CERHA HEMPEL

Insolvency and Restructuring Laws *in Austria and CEE*

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BELARUS
BULGARIA
CZECH REPUBLIC
HUNGARY
ROMANIA
SLOVAK REPUBLIC

Content

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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

FORMAL INSOLVENCY PROCEEDINGS AND TESTS FOR INSOLVENCY

Main Insolvency Proceedings

The Austrian Insolvency Act (*Insolvenzordnung, "IO"*) provides for uniform insolvency proceedings. These are conducted either as so-called restructuring proceedings (*Sanierungsverfahren*) with the general aim of continuing the operation of the business of the debtor (*Schuldner*) during and after the proceedings, without liquidating the debtor, or as bankruptcy (i.e. liquidation) proceedings (*Konkursverfahren*) where the aim is to liquidate all assets and distribute the funds generated from liquidation to the debtor's creditors.

In restructuring proceedings, the debtor files for the opening of restructuring proceedings and simultaneously submits a restructuring plan (*Sanierungsplan*). Restructuring proceedings are either self-administrated *(mit Eigenverwaltung)* or administrated by a restructuring administrator *(ohne Eigenverwaltung)*. Self-administration requires the debtor to file an application for self-administration supplemented by certain documents and a restructuring plan that provides a minimum debt repayment quota to the creditors of 30% of registered debt repayable within two years. In case of administration by a restructuring administrator, the debt repayment quota may be as low as 20% of the registered debt (repayable within two years).

If restructuring proceedings fail, they are transformed by court order into bankruptcy proceedings. The latter involves the liquidation of all available assets with the aim being to terminate the debtor and distribute all available funds to its creditors.

Of course, out-of-court restructuring efforts and negotiations are very common and usually made prior to the opening of (in-court) insolvency proceedings. In Austria, no hybrid court-administered restructuring proceedings or insolvency proceedings, such as the German "*Schutzschirmverfahren*" (i.e. special pre-insolvency, court-administered proceedings), are available.

Tests for Insolvency

Under the Austrian Insolvency Act, the opening of insolvency proceedings presupposes either the illiquidity (*Zahlungsunfähigkeit*) or over-indebtedness (*Überschuldung*) of the debtor. However, restructuring proceedings may already be applied for in case of impending illiquidity.

While illiquidity is not specifically defined in the Austrian Insolvency Act, it may be presumed in case the debtor ceases to make its financial obligations. Case law qualifies illiquidity as a permanent lack of funds, which prevents the debtor from discharging its debts which have fallen due for repayment. Generally speaking however, a mere delay in payment (*Zahlungsstockung*), which refers to a short period of time only (approx. three months), does not qualify as illiquidity.

Over-indebtedness means that (i) the liabilities of a company exceed its assets, whereby the latter are assessed on the ba-

sis of their liquidation value, not on their going concern value, and (ii) the debtor has a negative going concern forecast (*negative Fortbestehensprognose*).

Moreover, sufficient assets to cover the costs of the proceedings (*kostendeckendes Vermögen*) are required to open insolvency proceedings.

PROCEDURAL ASPECTS

In bankruptcy proceedings, the application might either be filed by the debtor himself or by a creditor. In contrast, an application for the opening of restructuring proceedings may only be made by the debtor.

The opening of insolvency proceedings is made public by an official notice (*Ediktsdatei*), either as bankruptcy or restructuring proceedings (with or without self-administration).

The official notice contains the most important information on the debtor, the name of the insolvency administrator (*Insolvenzverwalter)*, the kind of proceedings being opened, the place and date of the meeting of creditors (*Gläubigerversammlung*), and the place and date of the examination hearing regarding the claims registered by the creditors (*Prüfungstagsatzung*).

The opening of insolvency proceedings is also published in other public registers, such as the land register and/or the companies register.

Additionally, for the publication of the official notice, each known creditor of the debtor, the representatives of the creditors and the Austrian National Bank have to be informed individually. There is also a duty to inform the debtor's bank, the employees of the debtor and the Austrian courier service. Importantly, after the opening of insolvency proceedings, mail is only submitted to the insolvency administrator (so-called Postsperre).

After the opening of proceedings, creditors are entitled to file their claims, which will be examined by the insolvency administrator at a later stage.

The first meeting of creditors usually takes place 14 days after the opening of insolvency proceedings and the general examination hearing 60 to 90 days after such opening. The period in which claims have to be filed ends, generally speaking, 14 days before the examination hearing is scheduled to take place. The report hearing (*Berichtstagsatzung*) is held 90 days after the opening of insolvency proceedings. The subject matter of the examination hearing is whether the company should be closed or not. Usually the examination and report hearings are combined into one hearing.

The opening of insolvency proceedings requires the existence of certain assets to cover the main costs for the insolvency proceedings. In practice, this means that assets in the amount of at least EUR 4,000 must be proven to exist by the debtor.

PRE-INSOLVENCY RESTRUCTURING & REFINANCING

The reorganization 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, whether debtors, creditors, such as banks, directors, or shareholders. There is a great variety of contractual freedom under Austrian law and 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, but also still during the course of (in-court) restructuring proceedings (*Sanierungsverfahren*). In practice, in the latter case, the situation has often not changed dramatically compared to pre-insolvency negotiations, unless the debtor is now replaced and/or supervised by the insolvency administrator and the threat of bankruptcy, and therefore liquidation, is more imminent than before.

DISTRESSED M&A

In practice, in a pre-insolvency scenario, "pre-packaged deals" are very common. Prior to the opening of insolvency proceedings, negotiations are held with a purchaser regarding the sale of all or a portion of a company's business or assets, and then the insolvency administrator only effects the sale immediately on, or shortly after, his appointment. Austrian law does not provide special rules on pre-packaged deals, so creditors or third parties must primarily rely on voidance claims (*Anfechtung*), should they disagree with or suspect irregularities in the sales process.

It should be noted that in the case of both pre-packaged deals and ordinary sales processes during the course of an insolvency proceeding the insolvency administrator (as seller) will not be willing to provide extensive representations and warranties, other than for ownership and the non-encumbrance of the assets sold. For M&A deals effected prior to the opening of insolvency proceedings, the general rules applicable to voidance claims (*Anfechtungsklagen*) need to be taken into consideration, but overall such transactions follow the standard procedures for M&A deals.

CREDITORS' ROLE

Generally, creditors, such as banks and other business partners as well as employees, play a key role in all insolvency proceedings in Austria. In practice, creditor unions (*Gläubigerschutzverbände*) representing the interests of creditors or groups of creditors, play an important role in all types of insolvency proceedings in Austria. There are, however, merely two classes of creditors - secured (or preferential) and unsecured creditors.

Unsecured Creditors

Any creditor may file his claim, including for interest, until the opening of insolvency proceedings. The enforcement of a claim requires the filing of the claim (*Forderungsanmeldung*) as an insolvency claim with the insolvency court. The period in which the claim must be filed (*Anmeldefrist*) is published in the official notice.

The insolvency administrator summarizes all claims in a special registration list (*Anmeldeverzeichnis*), which is then submitted to the court. In practice, all claims are first examined between the debtor and the insolvency administrator, and then again formally in the examination hearing in court. The insolvency administrator needs to declare whether he acknowledges or rejects a claim. In case the insolvency administrator acknowledges the claim and no other creditor objects, the claim is deemed to have been acknowledged and the creditor will be satisfied pro rata in the amount of the insolvency debt repayment quota (e.g. 10% or 15% in bankruptcy proceedings).

Secured Creditors

Secured creditors usually have a claim of separation either to receive the asset (*Aussonderungsanspruch*) or its value after its sale (*Absonderungsanspruch*). Such separation claims are – subject to voidance claims (*Anfechtung*) – unaffected by the opening of insolvency proceedings.

Claims of separation are made against the insolvency administrator. Where the insolvency administrator does not release the asset, an action may be brought against the administrator. Claims of separation in order to receive the value of the asset resulting from collateral are claims for preferential satisfaction on certain secured assets in case they are sold by the insolvency administrator, above all pledges on movable and immovable assets.

In bankruptcy proceedings, typically the (encumbered) assets are sold, the amount received then serves as a pool of separate assets (*Sondermasse*) and the creditors of the separation claims are entitled to preferential satisfaction from the sales proceeds.

In restructuring proceedings, typically (encumbered) assets are not sold, but the business is kept running. Secured creditors of the debtor may generally enforce their claims. However, they are barred from doing so prior to the expiry of six months after the restructuring proceedings were opened if such enforcement might endanger the continuation of the debtor‘s business operations.

Set-off of Respective Claims

Generally, a creditor may set off (*aufrechnen*) claims against counter-claims by the debtor after the opening of insolvency proceedings.

Pursuant to Austrian law, set-off is possible if the claims are due and uniform. Under the Austrian Insolvency Act, set-off is not excluded if the claim of the creditor is not due or the claim is not a monetary claim. As all claims of creditors become due and are converted to monetary claims at the time of the opening of insolvency proceedings, the claims are converted in any event. The prerequisites for set-off must exist at the time of the opening of insolvency proceedings. A claim which only comes into existence after the opening of insolvency proceedings can no longer be set off against a claim of the debtor.

Creditors whose claims are secured by collateral need to inform the insolvency administrator and, where the claim is not acknowledged by the administrator, file a lawsuit against the administrator in order to enforce their claims.

Priority Claims

Priority claims (*Masseforderungen*) are defined as claims against the insolvency estate that are satisfied prior to all other insolvency creditors. Priority claims are reduced to certain kinds of claims and include (i) costs of the proceedings, (ii) costs regarding administration, sustainment and supply of the insolvency estate, (iii) claims of the employees for current salary, (iv) claims in connection with the termination of certain kinds of employees, (v) claims resulting from the fulfilment of certain contracts, (vi) claims based on transactions processed by the insolvency administrator, (vii) claims based on unjust enrichment of the insolvency estate, and (viii) compensation for the members of privileged associations for the protection of creditors' rights. Filing priority claims with the insolvency court separately is not required. These claims are filed directly with the insolvency administrator.

Insolvency Claims

As opposed to priority claims, insolvency claims (*Insolvenzforderungen*) have to be filed with the insolvency court by creditors whose claims are unsecured. The period within which their claims must be filed is set forth in the official notice and ends 14 days prior to the examination hearing. More complex insolvency proceedings with numerous creditors usually provide for multiple examination hearings. Claims can also be filed after the filing period has ended; however, in this case an additional fee of approx. EUR 70 has to be paid by the respective creditor.

