a register of shipping on the basis of documents which prove these relations, and on the basis of the proposal of the parties, their legal representatives or competent authorities.

12. *If the insolvent business is a shipowner, do your laws require notice of insolvency proceedings to be given to the ship registrar for domestically registered vessels?*

Yes, as explained under the previous Answer of this Questionnaire.

13. *Do your laws require notice of insolvency proceedings to be given to diplomatic or consular officials of the flag states of foreign registered vessels which are assets of a local insolvent ship operator?*

As explained under the Answer 10 of this Questionnaire, The Article 64 of the Act regulates that the creditors are notified by the announcement published on the insolvency court's bulletin board and in the Official Gazette which rule applies to all of the decisions of the insolvency court during the insolvency proceeding).

Therefore, no such rule on notice to be given to diplomatic or consular offices is regulated under Croatian legislation.

14. *If a foreign creditor later learns of the existence of insolvency proceedings, is the foreign creditor permitted to file late claims or have a right to claim against any of the assets of the insolvent ship operator which have not yet been distributed to creditors?*

As explained under Answer 10 of this Questionnaire - the decision on the commencement of the insolvency proceeding shall not be delivered to the creditors but published on the insolvency court's bulletin board and in the Official Gazette which rule applies to all of the decisions of the insolvency court during the insolvency proceeding) but the creditors shall be notified on the procedure of recognition of the foreign decision on commencement of the insolvency procedure and its effects (as explained under below Answer 23 of this Questionnaire). It is regulated by the Article 54 of the Act that such decision contains summons to all creditors to report their claims in a certain deadline which cannot be shorter than 15 (fifteen) days and not longer than 30 (thirty) days.

The Article 176 of the Insolvency Act regulates that the claims filed after the deadline for filing may be examined at the examination hearing if proposed so by the insolvency administrator.

Claims filed after the deadline for filing that are not examined at the examination hearing and the claims submitted not later than 3 (three) months after the first examination hearing, but not after the announcement of avocation for the final hearing, may be examined in one or more special examination hearing which shall - as proposed by the creditors who have not timely filed their claims - be ordered by the insolvency judge, provided that within 15 (fifteen) days the creditors remunerate in advance the costs of that hearing. If those costs are not paid within the mentioned period, special examination hearing shall not take place, and the late claims shall be dismissed. Here also please note that Paragraph 4 of this Article regulates that all claims filed after this deadline of 3 (three) months after the first examination hearing shall be dismissed.

The Article 199 of the Insolvency Act regulates that the insolvency judge shall - on the basis of proposal of the insolvency administrator, any of the creditors or the insolvency administrator - determine *ex offio* to continue the subsequent distribution if, after the final hearing:

a) the conditions for distribution among creditors are met; b) amounts that are paid from the insolvency estate are rendered to the insolvency estate; c) the assets that belong to the insolvency estate are found. After performing the subsequent distribution insolvency judge shall issue a decision on the conclusion of the insolvency proceeding.

The court shall determine the continuation of the procedure for subsequent separation regardless of whether the proceeding was previously concluded.

The insolvency judge may decide not to determine the subsequent distribution and the amount available for distribution to creditors or a found asset give over to an individual debtor, if it deems appropriate with respect to the insignificant amount or insignificant value of the asset.

Upon executing of the subsequent distribution insolvency judge will issue a decision on the conclusion of insolvency proceeding.

Part 4 Recognition of Foreign Claims

15. *Please describe the conflict of laws rules for recognition of foreign maritime claims in insolvency proceedings. For example, if the claim is a maritime lien under the law of the place where the claim arose but not in the country where the insolvency proceeding is being conducted, will the insolvency administrator or tribunal recognize the foreign maritime lien?*

Pursuant to the provisions of the Article 71 and 72 of the Insolvency Act all of the creditors' claims are being divided in two distribution ranks - higher and lower (depending on the type of the claim).

The Article 71 regulates that the *first higher distribution rank claims* include claims of debtor's employees and former employees incurred from employment relationship till the date of commencement of the insolvency proceeding (in the gross amount), the severance payments in amounts as prescribed by law or by collective agreement and claims arising from damages suffered due to injury or occupational illness, while *second higher distribution rank claims* include all other claims towards debtor, except those classified in the lower distribution ranks.

