



**CERHA HEMPEL**  
*Insolvency Proceedings –  
Checklist*

## **CERHA HEMPEL Insolvency Checklist**

In view of the threat of the largest wave of insolvencies in Europe since World War II, many companies ask themselves how to properly act in these circumstances, and in particular which duties managing directors have, but also how to react in relation to the insolvency of a business partner.

Since insolvency proceedings are structured very differently depending on the country, this newsletter will first give an overview of the different types of proceedings in the respective CEE jurisdictions. Most legal systems provide for reorganization as well as insolvency proceedings in the case of the insolvency of a company, so the characteristics of both proceedings are briefly described. At the same time, practice-relevant topics will be covered, and a short overview of the obligations and possibilities that affect both debtors and creditors of insolvent business partners will be given.

This newsletter follows a chronological order – from the obligation to open insolvency proceedings to filing an insolvency claim up to the satisfaction of creditors. Thereby, the effects on existing business contracts are described, whether existing contracts can be challenged by the insolvency administrator and possibly declared void retroactively. Finally, the various possibilities of obtaining early protection in the event of the insolvency of a business partner are described for the various jurisdictions.

For any queries, please let us know.

Yours,

CERHA HEMPEL Insolvency & Restructuring team

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## **AUSTRIA**

<b>Question</b>	<b>Explanation and guidance for practical action</b>
<b>What kind of insolvency proceedings exist in Austria?</b>	<p>For companies there are three types of proceedings available:</p> <ul style="list-style-type: none"><li>• Reorganization proceedings with self-administration,</li><li>• Reorganization proceedings without self-administration, and</li><li>• Bankruptcy proceedings</li></ul> <p>In the case of natural persons, there is a choice between:</p> <ul style="list-style-type: none"><li>• private bankruptcy proceedings, and</li><li>• debt regularization proceedings</li></ul>
<b>What is the difference between reorganization proceedings and insolvency proceedings?</b>	<p>In the case of reorganization proceedings, the debtor draws up a reorganization plan setting out how it intends to continue its business. For this purpose, the plan must explain with which measures and means the company will be continued. This plan is then submitted to the creditors for approval (double majority requirements). The creditors, after approval, usually receive a certain quota (of at least 20% resp. 30% of the debt depending on the proceedings), including a first cash-down-payment of 10%, and regular payments from the debtor as set forth in the plan over two years. If the debtor has fulfilled its quota, the remaining debt is discharged, i.e. the remaining outstanding debts do not have to be paid and the debtor regains its power over the company.</p> <p>In ordinary insolvency proceedings, the debtor loses control over its company and either the entire company or its single assets are sold and the creditors receive their respective quota.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>Both the debtor and a creditor can apply for the opening of insolvency proceedings. A creditor must demonstrate</p> <ul style="list-style-type: none"><li>• that the debtor is insolvent, and</li><li>• that it has the status of a creditor in the insolvency proceedings being initiated.</li></ul>

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**What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

The debtor's power of disposal over its company is withdrawn and transferred to the insolvency administrator. Depending on whether the application is for reorganization proceedings or insolvency proceedings, the insolvency administrator either takes steps to ensure the business continues or it sells the assets.

The creditors can then file their claims, thereby enabling them to participate in the insolvency proceedings later on and exercise their right to a say. The insolvency administrator can either accept or object to this claim. If the insolvency administrator accepts it, the creditor participates in the proceedings with the claim in the amount filed. In addition, an execution moratorium occurs, meaning that creditors cannot execute their claims and instead have to wait for the distribution by the insolvency administrator.

**How long do creditors have to file the claim and what are the consequences of not filing?**

The deadline for registration is up to 14 days before the examination day, which is usually 60-90 days after the opening of the insolvency proceedings. The deadline must be publicly announced in the insolvency database ("*Ediktsdatei*"). Failure to register a claim means that the creditor does not participate in the proceedings and will not receive its claim. Although the insolvency administrator is required to notify known creditors in person, it is nevertheless advisable to check the insolvency database from time to time to see whether e.g. business partners are insolvent.

**What are the effects on existing business contracts?**

If the insolvency administrator withdraws from an existing contract, the creditor is entitled to assert a claim for damages for non-performance, to be settled on a pro rata basis. The law makes special provision for certain contracts such as employment and real estate agreements.

If the contract serves to guarantee the continuation of the business, the creditor can only terminate the contract for good cause within the first six months of the opening of insolvency proceedings.

**Can previous business transactions be challenged resp. is there a risk of a claw-back?**

If the insolvency administrator deems a transaction to be unfavorable to the debtor (in particular in the case of a forbidden profit distribution, whether directly or indirectly, to the shareholder, or in the case of other transactions falling within the scope of the provisions on challenging transactions), then there is a risk that the transaction will be qualified as illegal and will need to be unwound. There are deadlines from six months to up to 10 years, depending on the facts and circumstances, which could be theoretically triggered.

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## *Insolvency Proceedings – Checklist Austria*

**What are the consequences if the reorganization process is successful?**

In the case of reorganization proceedings, the debtor draws up a reorganization plan setting out how it intends to continue its business. For this purpose, the plan must explain with which measures and means the company will be continued. This plan is then submitted to the creditors for approval. They usually receive a quota and regular payments from the debtor. If the debtor has fulfilled its quota, the remaining debt is discharged, i.e. the remaining outstanding debts do not have to be paid and it gets back the power of disposal over its company.

**What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

Ordinary insolvency (bankruptcy) proceedings are initiated if the reorganization procedure fails. During ordinary insolvency proceedings, the insolvency administrator either seeks to sell the company as a whole or to liquidate the company and sell its assets. The order of distribution of the proceeds is based on so-called "creditor classes", whereby there are generally only two classes, secured creditors (such as "segregation creditors"), and unsecured creditors ("insolvency creditors").

**When and in what order will claims be satisfied?**

After the insolvency administrator has liquidated all assets, payment is made to the creditor classes. Since this depends very much on the size of the company, the time of payment varies greatly.