There also are claims that are excluded from insolvency proceedings (*ausgeschlossene Forderungen*), such as (i) interest regarding insolvency claims that accrues after the opening of the proceedings, (ii) costs incurred by creditors due to their participation in insolvency proceedings, (iii) penalties for criminal acts, and (iv) claims against the debtor based upon services provided free of charge.

Voidance Claims and Claw-back

The Austrian Insolvency Act provides that such transactions that unduly decrease the assets of the debtor prior to the opening of insolvency proceedings may be contested, but only if certain prerequisites are met. In this regard, transactions entered into by the debtor and a third party which discriminate against other creditors may be contested. Formally, the transaction in question would need to be contested by the insolvency administrator (*Insolvenzverwalter*) appointed by the court.

The general principles for contesting transactions are as follows: (i) there is a transaction; (ii) the transaction is entered into prior to the opening of insolvency proceedings; (iii) the transaction unduly decreases the assets of the debtor; and (iv) the transaction discriminates other creditors; provided that (v) a specific contesting provision (*Tatbestand*) of the Austrian Insolvency Act is fulfilled.

The Austrian Insolvency Act provides for the following contesting provisions:

(i) Intent to discriminate (*Benachteiligungsabsicht*): This provision applies in the case of transactions concluded by

the debtor to intentionally discriminate against certain creditors vis-à-vis the others within the past ten years prior to the opening of insolvency proceedings and the other contracting party knew of this intent. If the other contracting party should have known of such intent, the period in which to contest the transaction is reduced to two years. Regarding "familia suspecta" (related persons) a different provision provides for a reversal of the burden of proof;

(ii) Squandering of assets (*Vermögensverschleuderung*): A transaction falls under this provision if the other contracting party must or should have known that the transaction squanders the company's assets and the transaction was entered into within the last year prior to the opening of insolvency proceedings;

(iii) Dispositions free of charge *(Unentgeltliche Verfügungen)*: Transactions that were made free of charge (gifts) and were entered into within the last two years prior to the opening of insolvency proceedings;

(iv) Preferential treatment of creditors (*Gläubigerbegünstigung*): This provision applies in case a transaction discriminates against one creditor vis-à-vis the others, or is intended to give preference to one creditor over the others; and

(v) Knowledge of illiquidity *(Kenntnis der Zahlungsunfähigkeit)*: A transaction (after illiquidity has occurred or after insolvency proceedings have been commenced) may be challenged if the other contracting party knew or was negligent in not knowing of the debtor's illiquidity or the filing of the petition for opening insolvency proceedings, respectively.

All of the above provisions aim to secure the debtor's assets prior to the opening of proceedings. After the opening of insolvency proceedings and the appointment of the insolvency administrator, the insolvency administrator is the debtor's sole representative. This does not apply in case the insolvency proceedings were opened as restructuring proceedings with self-administration of the debtor (*Sanierungsverfahren mit Eigenverwaltung*). In specific circumstances, however, the consent of the insolvency administrator, the court or the meeting of creditors will be required to enter into transactions. Hence, any transaction or disposition of a debtor's asset can only be undertaken by the administrator, and, under certain circumstances, requires the consent of the court or the meeting of creditors.

The claim contesting a transaction must be filed within one year of the opening of insolvency proceedings by claim or objection (*Einrede*) by the insolvency administrator. It must seek a declaration of ineffectiveness of the contested transaction.

EXCURSUS: AUSTRIAN CAPITAL MAINTENANCE RULES

Under Austrian capital maintenance rules, an Austrian company (in the form of a so-called capital company, in particular a limited liability company) must not transfer funds or assets or corporate opportunities to its shareholders or to related parties of its shareholders, unless explicitly permitted under statutory law, such as in case of distribution of dividends covered by the balance sheet profit, a capital decrease or in liquidation proceedings. This "prohibition of repayments of equity" also extends to "hidden" repayments, meaning unlawful financial assistance, i.e. entering into any transaction with a shareholder or a shareholder's related party otherwise than at arm's length.

In practice, if companies violate the capital maintenance rules described above, the insolvency administrator may claim back the transferred funds or benefits from the recipients, in which case only the general limitation periods apply (i.e. usually 30 years). A "short" limitation period of five years only applies where the respective other party did not know of the unlawfulness of the repayment.

MANAGEMENT LIABILITY

Directors of a company are obliged to file for the opening of insolvency proceedings without undue or culpable delay, but not later than 60 days after the insolvency criteria are met pursuant to the Austrian Insolvency Act. The violation of this provision generally triggers the liability of directors vis-à-vis all creditors for damages caused by delay in filing for the opening of insolvency proceedings, since the respective provision of the Austrian Insolvency Act qualifies as a so-called protective law (*Schutzgesetz*) to the benefit of the creditors. The protection only covers existing creditors (*Altgläubiger*); the latter are creditors whose claims existed prior to the opening of insolvency proceedings. Such creditors are entitled to claim for so-called quota damage (*Quotenschaden*), which is defined as the damage resulting from the late application for the opening of an insolvency proceeding. As for new creditors (who only become creditors after the opening of insolvency proceedings), the Austrian Supreme Court has ruled in several cases that only the negative interest (*Vertrauensschaden*) may be reimbursed.

Under the Austrian Act of Companies with Limited Liability (*GmbH-Gesetz*), the managing director of a company is liable vis-à-vis the company if he effects payments after being legally obliged to file for the opening of insolvency proceedings and hence the company is regarded as having suffered from damages resulting from the payment. The company is entitled to claim compensation from the respective managing director.

The Austrian Criminal Code (*Strafgesetzbuch*) also contains provisions on insolvency proceedings. The most important provisions are (i) grossly negligent interference with creditors' interests, (ii) fraudulent intervention with a creditor's claims, (iii) preferential treatment of creditors, and (iv) withholding of social security payments.

RUNNING THE BUSINESS

Role of the Debtor

When opening insolvency proceedings, the debtor generally loses its rights of administration and disposition. The debtor remains the owner of the assets, but the assets form the so-called insolvency estate

to be used primarily to satisfy the claims of creditors. The right to administer and dispose of the assets generally passes to the insolvency administrator.

Any acts taken by the debtor after the opening of insolvency proceedings are legally void vis-à-vis the insolvency creditors.

Role of the Insolvency Administrator

Generally, the insolvency administrator plays the key role in running or disposing of the business of the debtor, respectively. The administrator is called the bankruptcy administrator (*Masseverwalter*) in bankruptcy proceedings or restructuring administrator (*Sanierungsverwalter*) in restructuring proceedings.

In case restructuring proceedings with self-administration are opened, the debtor is generally entitled to keep on running the company and take steps and measures in the ordinary course of business, but the consent of the insolvency administrator and/or insolvency court is required for a number of other (extraordinary) measures. Certain actions – such as contesting transactions prior to the opening of insolvency proceedings – may only be taken by the insolvency administrator, whereas, for example, the discontinuation or closure of the company's business requires the approval of the insolvency court. As long as the company is continuing its business, the company may only be sold as a whole. If the company had been shuttered when insolvency proceedings were opened, its reopening is only admissible by court order and if no decrease in the debt repayment quota to the creditors is to be expected.

In all insolvency proceedings, the directors of the debtor are obliged to support the insolvency administrator as much as possible.

Effect on Work Force and Employees

According to the Austrian Insolvency Act, the insolvency administrator has the rights and obligations of the employer. This is the only direct impact on employees in connection with the opening of insolvency proceedings.

Further, the Austrian Insolvency Act provides special termination rights that make it possible to terminate certain employment contracts. Accordingly, the insolvency administrator has a privileged termination right (*Kündigungsrecht*). On the other hand, employees also have a special right of resignation (*Austrittsrecht*).

If the business is shut down, the insolvency administrator has the right to terminate the employment contract subject to giving notice in accordance with the statutory, collective bargaining agreement or the shorter notice period provided for under contract (but not a contractually agreed notice period that is longer than the one provided by statute). The termination has to be declared within one month of the publication of the court's resolution to shut down the business. In case a report hearing has not taken place and the continuation of the business was not published, the privileged termination still applies.

In case only parts of the company are closed, only those employment contracts that are affected by the shutdown can be terminated.

As regards restructuring proceedings with self-administration, a special termination right may be exercised within the first month of the opening of the restructuring proceedings. Within this time period, the debtor (with the consent of the insolvency administrator) may terminate the employment contracts of employees engaged in business units or parts of business units that have been closed. A further condition is that the maintenance of the corresponding employment contracts would endanger the conclusion of the restructuring plan or the continuation of the business. In contrast, in bankruptcy and restructuring proceedings without self-administration it is only possible to terminate employment contracts after the report hearing.

Effect on Contracts and Termination Rights

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

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, the contracting party may solely file an insolvency claim. On the other hand, if the debtor has already fulfilled its obligations, the other party is obliged to fully perform towards the insolvency estate.

Special provisions apply in case both sides have yet to fulfil each of their obligations in their entirety. In such a case, it is at the insolvency administrator's discretion whether to fulfil the contract (in which case the contracting party is also obliged to fulfil its respective contractual obligations) or to withdraw from the contract. In case of withdrawal, the contracting party may be entitled to claims in tort which would then be classified as insolvency claims.

The insolvency administrator may in principle decide freely as to whether to exercise his right to withdraw from the contract or to fulfil the contract, but upon application of the other contracting party the insolvency court will prescribe a (short) time period within which the insolvency administrator must decide.

An exemption from the general rule is applicable in case the debtor is obliged to provide performance other than in the form of monetary performance and is already in delay. In this case the insolvency administrator is obliged to give a declaration within 5 working days of the request of the contracting party; otherwise withdrawal from the contract is assumed.

Importantly, contractual partners of the debtor may only terminate their contracts in the first six months after the opening of insolvency proceedings for good cause if such termination could endanger the going concern of the debtor's business. In this regard, the deterioration of the debtor's economic situation is not deemed as being a good cause within the meaning of this provision. Where a contract contains

clauses for termination relating to the opening of insolvency proceedings, such clauses are invalid.

FORMAL RESTRUCTURING PROCEEDINGS

Reorganization Act

The Austrian Reorganization Act (*Unternehmensreorganisationsgesetz – "URG"*) contains certain provisions on restructuring a company which finds itself in an early stage of financial distress. In practice, however, the Austrian Reorganization Act is of rather minor significance and restructuring proceedings are typically conducted in accordance with the provisions of the Austrian Insolvency Act and in court, if out-of-court settlement is not successful.

