HUNGARY

Businesses experience many negative effects as a result of the coronavirus pandemic, such as factory closures, service suspensions and the slow payment of receivables. All this can lead to liquidity problems. **However, the flurry of new legislation has so far not sought to amend the Bankruptcy Act:** none of the conditions of when a company qualifies as insolvent or the requirements that apply to executive officers of insolvent or near-insolvent companies have changed so far.

Grounds for insolvency

One of the grounds for insolvency that is often used for debt collection purposes and is associated with the non-payment of a debtor's contractual debt remains unchanged. Therefore, regard-less of the emergency brought about by the pandemic, if a company owes an undisputed or acknowledged debt of at least HUF 200,000 (approx. 600) under a contract and it does not pay or dispute the debt within 20 days after the due date, it will expose itself to the possibility of being dissolved in a compulsory liquidation procedure. Once it receives the creditor's notice after the deadline, it will have to make the payment; otherwise the creditor will have a very good chance of successfully initiating a compulsory liquidation procedure against it (regardless of whether it has sufficient funds and assets to pay its debts). The only concession that the relevant rules make is that the debtor can dispute the validity of the debt until the receipt of the creditor's written notice. However, it is a risky proposition not to dispute the debt before the 20-day dead-line, because once the deadline passes, the debtor will be in a race with the creditor so that it can dispute the debt in writing at least one day before the creditor sends its written payment notice.

Therefore, in the current situation it is very important to monitor invoices and payment notices closely and to make complaints and dispute wrongful claims without delay.

Measures to avoid insolvency

Although the Bankruptcy Act has not yet been modified in response to the pandemic, a number of other measures that can help companies avoid insolvency have been introduced. Some of these options are as follows:

- loan deferment program introduced by the government;
- low-interest lending programs by MFB, a government-owned development bank;
- the reduced working hours program, based on the German model;
- social security contribution relief;
- bridging loans;
- factoring and sale-and-lease-back arrangements;
- corporate law measures, such as capital increases, additional capital contributions or shareholder loans.

Liability of executive officers

The new regulations introduced in response to the pandemic have not affected the requirements that apply to the conduct of the executive officers of insolvent or near-insolvent companies. Therefore, the

executive officers of such a company must continue to act in the best of interests of the company's creditors; otherwise creditors' claims may be satisfied from their personal property if the company's assets are insufficient for this purpose. However the regulations still do not mandate executive officers to initiate an insolvency procedure at any given point. In fact, they do not have the authority to do so in their own name; they only have the authority (and the obligation) to convene the company's supreme decision-making body and to request it to take the necessary actions.

An executive officer is exempt from liability if, after the situation that threatens the company with insolvency first arises, they do not assume un-reasonable business risks and they take all reasonable steps to prevent or reduce losses suffered by creditors and initiate action by the company's supreme decision-making body. On the other hand, the new emergency regulations have modified the powers of executive officers be-cause if the shareholders of a company are unable to adopt resolutions, whether in writing or via an electronic telecommunications device, the management will have to make decisions in matters where otherwise the shareholders would have the power to proceed but that are necessary for compliance reasons or that need urgent actions to ensure reasonable and responsible business management. However, the management is not entitled to initiate the company's dis-solution and may only order additional capital contributions under specific circumstances.

Executive officers should make sure that annual reports are deposited and published in accordance with the applicable regulations; otherwise they will have to prove that no situation that threatened the company with insolvency occurred during their tenure or that if it did, they acted with the creditors' interests in mind. (How-ever, the emergency regulations have extended the deadline for the preparation, submission and publication of annual reports to 30 September 2020.)

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Actions taken or not taken in a situation that threaten a company with insolvency can entail criminal liability as well: an executive officer commits a crime if he/she actually or seemingly reduces the value of the company's assets by acting contrary to the requirements of reasonable business management.