Subsequently, the claims of "insolvency creditors" are settled proportionately. These are creditors who have an unsecured claim against the debtor. After each insolvency creditor has been fully satisfied, the rest of the insolvency estate is distributed to the subordinate creditors. These include, for example, the owners of the company and creditors who have signed a subordination agreement. In addition to these classes of creditors, there are also so called "segregation creditors". Such creditors have a right *in rem* to an object, such as a pledge or security right, and their claims are initially settled from the sum realized from the sale of this asset.

Importantly, the claims of so called "mass creditors" are settled first, including, for example, the claims of the insolvency administrator or claims arising from contracts entered into by the insolvency administrator after the opening of the insolvency, or contracts the insolvency administrator wishes to continue despite the insolvency.

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## *Insolvency Proceedings – Checklist Austria*

**How can creditors protect themselves early to get as much as possible in the insolvency of a business partner?**

There are several possibilities, each of them to be assessed on a case-by-case basis, to get as much as possible from the business partner who or which is insolvent, e.g.:

- the provision of securities, such as mortgages,
- deliveries to the debtor (business partner) under retention of title,
- asking for down-payments, and
- securing the right to terminate the contract in times of deteriorating commercial success of the business partner.

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**For more information please contact**

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## **BELARUS**

<b>Question</b>	<b>Explanation and guidance for practical action</b>
<b>What kind of insolvency proceedings exist in Belarus?</b>	<p>The following exist in Belarus:</p> <ul style="list-style-type: none"><li>• protective period</li><li>• bankruptcy proceedings:<ul style="list-style-type: none"><li>○ completion of the preparation of the case for trial</li><li>○ reorganization</li><li>○ liquidation proceedings</li></ul></li><li>• settlement agreement</li></ul>
<b>What is the difference between reorganization proceedings and insolvency proceedings?</b>	<p>Reorganization proceedings are just one form that insolvency proceedings can take. Thus, insolvency proceedings is a broader concept than reorganization proceedings.</p> <p>If a permanent receiver can improve the financial condition of the debtor, it must prepare a “reorganization” plan and submit it to the creditors’ meeting for approval. Once approved, the plan should be filed with the court and then the reorganization of the debtor takes place. Otherwise, the liquidation procedure begins.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>Debtor, creditor, public prosecutor, employees’ representatives, tax authorities, customs authorities, social security fund.</p>
<b>What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?</b>	<p>Insolvency proceedings start with the “protective period”, which aims to prevent the debtor’s financial collapse and improve its economic situation under external control. During the “protective period”, the rights of the debtor’s management bodies are partly restricted and are under the control of the temporary receiver. For example, no dividends may be paid and all transactions are carried out only upon the written consent of the receiver. Upon expiry</p>

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of this period, the court reassesses the financial and economic condition of the debtor. If its situation has not improved, the insolvency proceedings continue.

Upon initiating the insolvency proceedings, the court appoints a permanent receiver who then has sole responsibility for overseeing the debtor's management. All other management bodies (including the sole shareholder and shareholders' meeting) lose their control over the debtor and its activity. In light of this, all creditors have the right to file their claims against the debtor with the receiver. The claims are assessed by the permanent receiver (to establish whether they are valid or not) and they are then included in the list of claims. Each creditor listed has the right to participate and vote on creditors' meetings, where the course of insolvency proceedings is defined.

The deadline for registration of the claim is two months from the date of the official publication of the beginning of insolvency proceedings.

### **How long do creditors have to file the claim and what are the consequences of not filing?**

Any claims not registered by the due date can still be reported later. However, to be accepted by the receiver they must be preliminarily approved by the creditors' meeting or the court. If accepted, the late claims can be satisfied only after full satisfaction of the claims that were registered on time. This rule does not apply to the late claims of the first and second categories of priority (i.e. claims arising from damage to life and health of individuals, severance pays, contributions to social security fund, fees for compulsory insurance against industrial accidents and occupational diseases).

If a claim is not registered at all, it will cease to exist upon completion of the relevant insolvency proceedings.

### **What are the effects on existing business contracts?**

The permanent receiver has the right to fulfil the existing contract or withdraw from it. Withdrawal is possible provided that:

- (i) fulfilment of the contract may lead to financial losses compared to fulfilment of comparable contracts
- (ii) the contract is concluded for a term longer than one year
- (iii) fulfilment of the contract may result in the debt increasing

Upon withdrawal, the creditor has the right to claim damages for any loss caused by such withdrawal.

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**Can previous business transactions be challenged resp. is there a risk of a claw-back?**

As a general rule, the receiver may dispute in the court the transactions as follows:

- (i) the transaction is concluded six months before the commencement of the insolvency proceedings by the court or afterwards if such transaction (a) results in the preferential satisfaction of one creditor's claim before the other creditors' claims or (b) relates to withdrawal of the shareholder's interest from the debtor;
- (ii) the transaction is concluded one year before the commencement of the insolvency proceedings by the court or afterwards if the debtor intentionally damaged the interests of the creditors by performing such transaction and the other party to the transaction knew or should have known about it;
- (iii) the transaction is concluded three years before the commencement of the insolvency proceedings by the court or afterwards if (a) the insolvency was caused as a result of a criminal offence committed by the debtor's managers or shareholders and the other party to the transaction knew or should have known about it or (b) the debtor intentionally damaged the interests of the creditors by performing such transaction and the other party to the transaction, being an interested party with respect to the debtor, knew or should have known about it.

**What are the consequences if the reorganization process is successful?**

If the company's economic situation improves during the reorganization, the insolvency procedure is required to be terminated.

**What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

As mentioned above, the reorganization is just one form that insolvency proceedings can take. Normally, the insolvency proceedings starts with the protective period. This is then followed by the bankruptcy proceedings, which comprises

- (i) completion of the preparation of the case for trial,
- (ii) reorganization, and
- (iii) liquidation proceedings.

Thus, the liquidation proceedings commence if the reorganization proceedings fail. The insolvency administrator will sell the assets and liquidate the company. The order of distribution of the proceeds is based on the priority of the creditors' claims.

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### **When and in what order will claims be satisfied?**

The claims will be satisfied in the course of either reorganization or liquidation proceedings.

All creditors' claims are divided into five categories of priority.

First category: claims arising from damage to life and health of individuals caused by the debtor. The relevant creditors receive all due periodic payments in one installment.

Second category: claims arising from severance pays, contributions to social security funds, fees for compulsory insurance against industrial accidents and occupational diseases.