Restructuring Proceedings

Pursuant to the Austrian Insolvency Act, it is generally possible to open restructuring proceedings instead of bankruptcy (i.e. liquidation) proceedings *(Sanierungsverfahren)*. The proceedings can either be conducted by an administrator or by self-administration of the debtor. The main goal of restructuring proceedings is to adopt a restructuring plan (*Sanierungsplan*). In case of self-administration, the debt repayment quota provided for in the restructuring plan must amount to at least 30 % of the total claims registered, and in case of administration by the restructuring administrator, to at least 20 % of the total claims registered. For the acceptance of the restructuring plan, a double absolute majority (50 %) by the creditors is required, both in terms of amount of debt registered and head count.

No Debt/Equity Swap

Austrian law makes no provision for a debt/equity swap in statutory restructuring proceedings. However, it is possible to agree on such a debt/equity swap on a contractual basis out of court, but in practice only if the number of shareholders and creditors is relatively low.

Cram-down of Dissenting Creditors

The resolution on the restructuring plan takes place in the restructuring plan hearing (*Sanierungsplantagsatzung*). Only the insolvency creditors whose claims are determined (*festgestellt*) have a voting right.

In order to adopt a restructuring plan, a double majority must be achieved: (i) more than half of the creditors present have to vote in favour of the restructuring plan and (ii) creditors holding more than 50% of the total amount of all current creditors' claims must consent. The restructuring plan is only adopted if both majorities are achieved; in such a case, dissenting creditors are overruled and have to accept the restructuring plan.

The proposal of the restructuring plan in the course of insolvency proceedings before court does not require the consent of other stakeholders, in particular not of the shareholders.

However, in out-of-court restructuring proceedings or restructuring proceedings with self-administration, the consent of the company's general assembly, i.e. the consent of its shareholders, may and in practice usually will be required.

ENDING OF INSOLVENCY PROCEEDINGS

Both bankruptcy and restructuring proceedings are closed by a formal resolution of the insolvency court. Bankruptcy proceedings are closed following 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 all priority claims are settled. The debtor then has the 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, insolvency proceedings will be reopened.

If it becomes apparent during the insolvency proceedings that the assets are insufficient to cover the costs of the proceedings, the proceedings are terminated due to insufficient assets.

INTERNATIONAL ASPECTS

According to EC Regulation No 848/2015, insolvency proceedings in other Member States of the European Union are recognized in Austria.

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

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Belarus

FORMAL INSOLVENCY PROCEEDINGS AND TESTS FOR INSOLVENCY

Main Insolvency Proceedings

The principal legislation governing insolvency proceedings in Belarus is Act No. 415-Z dated 13 July 2012 "On Economic Insolvency (Bankruptcy)", last amended on 24.10.2016 (the "Belarusian Insolvency Act"). Insolvency proceedings involve several consecutive steps:

(i) discovery of impending illiquidity, pre-insolvency economic improvement. Under the Belarusian Insolvency Act, the debtor is obliged to control its financial condition to prevent insolvency. Moreover, to prevent insolvency the debtor is obliged to take different measures to improve its economic situation before filing any applications with the court and before initiating insolvency proceedings. The debtor's obligation for pre-trial improvement measures can be waived if the debtor provides grounds justifying the inexpediency of such measures (e.g. there is no longer a market for the debtor's products and/or no demand, which consequently means the pre-trial improvement measures would not have any influence on the debtor's financial standing).

(ii) filing an application with the court and initiating insolvency proceedings. If the pre-trial improvement measures that are taken fail, the debtor may file for the opening of insolvency proceedings with the court. In addition, a creditor may also submit such petition provided that certain criteria under the insolvency test are met. Based on such application, the court initiates proceedings and appoints a temporary insolvency administrator.

(iii) "protection period" (*защитный период*). The insolvency proceedings start with the "protection period", which is aimed at preventing the debtor's financial collapse and improving its economic situation under external control. In the course of this "protection period", the rights of the debtor's management bodies are partly restricted and are under the control of the temporary insolvency administrator. For example, no dividends may be paid and all transactions are made only with the written consent of the administrator. Upon expiry of this period, the court reassesses the financial and economic condition of the debtor. If its situation has not improved the insolvency proceedings are continued.

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

(v) "reorganisation" (*санация*). If the permanent insolvency administrator can improve the financial condition of the debtor, it must draft a "reorganisation" plan and submit it to the creditors' meeting for approval. Otherwise liquidation proceedings begin.

(vi) liquidation proceedings (if it is impossible to improve the economic situation of the insolvent company). In case of liquidation proceedings, the permanent insolvency administrator drafts a liquidation plan which is submitted to the creditors' meeting for approval. In the course of the liquidation proceedings, the property of the debtor is sold, creditors receive monetary funds in proportion to their claims and according to their priority and CEOs and/or shareholders may face subsidiary liability if found guilty of causing or contributing to the debtor's insolvency. Upon completion of this step, the debtor is liquidated.

Insolvency tests

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

First, the debtor may submit an application to the court if its illiquidity has become permanent or will soon become permanent. The criteria for illiquidity are defined by Resolution No. 1672 of the Council of Ministers of the Republic of Belarus dated 12 December 2011 (as amended) and must be calculated based on the debtor's accounting books and records.

Second, the debtor must submit an application to the court if (i) payment of a debt to one creditor makes it impossible to fulfil obligations vis-à-vis other creditors, (ii) the shareholders' meeting (or the sole shareholder) decides to file a claim or (iii) the value of the debtor's property is not sufficient to pay all creditors' claims in the course of liquidation.

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

PROCEDURAL ASPECTS

In Belarus, an application for the initiation of insolvency proceedings may be filed either by the debtor itself or by any creditor. Moreover, it may also be submitted by a public attorney, an employees' representative or (if the debtor is a state-owned company or if the Republic of Belarus is a creditor) by the Department for Reorganisation and Bankruptcy of the Ministry of Economics of the Republic of Belarus.

Upon receipt of the application, the court adopts a resolution on initiating the insolvency proceedings and appoints the temporary insolvency administrator (usually, the candidate is proposed by the person submitting the application) for the term of the initial "protection period". From this moment, all other court and executive proceedings against the debtor are suspended and the temporary insolvency administrator informs banks, tax authorities and other public authorities of the beginning of the insolvency proceedings. In addition, information on the beginning of the insolvency proceedings is also published in the media and in the Unified State Register on Bankruptcy (the "USRB").

If the measures taken in the course of the "protection period" appear insufficient to prevent insolvency, the temporary insolvency administrator files a respective report with the court. The court then issues a resolution on the appointment of a permanent insolvency administrator and the initiation of insolvency proceedings. The resolution and information on the administrator are published in the media and the USRB. Within two months of publication, creditors have the right to file their claims with the permanent insolvency administrator who gathers together all claims and compiles a list of creditors. After this, but no later than 75 days from the day of the adoption of the resolution on initiating insolvency proceedings, the first creditors' meeting is held. In addition, creditors are required to appoint a creditors' committee which is entitled to convene creditors' meetings and approve material transactions of the debtor.

All other important steps adopted by the permanent insolvency administrator (including the report on completion of "reorganisation") have to be approved by the creditors' meeting and the court.

The initiation of insolvency proceedings is not expensive in Belarus. The relevant court fees amount to 10 basic units (Note: one basic unit is the specific amount in Belarusian rubles determined by the Belarusian Government for the purpose of calculating the amount of duties, fines, rent payments, etc.; as of 1 January 2019, 1 basic unit is equal to BYN 25.5 or approx. EUR 10.5). All other costs (including remuneration of the insolvency administrator) arising in the course of the proceedings are paid at the expense of the debtor's property prior to the reimbursement of creditors' claims.

PRE-INSOLVENCY MEASURES & RE-FINANCING

As mentioned above, the debtor is obliged to control its financial state to prevent insolvency and take different measures to improve its efficiency. The Belarusian Insolvency Act provides for a list of such measures. For example, the debtor is entitled to restructure itself or restructure its debts, to attract investments, to receive credits and loans as well as to take any other measure that does not contradict the law.

It should be noted that fulfillment of pre-insolvency measures is not a right but an obligation of the debtor. Thus, the court may even adopt a resolution forcing the debtor to take such measures.

DISTRESSED M&A

In practice, distressed M&A deals are pos-

sible in Belarus if an amicable agreement is reached between the creditors' meeting and the debtor represented by the insolvency administrator. In that case, creditors' claims are exchanged for shares in the debtor's statutory fund, provided that the debtor is an open joint stock company. Moreover, this exchange may only take place if the debtor has reimbursed all claims of (i) individuals suffering health damage caused by the debtor and (ii) employees for all unpaid salaries and social security contributions.

In all other cases, the insolvency administrator – upon approval of the creditors' meeting – may sell part of the debtor's property as a complex of assets as a going concern to reimburse creditors' claims. However, such sale is impossible during the "protection period".

CREDITORS' ROLE

Generally, creditors, such as banks and other business partners as well as employees, play a key role in all insolvency proceedings in Belarus. Creditors are represented by the creditors' meeting and the creditors' committee. The creditors' meeting approves the most significant decisions of the insolvency administrator, whereas the creditors' committee only adopts resolutions on the convocation of the creditors' meeting and approves material transactions of the debtor.

Depending on the priority of their claims, all creditors are divided into five categories.

Categories of Creditors

The first category of creditors are individuals who have suffered damage to their life and/or health caused by the debtor. They receive all their periodic payments in one installment.

The Belarusian Insolvency Act defines the debtor's employees as the second category of creditors. They have the right to receive their severance payment and all outstanding salaries. Moreover, they have the right to demand from the debtor payment of all relevant social security contributions that are usually paid by the employer.

Tax authorities, customs authorities and other public bodies entitled to collect taxes and other relevant fees are considered the third category of creditors. However, if a public body submits a claim that does not arise from its public functions (for example, the debtor was a party to a commercial contract with it), such claims are included in the fourth or fifth category (depending on their essence).

Creditors that do not fall into the previous categories, but whose claims are secured by a pledge, are considered as belonging to the fourth category. Nevertheless, they are not entitled to take the debtor's pledged property in possession. On the contrary, such pledged property forms part of the insolvency estate. However, fourth category creditors have the right to receive reimbursement for their claims prior to fifth category creditors, but only after the claims of first, second and third category creditors have been reimbursed in full.

Claims of all other creditors are included in the fifth category.

