Insolvency Proceedings in CEE & SEE

Bankruptcy, Restructurings and Creditors' Rights in Insolvency Proceedings

Wolf Theiss

Insolvency Proceedings in CEE & SEE

Foreword

Welcome to the comprehensive guide on insolvency proceedings across the Wolf Theiss region (CEE and SEE). In today's complex economic landscape, navigating insolvency laws and procedures is paramount for businesses, creditors, and stakeholders alike. This guide aims to provide a thorough understanding of the legal frameworks governing insolvency proceedings in each country within our region.

From understanding the initial stages of insolvency, such as grounds for filing for bankruptcy or initiating restructuring processes and the respective processes as such, to delving into the intricacies of creditor rights and debt recovery, each country report of this guide offers invaluable insights tailored to the specific legal landscape of the respective country.

Whether you are a legal practitioner seeking to advise clients on insolvency matters, a business owner facing financial distress, or a creditor seeking to protect your interests, this guide serves as a reliable resource for comprehending the nuances of insolvency laws and navigating the complexities of insolvency proceedings effectively.

Sincerely yours,
The Authors of the WT Insolvency Proceedings Guide

Disclaimer

This WT Insolvency Proceedings Guide is intended as a practical guide to the general principles and features of the basic legislation and procedures in the countries included in the publication.

While every effort has been made to ensure that the content is accurate when finalised, it should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions; it cannot substitute legal advice with respect to specific matters. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation. Neither Wolf Theiss nor any of the authors accept any kind of liability for the accuracy and completeness of the content of this guide. Thus, any kind of liability of Wolf Theiss or the authors is explicitly excluded.

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Insolvency Proceedings
in CEE & SEE

Albania

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1. General overview

Insolvency proceedings in Albania are primarily regulated by the Albanian Insolvency Act (*Law No. 110/2016 "On bankruptcy"*). For businesses, the Albanian insolvency regime provides for the following types of insolvency proceedings:

- Bankruptcy proceedings; and
- Restructuring proceedings.

In the insolvency proceedings, the court may appoint an insolvency administrator or a supervising administrator depending on which party has filed the application for insolvency proceedings. If the creditor filed the application, the court will appoint an insolvency administrator, and the debtor will not retain any right to self-administration. If the debtor initiated the insolvency proceedings, the court will appoint a supervising administrator, and the debtor will retain its right to self-administration. In this latter case, however, the court may still appoint an insolvency administrator if it believes that the debtor should not continue to pursue its business activity.

The tasks of the administrator vary depending on the type of proceedings. While bankruptcy proceedings usually lead to a realisation or winding-up of the debtor's estate, restructuring proceedings aim at the continuation of the debtor's business and the discharge of its debts.

In general, the Albanian insolvency regime follows the tier-based principle of repaying creditors, who are separated into the following priority ranks:

- Secured creditors;
- Preferred creditors;
- Unsecured creditors; and
- End creditors.

In Albania, there is no restructuring outside of insolvency proceedings.

2. Insolvency triggers

A precondition for the opening of insolvency proceedings is that the debtor must be illiquid or over-indebted in insolvency law terms:

- Illiquidity means that the debtor is unable to pay its debts in due time and is not able to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time.
- Over-indebtedness in insolvency law terms occurs when a corporate entity's liabilities exceed its assets and the company has negative prospects.

Both the debtor and creditors have the right to file for the opening of insolvency proceedings. Indeed, the debtor has an obligation to make such an application within 60 days of the date on which the debtor knew or should have known of its insolvency status.

Creditors can file for the opening of insolvency proceedings anytime a receivable from a given debtor is overdue. The court must accept the creditor's application once it is proven that the insolvency status or event exists. Where the creditor has previously initiated enforcement proceedings in relation to an overdue obligation of the debtor, but has failed to see its claim satisfied, the debtor is then presumed insolvent for the purpose of the insolvency proceedings and the creditor does not need to provide any further proof to support its application.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realise the debtor's assets and to distribute the proceeds among its creditors; this is the task of the insolvency administrator or supervising administrator appointed by the court. The proceeds that remain after the administrative expenses and secured claims have been satisfied are distributed among the (unsecured) creditors on a *pro rata* basis.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. However, with corporate debtors, bankruptcy will result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

The bankrupt debtor may also apply for restructuring during bankruptcy proceedings. In practice, the debtor must submit a proposal for at least 20 per cent of all insolvency debts to be satisfied within a maximum period of two years. After the preliminary formal examination of the debtor's proposal by the court, the creditors must decide at a creditors' hearing whether to accept the proposal; the quorum requirement is both a simple majority of creditors attending the hearing and a simple majority according to the value of their claims. The restructuring plan must also be approved by the court. The fulfilment of the restructuring plan will discharge the debtor of its debts.