Third category: claims arising from mandatory payments to the state (e.g. taxes, customs duties, social security contributions, etc.).

Fourth category: claims secured with a pledge of the debtor's assets.

Fifth category: all other claims. In addition to these classes of creditors, there are also segregation creditors. These have a right in rem to an object, such as a pledge or security right, and are initially paid from the realization of this asset.

### **How can creditors protect themselves early to get as much as possible in the insolvency of a business partner?**

To protect themselves early in the insolvency, creditors could use general business security means such as:

- Pledges
- Suretyships
- Guarantees
- Down-payments

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## **BULGARIA**

<b>Question</b>	<b>Explanation and guidance for practical action</b>
<b>What kind of insolvency proceedings exist in Bulgaria?</b>	<p>Several insolvency and pre-insolvency procedures exist:</p> <ul style="list-style-type: none"><li>• Reorganization proceedings</li><li>• Stabilization proceedings</li><li>• Bankruptcy proceedings</li></ul>
<b>What is the difference between reorganization proceedings, insolvency proceedings and stabilization proceedings?</b>	<p>Reorganization proceedings have the general aim of keeping the business of the debtor running during and after the proceedings, without liquidation of the debtor. Reorganization proceedings are carried out in keeping with a reorganization plan approved by the creditors. The reorganization plan may provide for a deferment or rescheduling of payments, cancellation of debts in full or in part, restructuring of the debtor's company (e.g. a spin-off), or undertaking other transactions such as a sale of the debtor's going concern or a part of it.</p> <p>Ordinary insolvency proceedings (bankruptcy) aim to liquidate all assets of the debtor and distribute available funds to the creditors.</p> <p>Stabilization proceedings are special pre-insolvency court-administered proceedings which aim to prevent the opening of insolvency proceedings, and are applicable to companies in danger of illiquidity.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>A request for the opening of insolvency proceedings can be filed by the debtor, a creditor, the National Revenue Agency in case of obligations vis-à-vis the state/municipalities, or the Labour Inspectorate Agency in case of obligations vis-à-vis employees.</p> <p>Reorganization proceedings may be initiated by an application of the debtor, the insolvency administrator, creditors, shareholders or employees of the debtor.</p>

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## *Insolvency Proceedings – Checklist Bulgaria*

### **What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

When insolvency proceedings are opened, the debtor generally loses its administration and disposition rights. The right to administer and dispose over the assets generally passes to the insolvency administrator. Any acts taken by the debtor after the opening of insolvency proceedings require the prior consent of the insolvency administrator.

In the case of reorganization proceedings, the debtor is generally entitled to keep on running the company and take steps and measures in the ordinary course of business. However, the reorganization plan can specify restrictions on the debtor's activities.

After the initiation of the proceedings, creditors are entitled to file their claims, which are then examined by the insolvency administrator.

### **How long do creditors have to file the claim and what are the consequences of not filing?**

The claims must be filed within one month of the announcement of the initiation of insolvency proceedings in the commercial registry. Creditors may still file claims after this period expires; however, claims can only be filed for a period of two months following the end of the initial one-month term. Such creditors are, however, not entitled to challenge claims already accepted and the funds already distributed.

### **What are the effects on existing business contracts?**

The opening of insolvency proceedings has a different impact on contracts depending on whether or not contractual obligations have already been fulfilled by the parties. The insolvency administrator is entitled to terminate certain contracts by giving 15 days' notice. In case of termination, the contracting party may be entitled to claims in tort, which then would be classified as insolvency claims.

### **Can previous business transactions be challenged resp. is there a risk of a claw-back?**

Certain transactions and actions that unduly decrease the assets of the debtor may be challenged. The insolvency administrator and each creditor are entitled to challenge such transactions within one year of the opening of insolvency proceedings. This applies to certain transactions executed after the opening of insolvency proceedings, some transactions executed by the debtor after the initial date of illiquidity/over-indebtedness, and certain transactions executed by the debtor prior to the date of the request for the opening of insolvency proceedings (such as dispositions made free of charge, which were performed to the benefit of a party related to the debtor).

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**What are the consequences if the reorganization process is successful?**

Reorganization proceedings are formally closed after a reorganization plan is adopted by the creditors and the court. The debtor then has a duty to fulfil the reorganization plan under the terms and conditions stipulated therein. If the debtor does not fulfil its obligations under the reorganization plan, the insolvency proceedings will be reopened.

**What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

If the reorganization procedure fails, ordinary insolvency proceedings are initiated (reopened), and the insolvency administrator liquidates all assets and distributes the funds to the creditors. The order of distribution of the proceeds is based on so-called "creditor classes".

**When and in what order will claims be satisfied?**

After the insolvency administrator has liquidated all assets, the distribution is made based on creditor classes, according to the priority order of creditors' claims defined in the Commerce Act. First of all, secured creditors are served, such as creditors with claims for preferential satisfaction on certain secured assets (such as claims secured by a mortgage, pledge or right of retention). After that, the unsecured creditors are served proportionately.

In reorganization proceedings, all claims are reorganized in accordance with the reorganization plan approved by the creditors.

**How can creditors protect themselves early to get as much as possible in the insolvency?**

A creditor can take various actions to make its potential claim secured, such as:

- The provision of securities, such as a mortgage or a pledge
- Deliveries to the debtor under retention of title

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## **CZECH REPUBLIC**

<b>Question</b>	<b>Explanation and guidance for practical action</b>
<b>What kind of insolvency proceedings exist in the Czech Republic?</b>	<p>There are several types of insolvency proceedings depending on whether a debtor is a natural or legal person.</p> <p>If the debtor is a natural person, the Czech Insolvency Act offers the following:</p> <ul style="list-style-type: none"><li>• bankruptcy (in Czech: “<i>konkurz</i>”) or</li><li>• debt relief (in Czech “<i>oddlužení</i>”)</li></ul> <p>If the debtor is a legal person, the Czech Insolvency Act offers the following:</p> <ul style="list-style-type: none"><li>• bankruptcy (in Czech “<i>konkurz</i>”)</li><li>• reorganization (in Czech: “<i>reorganizace</i>”)</li></ul>
<b>What is the difference between reorganization proceedings and insolvency proceedings?</b>	<p>Under Czech law, reorganization is one of the ways of resolving a debtor’s insolvency (i.e. a type of insolvency proceeding).</p> <p>The usual aim of reorganization is to keep the debtor’s business running, whereas bankruptcy proceedings (the second way of resolving a debtor’s insolvency) usually lead to the sale of the debtor’s assets without maintaining its business operations.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>Insolvency proceedings may be initiated both by a debtor (in the case of a legal person, its statutory body or its liquidator) and its creditor provided that the debtor:</p> <ol style="list-style-type: none"><li>(i) has several (at least two) creditors,</li><li>(ii) has outstanding financial liabilities that are more than 30 days overdue, and</li><li>(iii) is unable to meet its financial obligations.</li></ol>