Reimbursement of Creditors' Claims

As a rule, in Belarus debtor's monetary funds (as well as funds received in the course of selling the debtor's property) are distributed among the creditors. First, all monetary funds are used to reimburse in full the claims of first category creditors. Then, the remaining sum is used to reimburse in full the claims of second category creditors and so on. Creditors of the subsequent category may not receive any installments until all creditors of the previous category receive reimbursement of their claims in full. If the amount of monetary funds is insufficient to reimburse the claims of all creditors of any given category, the remaining money is distributed among them in proportion to their claims.

In practice, some creditors may be simultaneously considered creditors of two or more categories. In that case, each claim – depending on its legal basis – is reimbursed in the course of the satisfaction of claims of the relevant category of creditors.

Finally, if a creditor fails to submit a claim to the insolvency administrator within the period established by law, it has the right to satisfaction of the claim (irrespective of the legal basis of such claim) only upon satisfaction of all other creditors' claims.

Set-off of Respective Claims

In Belarus, no set-off of debtor's claims against creditors' claims is possible upon expiry of the "protection period" and once insolvency proceedings have begun unless the liquidation or "reorganisation" plan approved by the court states otherwise.

Moreover, as insolvency proceedings in Belarus aim to satisfy the claims of all creditors, the insolvency administrator has the right to file claims with the court requesting due payment of all installments by a creditor even if such creditor could hypothetically set off such claim. The received monetary funds are then included in the insolvency estate and used for reimbursement of the claims of all creditors.

Priority Claims

The Belarusian Insolvency Act defines that certain claims against the insolvency estate have priority over ordinary creditors' claims and must be satisfied prior to all other insolvency creditors. Priority claims are certain sorts of claims that have arisen after insolvency proceedings were commenced and include (i) reimbursement of damage to individuals' health and life, (ii) payment of salaries and severance payments to employees that were working for the debtor during the insolvency proceedings, (iii) payment of taxes and other state fees including social security contributions paid by the employer, (iv) costs of the proceedings, (v) costs of the insolvency administration, and (vi) costs of publication of information on the insolvency proceedings.

Insolvency Claims

As opposed to priority claims, insolvency claims have to be filed with the insolvency administrator in the course of insolvency proceedings. These claims must be filed

within two months of the date of publication of information on the termination of the "protection period" and the beginning of the bankruptcy proceedings in mass media. The insolvency administrator examines the claims and includes the creditors on the relevant list. Any resolution of the insolvency administrator on inclusion of a creditor on such a list or on rejection of a claim may be retried on merits by the court upon application of that creditor or other creditors requesting rejection of the claim.

Any claim submitted after termination of the two month period is also included on the list. However, such a claim will be satisfied only upon satisfaction of all other creditors' claims. Moreover, interest accrued on the amounts of insolvency claims submitted after the opening of the proceedings are fully excluded from the scope of the proceedings.

VOIDANCE TRANSACTIONS AND CLAW-BACK

The Belarusian Insolvency Act provides that transactions which unreasonably decrease the assets of the debtor may be contested. Transactions in question would have to be contested by the insolvency administrator in court.

The following types of transactions may be contested according to the Belarusian Insolvency Act:

(i) transactions concluded by the debtor to intentionally discriminate against certain creditors vis-à-vis the others within the last six months prior to the opening of insolvency proceedings;

(ii) gifts granted by the debtor within the last six months prior to the opening of insolvency proceedings, directly or indirectly resulting in the debtor's financial distress and regardless of the intent of the contracting parties;

(iii) debts paid by the debtor within the last six months prior to the opening of insolvency proceedings, if the debt was paid under circumstances contradicting the law or the underlying contract or if the amount paid results in the debtor's financial distress and is not an ordinary payment under routine circumstances;

(iv) pledge agreements concluded by the debtor within the last six months prior to the opening of insolvency proceedings;

(v) transactions concluded by the debtor to intentionally impair the creditors' positions within the last year prior to the opening of insolvency proceedings, if the other contracting party was aware of this intent;

(vi) transactions contradicting criminal law provisions and resulting in intentional distress for the debtor which are concluded within three years prior to the opening of insolvency proceedings, if the other contracting party was aware of this intent;

(vii) gifts granted by the debtor within the last year prior to the opening of insolvency proceedings, unless the parties prove that upon making the gift the debtor still had sufficient funds to satisfy claims of all relevant creditors;

(viii) debts paid by the debtor to a contracting party that was affiliated with the debtor (i.e. parent companies and subsidiaries, members of debtor's governing bodies, chief accountant, relatives of chief accountant and members of debtor's management bodies, hereinafter "**Affiliate**") within the last year prior to the opening of insolvency proceedings unless the parties prove that such payment did not result in the debtor's financial distress;

(ix) pledge agreements concluded by the debtor with an Affiliate within the last year prior to the opening of insolvency proceedings, unless the parties prove that such payment did not result in the debtor's financial distress;

(x) severance payments and salaries paid by the debtor within the last eighteen months prior to the opening of insolvency proceedings, if paid under circumstances contradicting the law or the underlying contract;

(xi) transactions concluded by the debtor with an Affiliate to intentionally impair the creditors' positions within three years prior to the opening of insolvency proceedings, if the Affiliate was aware of this intent;

(xii) gifts granted by the debtor to an Affiliate within three years prior to the opening of insolvency proceedings, unless the parties prove that upon making a gift the debtor still had sufficient funds to satisfy claims of all relevant creditors.

Termination of these transactions aims at securing the debtor's assets prior to the opening of proceedings. After the initiation of insolvency proceedings and the appointment of the insolvency administrator, the insolvency administrator is the sole representative of the debtor (with the exception of the "protection period").

In the course of the "protection period", only the temporary insolvency administrator may approve all debtor's transactions, while the debtor's management bodies resolve on all other issues. However, if the debtor's CEO prevents the insolvency administrator from fulfilling his duties, the temporary insolvency administrator may file an application with the court for dismissal of such CEO from his position.

The claims contesting a transaction can be filed within the duration of all insolvency proceedings both by the insolvency administrator and by any creditor.

BELARUS

MANAGEMENT LIABILITY

Filing an application for opening insolvency proceedings without undue or culpable delay is an obligation of the debtor's governing bodies. In case of failure to file such application within one month upon discovery of impending illiquidity, the debtor's officials who are found guilty of such failure are jointly and severally liable for all unsettled creditors' claims. The permanent insolvency administrator may bring a relevant action to the court after initiating insolvency proceedings if the debtor's assets are not sufficient to settle

all claims.

Moreover, if the debtor's insolvency was caused by its shareholders, members of its governing bodies or other individuals entitled to determine the course of the debtor's activity, such persons are jointly and severally liable for unsettled creditors' claims. Any creditor, public attorney or governmental body may bring an action against such an individual within ten years of the date of initiating the insolvency proceedings. Termination of shareholdings in a company or the granting of discharge to its governing bodies before initiation of the insolvency proceedings does not preclude the above-mentioned liability.

The Code of the Republic of Belarus No. 194-Z dated 21.04.2003 "On Administrative Violations" also contains provisions with respect to insolvency proceedings. The most important provisions are (i) culpable negligence resulting in the company's insolvency; (ii) concealment, sale or destruction of property in order to impede satisfaction of creditors' claims; (iii) failure to file an application on insolvency by the debtor with the court; (iv) deliberate filing of an application on insolvency by the creditor containing false information; (v) proposition of persons for the position of insolvency administrators that do not satisfy legal requirements; (vi) illegal influence over the insolvency administrator; (vii) non-fulfillment of duties by the insolvency administrator; and (viii) other culpable non-fulfillment of legal requirements.

In addition, the Criminal Code of the Republic of Belarus No. 275-Z dated 09.07.1999 envisages liability in the following cases: (i) false insolvency; (ii) concealment of insolvency; and (iii) deliberate insolvency.

RUNNING THE BUSINESS

Role of the Debtor

The role of the debtor and its rights to administer its property vary in the course of insolvency proceedings. During the "protection period", the debtor may manage its assets and enter into any transaction, but only upon written approval of the temporary insolvency administrator.

However, upon the commencement of bankruptcy proceedings, the debtor loses its administration and disposition rights. All assets are included in the so-called insolvency estate that are primarily used to satisfy creditors. The right to administer and dispose over the assets generally passes to the insolvency administrator.

Role of the Insolvency Administrator

Generally, the insolvency administrator is the key figure running the business of the debtor. There are two types of insolvency administrators in Belarus. The temporary insolvency administrator controls the debtor's activity in the course of the "protection period". If the measures undertaken in the course of this period fail and the debtor is still in financial distress, a permanent insolvency administrator is appointed by the court.

The temporary insolvency administrator is appointed by the court and controls the activity of the debtor, but does not define it. However, he is entitled to approve any transaction or payment of the debtor. Without such approval, the transaction could be found to be void. Nevertheless, the temporary insolvency administrator can gain full control over the debtor if the court finds the debtor's CEO guilty of hampering the insolvency proceedings.

If the measures undertaken in the course of the "protection period" fail to improve the debtor's financial situation, the court begins the insolvency proceedings and appoints the permanent insolvency administrator, who has full rights to manage the debtor and dispose of its assets instead of all management bodies of the debtor (including CEOs, supervisory boards, shareholders' meetings, etc.).

Effect on Work Force and Employees

Under the Belarusian Insolvency Act, the insolvency administrator is required to ensure contracts with all of the debtor's employees are fulfilled. The insolvency administrator amends and terminates employment contracts and collective bargaining agreements on behalf of the debtor. However, he may hire new employees or enter into new employment contracts or collective bargaining agreements only upon the prior consent of the creditors' meeting (or the creditors' committee).

In any case, upon the commencement of the insolvency proceedings, the insolvency administrator should inform the debtor's employees of their pending layoff no later than two months in advance. In that case, every employee is entitled to receive a severance payment amounting to his/her three-month average salary.

To ensure the payment of all salaries and severance payments, employees elect a representative. Only such person has the right to participate in the insolvency proceedings as creditor acting on behalf of all employees. Employees have a preemptive right of satisfaction of their claims. The employees' claims are satisfied in full before all other creditors' claims (except for claims of individuals that have suffered damage to their life and health caused by the debtor).

Effect on Contracts and Termination Rights

As a rule, in the course of the "protection period" the debtor should fulfil all its rights and obligations under all contracts. However, upon initiating the insolvency proceedings, the debtor suspends all payments to the creditors under all contracts. Creditors may only file an insolvency claim.

