

THE INSOLVENCY  
REVIEW

TENTH EDITION

Editor  
Donald S Bernstein

THE LAWREVIEWS

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INSOLVENCY  
REVIEW

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This article was first published in October 2022  
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Published in the United Kingdom  
by Law Business Research Ltd, London  
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK  
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[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

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ISBN 978-1-80449-115-7

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ACCLIVUS LAW PARTNERS

APPLEBY

ARENDT & MEDERNACH

BERNITSAS LAW

CAPITAL EQUITY LEGAL GROUP

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# HUNGARY

*Zoltán Faludi and Enikő Lukács<sup>1</sup>*

## I INSOLVENCY LAW, POLICY AND PROCEDURE

### i Statutory framework and substantive law

Insolvency proceedings in Hungary are governed by Act No. XLIX of 1991 on Bankruptcy and Liquidation Proceedings (the Insolvency Act), which has been amended from time to time.

The procedural issues that are not otherwise provided for in the Insolvency Act, the provisions of Act CXXX of 2016 on the Civil Procedure on non-contentious judicial civil actions, shall apply, subject to the derogations stemming from the special characteristics of non-contentious proceedings, as well as the general provisions of the Act on the Rules Applicable to Non-Contentious Civil Actions and on Non-Contentious Court Proceedings.

Owing to the transposition of Directive (EU) 2019/1023 through Act No. LXIV of 2021 on Restructuring (the Restructuring Act), which entered into force on 1 July 2022, a new pre-insolvency procedure under Hungarian law is applicable. The Restructuring Act has amended several provisions of the Insolvency Act.

### ii Policy

Prior to initiating insolvency proceedings, business entities usually make attempts out of court for a restructuring or reorganisation, and comprehensive negotiations that can be considered as a prevailing attitude to rectify the financial situation of a business entity.

Under the Restructuring Act, restructuring procedure as a pre-insolvency method is available at the early stage of business entities' financial distress.

The Insolvency Act allows a financially troubled business entity to initiate bankruptcy proceedings instead of liquidation proceedings, and thus the business entity may make an attempt to rescue the business. If the bankruptcy proceeding fails, it is transformed into a liquidation proceeding by the court.

### iii Insolvency procedures

Under the Insolvency Act, there are two types of insolvency proceedings applicable for business entities controlled and supervised by the competent court:

- a bankruptcy proceedings that aim at recovering the ordinary course of business, achieving a settlement between a financially troubled business entity and its creditors by granting a temporary relief (payment moratorium) for its financial obligations and enabling a reorganisation; and

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<sup>1</sup> Zoltán Faludi is the managing partner and Enikő Lukács is an associate at Wolf Theiss.



- b* liquidation proceedings that aim at the dissolution of an insolvent business entity and the distribution of its assets to its creditors.

Under the Restructuring Act, the aim of the restructuring is to adopt and implement a restructuring plan with some or all of the creditors, thus preventing the debtor's future insolvency and ensuring the debtor's viability.

### ***Bankruptcy proceedings***

Bankruptcy proceedings allow the reorganisation and restructuring of a business entity in financial distress. In this context there is no insolvency test; the financially troubled business entity decides on the initiation of bankruptcy proceedings.

During the proceedings, the debtor is granted a temporary relief (payment moratorium) for a maximum of 365 days if agreed by the creditors. The debtor shall hold a meeting of creditors with a view to reaching a settlement within 90 days of the commencement date. For the meeting of creditors, the debtor – assisted by the administrator – shall prepare a reorganisation plan and a proposal for the settlement to restore or preserve its solvency. During any meeting of creditors, the creditors may state that they do not support the proposal for the settlement, and they do not give consent to the settlement agreement. If the debtor declines to rework the proposal for the settlement, the meeting of creditors shall be closed. If the debtor agrees to rework the proposal for the settlement within the deadline set by the creditors, several meetings of creditors can be held during the payment moratorium. If the debtor and its creditors fail to agree on a settlement or if the settlement agreement fails to comply with the law, bankruptcy proceedings are terminated and the court will commence liquidation proceedings.

During a payment moratorium, the enforcement of financial claims against the debtor is suspended and the enforcement of such claims cannot be ordered.

