CERHA HEMPEL

Insolvency and Restructuring Laws in Austria and CEE

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BULGARIA
CZECH REPUBLIC
HUNGARY
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SLOVAK REPUBLIC
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Content

About this Guide

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This CERHA HEMPEL Guide to Insolvency & Restructuring laws in Austria and CEE is intended to give the reader a valuable insight into this field in select countries in Central and Eastern Europe where we have offices. This Guide provides a summary of the subject-matter covered, is of a general nature, neither purports to be comprehensive, conclusive nor up-to-date and must not be relied upon as legal advice. If you would like to receive specific legal advice please speak to your contact at CERHA HEMPEL or the key contacts referred to in this Guide. All liability for damages, direct or indirect, from the information provided is explicitly excluded. It is highly recommended that parties seek professional legal advice prior to conducting any business transactions involving insolvency and restructuring matters.

About CERHA HEMPEL

CERHA HEMPEL is one of Austria's leading law firms, with an integrated Central and Eastern European practice. With a team of approx. 200 lawyers, we offer our clients expertise and experience in all areas of business law in Austria and Central and Eastern Europe.

At CERHA HEMPEL, we have a dedicated team of experienced lawyers, all of whom have in-depth expertise coupled with a detailed understanding of the legal and business environments in which our clients operate. Each client is served by an integrated team of specialists drawing, where necessary, upon experts from other practice groups, such as Banking & Finance, Corporate M&A, Labour Law and Litigation.

The CERHA HEMPEL Insolvency & Restructuring team handles this multi-faceted area of law through every phase of a matter, ranging from pre-insolvency reorganization and refinancing, the protection of creditors' rights, advice to shareholders or management of companies in financial distress, distressed M&A to insolvency-related litigation.

This expertise – combined with our extensive experience in Central and Eastern Europe and our LEX MUNDI network – ensures that our clients receive high-quality, intellectually rigorous advice across disciplines and across borders.

Austria

TYPES OF INSOLVENCY PROCEEDINGS

With respect to companies, the Austrian Insolvency Act (*Insolvenzordnung, IO*) establishes two types of uniform insolvency proceedings: restructuring proceedings (*Sanierungsverfahren*) on the one hand and bankruptcy proceedings (*Konkursverfahren*) on the other.

While restructuring proceedings are aimed at preserving and continuing the operation of the debtor's business by implementing a cut of existing debts, bankruptcy proceedings lead to the shutdown and liquidation of the debtor's business.

In Austria, restructuring proceedings are either subject to self-administration by the debtor (*Sanierungsverfahren mit Eigenverwaltung*) or administration by a specially appointed insolvency administrator (*Sanierungsverfahren ohne Eigenverwaltung*).

REQUIREMENTS FOR INSOLVENCY

The debtor can become subject to insolvency proceedings under the Austrian Insolvency Act only in the case of a so-called material insolvency (*materielle Insolvenz*), which requires illiquidity (*Zahlungsunfähigkeit*) or over-indebtedness (*Überschuldung*).

The Austrian Insolvency Act does not provide an explicit definition of illiquidity. Case law defines illiquidity as a permanent lack of funds, which prevents the debtor from paying all its debts at the time of maturity. Consequently, a mere temporary delay in payment (*vorübergehende Zahlungsstockung*) does not constitute illiquidity; however, a temporary delay in payment may be deemed to exist only if there is a high probability that the debtor will be able to obtain the necessary funds for settlement of any due debts within a period of no more than three months.

To determine whether a debtor is over-indebted, a two-step assessment is used (*rechnerische Überschuldung*). Firstly, the debtor's liabilities must exceed its assets (subject to the valuation of such assets based on liquidation values instead of going concern values). Secondly, the debtor's business must be subject to a negative going concern forecast (*negative Fortbestehensprognose*).

In order to initiate formal insolvency proceedings, the debtor (or – subject to certain prerequisites – its managing directors or [majority, i.e. 50 % or more] shareholders) also need(s) to have sufficient funds at its (their) disposal to cover the costs of opening the proceedings (usually

app. EUR 4,000) (*kostendeckendes Vermögen*).

PROCEDURAL ASPECTS

The court opens insolvency proceedings under the Austrian Insolvency Act upon the debtor or a creditor filing a petition; insolvency proceedings are not opened *ex officio*. In addition, a petition for the opening of restructuring proceedings can only ever be filed by the insolvent debtor, not by any of its creditors.

To apply for restructuring proceedings with self-administration, the debtor must submit an application to the competent insolvency court that includes a restructuring plan proposing a minimum repayment to all creditors of 30% of their outstanding claims (payable within two years at the latest). If the debtor applies for restructuring proceedings subject to administration by a specially appointed insolvency administrator, the proposed repayment quota must be at least 20%.

To initiate restructuring proceedings successfully, the debtor's restructuring plan needs to be accepted by the creditors subject to a double majority (*doppelte Mehrheit*). This means that a majority of the creditors (head count) present at the court hearing at which a vote is held on adopting the intended restructuring plan needs to accept the debtor's proposal and such a majority must also represent a majority of the claims held by all creditors present.

If restructuring proceedings fail, they are transformed by court order into bankruptcy proceedings.

The court publishes the opening of insolvency proceedings by way of an official notice, which is available to the public online via the Austrian insolvency database (*Insolvenzdatei*). This notice includes, in particular, information on the debtor, the type of insolvency proceedings, e.g. bankruptcy/ restructuring (with or without self-administration), the contact details of the appointed insolvency administrator (*Insolvenzverwalter*), as well as the date of the examination hearing for registered claims (*Prüfungstagsatzung*), and the deadline for filing any claims with the competent court. It, thus, offers vital information not just on the opening but also the current state of insolvency proceedings.

In general, the creditors convene for the so-called first creditors' meeting within 14 days of the opening of insolvency proceedings (*erste Gläubigerversammlung*), while the examination hearing (*Prüfungstagsatzung*) takes place 60 to 90 days after the opening of the proceedings. Moreover, a report

hearing (*Berichtstagsatzung*) is held within 90 days of the opening of proceedings to determine whether the debtor's business is to be shut down or continued. The court outlines the respective hearing dates in the insolvency database and usually combines the examination and report hearings for convenience purposes.

INSOLVENCY CLAIMS

Following the opening of insolvency proceedings, **non-secured** creditors must file their claims against the debtor as so-called "insolvency claims" with the competent insolvency court (*Forderungsanmeldung*) in order to participate in any distribution of funds during the proceedings. For any such filing, a specific deadline is indicated in the Austrian insolvency database; however, if the filing deadline is missed, claims can nevertheless still be validly filed.

Certain claims are excluded from being filed during insolvency proceedings (*ausgeschlossene Forderungen*), such as claims for or relating to (i) interest regarding insolvency claims that accrues after the opening of the proceedings; (ii) costs incurred by individual creditors due to their participation in the proceedings; (iii) fines for criminal acts; and (iv) donations or last will arrangements.

The insolvency administrator records any filed claims in a special registration list (*Anmeldeverzeichnis*), assesses the claims based on their merits and either accepts or rejects them in the formal examination hearing (*Prüfungstagsatzung*). Creditors whose claims are rejected may file a lawsuit for acknowledgement and acceptance of their claims with the competent insolvency court (*Prüfungsprozess*). A lawsuit is also necessary if the insolvency administrator acknowledges a claim while another creditor disputes it, which is legally possible, albeit rather rare in practice.

Secured creditors (e.g. holders of a mortgage or similar security) do not necessarily have to file their claims with the competent insolvency court like non-secured creditors. They may assert their security rights directly vis-à-vis the insolvency administrator (representing the debtor's insolvency estate). However, secured creditors are barred from enforcing their claims during a period of six months after the opening of insolvency proceedings if such enforcement could endanger the continuation of the debtor's business operations.

In principle, a creditor may set off (*aufrechnen*) claims against counterclaims by the debtor after the opening of insolvency proceedings. However, generally

speaking, this is only possible if the relevant prerequisites for a set-off were already fulfilled prior to the date of the opening of the relevant insolvency proceedings. Further details are provided in Sections 19 and 20 of the Austrian Insolvency Act.

PRIORITY CLAIMS

Priority claims (*Masseforderungen*) include (i) claims relating to the costs of the insolvency proceedings (e.g. court fees, compensation for the insolvency administrator, etc); (ii) claims relating to all expenses incurred in connection with the administration of the insolvency estate (e.g. taxes and social security contributions, etc); (iii) claims by employees for salaries after the opening of insolvency proceedings; (iv) claims resulting from the termination of certain employment relationships; (v) claims to fulfil bilateral contracts accepted by the insolvency administrator; (vi) claims arising from legal action (e.g. lawsuits) taken by the insolvency administrator; (vii) claims resulting from unjust enrichment of the insolvency estate; and (viii) compensation of privileged creditor unions. Priority claims must be fully settled before funds can be distributed to any creditors with "simple" insolvency claims.

Creditors can raise priority claims directly against the insolvency administrator (representing the debtor's insolvency estate); a prior separate filing with the insolvency court is not necessary.

CHALLENGE AND CLAW-BACK

An insolvency administrator appointed under Austrian law is entitled to challenge legal acts made and/or transactions concluded by the debtor with any third party in any of the following cases:

Challenge due to discriminatory intent (*Benachteiligungsabsicht*)

The insolvency administrator can challenge legal actions or transactions relating to any assets of the debtor if

> the debtor – within the last ten years prior to the opening of insolvency proceedings – implemented such legal actions or transactions with the intention of discriminating against some or all of its creditors, provided that the third party actually knew of the debtor's intention to do so at the time of the conclusion of the relevant legal action or transaction;

or

> the debtor – within the last two years prior to the opening of insolvency proceedings

– implemented such legal actions or transactions with the intention of discriminating against some or all of its creditors, provided that (i) at least some of the creditors were actually discriminated against and (ii) the third party ought to have known of the debtor's intention to discriminate against them at the time of the conclusion of the relevant legal action or transaction.

Challenge due to the squandering of assets (*Vermögensverschleuderung*)

The insolvency administrator can challenge legal actions or transactions relating to any assets of the debtor if the underlying agreement was concluded within the last year prior to the opening of the insolvency proceedings and provided that (i) the legal action or transaction qualified as the squandering of assets to the detriment of the debtor's creditors (i.e. a transfer without even remotely adequate consideration) and (ii) the third party actually knew or ought to have known of the squandering of such assets at the time of conclusion of the relevant legal action or transaction.

Challenge regarding donations

The insolvency administrator can challenge any donations made by the debtor to any third party within the last two years prior to the opening of the insolvency proceedings.

Challenge due to preferential treatment of creditors (*Begünstigungsabsicht*)

The insolvency administrator can challenge legal actions or transactions undertaken by the debtor (i) within one year prior to the opening of the insolvency proceedings but (ii) after the debtor has become illiquid or over-indebted or after an application to open insolvency proceedings has been filed with the competent court, if:

any claims of a third party were secured or settled by the debtor without the third party being legally entitled to demand respective security or settlement and provided further that other creditors were actually discriminated against in such a way;

or

the debtor secured or settled any claims of a third party (irrespective of whether such acts were based on existing legal obligations of the debtor or not), thereby discriminating against other creditors of the debtor and provided further that the third

party actually knew or ought to have known of the debtor's intention to so discriminate against other creditors at the time of the acceptance/ receipt of the relevant security or settlement.

The insolvency administrator can also challenge any relevant legal actions or transactions if such were consummated (i) within one year prior to the opening of the insolvency proceedings and (ii) within 60 days prior to the date on which (a) the debtor became illiquid or over-indebted or (a) an application to open insolvency proceedings was filed with the competent court.

Challenge due to knowledge of illiquidity

The insolvency administrator can challenge any legal action or transaction undertaken by the debtor (i) within six months prior to the opening of the insolvency proceedings but only after (ii) the debtor has become illiquid or over-indebted or an application to open insolvency proceedings has been filed with the competent court. The relevant legal action or transaction must provide any creditor with security for or settlement of its claims or otherwise directly affect the debtor's creditors in a negative way. Successfully asserting a challenge claim also requires that the relevant third party involved in the legal action or transaction actually knew or ought to have known that the debtor was already illiquid or over-indebted or an application to open insolvency proceedings had already been filed with the competent court. In cases where the debtor's legal action or transaction does not directly (but only indirectly) affect the creditors in a negative way, successfully challenging the debtor's legal action or transaction further requires that it was objectively predictable that the relevant action or transaction would cause damage to the debtor's insolvency estate.

Consequences of Successful Challenges

If a legal action or transaction is successfully challenged, it is deemed void vis-à-vis all creditors of the debtor and must be reversed. If reversal is no longer possible, the insolvency estate may assert damage claims.

Excursus: Capital Maintenance Rules under Austrian Corporate Law

Under Austrian capital maintenance rules, a company (*Kapitalgesellschaft*) is principally prohibited from transferring funds, assets or other benefits to its shareholders or related parties. This so-called "prohibition of repayment of equity" (*Verbot der Einlagenrückgewähr*) also extends to

"hidden" transfers through unlawful financial assistance, e.g. entering into a transaction with a shareholder without observing the arm's length principle.

If a company violates capital maintenance rules and then becomes insolvent, the insolvency administrator may reclaim the transferred funds or benefits from the recipient. The claim is generally subject to a statutory limitation period of five years under Austrian corporate law. However, if the applicant provides evidence that the recipient knew that the payment/transaction it received or benefited from was unlawful, the general limitation period under civil law applies (i.e. usually 30 years).

LIABILITY OF THE MANAGEMENT

If a company becomes illiquid or over-indebted, its managing directors are obliged to file for the opening of insolvency proceedings without undue delay and within 60 days at the latest. If the managing directors violate such an obligation, they may be held liable for any damages incurred by creditors or the company as a result of the delayed filing. Late filing can further lead to criminal prosecution under the rules of the Austrian Penal Code (*Strafgesetzbuch*).

FURTHER IMPORTANT EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS

Effects on Legal Acts and Decisions of the Debtor

In general, legal acts taken by the debtor with respect to the insolvent business after the opening of insolvency proceedings are null and void vis-à-vis creditors because the insolvency administrator obtains the sole right to administer and dispose of any assets of the debtor. Only in the case of restructuring proceedings with self-administration does the debtor remain entitled to make decisions in the ordinary course of business, subject to supervision (and – depending on the gravity of the decision to be made – approval) by the insolvency administrator or the competent insolvency court.

Managing directors of an insolvent company are obliged to support the insolvency administrator during all phases of the insolvency proceedings to the extent possible.

Effects on the Workforce

Employment agreements between the debtor and its personnel survive the opening of insolvency proceedings over the debtor. However, the Austrian Insolvency Act provides both sides (i.e. the insolvency administrator and the employees) with special termination

rights.

If the insolvent business is shut down, the insolvency administrator may terminate any existing employment agreements subject to the notice periods provided for under statutory law or applicable collective bargaining agreements (in case the relevant notice periods are shorter than the ones agreed to in the contracts to be terminated). The administrator has to declare the termination within a one month period starting from publication of the insolvency court's decision to shut down the business. If the report hearing (*Berichtstagsatzung*) has not yet taken place and the continuation of the business has not been published, the period for privileged termination extends to four months.

In addition, the debtor may exercise a special termination right within the first month of the opening of restructuring proceedings with self-administration. In this respect, however, the debtor (with the consent of the insolvency administrator) may only terminate employment contracts of employees engaged in business units or parts of business units that have been closed as part of the restructuring. A further prerequisite is that the non-termination of the relevant employment contracts would endanger the successful implementation of the debtor's restructuring plan or the continuation of the business.

Effects on existing Commercial Contracts

The opening of insolvency proceedings has different impacts on existing commercial contracts, depending on whether or not the contractual obligations arising thereunder have already been fulfilled by the parties.

If a creditor has already entirely fulfilled its contractual obligations prior to the opening of insolvency proceedings and provided that the debtor has not, the creditor only has an insolvency claim against the debtor. On the other hand, if the debtor has already entirely fulfilled its contractual obligations prior to the opening of insolvency proceedings and provided that the creditor has not, the creditor is still obliged to fully perform under the contract.

Special provisions apply to contracts where both parties have not entirely fulfilled their respective obligations prior to the opening of insolvency proceedings. In such cases, the insolvency administrator may decide whether or not to fulfil the relevant contract. If he decides to fulfil the contract, the creditor receives full performance from the insolvency estate but also has to fulfil his own obligations in full. If the insolvency administrator decides

not to fulfil the contract, the creditor may file an insolvency claim for compensation of damages (limited to the insolvency quota) and may not claim performance by the debtor.

The Austrian Insolvency Act further allows creditors to terminate their contracts with the debtor for good cause only after the lapse of a period of six months from the opening of insolvency proceedings if such termination could otherwise endanger the debtor's ongoing business. Further, if a contract contains termination clauses which are conditional upon the opening of insolvency proceedings, such provisions are void and unenforceable.

COMPLETION OF INSOLVENCY PROCEDINGS

Both bankruptcy and restructuring proceedings are officially closed by a formal resolution of the insolvency court.

In case of bankruptcy proceedings, the court declares closure after the distribution of all proceeds resulting from the sale of the debtor's assets, i.e. the liquidation of the debtor business, has been completed. Restructuring proceedings are closed by the court after (i) the creditors have accepted the debtor's restructuring plan, (ii) such has been approved by the competent insolvency court (whereby the relevant approval must not have been disputed by any eligible party in a timely manner) and (iii) all priority claims of creditors have been settled. The debtor is then obliged to fulfil the restructuring plan in accordance with the approved terms. If he fails to do so, the insolvency court will reopen insolvency proceedings.

The insolvency court also has to terminate insolvency proceedings if it becomes apparent that the debtor's assets are insufficient to cover the costs of such proceedings.

PRE-INSOLVENCY RESTRUCTURING

The debtor can negotiate with creditors and agree on a variety of measures in a pre-insolvency scenario to avoid statutory insolvency proceedings. However, it has to be taken into consideration that to achieve an out-of-court arrangement, the debtor needs to reach an agreement with all existing creditors which, in practice, often proves difficult.

By comparison, in the case of in-court restructuring proceedings, the debtor does not depend on unanimous consent or approval by all creditors but can achieve a restructuring of its business by way of negotiating a viable restructuring plan with a sufficient number of "important" creditors, which can be a substantial advantage in practice.

DISTRESSED M&A

The debtor business may also be sold subject to pre-packaged deals usually arranged prior to the opening of formal insolvency proceedings. In such cases, the debtor negotiates with a purchaser for the sale of all or a portion of its business or assets before formal insolvency proceedings are opened and, once opened, the insolvency administrator can approve and consummate the agreement. It should be noted, however, in this respect that insolvency administrators (as formal sellers of the debtor business) are usually not willing to provide extensive representations and warranties, other than for ownership and non-encumbrance in connection with pre-packaged deals.

If M&A deals are consummated before the opening of insolvency proceedings, the general rules on voidance claims need to be taken into consideration; apart from this aspect, such transactions overall follow standard procedures and rules.

ADDITIONAL RESTRUCTURING PROCEEDINGS

Reorganization Act

The Austrian Reorganization Act (*Unternehmensreorganisationsgesetz, URG*) contains certain provisions on restructuring companies in the early stage of financial crisis. However, in practice, the Reorganization Act is of minor significance as restructuring proceedings are typically pursued under the Insolvency Act if out-of-court settlements fail.

Restructuring Act

On the basis of Directive (EU) 2019/1023, the Austrian legislator has introduced an additional type of restructuring proceedings under the so-called Restructuring Act (*Restrukturierungsordnung, ReO*).

In general, similar to restructuring proceedings under the Austrian Insolvency Act, the ReO aims at the conclusion of a restructuring plan between the debtor and its creditors in legally defined court proceedings. The debtor is eligible to engage in such proceedings if it is likely to become insolvent, meaning the debtor will probably reach the status of illiquidity or over-indebtedness without restructuring. The debtor may therefore pursue restructuring under the auspices of the ReO at an earlier stage than under the Austrian Insolvency Act, as no material insolvency is required.

If the debtor opts for restructuring under the ReO, it needs to submit a restructuring plan for approval by the creditors. The debtor is not required to offer a minimum

repayment quota under such a plan, as opposed to a restructuring plan under the Austrian Insolvency Act (i.e. 20 % or 30 % within two years).

In addition, the creditors are divided into different classes in order to vote on the ReO restructuring plan in a separate court hearing, which – unlike "Chapter 11" in the US for example – is a very new system under Austrian insolvency law. If a class of creditors rejects the restructuring plan (by not reaching the necessary double majorities, for instance), the insolvency court may substitute their vote under specific circumstances and issue an order of confirmation (so called "*cross class cram-down*").

INTERNATIONAL ASPECTS

Under Regulation (EU) 2015/848, insolvency proceedings in other EU member states are recognized in Austria.