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All the above-mentioned conditions must be shown to exist in the insolvency petition regardless of whether such is filed by the creditor or debtor. In the case the insolvency petition is filed by the creditor, such creditor must also prove that it has registered its receivable vis-à-vis the debtor.

Please note that the insolvency petition may only be filed by the debtor itself or its creditor (i.e. insolvency proceedings may not be initiated by any public authority unless it is the debtor's creditor)

### **What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

From the moment when the effects associated with the commencement of the insolvency proceedings occur (i.e. the insolvency petition is published in the insolvency register), the debtor is obliged to refrain from handling its assets and property that may form part of the insolvency estate to ensure such activities do not result in significant changes in the composition, use or the determination of the property or its reduction in a non-negligible extent. Furthermore, the debtor is entitled to satisfy its financial liabilities incurred prior to the commencement of the insolvency proceedings only to the extent and under the conditions stipulated by the Insolvency Act.

After the insolvency petition is published in the insolvency register, creditors are still allowed to offset the claims they register against the debtor against the claims the debtor registers against them provided that the set-off is in compliance with the Insolvency Act. The creditors' possibility to offset its claims ends when a motion for reorganization is published in the insolvency register or insolvency is declared, whichever occurs earlier. A special regime might be imposed by the insolvency court's preliminary measure.

### **How long do creditors have to file the claim and what are the consequences of not filing?**

A two-month period for both secured and unsecured creditors to lodge (register) their claims in the insolvency proceedings begins at the time at which the declaration of insolvency is made by the respective insolvency court. Following the expiration of the deadline for lodging claims, the insolvency court will call a review and a creditors' meeting that takes place at the latest two months after the expiration of the deadline for lodging claims.

Should the creditors fail to meet the two-month deadline for lodging their claims, these claims will be disregarded by the insolvency court and thus claimed receivables will not be satisfied in the insolvency proceedings.

The Czech Insolvency Act provides few exemptions from this two-month deadline and, therefore, claims that meet the criteria for the exemptions may be lodged at any time within the insolvency proceedings (such as enforceable

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claims for damages or non-pecuniary damage caused as a result of a criminal offence or for the issue of unjust enrichment obtained as a result of a criminal offence).

In compliance with the respective EU regulations, this exemption from the two-month deadline to lodge claims also applies to unknown foreign creditors of the debtor.

### **What are the effects on existing business contracts?**

The effect on business contracts differs depending on whether the debtor's insolvency is to be resolved by bankruptcy or reorganization.

If the debtor's insolvency is to be resolved through bankruptcy proceedings, the debtor's unfulfilled agreements on mutual performance (e.g. a purchase contract, including future agreements) and lease agreements are automatically deemed as having been terminated unless the insolvency administrator states otherwise to the other party to the agreement.

However, if the debtor's insolvency is to be resolved through reorganization proceedings, the debtor has the right to terminate, subject to obtaining the consent of the creditors' committee, agreements on mutual performance and lease agreements. In the case the debtor does not do so, the agreements remain in full force and effect.

### **Can previous business transactions be challenged resp. is there a risk of a claw-back?**

Under the Insolvency Act, the insolvency administrator is entitled to challenge the actions (or omissions) of the debtor during a one-year period from the time of the declaration of insolvency (or during a three-year period if the action was made in favour of members of the debtor's group and its affiliated persons) by means of a special action to set the transaction aside. A filing of the challenge will result in an incidental lawsuit led before the insolvency court.

The main grounds for the action to set aside a transaction include either the absence of adequate consideration (renumeration), the giving of preferential treatment to some creditors over others or the intentional lowering of creditors' satisfaction. Successfully challenged actions and omissions are deemed null and void based on a decision of the insolvency court. The respective persons are obliged to return any consideration received under such voidable transactions, and if this is not possible to provide adequate financial compensation to the insolvency estate.

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### **What are the consequences if the reorganization process is successful?**

In the Czech Republic, it is possible that a debtor submits the reorganization plan together with its petition for the commencement of insolvency proceedings against it (the so-called pre-agreed or pre-packed reorganization). In this case, the reorganization plan must be approved by a simple majority of both the secured and unsecured creditors, calculated on the basis of to the debtor's accountancy evidence.

In the case that reorganization was not already approved based on the debtor's pre-packed reorganization plan, a special motion during the period given by the Czech Insolvency Act in order to reach a reorganization may be submitted by both the debtor and creditor (however, it is very uncommon that a creditor submits such a motion).

Following the submission of the reorganization plan, the insolvency court calls a special creditors' meeting in order to vote on the submitted reorganization plan. After the creditors' meeting takes a vote, the insolvency court will also approve the reorganization plan provided that all requirements set by the Insolvency Act are met.

After the debtor fulfils the reorganization plan (or substantial parts of it), the insolvency court takes this into account by issuing a decision on the termination of the debtor's reorganization. The insolvency proceedings are formally brought to an end by this decision of the insolvency court, meaning that all the restrictions connected with insolvency proceedings under the Insolvency Act are terminated. As a result, the debtor is entitled, for example, to enter into all transactions (including those with uncommon terms) with no prior approval of the creditors' bodies required. Further, as a result of the fulfilment of the reorganization plan, the claims of creditors are usually reduced by significant amounts (i.e. the debtor is not obliged to pay the debts in full).

### **What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

If the company fails to fulfil its reorganization plan or is unable to duly settle all undisputed priority claims within the allotted time, the insolvency court will decide on transforming the reorganization proceedings into bankruptcy proceedings.