Claims are categorised as follows:

- a* claims with regard to the payment obligations of the debtor during the payment moratorium (e.g., wages and other similar benefits, related taxes and other similar charges, value added taxes, exercise taxes, payment obligations assumed with a view to carrying on the economic activity, as endorsed by the administrator); and
- b* secured and unsecured claims notified within the mandatory deadline.

The creditors must file their claims and pay the registration fee within 30 days of the commencement date. The above categories of claims cannot be considered as the order of satisfaction; it is the settlement agreement concluded between the debtor and the creditors that lays down the satisfaction of each claim.

### ***Liquidation proceedings***

Liquidation proceedings require the insolvency of the debtor. The court orders the liquidation of the debtor if it determines that the debtor is insolvent. The debtor may only be qualified as insolvent in the following cases:

- a* the debtor failed to settle or contest its previously uncontested and acknowledged contractual debts within 20 days of the due date, and failed to satisfy that debt upon receipt of a creditor's written payment notice;
- b* the debtor failed to settle its debt within the deadline specified in a final court decision or order for payment;

- c* the enforcement procedure against the debtor was unsuccessful;
- d* the debtor failed to fulfil its payment obligation as stipulated in the settlement agreement concluded in bankruptcy or liquidation proceedings, in the court-approved reorganisation plan in reorganisation procedures or in the court-approved restructuring plan in restructuring procedures;
- e* the court has declared the previous bankruptcy proceedings terminated;
- f* the debtor's liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets;
- g* the debtor was unable and, it is presumed, will not be able to settle its debts on the date when they are due; and
- h* in proceedings opened by the receiver, the members (shareholders) of the debtor fail to provide a statement of commitment in relation to providing funds necessary to cover such debts when due.

A debtor cannot be declared insolvent in the above cases within the deadline specified by the court for the settling of debts.

When liquidation proceedings are commenced, all pending enforcement procedures are terminated by the court and the creditors can only satisfy their claims within the liquidation proceedings.

Creditors' claims are ranked in the following order of satisfaction:

- a* costs of liquidation;
- b* parts of claims secured by pledges established before the commencement date of liquidation proceedings, which were not satisfied under the rules applicable to priority;
- c* alimony claims, life annuity payment claims and compensation benefits to private individuals;
- d* other claims of private individuals not originating from economic activities (e.g., damages, warranty claims);
- e* taxes and other public dues, and public utility charges;
- f* other claims (e.g., any unsecured claims);
- g* default interest and late charges, surcharges, penalties and similar debts; and
- h* claims held by a shareholder (member) or executive officer or executive employee of the debtor business entity.

In addition, claims that are secured by pledges will enjoy priority in satisfaction irrespective of the order above. In the case of secured creditors (i.e., pledgees), a special order of satisfaction prevails; however, there are also costs to be taken into account before the secured creditor's claim.

The creditors must file their claims within 40 days of the commencement date and, at the same time, must pay the registration fee.

### ***Restructuring procedure***

The debtor may decide on restructuring if there is a likelihood of insolvency. The likelihood of insolvency means a situation in which there are reasonable grounds for believing that the debtor will be unable to meet its outstanding payment obligations when they fall due, unless further measures are taken.

The restructuring plan is the key element of the restructuring procedure because the aim of restructuring is to prepare a restructuring plan that is confirmed by the creditors.

To adopt the restructuring plan, the affected creditors' claims are grouped into the following classes:

- a* secured creditors' claims;
- b* creditors' claims related to the debtor's economic activity;
- c* other creditors' claims; and
- d* creditors' claims arising from a transaction which are of interest to the debtor.

The above-mentioned order of creditors' classes does not constitute an order of satisfaction.

The creditors vote on whether to accept the proposed restructuring plan but the final confirmation rests with the court.

To facilitate negotiations on the restructuring plan and to ensure that the restructuring goal is achieved, the court may, on the application of the debtor, order a stay of individual enforcement actions (moratorium). The stay of individual enforcement actions can be general, covering all creditors, or it can be limited, covering one or more individual creditors or categories of creditors. The duration of a stay of individual enforcement actions shall be the duration defined in the application of the debtor, but it shall be limited to a maximum period of four months. The total duration of stay of individual enforcement actions, including extensions and renewals, shall not exceed 12 months.