With respect to cases to which the regulation does not apply, the Austrian Insolvency Act provides for specific provisions on the recognition of foreign insolvency proceedings. In general, foreign insolvency proceedings and their impact are recognized in Austria if (i) the debtor's main centre of interest is located in the relevant foreign country, and (ii) the insolvency proceedings to be recognized are broadly comparable to those in Austria. In particular, Austrian creditors need to be treated in the same way as creditors from the jurisdiction in which the proceedings were opened.

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Bulgaria

FORMAL INSOLVENCY PROCEEDINGS AND TESTS FOR INSOLVENCY

Main Insolvency Proceedings

The Bulgarian Commerce Act (*Търговски закон*) provides a uniform insolvency proceeding. It is either carried out as (i) a so-called restructuring proceeding (*Оздравяване на предприятието*) with the general aim to keep on running the business of the debtor during and after the proceeding, without liquidating the debtor; or (ii) a bankruptcy (i.e. liquidation) proceeding (*Несъстоятелност*) with the aim to liquidate all assets and distribute the funds available to the creditors.

A restructuring proceeding is opened upon a petition being filed by the debtor, the insolvency administrator, creditors, shareholders or employees. Together with the petition, a restructuring plan (*План за оздравяване*) has to be submitted.

In case the restructuring proceeding fails, it is transformed by court order into a bankruptcy proceeding. The latter has the aim to wind up the debtor, realise its assets and distribute all available funds to the creditors.

Tests for Insolvency

Under the Commerce Act, the opening of insolvency proceedings requires either illiquidity (*Неплатежоспособност*) or over-indebtedness (*Свръхзадълженост*) of the debtor.

According to the definition in the Commerce Act, a debtor is considered illiquid if the debtor is unable to meet a monetary obligation which is due under a commercial transaction or a public obligation towards the state or a municipality which is related to its commercial activity, a private obligation towards the state, or an obligation to pay wages to at least one third of the employees for more than two months. Illiquidity is presumed where the debtor stops paying its debts that have fallen due, as well as in case the debtor's annual financial statements for the last three years have not been filed with the commercial registry.

Over-indebtedness is defined as a condition where the assets of a debtor are insufficient to cover its liabilities.

It is further required that the assets of the debtor are sufficient to cover the initial costs of the proceedings in order to initiate the insolvency proceedings. If this is not the case, insolvency proceedings can still be initiated if other concerned parties, typically creditors, cover the initial costs.

PROCEDURAL ASPECTS

A request for opening insolvency proceedings can be filed by the debtor, a creditor, the National Revenue Agency (in the case of obligations vis-à-vis the state/ municipalities), or the Labour Inspectorate Agency (in the case of obligations vis-à-vis employees). A restructuring proceeding may be initiated by an application of the debtor, the insolvency administrator, creditors, shareholders or employees of the debtor.

The opening of insolvency proceedings is made public by an announcement of the court resolution in the commercial registry.

The court resolution for the opening of insolvency proceedings declares the debtor to be illiquid/over-indebted and sets an initial date. By means of this resolution, the court further appoints an interim insolvency administrator, imposes security measures and specifies the time limits for creditors to submit their claims.

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

The insolvency administrator prepares a list of the filed claims and indicates whether each claim has been accepted or not. All claims of employees, as well as enforceable public claims, are included ex officio by the insolvency administrator. The list of claims has to be approved by the insolvency court.

The opening of insolvency proceedings requires the existence of certain assets, which have to cover the initial costs. The initial costs are determined by the court on the basis of the remuneration of the interim insolvency administrator and other expected costs such as court fees, payments to employees if the debtor's business is not shut down, and costs for managing, assessing and distributing the assets of the insolvency estate.

PRE-INSOLVENCY AND OUT-OF-COURT RESTRUCTURING

Out-of-court restructuring efforts are usually made prior to the opening of insolvency proceedings. The parties involved (debtor and creditors) are

free to apply various measures. There is also a special pre-insolvency court administered proceeding available under Bulgarian law, the so-called stabilization proceedings (*Стабилизация на търговец*).

At any point in the insolvency proceedings, the debtor and all creditors with accepted claims can execute a settlement agreement. In such a case, the debtor acts independently and is not represented by the insolvency administrator.

Provided that the executed agreement meets the statutory requirements, and on condition that there are no pending court proceedings challenging accepted claims, the court terminates the insolvency proceedings. As creditors with unaccepted claims are not party to the settlement agreement, they can only protect their rights by initiating regular court proceedings, which however do not prevent the settlement agreement from becoming effective and the insolvency proceedings from being terminated.

Should the debtor fail to perform its obligations under the settlement agreement, the creditors are entitled to request a renewal of the insolvency proceedings without having to provide new proof of illiquidity/over-indebtedness.

DISTRESSED M&A

Bulgarian law does not provide special rules on pre-packaged insolvency. For M&A deals effected prior to or after the opening of insolvency proceedings, the general rules relating to voidance claims need to be taken into consideration.

CREDITORS' ROLE

Creditors play a key role in all insolvency proceedings. Creditors' meetings (*Събрание на кредиторите*) at which the interests of creditors or groups of creditors are represented play an important role in all types of insolvency proceedings. There are two classes of creditors: secured (or privileged) and unsecured creditors.

Unsecured Creditors

Creditors must file their claims in writing within one month following the announcement of the opening of the insolvency proceedings in the commercial registry. Each creditor must submit a claim using a standard form, specifying: (i) identification of the court and insolvency case; (ii) the name and address of the creditor and, if applicable, their legal representative or attorney; (iii) a statement of the facts and amount of the claim; (iv) any privileges or securities; (v) a request for claim admission; (vi) the creditor's bank account.

The debtor or a creditor may challenge a claim, regardless of whether it is accepted by the insolvency administrator, by submitting an objection to the insolvency court. The court decides on any such objection and approves the final list of claims accepted by the insolvency administrator. The court's ruling in this regard is announced in the commercial registry. Creditors' claims included in the list approved by the court are considered as acknowledged claims in the insolvency proceedings.

In case the objection of a debtor (who has submitted an objection against an acknowledged claim) or the objection of a creditor (who has submitted an objection against other creditor's acknowledged claims or against its own unacknowledged claim) was not respected by the court, the debtor or the creditor, respectively, may initiate regular court proceedings, which will be held in parallel with the insolvency proceedings. In such cases, the distribution of funds (or respectively the restructuring plan) must provide provisions to cover the pending claims, should they be upheld.

Secured Creditors

Secured creditors are entitled to receive the value of the assets sold. Such secured claims are – subject to voidance claims – unaffected by the opening of insolvency proceedings.

Secured claims are claims for preferential satisfaction on certain secured assets in case they are sold by the insolvency administrator. These are claims secured with a mortgage, a pledge, an injunction (*залог*), a distraint (*възбрана*) or a right of retention (*право на задържане*).

In bankruptcy proceedings, the assets serving as collateral are sold and the amount received serves for preferential satisfaction of respective secured creditors.

In restructuring proceedings, all claims are reorganised in accordance with the restructuring plan approved by the creditors. Generally, the secured claims remain preferential.

Set-off of Respective Claims

Generally, a creditor may set off (*прихващане*) its claims against counterclaims of the debtor after the opening of insolvency proceedings.

A set-off is possible in case both claims are uniform and the creditor's claim is due. Under Bulgarian law, all claims of creditors are converted to monetary claims at the time of the opening of insolvency proceedings. Further, all claims of creditors become due by virtue of the court decision declaring the debtor bankrupt.

A set-off may be declared invalid

with respect to other creditors, in case both the claim of the creditor and its obligation were acquired prior to the opening of insolvency proceedings, but the creditor knew as of the time of acquiring the claim or the obligation that illiquidity/ over-indebtedness has occurred or that an application for the opening of insolvency proceedings has been filed.

Priority Order of Claims

Creditors' claims are satisfied in the following order:

(a) Claims secured by a pledge, mortgage, distraint or prohibition, with respect to the funds generated from the sale of the respective asset;

(b) Claims with regard to which the right of retention is exercised, with respect to the value of the respective asset;

(c) Costs of the insolvency proceedings;

(d) Claims of employees that originated before the opening of insolvency proceedings;

(e) Alimony obligations owed by the debtor to third persons by operation of law;

(f) Public claims of the state and the municipalities, such as taxes, customs duties, fees, social security contributions and others, originated before the opening of insolvency proceedings;

(g) Claims acquired after the opening of insolvency proceedings;

(h) Any remaining unsecured claims acquired before the opening of insolvency proceedings;

(i) Statutory or contractual interest accrued on unsecured claims, due after the opening of insolvency proceedings;

(j) Loans extended to the debtor by a shareholder;

(k) Dispositions free of charge (*безвъзмездни сделки*);

(l) Expenses incurred by creditors in the course of the insolvency proceedings.

Voidance Claims and Claw-Back

The Commerce Act provides that certain transactions and actions that unduly decrease the assets of the debtor may be contested. The insolvency administrator and each creditor are entitled to contest such transactions within two years following the opening of insolvency proceedings.

The following transactions and actions can be contested:

(a) transactions/actions executed after the opening of the insolvency proceedings if they relate to:

- the performance of an obligation that occurred prior to the opening of insolvency proceedings;
- pledges or mortgages over real estate or movables included in the debtor's assets (insolvency estate);
- transactions regarding rights or property included in the insolvency estate.

(b) transactions/actions executed by the debtor after the initial date of illiquidity/over-indebtedness (determined by the court) if they relate to:

- the performance of a monetary obligation which is not due (within one year prior to the opening of insolvency proceedings; if the creditor was aware of the illiquidity/over-indebtedness of the debtor, the term is two years);
- mortgages and pledges created by the debtor to secure claims which were not secured before that (within one year prior to the opening of insolvency proceedings; if the creditor was aware of the illiquidity/over-indebtedness of the debtor, the term is two years);
- the payment of due monetary obligations of the debtor (within six months prior to the opening of the insolvency proceedings; if the creditor was aware of the illiquidity/over-indebtedness of the debtor, the term is one year).

(c) transactions executed by the debtor prior to the date of the request for the opening of insolvency proceedings if they relate to:

- dispositions free of charge, with the exception of ordinary donations (*обичайни дарения*), which were performed for the benefit of a party related to the debtor, executed within three years prior to the date of the request for the opening of insolvency proceedings;
- dispositions free of charge executed within two years prior to the date of the request for the opening of insolvency proceedings;
- transactions against consideration where the items given exceed considerably in value the items received, executed within two

years prior to the date of the request for opening insolvency proceedings and after the date of illiquidity/ over-indebtedness;

• mortgages, pledges or personal collateral (such as guarantees) securing obligations of third persons, executed within one year prior to the date of the request for opening insolvency proceedings and after the date of illiquidity/ over-indebtedness;

• mortgages, pledges or personal collateral securing obligations of third persons in favour of a creditor who is a related party to the debtor, executed within two years prior to the date of the request for opening insolvency proceedings;

• transactions to the detriment of creditors, executed with a party related to the debtor, effected within two years prior to the opening of insolvency proceedings.

MANAGEMENT LIABILITY

Directors of a company are obliged to file for the opening of insolvency proceedings within 30 days of illiquidity/over-indebtedness. The violation of this provision triggers the liability of the directors towards all creditors for damages caused by the delay in filing for the opening of insolvency proceedings.

The Bulgarian Criminal Code (*Наказателен кодекс*) also contains provisions in connection with insolvency proceedings. The most important provisions are (i) failure on behalf of the debtor (its directors) to file for the opening of insolvency proceedings within the required term; (ii) intentional bankruptcy (*умишлен банкрут*); and (iii) careless bankruptcy (*непредпазлив банкрут*).

RUNNING THE BUSINESS

Role of the Debtor

When opening insolvency proceedings, the debtor generally loses its administration and disposition rights. The debtor remains owner of the assets, but the assets form the so-called insolvency estate to be used primarily to satisfy the creditors. 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 restructuring 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 restructuring plan can provide restrictions on the debtor's activities. The scope and duration of the creditors' control has to be regulated in the restructuring plan.

Role of the Insolvency Administrator

The insolvency administrator (*синдик*) plays the key role in running or disposing over the business of the debtor, respectively.

In the insolvency proceedings, the directors of the insolvent company are obliged to support the insolvency administrator and provide the necessary information related to the property and the business of the company.

Effect on the Work Force and Employees

As mentioned above, the claims of employees are automatically included by the insolvency administrator in the list of acknowledged claims. The employees thus do not have to file their claims.

Employees have the possibility to propose a restructuring plan. This requires a quorum of twenty per cent of the total number of the debtor's employees. As creditors, the employees also participate in adopting the restructuring plan.

Further, the Bulgarian Labour Code provides special termination rights for employees and the insolvency administrator. In case the business is shut down, the employees have a resignation right. Respectively, the insolvency administrator has the right to terminate the employment contracts by observing a one-month notice period. If only parts of the company are closed, only those employment contracts can be terminated that are affected by the shutdown.

In the case of restructuring proceedings, the restructuring plan has to define what kind of impact the restructuring will have on the workforce.

Effect on Contracts and Termination Rights

The opening of insolvency proceedings has different impacts on contracts depending on whether or not contractual obligations have already been fulfilled by the parties.

If a contracting party has entirely fulfilled its contractual obligations prior to the opening of insolvency proceedings, but has not received the entire consideration from the debtor, it should generally qualify as an insolvency creditor. If the

debtor has already fulfilled its obligations, the receivable towards the contracting party will be part of the insolvency estate and could be claimed by the insolvency administrator.

If both sides have not yet fulfilled their respective obligations, the insolvency administrator is entitled to terminate the contract by giving 15 days' notice. Upon request of the contracting party, the insolvency administrator must inform the other party within 15 days whether he will keep the contract in effect or terminate it. Should there be no response, the contract is considered as having been terminated. In case of termination, the contracting party may be entitled to tort claims, which then would be classified as insolvency claims.

FORMAL RESTRUCTURING PROCEEDINGS

Restructuring Proceedings

Restructuring proceedings are initiated by proposing a restructuring plan (*План за оздравяване*). The following persons are entitled to propose a restructuring plan: the debtor, the insolvency administrator, creditors holding at least one-third of the secured claims, creditors holding at least one-third of the unsecured claims, shareholders holding at least one-third of the share capital of the debtor company, an unlimited liability shareholder and twenty per cent of the total number of the debtor's employees.

A restructuring plan may be proposed not later than two months following the date of the announcement in the commercial register of the court's ruling on the approval of the list of acknowledged claims.

The restructuring plan may provide for a deferment or rescheduling of payments, a cancellation of the debts in full or in part, a restructuring of the debtor's company (e.g. a spin-off), undertaking other acts or transactions such as sale of the going concern or a part of it. The plan may also propose the sale of the entire or a part of the debtor's enterprise, as well as a debt-equity swap.

The restructuring plan may provide for the appointment of a supervisory body to exercise control over the debtor's activity for the duration of the restructuring plan or for a shorter period. In case such supervisory body is installed, the debtor may make decisions only upon the approval of the supervisory body. This relates to matters such as transformation of the company, winding down or transfer of the enterprise or of considerable parts thereof, property transactions beyond the customary actions or transactions related to the normal business operations of the debtor, any material change in the

business activity and any material organizational change.

Adoption of the restructuring plan. Cramdown of Dissenting Creditors

The adoption of the restructuring plan takes place at the creditor's meeting. Only creditors whose claims are acknowledged (by both the insolvency administrator and the court) have a voting right. However, each class of creditors (which has to vote separately) has to accept the plan by a majority exceeding 50% of the amount of the claims of the respective class; and (ii) creditors holding more than 50% of the total amount of all current creditors' claims must consent. The dissenting creditors are overruled and have to accept the restructuring plan.

The proposal of a restructuring plan in the course of pending insolvency proceedings does not require the consent of other stakeholders; in particular, no consent of the shareholders is required. The shareholders' consent will, however, be required in an out-of-court restructuring.

ENDING OF INSOLVENCY PROCEEDINGS

Both bankruptcy and restructuring proceedings are closed by a resolution of the insolvency court. Bankruptcy proceedings are closed after the distribution of all assets, or in case all claims are settled.

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

INTERNATIONAL ASPECTS

According to Regulation (EU) 2015/848, insolvency proceedings in other Member States of the European Union are recognized in Bulgaria.

In case the Regulation is not applicable, the Bulgarian Commerce Act contains provisions referring to the recognition of proceedings in third countries. Foreign court rulings on bankruptcy are generally recognized in Bulgaria if the ruling is taken by an authority of the state where the debtor's seat is located.

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Czech Republic

FORMAL INSOLVENCY PROCEEDINGS AND INSOLVENCY TESTS

Introduction

In the Czech Republic, formal insolvency proceedings are governed by Act No. 182/2006 Coll. on insolvency proceedings, as amended (*"Insolvency Act"*). The purpose of insolvency proceedings is to resolve the insolvency (or impending insolvency) of the debtor by one of the lawfully prescribed means in a way that ensures fair, proportional and the highest possible satisfaction of the creditors. It also regulates the debtor's discharge of its debts.

Certain conditions have to be met in order to declare insolvency. According to the Insolvency Act, the debtor must have (i) more than one creditor, (ii) more than one outstanding financial liability which is already overdue by more than 30 days and (iii) the debtor must be unable to pay these debts.

A debtor is deemed to be unable to pay its debts if it has (i) ceased payments on a substantial portion of its debts, or (ii) failed to satisfy such debts for more than three months after their due date, or (iii) if it is not possible to obtain satisfaction of any due monetary claim against the debtor through enforcement proceedings or execution, or (iv) if it has failed to submit the lists under Section 104(1) of the Insolvency Act, i.e. list of assets, liabilities and employees, despite being ordered to do so by the Insolvency Court.

In the case of entrepreneurs (legal entities or natural persons), insolvency can also occur in the form of over-indebtedness. Over-indebtedness is deemed to exist if the debtor (i) has more than one creditor and (ii) the total of its liabilities exceeds the value of its assets (taking into account its possible future as a *going concern*).

However, insolvency cannot be declared if the debtor only has one creditor even if its debt is of significant value and already long overdue.

The Insolvency Act also covers situations in which the debtor is not yet insolvent, but given all the circumstances it can be assumed the debtor will not be able to duly and timely fulfil a substantial part of its obligations (i.e. imminent insolvency).

INITIATION OF INSOLVENCY PROCEEDINGS

Insolvency proceedings can only be commenced on the basis of an insolvency petition. This petition can be filed by both the creditor and the debtor. However, if insolvency is only imminent, the petition can only

be filed by the debtor.

For a petition to be valid, it has to include certain criteria which are set forth by law. In brief, it has to include the basic information about the petitioner and the debtor (e.g. name/business name, residence address or the address of the seat of the company, and in the case of an entrepreneur also the identification number). In the petition, it has to be defined on what grounds insolvency or imminent insolvency is sought and the petitioner has to attach all the relevant documentation that supports the alleged insolvency. This requirement can prove challenging especially with petitions filed by creditors as they might not have enough information about the debtor and the necessary documentation available.

Insolvency proceedings may commence only based on a petition, and they are deemed to be initiated on the date the insolvency petition is delivered to the competent court. The petition must be submitted in written form and must bear an officially certified signature of the person filing it; otherwise, it will not be considered.

If the petition is filed by the debtor, the debtor is also obliged to submit a list of its assets (including the receivables it has against its debtors), a list of all its creditors and their receivables (the debtor's liabilities), a list of its employees (if applicable) and all relevant documents that demonstrate its insolvency or imminent insolvency, respectively. Such information has to be submitted in order to prove that the insolvency conditions are fulfilled. When submitting this documentation, the debtor is obliged to explicitly state that all information provided is accurate and complete.

If a creditor files the petition, the petition – in addition to the above-mentioned requirements – has to further include proof regarding the fact that it has an overdue receivable. If more creditors have receivables that are overdue and want to support the already filed petition to make the debtor's insolvency more certain, they can also file a petition as the first petition does not constitute a *lis pendens* obstacle. The creditors can do so until the court's decision on the debtor's insolvency is published in the Insolvency Register.

Consequences of Filing an Insolvency Petition

Once the insolvency petition has been filed and delivered to the competent court (which is assigned based on the residence or registered seat of the debtor), severe consequences will arise, which affect both the debtor and its creditors.

The petition will first be published in the Insolvency Register. From this moment on, the insolvency proceedings are legally initiated and the debtor must refrain from any disposal of its assets which are outside the scope of its regular course of business (i.e. acts that would constitute material changes in the composition, use or determination of such assets or lead to a not negligible reduction in the value of the assets). Such acts are ineffective towards the creditors, unless the debtor obtained the previous consent of the court.

The main consequence of the initiation of insolvency proceedings with regard to the creditors is that they are only entitled to enforce their claims in the course of the insolvency proceedings via a claim application. In other words, they are generally barred from filing an action against the debtor, enforcing a court ruling regarding their claim (the enforcement proceedings can be initiated, but not executed), and claiming or acquiring the right of satisfaction by secured receivables or establishing a new security over the debtor's assets.