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With respect to the secured assets of the debtor, secured creditors have a priority right to any proceeds from the realisation of their security (collateral) following the deduction of the insolvency administrator's fee and the costs of realisation and maintenance. Should there remain any proceeds from the realisation of the security after the full satisfaction of the secured creditor, those proceeds are used to settle the claims of unsecured creditors (including creditors with priority claims).

With respect to unsecured assets, proceeds from these assets are distributed among creditors with so-called priority claims and then among secured and unsecured creditors. Creditors with so-called priority claims, i.e. claims against the insolvency estate (in Czech: *pohledávky za majetkovou podstatou*) (e.g. remuneration and cash expenses of the insolvency administrator) and claims equal to those against the insolvency estate (in Czech: *pohledávky postavené na roveň pohledávkám za majetkovou podstatou*) (e.g. employee claims) are satisfied first. Priority claims may be satisfied at any time during the insolvency proceedings.

### **When and in what order will claims be satisfied?**

After the creditors with priority claims are satisfied, secured creditors (or parts of their claims not fully satisfied from proceeds from respective collateral) as well as unsecured creditors are satisfied from the remainder of the proceeds from unsecured assets on a pro rata basis (proportionally). The claims of subordinated creditors are next in line for satisfaction. The claims associated with shareholders' participation in a debtor are settled last.

In bankruptcy proceedings, the enforcement of unsecured claims takes longer than the enforcement of secured ones. This is mainly because proceeds from the realisation of collateral are released to the respective secured creditors without undue delay. On the other hand, unsecured creditors usually have to wait until the whole debtor's insolvency estate is realised and priority claims are settled before them. Therefore, the final distribution of proceeds among unsecured creditors usually takes place several months or even several years after the commencement of insolvency proceedings.

According to the latest data published, the average length of bankruptcy proceedings in the Czech Republic is 27 months. The average length of reorganization proceedings (up to the approval of the reorganization plan, not its fulfilment) is 13 months.

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## *Insolvency Proceedings – Checklist Czech Republic*

**How can creditors protect themselves early to get as much as possible in the insolvency of a business partner?**

Creditors may protect their claims by:

- securing their claims by means of a pledge or other suitable security over the debtor's assets
- entering into an insurance agreement under which the creditor is entitled to compensation in case the debtor fails to fulfil the claims
- concluding an agreement under which a guarantee is issued by an affiliate of the debtor (e.g. debtor's mother company) or a third person
- including a retention of title clause in agreements, or stipulate such in the general terms and conditions
- unilaterally offsetting their claims against the claims the debtor registers against them (this may be done even after the commencement of the insolvency proceedings, provided that other conditions set by the Insolvency Act are met)
- taking an active role in the insolvency proceedings.

Nevertheless, it is always necessary to duly analyse any steps taken to protect claims as some actions may later be challenged by the insolvency administrator or other creditors (see above).

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**For more information please contact**

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## HUNGARY

Question	Explanation and guidance for practical action
<b>What kind of insolvency proceedings exist in Hungary?</b>	<p>The first step is to establish whether the insolvent party is a company or a natural person. A distinction can be made between two procedures for companies:</p> <ul style="list-style-type: none"><li>• Reorganization proceedings with self-administration</li><li>• compulsory liquidation proceedings</li></ul> <p>In the case of natural persons, there is a distinction between:</p> <ul style="list-style-type: none"><li>• out-of-court debt regularization proceedings, and</li><li>• court debt regularization proceedings</li></ul>
<b>What is the difference between reorganization proceedings and compulsory liquidation proceedings?</b>	<p>In the case of reorganization proceedings, the debtor draws up a reorganization plan setting out how it intends to continue running its business. For this purpose, the plan must explain with which measures and means the company will be continued. The settlement agreement based on this plan must then be approved by the creditors. They usually receive a quota and/or regular payments from the debtor. If the debtor fulfils the settlement agreement, his remaining debts will be discharged, i.e. the remaining outstanding debts will not have to be paid.</p> <p>In compulsory liquidation proceedings, all of the assets are sold and the creditors receive their quota.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>Both the debtor and a creditor can apply for the opening of compulsory liquidation proceedings. A creditor must demonstrate that</p> <ul style="list-style-type: none"><li>• the debtor is insolvent and</li><li>• it has the status of a creditor in the insolvency proceedings being initiated.</li></ul> <p>Reorganization proceedings can only be initiated by the debtor itself.</p>

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Hungary*

### **What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

If the court establishes the debtor's insolvency in compulsory liquidation proceedings, the debtor's power of disposal over its company is withdrawn and transferred to the insolvency administrator. The insolvency administrator may continue the business under the compulsory liquidation proceedings (with the consent of the creditors' committee, if there is one) and take steps to sell the assets.

In the case of reorganization proceedings, the debtor is granted a temporary payment moratorium immediately and automatically when it submits its relevant application if the application submitted meets the formal requirements prescribed by law. If the court decides to commence reorganization proceedings, the temporary moratorium will be replaced by a moratorium lasting 180 days. The moratorium may be extended to 240 or even 365 days (with the consent of a certain majority of the creditors).

The creditors can then file their claims, thereby enabling them to participate in the insolvency proceedings later on and exercise their right to a say. The insolvency administrator can either accept or object to this claim. If the insolvency administrator accepts it, the creditor participates in the proceedings with the claim in the amount filed. In addition, an execution moratorium occurs, meaning that creditors cannot execute their claims and instead have to wait for

- (i) the distribution by the insolvency administrator in the compulsory liquidation proceedings and
- (ii) the voting on the restructuring plan and the settlement agreement in the reorganization proceedings.

### **How long do creditors have to file the claim and what are the consequences of not filing?**

In compulsory liquidation proceedings, the deadline for registration is 40 days after the publication of the liquidation order in the Company Gazette (*"Cégközlöny"*). It is essential that creditors regularly check the Company Gazette, since debtors are not obliged to inform their creditors individually about the opening of compulsory liquidation proceedings. If a creditor fails to report its claim in time, it can still do so for up to 180 days from the date of publication. However, the chances of such claims being satisfied will be significantly reduced, since such creditors can be satisfied only after the complete satisfaction of creditors whose claims were submitted in time. No claims may be filed after the 180<sup>th</sup> day. Failure to register a claim means that the creditor does not participate in the proceedings and does not receive its claim.