#### **iv Starting proceedings**

Bankruptcy and liquidation proceedings are non-contentious proceedings falling within the competence and exclusive jurisdiction of the regional court responsible for the place where the debtor's Hungarian-registered seat is located on the day of submission of the request for opening proceedings.

Under the Insolvency Act, there is no mandatory deadline for filing a request on the commencement of bankruptcy or liquidation proceedings.

The commencement of both types of proceedings becomes effective as of the date they are published in the Company Gazette (a publicly available online platform).

Bankruptcy proceedings can only be initiated by the debtor business entity. The representatives (directors) of that entity, upon prior approval of its main decision-making body, may request the competent court to commence bankruptcy proceedings. The debtor business entity cannot file a request for bankruptcy with the court if, among other things:

- a* the restructuring procedure is in progress;
- b* the time period for the implementation of a restructuring plan approved by the court in the restructuring procedure, and confirmed by means of a cross-class cramdown, is still open; and
- c* before filing a request for bankruptcy, a restructuring procedure was in progress when the debtor was given moratorium and one year has not elapsed from the date on which restructuring failed.

As of the commencement date of bankruptcy proceedings, the debtor is granted a temporary relief (payment moratorium) for 180 days, which may be extended to 240 days or a maximum of 365 days if agreed by the creditors.

Liquidation proceedings can be initiated by the debtor business entity, the creditor or the receiver. Furthermore, the court commences liquidation proceedings *ex officio* following unsuccessful bankruptcy proceedings or upon request of the company court or the criminal court.

If liquidation proceedings are requested by a creditor, the creditor must prove that the debtor is insolvent and specify the reasons for the debtor's alleged insolvency and, if available, the application shall be accompanied by the last published annual financial statements of the debtor. A creditor can only request the commencement of liquidation proceedings if the amount of its claim exceeds 200,000 forint. The court shall reject the creditor's request for liquidation if, among other things, the debtor is subject to a stay of individual enforcement actions (i.e., moratorium) under the Restructuring Act or moratorium under the reorganisation procedure, and the request was submitted by a creditor to whom the moratorium under the Restructuring Act or the moratorium for reorganisation applies.

Upon request of the debtor business entity, the court may allow a maximum period of 45 days for the debtor to settle its debt, except in liquidation proceedings following unsuccessful bankruptcy proceedings. A debtor cannot be declared insolvent within the deadline specified by the court for the settling of debts.

Under the Restructuring Act, the request for the opening of the restructuring procedure shall be submitted by the debtor. The request shall be accompanied by the debtor's decision on restructuring and the debtor's six months' or less interim balance sheet with the last available financial statements.

The debtor's decision-making body cannot make a decision to open the restructuring procedure if bankruptcy or liquidation proceedings are pending. The restructuring cannot be decided if three years have not yet elapsed since the start of the previous restructuring procedure.

#### **v Control of insolvency proceedings**

Although the bankruptcy or the liquidation proceedings will be controlled by the competent court that ordered them, responsibility lies with either the administrator who is conducting bankruptcy proceedings or the liquidator who is conducting liquidation proceedings.

The main roles of the competent court are as follows:

- a* adjudication on objections filed against the administrator or the liquidator during bankruptcy or liquidation proceedings, respectively; and
- b* the transformation of unsuccessful bankruptcy proceedings into liquidation proceedings.

In both proceedings, the most effective procedural tool available for creditors is an objection. By way of filing an objection to the competent court, diligent creditors may contest the unlawful acts or omissions of the administrator or the liquidator (in practice, typically the classification of other creditors' claims, or the proposal on the distribution of the debtor's assets).

In both proceedings, creditors may form a creditors' committee for the protection of their interests, representation before the competent court, and especially to monitor the activities of the administrator or the liquidator. Instead of forming a creditors' committee, creditors may elect to appoint a representative from among themselves. The rules applicable to a creditors' committee are also applicable to a creditors' representative.