Court Decision on Insolvency

If the insolvency petition was filed properly and if it was established that the debtor is in fact insolvent or that insolvency is imminent, the court will issue a decision on the insolvency of the debtor. This decision usually contains (i) the appointment of an insolvency administrator, (ii) a notice for the creditors to register their claims against the debtor within two months of the decision, and (iii) information on where and when the creditors' meeting will take place. The court may issue a decision on the method of a resolution of the insolvency together with the decision on insolvency if certain conditions are met.

The effects of the commencement of the insolvency proceedings continue even after the formal declaration of insolvency. Hence, the debtor's rights to dispose over its property are limited, the exact extent depending on the method of resolving the insolvency. All court and arbitration disputes concerning creditors' claims are also suspended, as all receivables have to be characterised in an application filed by the creditor and must be submitted to the Insolvency Court. The set-off of claims is only allowed subject to specific conditions set forth in the Insolvency Act.

MORATORIUM

A moratorium is a specific legal instrument that can only be used by entrepreneurs as debtors in order to prevent insolvency for a certain time period to provide them with the possibility to overcome the (imminent) insolvency. It can only

be declared by the court based on a petition filed by the debtor, usually together with its insolvency petition. However, a court's decision on a moratorium can only be made if the debtor's respective request is submitted within a certain time period. The debtor can only file the proposal for a moratorium within seven days following its insolvency petition; if a creditor filed the petition, the proposal has to be submitted within 15 days from the receipt of the insolvency petition.

The main consequence of a moratorium is that the court temporarily cannot declare insolvency over the debtor. However, the above-described consequences of the initiation of insolvency proceedings also apply in case of a moratorium. A moratorium can only be used for a short period, not exceeding three months. During this period, the debtor is entitled to prioritise its debts that accrued in the last 30 days before the declaration of the moratorium, which are crucial for maintaining business operations. It is in the sole discretion of the debtor to decide which of its debts will be settled, as long as they fulfill the above-mentioned criteria. These debts can then be paid prior to all other overdue claims, which constitutes an exception to the prohibition of the preferential satisfaction of claims.

In order to keep the business of the debtor up and running, the supply of energy and commodities for the debtor is protected as well. Creditors cannot withdraw from such contracts due to payment delays that occurred before the declaration of the moratorium. Unless stated otherwise in a preliminary injunction, the debtor cannot set off its claims against the creditor within the course of a moratorium.

As stated above, a moratorium is designed to protect the debtor from insolvency, which leads to certain disadvantages for the creditors. Thus, the debtor is obliged to discuss the moratorium with its creditors, and at least a simple majority of its creditors has to agree and their consent must be attached to the proposal for the declaration of a moratorium, including their certified signatures; otherwise the proposal for a moratorium will be rejected by the Insolvency Court.

CREDITORS IN INSOLVENCY PROCEEDINGS

Creditors who exercise their rights against the debtor are one of the procedural bodies and, together with the debtor, the main participants in the insolvency proceedings under the Insolvency Act in the Czech Republic.

In order to organize the creditors and represent their interests, creditors' bodies are established, i.e.

the creditors' meeting, the creditors' committee and/or the creditors' representative.

Creditors' Meeting

The creditors' meeting has the right to elect and remove members of the creditors' committee and its substitutes or representatives. The creditors' meeting may reserve any right or action that falls within the scope of the other creditors' bodies for itself. In case neither a creditors' committee nor a creditors' representative have been appointed, the Insolvency Court may act in their capacities as well.

The creditors' meeting is convened and directed by the Insolvency Court. It is convened on the court's own initiative or on the basis of a petition filed by the insolvency administrator, the creditors' committee or at least two creditors, whose total value of receivables exceeds one tenth of all filed receivables.

The Insolvency Court is required to issue a public notice to announce the convening of a creditors' meeting. The notice must specify the subject matter of the meeting as well as the place and date of the meeting. In the first creditors' meeting, the members of the creditors' committee are elected and the creditors vote on the method of the resolution of the insolvency or the imminent insolvency of the debtor, respectively.

With regard to all subsequent meetings, a list with the matters to be discussed has to be provided to the creditors in advance. Matters not included in the list can only be discussed if all creditors are represented at the meeting (in most insolvency proceedings it is very unlikely that all creditors would be present as attendance is not obligatory).

All creditors attending the creditors' meeting, either in person or through a representative, are entitled to vote. A resolution is considered accepted if approved by a simple majority of the votes cast by those present or duly represented, with voting power determined by the amount of their respective claims (1 vote per CZK 1 of the claim) unless a qualified majority is required by the Insolvency Act.

Creditors' Committee

The creditors' committee exercises the powers of the creditors' bodies with the exception of those matters falling within the scope of the creditors' meeting or which the creditors' meeting reserved for itself. The three to seven obligatory members are elected by the creditors' meeting. They are elected out of all registered creditors. If the debtor has more than 50 registered creditors, the establishment of the creditors' committee is mandatory

(with the exception of insolvency being resolved by debt relief).

The creditors' committee decides by a simple majority of votes. In case of a tie, the chairperson of the creditors' committee casts the deciding vote.

The main function of the creditors' committee is to protect the common interest of the creditors and supervise all actions taken by the insolvency administrator. For this purpose, it is entitled to file motions with the Insolvency Court concerning the course of insolvency proceedings (i.e. it can convey creditors' meetings, etc.).

Creditors' Representative

If no creditors' committee is established (and there are no more than 50 registered creditors), the creditors' meeting may also elect a creditors' representative who is entrusted with the same powers and has the same obligations as the creditors' committee.

Different Types of Claims

In the context of insolvency proceedings, it is necessary to distinguish between several types of claims. On the basis of these types of claims, the creditors can be divided into several groups.

The most common receivables are those established before the initiation of the debtor's insolvency proceedings, e.g. based on a purchase agreement. Creditors can claim their receivables by filing an application for insolvency proceedings, in which they specify their receivables and the title from which each claim arose. However, they can only submit their application during a certain period, which is set forth in the court's decision on insolvency (generally two months from the day the decision on insolvency was issued).

Another very common type of receivable are those secured by the property of the debtor. Secured receivables also have to be claimed by the creditor via their respective application. The application has to specify the security, indicate the circumstances that certify it and security has to be proven by relevant documents. Secured receivables are generally settled via the sale of the secured property at any time during the insolvency proceedings, so their rate of satisfaction is usually higher than is the case with "ordinary" claims.

Furthermore, there are claims against the estate of the debtor (*pohledávky za majetkovou podstatou*). These debts can be paid in full by the debtor at any time following the court's decision on insolvency. They are classified as follows:

a) claims against the estate incurred after the initiation of insolvency proceedings or after the declaration of a moratorium (e.g. reimbursement of cash expenses and remuneration of the interim insolvency administrator, of the liquidator of the debtor and the members of the creditors' committee, etc.);

b) claims against the estate which arose after the court's decision on insolvency (cash expenses and remuneration of the insolvency administrator, taxes, fees, etc.), and claims that are equivalent to claims against the estate (labour claims of the debtor's employees, creditors' claims relating to maintenance, etc.).

Some types of claims cannot be satisfied in the insolvency proceedings. These include inter alia interests, interests on late payments and fees for late payments connected to receivables of registered creditors incurred after the court's decision on insolvency as well as non-contractual sanctions affecting the debtor's assets, etc.

Review of Applications

Applications filed by the creditors are first subjected to an examination by the insolvency administrator. They are reviewed based on the documents and accounts of the debtor submitted or the registers kept under special legislation. Furthermore, the insolvency administrator will obtain the opinion of the debtor on registered receivables, i.e. whether it agrees with the receivable or denies it (especially with regard to the title from which it arose, the alleged amount or the order of the claim).

If the claim application cannot be reviewed due to defects or incompleteness, the insolvency administrator is required to notify the creditor to correct or supplement it within a set deadline of a minimum of 15 days.

The insolvency administrator then draws up a list of all submitted claims, in which he should expressly state which claims are denied. Secured creditors must be listed separately. This list must be published in the insolvency register at least 15 days prior to the review hearing.

Review Hearing

In order to review all registered receivables, a review hearing is scheduled by the Insolvency Court. The attendance of both the insolvency administrator and the debtor is compulsory. During the review meeting, the insolvency administrator can change his opinion regarding the denial of certain claims. Creditors may also still change the amounts of their receivables previously registered

via an application until the end of the review hearing or until the moment their claims are confirmed or effectively denied via decision of the court in incidental disputes.

If a receivable is denied by the insolvency administrator, the debtor or another creditor, the creditor concerned is no longer allowed to vote at the creditors' meeting as to the amount that was denied. Creditors whose claims have been denied by the insolvency administrator may vote to the extent of the denial, if so decided by the creditors' meeting or the Insolvency Court.

If the creditor disagrees with the denial, it can object via incidental disputes by filing an action against the insolvency administrator. The decision is made by the same court that also leads the insolvency proceedings. Hence, the Insolvency Court is also competent to decide on disputes concerning the existence, amount or priority of filed claims as well as disputes on the exclusion of things, rights, claims or other assets from the estate and other incidental disputes. The final judgment issued in incidental proceedings is binding on all parties and has to be regarded in the insolvency proceedings.

DIFFERENT METHODS OF RESOLUTION OF INSOLVENCY

In the Czech Republic, the Insolvency Court can decide to solve a debtor's insolvency by one of the following methods:

Bankruptcy

Bankruptcy is the most frequent method of dealing with a debtor's insolvency in the Czech Republic. It usually ends with the winding-up of the debtor's business. Its main goal is the sale of the debtor's estate and the subsequent proportional distribution of the acquired assets among the (unsecured) creditors, while claims of certain creditors still keep their priority position (secured creditors).

The effects of bankruptcy proceedings come into force as soon as the decision on the declaration of bankruptcy is issued by the Insolvency Court and published in the Insolvency Register. Bankruptcy is used as a method to resolve the debtor's insolvency in case the insolvency petitioner proposes so (either the debtor itself or the creditors), and also in case the insolvency cannot be solved by any other method (because conditions as set forth for the reorganisation or debt relief are not met). The commencement of bankruptcy proceedings has a serious impact on the business activities of the debtor. Since the bankruptcy order is issued by the court, the insolvency administrator is entitled to dispose of the debtor's property, perform

other rights and liabilities and run the debtor's business (if still possible) or cease its operation.

In case the debtor is a natural person, a non-entrepreneur, or where the annual turnover of the debtor does not exceed CZK 2 million (approx. EUR 75,000) and provided that the debtor does not have more than 50 creditors, the court may decide to carry out a so-called minor bankruptcy, which is a shortened and simplified version of bankruptcy.

Reorganisation

Reorganisation is a preferred method of dealing with a debtor's insolvency and may only be used to deal with the insolvency of entrepreneurial entities. The main purpose of reorganisation is to satisfy the creditors by gradually fulfilling their claims while maintaining the business of the debtor (*going concern*). This has to be done in accordance with the conditions set out in the reorganisation plan. In other words, unlike bankruptcy, which aims at the liquidation of the debtor, reorganisation aims at the financial rehabilitation of the debtor and continued operation of its business.

In order to use reorganisation as a method of resolving insolvency, several legal criteria must be met. Only the debtor and registered creditors are entitled to file a motion with the court requesting a decision on authorizing the reorganisation. Reorganisation requires the debtor to carry on its business activities for profit. Further, the debtor must have either at least 50 employees or a turnover of at least CZK 50 million (approx. EUR 2,033,000) for the last accounting period. The requirements relating to a certain turnover or the number of employees are disregarded if the debtor submits a reorganisation plan that has already been approved by at least half of all secured creditors and half of all unsecured creditors (quorum of the creditors is calculated based on the amount of their claims).

Reorganisation Plan

The reorganisation plan constitutes a very extensive and detailed document laying out the process of reorganisation and has to be adopted by the creditor's meeting (in separate creditor groups) and also approved by the Insolvency Court. The Insolvency Court is required to consider all statutory conditions (e.g. if each creditor will receive consideration equal to or higher than the value of the consideration that they would likely receive if the debtor's insolvency was resolved through bankruptcy).

The main aim of the reorganisation plan is to organise the relationships between the debtor and its creditors.

This includes determining the means of reorganisation, identifying possible measures to implement the reorganisation plan, particularly in terms of dealing with the assets, providing information as to whether the debtor's business or part of it is going to continue operating and, if so, under which conditions this is to be done, classifying creditors into groups, identifying potential investors (if any), providing information about the anticipated amount of obligations vis-à-vis creditors after the end of the reorganisation and providing other information as required under the Insolvency Act.

The reorganisation plan becomes effective as soon as the court decision approving the reorganisation plan becomes final, with only the creditors voting against the plan being able to appeal the decision.

Reorganisation may be terminated in three different ways: (i) satisfaction of the reorganisation plan confirmed by the Insolvency Court, (ii) transformation into bankruptcy, or (iii) cancellation of the decision on approval of the reorganisation plan, if the court finds that any of the creditors gained special benefits in connection with the reorganisation plan or that the approval of the plan was achieved fraudulently.

Debt Relief

Debt relief (or "personal bankruptcy") is an instrument that allows the sociological aspects of debt to be put before their economic aspects. It is supposed to enable the debtor to have a "fresh start" and at the same time motivate it to actively repay its debts. It is therefore a method of resolving insolvency primarily intended for non-business individuals or entrepreneurs who are unable to meet their due obligations but are interested in resolving their situation in a lawful, transparent, and controlled manner.

Debt relief was primarily designed for natural persons, although it can be used for entrepreneurs as well. The Insolvency Act stipulates that debt relief is not an option for legal entities carrying out business activities or for the coverage of debts, which arose from the debtor's business activities. Nevertheless, there are also situations in which debt relief can be used by a person who has debts from its business activities, e.g. if the creditors concerned agree; or in case the debt that arose from the debtor's business activities is secured.

The application for the approval of debt relief can only be submitted by the debtor itself by means of using a certain form alongside with the insolvency application. It must contain the following information:

- identification of the debtor and the persons authorised to act on its behalf;

- information on the debtor's ability and capacity to engage in gainful employment and information on the debtor's expected income over the next twelve months;

- information on the debtor's income in the last twelve months;

- proposal on how debt relief is to be carried out, or a statement that such a proposal is not given.

Together with the proposal, the debtor is obliged to enclose the following information:

- list of its assets;

- documentation on the income of the debtor during the last twelve months;

- sworn statement of the debtor that he was informed of its obligations in the insolvency proceedings and that it must satisfy the claims of its creditors and undertake every reasonable effort to ensure their full satisfaction, fulfil all obligations under the Insolvency Act and the debt relief decision, and truthfully declare all income.

After deciding on the insolvency of the debtor, the insolvency administrator executes a report for debt relief. This report is used to assess whether the debt relief proposal is feasible, whether the debtor meets the legal requirements for debt relief, and whether their proposal is honest and credible. The report forms the basis for the court's decision on whether to approve debt relief

The Insolvency Court will not authorize debt relief if:

- the debtor acts with dishonest intent;

or

- the debtor is proven to be an unreliable person;

or

- the debtor will not be able to repay debts to the insolvency administrator or debts to creditors according to the repayment schedule;

or

- in the past 12 years prior to filing for insolvency, the debtor was granted exemption from payment of debts by a final decision; or

- in the past five years prior to filing for insolvency, the debtor's application for debt relief was rejected by a final decision on the grounds that it was made in bad faith, or if, for the same reason, debt relief was not approved or approved debt relief was revoked;

or

- in the past three months prior to filing the insolvency petition, the debtor withdrew their previous petition for debt relief.

In case the Insolvency Court denies the suggested debt relief, it must decide to solve the insolvency of the debtor by bankruptcy proceedings. In all other cases, the Insolvency Court will permit debt relief and decide how it is to be carried out. There are two possibilities: (i) sale of all assets of the debtor or (ii) creating a repayment schedule, while both of them can be combined.

The sale of the debtor's assets solely relates to its current assets. In the decision approving debt relief through the sale of assets, the Insolvency Court must identify the assets that belong to the estate that will be sold. Future income or income generated during insolvency proceedings but after debt relief was approved is not affected.

The repayment schedule, however, also affects the debtor's future assets as the debtor must make monthly payments to unsecured creditors from their income until they file for debt relief. The maximum repayment period for debt relief is now set at three years for all natural persons (i.e. the period during which the debtor must give its creditors part of its income). The debtor is obligated to work and if it is unemployed, it must immediately and actively seek a suitable occupation. The debtor must provide the Insolvency Court with a report on its income and must honestly declare all its income every three months during this period to the insolvency administrator. Furthermore, the debtor must not attempt to conceal any income and, at the request of the Insolvency Court, the insolvency administrator or creditors' committee, it must submit tax returns for inspection, not grant any special advantages to any of the creditors or take on new obligations that he would be unable to meet when they fall due.

The Insolvency Court will revoke the approved debt relief and at the same time decide on the method of resolving the debtor's insolvency through bankruptcy if the debtor:

- violates the conditions of debt relief;

- is unable to fulfil the repayment schedule;

- requests it.

In general, following a successful debt relief the debtor's debt, up to the date of the approval of the debt relief, ceases to exist. The insolvency proceedings formally end by a decision of the Insolvency Court.

PREVENTIVE RESTRUCTURING

Besides the formal insolvency proceedings, the preventive restructuring frameworks were implemented into Czech law by Act No. 284/2023 Coll. on Preventive Restructuring (*"Preventive Restructuring Act"*), effective from 23 September 2023.

The purpose of preventive restructuring is to enable entrepreneurs to resolve their financial difficulties and come to an agreement with their creditors outside formal insolvency proceedings, while ensuring appropriate protection for creditors and other affected parties.

Preventive restructuring is available only to business corporations (i.e. only legal entities) that are not insolvent within the meaning of the Insolvency Act, have a realistic chance of business recovery, and are willing to negotiate a restructuring plan with their creditors. A precondition for preventive restructuring is the existence of a credible prospect of recovery and the entrepreneur's good faith intent to resolve the situation in cooperation with creditors.

Preventive restructuring is initiated by sending a written invitation to the chosen affected parties (not necessarily all creditors) to enter negotiations for a restructuring plan. The date of commencement is deemed to be the date on which the first affected party receives the invitation. Together with the invitation, the debtor must also submit or provide access to a recovery plan (a document outlining the current situation and the intended restructuring) to all affected parties.

The key element of the preventive restructuring process is the restructuring plan, which is prepared by the entrepreneur. The plan must include a description of the causes of the financial difficulties, a proposal for remedial measures, and the categorization of creditors (affected parties) into specific groups. Creditors vote on the plan within their respective groups, and the plan must be approved by a qualified majority as defined by law in each group. The outcome of the vote must be certified by a notarial deed.

During the restructuring process, the entrepreneur may apply to the court for protection against creditors in the form of a moratorium. The

moratorium may be individual (covering only specific creditors) or general (providing protection against all creditors). During the moratorium, it is not possible to initiate or continue enforcement or insolvency proceedings, to terminate key contracts, or to dispose of the entrepreneur's assets. The moratorium offers the entrepreneur a time-limited space to negotiate with creditors and finalize the restructuring plan. The standard duration is three months, unless a shorter period is specified, with the possibility of extension.

Once the restructuring plan is approved by the creditors and confirmed by the court, it becomes binding on all affected creditors. Upon successful implementation of the plan, the entrepreneur is considered financially recovered. However, if the plan is not approved or not complied with, the initiation of formal insolvency proceedings may follow. The Preventive Restructuring Act also provides safeguards against abuse of the process.

Therefore, the aim of the Preventive Restructuring Act was to introduce a new, flexible, and faster alternative to insolvency proceedings for businesses in financial difficulties that are not yet insolvent. It is designed to support early intervention and recovery through creditor cooperation, outside of formal insolvency proceedings in a semi-formal process. Nevertheless, so far we have not been able to witness a wider use of this process among entrepreneurs, while the publicly known attempts at preventive restructuring were mostly unsuccessful, resulting in the initiation of formal insolvency proceedings. However, since the process is not always public, the information on ongoing cases might not always be available.

INTERNATIONAL ASPECTS

Based on Regulation (EU) 2015/848, as amended, insolvency proceedings in any other EU Member State are recognized in the Czech Republic as well. In this case, national law does not apply and all creditors, regardless of their seat, are entitled to submit their claims to the competent Insolvency Court.

In case the Regulation is not applicable, based on Act No. 91/2012 Coll., foreign judgments in insolvency matters from any other countries (outside of the EU) are recognized in the Czech Republic on a reciprocal basis.

Directive (EU) 2019/1023 of the European Parliament and of the Council on restructuring and insolvency, based on which the Preventive Restructuring Act was adopted, represents a significant step towards harmonizing insolvency law within the EU. Its main objective

is to enable entrepreneurs facing imminent insolvency to access preventive restructuring frameworks that allow them to restore their viability and avoid formal insolvency.

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Hungary

FORMAL INSOLVENCY PROCEEDINGS

Introduction

The Hungarian Restructuring and Insolvency Act (*Csődtörvény, "Cstv."*) regulates two types of insolvency proceedings:

(i) so-called restructuring proceedings (*csődeljárás*) with the general aim of keeping the business of the debtor (*adós*) running during and after the proceedings (without liquidating the debtor) by means of concluding an agreement with the creditors (*hitelezők*) on the settlement of debts; and (ii) compulsory liquidation proceedings (*felszámolási eljárás*) with the aim of dissolving the debtor without a legal successor, and selling and distributing all of its assets to the creditors.