On the other hand, any contracting party should fulfil all its due obligations vis-à-vis the debtor, both monetary and in kind. The insolvency administrator – on behalf of the debtor – may request enforcement of a contract in court.

Special provisions apply in case both sides have not yet fulfilled their respective obligations partly or in full. In such case, the insolvency administrator may rescind the contract if (i) fulfillment of the contract will lead to damage exceeding damage arising in the course of fulfillment of similar contracts, or (ii) the contract is

concluded for more than one year and the debtor receives any positive results only upon expiration of this period or more, or (iii) fulfilment of the contract will lead to additional damage, or (iv) there are other circumstances that prevent the debtor from overcoming the insolvency.

If any of the aforementioned criteria is met, the insolvency administrator may rescind the contract by giving prior written notice to the contracting party within the period specified by the court. The contracting party has the right to compensation for real damage.

FORMAL RESTRUCTURING PROCEEDINGS

Restructuring Proceeding

The Belarusian Insolvency Act provides for the possibility to open restructuring proceedings instead of bankruptcy (i.e. liquidation) proceedings. This can be done via an amicable agreement concluded between the creditors and the debtor represented by the permanent insolvency administrator, but only upon reimbursement of all claims of (i) individuals who have suffered health damage caused by the debtor and (ii) employees for all unpaid salaries and social security contributions.

Such restructuring can be implemented in different forms, for example, by delay of debtor's payments, assignment of debtor's rights or obligations under contracts, fulfilment of debtor's obligations by a third party, novation, waiving of debt, etc.

In any case, creditors and the permanent insolvency administrator are free to define the amount of claims to be reimbursed in the course of such restructuring proceedings. Thus, the amicable agreement may provide, for example, repayment ranging from 1% to 100% of all claims.

Debt Equity Swap

In case the debtor is an open joint stock company, the amicable agreement may provide for reimbursement of creditors' claims by means of exchange for shares in the debtor. As described above, such exchange may take place only upon payment of all claims of (i) individuals that have suffered health damage caused by the debtor and (ii) employees for all unpaid salaries and social security contributions. Thus, such creditors do not participate in the exchange and have no rights to receive shares.

Cram-down of Amicable Agreement

The creditors' resolution on entering into an amicable agreement is adopted in the creditors' meeting. The resolution may be adopted in case the following criteria are met simultaneously: (i) more than 50% of all creditors have voted in favour of an amicable agreement; and (ii) all creditors whose claims are secured by a pledge have also voted in favour. The resolution on entering into an amicable agreement is adopted by the permanent insolvency administrator.

The executed amicable agreement that provides for the adoption of a restructuring plan is approved by the court. However, the court may reject the agreement if it contradicts the law or violates the rights of third parties. Nevertheless, this does not prevent parties from entering into a new amicable agreement later on.

ENDING OF INSOLVENCY PROCEEDINGS

Insolvency proceedings are closed by a formal resolution of the court. Irrespective of the status of the proceedings, they are closed if any of the following criteria is met: (i) the insolvency has been prevented in the course of "reorganisation" (ii) all parties to the insolvency proceedings have entered into an amicable agreement; (iii) all creditors' claims have been satisfied; (iv) the amount of debtor's assets is insufficient for satisfaction of all creditors' claims and the insolvency administrator has distributed them among the creditors of the relevant category.

INTERNATIONAL ASPECTS

As Belarus is not a member of the European Union, no relevant international agreements apply in the course of insolvency proceedings in Belarus.

Currently, no international act on insolvency proceedings has been adopted by the Eurasian Economic Union to which Belarus is a party.

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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 funds available to the creditors.

A restructuring proceeding shall be opened on petition of 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 terminate 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 being illiquid if the debtor is unable to meet a due money obligation 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 due debts, as well as in case the debtor's annual financial statements for the last three years have not been filed in 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 creditors cover the initial costs.

PROCEDURAL ASPECTS

A request for opening of an insolvency procedure can be filed by the debtor, by a creditor, by the National Revenue Agency in case of obligations vis-à-vis the state/municipalities, or by the Labour Inspectorate Agency in 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 initiation of insolvency proceedings is made public by announcement of the

court resolution in the commercial registry.

The court resolution for the initiation of insolvency proceedings declares the debtor's illiquidity/over-indebtedness and determines the proceeding's initial date. By means of this resolution the court further appoints an interim insolvency administrator, imposes security measures and schedules the date of the creditor's first meeting.

At the first meeting the creditors review the report of the interim administrator, appoint a permanent insolvency administrator (to be further confirmed by the court) and elect a creditor's committee.

After the initiation of the 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 initiation 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 performed distribution of funds.

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

The initiation 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 due, payments to the employees in case 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 initiation 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 of the insolvency proceedings, the debtor and all creditors with accepted claims can execute a settlement agreement. In such 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 proceeding 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 prove new 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)* representing the interests of creditors or groups of creditors, 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 indicate the grounds and amount of its claim, and whether the claim is secured.

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 resolves 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 debtor's (who has submitted an objection against an acknowledged claim) or a creditor's (who has submitted an objection against other creditor's acknowledged claims or against its own unacknowledged claim) objection 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 in order to cover the pending claims in case they will be respected.

Secured Creditors

Secured creditors are entitled to receive the value of the sold assets. 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 a bankruptcy proceeding the assets serving as collateral are being sold and the amount received serves for preferential satisfaction of respective secured creditors.

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

Set-off of Respective Claims

Generally, a creditor may set-off *(прихващане)* its claims against counter-claims 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 have been 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 opening 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 received 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 proceeding;

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

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

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

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

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

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

(l) Expenses made by the 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 one year 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 has occurred prior to the opening of the 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 the insolvency proceedings; in case 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 the insolvency proceedings; in case 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; in case 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 opening of the insolvency proceedings, if they relate to:

- dispositions free of charge, with the exception of ordinary donations *(обичайни дарения),* which were performed to the benefit of a party related to the debtor, executed within three years prior to the date of the request for the opening of the insolvency proceedings.
- dispositions free of charge executed within two years prior to the date of the request for the opening of the 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 collaterals (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 collaterals 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 through which creditors are damaged, 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 after occurrence of illiquidity/over-indebtedness. The violation of this provision triggers 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 to primarily satisfy the creditors. The right to administer and dispose over the assets generally passes over 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 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 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 both, 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. In case only parts of the company are closed, solely those employment contracts can be terminated that are affected by the shutdown.

In 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.

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, it should generally qualify as an insolvency creditor. In case 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.

In case both sides have not yet fulfilled each of their obligations the insolvency administrator is entitled to terminate the contract by sending a 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 rather terminate it. Should there be no response, the contract shall be considered being 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 Proceeding

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 one month 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, the court may also grant a specific voting right to a creditor whose claim is subject to pending litigation.

In order to adopt a restructuring plan, a double majority must be achieved: (i) 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 proceeding will be reopened.

INTERNATIONAL ASPECTS

According to the EC Regulation No. 2015/848, insolvency proceedings in other Member States of the European Union are being recognized in Bulgaria.

In case the EC Regulation is not applicable, the Bulgarian Commerce Act contains provisions referring to the recognition of proceedings in third countries. Foreign court ruling of bankruptcy is generally recognized in Bulgaria in case it 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 TESTS FOR INSOLVENCY

Introduction

In the Czech Republic, insolvency proceedings are governed by Act No. 182/2006 Coll. on insolvency proceedings, as amended ("*Insolvency Act*"). The purpose of insolvency proceedings is to overcome the insolvency (or impending insolvency) of the debtor by one of the lawfully prescribed means in a way that ensures fair, proportional and highest possible satisfaction of the creditors. Furthermore, 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 has to have (i) more than one creditor, (ii) more than one outstanding financial liability which is already overdue for more than 30 days and (iii) the debtor must be unable to pay these debts. In case of entrepreneurs (legal entities or natural persons), insolvency can also occur in the form of over-indebtedness. Such insolvency pattern is fulfilled if the debtor (i) has more than one creditor and (ii) the total of its liabilities exceeds the value of its assets.

However, insolvency cannot be declared in case the debtor has only 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 won't be able to duly and timely fulfill 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, in case insolvency is only imminent, the petition can only be filed by the debtor.

In order 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 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.

If the petition is filed by the debtor, the debtor is 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, 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.

In case 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. The petition has to be filed by using a form that can be downloaded from the homepage of the Ministry of Justice of the Czech Republic. If more creditors have receivables that are overdue, 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 of Insolvency Petition

Once the insolvency petition has been filed and delivered to the competent court (which is assigned based on the residence 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. act that would constitute major changes in the composition, use or determination of such assets or shall lead to significant reduction 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. In other words, they are generally barred from filing an action against the debtor, enforcing a court ruling regarding their claim, and claiming or acquiring the right of satisfaction by secured receivables, nor can the creditors' claims be settled by wage deductions of the debtor (in case of a natural person), if the creditor is entitled to these deductions on the basis of an agreement with the debtor.

MORATORIUM

A moratorium is a specific legal instrument that can only be used by entrepreneurs as debtors in order to prevent the debtor from insolvency for a certain time period. It can only be declared by the court on the basis of a petition filed by the debtor, usually together with his insolvency petition. However, a court's decision on a moratorium can only be made in case the debtor's respective request is submitted within a certain time period. The debtor can only file the proposal on a moratorium within 7 days following its insolvency petition; in case the petition was filed by a creditor, 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 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 of time, the maximum period being 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 of 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 abovementioned criteria. These debts can then be paid prior to all other overdue 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.

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 moratorium; 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 to represent their interests, so called creditors' bodies are being 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' institutions for itself. In case the creditors' committee or a creditors' representative have not been appointed, the creditors' meeting may act in their capacities as well.

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

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 that shall be discussed has to be provided to the creditors beforehand. Matters not included in the list can only be heard if all creditors are being represented at the meeting.

Creditors' Committee

The creditors' committee generally takes the role of the creditors' bodies with the exception of 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. In case the debtor has more than 50 registered creditors, the establishment of the creditors' committee is even mandatory.

The main function of the creditors' committee is the supervision of 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, 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 would have.

Different Types of Claims

In the context of insolvency proceedings several types of claims must be distinguished. On the basis of these types of claims, the creditors can be divided into several groups.

The most common receivables are those which were established before the initiation of the insolvency proceedings of the debtor, e.g. on the basis of a purchase agreement. Creditors can claim their receivables by filing an application for the insolvency proceedings in which they specify their receivables and the title out of which each arose. However, they can only submit their application during a certain time period which is set forth in the court's decision on insolvency (usually 30 days or two months from the day the decision on insolvency was issued).