Knowledge of, and compliance with, these rules has heightened importance in the current situation because the resignation of executive officers is subject to special rules during the current pandemic: unless the company's supreme decision-making body decides otherwise, their appointment will remain in effect for a period of 90 days after the end of the state of emergency even if they were to resign from their position or their appointment were to expire during such period.

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CZECH REPUBLIC

Czech companies are facing financial difficulties due to the COVID-19 pandemic and the government's emergency restrictions put in place to protect public health. In order to prevent entrepreneurs from suffering a severe decrease in earnings and liquidity shortages, **the Czech Re-public adopted new legislation ("lex COVID") that introduces insolvency-related measures** that should mitigate the impact of the coronavirus crisis.

Suspension of the debtor' duty to initiate insolvency proceedings

The statutory duty on the debtor to file an insolvency petition without undue delay after becoming insolvent has been suspended for a period ending six months after revocation of the pandemic emergency measures currently imposed by the Czech government, but not later than 31 December 2020. The debtor and its managing directors are not liable for losses that may be caused to creditors as a result of the delay in filing the insolvency petition. However, such an exemption does not apply to those debtors who became insolvent before 12 March 2020 and/or whose insolvency did not occur due to the pandemic emergency measures. For the avoidance of doubt, debtors are still allowed to initiate insolvency proceedings against themselves, even if they became insolvent due to the COVID-19 pandemic.

In any case, new legislation does not suspend the general responsibilities and duty of care owed by the management. Therefore, managing directors of distressed companies must perform their duties by exercising due care and must take all necessary and reasonably required measures to avert the threat of the debtor's insolvency. In the current situation, managing directors should in particular document their actions and the reasons for their decision-making and consult experts on key issues.

Suspension of creditors' rights to initiate insolvency proceedings

The new Czech legislation also provides debtors with temporary protection from insolvency petitions filed by creditors. Such protection applies to all debtors regardless of whether or not their insolvency was caused as a result of the corona-virus pandemic and whether they became insolvent before or after the pandemic measures were introduced. This means that any insolvency petition filed by a creditor during the period from the effectiveness of "lex COVID" until 31 August 2020 will be refused by the insolvency court and will not be published on the online insolvency register. Nevertheless, creditors may individually enforce their claims against debtors out of insolvency proceedings, such as through the set-off of mutual receivables or the realization of their security interests.

Suspension of fulfilment of the reorganization plan

Debtors whose reorganization plan was approved by the insolvency court as of 12 March 2020 may request that the court suspend fulfilment of the reorganization plan until six months after revocation of the pandemic emergency measures, but not later than 31 December 2020. The court will decide on the debtor's request after considering representation from the creditors' committee and insolvency

trustee. Nevertheless, it is believed that the insolvency courts will accept such a creditor's request with regard to today's corona-virus situation. During the suspension period, the insolvency court cannot transform the reorganization proceedings into a bankruptcy liquidation.

Extraordinary moratorium

The Czech "lex COVID" introduces a new special insolvency tool – extraordinary moratorium. Applications for the extraordinary moratorium can be filed until 31 August 2020 by debtors who have become insolvent after 12 March 2020. Debtors can apply for the extraordinary moratorium prior to commencement of the insolvency proceedings or within 15 days after receipt of the creditor's insolvency petition.

Contrary to a standard (ordinary) moratorium, the extraordinary moratorium does not require approval from a majority of creditors. However, the debtor must submit a declaration of honour that it is applying for the extraordinary moratorium as a consequence of the pandemic emergency measures introduced, he was not insolvent as of 12 March 2020 and he has not paid any extraordinary payments (including profit shares or accelerated loan payments) to shareholders or managing directors, unless such payments have been given back to the debtor before filing the application for extraordinary moratorium.

The extraordinary moratorium lasts for up to three months and can be prolonged by a further three months upon the debtor's request, provided that such a prolongation was approved by a majority of the creditors (calculated according to the amount of claims of secured and unsecured creditors together).