3.2 Restructuring proceedings

Applications to initiate restructuring proceedings may be filed by the debtor, the creditor/s (representing more than 20 per cent of the debts) or the insolvency/supervising administrator. Any application will then be discussed with all involved parties at a court meeting chaired by the judge. If the meeting votes in favour, the court will ask the insolvency/supervising administrator to prepare a restructuring plan. Other involved parties (creditor/s representing more than 20 per cent of the debts or the debtor) also have the right to submit a restructuring plan. The restructuring plan(s) is then discussed and voted on at another court meeting. If two or more restructuring plans are submitted, the debtor's plan (if any) is discussed and voted on first, followed by the insolvency/supervising administrator's plan. The plan submitted by the creditor(s) (if any) is discussed last. Thereafter, the plan is submitted for the approval of the court before it becomes binding for all parties. The court then periodically supervises the implementation of the plan and the insolvency administrator periodically reports to the court and to the creditors' committee.

In restructuring proceedings where the debtor does not retain its right to self-administration, the debtor loses control over its business and the insolvency administrator makes all decisions. In restructuring proceedings where the debtor retains its right to self-administration, the debtor retains the legal capacity to act and have control over the business with supervision from the court-appointed insolvency administrator (which becomes the "supervising" administrator); certain material actions and transactions require the consent of the insolvency/supervising administrator or of the court.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the insolvency court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides to open and terminate insolvency proceedings and makes all main decisions during ongoing insolvency proceedings. The insolvency court appoints the insolvency/supervising administrator and establishes – if provided for – a creditors' committee. Certain actions in insolvency proceedings are subject to approval by the insolvency court (and, if appointed, by the creditors' committee), such as the inventory of the debtor's assets, the insolvency estate distribution plan that will be implemented in case of bankruptcy and the restructuring plan.

4.2 Insolvency administrator

The insolvency/supervising administrator is appointed by the insolvency court, usually be selecting the administrators from a list of potential appointees. Most of the administrators appointed in Albania are auditors.

The insolvency/supervising administrator has a central oversight and management function in insolvency proceedings and primarily represents the creditors' interests. The insolvency/supervising administrator's duties – in both bankruptcy and restructuring proceedings – include assessing the debtor's economic situation and determining the reasons that led to the debtor's insolvency, as well as representing the debtor in all legal disputes concerning the debtor's estate.

In insolvency proceedings, the insolvency/supervising administrator must also:

- establish whether the debtor's business can continue to operate or, if applicable, be resumed (at least for a limited time);
- assess whether a restructuring scheme is possible and would be in the common interest of the creditors; and
- liquidate the debtor's estate.

4.3 Creditors

Creditors have certain rights of control in insolvency proceedings, as the creditors' committee must approve certain actions taken by the administrator. However, a creditors' committee is not established in all cases, but rather only in complex and large-scale insolvency proceedings.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the debtor – except in cases of restructuring where the debtor retains the right to self-administration – loses its right to dispose of assets that belong to the insolvency estate.

5.2 Contracts

The opening of insolvency proceedings does not automatically terminate existing contracts. Nevertheless, the insolvency administrator may choose whether or not to fulfil contracts that:

- were agreed between the contractual parties prior to the opening of insolvency proceedings; and
- were not fully satisfied by both parties prior to the opening of the insolvency proceedings.

With regard to the termination of contracts, the following restrictions apply:

Agreements/clauses that grant a party the right to terminate or to withdraw from a contract in case of the insolvency of the other party are void, subject to exceptions for certain financial instruments such as derivative contracts.

5.3 Inadmissibility of legal actions or enforcement measures

Generally, once insolvency proceedings have been opened, legal actions or enforcement measures concerning the insolvency estate cannot be initiated or continued against the debtor. Any asset belonging to the debtor which has been seized by the bailiff in enforcement proceedings before the initiation of the insolvency proceedings and all income generated from the sale of the enforced assets become part of the liquidation estate and will be returned to the insolvency administrator within 5 days of the date the initiation of the insolvency proceedings is made public. However, where income generated from the sale of an enforced asset has already been transferred to a creditor, the latter is entitled to keep that income.

No new security rights can be established over assets forming part of the insolvency estate.

5.4 Rights of avoidance

The insolvency administrator can contest legal actions and transactions which have taken place within certain time periods before the opening of insolvency proceedings and which relate to the assets of the insolvent debtor, provided that those acts or transactions have reduced the funds of the debtor. The Albanian Insolvency Act sets forth various circumstances for contestation. The avoidance periods can be up to 2 years prior to the opening of insolvency proceedings.

6. Creditors' claims

6.1 General

Any obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are assumed to be due for the insolvency proceedings. Albanian law distinguishes between secured and unsecured creditors.