Another very common type of receivables is 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 anytime during the insolvency proceedings.

Furthermore, there are claims against the estate of the debtor (pohledávky za majetkovou podstatou). These debts can be paid in full 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, duties, etc.); and

c) receivables that are equivalent to claims against the estate (labor claims of the debtor's employees, creditors' claims on 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 as well as sanctions affecting the debtor's assets.

Review of Applications

Applications filed by the creditors are first subjected to an examination by the insolvency administrator. They are reviewed on the basis of the submitted documents and accounts of the debtor 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 out of which it arose, the alleged amount or the order of the claim).

The insolvency administrator shall then draw up a list of all submitted claims in which he should expressly state which debts are denied. Secured creditors shall be listed separately. This list shall 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 registered receivables via an application until the end of the review hearing or until the moment their claims are identified or effectively denied via decision of the court in interlocutory disputes.

If a receivable is denied by the insolvency administrator, the debtor or another creditor, the concerned creditor is no longer allowed to vote at the creditors' meeting as to the amount that was denied. If the creditor disagrees with the denial, it can object via interlocutory 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 order of filed claims as well as disputes on the exclusion of things, rights, claims or other assets from the estate, disputes on the settlement of the joint property of the debtor and its spouse, etc. The final judgment issued in interlocutory proceedings is binding for all parties and has to be regarded in the insolvency proceedings.

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 insolvency administrator for this proceeding, (ii) a notice for the creditors to register their claims against debtor, (iii)

information on where and when the creditors' meeting will take place and (iv) a notice for the debtor to submit a list of its assets and liabilities together with a list of its creditors and debtors. 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. Hence, the debtor cannot dispose over its property. With the court's decision on insolvency of the debtor, the authorisation to dispose over the property of the debtor is transferred to the insolvency administrator. The most important aspect of this decision is that all court and arbitration disputes concerning creditors´ claims are suspended. All receivables have to be characterised in an application filed by the creditor and shall be submitted to the insolvency court.

DIFFERENT PROCEEDINGS RELATED TO INSOLVENCY

In the Czech Republic, the Insolvency Court can decide to solve insolvency of a debtor by 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 bankrupt'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 on resolution of insolvency of the debtor in case the insolvency petitioner proposes so (either the debtor himself 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).

In case the debtor is a natural person, a non-entrepreneur, or where the annual turnover of the debtor does not exceed 2 million CZK (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 rather new and 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 gradual fulfillment of their claims while maintaining the business of the debtor. 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.

In order to use reorganisation as the method of resolving insolvency, several legal criteria must be met. Only the debtor and registered creditors are entitled to file a motion for a decision on the permission of reorganisation with the court. Reorganisation requires the debtor to carry on its business activities for profit. Further, the debtor has to have either at least 50 employees or a turnover of at least CZK 50 million (approx. EUR 1,852,000) for the last accounting period. The requirements relating to a certain turnover or the number of employees are neglected if the debtor submits a reorganisation plan which has been approved by at least half of all secured creditors and half of all unsecured creditors or, alternatively, if the plan has been approved by at least 90 % of the creditors present at the creditors' meeting (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 approved by the Insolvency Court. Its main aim is to organise the relationships between the debtor and its creditors. It includes the determination of the way of reorganisation, the identification of possible measures to implement the reorganisation plan, particularly in terms of dealing with the assets, information on whether the debtor's business or part of it is going to continue its operations and, if so, under which conditions this shall be done, information about the anticipated amount of obligations vis-à-vis creditors after the end of reorganisation and other information stated in the Insolvency Act.

Reorganisation may be terminated in three different ways: satisfaction of the reorganisation plan, transformation into bankruptcy or cancellation of the decision on the 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 institute under which sociological aspects of debts are put before their economical aspects. It is supposed to enable the debtor to a "fresh start" and at the same time motivate it to actively repay its debts in an amount of at least 30 % (in case of unsecured creditors).

The institute of 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 persons or for the coverage of debts which arose out of business activities of the debtor. 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 out of debtor's business activi-

ties 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 expected income of the debtor in the next 5 years;
- information on the debtor's income in the last three years;
- proposal on how Debt Relief shall 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 and obligations;
- documentation on the income of the debtor during the last three years;
- written consent of unsecured creditors stating that less than 30 % of their claims will be satisfied.

The Insolvency Court will not allow to solve insolvency via Debt Relief if:

- the debtor pursues a dishonest intent;
- the debtor is proven to be an unreliable person;
- the amount of debt that would be covered in case of Debt Relief would be less than 30 %.

In case the Insolvency Court denies the suggested Debt Relief, it shall decide to solve the insolvency of the debtor by bankruptcy proceedings. In all other cases, the Insolvency Court will permit the Debt Relief and decide on the manner by means of which it is to be carried out. There are two possibilities: (i) sale of all assets of the debtor or (ii) creating a repayment schedule.

The sale of the debtor's assets solely relates to its current assets. Future income or income which is gained during insolvency proceedings but after the approval of Debt Relief is not affected.

The repayment schedule, however, also affects the debtor's future assets. For a period of five years, the debtor must give its creditors part of its income. As for that, the debtor is obligated to work and if it is unemployed, it must immediately and actively seek a suitable occupation. Twice a year the debtor must provide the Insolvency Court with a report on its income and shall honestly declare all its income during this period to the insolvency administrator.

In general, 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.

INTERNATIONAL ASPECTS

On the basis of Council Regulation EC No. 848/2015, insolvency proceedings in any other Member state of the EU 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 EU) are recognized in the Czech Republic on a reciprocal basis.

CZECH REPUBLIC

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Hungary

FORMAL INSOLVENCY PROCEEDINGS

Introduction

The Hungarian Restructuring and Insolvency Act (*Csődtörvény, "Cstv."*) regulates two types of insolvency proceedings: (i) the so-called restructuring proceeding (*csődeljárás*) with the general aim of keeping the business of the debtor (*adós*) running during and after the proceeding (without liquidating the debtor) by means of concluding an agreement with the creditors (*hitelezők*) on the settlement of the debts; and (ii) the compulsory liquidation proceeding (*felszámolási eljárás*) with the aim of dissolving the debtor without a legal successor, and selling and distributing all of its assets to the creditors.

A restructuring proceeding 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 a restructuring proceeding, 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 (*jóhiszemű jogyakorlás elve*).

If a restructuring proceeding fails, it is transformed by a court order into a compulsory liquidation proceeding. The main goal of the liquidation proceeding is to terminate the debtor and to distribute all of its available assets to the creditors.

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, there are no hybrid court-administered restructuring or insolvency proceedings, such as the German "Schutzschirmverfahren" (i.e. a special pre-insolvency, court administered proceeding) available.

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").

COMPULSORY LIQUIDATION PROCEEDINGS

Tests for Insolvency

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

The cases in which a debtor is considered being 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 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 given by the creditor. The court will also establish the debtor's insolvency if the debt collection procedure was unsuccessful or if the debtor failed to pay its debts within 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 proceeding in order for it to be opened. However, in this case the compulsory liquidation procedure must be conducted as a simplified compulsory liquidation procedure (*egyszerűsített felszámolási eljárás*), in which the assets of the debtor are directly distributed to the creditors in an expedited procedure.

PROCEDURAL ASPECTS

A compulsory liquidation procedure can either be initiated by the debtor or by a creditor. Further, also other persons or entities such as the liquidator in a voluntary liquidation (*végelszámoló*) or the Court *of Registration (cégbíróság) may petition* for the opening of compulsory insolvency proceedings. A creditor can only request the opening of a compulsory liquidation proceeding if the amount of its (due) claim (excluding interest and taxes) exceeds HUF 200,000 (approx. EUR 615).

The effective date of a liquidation procedure is the day on which the court's final decision on commencing the liquidation procedure is published in the Company Gazette (*Cégközlöny*). The proceeding is conducted by a liquidator (*called 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 court using a random electronic selection process.

After a modification of the Restructuring and Insolvency Act in 2018, the courts have the option of terminating a compulsory liquidation without the consent of the creditor that initiated it if the debtor confirms before the start date of the compulsory liquidation procedure that it has paid its debt to the debtor. Prior to the modification, the creditor's consent was required for the termination of the procedure even if the debtor paid its debt, which exposed the system to abuses.

The Company Gazette will publish the most important information regarding the liquidation procedure: (i) the name of the court conducting the liquidation procedure, (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 to pay the registration fee within 40 days after the publication of the liquidation order in the Company Gazette. The fee currently amounts to 1% of the filed claim but is limited with a maximum of HUF 200,000 (approx. EUR 615). 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 after the opening of the procedure, 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.

Claims involving debts that have incurred during the liquidation procedure must be announced within 40 days from the date when they become due and payable.

The National Tax Authority, the relevant local office of the Employment Agency, the competent Land Registry and the Court of Registration will be informed about the opening of the insolvency proceeding. Cash services providers (such as banks) and companies that keep securities accounts are required to inform the liquidator within 15 days after 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 later on.

The first meeting of the creditors takes place within 75 days after the opening of the insolvency proceeding. 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*). Further, 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. Hungarian law does not provide special rules on deals in pre-insolvency scenarios, so that creditors or third parties must primarily rely on voidance claims, in case they disagree with or suspect irregularities in the sales process.

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 to 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 after the publication of the order on the proceeding in the Company Gazette. The enforcement of a claim requires the filing of the claim *(hitelezői igénybejelentés)* as an insolvency claim with the liquidator and the payment of the registration fee. The liquidator summarises all claims in a special registration list (*hitelezői jegyzék*). As mentioned before, all claims are examined and registered by the liquidator within 45 days from 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 confirmed or rejected. If the liquidator confirms a claim, 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, he must submit the claim to the court, unless the legal basis for such claim is already being contested in a separate court proceeding. 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.

The holder of a purchase option that is intended serve as a security and an entity to which a debt is transferred as a 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 debt collection procedure, the creditor is also treated as a pledgee in the compulsory liquidation procedure.

Creditors with a fix 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 said 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 on the basis of the date when the relevant pledge, charge or mortgage is created or the relevant right is registered.