The extraordinary moratorium has very similar legal effects as the standard moratorium under the Czech Insolvency Act and the case will be published in the insolvency register. Debtors under the extraordinary moratorium will be protected from being declared bankrupt by the insolvency court, and from the enforcement of creditor's security interest or execution proceedings. They are also allowed to prioritize payments of new debts which occur within the moratorium period over older debts. Furthermore, the debtors' business partners cannot terminate certain long-term contracts and/or stop supplies of energy, products or services under these contracts. Nevertheless, the creditors can set off their mutual receivables unlike under the standard moratorium. As numerous moratoria failed in recent years, risks of losing the confidence of stakeholders is substantial, and the debtor's management should carefully consider whether and when to use the moratorium.

Bank loan moratorium

The Czech Republic also adopted new legislation under which both entrepreneurs and consumers are entitled to postpone their loan instalments. In general, this bank loan moratorium applies to the loans agreed prior to 26 March 2020. However, this will not be allowed for debtors who were in default for more than 30 days as of 26 March 2020.

Outlook

It is expected that most insolvency cases in the Czech Republic will evolve after the end of emergency insolvency measures. Therefore, debtors, creditors and potential investors should carefully consider their present position and should use the time for proper preparation of the post-coronavirus period.

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SLOVAK REPUBLIC

The temporary cessation of or restrictions imposed on many business activities in the wake of the COVID-19 pandemic to prevent its spread have resulted in a lack of income for companies, with a related adverse effect on their liquidity. The possibility of negative impacts on the financial health of companies was not ignored by the Slovak legislator. It also adopted some mitigation measures in this regard. However, those measures (as a general rule with specific exceptions) do not foresee any suspension or prolongation of deadlines for payment of debts, nor any release from the legal duty to prevent the insolvency or over-indebtedness of a company. On the contrary, even during the period of mandatory shut down each company is obliged to maintain a balance between its equity and debts according to the terms prescribed by the law.

Risk of bankruptcy and mandatory restrictions

Slovak law imposes a duty on every company to prevent i) its bankruptcy and ii) the risk of its bankruptcy.

The risk of bankruptcy is legally defined as the condition in which a company's debt-to-equity ratio is lower than 8/100. During the period in which there is a risk of bankruptcy, the statutory body of the company is obliged to take the necessary steps to overcome such state, while the company is subject to some restrictions regarding the disposal of its assets. In particular, during the period in which a company is at risk of going bankrupt, the company is under no obligation to pay back any loan to a borrower who is a person with a direct or indirect share in the company corresponding to at least 5% of its share capital, a member of its statutory or supervisory body, a holder of procuration, a head of an organizational unit, a leading employee, or a person close to those listed or acting on their behalf. In addition, the company may not provide any monetary or non-monetary benefit without adequate remuneration to a person with a direct or indirect share in the company corresponding to at least 5% of its share capital, to a person who will become a shareholder of the company within the two years following the provision of the benefit or to a person who was a shareholder of the company within the two years preceding the provision of the benefit.

Grounds for bankruptcy

Bankruptcy is defined by Slovak law as the state in which

1. the company is insolvent, meaning that it is unable to pay at least two debts towards two different creditors within 30 days after they have become due;
2. the company is over-indebted, meaning that it has at least two creditors and the amount of its debts exceeds the value of its equity, regardless of whether the debts in question are already due or not.

A significant difference between the possibilities above is that in the case of insolvency, an application for the initiation of bankruptcy proceedings in respect of a company can only be made by its creditor and it is at its discretion. In the case of over-indebtedness, only the company itself can do so and

it is obliged to file such a petition without having any discretionary right.

In the case of over-indebtedness, the 30-days deadline for filing the application for bankruptcy, which starts running from the time when the company became aware (or should have become aware by acting with due care) of its over-indebtedness, has been prolonged to 60 days for companies that became over-indebted in the period between the 12. March and the 30. April 2020.

Obligation to initiate bankruptcy proceedings

The Slovak "Law on bankruptcy and restructuring" obliges each company to file for bankruptcy in the event that it is over-indebted.

