

NEW CZECH PREVENTIVE RESTRUCTURING LEGISLATION

With a delay of over a year, the Czech Act on preventive restructuring (the "Act") implemented Directive (EU) 2019/1023 on preventive restructuring frameworks. The Act finally became effective on 23 September 2023. This new legislative development in the Czech Republic aims to provide a fresh approach to handling financial distress and preventing insolvency. The new Act brings several significant changes to the country's insolvency and restructuring framework.

Aim of the legislation

The primary goal of the new legislation is to introduce preventive restructuring into the Czech legal system. Preventive restructuring should enable entrepreneurs to resolve their financial difficulties and avert a potential bankruptcy situation at an early stage through a mutual agreement with selected creditors and by implementing appropriate restructuring measures. The debtor may propose and include such measures in a comprehensive restructuring plan, which needs to be approved by the affected creditors. The timely and effective application of this tool has the potential to enable entrepreneurs in financial difficulties to continue their business and avoid formal insolvency proceedings.

Eligible debtors

Any business, company or cooperative entity, except for specifically licensed entities such as banks as well as investment and insurance companies, will have the opportunity to proceed with preventive restructuring. The framework will not be applicable to individual entrepreneurs (natural

persons). Creditors will not have the right to initiate the preventive restructuring process against their debtors. To be eligible for preventive restructuring, the debtor must be experiencing financial distress within a specific range. At a minimum, the debtor's financial difficulties should – upon thorough evaluation – be expected to result in insolvency unless the proposed restructuring measures are implemented. At the same time, however, the financial difficulties experienced by the debtor must not reach the intensity of bankruptcy where it is no longer able to meet its financial commitments. The debtor must also have good faith that by implementing appropriate restructuring measures, it will be possible to maintain the business as a going concern or restore it to that status.

Advantages of preventive restructuring

Until now, insolvency proceedings have been the only legally regulated procedure in the Czech legal system for achieving a comprehensive restructuring of a business. However, these proceedings come with several adverse consequences for entrepreneurs. Such consequences include restricted control over business operations, public listing in the insolvency register, diminished access to credit financing, and an overall deterioration of the entrepreneur's market position. Preventive restructuring may provide entrepreneurs with the opportunity to avoid or at least limit these negative outcomes.

Unlike formal insolvency proceedings, preventive restructuring primarily relies on a consensual approach. It requires a mutual agreement between the entrepreneur and the affected creditors, with court interventions reserved only for necessary



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cases. This approach can lead to reduced transaction costs compared to formal insolvency proceedings, which is another notable advantage.

As the Act enables entrepreneurs to mitigate certain adverse effects linked to insolvency proceedings, it can also serve as a powerful incentive for them to address financial issues in a timely manner.

For more information

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