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

On the other hand, in a restructuring proceeding, assets are generally not sold, as the business is kept running. In order to protect the debtor's assets, secured creditors are barred from enforcing pledges after the court decision on the start of the proceeding 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 a confirmed claim and the claim has not been assigned to another entity during the liquidation procedure. 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. As a prerequisite for a set-off under Hungarian law, the creditor's claim must be due. This requirement is fulfilled ex lege in a compulsory liquidation proceeding as all creditors' claims become due with the opening of the insolvency proceeding. A claim based on a debt that has incurred after the opening of the insolvency proceeding 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 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 required to separately file certain priority claims (such as the costs of the liquidation proceedings) with the liquidator.

Voidance Claims and Claw-back

Hungarian law provides that certain transactions that unduly decrease the value of the debtor's assets prior to the start of a compulsory liquidation proceeding may be disputed. Avoidance is, however, subject to certain conditions and relates to transactions that were 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 in order to dispute such transactions are as follows: (i) a transaction was concluded; (ii) the transaction was entered into prior to the start of the compulsory liquidation proceeding; (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 proceeding, 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 the compulsory liquidation proceeding. 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 (an)other creditor(s), or is intended to prefer one creditor over (an)other creditor(s), if entered into within the last 90 days prior to (or after) the court's receipt of the request for the compulsory liquidation proceedings;

(iv) Fiduciary securities: Transactions that concern the transfer of ownership, rights or debts as a security or the exercise of a purchase option that serves as a security, where the holder of the right so acquired exercised the right in a manner that it did not perform its obligation of settlement vis-à-vis the debtor properly or at all or did not release the amount that was in excess of the value of the secured debt, provided that transaction was entered into within the 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 the 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 the proceeding. Once the insolvency proceeding is 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 consent of the creditors' committee, which is then valid for a year).

A claim disputing a transaction must be filed with the court within 120 days after the claimant acquired knowledge of it, but 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 the declaration of invalidity of the contested transaction.

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 case of 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 the 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 his or her tenure or, if such situation existed, he or she acted in view of 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 acts of crime: (i) the actual or feigned reduction of the value of company's 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 proceeding starts; 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 procedure. During the liquidation procedure, 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 proceeding onwards, any claim against the debtor can only be enforced in line with the rules applicable to the liquidation procedure.

The liquidator is responsible for the proper book keeping 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 any damage or loss as a result of any action of the liquidator. Such an objection must be submitted to the court within eight days after acquiring knowledge about the unlawful action.

Effect on Employees

The Hungarian Restructuring and Insolvency Act states that once the liquidation procedure starts, 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 with regard to 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 (*bérgarancia alap*).

Effect on Contracts and Termination Rights

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

If a contracting party has fulfilled all of its contractual obligations prior to the start of the insolvency proceeding but has not received the entire consideration from the debtor, it may file an insolvency claim. On the other hand, if the debtor has already fulfilled its obligations, the other party is obliged to fully perform its obligations towards the debtor. However, the Hungarian Restructuring and Insolvency Act generally authorises the liquidator to terminate all contracts concluded by the debtor prior to the start of the liquidation procedure with immediate effect.

Special provisions apply if neither party has fulfilled its obligations in their entirety. In such a case, the decision on whether the debtor should fulfil the contract (in which case the contracting party is also obliged to fulfil its respective contractual obligations) or rescind it, is made by the liquidator at his own discretion. In case of rescission, the other contracting party is entitled to enforce its claims based on the rescission by announcing the claim in the liquidation proceeding.

FORMAL RESTRUCTURING PROCEEDINGS

The Hungarian Restructuring and Insolvency Act contains certain provisions that allow 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 to open a restructuring proceeding (*csődeljárás*) instead of a compulsory liquidation proceeding (*felszámolási eljárás*). The restructuring proceeding is 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 the liquidation procedure, claims are examined and registered (i.e. confirmed or disputed and secured or unsecured claims) by the administrator.

A restructuring proceeding can only be initiated by the debtor and 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 procedure is the day on which the court's final decision on ordering the restructuring procedure 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 procedure, such as the request to the creditors to file their claims with the administrator and to pay the registration fee within 30 days from the publication of the court's decision in the Company Gazette. The fee currently amounts to 1% of the filed claim, but is limited with a maximum of HUF 100,000 (approx. EUR 307). If a settlement agreement is concluded and approved by the court, creditors, who failed to file their claims may only enforce their claims in a subsequent liquidation procedure initiated by a third party.

In case of a restructuring proceeding, the debtor is granted a moratorium and has the chance to reach a settlement agreement with the creditors in order to restore its solvency. If the application meets the formal requirements prescribed by law, a temporary moratorium is immediately and automatically granted to the debtor upon its application for a restructuring proceeding. If the court decides to commence the restructuring procedure, the temporary moratorium will be replaced by a moratorium which lasts for 120 days from the date of the order onwards. The moratorium may be extended to 240 days (with a simple majority of each of, the secured and unsecured classes of creditors) or to 365 days (with a two-thirds majority of each of, the secured and unsecured classes of creditors).

The moratorium serves the protection of 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 submitted before the start of the restructuring proceeding); (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 a restructuring proceeding, 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, for assuming new obligations and paying debts, the consent of the administrator (*vagyonfelügyelő*) is required.

Restructuring plan hearing

The first settlement conference (*csődegyezségi tárgyalás*) takes place within 60 days after the start of the restructuring proceeding. 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 qualify as adopted if a simple majority of each of the secured and unsecured classes of creditors vote in favour of it. In such 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 deny its approval if the settlement agreement does not meet the concept of exercising right in good faith (*jóhiszemű joggyakorlás elve*).

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, a compulsory liquidation procedure can be initiated.

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

SPECIAL RULES FOR INSOLVENCY PROCEEDINGS OF STRATEGICALLY IMPORTANT COMPANIES

The Hungarian government may issue a decree stating that a company is of strategic importance. A company can only be declared strategically important if (i) its operations are strategically important for the Hungarian economy; (ii) reorganisation is in the national interest; or (iii) its winding up in a swift, transparent and unified process is important for the national economy.

The Hungarian Restructuring and Insolvency Act includes special rules that apply to insolvency proceedings of strategically important companies. Most of these rules 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. For a company of strategic importance, the Hungarian court will appoint a state liquidator to act as the supervisor with regard to the company's assets.

Further special rules apply if a company of strategic importance or its facilities are also under national security protection or provide public service of strategic significance. It is again the Hungarian government that 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 public interest to sell the company's assets as a going concern.

INTERNATIONAL ASPECTS

According to EC Regulation No. 2015/848, insolvency proceedings performed in other Member States of the European Union are recognized in Hungary.

If the EC Regulation is not applicable, an insolvency proceeding involving a foreign company and its outcome are generally recognised 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 proceeding 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 financial area (the "Romanian Insolvency Act").

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 provided by the Romanian Insolvency Act are: (i) judicial reorganization proceedings (*reoganizare 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 insol-vency proceedings before the syndic judge (*judecător sindic*). The observation period is important due to the fact that within such period, the debtor takes business decisions in order to overcome the financial distress it is experiencing. Contracts and any other agreements concluded during the observation period have to be analysed by the syndic judge, who may decide whether or not such contracts and agreements may be effective.

After the observation period and provided that the business of the debtor can be carried on, the proceedings continue with the judicial reorganization 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 directly subjected to the bankruptcy proceedings (i.e. bankruptcy proceedings are commenced either immediately or after an observation period of 20 days).

Judical Reorganisation and Reorganisation Plan

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

Where the claim for judicial reorganization proceedings is approved, the debtor provides its creditors and the syndic judge with a reorganisation plan. The main purpose of the reorganisation plan is to display how the restructuring of the debtor's business should be effected. 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, it is generally 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 of the debtor. The latter is only possible if the syndic judge does not deny the right to self-administration.

If the reorganization 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 for not observing one of the mandatory legal provisions;

c) the debtor expresses its intention to reorganise its activity, however, the reorganisation plan is invalid for not observing 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 40,000.00 (approx. EUR 9,000.00) and which is older than 60 days.

Tests for Insolvency

Under the Romanian Insolvency Act, insolvency is the state of patrimony of the debtor characterised by insufficient funds to meet its payment obligations for CERT (i.e. uncontested), liquid (i.e. determined and determinable) and due debt (*creanta certă, lichidasi 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 motivated 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 goods, 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, the minimum amount of debt required to file a claim for opening insolvency proceedings (either by the creditor or by the debtor) is RON 40,000.00 (approx. EUR 9,000.00) for debts other than salaries. 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 as per the 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 "in insolventd", "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 "*in reorganizare judiciară*", "in judicial reorganization", "*en redressement*" or "*in faliment*", "in bankruptcy", "*en faillite*". The same will apply in the case of simplified insolvency proceedings (i.e. "*in 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 creditors' summons has to be published in the Insolvency Proceedings Bulletin at least five days prior to the meeting. It has to 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, such 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 damaged the creditors.

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

Creditors' Role

The creditors have an important role in insolvency proceedings in Romania. They are acting through the creditors' assembly which may appoint a creditors' committee composed of three or five creditors during the first meeting. It has to 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 withdrawal of the debtor's right to manage its business, submitting claims regarding the annulment of the debtor's fraudulent acts and operations that 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 the 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 will draft the preliminary table including all debts against the debtor's goods. This table then has to 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 or not included in 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 goods.

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 the exceeding part of its debt had been registered as an unsecured debt. This procedure also applies in case the reorganisation plan fails and thus the debtor's goods 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 the 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 creditors' table 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 6 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 goods from the creditors' control or (b) damage their rights in any other way;

(iv) property transfers to a creditor in order 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 case of 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) acts of transfer 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.

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 which led to the insolvency of the debtor, however 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 has the fundamental competence of filing the claim for the opening of the 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 sanctioned with absolute nullity.

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).

Also, it is 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 inventory status.

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

Effect on 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, such 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 electricity, natural gases, 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 re-organisation 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 con-

ducted 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 ad hoc mandate (*mandat ad-hoc*) or the preventive arrangement (*concordat preventiv*); these are legal instruments that serve the purpose of avoiding typical insolvency proceedings before the syndic judge.

Ad Hoc Mandate

The ad hoc mandate represents a confidential procedure initiated before the syndic judge upon the request of a debtor in financial distress. In this case, the court appoints an ad hoc trustee who negotiates with the creditors of the debtor in distress. The aim of the ad hoc mandate is to reach agreement so as to overcome such financial distress.

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 more than 75% of the debt in order to obtain financial recovery.

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 the 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.