In bankruptcy proceedings, a creditors' committee may be formed if it represents at least one-third of the creditors, provided that the number of claims controlled by those creditors is at least half of the aggregate number of claims. In liquidation proceedings, a creditors' committee may be formed if it represents at least one-third of the creditors, provided that those creditors control at least one-third of the aggregate number of claims. The creditors'

committee must consist of a minimum of three and a maximum of seven members, and the creditors operating the select committee may elect a chairperson. The participating creditors must agree on the creditors' committee's rights, cost advancing method and accounting issues.

Voting rights shall be held by any creditor who registered its claim (in the case of bankruptcy, within 30 days of the commencement of the bankruptcy procedure), paid the registration fee and whose claim is shown under recognised or uncontested claims. Any creditor who failed to participate in person or by way of proxy shall be counted as having voted 'no'. As regards voting rights, creditors shall have one full vote awarded for each recognised or uncontested claim of 50,000 forint. There shall be no fractional votes. Creditors holding claims below the 50,000 forint threshold shall also have one vote. Interest accrued during the term of the stay of payment will not be taken into consideration with respect to voting rights.

In the case of liquidation procedures, the votes of creditors who notified their claims after the 40-day time limit shall apply this calculation method at a rate of one-half. Decisions shall be adopted by simple majority.

The establishment of a creditors' committee may have, the following practical advantages, among others:

- a* the liquidator sends a quarterly report on his or her activity and the financial situation of the debtor (if there is no creditors' committee, the information about the individual creditors will be verified by the liquidator's intermediate balance sheet);
- b* the liquidator informs the creditors' committee (or creditors' representative) regarding the contracts that exceed the scope of day-to-day operations and the termination of existing contracts;
- c* if a creditors' committee has been formed, the liquidator is obliged to obtain the consent of that committee to continue the economic activity of the debtor during liquidation;
- d* the liquidator may rent the debtor's assets only with the approval of the creditors (or creditors' representative);
- e* in respect of wage increases after the time of the opening of liquidation proceedings, the liquidator may assume any new obligations only upon the committee's consent;
- f* in the case of the sale of a debtor's assets, the liquidator may forego the application of sale process by way of a tender or auction only with the prior consent of the creditors' committee;
- g* the creditors' committee may instruct the liquidator to notify the committee on the sales procedure, or to make available the appraisal and the sales procedure for the creditors for inspection and for monitoring;
- h* the creditors' committee may also instruct the liquidator to present the invitation to tender and the auction notice in advance to the committee for inspection, including the appraised value of the assets offered for sale, subject to the right of consultation; and
- i* the creditors' committee may request that the court appoint an expert for the cross-verification of the appraised value, and shall advance the costs involved.

In bankruptcy proceedings, the directors of a debtor business entity, including its main decision-making body and owners, shall exercise their respective rights only if the powers vested in the administrator are not violated. Directors remain in control over the debtor; however, an administrator monitors, inter alia, the business of the debtor, the approval of the administrator is required for the new commitments of the debtor and the endorsement of the administrator is required for the fulfilment of payments from the debtor's assets.

The directors of a debtor business entity are obliged to:

- a* cooperate with the administrator;
- b* provide a statement:
  - that the annual financial statement and the interim balance sheet give a true and fair view of the financial position of the debtor; and
  - regarding the significant changes in the debtor's financial position since the financial statement and the interim balance sheet had been adopted;
- c* provide a statement indicating the payment service providers holding the debtor's accounts (including account numbers), and investment firms where the debtor has a savings account;
- d* provide a statement of commitment:
  - for notifying the payment service providers of the filing of the petition for the commencement of bankruptcy proceedings; and
  - refraining from initiating any payment transaction or credit transfer that would be contradictory to the purpose of the payment moratorium, and from taking any measures by which to provide preferential treatment to any creditor;
- e* provide a data sheet on the debtor's financial position, as prescribed by the relevant laws; and
- f* inform the creditors or creditors' committee, the employees, the trade unions and the works councils regarding the financial position of the debtor upon their request during the bankruptcy proceedings.

In liquidation proceedings, directors lose their management power over the debtor. As of the commencement date of liquidation, the court appoints a liquidator who becomes the sole representative of the debtor business entity (i.e., replacing the directors) and is responsible for conducting the entire liquidation proceedings. After the commencement of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the debtor business entity.