In reorganization proceedings, the court's final decision on ordering the reorganization procedure is published in the Company Gazette. Besides the publication of the decision, each known creditor of the debtor has to be informed

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Hungary*

individually by the debtor. The creditors have to file their claims with the administrator within 30 days of the publication of the court's decision in the Company Gazette.

### **What are the effects on existing business contracts?**

The administrator is generally authorised to terminate all contracts concluded by the debtor prior to the start of the compulsory liquidation proceedings. Special provisions apply if neither party has fulfilled its obligations in their entirety. In such a case, the decision on whether the debtor should fulfil the contract or rescind it is made by the administrator. In the case of termination or rescission, the other party is entitled to enforce its claims based on the termination or rescission by reporting the claim in the liquidation proceedings. The law makes special provision for certain contracts such as employment and real estate contracts.

In the case of reorganization proceedings, the moratorium means that contracts cannot be rescinded or terminated on the grounds of the initiation of the reorganization procedure or the non-payment of the debts during the moratorium. However, with the consent of the administrator, the debtor has to fulfil its payment obligations arising from contracts that are necessary for the continuation of its business even during the moratorium.

### **Can previous business transactions be challenged resp. is there a risk of a claw-back?**

If a transaction falls within the scope of the provisions on challenging transactions, then there is a risk that the transaction will be qualified as illegal and will need to be unwound or the consideration might be clawed back. There are deadlines from 60 days to up to 5 years, depending on the facts and circumstances, which could be theoretically triggered.

### **What are the consequences if the reorganization process is successful?**

In the reorganization procedure, the debtor draws up a reorganization plan setting out how it intends to continue running its business. For this purpose, the plan must explain with which measures and means the company will be continued. The settlement agreement based on this plan must then be approved by the creditors. They usually receive a quota and/or regular payments from the debtor. If the debtor fulfils the settlement agreement, its remaining debts will be discharged, i.e. the remaining outstanding debts will not have to be paid.

### **What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

Compulsory liquidation proceedings are initiated if the reorganization procedure fails. During compulsory liquidation proceedings, the insolvency administrator seeks to liquidate the company and sell the assets. The order of distribution of the proceeds is based on so-called "creditor classes".

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## *Insolvency Proceedings – Checklist Hungary*

### **When and in what order will claims be satisfied?**

After the insolvency administrator has liquidated all assets and the closing balance has been approved, payment is made to the creditor classes. However, certain claims such as the claims of the insolvency administrator or claims arising from contracts entered into by the insolvency administrator have to be satisfied as soon as they fall due. Creditors with certain security rights over an asset of the debtor, such as a pledge or a mortgage, are initially paid from the proceeds realized from the sale of the relevant asset.

The insolvency creditors are served proportionately in each creditor class after the preceding creditor class has been satisfied completely. Creditors with unsecured claims will only be satisfied in the sixth creditor class, while subordinate creditors (such as managing directors or owners of the company) in the eighth creditor class.

### **How can creditors protect themselves early to get as much as possible in the insolvency?**

Creditors can protect themselves early to get as much as possible in the insolvency of their business partner if they agree on

- (i) securities which allow for a preferential satisfaction from the insolvency estate (such as a mortgage or a pledge) or
- (ii) retention of title, in which case the relevant asset will not form part of the insolvency estate.

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## ROMANIA

Question	Explanation and guidance for practical action
<b>What kind of insolvency proceedings exist in Romania?</b>	<p>Both individuals and companies can be subject to insolvency proceedings. In each case, different regulations apply.</p> <p>For companies, there are two types of procedure:</p> <ul style="list-style-type: none"><li>• a simplified procedure – in which case the company is subject directly to bankruptcy proceedings</li><li>• a general procedure – in which case the debtor (i) is successively subject, after a period of observation, to judicial reorganization and bankruptcy proceedings or (ii) is subject only to judicial reorganization or bankruptcy proceedings.</li></ul> <p>For individuals, the following procedures are regulated:</p> <ul style="list-style-type: none"><li>• Recovery plan procedure</li><li>• Liquidation procedure</li><li>• Simplified insolvency procedure (Simplified procedure).</li></ul>
<b>What is the difference between judicial reorganization proceedings and bankruptcy proceedings?</b>	<p>The judicial reorganization aims to enable an insolvent debtor to continue its business activity and pay its debts. It is based on a reorganization plan proposed by the insolvent debtor, the judicial administrator and/or by one or more creditors holding together at least 20% of the total value of the receivables included in the receivables table. The plan must be approved by the creditor's meeting and confirmed by the syndic judge.</p> <p>Bankruptcy proceedings and liquidation aim at liquidating all the assets of the insolvent debtor and the distribution of the proceeds to its creditors according to the preferential order, followed by the dissolution of the insolvent debtor.</p> <p>The judicial reorganization aims to save the business, while bankruptcy aims to liquidate the debtor's assets and pay all outstanding amounts.</p>

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Romania*

### **Who can initiate insolvency proceedings?**

The procedure can be initiated by filing a request with the court:

- by the debtor itself – who is obliged to file the request for insolvency procedure within 30 days from the occurrence of insolvency.  
*Note: During the state of alert, the 30-day period is suspended until termination of the state of alert, after which a new term begins to run.*
- by one or more creditors – who have had a certain, liquid and due receivable for more than 60 days in excess of RON 50,000 (approximately EUR 10,500) or six national gross average salaries/per employee, for receivables arising from employment relations.  
*Note: During the state of alert, creditors can file such a request only if creditors can provide proof of an attempt to conclude a payment agreement with the debtor, which failed.*
- by other persons or institutions provided by law, such as the National Bank of Romania and the Romanian Financial Supervisory Authority, that may initiate insolvency proceedings against the legal entities that are under their supervision and control.

### **What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

Upon the commencement of insolvency proceedings, the insolvent debtor loses the right to administer its business (i.e. the right to manage its activity, its assets and to dispose of such assets – including those assets acquired subsequent to the opening of proceedings), unless the debtor has declared, in certain cases, its intention to reorganize its business. Further, the general assembly of the shareholders of the insolvent debtor appoints a special administrator if the management and representation right of the insolvent debtor is not lifted by the court. The special administrator manages the activity of the insolvent debtor under the supervision of the judicial administrator during the reorganization phase.