Restructuring proceedings can be initiated only by the debtor and requires the prior approval of its main decision-making body (i.e. the approval of the general meeting in the case of a limited liability company). In restructuring proceedings, the debtor is granted a moratorium and is allowed to reach a settlement agreement regarding its debts with the creditors in order to restore its solvency. Hungarian law does not stipulate any requirements regarding a minimum debt repayment quota; however, the settlement agreement must comply with the concept of exercising rights in good faith. If a settlement agreement is approved by the court, creditors who failed to file their claims within the given deadline and are therefore not party to the settlement agreement will only be able to enforce their claims if a third party initiates compulsory liquidation proceedings against the debtor. Otherwise, failure to meet the given deadline for filing claims results in the forfeiture of rights.

If restructuring proceedings fail, it is transformed by a court order into compulsory liquidation proceedings. In other cases, compulsory liquidation proceedings can be initiated by creditors, the debtor itself, the liquidator in a voluntary liquidation (*végelszámoló*), or a court if the relevant preconditions are met. The main goal of liquidation proceedings is to terminate the debtor and to distribute all its available assets to the creditors. If the court orders the liquidation of the debtor, any claims against it can only be enforced in the compulsory liquidation proceedings. Failure to meet the given preclusive deadline for filing the claims results in the forfeiture of rights.

Of course, out-of-court restructuring efforts and negotiations are very common and are usually made prior to the opening of (in-court) insolvency proceedings. In Hungary, Act LXIV of 2021 introduced what is

known as preventive restructuring proceedings (*szerkezetátalakítási eljárás*) for financially distressed but solvent companies. Court-administered preventive restructuring proceedings serve to create an opportunity for the debtor and the creditors to reach a restructuring agreement on a preventive restructuring plan (*szerkezetátalakítási terv*) with the support of a court-appointed expert in order to avoid insolvency.

In this article, the main aspects of compulsory liquidation proceedings will be discussed first, followed by a discussion of the main characteristics of restructuring proceedings (under the title "Formal Restructuring Proceedings") and a summary of preventive restructuring proceedings.

COMPULSORY LIQUIDATION PROCEEDINGS

Tests for Insolvency

Under the Hungarian Restructuring and Insolvency Act, the opening of compulsory liquidation proceedings requires the debtor to be insolvent (*fizetésképtelenség*). In the case of impending insolvency, a company can apply for restructuring or preventive restructuring proceedings.

The cases in which a debtor is considered insolvent are specifically defined in the Hungarian Restructuring and Insolvency Act. The most common case of insolvency is where a debtor fails to pay a debt that has been incurred due to a contractual obligation (that was previously expressly acknowledged or not disputed by the debtor) within 20 days after the due date expires and remains unpaid despite a written notice issued by the creditor. The court will also establish the debtor's insolvency, among other cases, if the enforcement procedure was unsuccessful or if the debtor failed to pay its debts by the deadline specified in a final and binding court decision.

A debtor is not required to have sufficient assets to cover the costs of the insolvency proceedings in order for it to be opened. However, the debtor must, upon receipt of the first instance order for liquidation and until the order becomes final, set aside funds for certain liquidation costs. To ensure that such obligations are fulfilled, the debtor's majority shareholder will act as an unconditional surety. If the debtor's assets are insufficient to cover the expected liquidation costs, or if the completion of the procedure is technically impossible under the general rules due to deficiencies in the debtor's financial and accounting records, compulsory liquidation proceedings must be conducted as simplified compulsory liquidation proceedings

(*egyszerűsített felszámolási eljárás*), in which the assets of the debtor are directly distributed to the creditors in an expedited procedure.

PROCEDURAL ASPECTS

Compulsory liquidation proceedings can be initiated by the debtor or by a creditor. Furthermore, other persons or entities, such as the liquidator in a voluntary liquidation (*végelszámoló*) or the Court of Registration, may petition for the opening of compulsory insolvency proceedings. A creditor can only request the opening of compulsory liquidation proceedings (based on the debtor's non-performance of an obligation set out in a contract or a court decision) if the amount of its (due) claim (excluding interest and taxes) exceeds HUF 200,000 (approx. EUR 495). However, the temporary legal measures currently in force in connection with the state of emergency state that in the case of compulsory liquidation proceedings initiated on the basis of requests submitted before 31 December 2025, the amount of the due claims (excluding interest and taxes) must exceed HUF 1,000,000 (approx. EUR 2,475).

The effective date of liquidation proceedings is the day on which the court's final decision on commencing liquidation proceedings is published in the Company Gazette. The proceedings are conducted by a liquidator (*felszámoló*). All of the debtor's liabilities become due and payable on the effective date of the liquidation, and from this date forward only the liquidator will be entitled to represent the debtor and to make decisions in connection with its assets. The liquidator will be appointed by the court using a random electronic selection process.

The debtor can avoid being declared insolvent by requesting a 45-day deadline to pay its debts and by actually paying the debts within the deadline. After the final court order on the insolvency of the debtor but before the effective date of the liquidation (i.e. the publication of the final court order in the Company Gazette), the debtor can request the termination of the compulsory liquidation proceedings without the consent of the creditor that initiated it if the debtor confirms to the court that it has paid its debt to the creditor.

The Company Gazette will publish the most important information regarding the liquidation procedure: (i) the name of the court conducting the liquidation proceedings, (ii) the case number, (iii) the name of the appointed liquidator and the debtor, and (iv) an invitation for the creditors to file their claims and pay a registration fee and a flat-rate fee for the disclosure of assets within 40 days after the publication of the

liquidation order in the Company Gazette. The registration fee currently amounts to 1% of the claim filed but is limited to a maximum of HUF 400,000 (approx. EUR 990). The flat-rate fee for the disclosure of assets amounts to 0.5% of the claim filed but is limited to a maximum of HUF 40,000 (approx. EUR 100). 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 procedures.

If a creditor fails to report its claim in time, i.e. within 40 days of the opening of proceedings, it can still do so for up to 180 days following such date; however, the chances of such claims being satisfied will be significantly reduced, since such creditors can be satisfied only after the complete (i.e. 100%) satisfaction of "in-time" creditors. No more claims may be filed after the 180th day as this is a preclusive deadline.

Claims involving debts that have been incurred during the liquidation procedure must be announced within 40 days, but no later than 180 days from the date when they become due and payable. This 180-day deadline is also preclusive.

The National Tax Authority, the relevant local office of the Employment Agency, the competent Land Registry and the Court of Registration will be informed of the opening of insolvency proceedings. Cash services providers (such as banks) and companies that keep securities accounts are required to inform the liquidator within 15 days of the publication of the order on the compulsory liquidation of a debtor in the Company Gazette whether they have managed any securities accounts for the debtor within a five-year period prior to the publication of the order. The liquidator is also authorised to request information from such providers about the financial assets they manage.

After the deadline for creditors to file their claims expires, the liquidator has 45 days to examine and register the claims. In case circumstances previously unknown to the liquidator require a modification of the registration, said registration can still be modified by the liquidator at a later stage.

The first creditors' meeting takes place within 75 days of the opening of insolvency proceedings. All creditors whose claims were registered will be invited to the creditors' meeting by the liquidator. The main aim of the meeting is to elect a creditors' committee (*hitelezői választmány*) or a creditors' representative (*hitelezői képviselő*). Furthermore, the creditors are given information about the debtor's assets, which are available for distribution.

PRE-INSOLVENCY RESTRUCTURING & REFINANCING

There is a great variety of contractual freedom under Hungarian law and it is common practice, in particular with banks as a major creditor group, to agree on a variety of measures with all stakeholders in a pre-insolvency scenario. This is also still possible in the course of restructuring proceedings and compulsory liquidation proceedings.

In Hungary, Act LXIV of 2021 introduced what is known as preventive restructuring proceedings (*szerkezetátalakítási eljárás*) for financially distressed but solvent companies. A preventive restructuring procedure can be initiated only by the debtor in an event of probable insolvency. Preventive restructuring involves measures aimed at restoring the debtor's financial stability, including changes to the composition, terms or structure of its assets, liabilities, or capital structure — such as the sale of assets or business units, the transfer of ownership interests (including as a going concern), operational changes, or any combination thereof. Court-administered proceedings allow the debtor and its creditors to reach a restructuring agreement on a preventive restructuring plan (*szerkezetátalakítási terv*) with the support of a court-appointed expert to avoid insolvency.

CREDITORS' ROLE

Creditors, such as banks and other business partners as well as employees, should play a key role in all insolvency proceedings. In practice, however, compulsory liquidation proceedings are still largely dominated by the liquidators. Creditors can elect creditors' committees or creditors' representatives to represent their interests. Compared to individuals and ordinary creditors, creditors' committees and creditors' representatives have additional rights to request information from the liquidator and control his activities. However, creditors still often fail to take advantage of this possibility.

There are two classes of creditors: secured (or preferential) and unsecured creditors.

Unsecured Creditors

Any creditor may file its claim, including interest, within 40 days of the publication of the order on commencing liquidation proceedings in the Company Gazette. Creditors may also file their claims within a 180-day preclusive time period starting from the date of publication, but the chances that such claims will be satisfied are lower compared to the claims filed within the 40-day deadline. That is because the claims filed within the 40-day

deadline will be completely satisfied before any other claim which was filed after the 40th day (but before the 180th day). Besides the filing of the claim with the liquidator, the enforcement of a claim also requires the payment of a 1% registration fee and a 0.5% flat-rate fee for the disclosure of assets. The liquidator summarises all claims in a special registration list. As mentioned before, all claims are examined and registered by the liquidator within 45 days of the expiry of the deadline for filing claims. After the examination of each claim, the liquidator decides whether it qualifies as a secured or an unsecured claim and how it must be ranked according to the priority ranking prescribed by the Hungarian Restructuring and Insolvency Act.

The liquidator must further declare whether a claim is undisputed or disputed. If the liquidator confirms that a claim is undisputed, other creditors (in certain cases) have the right to dispute the confirmation in court. If the liquidator disputes the legal basis or the amount of a creditor's claim, he must discuss this with the creditor. If no agreement is achieved, the creditor must submit the claim to the court unless the legal basis for such claim is already being contested in separate court proceedings. In this latter case, the liquidator is not obliged to submit the claim to the court because the claim qualifies *ex lege* as a contested claim.

Secured Creditors

Secured creditors' claims are secured by a pledge (*zálog*).

The holder of a purchase option that is intended to serve as security and an entity to which a debt is transferred as security also qualify as secured creditors if their rights are recorded in the register of loan securities or in the property register.

Under Hungarian law, 'pledge' is a general term for all types of securities, including pledges on movable assets (*ingózálog*), pledges over receivables (*követelészálog*), mortgages (*ingatlan-jelzálog*) and floating charges (*vagyont terhelő or körülírással meghatározott zálog*). If an asset was already seized in favour of a creditor in a previous enforcement procedure, the creditor is also treated as a pledgee in compulsory liquidation proceedings.

Creditors with a fixed pledge are entitled to receive nearly the entire value of an asset after its sale (up to the amount of their claims). Creditors with a floating charge are entitled to receive nearly half of the value of the charged assets after their sale; they are entitled to the other half only after the liquidation costs have been paid from the debtor's assets (including the proceeds).

If the same asset is subject to a

pledge, charge or mortgage and a purchase option or a transfer for security purposes, the order of priority for creditors will be determined based on the date when the relevant pledge, charge or mortgage is created or the relevant right is registered.

In liquidation proceedings, (encumbered) assets are typically sold and the respective secured creditors have a claim of separation to receive the asset's value after its sale.

Unlike under the rules of compulsory liquidation proceedings, assets are generally not sold in restructuring proceedings as the business is kept running. To protect the debtor's assets, secured creditors are barred from enforcing pledges after the court decision on the commencement of proceedings is published in the Company Gazette.

Set-off of Respective Claims

In compulsory liquidation proceedings, a set-off is permitted if the creditor's claim is registered by the liquidator as an undisputed claim and the claim has not been assigned to another entity during the liquidation proceedings. Otherwise, a creditor may not set off claims that are based on debts assumed in the two-year period prior to (or after) the date when the court receives the request for compulsory liquidation. A claim based on a debt that has been incurred after the opening of insolvency proceedings can also be set off against a claim of the debtor.

Priority Claims

Priority claims are claims against the insolvency estate that are satisfied prior to the claims of all unsecured creditors. Priority claims mainly include (i) costs of the proceedings; (ii) costs regarding administration, sustainment and supply of the insolvency estate; (iii) claims of the debtor's employees for current salary; (iv) claims in connection with the termination of certain kind of employees; (v) claims resulting from the fulfilment of certain contracts; (vi) claims of private persons from non-professional activities; (vii) claims of small or micro enterprises; and (vii) taxes. It is not necessary to file certain priority claims with the liquidator separately (such as the costs of the liquidation proceedings).

Voidance Claims and Claw-back

Hungarian law provides that certain transactions that unduly decrease the value of the debtor's assets prior to the commencement of compulsory liquidation proceedings may be disputed. Avoidance is, however, subject to certain conditions and relates to transactions entered into by the debtor and a third party. Formally, such a transaction can be

contested by the liquidator as well as by the creditors.

The conditions that must be met to dispute such transactions are as follows: (i) a transaction was concluded; (ii) the transaction was entered into prior to the commencement of compulsory liquidation proceedings; (iii) the transaction unduly decreased the value of the debtor's assets; and (iv) one of the specific reasons for which the transaction can be disputed under the Hungarian Restructuring and Insolvency Act applies.

The Hungarian Restructuring and Insolvency Act lists the following specific reasons that allow creditors and liquidators to contest a transaction:

(i) Fraudulent transactions (*csalárd ügyletek*): This provision applies if a transaction was concluded by the debtor to intentionally deceive (certain) creditors within the last five years prior to (or after) the court's receipt of the request for opening the compulsory liquidation proceedings, provided that the other contracting party knew or should have known of the fraudulent intent. As for "*familia suspecta*" (related persons), a different provision provides for a reversal of the burden of proof;

(ii) Transfers free of charge (*ingyenes elidegenítés*) and undervalued transactions (*laesio enormis or feltűnően aránytalan értékkülönbözet*): Transactions that were conducted free of charge (gifts) or where the difference between the value of the service, product or asset given differs from the consideration to a grossly unfair amount, if entered into within the last three years prior to (or after) the court's receipt of the request for compulsory liquidation proceedings. As for "*familia suspecta*" (related persons), a different provision provides for a reversal of the burden of proof;

(iii) Preferential treatment of creditors (*hitelező előnyben részesítése*): This applies where a transaction discriminates against one creditor in favour of another creditor or creditors, or is intended to prefer one creditor over another or others, if entered into within the last 90 days prior to (or after) the court's receipt of the request for compulsory liquidation proceedings;

(iv) Fiduciary securities: Transactions that concern the transfer of ownership, rights or debts as security or the exercise of a purchase option that serves as security, where the holder of the right so acquired exercised the right in a manner that did not ensure it's the obligation of settlement was performed at all or properly vis-à-vis the debtor or it did not release the amount that was in excess of the value of the secured debt, provided

that the transaction was entered into within three years prior to (or after) the court's receipt of the request for compulsory liquidation. If the acquisition for security purposes was not recorded in the relevant register, it must be assumed that the transaction was unlawful;

(v) Claw-back (*visszakövetelés*): A service performed outside the ordinary course of business might be claimed back if it was performed within the last 60 days prior to (or after) the court's receipt of the application for compulsory liquidation proceedings if it resulted in the preferential treatment of a creditor vis-à-vis the others.

All of the above provisions aim at securing the debtor's assets prior to the opening of proceedings. Once insolvency proceedings are opened and the liquidator is appointed, the liquidator is the sole representative of the debtor. Hence, only the liquidator has the right to dispose of the debtor's assets. Such decisions require the consent of the creditors' committee in a limited number of cases only (for example, if the liquidator intends to continue the business activities of the debtor, this decision to continue the business requires the consent of the creditors' committee, which is then valid for a year).

A claim disputing a transaction must be filed with the court in no event later than one year after the publication of the court's order on the start of the proceedings in the Company Gazette. It must seek a declaration stating that the contested transaction was invalid.

EXCURSUS: HUNGARIAN CAPITAL MAINTENANCE RULES

Under Hungarian capital maintenance rules, a company (in the form of a so-called capital company, in particular a limited liability company) must not transfer funds or assets to its shareholders on the basis of the shareholders' status, unless explicitly permitted under statutory law, such as in the case of the distribution of dividends covered by the balance sheet profit, a capital decrease or in liquidation proceedings. Dividends are also not payable if the amount of equity has fallen or, as a result of the payment, would fall below the amount of the registered capital or if the payment would endanger the company's solvency.

The same rules apply if the payment is made on the basis of a contract between the shareholder and the company.

If companies violate the above-described capital maintenance rules, the liquidator may claim back the transferred funds or benefits from the recipients, in which case only the general limitation periods

apply (i.e. usually five years).

MANAGEMENT LIABILITY

Under Hungarian law, there is no specific obligation for the directors of a company to request the opening of insolvency proceedings. However, if a company is threatened by insolvency, its managing director(s) must also consider the creditors' interests when managing the company's affairs. "Threatening insolvency" means a situation in which the managing director(s) can or should be able to foresee that the company will not be able to pay its liabilities when they fall due. A managing director who has taken all reasonable measures to reduce the creditors' losses, and to convene the shareholders' meeting, and did not undertake risks that would have qualified as unreasonable in light of the debtor's financial situation, cannot be held liable. However, if the managing director has not filed and published the annual report in accordance with the relevant legislation, the burden of proof will be reversed and the managing director will have to prove that there was no situation where the company was threatened with insolvency during their tenure or, if such a situation existed, they acted in the creditors' interests.

If the liability of the managing director is stated by a court, any creditor whose claim remained unsatisfied in the compulsory liquidation process may bring an action against the managing director to seek payment of its claims.

The Hungarian Criminal Code (*Büntető Törvénykönyv*) also contains provisions in connection with insolvency proceedings. The most important provisions state that the following actions qualify as criminal acts: (i) the actual or feigned reduction of the value of company assets in violation of the requirement of prudent business management at a time when the company is threatened by insolvency or is already insolvent and (ii) the preferential treatment of certain creditors after a compulsory liquidation procedure has been ordered.

RUNNING THE BUSINESS

Role of the Debtor

In compulsory liquidation proceedings, the debtor generally loses the right to manage its business. The debtor remains the owner of its assets, but the assets form the so-called insolvency estate to be used primarily to satisfy the creditors. The right to manage and dispose of assets therefore passes to the liquidator.

Role of the Liquidator

Generally, the liquidator plays a key

role in running the debtor's business or selling its assets. The debtor loses control over the assets on the date when the liquidation proceedings start; hence, only the liquidator is authorised to represent the debtor in connection with the assets forming the insolvency estate.

As mentioned before, creditors have 40 days from the date when the court's decision on ordering the liquidation is published in the Company Gazette to announce their claims to the liquidator. The claims will be registered and examined by the liquidator.

All debts owed by the debtor become due and payable on the effective date of the liquidation proceedings. During the liquidation proceedings, the liquidator collects the debtor's due receivables, enforces its claims against third parties and sells the debtor's assets in order to satisfy the creditors' claims. From the starting date of the liquidation proceedings onwards, any claim against the debtor can only be enforced in line with the rules applicable to the liquidation proceedings.

The liquidator is responsible for proper bookkeeping and for complying with the respective reporting obligations (preparing balance sheets, annual reports, tax returns, etc.).

If the liquidator fails to comply with the law, the creditors and the debtor are entitled to file a formal objection against the liquidator's actions in court, provided that they suffered damage or loss as a result of any action by the liquidator. Such an objection must be submitted to the court within 15 days of becoming aware of the unlawful action.

Effect on Employees

The Hungarian Restructuring and Insolvency Act states that once liquidation proceedings start, the liquidator is entitled to exercise the rights and obligations normally held by the employer. Employment contracts will not be terminated automatically due to insolvency proceedings; however, the liquidator has a privileged termination right regarding certain employment contracts. If the debtor's assets do not cover all of the employees' claims which are statutorily entitled to privileged satisfaction, employees will receive payment from a special government fund known as the salary guarantee fund.

Effect on Contracts and Termination Rights

Insolvency proceedings can have a different impact on a contract, depending on whether or not contractual obligations have already been fulfilled by the parties.

Generally, the liquidator is

authorised to terminate all contracts concluded by the debtor prior to the start of liquidation proceedings with immediate effect, or to rescind such contracts if neither of the parties has fulfilled their contractual obligations. The other contracting party is entitled to enforce its claims based on the termination or rescission by announcing the claim in the liquidation proceedings. However, the liquidator may not exercise the right of immediate termination or rescission in relation to certain contracts, for example rental agreements for apartments concluded with natural persons, or contracts concluded with schools or students for providing practical training, employment contracts, loan agreements unrelated to economic activities, contracts related to cooperative members acting in a business capacity, or collective bargaining agreements.