6.1.1 Secured creditors

Secured creditors are creditors:

- with a right to segregate assets; and
- with existing rights to separate satisfaction.

A creditor's right to segregate assets usually refers to assets belonging to the creditor that are in the possession of the debtor. The rightful owner of the property may bring an action against the insolvency administrator for the return of its property. A creditor's right to separate satisfaction concerns a creditor's security rights over assets belonging to the debtor.

6.1.2 Preferred creditors

Preferred creditors are creditors whose claims:

a.) derive from the termination of an employment contract in the 3 months before the application to open the insolvency proceedings was filed;

b.) relate to living expenses, where the debtor is a natural person;

c.) relate to compensation due to an employee for damage suffered during working activity;

d.) relate to compensation for damage to life or health; or

e.) relate to tax obligations that fell due in the 12 months before the application to open the insolvency proceedings was filed.

6.1.3 Unsecured creditors

Claims of unsecured creditors must be filed as insolvency claims in order to take part in insolvency proceedings. In this context, debtor obligations that are not due at the time of the opening of insolvency proceedings are assumed to be due for the purpose of said insolvency proceedings. All unsecured creditors, whose claims are registered and recognized, receive the same *pro rata* quota of their insolvency claim. Unsecured creditors are all creditors not falling under any of the other categories.

6.1.4 End creditors

End creditors are creditors whose claims relate to:

a.) penalties for late payments calculated on the claims of insolvency creditors before the insolvency proceedings were opened;

b.) mandatory penalties under the Albanian Civil Code (*Kodi Civil*), the applicable Albanian administrative legislation and the Albanian Criminal Code (*Kodi Penal*);

c.) loan repayments to any lender that was a related party of the debtor at the time of lending; or

d.) loans which the creditor and the debtor have agreed to classify as ultimate loans.

6.2 Filing of insolvency claims, procedure

In its decision to commence insolvency proceedings, the insolvency court invites the creditors to register their claims with the insolvency/supervising administrator within 45 days of the date the court's decision is published in the Albanian Commercial Register.

The insolvency/supervising administrator prepares a list of the creditors whose claims have been recognised. The list is then filed with the court and published in the Albanian Commercial Register. Any creditor whose claim has not been recognised or who challenges the inclusion of another creditor's claim in the creditor's list can submit its claim to the court. The court will then notify the insolvency/supervising administrator, who will have 10 days to issue a response. The court must decide on any claim within 15 days from the administrator's response. Once the decision is final, and to the extent that a claim has either been recognised or has been determined by the court, the claim becomes part of the proceedings as an insolvency claim.

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Client Guide
Insolvency Proceedings
in CEE & SEE

Austria

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1. General overview

Insolvency law in Austria is primarily regulated by the Austrian Insolvency Act (*Insolvenzordung*). For businesses,[1] the Austrian insolvency regime provides for the following types of insolvency proceedings:

- Bankruptcy proceedings (*Konkursverfahren*);
- Restructuring proceedings where the debtor does not retain the right to self-administration (*Sanierungsverfahren ohne Eigenverwaltung*); and
- Restructuring proceedings where the debtor retains the right to self-administration (*Sanierungsverfahren mit Eigenverwaltung*).

In all types of proceedings, an insolvency administrator (*Insolvenzverwalter*) is appointed; the tasks of the insolvency administrator vary according to the type of proceedings. While bankruptcy proceedings usually lead to a realisation or winding-up of the debtor's estate (*Insolvenzmasse*), restructuring proceedings aim at the continuation of the debtor's business and the discharge of debts (*Restschuldbefreiung).*

In general, the Austrian insolvency regime follows the principle of uniform and proportionate satisfaction of (unsecured) creditors. Aside from the distinction between secured and unsecured creditors, the Austrian insolvency regime only recognises a classless creditors' collective.

Debt-ridden businesses not already fulfilling the preconditions to file for insolvency can engage in different types of restructuring measures:

- Ahead of insolvency proceedings, solvent debtors may apply for reorganisation under the Business Reorganisation Act (*Unternehmensreorganisationsgesetz*), which enables the debtor to reorganise its business. However, the procedure set out in the Business Reorganisation Act has been used in very few cases since its introduction.

1 For natural persons, additional types of proceedings are applicable: (1) insolvency proceedings applicable to natural persons; and (2) garnishment applicable to natural persons. This overview will focus on the applicable regime for businesses only.

- The possibilities for businesses to restructure ahead of insolvency proceedings have been extended by the implementation of the Restructuring Directive (2019/1023) into the Reorganisation Act (*Reorganisationsordnung*). This allows for a non-public procedure which includes a restructuring plan and a suspension of individual enforcement measures (moratorium). The Austrian legislator has essentially adhered to the minimum requirements of the Restructuring Directive without making use of the leeway provided by it.