The Article 72 of the Insolvency Act regulates claims classified in the *lower distribution rank* (interest on the creditors' claims from the date of commencement of the insolvency proceeding, creditor's costs incurred due to participation in the insolvency procedure, claims for the debtor's non against-payment obligations etc.).

The same article also contains provisions on creditors with an exclusion right (which - on the basis of theirs some property or personal rights can prove that some asset does not belong to the insolvency estate) and the Article 81 of the Act on the creditors with a separate collection right (creditors entitled to a pledge or collection right over an asset or a right which is registered with the public registers (land register, register of shipping/aircrafts/intellectual property etc.) which are entitled to initiate the enforcement procedure in order to sell or cash such right.

These provisions of the Insolvency Act are compulsory provisions and - in such hypothetical situation as described under this query: that some claim is not recognized within the Croatian Maritime Code as maritime lien and under the foreign law are qualified and recognized as such - the foreign claim could not achieve ranking advantage beyond the provisions of Croatian legislation, regardless the status it has pursuant to the legislation of its domestic state.

16. *Apart from the characterization and priority of claims, are there any other procedural differences in the handling of claims between those by foreign creditors and those by local creditors? With reference to the types of claims listed in the table, please describe any differences in detail.*

As explained in the Answer 10 of this Questionnaire - the Insolvency Act does not contain procedural rules which would result with different position of the foreign creditors within the insolvency procedure with respect to domestic ones (whether in the domestic or cross-border (main or special) insolvency procedure. This applies to the claims listed in the table.

17. *Does your law recognize rights of claims to property rights, sale or enforcement given by foreign law to particular types of creditors, such as, for example, to financial institutions or spouses for their entitlement to business property interests of the other spouse on separation or divorce?*

The Article 94 of the Insolvency Act regulates that if the debtor is in the co-ownership or some other relationship or partnership, division of the joint assets shall be performed outside the insolvency procedure. For any of the obligations arising from such relationship the individual discharge may be demanded.

The procedure of dividing the assets from the co-ownership or some other relationship or

partnership is usually executed on the ground of agreement or before the competent municipal court.

On the matter of dividing the property of the spouses the Insolvency Act in the Article 69 states that - if the insolvency proceeding is commenced over the assets of one spouse - that spouse's share in the joint assets/property of the spouses belongs to the insolvency estate if it is possible to execute the enforcement procedure (pursuant to the general rule on enforcement procedure) on that particular share. Such procedure of dividing the assets/property shall be executed outside the insolvency procedure on demand of the insolvency administrator.

In terms of insolvency procedure in Croatia (whether domestic or cross-border one (main or special insolvency procedure) any particular solutions on the special property rights, sale or enforcement given by the foreign law to particular creditors are not provided. The effects of the foreign law and the rights arising from it are governed by Croatian Conflict Law Rules (Official Gazette No. 53/91 and 88/01) which provides the solutions for conflicts of Croatian legislation with the foreign law.

18. *Is the recognition of foreign al awards for purposes of proof of claim in insolvency proceedings different from the recognition of foreign arbitral awards for general legal purposes? Please explain any differences.*

The matter of recognition of foreign arbitration awards is regulated in the Articles 47-50 of the Arbitration Act (Official Gazette No. 88/01) which determine the preconditions which have to be met in order to recognize the foreign arbitration award. Since the Insolvency Act does not have any special requirement regarding recognition of foreign award for the purposes of proof of claim, the answer to this question is that Croatian law is silent on procedural difference for recognition of foreign arbitration award for the purposes of proof of claim in insolvency proceeding from the recognition of the foreign arbitration award for general legal purposes.

19. *If the insolvent ship operator is a state-owned enterprise, are there any differences in the rights or procedures available to a foreign creditor under your country's insolvency law?*

The Insolvency Act is silent on that matter and does not regulate any such exemption. It does regulate in the Article 3 that the Republic of Croatia and some other entities (state-owned or private) are exempt from the insolvency proceeding but the state-owned ship-operator could not be classified in any of those categories.