All acts, operations and payments performed by the debtor after the proceedings are declared opened are null and void unless expressly provided by law or authorised by the syndic judge.

Creditors can file their claims in order to participate in the insolvency proceedings and exercise their rights.

As a general rule, following the opening of insolvency proceedings, all judicial and extra-judicial actions (including enforcement of security) undertaken against the debtor or its assets for the satisfaction of a creditor's receivable are suspended.

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Romania*

### **How long do creditors have to file the claim and what are the consequences of not filing?**

All creditors should register their claims with the competent court within 45 days of the opening of the insolvency proceedings.

Any creditor who fails to submit an application for the admission of a claim within 45 days will lose the right to be included on the list of creditors and will not acquire the status of a creditor entitled to take part in the insolvency proceedings. Consequently, the creditor will not be entitled to enforce a claim against the debtor after the proceedings have been closed.

### **What are the effects on existing business contracts?**

All ongoing contracts will continue to be in force after the opening of the proceedings. Any contractual clause providing for the termination of the contract, waiving the benefit of the contractual term or payment prior to the due date, on grounds of the opening of insolvency proceedings, are null and void. This rule is not applicable to qualified financial contracts or to bilateral netting transactions under a qualified financial contract or a bilateral netting agreement.

The judicial administrator or liquidator may terminate any contract in progress (with the payment of damages for the counterparty) within three months of the opening of the proceedings, after an assessment of the cost-effectiveness, in economic terms, of the contracts and a legal assessment of the effects of their termination.

The law also regulates the status of particular contracts, such as those regarding the supply of utilities, leases, or master netting agreements.

### **Can previous business transactions be challenged resp. is there a risk of a claw-back?**

Certain potential fraudulent acts or transactions concluded by the debtor within a period of two years before the commencement of insolvency proceedings may be annulled by the syndic judge. The administrator or liquidator appointed by the court may also challenge (ask for the annulment) of certain transfers of assets, business transactions concluded by the debtor and guarantees contracted by the debtor which are performed to the detriment of the rights of the creditors.

If such annulment occurs, the counterparty of the insolvent debtor should return the assets received from the insolvent debtor and will be entitled to claim the reimbursement of the price, which may be recovered in the insolvency proceedings, together with the claims of the other creditors.

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Romania*

### **What are the consequences if the reorganization procedure is successful?**

The reorganization procedure involves determining whether there are actual opportunities to save the company based on a reorganization plan proposed by the insolvent debtor. This plan is approved by the creditors' meeting and confirmed by the syndic judge and may lead to the following consequences:

- operational and/or financial restructuring of the debtor
- corporate restructuring with a modification of the share capital structure
- decrease in activity by liquidating certain assets of the debtor.

If the debtor fulfils all obligations stated in the reorganization plan, the company successfully exits the insolvency procedure without any debts.

### **What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

If the reorganization procedure fails, the company should enter into bankruptcy. The bankruptcy procedure concerns the liquidation of assets to cover the debtor's debts.

### **When and in what order will claims be satisfied**

The proceeds from the realisation of the secured assets are to be distributed to the secured creditors after the payment of taxes, stamp duties and other expenses incurred as a result of the sale of such assets.

If the proceeds from the sale of the secured assets are insufficient to pay the secured receivables in full, the secured creditors will have a claim for the unsatisfied part of their receivables, which will be satisfied according to the distribution order applicable in the case of unsecured receivables:

- duties and any other procedure expenses, including the fee payable to the insolvency, judicial administrator/judicial liquidator
- receivables deriving from financing granted during the procedure
- receivables deriving from employment relations
- receivables deriving from the continuation of the debtor's activity
- budgetary receivables; other unsecured claims

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Romania*

The claims in those categories mentioned above will be satisfied only after full satisfaction of the claims in the preceding category. If the remaining amounts are not sufficient to satisfy the claims in a category in full, such amounts will be distributed on a proportional basis.

In order to benefit from adequate protection in case of the insolvency of the debtor, the creditors:

- can secure their receivables. As a consequence, in case of the insolvency of the debtor, the creditors will benefit from a priority.
- can sell/deliver to the debtor under the retention of the ownership right (until the payment of the price).
- can include in the agreements an obligation on the debtor to give notice of the risk of insolvency as soon as it becomes aware of it.
- should observe the deadlines provided by insolvency law in relation to exercising the creditors' rights during the insolvency proceedings.

**How can creditors protect themselves early to get as much as possible in the insolvency of a business partner?**

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## **SLOVAKIA**

<b>Question</b>	<b>Explanation and guidance for practical action</b>
<b>What kind of insolvency proceedings exist in Slovakia?</b>	<p>Slovak law distinguishes between two kinds of insolvency proceedings:</p> <ul style="list-style-type: none"><li>• Bankruptcy proceedings</li><li>• Restructuring proceedings</li></ul> <p>In the case of bankruptcy proceedings, there are two main types of bankruptcy according to Slovak law:</p> <ul style="list-style-type: none"><li>• Insolvency – A legal entity is insolvent when it is unable to pay at least two debts towards two different creditors within 30 days after they have become due.</li><li>• Over-indebtedness – The company is over-indebted if it has more than one creditor and the value of its debts exceeds the value of its assets, regardless of whether the debts in question are due or not.</li></ul>
<b>What is the difference between reorganization (i.e. restructuring “reštrukturalizácia”) proceedings and insolvency proceedings (i.e. bankruptcy “konkurz”)?</b>	<p>The process of restructuring a company leads to maintaining the existence of a company while satisfying its creditors.</p> <p>Ordinary insolvency proceedings (i.e. the bankruptcy proceedings) lead to the termination of the company’s existence and the eventual distribution of its assets among the creditors i.e. proportional satisfaction of their claims lodged in relation to the bankruptcy.</p>
<b>Who can initiate insolvency proceedings?</b>	<p>Both the debtor and a creditor can apply for the opening of insolvency proceedings.</p> <ul style="list-style-type: none"><li>• In the case of over-indebtedness, the company is legally required to file a motion for the initiation of bankruptcy proceedings. Such a motion should be filed within 30 days of the date on which it has determined that the company is over-indebted or should have determined this if it had exercised due diligence. In the event of a breach of the obligation to file for bankruptcy during this period, the company is entitled to a</li></ul>

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Slovakia*

contractual penalty in the amount of EUR 12,500 (it applies to limited liability companies, joint stock companies and simplified joint stock companies.)