2. Insolvency triggers

The precondition for the opening of insolvency (bankruptcy or restructuring) proceedings is that the debtor must be illiquid or, in cases where the debtor is a corporate entity, either illiquid or over-indebted in insolvency law terms:

- Illiquidity (*Zahlungsunfähigkeit*) means that the debtor is unable to pay its debts in due time and is not able to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time.
- Over-indebtedness, in insolvency law terms (*insolvenzrechtliche Überschuldung*), occurs when a corporate entity's liabilities exceed its assets and the company has a negative prospect.

Both debtors and creditors have the right to file for the opening of bankruptcy proceedings. By contrast, only the debtor can file for the opening of restructuring proceedings. Once it is apparent that the criteria for the opening of insolvency proceedings are fulfilled, the debtor is required to apply for the opening of bankruptcy or restructuring proceedings without culpable delay and in any case within not more than 60 (sixty) days. The debtor may already file for the opening of restructuring proceedings where under threat of illiquidity. Late filing or failure to file for insolvency may result in civil and/or criminal liability.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realise the debtor's assets and to distribute the proceeds among its creditors; this is the task of the bankruptcy administrator (*Masseverwalter*) appointed by the court. The proceeds remaining after the administrative expenses and secured claims have been satisfied are distributed among the (unsecured) creditors on a *pro rata* basis.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. However, with corporate debtors, bankruptcy will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

The bankrupt debtor may also apply for a restructuring scheme during bankruptcy proceedings. In the application, the debtor must submit a proposal for at least 20 per cent of all insolvency debts to be satisfied within a maximum period of two years. After its preliminary formal examination by the court, the creditors must decide at a creditors' hearing whether to accept the debtor's proposal; the quorum requirement is both a simple majority of creditors attending the hearing and a simple majority according to the value of their claims. The restructuring scheme must also be approved by the court. The fulfilment of the restructuring scheme will discharge the debtor of its debts.

3.2 Restructuring proceedings (under the Austrian Insolvency Act)

Debtors may also apply for the opening of restructuring proceedings at the time of filing for insolvency; creditors, on the other hand, are prevented from filing for restructuring proceedings. There are two types of restructuring proceedings available:

- Procedure where the debtor does not retain the right to self-administration; and
- Procedure where the debtor retains the right to self-administration.

In both cases, the application must contain a restructuring plan (*Sanierungsplan*), with a minimum quota of 20 per cent (in case of no self-administration) or 30 per cent (in case of self-administration) of all debts needing to be satisfied within a period of two years. The approval of the restructuring plan and the discharge of debts are subject to the same rules as outlined under 3.1 above.

If the restructuring proposal is not accepted by the creditors, the court will reclassify and resume the proceedings as bankruptcy proceedings. The debtor's business may only be liquidated if the debtor's restructuring plan has not been accepted by the creditors within 90 days of the opening of the insolvency proceedings.

In restructuring proceedings where the debtor does not retain the right to self-administration, the debtor loses control over its business and the court-appointed bankruptcy administrator takes all decisions. In restructuring proceedings where the debtor retains the right to self-administration, the debtor retains its legal capacity to act and its control over the business, with the supervision of the court-appointed restructuring administrator (*Sanierungsverwalter*); certain material actions and transactions require the consent of the restructuring administrator or the insolvency court. In certain cases (e.g. if actions by the debtor could lead to a disadvantage for creditors) the right to self-administration may be withdrawn.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the insolvency court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides to open and terminate insolvency proceedings and takes all main decisions during ongoing insolvency proceedings. The insolvency court appoints the insolvency administrator and establishes, if provided for, a creditor's committee (*Gläubigerausschuss*). Certain actions in the insolvency proceedings – i.e. the sale of the debtor's business or the sale of a substantial portion of the debtor's assets – are subject to approval by the insolvency court (and, if appointed, the creditor's committee).

4.2 Insolvency administrator

The insolvency administrator is appointed by the insolvency court, usually by selecting the insolvency administrator from a list of potential appointees. Most of the insolvency administrators appointed in Austria are attorneys.

The insolvency administrator has a central oversight and management function in insolvency proceedings and primarily represents the creditors' interests. The insolvency administrators' duties – in both bankruptcy and restructuring proceedings – include assessing the debtor's economic position and determining the reasons that led to the debtor's insolvency, as well as representation in all legal disputes concerning the debtor's estate.

In bankruptcy proceedings, a bankruptcy administrator must additionally:

- establish whether the debtor's business can be continued or, if applicable, resumed (at least for a limited period);
- assess whether a restructuring plan is possible and would be in the common interest of the creditors; and
- liquidate the debtor's estate.

