

Dr. Biljana Djuričin*

Austrian Bankruptcy Act

(ed. A. Konecny, U. Reisch),

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Glossary, ISBN 978-3-7083-0541-7

During the last ten years bankruptcy law as a field for academic and professional concern has grown rapidly, especially in Central East and Southeast Europe. New theoretical works have been published, case studies have been produced, and new bankruptcy codes have been adopted. Law schools offer mandatory or optional courses on bankruptcy law. Consulting firms now do the same in the corporate world.

This book provides an excellent approach to the Austrian Bankruptcy Act and its role in insolvency proceedings. The book has a high practical value for practitioners and students who in professional life may be called upon to understand the historical and legal basics of Austrian bankruptcy law, to apply it in the course of bankruptcy proceedings and to observe how Austrian insolvency law has proven it in practice.

In the preface, the authors explain the importance of the EC Regulation on Insolvency Proceedings for the Member States of the European Union, which came into force on 31st May 2002. In particular, the authors explain how the Regulation provides substantive legal norms in the matter of national insolvency laws. The authors emphasize that Austria has developed a strong economy with numerous commercial connections and investments within Europe. It has led to a rise in the number of insolvency cases with international aspects. The authors write in their conclusion, „To ensure Austria’s international professional standing in insolvency matters, this volume presents an English translation of the Austrian bankruptcy code, which is preceded by a brief introduction to Austrian bankruptcy law. Together, these should facilitate international cooperation for all concerned in cross-border insolvency cases relating to Austria“.

* The author is Professor at the Podgorica University of Montenegro Law School and was Fulbright Professor at the Catholic University of America, Washington, DC.

The book includes three divisions: Introduction to the Austrian Bankruptcy Law; Bankruptcy Act; and Glossary.

Professor at the University of Vienna Law Faculty Andreas Konecny, who is a well-known expert on bankruptcy law in the European Union, has written the Introduction to the Austrian Bankruptcy Law.

Chapter I, entitled as *Introduction*, has also three parts. The first covers the following areas: historical development of Austrian bankruptcy law, with the most important changes from 1993 until today; insolvency principles; the facts of insolvency that constitute inability to pay debts and over-indebtedness; insolvency objectives that are not regulated specifically; bankruptcy and composition versus unitary procedure; the activities of associations for the protection of creditors' rights and agencies for debt counselling; intensive use of information technology in bankruptcy proceedings; and international insolvency law. This chapter states in general that insolvency proceedings sometimes provide for disempowerment of the debtor in the appointment of an administrator, while at times the debtor remains in possession. On the other hand, in Austria there are two differences. First, in the bankruptcy of an enterprise the debtor loses his right to dispose of his assets; this right is vested in the bankruptcy administrator. Secondly, in debt settlement proceedings for non-entrepreneurs the debtor remains in possession for reasons of cost. The author emphasizes that the insolvency court has the authority to decide on all essential questions. It is in accordance with the tradition in Austrian civil court proceedings to give the judge a strong and clear position that has its historical background in the unedifying experiences of earlier creditor-dominated bankruptcies.

In the second part of the chapter, the author presents a brief description of the course of bankruptcy proceedings, without going into details or specific features. It covers the following areas: commencement of proceedings; course of proceeding; substantive bankruptcy law; the procedural handling of bankruptcy proceedings; reorganization plans; and special features concerning natural persons.

The third part is concerned with statistical data on proceedings in 2007. These statistics provide information on how Austrian insolvency law has implemented itself in practice.

The subject matter of Chapter II is the Austrian Bankruptcy Act itself. The Act includes five parts: Law of Bankruptcy; Bankruptcy Proceedings; Special Provision for Natural Parties; International Insolvency Law; and Final and Transition Provisions. The text of the Bankruptcy Act is very well translated, with specific legal terms in precise and understandable English. The translation of this book is an attempt to provide a concise, yet comprehensive overview of most issues that currently affect bankruptcy practice for practitioners and students in the civil law, as well

as in the common law system. Mrs. Lecia-Ann Mettam is to be commended for her translation and editorial assistance.

Chapter III contains a Glossary concerned with translation of insolvency-specific legal terms from German to English language.

One of the merits of book for readers is also illustrated well in chapter 1, which contains questions and comments as a basis for discussion for those practising and lecturing in this area. The book contains all the necessary basic information, presented in a lucid and systematic way, with detailed and sometimes expansive footnotes for those who wish to pursue the issues further. Although the space in a review does not permit in depth analyses of each of the myriad of issues raised, the reader hopefully will find useful resources through the references and cases at the footnotes.

This is an excellent book and a most valuable source for both practitioners and students in bankruptcy law. The book is clearly written, well documented, and provides a useful and comprehensive coverage of an important topic. It should prove a welcome addition to the library of any bankruptcy law practitioner and any respectable law school.