FORMAL RESTRUCTURING PROCEEDINGS

The Hungarian Restructuring and Insolvency Act allows the restructuring of a company at an early stage of financial distress.

Initiation of Restructuring Proceedings and Moratorium

Pursuant to the Hungarian Restructuring and Insolvency Act, it is possible for the debtor to open restructuring proceedings (*csődeljárás*) instead of compulsory liquidation proceedings if the relevant preconditions are met. Restructuring proceedings are conducted by a restructuring administrator (*vagyonfelügyelő*). The main goal of restructuring proceedings is to conclude a settlement agreement (*csődegyezség*), which is based on a restructuring plan (*reorganizációs terv*) prepared by the debtor. As in liquidation proceedings, claims are examined and registered (i.e. undisputed or disputed and secured or unsecured claims) by the administrator.

Restructuring proceedings can only be initiated by the debtor and this requires the prior approval of its main decision-making body (i.e. the approval of the general meeting of a limited liability company). The effective date of the restructuring proceedings is the day on which the court's final decision on ordering the restructuring proceedings is published in the Company Gazette. Besides the publication of the decision, each known creditor of the debtor has to be informed individually by the debtor.

The Company Gazette contains the most important information regarding the restructuring proceedings, such as requesting that the creditors file their claims with both the restructuring administrator and the debtor, and to pay the

registration fee within 30 days of the publication of the court's decision in the Company Gazette. The fee currently amounts to 1% of the filed claim, but is limited to a maximum of HUF 200,000 (approx. EUR 495). If a settlement agreement is approved by the court, creditors who failed to file their claims within the given deadline and are therefore not party to the settlement agreement will only be able to enforce their claims if a third party initiates compulsory liquidation proceedings against the debtor. Otherwise, failure to meet the given deadline for filing the claims will result in the forfeiture of rights.

If the debtor's application initiating the restructuring proceedings meets the formal requirements prescribed by law, the court will grant a temporary moratorium automatically and with immediate effect upon the publication of its decision in the Company Gazette. If the application is not rejected and the restructuring proceedings are commenced, the debtor will be granted an extended moratorium and given the opportunity to reach a settlement agreement with the creditors in order to restore its solvency. The moratorium, as approved by the court, will remain in effect for 180 days after the publication of the court's order on commencing the restructuring proceedings. The moratorium may be prolonged to 240 days if approved by a simple majority in each of the secured and unsecured creditor classes, or to 365 days if approved by a two-thirds majority in each of those classes.

The moratorium serves to protect the debtor's assets. This means, in particular, that during the moratorium (i) set-offs against the debtor are not possible (however, a set-off claim may be enforced in ongoing lawsuits filed by the debtor if they are submitted before the commencement of restructuring proceedings); (ii) in principle, payment orders may not be satisfied from the debtor's accounts or submitted against the debtor; (iii) the enforcement of money claims is suspended (with certain exceptions); and (iv) secured creditors are barred from enforcing their pledges.

In the case of restructuring proceedings, the debtor does not lose the right to dispose of its assets. He is generally entitled to keep running the company and manage it in the ordinary course of business. However, the consent of the restructuring administrator is required for the assumption of new obligations and the payment of debts.

Restructuring plan hearing

The first settlement meeting takes place within 90 days of the commencement of restructuring

proceedings. All registered creditors are invited by the administrator. However, only creditors whose claims have been confirmed by the administrator have the right to vote.

A settlement agreement will only be deemed as having been adopted if a simple majority of each of the secured and unsecured classes of creditors vote in favour of it. In such a case, dissenting creditors are overruled and bound by the settlement agreement (if it is also approved by the court).

The debtor and the creditors can freely determine the terms of the settlement agreement, including an agreement on the release of debts, payment relief arrangements, the establishment of securities, debt-equity swaps, etc. A minimum debt repayment quota is not prescribed by law. However, the settlement agreement must be approved by the court. The court is obliged to refuse to give its approval if the settlement agreement does not uphold the concept of exercising rights by acting in good faith.

ENDING OF INSOLVENCY PROCEEDINGS

Both compulsory liquidation and restructuring proceedings are closed by a formal resolution of the court. Liquidation proceedings are closed after the distribution of all assets, i.e. the liquidation of the debtor.

Restructuring proceedings are formally closed after a settlement agreement – which is based on the restructuring plan – is adopted by the creditors and approved by the court. The debtor is then obliged to fulfil the terms of the agreement at the time and within the period stipulated in it. If payments are not made in such a timely manner, compulsory liquidation proceedings can be initiated.

If no settlement agreement is reached in restructuring proceedings or if it is not approved by the court, the court closes the restructuring proceedings and orders the company's compulsory liquidation.

SPECIAL RULES FOR STRATEGICALLY IMPORTANT INSOLVENCY PROCEEDINGS

The Hungarian government may issue a decree stating that the special rules for strategically important insolvency proceedings apply to certain companies. The special rules can only be applied to a company if (i) its reorganisation is in the national economic interest or priority public interest; or (ii) it is important for the national economy that the company is wound up in a swift, transparent and unified process.

Most of these special rules for

insolvency proceedings aim at (i) a swift process, therefore the general deadlines set forth in the Hungarian Restructuring and Insolvency Act are reduced; and (ii) the sale of the assets on a going concern basis. Furthermore, the Hungarian government will appoint a state liquidator to act as the supervisor with regard to the company's assets. Additionally, when the debtor sells any asset with a market value exceeding HUF 25 million in strategically important liquidation proceedings, the Hungarian State holds a right of first refusal under the Hungarian Restructuring and Insolvency Act, which is preceded by any other rights of first refusal established by law.

Further special rules apply if a company or its facilities are also under national security protection or provide a public service of strategic significance. Once again, the Hungarian government can order the application of these further rules, provided that it is unlikely that the insolvency situation of the company can be rectified and a state or shareholder subsidy cannot be granted either, but it is in the priority public interest to sell the company's assets as a going concern.

INTERNATIONAL ASPECTS

According to Regulation (EU) 2015/848, insolvency proceedings performed in other Member States of the European Union are recognized in Hungary.

If the Regulation is not applicable, insolvency proceedings involving a foreign company and its outcome are generally recognized in Hungary unless (i) the recognition of the relevant court orders would violate Hungarian public order; (ii) the debtor did not participate in the process; or (iii) the proceedings significantly violated the principles of Hungarian laws on due process.

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Romania

FORMAL INSOLVENCY PROCEEDINGS AND TESTS FOR INSOLVENCY

Main Insolvency Proceedings

Insolvency proceedings are regulated by the Romanian Insolvency Act, No. 85/2014 on Insolvency Prevention and Proceedings, published in the Official Journal of Romania of 25 June 2014, subsequently amended and supplemented by Law No. 312/2015 on the Recovery and Resolution of Credit Institutions and Investment Companies as well as on amending and supplementing certain normative acts in the finance sector (the "Romanian Insolvency Act"). The legislation in Romania was also amended by Law No. 216/2022, which came into force on 17 July 2022. Its purpose was to transpose Directive (EU) 2019/1023 on preventive restructuring frameworks and the efficiency of insolvency procedures.

The changes implemented by the Romanian Insolvency Act are intended to bring together both the provisions on insolvency prevention and proper insolvency proceedings. Its main purpose is to create the conditions for the recovery of indebted companies.

The two main proceedings under the Romanian Insolvency Act are: (i) judicial reorganisation proceedings (*reorganizare judiciară*), which aim to give the debtor the chance to recover its business effectively and (ii) bankruptcy proceedings (*faliment*), which aim to liquidate all assets and satisfy creditors. General insolvency proceedings are complex proceedings characterised by several specific stages. The first stage is the observation period (*perioada de observatie*), which takes place prior to the opening of insolvency proceedings before the syndic judge (*judecător sindic*). The observation period is important because during this period, the debtor takes business decisions to overcome the financial distress it is experiencing. Contracts and any other agreements concluded during the observation period must be analysed by the syndic judge, who may decide whether or not such contracts and agreements are effective.

After the observation period and provided that the business of the debtor can be carried on, the proceedings continue with the judicial reorganisation phase. In case the business of the debtor cannot be continued, the rules relating to bankruptcy proceedings will apply.

Another classification made by the Romanian Insolvency Act stipulates that general insolvency proceedings, as provided above, and simplified insolvency proceedings, are applicable only to certain categories of professionals (natural or legal

persons).

During simplified insolvency proceedings, the debtor is the subject of bankruptcy proceedings (i.e. bankruptcy proceedings are commenced either immediately or after an observation period of 20 days).

Judicial Reorganisation and the Reorganisation Plan

If the debtor's business is recoverable, the debtor may apply for judicial reorganisation proceedings to be initiated. The syndic judge approves judicial reorganisation proceedings for the business of the debtor based on a court decision.

If judicial reorganisation proceedings are approved, the debtor provides its creditors and the syndic judge with a reorganisation plan. The main purpose of the reorganisation plan is to set out how the debtor's business should be restructured. The reorganisation plan needs to be approved by the creditors and confirmed by the court.

The reorganisation plan may include the restructuring and continuation of the activity of the debtor or the liquidation of certain assets. In practice, the reorganisation plan contains both the restructuring and the liquidation of certain assets or activity sectors.

Under the Romanian Insolvency Act, generally speaking it is possible to open restructuring instead of bankruptcy (i.e. liquidation) proceedings if the business of the debtor is recoverable. The proceedings can either be conducted by an administrator or by means of self-administration by the debtor. The latter is only possible if the syndic judge does not oppose the right to self-administration.

If the reorganisation proceedings fail, the debtor becomes subject to bankruptcy proceedings.

Bankruptcy Proceedings

Bankruptcy proceedings apply in the following situations:

a) the debtor expresses its intention to undergo simplified proceedings;

b) the debtor did not express its intention to reorganise its activity or the reorganisation plan is invalid on the grounds that it failed to observe one of the mandatory legal provisions;

c) the debtor expresses its intention to reorganise its activity; however, the reorganisation plan is invalid on the grounds that it failed to observe one of the mandatory legal provisions;

d) the report of the insolvency

administrator proposing the opening of bankruptcy proceedings was approved by the syndic judge;

e) if an application for insolvency is filed by a creditor and relates to a debt amounting to at least RON 50,000.00 (approx. EUR 10,000.00) and which is older than 60 days.

Tests for Insolvency

Under the Romanian Insolvency Act, insolvency is deemed to exist if the debtor has insufficient funds to meet its payment obligations for uncontested, liquid (i.e. determined and determinable) and due debt (*creanta certă, lichida si exigibilă*) vis-à-vis its creditor(s), as follows:

(i) the debtor's insolvency can be presumed if, within 60 days of maturity, the debtor has not met its payment obligation(s) vis-à-vis its creditor(s). The presumption is relative (*prezumtie relativa*);

(ii) the insolvency of the debtor is imminent when it can be proven that upon maturity, the debtor will not be able to meet its payment obligations vis-à-vis its creditors with the funds available at maturity.

Insolvency/bankruptcy proceedings are opened by a decision of the syndic judge based on a grounded court decision.

All costs relating to the proceedings and as provided by the Romanian Insolvency Act, including all document communication costs, are borne by the debtor.

If there is a lack of funds in the account of the debtor or only limited funds are available, payments for insolvency proceedings are paid from a special liquidation account (c.f. Government Emergency Ordinance No. 86/2006 related to the activity of the insolvency practitioner).

PROCEDURAL ASPECTS

Insolvency proceedings start with a claim filed either by the debtor, by one or more of the creditors or by certain persons or institutions expressly stated by law.

A claim filed by the debtor itself has to be submitted within 30 days of insolvency occurring and must include an attachment that serves as proof that the competent fiscal authority has been notified of the intention to open insolvency proceedings.

If the claim is filed by a creditor, it must contain the amount and the basis of the debt and, if applicable, the existence of a right of preference established by the debtor or by law, existence of insurance measures on the debtor's assets, a declaration of intent to participate in the debtor's

reorganisation and, at least in principle, the way the creditor will participate in the reorganisation. According to the provisions of the Romanian Insolvency Act, to file for insolvency proceedings (either by the creditor or the debtor) the minimum amount of debt held by the debtor for debts other than salaries must be RON 50,000.00 (approx. EUR 10,000.00). For employees, the minimum amount is six gross average salaries.

Summons, notifications and communications relating to procedural acts performed by the court and the insolvency administrator/liquidator as well as other acts, which are mandatory by law, are published in the Insolvency Proceedings Bulletin once the insolvency proceedings get under way.

Once the court has issued a final decision to initiate insolvency proceedings, all documents and correspondence issued by the debtor, the insolvency administrator or the liquidator will mandatorily include the wording "*în insolvență*", "in insolvency", "*en procedure collective*", written in Romanian, English and French. After the beginning of the judicial reorganisation proceedings or the bankruptcy proceedings, documents and correspondence will include the wording "*în reorganizare judiciară*", "in judicial reorganisation", "*en redressement*" or "*în faliment*", "in bankruptcy", "*en faillite*". The same will apply in the case of simplified insolvency proceedings (i.e. "*în faliment*", "*in bankruptcy*", "*en faillite*").

If the debtor owns or administers one or more internet pages, its representatives are obliged to publish on such internet pages information on the situation of the company as well as the number of the decision which initiated the proceedings, the date on which the decision was issued and the court which issued the decision. This has to be done within 24 hours from the communication date of the decision by means of which the insolvency proceedings were initiated.

The notice convening a creditors' assembly must be published in the Insolvency Proceedings Bulletin at least five days prior to the meeting. It must include the agenda of the meeting.

PRE-INSOLVENCY RESTRUCTURING & REFINANCING

The reorganisation of companies in distress obviously requires a good understanding not only of the legal aspects, but also of the economic needs and expectations of all parties involved, such as debtors, creditors (e.g. banks), directors and shareholders. There is a great variety of contractual freedom

under Romanian law and it is common practice, in particular with banks as a major creditor group, to agree on certain measures with all stakeholders in a pre-insolvency scenario.

Once the court opens insolvency proceedings, the proceedings will follow the course provided by the Romanian Insolvency Act. Thus, it is no longer possible to conclude an out-of-court agreement.

Distressed M&A

Romanian law does not provide special rules on "pre-packaged deals" in a pre-insolvency scenario.

It should be noted that, in the event of insolvency, both the insolvency administrator and the creditors' assembly may submit claims for the annulment of fraudulent acts taken by the debtor, as well as such acts and operations that have damaged the creditors.

M&A deals concluded prior to the opening of insolvency proceedings should not prejudice the rights of creditors. Hence, they may also be subject to avoidance.

Creditors' Role

The creditors have an important role in insolvency proceedings in Romania. They act through the creditors' assembly, which may appoint a creditors' committee composed of three or five creditors at the first meeting. It should be noted that only creditors with a voting right can be appointed.

The creditors' role is highlighted by the prerogatives given to the creditors' committee, such as analysing the report drafted by the insolvency administrator or liquidator, the possibility of challenging the report, requesting the withdrawal of the debtor's right to manage its business, submitting claims regarding the annulment of the debtor's fraudulent acts and operations that have damaged the creditors, if such claims were not already submitted by the insolvency administrator or the liquidator.

The creditors are divided into two categories: (i) secured or preferential creditors and (ii) unsecured creditors.

Unsecured Creditors

Unsecured creditors (*creditori chirografari*) are creditors registered in the table of debts, which are not entitled to preferential treatment. This category also includes secured creditors whose claims are, however, not fully covered by the value of the privileges, mortgages or pledges.

After insolvency proceedings have been opened, the insolvency administrator will send a notification

to all creditors included in the list submitted by the debtor as well as to the debtor and the Trade Registry Office, or, if applicable, to the Agricultural Registry of Companies or any other registers in which the debtor is registered in order to announce the commencement of proceedings.

Any creditor may submit a claim for registration with the creditors' assembly within the period provided for notification, as mentioned above. The Romanian Insolvency Act, however, stipulates that this period may not exceed 45 days from the date of the opening of insolvency proceedings.

After verifying the claims, the insolvency administrator/liquidator drafts the preliminary table including all debts against the debtor's assets. This table must then be submitted to the competent court. The preliminary table will be published in the Insolvency Proceedings Bulletin.

Upon publication of this preliminary table, the insolvency administrator/liquidator will send notifications to the creditors whose debts or preferential rights were partially included in or excluded from the table, where applicable giving reasons for their non-consideration.

Secured Creditors

Secured debts are defined by the Romanian Insolvency Act as debts with a right of privilege and/or a right of mortgage and/or a right equivalent to a mortgage and/or a right of pledge over the debtor's assets.

Secured debts will be registered in the final table of creditors up to the market value of the assets established as guarantee (e.g. a pledge or mortgage). The respective evaluation is done by the insolvency administrator or the liquidator.

If assets linked to preferential rights are sold at a higher price than the amount registered in the final table of creditors, the difference will also benefit the secured creditor, even if part of his claim had been registered as an unsecured debt. This procedure also applies in case the reorganisation plan fails and thus the debtor's assets are sold in the course of bankruptcy proceedings.

Opposition to the Opening of Insolvency Proceedings

Pursuant to the Romanian Insolvency Act, creditors can file an objection to the commencement of proceedings within 10 days of receipt of the notification.

Any creditor unsatisfied by the opening of proceedings has the legal possibility to file such an objection.

Priority Claims

Priority claims are defined as claims against the insolvent estate that are satisfied prior to the claims of all other insolvency creditors. Priority claims are reduced to certain kinds of claims such as (i) certain liquid and due claims arising during insolvency proceedings and (ii) expenses related to insolvency proceedings.

Insolvency Claims

According to the Romanian Insolvency Act, an insolvency claim is defined as the possibility provided to any creditor to submit a claim for registration with the table of creditors within a period stipulated in the court's decision on the opening of insolvency proceedings. Such insolvency claims may be submitted by any creditor irrespective of the category the creditor belongs to.

Voidance Claims

According to the Romanian Insolvency Act, the insolvency administrator/liquidator may submit to the syndic judge claims for the annulment of certain acts and transactions of the debtor that were undertaken in the two years prior to the opening of insolvency proceedings.

The following acts and operations may be subject to such claims:

(i) free of charge acts, except for humanitarian sponsorship;

(ii) operations where the debtor's performance clearly exceeds the consideration received, performed within six months prior to the opening of insolvency proceedings;

(iii) acts concluded within two years prior to the opening of insolvency proceedings with the intention of all parties involved to (a) withdraw assets from the creditors' control or (b) damage their rights in any other way;

(iv) property transfers to a creditor to settle a former debt or provide it with a benefit of any kind, performed within six months prior to the opening of proceedings if the amount that may be obtained by the creditor in the case of the bankruptcy of the debtor is smaller than the value of the transfer;

(v) establishment of a preferential right for a claim that was an unsecured debt within six months prior to the opening of insolvency proceedings;

(vi) advance payments performed within six months prior to the opening of insolvency proceedings if their due date had been fixed for a date after the opening date of insolvency proceedings;

(vii) transfers or undertaking obligations by the debtor within a period of two years prior to the opening of insolvency proceedings with the intention to hide or delay insolvency or commit fraud against a creditor.

(viii) A claim for the annulment of such a transaction must be filed within one year of the expiry date set for drafting the report on the causes and circumstances leading to the insolvency of the debtor; however, it must be filed no later than 16 months from the date on which insolvency proceedings were opened.

MANAGEMENT LIABILITY

According to the Romanian Companies Act, the administrative board of a company is responsible for filing for insolvency proceedings, which cannot be delegated to the executive.

It should be noted that the Romanian Insolvency Act provides the possibility of submitting claims against the members of the management, directors and auditors if they can be held responsible for the debtor's insolvency. It also establishes the possibility to notify the criminal investigation authorities in this regard.

RUNNING THE BUSINESS

Role of the Debtor

During the observation proceedings or the reorganisation period, the debtor's right of administration is exercised through a special administrator under the direct supervision of the insolvency administrator. The right of self-administration is lost as a result of bankruptcy proceedings.

Any act performed by the debtor that violates the above is deemed null and void.

Role of the Insolvency Administrator

The insolvency administrator plays an important role throughout the proceedings. Its main duties are to analyse the economic situation of the debtor and all related documents, draft a report proposing either the commencement of simplified proceedings or continuation of the observation period within the general proceedings, draft the reorganisation plan and terminate certain contracts concluded by the debtor.

The insolvency administrator is obliged to notify the syndic judge in connection with any important matter related to the debtor company that should be solved by the syndic judge (e.g. submitting claims for the

annulment of the debtor's fraudulent acts or operations concluded at the expense of the creditors' rights).

It is also mandatory for the insolvency administrator to submit a monthly report describing the fulfilment of its duties, justifying the expenses made in connection with the administration of the insolvency proceedings and, if necessary, the status of completion of the inventory.