4.3 Creditors

Creditors have certain rights of control in insolvency proceedings, as the creditors' committee must approve certain actions taken by the administrator. However, creditors' committees are not established in all cases, but rather only in complex and large-scale insolvency proceedings.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the debtor – except in restructuring proceedings where the debtor retains the right to self-administration – loses its right to dispose of assets that belong to the insolvency estate.

5.2 Contracts

The opening of insolvency proceedings does not automatically terminate existing contracts. Nevertheless, the insolvency administrator may choose whether to fulfil contracts that:

- were agreed between the contractual parties prior to the opening of insolvency proceedings; and
- were not fully satisfied by both parties prior to the opening of the insolvency proceedings.

Where the insolvency administrator does not respond in a timely manner, contracts are deemed terminated. Special regimes apply to lease agreements (*Bestandvertrag*) and employment contracts.

With regard to the termination of contracts, the following restrictions apply:

- Agreements/clauses which grant a party the right to terminate or to withdraw from a contract in case of the insolvency of the other party are void, subject to exceptions for certain financial instruments such as derivative contracts.
- Where the termination of a contract could jeopardise the continuation of the debtor's business, the debtor's counterparty cannot terminate the contract during the six-month period following the opening of insolvency proceedings, unless there is a compelling reason to do so. Compelling reasons do not include (a) the worsening of the debtor's economic situation and (b) default of payment of liabilities which have become due prior to the opening of insolvency proceedings. Exceptions apply (a) if the termination is indispensable for the prevention of materially adverse personal or economic consequences, (b) to claims for disbursement of loan proceeds and (c) with respect to employment contracts (to which a special termination regime applies).

5.3 Inadmissibility of legal actions or enforcement measures

Generally, once insolvency proceedings have been opened, legal actions or enforcement measures concerning the insolvency estate cannot be initiated or continued against the debtor (*Prozesssperre*). Exceptions to this are legal proceedings that do not affect the

debtor's estate, proceedings relating to rights to segregate assets (*Aussonderungsrechte*) and rights to separate satisfaction (*Absonderungsrechte*), proceedings relating to claims disputed by the administrator, and legal proceedings resulting from transactions concluded after the commencement of the insolvency proceedings.

From the date of the commencement of insolvency proceedings, no new security rights may be established with respect to assets that form part of the insolvency estate (*Exekutionssperre*).

5.4 Rights of avoidance

The insolvency administrator can contest legal actions and transactions which have taken place within certain time periods before the opening of insolvency proceedings and which relate to the assets of the insolvent debtor, provided that those acts or transactions have reduced the funds of the debtor. The Austrian Insolvency Act sets forth various circumstances for contestation, the avoidance periods ranging from six month up to ten years prior to the opening of the insolvency proceedings.

6. Creditors' claims

6.1 General

Any obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are assumed to be due for the insolvency proceedings. Austrian law distinguishes between secured and unsecured creditors.

6.1.1 Secured creditors

Secured creditors are creditors:

- with a right to segregate assets; and
- with existing rights to separate satisfaction.

A creditor's right to segregate assets usually refers to assets in the creditor's property that are in the possession of the debtor. The rightful owner of the property may bring an action against the insolvency administrator, or in other cases against the debtor (in restructuring proceedings where the debtor retains the right to self-administration), for the return of its property. A creditor's right to separate satisfaction concerns a creditor's security rights over the assets of the debtor.

6.1.2 Unsecured creditors

Claims of unsecured creditors must be filed as insolvency claims (*Insolvenzforderung*) in order to take part in the insolvency proceedings. In this context, obligations of the debtor that are not due at the time of opening of the insolvency proceedings are assumed to be due for the purpose of the insolvency proceedings. All unsecured creditors whose claims are registered and recognised receive the same *pro rata* quota of their insolvency claim.

6.2 Filing of insolvency claims, procedure

In its decision to commence insolvency proceedings, the insolvency court sets a date for the court hearing for the examination of insolvency claims (*Prüfungstagsatzung*), as well as a time limit within which creditors must file their claims with the court (14 days before the court hearing for the examination of claims).

The administrator must declare whether it recognises or disputes the claims filed. If a creditor's claim has been disputed, the creditor must file a lawsuit for determination (*Prüfungsklage*). However, if the claim is grounded in an enforceable title obtained prior to the commencement of insolvency proceedings, it is the disputing party that must file the lawsuit. To the extent that a claim has either been recognised or has been determined by the court in special determination proceedings (*Prüfungsprozess*), the claim becomes part of the proceedings as an insolvency claim.

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Insolvency Proceedings
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Bosnia & Herzegovina

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Bosnia and Herzegovina ("BiH") is a country consisting of two separate entities, the Federation of Bosnia and Herzegovina ("FBiH") and Republika Srpska ("RS"), along with a special autonomous district under direct sovereignty of the State, the Brčko District. Different legal regimes are applicable in each of these areas. Nevertheless, certain matters are regulated by State laws that are applicable in all parts of the country. Although corporate law matters, including insolvency proceedings, are regulated by the laws and regulations adopted in each entity, the legislations of the FBiH, RS and Brčko District are to a large extent harmonised and provide for substantially identical legal frameworks. Unless otherwise indicated below, our comments apply to both the FBiH and RS, while Brčko District – due to its size – is not included.

