

Institution of Private Individuals' Bankruptcy

Similarly to the practice of European countries, it would be timely to draft bankruptcy laws in respect of private individuals in Hungary, as the institution of private individuals' bankruptcy may help debtors, revealed it to [origo] the expert of Kovács Réti Szegheő Attorneys at Law.

Hungarian households are accumulating debts at an alarming rate which in the long run may even lead to a social crisis. The expert of Kovács Réti Szegheő Attorneys at Law opines that prevention or as the situation may be, tackling of the impending disaster by all means requires legal solution of some type.

In numerous West-European states the so-called institution of bankruptcy for private individuals enables private individuals to be relieved from the momentary crisis situation caused by indebtedness, as well as allowing bankruptcy proceedings to be commenced against them.

While in Hungary, as soon as a private individual debtor is deemed insolvent, creditors may avail to the most dramatic tools, Dr. Attila Kovács warned.

Feasible financial interests justify the survival of business associations following reorganisation, apart from avoidance of loss of financial standing by such individuals. A further argument is that the bankruptcy proceedings enable more efficient satisfaction of claims.

Private Individuals' Bankruptcy in Europe

The expert of Kovács Réti Szegheő Attorneys at Law elaborated, that private individuals' bankruptcy in Europe has become a frequently applied solution. In 1984, Denmark then in the 1980s, the United Kingdom and France has incorporated it in their regulation.

In the 1990s, this legal institution further spread among European states, i.e. the legislation of Sweden, Austria, Germany, Holland and Belgium took advantage of it. In 2008, the Czech Republic was the first one of the ten states joining the EU in 2004 to introduce it.

The bankruptcy of private individuals practiced in the above listed states is a multi-tiered procedure. Practically, this is a type of bankruptcy proceedings, where the aim is to settle the debts of a private individual. Firstly, always an agreement is sought between the debtor and the creditors.

In case it proves to be unsuccessful, the proceedings continue before court. During the bankruptcy proceedings, it is a prime concern, which assets will remain under the control of the debtor during the time of the proceedings and which are those which shall be removed from the proprietor's control.

Here a principal issue is, dr. Attila Kovács pointed out, what the optimal solution is as far as the residential property is concerned. As predominantly, the residential property means the major security of creditors' claims and at the same time, it is the fundamental guarantee of the debtor's subsistence.

Austrian Practice

Private individuals' bankruptcy proceedings (Privatkonkurs) have been around in Austria since 1st January, 1995. The proceedings are preceded by out of court settlement proposals however, in 50 per cent of the cases, the creditors refuse it.

Then the bankruptcy proceedings before court may commence, during which a compulsory settlement agreement is made. The settlement agreement aims to achieve that the debtor satisfy 20 per cent of creditor claims within two years while 30 percent thereof within five years.

In case no settlement agreement is concluded, the assets may be sold and a payment scheme is construed. In case of adoption of the payment scene, the remaining debts shall be waived, the expert of Kovács Réti Szegheo emphasises.

“Skimming Procedure”

In case the payment scheme should be rejected, a so-called “skimming procedure” follows. Even in such cases, the remaining debts are waived.

During the skimming procedure, a certain portion of the debtor's earnings shall be deducted for at least three or at most seven years by the asset manager for the settlement of creditor claims.

During the time of the skimming procedure, the debtor may retain such portion of his earnings that should be sufficient for his minimum subsistence.