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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"*), which was significantly amended in 2015. This amendment of the Insolvency Act established several new instruments which provide better protection for creditors and ensure a higher proportional satisfaction of their claims by introducing more rigid obligations on the debtors and trustees by adopting preventative and restrictive measures. A new significant amendment of the Insolvency Act came into force two years later. The main objective of the amendment from March 2017 was to establish a separate insolvency regime for natural persons. In addition, this amendment reflects the creation of a public sector partners register introduced by Act No. 315/2016 Coll. on the public sector partners register (*Zákon o registri partnerov verejného sektora, "Public Sector Partners Register Act"*), which came into force in February 2017. Following the amendment of the Insolvency Act in 2018, several minor changes were made to the insolvency proceedings, inter alia, such as a requirement for the administrator to be selected at random and the possibility for debtors to agree on a lower satisfaction quota with creditors in restructuring proceedings. In this guide we will try to provide a general overview of the most important aspects of Slovakian insolvency legislation.

Main Insolvency Proceedings

The Insolvency Act differentiates between the insolvency regime for natural and legal persons. Insolvency proceedings for companies in financial difficulty are either carried out as so-called restructuring proceedings (*Rešrukturalizácia*) with the general aim to keep on running the business of the debtor during and after the proceedings, without liquidating the debtor, or as bankruptcy proceedings (*Konkurzné konanie*) where the aim is to liquidate all assets and distribute the funds available to the creditors.

In the case of restructuring proceedings, the debtor files for the opening of restructuring proceedings and at the same time submits a restructuring plan (*Reštrukturalizačný plán*). Restructuring proceedings are administered by a restructuring administrator (*Reštrukturalizačný správca*). Should the restructuring proceedings fail, they are transformed by court order into bankruptcy proceedings. The debtor or its creditor may indeed file directly for the opening of bankruptcy proceedings without previously filing for restructuring proceedings if certain statutory conditions are met.

In the case of a natural person, the insolvency regime, known as debt relief (*Oddlženie*), is modelled on the approach taken by foreign legal systems and consists of two regimes for those seeking personal bankruptcy, irrespective of whether the creditor is the state, a bank, authority or corporation. Personal bankruptcy can be carried out either by liquidation of the debtor's assets and quick debt relief referred to as the "Fresh Start" (*Oddleženie konkurzom*), or by restructuring the debtor's obligations with a payment schedule "No Fresh Start" (*Oddlženie splátkovým kalendárom*). In both cases, the debtor is relieved of debt with effect from the day on which the bankruptcy petition is filed or from the day on which the payment schedule is approved and claims become unenforceable towards the debtor in the case of the repayment schedule.

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 is defined as an inability to fulfil (i) at least two monetary obligations, (ii) to more than one creditor, (iii) 30 days after their due date. By contrast, the definition of the illiquidity of a natural person is an inability to fulfil (i) at least one monetary obligation, (ii) 180 days after its due date. Illiquidity may be presumed if it is not possible to enforce a monetary obligation of the debtor through enforcement proceedings or if the debtor failed to fulfil its obligation to give its statement to the creditor's petition for the declaration of the bankruptcy of the debtor and prove its solvency, as imposed on it by a court after commencement of the bankruptcy proceeding.

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. When certain requirements are met, the debtor can request the payment of the fee by the CLA.

In 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 sus-

pension 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 5 days of the initiation of the bankruptcy proceedings either declares bankruptcy (if there are no doubts about the insolvency of the debtor) or appoints a preliminary administrator (*Predbežný správca*) for the purpose of the investigation of the debtor's insolvency status.

In case the petition for bankruptcy was filed by a creditor, the court within 5 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 bankruptcy 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.

The bankruptcy assets and list of property

The bankruptcy assets (*Konkurzná podstata*) comprises 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 consists of property securing a receivable of the secured creditor (*Zabezpečený veriteľ*) and only the claims of this specific creditor are satisfied from the proceeds remaining from the conversion into money of property 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.

For the purpose of proper and complete conversion of the bankrupt's property (*Speňažovanie*) into money and 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 particularly 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 else 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 instructions and recommendations of 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 in order 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) authorization of an auctioneer to sell the property, (iii) authorization of 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 ap-

propriate means of disposal.

Lodging claims for receivables

A claim should be lodged with one counterpart for the administrator and one for the court within 45 days of the declaration of bankruptcy. 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

In order to ascertain the opinions of the creditors of claimed receivables, to elect and remove members of the creditors 'committee and to replace the administrator, meetings of creditors (*Schôdza veriteľov*) are convened during the bankruptcy. Creditors of ascertained unsecured receivables elect the creditors' committee at a meeting of creditors.

Receivables against the bankruptcy assets

Receivables against the bankruptcy assets (*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 are 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 fully settle receivables of the same order, they are settled on a pro rata basis.

Satisfaction of creditors

Claimed receivables are settled by the administrator on the basis of 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 certain receivables that 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.

MANAGEMENT LIABILITY

The debtor's management is also under an obligation to file a petition for the declaration of bankruptcy within 30 days of establishing its over-indebtedness, on behalf of the debtor. If the management fails to fulfil this obligation, they are obliged to pay a statutorily stipulated contractual penalty in the amount of half of the lowest stipulated amount of registered capital of a public limited company. Any damage exceeding the amount of the contractual penalty may be also claimed.

The amendment from 2018 introduced liability for damage incurred by creditors in case of the failure to file a petition for the declaration of bankruptcy on time. If the amount of the damage cannot be determined, it is presumed that the damaged is in the amount of the unsatisfied claim of the creditor at the time of the suspension or termination of the bankruptcy proceed-

ings on the grounds that the debtor has insufficient assets.

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 has to act on behalf of the bankrupt in employment relationships in relation to the bankrupt's employees upon the declaration of bankruptcy authorization. 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 as 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 guarantee 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 with a 2-month notice period, 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

Through restructuring proceedings, the illiquidity or impending insolvency of a debtor can be resolved by the collective satisfaction of the creditors in a manner agreed in a restructuring plan. 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 the 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, such 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.

Should the filed petition be perfect, the court issues a resolution on the initiation of restructuring proceedings within 15 days from 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, such opinion is drawn up in accordance with statutory provisions and all conditions for the recommendation of 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 it must be delivered within 30 days from the day restructuring was permitted. Any claim delivered after the deadline will not be taken into account.

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) group for secured receivables, (ii) group for unsecured receivables, (iii) 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) 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 (V*eriteľský 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 bankruptcy. 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 the court decision if the creditors belonging to the group are – according to the binding part of the plan – satisfied within a period exceeding 5 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 amendment in 2015. Any claim up to 50% of its submitted and acknowledged amount must be maintained in full and can be enforced by a creditor by means of a standard enforcement procedure directly after due and complete fulfilment of the restructuring plan.

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 restruc-

tured 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 recent amendment of 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 over the debtor may be imposed 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 EU 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 in case (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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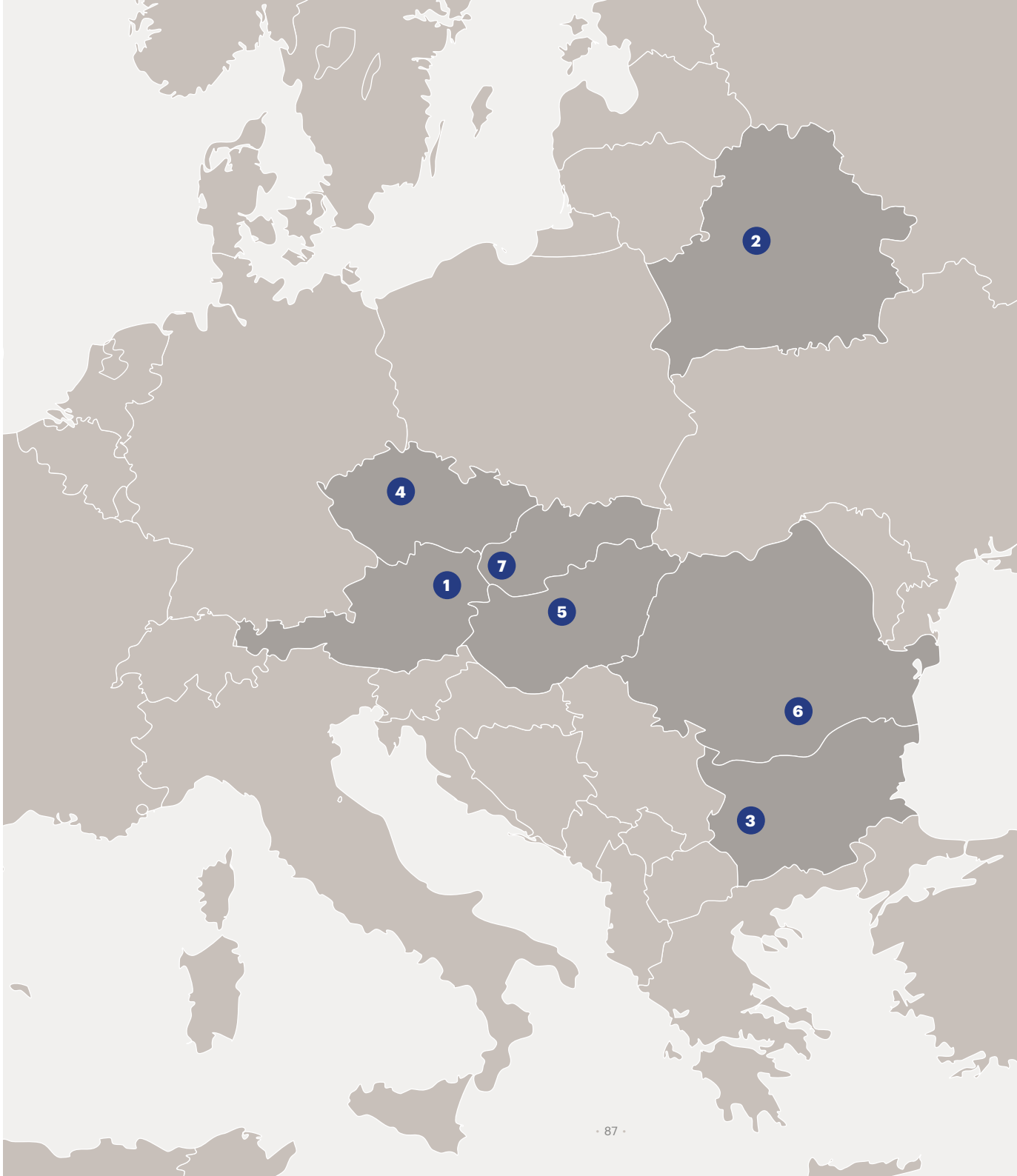

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