- In the case of insolvency, creditors are entitled to file a motion for the initiation of bankruptcy proceedings in the event that they can reasonably expect the insolvency of its debtor. The insolvency of the debtor may be expected when the debtor was previously asked in writing by one of the creditors to settle its debt. If the court stops the bankruptcy proceedings initiated by the creditor because the debtor has demonstrated that it was and is not insolvent, the creditor is liable towards the debtor for the potential loss related to the insolvency proceedings, as well as to the other parties involved.

### **What are the immediate consequences for the debtor and creditors if the insolvency application is accepted?**

After the bankruptcy is declared, the court appoints the insolvency administrator that will be in charge of administering the bankruptcy estate. The debtor's power of disposal over the company's assets is transferred to the bankruptcy administrator. The administrator acts in the name and on behalf of the debtor. The legal acts of the debtor performed during the bankruptcy proceedings are ineffective towards the creditors if they reduce the assets that form part of the bankruptcy estate.

### **How long do creditors have to file the claim and what are the consequences of not filing?**

The deadline for registration is 45 days after the declaration of the bankruptcy proceedings is published in the Commercial Journal („*Obchodný vestník*“). During this period, creditors can file their claims. A breach of this period does not mean that creditors cannot satisfy their claim but they cannot exercise their right to vote at the creditors' meeting.

### **What are the effects on existing business contracts?**

If the debtor concluded a mutual performance agreement before the declaration of bankruptcy, which the debtor already fulfilled but the other party has not yet fulfilled or has only partially fulfilled at the time of bankruptcy, the bankruptcy administrator may demand performance or withdraw from the contract. If the other party has partially fulfilled the contract, the administrator may withdraw from the contract only to the extent of the obligation not yet fulfilled by the other party.

If the mutual performance agreement has already been fulfilled by the other party but has not been fulfilled (or has only been fulfilled in part) by the debtor at the time of bankruptcy, the other party may withdraw from the contract to the extent of the obligation not yet fulfilled. The claim of the other party arising from such a rescission can be compiled

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Slovakia*

in the bankruptcy proceeding as a so called „*conditional claim*“ i.e. the accrual of the claim is subject to the fulfilment of a certain condition.

If the debtor concluded a contract prior to the declaration of bankruptcy, the subject of which is an obligation for continuous or repeated activity or an obligation to refrain from certain activities or to tolerate certain activities, the bankruptcy administrator may terminate such contract by giving two months' notice or less if such a notice period stems from the law or contract.

**Can previous business transactions be challenged resp. is there a risk of a claw-back?**

In bankruptcy proceedings, certain legal acts performed by debtor may be deemed ineffective under certain conditions if they are contested. These legal acts may be contested only by the administrator or creditor. A creditor has a right to contest these acts only when the insolvency administrator does not, when requested to do so by the creditor, take steps to contest such legal acts within a reasonable period of time. The right to contest a legal act lapses if it has not been exercised in relation to a liable person or in court within one year from the declaration of bankruptcy. The right to contest a legal act is deemed to have been exercised by the liable person only if the liable person has acknowledged this right in writing. It is only possible to contest a legal act of the debtor, if such an act reduces the satisfaction of registered claim of one of the creditors.

**What are the consequences if the reorganization process is successful?**

In the restructuring proceedings, the restructuring plan is drawn up with a view to regulating the creation, change and termination of the rights and obligations, as well as determining the extent to which claims registered in relation to the restructuring are satisfied. In the restructuring proceedings, the debtor currently pays at least 50% of the value of a receivable over the course of five years, at the latest. The restructuring plan must be approved first by the approval meeting and then by the court. If such approval is granted, the company may continue to operate and the debtor's activities are restored to its original extent.

**What are the consequences if the reorganization procedure fails or insolvency proceedings are initiated from the beginning?**

If the restructuring proceedings fail, the court will stop the restructuring proceedings once the resolution rejecting the restructuring plan enters into force. The court makes a single decision to discontinue the restructuring proceedings, initiate new bankruptcy proceedings and declare bankruptcy on the debtor's assets. In this order, the court also appoints the new insolvency administrator, to be selected at random. The effects of the initiation of restructuring

# CERHA HEMPEL

## *Insolvency Proceedings – Checklist Slovakia*

proceedings are extinguished once this decision is published in the Commercial Journal. The creditors' committee and the administrator also cease all activities in this regard.

### **When and in what order will claims be satisfied?**

In bankruptcy proceedings, the creditors are compensated after the insolvency administrator has liquidated all assets. Claimed receivables are settled by the administrator on the basis of a distribution plan approved by the creditors' committee and secured creditors. In bankruptcy proceedings, we distinguish between several creditor classes (secured creditors, unsecured creditors, creditors with subordinated claims, etc.) The property that is subject to bankruptcy forms the bankruptcy assets („*konkurzná podstata*“). Bankruptcy assets comprise the following assets:

- (i) assets that belonged to the debtor when the bankruptcy decision was made
- (ii) assets that the debtor acquired during bankruptcy proceedings
- (iii) assets securing the debtor's liabilities, and
- (iv) other property defined by statute.

The bankruptcy assets are divided into general assets („*všeobecná podstata*“) and the individual separated assets of secured creditors („*oddelená podstata*“).

Unsecured receivables are settled from the distribution of general assets while secured receivables are settled from the distribution of separated assets. If a secured receivable of a secured creditor cannot be settled in full, the amount of the receivable outstanding is settled as an unsecured receivable. Receivables against the assets shall be satisfied preferentially.

### **How can creditors protect themselves early to get as much as possible in the insolvency of a business partner?**

Creditors may secure their claims via

- Lien
- Transfer of security rights or transfer of a security claim
- or other rights that have similar content and effects.

During the bankruptcy proceedings, creditors may contest certain legal acts of the debtor (as stated above).

**CERHA HEMPEL**  
*Insolvency Proceedings –  
Checklist Slovakia*

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