The liability for an eventual breach of the time limit lies with the statutory body of the company, which is liable to the creditors of the company for any damage caused as a result of this breach; unless proven otherwise, it is presumed that the damages to which the creditor is entitled is equal to the amount of its unsatisfied claim towards the company.

Furthermore, by operation of Slovak law without any possibility of derogation, the over-indebted company is entitled to a pecuniary penalty amounting to one half of the minimum amount of the share capital of the joint stock company set by law (currently the penalty would be of EUR 12,500) towards the statutory body or its member who did not file the application for bankruptcy in time. This kind of penalty applies to limited liability companies, joint stock companies and simple joint stock companies.

More emphasis on this legal obligation is given by the Slovak Criminal Code, which qualifies an infringement of the duty to apply for bankruptcy in a timely manner as a criminal offence and is punishable by a custodial sentence of up to five years.

Prevention of bankruptcy

Slovak legislation emphasises the duty to prevent bankruptcy, including the duty of the statutory body of each company to act with due care in terms of the management of the company, to be interpreted as acting reasonably, in good faith and on the basis of all available information. Within the context of the current pandemic, some of the steps that it is advisable to take to mitigate any difficulties experienced by companies due to the current shortage of cash flow include:

- adequate administration of labour relationships, which may consist, for example, in reaching an agreement with the employees on unpaid vacation or leave;
- applying for state aid, consisting, for example, in refunding employees' wage or, in the case of small and medium-sized enterprises, in obtaining a guarantee provided by the Ministry of Finance for the repayment of loans subject to specific regulations;
- reaching agreements on debt deferral with respective creditors or on the adjustment of payment conditions under respective contracts; it should be noted that many of the creditors concerned may themselves face similar liquidity problems and as such they may not be willing to accept deferrals or adjustments.

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BULGARIA

The COVID-19 outbreak and the measures introduced by the authorities to prevent the pandemic spreading even further has adversely affected many businesses. Certain companies were forced to close their operations completely, and many others are suffering a decrease in revenues and experiencing a liquidity shortage. **Since the existing Bulgarian insolvency rules continue to apply during the crisis**, some companies will need to consider whether they are affected by insolvency related obligations, and if they can take measures to ward off insolvency.

Grounds for insolvency

Under the Bulgarian Commerce Act, the opening of insolvency proceedings requires either illiquidity or the over-indebtedness of the company. A company is considered illiquid if it is unable to meet a monetary obligation as it falls due (i) un-der a commercial transaction, (ii) a public obligation towards the state or a municipality which is related to commercial activity, (iii) a private obligation towards the state, or (iv) an obligation to pay wages to at least one third of the employees for more than two months. Illiquidity is presumed where the company stops paying its debts as they fall due. Over-indebtedness is defined as a condition where the assets of a company are insufficient to cover its liabilities

Deadline for filing for insolvency / Management liability

If a business faces illiquidity or is over-indebted, the management of the company is obliged to file for the opening of insolvency proceedings within 30 days. This deadline has not been changed by the currently applicable emergency legislation.

The violation of this obligation triggers the liability of the directors towards all creditors for damage caused by the delay in filing for the opening of insolvency proceedings. The Bulgarian Criminal Code also provides for the criminal liability of directors failing to file for insolvency in time.

Measures to prevent insolvency

If a company has liquidity problems, it is important to examine whether it is likely to be able to obtain financing or reduce its costs in the short term. Companies can consider the following measures to prevent insolvency:

- Pre-insolvency settlement or restructuring agreed with the creditors.
- Use of state aid under the business support package introduced by the authorities.
- Payment moratorium in relation to finance agreements introduced by the current crisis legislation.
- Postponing payments based on the applicable force majeure rules.
- Reduced working hours for employees during the crisis situation.
- Sale of own receivables (factoring) as well as sale and lease back arrangements.
- Measures under company law, e.g. capital increases, shareholder loans or additional contributions by shareholders.