Once the syndic judge appoints a liquidator, the insolvency administrator's powers pass to the liquidator, who then has administrative power over the debtor.

Effect on the work force and employees

According to the Romanian Insolvency Act, all active employment contracts stay in force during the insolvency proceedings.

Nevertheless, an employer who is subject to insolvency proceedings is not prohibited from terminating employment contracts after the proceedings were opened. This management decision will be made either by the debtor itself if its administration right has not been withdrawn or by the insolvency administrator.

Thus, the Romanian Insolvency Act provides the possibility for the insolvency administrator/ liquidator to terminate individual employment contracts. However, this requires prior notice to be given in accordance with the Romanian Labour Code.

Unless the administration right has been withdrawn from the debtor, the prior approval of the insolvency administrator is mandatory if restructuring measures or other changes are made with respect to collective employment contracts.

Please note that even though the insolvency administrator is obliged to observe the collective dismissal procedure, the terms provided by certain articles of the Romanian Labour Code are reduced in the course of insolvency proceedings.

Effect on contracts and termination rights

The opening of insolvency proceedings has different impacts on contracts, depending on the type of the contract concluded.

If a contracting party has entirely fulfilled its contractual obligations and has not received the entire consideration from the debtor after the opening of insolvency proceedings, the contracting party, in its capacity as creditor, may file a claim for the opening of insolvency proceedings. If the debtor has

already fulfilled its obligations, the other party is obliged to perform its obligations vis-à-vis the insolvency estate in full.

The Romanian Insolvency Act provides that ongoing contracts remain in force once insolvency proceedings are opened. Within three months of the date on which insolvency proceedings are opened, the insolvency administrator/ liquidator may terminate any contract, unexpired lease contracts or other long-term contracts as long as these contracts were not entirely executed by all contractual parties. Should the insolvency administrator or liquidator deem it necessary to maintain the contract, it is obliged to report every three months on whether the debtor has the necessary funds to fulfil its contractual obligations.

It should also be noted that, under the Romanian Insolvency Act, service providers (such as those providing electricity, natural gas, water, telephone services, etc.) have no right to change, refuse or temporarily interrupt the services they provide to the debtor or in connection with its property if the debtor has the quality of a captive consumer (*consummator captiv*) during the observation period or during the reorganisation period. The debtor is obliged to pay for such services within a payment term of 90 days.

FORMAL RESTRUCTURING PROCEEDINGS

The Romanian Insolvency Act contains certain provisions in relation to the restructuring of a company at an early stage of financial distress. In practice, however, the provisions for restructuring a company at an early stage of financial distress are of rather minor significance and restructuring proceedings are typically conducted in accordance with the legal provisions in court if out-of-court settlement is not successful.

The Romanian Insolvency Act further provides insolvency prevention proceedings such as the restructuring agreement (*acord de restructurare*) or the preventive arrangement (*concordat preventiv*); these are legal instruments that serve the purpose of avoiding typical insolvency proceedings before the syndic judge.

The restructuring agreement

The procedure for the ad-hoc mandate has been repealed, having been replaced by the procedure for the restructuring agreement. This new insolvency prevention procedure allows debtors in difficulty, but who are not yet in a state of insolvency, to negotiate a restructuring agreement with creditors whose claims are affected. The agreement is subject to the

approval of the court-appointed judge and aims to restore the debtor's activity.

Preventive Arrangement

The preventive arrangement is a legal instrument by which a debtor in financial distress may ask the syndic judge to approve an agreement with its creditors representing at least 30% of the affected claims to ensure its financial recovery. This marks a significant shift from the previous regulation, which required a 75% threshold of accepted and undisputed claims.

According to the new regulations, the procedure for preventive agreement may also be initiated at the request of one or more creditors holding a certain and liquid claim, provided that the prior consent of the debtor in difficulty is obtained.

Ending of insolvency proceedings

Both bankruptcy and restructuring proceedings are closed by a formal resolution of the insolvency court. Bankruptcy proceedings are closed after the distribution of all assets, i.e. the liquidation of the debtor.

Restructuring proceedings are formally closed after the creditors adopt a restructuring plan. The debtor then has a duty to fulfil the restructuring plan at the dates and within the periods stipulated in the restructuring plan. If the payments are not made in due time as stipulated in the restructuring plan, bankruptcy proceedings will be initiated.

INTERNATIONAL ASPECTS

According to Council Regulation (EC) No. 1346/2000, insolvency proceedings in other Member States of the European Union are recognised in Romania.

The Romanian Insolvency Act contains provisions with respect to the applicable procedural rules in private international relations as regards insolvency proceedings as well as provisions referring to the recognition of proceedings in third countries.

The recent reforms have marked a shift in Romanian insolvency law from a focus on liquidation to one on business recovery. By introducing preventive restructuring procedures and strengthening debtor protections, the legal framework now encourages early intervention and provides viable tools for companies to overcome financial distress, while also balancing the interests of creditors.

Future prospects

In an effort to reduce the national budget deficit, the Romanian Government is preparing a series

of strict and comprehensive amendments to insolvency legislation. These measures aim to curb the abusive use of insolvency proceedings as a business tactic to delay or avoid the payment of debts, particularly to the state budget.

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Slovak Republic

FORMAL INSOLVENCY PROCEEDINGS AND TESTS FOR INSOLVENCY

Introduction

Slovakian insolvency proceedings are regulated by Act No. 7/2005 Coll. on Bankruptcy and Restructuring (*Zákon o konkurze a reštrukturalizácii*, "Insolvency Act").

This guide provides a general overview of the most important aspects of Slovakian insolvency legislation.

Main Insolvency Proceedings

The Insolvency Act differentiates between insolvency for natural persons and insolvency for legal persons. Proceedings for companies in financial difficulty can take the form of:

- **Preventive restructuring** (*Preventívna reštrukturalizácia*) – Introduced by Act No. 111/2022 Coll. on the Resolution of Imminent Insolvency. This procedure is available to debtors facing a threat of insolvency (*Hroziaci úpadok*) before they meet the statutory tests for illiquidity or over-indebtedness. It allows the debtor to negotiate a restructuring plan with creditors under either a **public** regime, involving court oversight and publication in the Commercial Bulletin, or a **private** regime, conducted confidentially with selected creditors. Both aim to preserve viable businesses through early intervention, and public preventive restructuring may involve statutory moratoria on enforcement actions.

- **Restructuring proceedings** (*Reštrukturalizácia*) – Formal insolvency proceedings intended to keep the debtor's business operating during and after the process, under court and administrator supervision, with a view to providing a higher satisfaction of creditors than would be possible in bankruptcy proceedings.

- **Bankruptcy proceedings** (*Konkurzné konanie*) – Where the debtor's assets are liquidated and the proceeds distributed to creditors according to the statutory order of satisfaction.

In the case of restructuring proceedings, the debtor files for the opening of the proceedings together with a restructuring plan (*Reštrukturalizačný plán*). The proceedings are administered by a restructuring administrator (*Reštrukturalizačný správca*). If restructuring fails, the court

converts the proceedings into bankruptcy. The debtor or a creditor may also file directly for bankruptcy if statutory conditions are met.

For natural persons, the insolvency regime is known as **debt relief** (*Oddlženie*), available either by liquidation of assets with quick discharge (*Oddlženie konkurzom*) or by restructuring obligations through a payment schedule (*Oddlženie splátkovým kalendárom*). Access to either form requires that enforcement proceedings are pending, and in the case of debt relief by bankruptcy at least one year must have passed since enforcement began. Certain categories of claims, such as excessive interest or some contractual penalties, are excluded from satisfaction. In both forms, the debtor is discharged from debt from the date of filing the petition (in bankruptcy) or the approval of the payment schedule, with unenforceability of claims applying accordingly.

Preventive Restructuring

Act No. 111/2022 Coll. on the Resolution of Imminent Insolvency introduced two preventive restructuring regimes – **public preventive restructuring** and **private preventive restructuring** – allowing debtors facing a threat of insolvency (*Hroziaci úpadok*) to negotiate a restructuring plan with creditors before meeting formal insolvency tests. Public preventive restructuring involves court oversight, publication in the Commercial Bulletin, and access to statutory moratoria, while private preventive restructuring is conducted largely behind closed doors with only selected creditors. These instruments implement Directive (EU) 2019/1023 and are designed to preserve viable businesses through early intervention, avoiding formal bankruptcy or restructuring proceedings.

Tests for Insolvency

Under the Insolvency Act, the opening of insolvency proceedings requires either the illiquidity (*Platobná neschopnosť*) or over-indebtedness (*Predlženosť*) of the debtor. However, restructuring proceedings may already be applied for in the case of impending insolvency.

The Insolvency Act provides a separate definition of illiquidity for natural and legal persons. The illiquidity of a legal person means an inability to fulfil at least two monetary obligations to more than one creditor that are 90 days overdue; a 90-day period applies from the due date for each obligation. For assessing a debtor's payment ability, all claims held by the same creditor within 90 days before a bankruptcy petition is filed are treated as one

claim. In addition, a legal person is presumed solvent if its coverage gap (difference between accounts payable and available funds) is less than one tenth or will decrease below that threshold within 60 days. By contrast, the definition of the illiquidity of a natural person means that the person is unable to pay at least one monetary obligation for 180 days after its due date. Illiquidity is presumed if the claim cannot be enforced through execution, or if the debtor fails to prove their ability to pay when requested by the court after a creditor has filed for bankruptcy proceedings to be initiated against the debtor. A debtor may file for bankruptcy or request an instalment schedule only if execution or similar enforcement proceedings are already underway. In the case of bankruptcy, at least one year must have passed since the issuance of the execution order or the commencement of equivalent proceedings.

Over-indebtedness means that a debtor (i) is obliged to keep accounts, (ii) has more than one creditor, and (iii) the value of its obligations exceeds the value of its property.

Moreover, sufficient assets to cover the costs of the proceedings are required to open insolvency proceedings.

PERSONAL BANKRUPTCY

Until the administrator (Správca) is appointed by the court, the debtor is represented by the Centre for Legal Aid ("CLA") or by an attorney designated by the CLA. The fee for filing the petition is EUR 500. If certain requirements are met, the debtor can request the fee be paid by the CLA.

In the case of bankruptcy proceedings, all of the debtor's assets are liquidated and sold and the court decides on the distribution of the proceeds among the creditors and then adopts a decision on debt relief. Parties affiliated with the debtor have a preferential right to buy the debtor's assets. The Insolvency Act establishes the so-called unenforceable value of home (*Nepostihnuteľná hodnota obydlia*) in order to protect the debtor from losing his/her home. Secured claims are in principle set aside as claims unaffected by debt relief.

The payment schedule is an alternative, in particular for debtors who still have sufficient assets and are in a position to satisfy unsecured creditors with a higher level of satisfaction than they would receive under bankruptcy proceedings, otherwise the proceedings are suspended. The suspension does not automatically initiate the bankruptcy proceedings since only the debtor is entitled to file for bankruptcy.

BANKRUPTCY PROCEEDINGS OF CORPORATIONS

Initiation of bankruptcy proceedings, declaration of bankruptcy and its effects

If the petition for bankruptcy was filed by a debtor, the court within five days of the initiation of the bankruptcy proceedings either declares the debtor bankrupt (if there are no doubts about the insolvency of the debtor) or appoints a preliminary administrator (*Predbežný správca*) for the purpose of investigating the debtor's insolvency status.

If the petition for bankruptcy was filed by a creditor, the court within five days of the initiation of the bankruptcy proceedings sends one counterpart of the petition for the declaration of bankruptcy to the debtor, requesting it to give its statement on the matter and prove its solvency within 20 days. The court subsequently declares the debtor bankrupt if the debtor fails to prove its solvency or fails to give its statement within the above-mentioned period.

Where the petition for bankruptcy is filed by a creditor against a debtor who is a natural person and entrepreneur, and if the debtor files (until the resolution declaring the bankruptcy is issued) the petition on debt relief by personal bankruptcy or by a payment schedule, the bankruptcy proceedings are suspended until the court decides on such petition. If the petition is declined, the bankruptcy proceedings continue.

If the petition for bankruptcy is perfect, bankruptcy is initiated upon publication of the court's resolution on the declaration of bankruptcy (*Vyhlásenie konkurzu*) in the Commercial Bulletin (*Obchodný vestník*).

Upon the declaration of bankruptcy, the debtor becomes the bankrupt (*Úpadca*) and generally loses its administration and disposition rights. The debtor remains owner of the assets, but the assets form the so-called bankruptcy assets to be used to primarily satisfy the creditors.

Any acts taken by the debtor after the opening of bankruptcy proceedings and reducing the property subject to bankruptcy are ineffective towards the creditors.

Submissions in bankruptcy and restructuring are **exclusively electronic** (e-forms with authorization), except in narrowly defined statutory exceptions. From 1 October 2025, only updated Ministry of Justice e-forms may be used, with strengthened identity verification requirements.

Register of Insolvents

In addition to publication in the Commercial Bulletin, key information on insolvency proceedings is also published in the Register of Insolvents (*Register úpadcov*) maintained by the Ministry of Justice of the Slovak Republic. The Register contains, in particular, details on the court and case number, the judge and administrator, the debtor, important dates in the proceedings, whether the case is conducted as a small bankruptcy, lists of filed claims and claims against the estate, the asset inventory, and other documents and data specified by law. The Register is accessible to the public and is intended to improve transparency and facilitate access to up-to-date information on the course of insolvency proceedings.

Digitalisation of Insolvency Proceedings

Recent amendments have expanded the scope of mandatory electronic communication, requiring the use of updated Ministry of Justice e-forms, stronger identity verification for electronic submissions, and full electronic access to case files. These measures aim to reduce delays and improve transparency in both bankruptcy and restructuring proceedings.

The bankruptcy assets and list of property

The bankruptcy assets (*Konkurzná podstata*) comprise property subject to bankruptcy, which is (i) property that belonged to the bankrupt at the time of the declaration of bankruptcy, (ii) property acquired during bankruptcy, (iii) property that secures the bankrupt's obligations, and (iv) other property stipulated by law.

The bankruptcy assets are divided into general assets (*Všeobecná podstata*) and the individual separated assets of secured creditors (*Oddelená podstata*). Separated assets of the secured creditor consist of property securing a receivable of the secured creditor (*Zabezpečený veritel'*) and only the claims of this specific creditor are satisfied from the proceeds remaining from the conversion into money of property through the "realisation of assets" constituting the separated assets of the secured creditor.

The general assets consist of bankruptcy assets that do not constitute any of the separated assets. Unsecured creditors whose receivables against the bankrupt are not secured by a security right and do not belong to any other category of receivables within the bankruptcy proceedings (*Nezabezpečení veritelia*) are satisfied from general

assets as well as secured creditors who were not fully satisfied from the separated assets of secured creditors.

Moreover, the Insolvency Act stipulates which property cannot be subject to bankruptcy such as property that may not be the subject of enforcement proceedings.

To convert the bankrupt's property (*Speňažovanie*) into money properly and completely and to ensure the highest possible satisfaction of the bankrupt's creditors, the administrator is obliged to ascertain the property subject to bankruptcy throughout the bankruptcy. The ascertainment (*Zisťovanie majetku*) is based in particular on the list of property submitted by the bankrupt, statements of the bankrupt and other parties and the administrator's own investigations.

The administrator prepares a list of property constituting the assets (*Súpis majetku*) separately for general assets and separated assets. This is a document entitling the administrator to convert the listed property into money. As soon as the property is entered into the list, no person other than the administrator may transfer the property, lease it long-term, establish the right of another over the property or otherwise reduce its value or liquidity.

If the property owned by someone other than the bankrupt is entered into the list, the rightful owner may file an action for the exclusion of property (*Vylučovacia žaloba*) against the administrator.

Administration of the property

The administration of the property subject to bankruptcy is vested in the administrator who is bound by the instructions of and recommendations made by the creditors' committee (*Veriteľský výbor*), the secured creditor or court and must administer the property with professional care.

Conversion of the property subject to bankruptcy into money

After the property subject to bankruptcy is duly ascertained, the administrator begins its conversion into money, i.e. into funds in euros to satisfy creditors, securing the cash of the bankrupt, receiving fulfilment from the bankrupt's monetary receivables and the paid transfer of the bankrupt's enterprise or part thereof.

The manner of conversion of property into money is stipulated by the Insolvency Act and is as follows: (i) a public tender, (ii) authorizing an auctioneer to sell the property, (iii) authorizing a securities trader to sell the property, (iv) organizing an auction, tendering procedure or

some other competition process leading to the sale of the property, and (v) any other appropriate means of disposal.

Lodging claims for receivables

Claims must be lodged with the administrator and electronically via the statutory e-form to the administrator's electronic mailbox, duly authorized, within 45 days of the bankruptcy declaration. Foreign creditors may use the standard EU form; assignments must be evidenced by a qualified document. If a creditor delivers the claim to the administrator later than this, the claim is taken into account but the creditor may not exercise any voting right or other rights connected with the claim lodged for the receivable. However, the right to the proportionate satisfaction of the creditor is not affected.

Where a secured receivable is concerned, the security right must also be duly exercised in a timely manner, otherwise it expires.

A claimed receivable may be disputed (*Popretá pohľadávka*). The administrator or other creditor with a claimed receivable may dispute the other creditor's claimed receivable in terms of the legal grounds, enforceability, amount, order, its security with a security right or the order of the security right. The creditor has the right to claim the determination of a disputed receivable by an action in court.

In case the administrator acknowledges the claim and no other creditor contests it, the claim is deemed to have been acknowledged and the creditor will be satisfied pro rata according to the amount of the bankruptcy debt repayment quota (e.g. 5% or 8% in bankruptcy proceedings).

Creditors' bodies

Meetings of creditors (*Schôdza veriteľov*) are convened during the bankruptcy to obtain the opinions of the creditors of ascertained receivables, elect and remove members of the creditors' committee, and replace the administrator. The first meeting of creditors is convened by the administrator within 55 days of the declaration of bankruptcy, and it must be held between 30 and 45 days after the expiry of the period for challenging claims. Creditors of ascertained unsecured receivables elect the creditors' committee at a meeting of creditors. With the consent of the court or the creditors' committee, a meeting of creditors may also be held by videoconference or using other technical means enabling an audio-visual record, which forms part of the case file.

Claims against the estate

Claims against the estate (*Pohľadávky proti podstate*) are receivables that arose after the declaration of bankruptcy in connection with the administration of the property subject to bankruptcy, the conversion of the property into money and the running of the bankrupt's business.

Receivables against the assets include receivables against the general assets and receivables against separated assets, and they are enforced through the administrator. They are settled from either general assets or separated assets in the order stipulated by the Insolvency Act and on a continual basis. If the administrator is unable to settle receivables of the same order in full, they are settled on a pro rata basis.

Satisfaction of creditors

Claimed receivables are settled by the administrator based on a distribution plan (*Rozvrh*) approved by the creditors' committee and secured creditors. If the competent body does not approve the distribution plan, the administrator subsequently submits it to the court for approval.

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 fully settled, the remaining extent of the receivable is settled as an unsecured receivable. On the other hand, if unsecured receivables cannot be fully settled, they must be settled on a pro rata basis according to their mutual amounts. Receivables against the assets are satisfied preferentially.

Based on the approved distribution plan, the administrator is required to release the indisputable part of the proceeds to the creditor without undue delay. The disputable part of the proceeds is kept in custody by the administrator and released to the creditor subject to the final decision of the court.

Set-off of respective claims

Generally, a creditor may set off (*Započítať*) claims against counterclaims by the bankrupt after the opening of bankruptcy proceedings.

Pursuant to Slovakian law, it is possible to set off such claims if they are due and of a uniform kind.

The Slovakian Insolvency Act stipulates that certain receivables cannot be set off. For instance, a receivable that arose for the bankrupt after the declaration of bankruptcy may not be set off

against a receivable that arose vis-à-vis the bankrupt before the declaration of bankruptcy.

Voidance claims and claw-back

The Slovakian Insolvency Act provides that such transactions that unduly decrease the assets of the debtor prior to the opening of insolvency proceedings may be contested, of course only if certain prerequisites are met. In this regard, transactions that were entered into by the debtor and a third party and which discriminate against other creditors might be contested. Formally, the transaction in question would need to be contested by the administrator or by a creditor of the claimed receivable.

The claim contesting a transaction must be filed within one year of the declaration of bankruptcy against the liable party or in court.

Other procedural details

The declaration of bankruptcy produces statutory effects on the debtor's rights and obligations, including the loss of administration and disposition rights over property forming part of the bankruptcy estate. The bankruptcy estate (*Konkurzná podstata*) is divided into general assets (*Všeobecná podstata*) and separate assets of secured creditors (*Oddelená podstata*), with the latter consisting of property securing the receivable of a specific secured creditor and serving to satisfy only that creditor. The administrator is obliged to identify and record all assets belonging to the estate and to convert them into money in the manner prescribed by law, such as public tender, auction, or other competitive sale.