Part 5 Recognition of Foreign Insolvency Proceedings

20. *Do your laws permit the administrator of a foreign insolvency proceeding to publish notices of such proceedings in local news media or to communicate directly with local creditors concerning proofs of claim and payment of any recoveries in the insolvency proceedings? If there any legal restrictions on direct handling of claims by foreign administrators, please provide details.*

The insolvency Act does not proscribe such competence of the foreign insolvency administrator. As explained before, it does regulate (in the Article 307) the obligation of cooperation, both - the foreign and domestic insolvency administrators in the main insolvency procedure (under Article 301 of the Act, as described under Answer 2 of this Questionnaire).

In addition to the obligation to cooperate with the domestic insolvency administrator the competence of the foreign insolvency administrator in the special insolvency procedure (under Article 301 of the Act, as described under Answer 2 of this Questionnaire) are

regulated in the Article 327 of the Act which determines that besides a domestic insolvency administrator in the special insolvency procedure and the creditors who participate in it, the foreign insolvency administrator in this proceeding is also entitled to challenge the reported claims. The same Article regulates the foreign insolvency administrator's right to challenge the debtor's legal actions under the rules of the Croatian insolvency law.

However, the costs of a foreign insolvency administrator incurred in connection with the exercise of these rights shall not be considered as the costs of the insolvency proceedings in Croatia (Paragraph 3 of the same Article).

21. *Will your country's courts recognize a request for the recognition of foreign insolvency proceedings?*

Croatian Insolvency Act does not regulate the recognition of foreign insolvency procedure, As explained under Answers 2 and 8 of this Questionnaire, in Croatia, besides domestic insolvency procedure - depending on the legal preconditions set out in the Insolvency Act it is possible to execute main and special insolvency procedure (cross-border insolvency procedure).

22. *Will such a request be recognized if it comes directly from a foreign trustee in bankruptcy, liquidator or administrator, or does the request have to be in the form of a letter of request issued by the foreign bankruptcy tribunal?*

Please see below Answer 23.

23. *What legal standards do your country's courts apply for the purpose of recognition of foreign insolvency proceedings? Please provide details.*

With respect to the Answer 21 of this Questionnaire (and the lack of rules on recognition of foreign insolvency procedure) it is necessary to provide the details on another recognition proceeding that insolvency Act does regulate - the recognition of foreign decision on commencement of the insolvency proceeding.

The Article 311 of the Act regulates that the foreign decision on commencement of the insolvency proceeding shall be recognized under the following conditions: 1) if the decision is issued by the court or the authority which has the international jurisdiction pursuant to Croatian law 2) if the decision is the enforceable deed pursuant to the law of the country where it was issued and 3) if its recognition would not be contrary to the public order of the Republic of Croatia.

The proposal for the recognition shall be refused if - on the grounds of appeal of the debtor or some other participant of the procedure - determines that the decision by which the procedure was initiated had not been delivered pursuant to the law of the country in which the decision was issued and if in that procedure his defense rights had been violated.

It is important to emphasize that this Article also regulates that the foreign decision on commencement of the insolvency proceeding shall be recognized even if it is not final (if it has not reached its legal validity).

The proposal for the recognition of decision of the foreign court or other competent authority on commencement of the insolvency proceeding may be filed by the foreign insolvency administrator or the creditor.

Following documents have to be enclosed to proposal for the recognition of foreign decision on commencement of the insolvency proceeding: 1) original or certified copy of the decision and certified translation into the Croatian language, 2) confirmation of the competent foreign authorities about its enforceability, 3) list of debtor's known assets in the Republic of Croatia and the list of his creditors followed by the appropriate evidence. The court shall dismiss any proposal that does not include the all these enclosures, if the lack of any of enclosures is not remedied within a reasonable time.

The Article 312 of the Insolvency Act regulates the effects of filing the proposal for recognition of the foreign decision on commencement of the insolvency proceeding: entry on commencement of the insolvency proceeding in the public registers (register of shipping/aircrafts/intellectual property etc.). Furthermore, immediately upon filing the proposal for recognition the insolvency judge may order means of collateral and appointment of the temporary insolvency administrator (which shall also be registered in mentioned in the public registers).

In addition to these obligations, the insolvency judge shall immediately publish an announcement in the Official Gazette and on the insolvency court's bulletin board. The Article 313 of the Act regulates that such announcement must contain 1) the information on the court publishing the announcement, 2) information on the case with reference of the data on the foreign decision which recognition is demanded and its contents, 3) information on the foreign insolvency administrator and information on the decision on his appointment if had not been appointed by the decision on commencement of the insolvency procedure and 4) avocation to the creditors, the foreign debtor and all other persons with legal interest to file their claims within fifteen days from the publication of the announcement in the Official Gazette and to submit a statement on the existence of conditions for recognition of the decision (if any) and the possible difficulties in settlement of claims in foreign insolvency proceeding.