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BELARUS

The global spread of COVID-19 currently poses enormous problems for Belarusian companies, not least because plant closures, a decline in output and the partial withdrawal or cessation of services result in liquidity shortages. However, despite these circumstances, **Act No. 415-Z dated 13 July 2012 "On Economic Insolvency (Bankruptcy)" ("Insolvency Act") requires persons who run companies to maintain an overview of the company's economic situation at all times.** Since no public pandemic emergency has been declared in Belarus, special extenuating circumstances are not deemed to exist for non-compliance with the insolvency regulations.

Grounds for insolvency

Under the Insolvency Act, there are three cases in which an application for the initiation of insolvency proceedings can be filed.

First, the debtor may submit an application to the court if its illiquidity has become permanent or will soon become permanent. The criteria for illiquidity are defined by the Council of Ministers of the Republic of Belarus and must be calculated based on the debtor's accounting books and records.

Second, the debtor must submit an application to the court if (i) payment of a debt to one creditor makes it impossible to fulfil obligations vis-à-vis other creditors, (ii) the shareholders' meeting (or the sole shareholder) decides to file a claim, or (iii) the value of the debtor's property is insufficient to pay all creditors' claims in the course of liquidation.

The debtor's application must be filed with the court no later than one month from the date of the occurrence (discovery) of any grounds mentioned in the paragraph above.

Finally, an application may be filed by a creditor if the following criteria are met cumulatively: (i) the creditor obtains valid information that the debtor's illiquidity has become permanent or will soon become permanent and (ii) the debtor fails to pay all debts in the course of execution proceedings within three months (or the debtor does not have sufficient property to pay debts).

Insolvency vs. temporary delay in payment

If a company has liquidity problems and is unable to pay its debts (as they fall due), it is important to examine first whether it concerns a **mere temporary delay in payment.**

Insolvency within the meaning of Article 1 of the Insolvency Act is deemed to exist if the debtor is not in a position to pay its debts as they fall due on a permanent basis or it is likely to be in such position in the near future. The permanency of insolvency is the de-fining element for establishing whether a business is insolvent and at the same time it is what differentiates it from a temporary delay in payment.

Measures to prevent insolvency

It is up to the management to take measures early enough to prevent insolvency. There are several options in Belarus provided for in Article 17 of the Insolvency Act, which include but are not limited to the following:

- Raising investments;
- Recovering outstanding debts;
- Restructuring own debts;
- Attracting credit facilities and budgetary loans;
- Deferring the payment of taxes;
- Taking measures under company law, e.g. capital increases, shareholder loans or additional contributions by shareholders.

Duties of care owed by the management

The debtor's management is subject to an obligation to file an application for the opening of insolvency proceedings without undue delay for which it is culpable. In case of failure to file such application within one month upon discovery of impending illiquidity, the debtor's managers who are found guilty of such a failure are jointly and severally liable for all unsettled creditors' claims. The permanent insolvency administrator may bring a relevant action before the court after initiating insolvency proceedings if the debtor's assets are insufficient to settle all claims.

Moreover, if the debtor's insolvency was caused by the culpable (deliberate) actions of its share-holders, members of its management or other individuals entitled to determine the course of the debtor's activity, such persons are jointly and severally liable for unsettled creditors' claims. Any creditor, public attorney or governmental body may bring an action against such an individual within ten years of the date of initiating the insolvency proceedings. Any termination of a shareholding in a company before initiation of the insolvency proceedings does not preclude the above-mentioned joint and several liability.

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ROMANIA

In view of the developments surrounding the international situation caused by the coronavirus pandemic, Romania joins those European countries that have implemented exceptional socio-economic emergency measures by **adopting Decree no. 195/2020 dated 16 March 2020 on the establishment of a state of emergency in Romania ("Decree") and subsequent legislation.**

This limited or suspended the activity of a wide range of traders, which made it more difficult to meet contractual obligations and impossible to pay back debts or wages. This has implications for insolvency procedures already underway, as well as those that are pending.