1. General overview

Insolvency law in BiH is regulated by the Insolvency Law of the Federation of Bosnia and Herzegovina ("*Official Gazette of the Federation of Bosnia and Herzegovina*", no. 52/2021) and the Insolvency Law of Republika Srpska ("*Official Gazette of Republika Srpska*", no. 16/2016).

The BiH insolvency regime provides for the following types of insolvency proceedings:

- bankruptcy proceedings (*stečajni postupak*); and
- restructuring proceedings (*predstečajni postupak* in the FBIH and *postupak restrukturiranja in RS*).

While bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate, restructuring proceedings aim to keep the debtor's business in operation and to discharge the debtor's debts.

Namely, restructuring proceedings are carried out for the purpose of regulating the legal (and financial) status of the debtor and its relationship with creditors, as well as to enable the debtor to continue in business.

Conversely, the aim of bankruptcy proceedings is the collective satisfaction of all creditors through liquidation of the bankruptcy debtor's property and the distribution of the sales proceeds. However, even during the course of bankruptcy proceedings – as an alternative to liquidation and dissolution of the bankruptcy debtor – a reorganisation (*reorganizacija*) of the debtor can be performed. This alternative aims to re-define the legal and economic position of the bankruptcy debtor and its relationships with creditors, in order to keep the business operating on a "going concern basis".

2. Insolvency triggers

The preconditions for the opening of bankruptcy proceedings against a debtor in BiH are the following:

- Illiquidity (*platežna nesposobnost*) which is presumed if the debtor fails to fulfil its obligations as they fall due for an uninterrupted period of 60 (sixty) days or if the debtor's bank accounts have been frozen for an uninterrupted period of 60 (sixty) days. The ability of the debtor to fulfil some of its obligations but not all of them is not sufficient evidence, *per se*, of the debtor's inability to pay.
- Imminent illiquidity (prijeteća platežna nesposobnost) means that the debtor is unable to pay its debts as they fall due for a period of 12 (twelve) months and is not able to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time.

Both debtors and creditors have the right to file for the opening of bankruptcy proceedings on the grounds of illiquidity. A debtor may also file for the opening of bankruptcy proceedings on the grounds of imminent illiquidity. Once it is apparent that the criteria for opening insolvency proceedings are fulfilled, the debtor is required to file a bankruptcy petition within no later than 60 (sixty) days. Late filing of failure to file for bankruptcy may result in civil and criminal liability.

The precondition for the opening of restructuring proceedings is imminent illiquidity which is presumed (i) if the debtor is unable to pay its debts as they fall due for a period of 12 (twelve) months and (ii) if the debtor fails to fulfil its obligations as they fall due for period up to 60 (sixty) days. A petition for the initiation of restructuring proceedings, along with a draft plan of the financial and operational restructuring, can be submitted to the court by the debtor or by a creditor with the debtor's consent.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realise the debtor's assets and to distribute the proceeds among its creditors; this is the task of the bankruptcy administrator (*stečajni upravnik*) appointed by the court. The proceeds remaining after the administrative expenses and secured claims have been satisfied are distributed among the (unsecured) creditors of the same rank on a *pro rata* basis.

The commencement of bankruptcy proceedings occurs when the court publishes the decision in the relevant Official Gazette. On this date:

- the court appoints a bankruptcy administrator, who assumes control over the debtor and its assets;
- any existing court, arbitration and similar proceeding related to the debtor's estate are suspended; and
- the opening of bankruptcy proceedings is noted in all relevant public registries (commercial registry, land registry, etc.).

As an alternative to liquidation and dissolution of the debtor, insolvency laws permit the reorganisation of the debtor, which can be initiated by the debtor or the bankruptcy administrator, no later than the closure of the final hearing (*ročište za glavnu diobu*) - i.e. the stage when proceeds from the sale of the bankruptcy estate should be distributed among the creditors. To proceed with a reorganisation, a reorganisation plan must be approved by the creditors.

3.2 Restructuring proceedings

The goal of the restructuring procedure is to enable the debtor that has become insolvent to undergo financial restructuring, on the basis of which it will become liquid and solvent, and to provide creditors with more favourable conditions for settling their claims than those that would be achieved in bankruptcy proceedings.

In the decision on opening of restructuring proceedings, the court will also:

- appoint a trustee (*povjerenik*);
- schedule an examination hearing (*ispitno ročište*);
- invite creditors to notify their claims (in the FBiH within 15 days, in RS within 30 days after the decision on opening the insolvency proceedings is published in the Official Gazette).