The directors of the debtor business entity are obliged to:

- a* prepare a closing inventory, annual financial statements, closing balance sheet and tax return, and send them to the liquidator and the tax authority within 30 days of the commencement date of the liquidation, as well as provide a statement:
  - that the closing inventory, the annual financial statement and the closing balance sheet give a true and fair view of the financial position of the debtor, and
  - regarding any significant changes in the debtor's financial position since the balance sheet was adopted;
- b* prepare a list of the documents that may not be discarded, and deliver both those documents and archive materials to the liquidator within 30 days of the commencement date of the liquidation, with the assets according to an itemised inventory, and shall provide information regarding the pending affairs, and declare to have delivered all assets and documents as required;
- c* provide a statement to the liquidator and the environmental protection authority within 15 days of the commencement date of the liquidation regarding any environmental damage or hazards that may result in penalties or other payment obligations, and expenses relating to cleaning up any such damage;
- d* disclose information regarding all legal transactions and commitments;

- e* inform without delay the employees, the cooperative members, the trade unions and the works councils regarding the commencement of liquidation proceedings;
- f* inform the beneficiaries of the claims specified in the Insolvency Act regarding the opening of liquidation proceedings within 15 days of the commencement date of the liquidation;
- g* provide information at the liquidator's request regarding the debtor's activities prior to the liquidation and the placement of assets, and assist the liquidator in his or her activities;
- h* notify the service provider carrying the securities account of the debtor and the service provider managing other money-market instruments of the debtor regarding the ordering of liquidation proceedings within three business days of the commencement date of the liquidation, as well as the creditors holding a lien, right of enforcement and security deposit, and shall also verify the fulfilment of this notification requirement to the liquidator;
- i* inform the liquidator about fulfilling the obligation of provisioning;
- j* provide to the liquidator a statement of property and other assets controlled by the debtor business entity, supported by documentary evidence, within 30 days of the commencement date of the liquidation, which are beyond the scope of liquidation assets, and shall make them available for the liquidator; and
- k* inform the creditors or the creditors' committee, the employees, the relevant trade unions and works councils regarding the financial position of the debtor upon their request during the liquidation proceedings.

#### **vi Special regimes**

The Insolvency Act contains special provisions regarding bankruptcy and liquidation proceedings of strategic importance. The Hungarian government may decide to apply the special procedural regime with respect to the business entities to whom the following criteria applies:

- a* settlement of the debts of such business entities, settlement with creditors is in the interests of the national economy or is of particular public interest; or
- b* the winding up of such operators without succession – where the lack of funding and insolvency cannot presumably be resolved – in a simplified, transparent and standardised procedure is given priority due to economic considerations.

The Hungarian government shall publish the decree:

- a* in bankruptcy proceedings at the latest by the time a settlement agreement is reached; and
- b* in liquidation proceedings at the latest by the time a settlement agreement is reached, if a settlement conference is held, in the absence of a settlement agreement, before the closing balance sheet is submitted to the court.

The most notable implications of such a special regime are the following:

- a* certain procedural rights granted to the creditors under the general regime are limited or excluded;
- b* different procedural deadlines are applied;

- c* only a state-owned administrator or liquidator can be appointed to control the entire bankruptcy or liquidation proceedings (including the sale of the assets of the debtor business entity); and
- d* in liquidation proceedings, in the sale of the assets of the debtor business entity with a market value exceeding 25 million forints, the Hungarian state shall have pre-emption right, but the Hungarian state's pre-emption is preceded by a pre-emption right based on law.

The Insolvency Act provides for the possibility of simplified liquidation proceedings. Simplified procedural rules apply to liquidation proceedings of a debtor business entity if its assets are not even expected to cover the costs of the liquidation proceedings, or to those liquidation proceedings that cannot proceed owing to deficiencies in the records or in the bookkeeping of the debtor business entity. If this is the case, the liquidator informs the creditors and requests them to provide any information they may have concerning the assets of the debtor business entity that are generally available, or to render assistance in conducting liquidation proceedings. If no information or no assistance has been provided upon this request of the liquidator and hence the liquidation proceedings cannot be conducted under the general rules, the liquidator prepares a report thereon and submits a request or recommendation to the court for the distribution of the debtors' assets among the creditors.