Grounds for insolvency and deadline for filing for insolvency

The main measures imposed by the Decree are:

- the limitation periods and any other type of time limits do not start to run and, if they have already started to run, they are suspended throughout the state of emergency; and
- the activity of the courts of law continues only with respect to the special emergency cases. According to the CSM Decision, applications for obtaining a declaration of enforceability and for the temporary suspension of enforcement are deemed special emergency cases. Applications for insolvency are not expressly mentioned as emergency cases and in principle will not be examined during the state of emergency

The suspension of the limitation periods and other time limits do not modify the conditions for the opening of insolvency proceedings, which remain those provided by the Insolvency Act 85/2014. These conditions are, in essence, the appearance of the inability to pay debts of over RON 40,000, at the request of the debtor, and the existence of a certain debt, specifiable and due for more than 60 days and with a value of more than RON 40,000, at the request of the creditor. In case the debtor applies for insolvency, the total amount of budgetary debts must be lower than 50% of the total amount of debts declared by the debtor.

The obligation of the debtor to lodge the application within a maximum of 30 days of the occurrence of the insolvency is not suspended during the state of emergency.

Failure to file the request or any delay may give rise to criminal liability for the offence of simple bankruptcy.

The case before the court is suspended during the state of emergency, not the insolvency proceedings themselves.

Article 42 (6) of Annex no. 1 to the Decree refers to the suspension of the judgment. This means that only the judicial review procedure of the Sindic judge will be suspended, and no further time limit for review or for court proceedings can be set, except in urgent cases established under the Decree. However, insolvency proceedings continue to be conducted under the supervision or direction of the administrator/liquidator.

Compositions, observations, reorganization or bankruptcy proceedings are conducted as before the state of emergency, with the exception of the judicial proceedings.

Meetings and creditors' committees may be convened, and meetings may continue to be chaired by the insolvency practitioner.

Voting by electronic means will be accepted, provided that each vote cast includes an electronic signature based on a valid certificate.

The debt tables, activity reports, case reports and circumstances will be drawn up and recorded on the case file, i.e. published in the BPI (Insolvency Proceedings Gazette), which is fully operational during this period.

Measures to prevent insolvency taken by the state

The main measures taken by the state that have potential consequences for insolvency proceedings are as follows:

- amendment of the conditions regarding the technical unemployment and granting allowances by the state up to 75% of the medium national wage for each employee, to the employers that temporarily suspended the employment agreements on economic grounds.
- the extension of the maturity dates with respect to taxes on land, buildings and means of transport from 31 March 2020 to 30 June 2020, while maintaining the bonus granted by the local authorities for payment;
- deferral of utility payments or rent for SMEs that totally or partially closed their business.
- the postponement of the payment of bank instalments for individuals or companies whose income has been directly or indirectly affected, of bank instalments and also the suspension of any enforcement proceedings until 31 December 2020, upon the debtors' request, has been adopted. However, an appeal has been brought before the Constitutional Court which will rule on whether or not it is unconstitutional.
- G.E.O. no. 33/2020 establishes a series of facilities applicable to loans and leasing operations contracted by certain categories of debtors.
- bonus percentages granted for taxpayers which pay corporate income tax due for the first quarter of 2020 by 25 April 2020.

Possibilities to prevent insolvency to be taken by debtors

Tools that the debtors could have used to prevent insolvency, such as ad-hoc mandates or the preventive "concordats" cannot in principle be employed either as such are not expressly considered emergency procedures. However, given that in exceptional circumstances courts may deem certain requests as emergency cases (according to Decision no. 417 of CSM), it may be possible to argue in certain cases in favour of such alternative procedures.

If good faith negotiations with creditors fail and good-faith debtors find themselves under pressure due to undue enforcements or provisional measures, an application for insolvency may be filed provided that all the other legal requirements are met.

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For any queries, please get in touch with your local CERHA HEMPEL contact. We are pleased to serve you.

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