If the restructuring plan is subsequently adopted, the claims by those creditors that accepted the plan will be reduced in accordance with said plan, while claims by creditors who voted against the plan may be reduced by up to ten per cent (10%) of their claims.

During the restructuring proceedings the debtor continues to operate but can only make payments that are necessary for regular business operations. During restructuring proceedings, litigation and enforcement proceedings against the debtor are suspended.

4. Actors of insolvency proceedings

Bankruptcy proceedings are generally controlled by the bankruptcy judge (*stečajni sudija*) and the bankruptcy administrator (*stečajni upravnik*). Furthermore, creditors have certain rights of control through the creditors' assembly (*skupština povjerilaca*) and the creditors' committee (*odbor povjerilaca*). Their role and authorizations are further defined in the following Sections.

Restructuring proceedings are carried out and controlled by the court and the trustee (*povjerenik*).

4.1 Bankruptcy judge

The bankruptcy judge decides to open and terminate the bankruptcy proceedings and manages the proceedings from the filing of the petition to their conclusion. The judge appoints the bankruptcy administrator and convenes a creditors' assembly. The bankruptcy judge can invalidate any of the bankruptcy administrator's decisions that violate the provisions of the insolvency law and other positive regulations that reduce the bankruptcy estate and violate the rights of creditors.

4.2 Bankruptcy administrator

As a general rule, the bankruptcy administrator is appointed by the bankruptcy judge from a list of certified bankruptcy administrators.

The bankruptcy administrator has a central oversight and management function in bankruptcy proceedings. The bankruptcy administrators' duties involve assessing the debtor's economic situation and determining the reasons that led to the debtor's insolvency; as well as representing the debtor in all legal disputes concerning the debtor's estate.

4.3 Creditors' assembly

Creditors have certain rights of control in the bankruptcy proceedings through the creditor's assembly, which is authorised to made decisions regarding the sale of the bankruptcy estate, as well as the conditions and methods of the sale. Only creditors who have registered claims which have not been challenged by the bankruptcy administrator have a right to vote.

4.4 Creditors' committee

The creditors' assembly can elect the creditors' committee. The following groups of creditors must be represented in the creditors' committee:

a.) bankruptcy creditors with the highest claims;

b.) bankruptcy creditors with small claims;

c.) representatives of the bankruptcy debtor's employees; and

d.) secured creditors.

If the creditors' committee has been elected, it is obligated to support and supervise the bankruptcy administrator in the management of the bankruptcy estate. Any and all undertakings by the bankruptcy administrator which produce significant legal and formal consequences, require the consent of the creditors' committee.

5. Main effects of the opening of insolvency proceedings

5.1 General

The below specified effects relate to bankruptcy proceedings only – the main features and effects of the restructuring proceedings have been summarized under Section 3.2 above.

As a general rule, once bankruptcy proceedings are opened, the rights of the debtor to manage and dispose of the assets belonging to the bankruptcy estate, as well as the rights of the debtor's agents, representatives and attorneys, are transferred to the bankruptcy administrator.

5.2 Contracts

The commencement of bankruptcy proceedings does not result in the automatic termination of existing (commercial) contracts. Nevertheless, the bankruptcy administrator may choose whether or not to fulfil or avoid contracts if on the date of the commencement of bankruptcy proceedings the obligations under the contract have not been performed in whole or in part.

The other party to the contract may require the administrator to submit a statement in writing, no more than 15 days after the commencement of the bankruptcy proceeding, as to whether it is withdrawing from the contract or demanding its execution. If the bankruptcy administrator makes no such statement within this period, the debtor is deemed to have withdrawn from the contract.

5.3 Employment contracts

On the day on which bankruptcy proceedings are opened, the debtor's employees will have their employment contracts terminated.

The bankruptcy administrator can conclude new employment contracts to meet the needs of continuing operations or to conduct the bankruptcy proceedings. The bankruptcy administrator shall enter into new employment contracts primarily with employees of the debtor whose employment contracts have ended.

5.4 Inadmissibility of legal actions or enforcement measures

All judicial or extrajudicial actions and proceedings, including enforcement proceedings submitted by the creditors against the debtor, will be suspended once the bankruptcy proceedings are opened. Creditors can enforce their claims against the debtor only within the framework of the bankruptcy proceedings.

Litigation or enforcement initiated against the debtor before the commencement of bankruptcy proceedings may be resumed if they concern:

a.) removal of an item from the bankruptcy estate;

b.) separate settlement e.g. in case of secured creditors; or

c.) debts of the bankruptcy estate (*dugovi stečajne mase*).