Written report on the filed proposal for recognition with the information from the announcement the insolvency judge shall deliver to the foreign debtor, foreign insolvency administrator and those creditors with known residence or registered seat.

After such announcement on the insolvency court's bulletin board it is not allowed - during the pending procedure on recognition of the foreign decision - to initiate the litigation, enforcement proceeding nor the establishment of collaterals with the debtor as the party in such proceeding and all such till that time pending procedures shall be suspended. The exemption to this rule concerns the creditors with an exclusion right and the creditors with separate collection right which creditors are entitled to - during the pending procedure on recognition of the decision on commencement of the insolvency proceeding - initiate or continue suspended enforcement procedure in order to collect their claim towards the debtor but only with consent of the insolvency administrator.

24. *Do your laws have a procedure for a request for the recognition by a foreign insolvency administrator or insolvency court of a local insolvency proceeding? Are such requests generally made by the administrator or the insolvency court? Generally describe the procedure.*

Please see previous Answers 2, 8 and 23 of the Questionnaire.

25. *Can an administrator of insolvency proceedings request the courts of your country for assistance in obtaining recognition of insolvency proceedings of foreign insolvency administrators or foreign courts? Generally describe the procedure.*

As explained under previous Answer 23 of the Questionnaire.

26. *Will your courts enforce any compulsory transfer of a contractual obligation involving a vessel formerly owned by an insolvent ship operator, if this contractual obligation affects parties located in your country?*

The Article 98 of the Insolvency Act regulates that the creditors with an exclusion right and the creditors with separate collection right are - after the commencement of the insolvency proceeding - entitled to initiate the enforcement procedure and realization/execution of their collaterals pursuant to the general rules of the enforcement procedure (Enforcement Act (Official Gazette No. 57/96, 29/99, 42/00, 173/03, 194/03, 151/04, 88/05, 121/05, 67/08).

Since the enforcement procedure over vessels is regulated in the Maritime Code (in relation with the Enforcement Act is *lex specialis*) those apply to the cessation of the rights over the vessel., which are registered in the ship's register.

27. *Does your legal system have a procedure for the coordination of concurrent insolvency proceedings involving maritime assets, insolvent ship operators or creditors in your country and abroad? Is this procedure set out in laws or regulations or has it been developed through practice of insolvency tribunals? Please provide details including any generally used precedent forms of procedural orders.*

As explained under the Answer 3 of this Questionnaire, one of the most important principles set out in the Insolvency Act with respect to cross-border insolvency proceeding is cooperation between the domestic and foreign insolvency administrator (regulated in the Article 307 which states that insolvency administrator of the main insolvency procedure commenced before Croatian courts and the insolvency administrator of the insolvency procedure commenced against the same debtor in an another country shall cooperate and are mutually bound to provide each other all of the legally admissible notifications that may be of importance for execution of such proceedings). The Insolvency Act does not proscribe any difference among the creditors with respect to their business activities

regarding the cooperation of the insolvency proceeding.

28. *Is your country a party to any bilateral or multilateral agreements for the coordination of multi-country insolvency proceedings or the recognition of foreign insolvency proceedings? Please list such agreements.*

Croatia is not a party to any bilateral or multilateral agreements for the coordination of multi-country insolvency proceedings or the recognition of foreign insolvency proceedings. As previously mentioned in the Answer 1 of this Questionnaire, on the 01 July 2013 (the date of Croatia entering into the European Union) the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) shall come into force and be part of the Croatian legal system.

Part 6 Need for Reform

29. *Have any provisions of your insolvency law created legal uncertainty or difficulties in the administration of cross-border maritime insolvencies? Please refer to any legal commentary or case law.*

Majority of difficulties with the execution of the insolvency proceedings in general (domestic or cross-border) in Croatia are related to the significant number of the procedures per judge (and insolvency administrators) which results with significant duration of the insolvency proceedings (some are ongoing for several years). Also, the number of the cross-border (main or special) insolvency procedure is still not significant enough to result with the reliable court practice.