The proceeds are distributed according to the statutory order of satisfaction and based on a distribution plan (*Rozvrh*) approved by the creditors' committee and secured creditors, or, if they fail to approve it, by the court. Secured receivables are satisfied from the separate assets; unsecured receivables are satisfied from the general assets; receivables against the estate (*Pohľadávky proti podstate*) are satisfied preferentially and on a continuous basis. If assets are insufficient to satisfy receivables of the same rank in full, they are satisfied on a pro rata basis.

The law provides rules on avoidance claims (*Odporovateľnosť právnych úkonov*), allowing the administrator or an eligible creditor to challenge legal acts that unduly reduce the debtor's assets or disadvantage creditors, subject to statutory time limits. Proceedings are conducted predominantly by electronic means, with submissions, including claims, made using the statutory electronic forms. Information on the proceedings is published both in

the Commercial Bulletin (*Obchodný vestník*) and in the Register of Insolvents (*Register úpadcov*).

SMALL BANKRUPTCY

Small bankruptcy is a simplified bankruptcy available to qualifying legal entity debtors. Within 15 days of a complete debtor's petition, the court declares small bankruptcy if certain conditions are met, including among others: liabilities not exceeding EUR 1,000,000 and assets not exceeding EUR 1,000,000 over the last five financial statements; a properly constituted statutory body; and payment of the advance on costs. The court appoints an administrator and invites creditors to file claims. The small bankruptcy judge also hears related disputes; certain avoidance rights are exercised directly by creditors. All business authorizations of the debtor terminate upon the declaration of small bankruptcy. A creditor who deposits the standard advance may seek conversion to ordinary bankruptcy within six months.

MANAGEMENT LIABILITY

The debtor's management is under an obligation, on behalf of the debtor, to file a petition for the declaration of bankruptcy within 30 days of the moment the debtor knew, or acting with due professional care should have known, that the debtor is insolvent (whether illiquid or over-indebted). This duty likewise binds the debtor's statutory body (or its member), a court-appointed liquidator and the debtor's legal representative. If this obligation is not fulfilled on time, a statutorily stipulated contractual penalty in the amount of one half of the lowest statutory amount of registered capital of a joint-stock company is deemed agreed between the company and the person obliged to file on its behalf; this penalty may not be excluded, limited, waived, set off or otherwise settled, and does not prejudice the right to claim damages in excess of the penalty. The Act also expressly provides for liability for damage suffered by creditors as a result of a failure to file the petition on time. From 1 October 2025, the statutory triggers for this filing duty will be further aligned with the early-warning duties under Section 4a of the Insolvency Act, requiring management to act promptly when specific indicators of financial distress are present. Where the amount of damage cannot otherwise be determined, it is presumed to equal the portion of the creditor's claim that remained unsatisfied upon the stopping of the bankruptcy proceedings for lack of assets, upon the cancellation of a bankruptcy for lack of assets, or upon the termination of enforcement (or similar execution) proceedings for lack of assets. A creditor's damages claim is time-barred no earlier than

one year after the proceedings were stopped or after cancellation or termination, and a final judgment awarding damages for late filing constitutes a disqualification decision.

Threat of insolvency and management duties

A debtor must continuously monitor its financial situation and act without undue delay to avert a threat of insolvency (*Hroziaci úpadok*). If the statutory body lacks sufficient expertise, it is obliged to seek professional assistance.

Since the adoption of Act No. 111/2022 Coll. on the Resolution of Imminent Insolvency, the early-warning duties to which the management are subject have been expanded and further aligned with Directive (EU) 2019/1023. Statutory bodies must assess specific indicators of financial distress, such as sustained liquidity gaps, arrears in public law obligations, or repeated listing in public debtor registers, and consider whether preventive restructuring is appropriate.

Preventive restructuring offers two possible regimes:

- **Public preventive restructuring**, requiring court oversight, publication in the Commercial Bulletin, and the possibility of a statutory moratorium on enforcement actions.
- **Private preventive restructuring**, which is conducted confidentially with selected creditors without public announcement.

In both regimes, the objective is to reach an agreement on a restructuring plan before the debtor meets the formal insolvency tests of illiquidity or over-indebtedness. Failure by management to act when clear early-warning signs are present may lead to liability similar to the liability for late filing in bankruptcy.

Early-warning mechanisms

The Insolvency Act now expressly requires statutory bodies to monitor financial indicators signalling potential distress, such as arrears in social and tax obligations, repeated listing in public debtor registers, or liquidity gaps. Upon detection, the management must assess whether to initiate preventive restructuring, seek professional advice, or take other measures to avert insolvency. Failure to act may lead to liability similar to the liability for late filing in bankruptcy.

Criminal aspects

The Slovakian Criminal Code (*Trestný zákon*) also contains provisions in connection with

bankruptcy proceedings. The most important provisions are (i) damage to a creditor, (ii) favouring a creditor, (iii) machinations in connection with the bankruptcy and restructuring proceedings, and (iv) obstruction of bankruptcy and restructuring proceedings.

Effect on the work force and employees

According to the Slovakian Insolvency Act, the insolvency administrator must act on behalf of the bankrupt in employment relationships in relation to the bankrupt's employees upon the declaration of bankruptcy. This is the only direct impact on employees in connection with the opening of insolvency proceedings.

Further, Slovakian Act No. 311/2001 Coll. Labour Code as amended provides special termination rights that offer the employer the possibility to terminate employment contracts in case the business is shut down. The receivables of the employees that have originated after the declaration of bankruptcy and during the month when the bankruptcy was declared are considered receivables against the bankruptcy assets and therefore are subject to preferential treatment and satisfaction.

If an employer becomes insolvent and is unable to satisfy any statutorily specified claims of its employees, employees are entitled to a guaranteed insurance benefit paid by the Slovak Social Insurance Agency.

Effect on contracts and termination rights

The effect of the opening of bankruptcy proceedings has different impacts on contracts which depend on the status of the fulfilment concluded therein.

In case a contracting party has entirely fulfilled its contractual obligations prior to the opening of insolvency proceedings, but has not received the entire consideration from the debtor, the contracting party may withdraw from the contract.

Special provisions apply in case both sides have not yet fulfilled each of their obligations in their entirety. In such a case, the administrator as well as the other contractual party is entitled to withdraw from the contract.

The entitlements of the other contracting party from withdrawal may solely be filed in bankruptcy as a claim of a contingent receivable. On the other hand, in case the debtor has already fulfilled its obligations, the administrator may demand fulfilment of the contract by the other party or may withdraw from the contract.

If, before the declaration of bankruptcy, the bankrupt concluded a contract, the subject of which is an obligation to perform a continuous or repeated activity, or an obligation to refrain from a certain activity or tolerate a certain activity, the administrator may terminate the contract by giving two months' notice unless a shorter period is stipulated by a law or in the contract. If the other contracting party is obliged to provide fulfilment in advance under a contract concluded with the bankrupt before the declaration of bankruptcy, it may withhold its fulfilment until mutual fulfilment is provided or secured.

FORMAL RESTRUCTURING PROCEEDINGS

The illiquidity of a debtor, or in some cases impending insolvency (*Hroziaci úpadok*), can be resolved through formal restructuring proceedings. Preventive restructuring under Act No. 111/2022 Coll. is also available at the stage of impending insolvency, allowing earlier intervention before the statutory tests for insolvency are met. It aims to keep the debtor's business, or part of the business, running and continue the debtor's business activity under the strict supervision of an administrator, court and creditor bodies. A higher satisfaction of creditors than specified in bankruptcy proceedings is expected and required for successful restructuring. Contrary to bankruptcy proceedings, the debtor is only limited in its disposition rights regarding its business activities and the disposition rights are not vested in the administrator.

Restructuring opinion, initiation of restructuring proceedings and its effects

In case a debtor is illiquid or its insolvency is pending, the debtor or its creditor may authorize an administrator to draft a restructuring opinion (*Reštrukturalizačný posudok*) for the purpose of determining whether the prerequisites for restructuring are met. The administrator generally recommends the restructuring of a debtor if maintenance of a substantial part of the debtor's business and a higher satisfaction of creditors can be expected than that specified in the bankruptcy proceedings.

A petition for a restructuring permit must be filed with the competent court based on a restructuring opinion recommending a restructuring of the debtor that is not older than 30 days. If the petition is filed by a creditor, the debtor's consent is required for such a petition.

If the filed petition is perfect, the court issues a resolution on the initiation of restructuring proceedings within 15 days of delivery of the petition.

The restructuring proceedings are initiated upon publication of the resolution in the Commercial Bulletin.

Restructuring permit and its effects

The court permits the restructuring if restructuring is recommended in the restructuring opinion, the opinion is drawn up in accordance with statutory provisions and all conditions for recommending restructuring are met. In the resolution, the court (i) appoints an administrator (according to a random selection based on technical programming means approved by the ministry), (ii) calls for creditors to submit their claims for receivables within a statutory period, and (iii) determine the scope of legal acts that are to be subject to the administrator's consent in the course of the restructuring.

The initiation of restructuring has the following effects: (i) the debtor must perform legal acts stipulated in the court's resolution only with the consent of the administrator, (ii) enforcement proceedings over property belonging to the debtor which have been suspended are terminated, and (iii) court and arbitration proceedings on receivables that could be claimed in the restructuring proceedings are suspended. Receivables that are not claimed in the restructuring proceedings do not lapse. However, they cannot be judicially enforced.

Lodging claims for receivables and the rights of creditors

A claim must be lodged with one counterpart for the administrator and must be delivered within 30 days of the day restructuring was permitted. Any claim delivered after the deadline will be disregarded.

Claims lodged for receivables may be disputed. The claims may be disputed solely by the administrator within 30 days of the expiry of the period for the submission of claims for receivables. However, the debtor or creditor with a claimed receivable is entitled to suggest to the administrator to dispute a claimed receivable. The administrator must notify the dispute without undue delay from its registration in the list of claimed receivables to the creditor concerned. Within 30 days of the expiry of the period for disputing receivables, the creditor of a disputed receivable may demand through an action filed against the debtor the determination of the receivable by a court.

All creditors who claim their receivables in the restructuring proceedings are entitled to participate in the meeting of creditors.

Supervision by the administrator and court during restructuring

The administrator must supervise the debtor's business activity during restructuring so that the debtor does not reduce the value of its property and does not obstruct the successful completion of the restructuring. On the other hand, the court must supervise the administrator as well as the debtor and creditor's bodies.

Restructuring plan

The restructuring plan is a document regulating the creation, change and expiry of the rights and obligations of parties stated therein as well as the extent and manner of satisfaction of creditors of claimed receivables or shareholders of the debtor.

It is drawn up by the debtor if the petition for the restructuring permit was filed by the debtor or by the administrator if the petition was filed by the creditor. The plan is divided into a descriptive part (*Opisná časť*) and a binding part (*Záväzná časť*).

The binding part of the plan specifies all rights and obligations that according to the plan are to arise, change or expire for the participants of the plan (*Účastníci plánu*). For the purposes of voting on the adoption of the plan, the binding part must contain a separation of creditors into several groups: (i) a group for secured receivables, (ii) a group for unsecured receivables, (iii) a group for proprietary rights of the debtor's shareholders if the plan assumes a change in the proprietary rights of debtor's shareholders, the transfer of the debtor's enterprise or merger or dissolution of the debtor, and (iv) a group for receivables not affected by the plan.

The plan must provide unsecured creditors with satisfaction of their claims that is at least 20% higher than they would achieve in bankruptcy proceedings. The receivables and proprietary rights of the debtor's shareholders that are classified in the same group are settled to the same degree and in the same manner.

The final draft of the restructuring plan must be submitted within 90 days of the restructuring permit.

Plan approval

The restructuring plan must be approved in two stages: (i) by preliminary approval by the creditors' committee (*Veriteľský výbor*), and (ii) by approval at the approval meeting (*Schvaľovacia schôdza*).

If the creditors' committee rejects the submitted draft of the plan or does not approve the submitted draft of the plan within statutory periods, the administrator must petition the court to declare the debtor bankrupt. If, however, the

creditors' committee approves the plan, the administrator convenes the approval meeting.

The approval meeting is presided over by the administrator who is supervised by the court.

Confirmation of the plan by the court

If the required majority in one or more of the groups did not vote for the adoption of the plan, the plan submitter may demand in the petition for confirmation of the plan that the court substitutes the adoption of the plan within such group with its own decision if conditions stipulated by the Insolvency Act are fulfilled. Since April 2015, an approval of a group for unsecured receivables may not be substituted by a court decision, and this rule remains in force under the current version of the Insolvency Act if the creditors belonging to the group are – according to the binding part of the plan – satisfied within a period exceeding five years.

If there are no reasons to reject the plan, the court must confirm the submitted plan in a resolution published without undue delay in the Commercial Bulletin. If the Court terminates the decision approving the plan, the right of the creditors to invoke their initial claims must be renewed.

Amendment of the Slovak Insolvency Act relating to restructuring

Two new regimes relating to creditors' claims and the prohibition of distribution of profit and own funds were introduced by the 2015 amendment. Any claim up to 50% of its submitted and acknowledged amount must be preserved in full. A creditor may enforce such claims through standard enforcement procedures immediately after the restructuring plan has been fully and properly fulfilled.

The other 50% of a submitted and acknowledged claim should be considered as another proprietary right. In case the restructured debtor generates profit, which it does not need for maintaining the operation (of major parts) of its enterprise, the other proprietary right, as stated in the previous sentence, should be satisfied before the profit is distributed to a shareholder.

The other proprietary right can only be satisfied from future profits of the restructured debtor, whereas the first half of the claim can be satisfied from any property of the restructured debtor.

In case a debtor infringes this prohibition, the restructuring plan becomes ineffective ex lege and when the debtor does not distribute generated profit to its members, the

creditors are entitled to file a petition seeking additional satisfaction of their claims.

The recent amendment of the Insolvency Act from 2017 enables the restructuring plan to provide a creditor satisfaction quota lower than 50%, providing the debtor is able to agree with each individual creditor on a lower extent of their claims satisfaction.

Debt equity swap

Pursuant to the Slovakian Insolvency Act, the possibility of swapping unsecured creditors' receivables for an equity participation in the debtor is a mandatory part of the restructuring plan.

Ineffectiveness of the plan

Any participant in the plan who voted against its adoption and who raised a justified objection against the plan has the right to demand that the court deems the plan ineffective in relation to the creditor if conditions stipulated by the Slovakian Insolvency Act are fulfilled.

On condition that the court deems the plan ineffective in relation to the creditor, the debtor is obliged to settle the original receivable of the creditor to the extent to which the receivable was claimed and ascertained within the original maturity.

If the plan is ineffective towards a shareholder of the debtor, then the debtor is obliged to pay the shareholder the value of the performance that would correspond to their participation in the liquidation balance of the debtor at the time the plan was confirmed by the court.

Supervisory administration

After the completion of restructuring, a supervisory administration may be imposed on the debtor in the binding part of the restructuring plan. The supervisory administration is optional and must be performed by a supervisory administrator until complete fulfilment of the plan.

ENDING OF INSOLVENCY PROCEEDINGS

Both bankruptcy and restructuring proceedings are closed by a formal resolution of the insolvency court. Bankruptcy proceedings are closed after the distribution of all assets, i.e. the liquidation of the debtor.

Restructuring proceedings are formally closed after a restructuring plan is adopted by the creditors and confirmed by the court. The debtor then has a duty to fulfil the restructuring plan at the time and within the period stipulated in the restructuring plan. If payments are

not made at the time and within the period stipulated in the restructuring plan, the insolvency proceedings will be reopened.

If during the insolvency proceedings it becomes apparent that the assets are not sufficient to cover the costs of proceedings, the proceedings are terminated due to insufficient assets.

INTERNATIONAL ASPECTS

According to Regulation (EU) 2015/848, insolvency proceedings in other Member States of the European Union are recognized in Slovakia.

In case the Regulation is not applicable, the Slovakian Insolvency Act contains provisions referring to the recognition of proceedings in third countries. Insolvency proceedings and their impacts are generally recognized in Slovakia if (i) the main centre of interest of a debtor is located in another country, and (ii) the proceedings opened abroad are comparable to Slovakian insolvency proceedings in their material aspects.

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Slovenia

FORMAL INSOLVENCY AND RESTRUCTURING PROCEEDINGS

Introduction

In Slovenia, formal insolvency and restructuring proceedings are governed by the Slovenian Financial Operations, Insolvency Proceedings and Compulsory Winding-Up Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*, "**Slovenian Insolvency Act**"). The Slovenian Insolvency Act also regulates the financial operations of legal entities and compulsory dissolution proceedings (*postopki prisilnega prenehanja*).

In Slovenia, financial restructuring proceedings, which address pre-insolvency situations and are only available to debtors that are not yet insolvent but are likely to become insolvent within one year, include preventive restructuring proceedings (*postopki preventivnega prestrukturiranja*) and judicial restructuring proceedings to remedy threatened insolvency (*postopki sodnega prestrukturiranja zaradi odprave grozeče insolventnosti*).

Restructuring may also occur within compulsory settlement proceedings (*postopki prisilne poravnave*) and compulsory settlement proceedings for small businesses (*postopki prisilne poravnave za malo gospodarstvo*), both of which are only available to insolvent debtors and constitute forms of insolvency proceedings. Bankruptcy proceeding (*stečajni postopek*) are another type of insolvency proceedings. Under the Slovenian Insolvency Act, three types of bankruptcy proceedings are recognized: (i) bankruptcy proceedings against a legal entity (*stečajni postopek nad pravno osebo*), (ii) personal bankruptcy proceedings (*postopek osebnega stečaja*), and (iii) legacy bankruptcy proceedings (*postopek stečaja zapuščine*).

Threatened Insolvency and Insolvency Tests

According to the Slovenian Insolvency Act, the debtor is considered to be in a state of threatened insolvency if it is likely to become insolvent within one year. A debtor is considered insolvent if it is: (i) unable to meet its payment obligations in due time, a situation referred to as prolonged illiquidity (*trajnejša nelikvidnost*), and/or (ii) over-indebted, so-called over-indebtedness (*dolgoročna plačilna nesposobnost*).

The Slovenian Insolvency Act sets out several presumptions of prolonged illiquidity and over-indebtedness. A debtor is deemed to be experiencing prolonged illiquid if it fails to pay at least its employees their minimum salaries, or to pay

taxes and social contributions related to employee salaries, for a period exceeding two months. This presumption is irrebuttable. Other rebutted presumptions of prolonged illiquidity include, for example, cases where the debtor is in arrears with the payment of one or more obligations in a total amount exceeding 20% of its total liabilities, as stated in the last publicly available annual report of the debtor, or where the funds in the debtor's bank accounts are insufficient to execute an enforcement decision and said situation persists for more than 60 days without interruption or for 60 days in a 90-day period. The Slovenian Insolvency Act also sets out distinct presumptions of prolonged illiquidity for debtors who have undergone a compulsory settlement procedure that has been concluded with a legally binding approval, as well as for debtors who are classified as consumers. Furthermore, it is presumed, unless proven otherwise, that the debtor is over-indebted if (i) the value of the debtor's assets is less than the sum of its liabilities, or (ii) the loss from the current year plus the accumulated loss carried over from previous years amounts to at least half of the company's registered capital and cannot be covered by carrying over profits or capital reserves.

INITIATION OF INSOLVENCY PROCEEDINGS

Obligation to Initiate Insolvency Proceedings

The management of the company must continuously monitor the company's operations and financial position. If it identifies developments that could endanger the company's continued existence, it is required to adopt financial restructuring measures aimed at preventing threatened insolvency.

If the company is in a situation likely to result in insolvency within one year, the management must prepare a financial restructuring plan with the aim of resolving the threatened insolvency within one month of identifying such circumstances.

When a company becomes insolvent, the management of the insolvent debtor must, among other actions, file a petition to initiate insolvency proceeding without delay and no later than one month from the occurrence of insolvency, or within three months if the insolvency occurred due to a natural disaster, major accident, epidemic or other similar extraordinary event.

Filling the Petition

In Slovenia, insolvency proceedings may only be initiated based on the petition filed by an authorized

petitioner.

In bankruptcy proceedings against a legal entity, the petition can be filed by the debtor, a personally liable shareholder of the debtor, in certain cases by a creditor or the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia, and if the debtor does not have management, by any shareholder or by a member of a supervisory board or by a founder. For a petition to be valid, it must meet certain criteria. For example, in the case of a petition to initiate bankruptcy proceedings against a legal entity, the petition must include identifying information about the debtor, a description of the facts demonstrating that the debtor has become insolvent, supporting evidence for those facts, and a request that the court opens bankruptcy proceedings against the debtor. If the petition is filed by a creditor, it must additionally include a description of the facts establishing the existence of the creditor's claim against the debtor and evidence that the debtor has been in arrears for more than two months.

In compulsory settlement proceedings, the petition can be filed by the debtor, a personally liable shareholder of the debtor or, in the case of limited liability companies and joint stock companies, by creditors jointly holding at least 20% of the financial claims against the debtor. The petition must, by law, include a subordinate petition to initiate bankruptcy proceedings against the debtor if the court refuses to initiate compulsory settlement proceedings and be accompanied by a report on the debtor's financial situation and business operations, an auditor's report with a clean (unqualified) opinion, a financial restructuring plan, a report from an authorized business valuation expert with a positive opinion, or a qualified opinion if required, and proof that the initial advance fee has been paid.