In addition to the foregoing special regime as regulated by the Insolvency Act, special insolvency rules are to be applied in the case of financial institutions, insurance companies and Hungarian branch offices of foreign business entities under the relevant legislation that defines the proceedings to be followed for insolvency.

## **vii Cross-border issues**

Insolvency proceedings within the European Union are recognised pursuant to Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (the Recast Insolvency Regulation).

Article 3(1) of the Recast Insolvency Regulation provides that the courts of the Member State within the territory of which the debtor's centre of main interests (COMI) is situated shall have jurisdiction to open insolvency proceedings. The COMI shall be the place where the debtor regularly conducts the administration of its interests and which is ascertainable by third parties. In the case of a company, the place of the registered office shall be presumed to be the COMI in the absence of proof to the contrary. This presumption shall apply only if the registered office has not been moved to another Member State within the three months prior to the request for the opening of insolvency proceedings. With the re-tailored definition of COMI, the Recast Insolvency Regulation prevents bad or abusive forum shopping.

Pursuant to Article 3(2) of the Regulation, if the debtor's COMI is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

Hungary has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.



## II INSOLVENCY METRICS

The total number of business enterprises<sup>2</sup> in Hungary was nearly 2 million at the end of 2021. The number of newly registered business enterprises was 143,845 in 2021. The number of business enterprises that ceased to exist with or without a legal successor in 2021 was 100,149.<sup>3</sup>

## III PLENARY INSOLVENCY PROCEEDINGS

The insolvency proceedings that have opened in Hungary in recent years and are worth highlighting are the following.

### i JAS Budapest Zrt

JAS Budapest Zrt is one of the largest power supply companies in the Hungarian market. The main reason for the company's bankruptcy was the rise in electricity prices, which resulted in the continued rise in gas prices. The Regional Court of Budapest ordered a bankruptcy proceeding against JAS Budapest Zrt and the court's order was published in the Company Gazette on 23 November 2021. Following two unsuccessful settlement meetings with the creditors and a lack of support of the majority of the secured and unsecured creditors, a settlement agreement between JAS Budapest Zrt and the creditors was not reached. The court terminated the bankruptcy proceeding and the court *ex officio* ordered the liquidation proceeding against JAS Budapest Zrt. At the time of writing, the order of the court on the liquidation proceeding has yet to be published.

### ii MALÉV GH Földi Kiszolgáló Zrt

The state-owned Malév GH Zrt, which provided ground-handling services to Malév, has struggled with financing problems in recent years. The impact of the coronavirus crisis on the air travel industry made Malév GH Zrt insolvent. The Regional Court of Budapest ordered liquidation proceedings against Malév GH Zrt, which were published in the Company Gazette on 8 July 2020. The Hungarian Government declared Malév GH Zrt a business entity of strategic importance, hence, requiring the application of a special liquidation proceedings controlled by state-owned liquidators. Currently, the public tender sale process of the debtor's assets is in progress.

### iii Eurovegas Kft and Ipari Terület Bezenye Kft

The unique Eurovegas casino, entertainment and hotel project would have been created near Hungary's borders with Austria and Slovakia. However, the €300 million construction project suffered severe financial difficulties. Eurovegas Kft and Ipari Terület Bezenye Kft are the exclusive owners of the real properties in Bezenye and Hegyeshalom concerned in this project. The two companies have been declared insolvent and liquidation proceedings have been ordered against them by the Regional Court of Győr and published in the Company Gazette on 22 July 2016. During the liquidation proceedings, the Hungarian government classified Eurovegas Kft and Ipari Terület Bezenye Kft as business entities with strategic

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2 The term 'business enterprises' is used here to mean for-profit business associations, including business entities, private entrepreneurs and other forms of entities and businesses.