Court Decision on Insolvency

After the petition is filed, the competent district court determines whether the conditions for initiating insolvency proceedings are met. The course of the preliminary insolvency proceedings depends on who the petitioner is.

If a petition to initiate bankruptcy proceedings against a legal entity is filed by the debtor or by a personally liable shareholder, insolvency is presumed, and no advance payment of the initial costs is required. In such cases, the court automatically issues an order initiating bankruptcy proceedings. By contrast, in personal bankruptcy proceedings, insolvency is not presumed. The court independently assesses the debtor's insolvency based on the report on

the debtor's financial position and insolvency. If the petition is filed by a creditor (except when the creditor is an employee) and the creditor fails to pay the advance for the initial costs of the proceedings or to remedy deficiencies in an incomplete petition, the court will dismiss the petition.

In response to a creditor's petition, the debtor may:

- file an objection challenging the creditor's standing (active legal interest) and/or asserting that they are not insolvent;

or

- request a postponement of the court's decision on the creditor's petition on the grounds that insolvency will be resolved through financial restructuring.

If the debtor files an objection, the court will, at a hearing, examine the evidence concerning the creditor's standing to file the petition and whether the debtor is insolvent. If the debtor files a request for postponement, the court may, by order, defer its decision on the creditor's petition for the commencement of bankruptcy proceedings for a period of up to two months. Within this two month period, the debtor must substantiate the grounds for postponement by either filing a proposal for compulsory settlement or submitting evidence that the share capital has been increased and that the debtor is no longer insolvent.

If the petition has been properly filed and it is established that the debtor is insolvent, the court is required to issue a decision initiating insolvency proceeding, which is published on the eObjave portal of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). The court notifies creditors of the commencement of insolvency proceedings by means of a public notice, which is published simultaneously with the decision to initiate the proceedings. The parties to the proceedings and other persons are deemed to have been informed of the content of the publication eight days after its publication.

INSOLVENCY ADMINISTRATOR

The insolvency administrator is appointed by the insolvency court from the list of selected administrators, in the order in which they appear on the list.

In bankruptcy proceedings against a legal entity, the insolvency administrator assumes all management rights and powers of the debtor and conducts the proceedings on behalf of the

debtor. The powers and duties of the insolvency administrator are prescribed by law to protect and enforce the interests of the creditors. During bankruptcy proceedings, the administrator must, among other duties, manage the bankruptcy estate (e.g. by leasing the debtor's assets and handling the debtor's cash balances), and liquidate the estate through the sale of the debtor's assets and the enforcement of its claims.

In contrast to the insolvency administrator in bankruptcy proceedings, the insolvency administrator in compulsory settlement proceedings has no managerial or executive authority. His duties are limited to supervisory functions.

CREDITORS IN INSOLVENCY PROCEEDINGS

Creditors who register their claims, along with the insolvency debtor, insolvency court, and insolvency administrator, play the most important role in insolvency proceedings.

Creditors' Committee

The creditors' committee is a body representing the creditors and has a duty, on behalf of all creditors, to perform the procedural acts assigned to it by law.

The formation of a creditors' committee is mandatory in compulsory settlement proceedings, whereas in bankruptcy proceedings such a committee may be established upon the request of creditors. If the request for the establishment of a creditors' committee is submitted before the publication of the order on the examination of claims, it may be filed by any creditor who has duly lodged a claim in the proceedings. If the request is submitted after the publication of the order on the examination of claims, it may be filed by creditors holding together at least 10% of the voting rights.

The members of the creditors' committee are elected by the creditors and appointed by the insolvency court, which also determines the number of members of the committee. In the case of compulsory settlement, a creditors' committee of ordinary creditors and a creditors' committee of secured creditors may be established.

The creditors' committee is entitled (but not required) under the Slovenian Insolvency Act to provide its consent or opinion on various matters (e.g. the disposal of assets and the continuation of business). The creditors' committee also reviews the reports of the insolvency administrator and, for that purpose, has access to all documents and records of the insolvent debtor.

Registration of Claims

Creditors must file their claims and any associated rights within three months of the publication of the notice of the commencement of bankruptcy proceedings, or within one month of the publication of the notice of the commencement of compulsory settlement proceedings.

If a creditor fails to file a claim by the deadline in bankruptcy proceedings, the claim is deemed extinguished. However, if a creditor fails to file a claim by the deadline in compulsory settlement proceedings, the claim is not extinguished, but the creditor loses the right to vote and is excluded from the list of claims, which serves as an enforcement title. In such cases, the creditor must initiate a separate procedure to have the claim verified.

Within one month after the deadline for registration of claims expires, the insolvency administrator compiles a basic list of verified claims in which each claim is either recognized or rejected. The creditor may file an objection against the basic list of verified claims if the list does not include their timely submitted claim or if the information about their claim is incorrect, as well as to reject claims made by other creditors. A creditor whose claim has been rejected must within one month of the publication of the basic list of verified claims file an action to establish the existence of the rejected claim. If the creditor fails to file the action, the contested claim ceases to exist in relation to the insolvent debtor.

The insolvency administrator then compiles an updated basic list of the verified claims that includes all objections. The insolvency court finally issues a decision on the verification of claims, in which it decides which claims are to be ultimately recognised and which are to be rejected. The decision is accompanied by the final list of verified claims.

Different Types of Claims

The Slovenian Insolvency Act distinguishes between several types of claims.

The most common are unsecured claims, which may be preferential, ordinary or subordinated. Preferential claims are repaid in priority to ordinary and subordinated unsecured claims. The types of preferential claims are defined in the Slovenian Insolvency Act and include, for example, salaries, compensation for work-related injuries and occupational diseases, as well as taxes and social security contributions payable by the employer in connection with salaries. Subordinated claims are those that, under the legal relationship between the debtor and the creditor, are to be paid only after all other unsecured

claims have been repaid.

Another category of claims are secured claims, i.e. claims secured by a right of separate satisfaction, entitling the creditor to be repaid from the proceeds of the sale of a specific asset of the debtor before other creditors are satisfied from those assets.

Creditors who hold a property right over an asset that is in the possession of the debtor have exclusion rights. Claims that arise after the commencement of insolvency proceedings are generally considered costs of the bankruptcy proceedings and are therefore paid first from the bankruptcy estate. Creditors who have a claim against the insolvent debtor and against whom the insolvent debtor has a counterclaim are referred to as set-off creditors. Their mutual claims are deemed to have been set off as of the commencement of the insolvency proceedings.

BANKRUPTCY

Bankruptcy proceedings are conducted in order to realize the creditors' interest in obtaining payment of their claims simultaneously and in the same proportion as other creditors who are in an equal position in relation to the insolvent debtor. In pursuing these interests, all of the debtor's assets are liquidated and the proceeds are distributed among the creditors, followed by the dissolution of the company. An exception to this is the preservation of the profitable part of the insolvent debtor's business through the sale of the debtor's assets that constitute a business unit.

Personal Bankruptcy and Debt Discharge

The purpose of the debt discharge is to offer honest and diligent entrepreneurs a new opportunity by discharging those obligations that, despite their efforts, they are unable to fulfil from the assets they possessed at the commencement of personal bankruptcy or acquired during the probation period.

A bankrupt debtor may, up until the issuance of the decision concluding the personal bankruptcy proceedings, file a petition for the discharge of their obligations that arose prior to the commencement of the personal bankruptcy proceedings, to the extent that such obligations will not be settled in the course of the proceedings. In the petition for debt discharge, the debtor must attach a declaration stating that there are no obstacles to the discharge of their obligations and must describe the circumstances forming the basis for determining the probation period.

Obstacles to the debt discharge

are circumstances that prevent the discharge from being granted. Debt discharge is not permitted if:

- the debtor has been finally convicted of a criminal offence against property or the economy, and the conviction has not been expunged from the criminal record by the end of the probation period;

- a final decision on the debt discharge has already been issued for the debtor, and fewer than ten years have passed since that decision became final;

or

- the debtor abuses the right to debt discharge.

A debtor is deemed to have abused the right to debt discharge if, based on the debtor's conduct during the five years preceding the initiation of personal bankruptcy proceedings, during the proceedings themselves, or in light of the debtor's financial circumstances, it is evident that granting a discharge would be contrary to the purpose of the debt discharge. Such abuse includes, among other things, situations where the debtor, within five years before or after the commencement of personal bankruptcy proceedings, (i) provides false, inaccurate, or incomplete information required by the tax authority for tax collection; or (ii) accepts non-monetary benefits instead of monetary payments; or (iii) fails to make sufficient efforts to repay creditors during the probation period, with insufficient effort defined as repaying less than 10% of all registered claims.

The probation period is the period during which the debtor's fulfilment of all legally prescribed obligations is monitored. In principle, the probation period must not be shorter than one year and not longer than three years from the commencement of the debt discharge proceedings. It is determined on the basis of the administrator's opinion, taking into account the debtor's age, family circumstances, health condition, other personal circumstances, and the reasons for insolvency.

Any creditor or the administrator may file an objection to the discharge of obligations until the end of the probation period, in the following cases:

- if there is an obstacle to the discharge of obligations;

- due to the debtor's violation of obligations during the personal bankruptcy proceedings;

or

- in the case of an excessively short probation period (creditors only).

The discharge of obligations applies to all creditors' claims against the debtor that arose prior to the commencement of personal bankruptcy proceedings, regardless of whether the creditor filed the claim in the proceedings. The basic rule is that the discharge of obligations applies to all claims, except for those specified in the Slovenian Insolvency Act, such as preferential claims (salaries, severance pay, taxes, and social security contributions), claims arising from criminal and misdemeanor sanctions, maintenance (alimony) claims, and claims for damages caused intentionally or as a result of gross negligence.

COMPULSORY SETTLEMENT

In the case of compulsory settlement, the insolvent debtor undergoes financial restructuring, through which it eliminates reasons for its own insolvency and, upon completion of the proceedings, continues with its business activities. In such proceedings, creditors file their claims and control the compulsory settlement procedure through their participation in the creditors' committee and through their decision-making powers when approving the compulsory settlement. Since creditors decide on the proposal for compulsory settlement by majority, the compulsory settlement is binding on those creditors who did not vote in favour of it, provided that the majority required for the adoption of the compulsory settlement has been reached.

Compulsory settlement may be initiated only if: (i) the debtor is insolvent; (ii) the financial restructuring plan is expected to restore the debtor's short-term and long-term solvency; and (iii) the creditors are provided with more favourable repayment terms than those they would receive in bankruptcy proceedings.

The main document in compulsory settlement proceedings is the financial restructuring plan, which sets out the proposed restructuring measures and includes the compulsory settlement proposal.

There are three types of restructuring measures:

- restructuring of creditors' claims: reduction of the principal amount and/or reduction of interest rates and/or deferral of maturity or conversion of claims into equity;

- corporate restructuring of the debtor: an increase in share capital or the spin-off

of the profitable part of the business into a new company;

• business restructuring of the debtor: the sale of non-essential assets and the optimization of the debtor's operations.

The type of debtor being restructured determines which measures may be applied.

Ordinarily, compulsory settlements are intended exclusively for creditors with ordinary unsecured claims.

In the case of the compulsory settlement of a small, medium-sized or large capital company, it is possible to restructure secured claims (but only by reducing interest rates or deferring maturity). The debtor can also propose the transfer of a claim to it as a creditor's capital contribution in rem (conversion into equity).

The compulsory settlement is adopted if it is approved by creditors whose total weighted amounts of claims are at least 60% of the sum of weighted amounts. The weighted amount of an individual creditor's claim is determined by multiplying the confirmed amount of the creditor's claim by a specific coefficient, depending on the nature of the claim.

Following the voting process on the compulsory settlement, the court must confirm the settlement. If the compulsory settlement is not confirmed, bankruptcy proceedings are initiated.

Compulsory Settlement for Small Businesses

The compulsory settlement procedure for small businesses may be conducted for a micro company whose total asset value and total liabilities do not exceed EUR 700,000. The proposal does not need to include an auditor's report or a report prepared by a certified business valuation expert. Instead, it must contain a declaration stating that the report on the company's financial position and operations truthfully and fairly represents its financial situation and performance. During the procedure, an administrator is appointed to supervise the debtor and to verify the existence of the submitted claims.

RESTRUCTURING PROCEEDINGS

Preventive Restructuring Proceedings

Preventive restructuring is a judicial procedure conducted with the aim of enabling a debtor, who is likely to become insolvent within one year, to implement appropriate measures to restructure their financial obligations and other necessary

financial restructuring measures, based on a financial restructuring agreement with their creditors, in order to eliminate the causes that could lead to insolvency. There is a presumption that insolvency is likely if creditors holding together at least 30% of the total value of financial claims against the debtor support the initiation of the proceedings.

The petition to initiate preventive restructuring proceedings can only be filed by the debtor itself and has to include the following documents: (i) a list of all financial claims against the debtor; (ii) an auditor's report on the review of the list of financial claims in which the auditor has given its opinion without reservations; and (iii) notarized statements of consent to the commencement of preventive restructuring proceedings of creditors with at least 30% of the total value of financial claims against the debtor included in the basic list of all financial claims.

The court decides on the commencement of preventive restructuring proceedings, assessing whether the statutory conditions for such proceedings are met; for example, whether the proposal includes all required elements and whether at least two years have elapsed since the previous preventive restructuring proceedings were concluded with final effect.

Once the court decision to initiate preventive restructuring proceedings is published, a number of legal consequences arise that distinguish this procedure from out-of-court restructuring. These include: (i) standstill, meaning that no enforcement proceedings may be initiated against the debtor and any ongoing enforcement proceedings are stayed; (ii) an automatic moratorium on the payment of financial claims; and (iii) the suspension of limitation periods applicable to such claims. These legal effects apply only to financial claims that are included in the list of all the financial claims against the debtor.

The procedure is intended for the restructuring of unsecured and secured financial claims (e.g. claims arising from a loan agreement). Unsecured financial claims may be subject to a principal reduction and/or an extension of maturity, while secured financial claims may be restructured solely by a reduction of interest rates or extending their maturity, for a maximum period of five years. Ordinary non-financial claims of creditors are not affected unless they consent to the conclusion of the financial restructuring agreement.

The content of the financial restructuring agreement concluded by the debtor with creditors is similar to a standard master restructuring

agreement, and includes financial restructuring measures, an implementation schedule, any conditions and other mutual rights and obligations.

If an agreement is reached between the debtor, the creditors whose total amount of unsecured financial claims is at least 75% of the total of all unsecured financial claims, and (if the proposal also applies to secured claims) creditors whose total amount of secured financial claims is at least 75% of the total of all secured financial claims, and the debtor and the creditors have all signed the same copy of the agreement with notarized signatures, the court is required to confirm the agreement. Once confirmed by the court, the agreement becomes binding on all creditors listed in the basic list of financial claims, including those who did not consent to the restructuring, and also takes effect for all other creditors who have consented to its conclusion.

Judicial Restructuring Proceedings to Remedy Threatened Insolvency

As of 1 January 2025, a debtor is also entitled to request the opening of judicial restructuring proceedings to remedy threatened insolvency. The purpose of this procedure is to facilitate the financial restructuring of a debtor at a stage when insolvency is imminent, while applying the provisions governing compulsory settlement proceedings, unless otherwise provided by law. Such proceedings may be initiated only upon the debtor's proposal.

Out-of-court restructuring proceedings

In addition to formal (in-court) insolvency and restructuring procedures, out-of-court restructuring proceedings are also carried out in Slovenia. These procedures do not require court approval or consent – neither to initiate nor to conclude the process. The procedure is concluded with the signing of a master restructuring agreement, which is binding on all signatories. If the agreement is not successfully reached, formal restructuring proceedings or even bankruptcy proceedings typically follow. The advantage of this procedure is that it is confidential.

INTERNATIONAL ASPECTS

EU Insolvency Proceedings

Slovenia, as an EU member state, abides by Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings, which facilitates the recognition of insolvency proceedings that span multiple jurisdictions. Insolvency proceedings, set out in Schedule A of the Regulation on insolvency proceedings, commenced in any EU

member state have direct effect in Slovenia, and no recognition of the proceedings is required.

Recognition of Third Country Insolvency Proceedings

Insolvency proceedings conducted in third countries and any proceedings not included in the aforementioned Schedule A require recognition in Slovenia. Such proceedings are recognized either under the Slovenian Insolvency Act or pursuant to the general provisions on the recognition and enforcement of foreign judgements set out in the Private International Law and Procedure Act.

As Slovenia has implemented the UNCITRAL Model Law on Cross-Border Insolvency, foreign creditors are given the same rights as domestic creditors and foreign insolvency administrators have the right of access to Slovenian courts, including the right to request recognition of foreign proceedings in a fairly simplified procedure. Upon recognition of foreign insolvency proceedings, either as a main or auxiliary procedure, creditors may not initiate any new enforcement or interim security proceedings, existing enforcement and interim security proceedings are suspended, and the rights of the debtor's representation are transferred to the insolvency administrator. The

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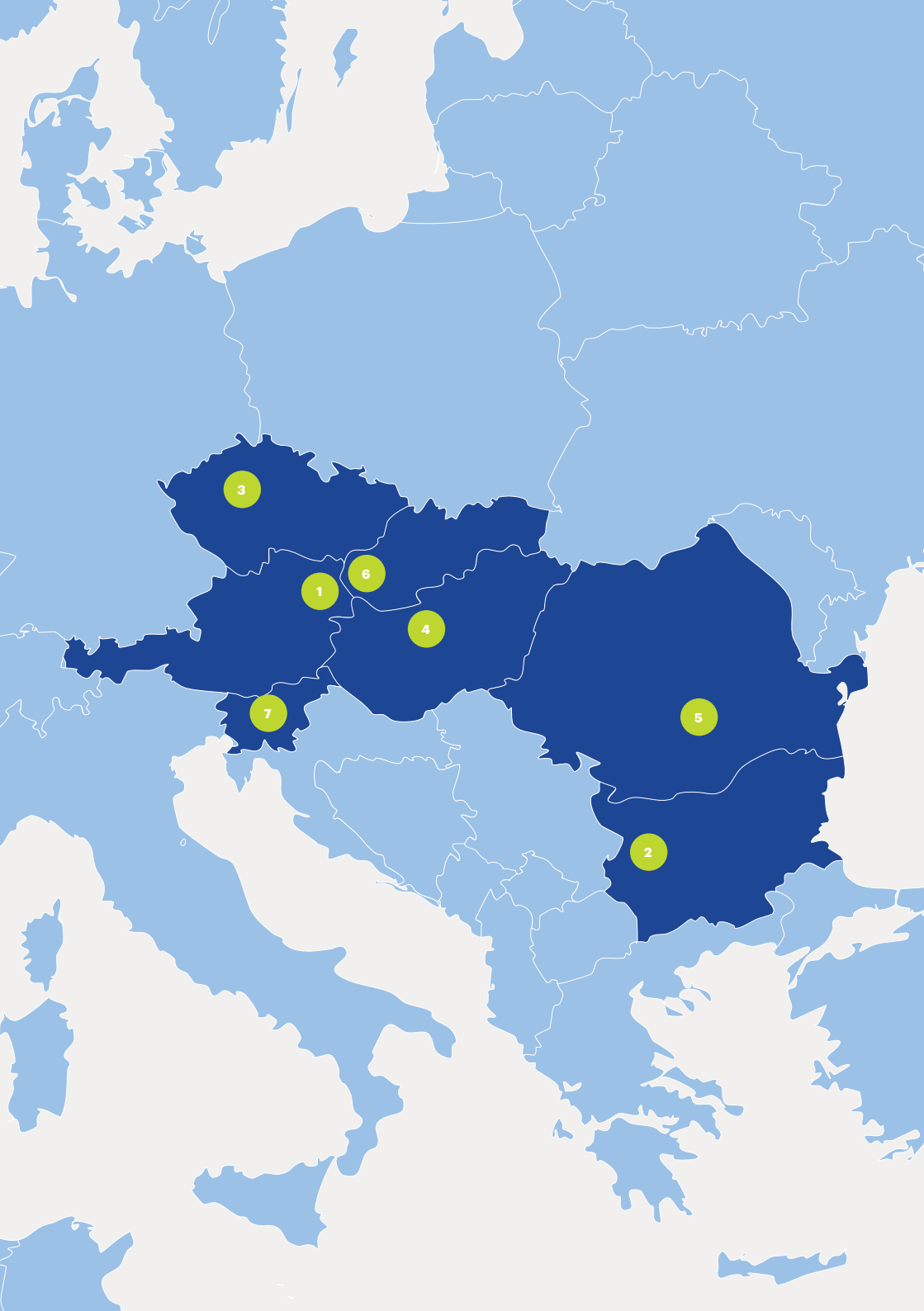
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