3 Source: Central Statistics Office.

importance under Government Decree No. 295/2016 (IX.29), and hence the satisfaction of the creditors' claims needs to be completed under a special procedural regime within the Insolvency Act. New state-owned liquidators (National Reorganisation Non-profit Kft) were appointed by the court that controls the liquidation proceedings. The first round of the public tender was started on 13 January 2017 in both liquidation proceedings but was revoked on 7 February 2017. The call for the public tender sale process was published in the Company Gazette on 17 January 2019. The sale processes regarding the real properties of Eurovegas Kft and Ipari Terület Bezenye Kft were merged by the liquidators; therefore, a joint sale process took place and interested parties had to submit a tender for all real properties in one package. The minimum price of the real properties was 6.45 million forint. The successful tender was submitted by FAKT Hungária Kft, with which the liquidators – in the name and on behalf of Eurovegas Kft and Ipari Terület Bezenye Kft – concluded the sale and purchase agreement.

FAKT Hungária Kft belongs to the German FAKT AG group and a new project aims to create a €1 billion horticultural and logistics centre on the area covering 330 hectares.

The creditors' claims have been satisfied by the liquidators and the liquidation proceedings have finally been completed by the court in September to October 2021.

#### **iv Tungsram Operations Kft**

Currently in the spotlight is Tungsram Operations Kft, one of the most iconic lighting companies in Hungary. Tungsram Operations Kft filed for bankruptcy protection to restore the company's solvency. The Regional Court of Budapest ordered the bankruptcy proceeding, which was published in the Company Gazette on 20 May 2022.

### **IV ANCILLARY INSOLVENCY PROCEEDINGS**

Secondary and territorial insolvency proceedings may be opened in Hungary in the event that the main insolvency proceedings are pending in another EU Member State, subject to the Recast Insolvency Regulation. Secondary and territorial insolvency proceedings are not common in Hungary; no information is available regarding the commencement of any such insolvency proceedings during the past 12 months.

### **V TRENDS**

In the majority of cases, creditors initiate liquidation proceedings against debtors. In practice, liquidation proceedings may lead to the sale of all or part of the debtor's business as a going concern to a third party instead of the sale of the individual assets of the debtor's business. If a debtor has several real properties with different values, it is quite common for the real property portfolio to be sold in its entirety. This usually leads to a much higher value being realised at the end of liquidation proceedings.

The number of business entities regarded as being of strategic importance is increasing and it seems that the Hungarian government is making an attempt to use this procedural tool to mitigate sectoral issues within the Hungarian economy (i.e., usually major players of a given industry area are classified as business entities with strategic importance). It can be expected that this trend will continue under the extraordinary circumstances.

As far as recent developments are concerned, in accordance with the Recast Insolvency Regulation, an insolvency register has been established in Hungary,<sup>4</sup> which contains the particulars of insolvency proceedings falling within the scope of the Regulation that have opened in Hungary. We are of the view that this gap-filling insolvency register may play to the advantage of creditors and may also ensure the transparency and traceability of insolvency proceedings.

Looking beyond the recent acquisition targets, there is an appetite in the Hungarian market for further acquisition of distressed assets and companies that lack state-of-the-art technology. In particular, there are targets of interest within the energy sector.

Insolvency proceedings provide an opportunity for the use of electronic communication networks and other electronic devices; for example, the liquidator shall allow creditors to attend the creditors' meeting via electronic communications equipment instead of physical presence.

By the implementation of the Directive (EU) 2019/1023 on Restructuring and Insolvency into Hungarian law in June 2021, important changes were introduced in the Hungarian legal system. The Restructuring Act tries to provide a new concept in the existing gap between contractual-based restructuring and formal insolvency proceedings. The following new measures are worth highlighting:

- a* the concept of the cross-class cramdown, meaning that the court can overrule an entire group of creditors that refuses the restructuring plan;
- b* the 'best-interest-of-creditors' test, meaning that no dissenting creditor is worse off under a restructuring plan than it would be in the case of liquidation; and
- c* the stay of individual enforcement actions means a temporary suspension, granted by the court in order to facilitate the negotiations on the restructuring plan.

Overall, it remains to be seen whether the new restructuring procedure will indeed foster the resolution of insolvency situations and will change the approach of debtors and creditors and hence change the actual practice.

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<sup>4</sup> Publicly available information on the Hungarian insolvency register can be accessed free of charge via <https://fizeteskeptelenseg.im.gov.hu/#/>.

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Zoltán is a former chairman of the former Energy Arbitration Court in Hungary. He is regularly invited to speak at various local and international events, focusing on market-related questions.

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ISBN 978-1-80449-115-7