In addition, enforcement of claims related to the debts of the bankruptcy estate (i.e. special types of claims defined as such under law, primarily related to obligations caused by actions of the bankruptcy administrator) are prohibited for a period of six (6) months following the commencement of bankruptcy proceedings, except in the following cases:

- bilateral agreements (*dvostranoobavezujući ugovori)* which the bankruptcy administrator has elected to perform;
- permanent agreements (*trajni ugovori*) which the bankruptcy administrator did not cancel within appropriate deadlines; or
- employment contracts or other long-term agreements in relation to which the bankruptcy administrator has requested that the other party fulfil obligations in favour of the bankruptcy estate.

5.5 Rights of avoidance

The bankruptcy administrator can contest legal actions and transactions that have taken place within certain time periods before the opening of bankruptcy proceedings and that relate to the debtor's assets, provided that those acts or transactions impair the equal settlement of creditors (*oštećenje povjerilaca*) or put individual creditors in a more favourable position (*pogodovanje povjerilaca*). Insolvency laws in the FBiH and RS set forth various circumstances for contestation; avoidance periods range from three months up to five years prior to the opening of bankruptcy proceedings.

6. Creditors' claims

6.1 General

Creditors who wish to participate in insolvency proceedings (either bankruptcy or restructuring proceedings) must register their claims no later than 30 days (in the FbiH, in the case of restructuring, a deadline is 15 days) after the decision on opening the insolvency proceedings is published in the Official Gazette.

Insolvency laws in the FBiH and RS draw a distinction between secured and unsecured creditors (the differences provided below are, unless otherwise indicated, applicable to both bankruptcy and restructuring proceedings).

6.1.1 Secured creditors

Secured creditors (*razlučni povjerioci*) are creditors who are entitled to a separate settlement of their claims from certain parts of the insolvency estate – i.e. collaterals.

Secured creditors are:

- mortgage creditors (*hipotekarni povjerioci*);
- creditors who acquired a lien by law, confiscation, court agreement or a legal transaction;
- creditors to whom the debtor has transferred a right for the purpose of security; or
- creditors who hold right of retention.

Secured creditors who have validly established a security interest *in rem* can generally demand a separate settlement of their respective claims from the proceeds realised through the sale of the collateral, either during the course of the insolvency proceedings or in a separate enforcement proceeding.

6.1.2 Unsecured creditors

Claims of unsecured creditors must be filed as insolvency claims in order to take part in insolvency proceedings. In this context, obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are assumed to be due for the purpose of the insolvency proceedings.

All unsecured creditors of the same ranking, whose claims are registered and recognised, receive the same *pro rata* quota of their insolvency claim in the event of bankruptcy proceedings (i.e. liquidation and dissolution of the debtor).

6.1.3 Filing of insolvency claims, procedure

In its decision to commence insolvency proceedings, the court invites creditors to file their claims with the court and sets a court hearing date at which to examine the insolvency claims.

During this hearing, the bankruptcy administrator (in bankruptcy proceedings), or the debtor and trustee (in restructuring proceedings) must declare whether to recognise or dispute the claims filed. If a creditor's claim has been disputed, the creditor must file a lawsuit for determination. An exemption exists if the claim is based on an enforceable title obtained prior to the commencement of insolvency proceedings, in which case the lawsuit must be filed by the disputing party.

To the extent that a claim has either been recognised or has been determined by the court in special court proceedings, the claim becomes part of the insolvency proceedings as an insolvency claim.

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Insolvency Proceedings
in CEE & SEE

Bulgaria

Wolf Theiss

1. General overview

Insolvency in Bulgaria is essentially regulated by the Bulgarian Commerce Act (*Търговски закон*). Certain sector-specific provisions are also present in other pieces of legislation (e.g. regarding bank insolvency and other regulated sectors). For businesses, the Bulgarian insolvency regime provides for the following types of insolvency proceedings:

- Insolvency proceedings (*Производство по несъстоятелност*); and
- Reorganisation proceedings (*Производство по стабилизация*).

The tasks involved vary according to the type of proceedings. While insolvency proceedings usually lead to a realisation or winding-up of the debtor's estate (*аса на несъстоятелността*), reorganisation proceedings are aimed at the continuation of the debtor's business.

In general, Bulgarian insolvency regulation seeks to rehabilitate the debtor's business and, where that is not possible, to satisfy its creditors fairly.

Ahead of insolvency proceedings, solvent debtors can apply for stabilisation under the Bulgarian Commerce Act. During these proceedings, the powers of the debtor are limited by various measures. The aim of stabilisation is for the debtor and its creditors to agree on a stabilisation plan to prevent the initiation of insolvency proceedings.

2. Insolvency triggers

A precondition for the opening of insolvency (bankruptcy) proceedings is that the debtor must be illiquid or over-indebted:

- Illiquidity (*Неплатежоспособност*) means that the debtor is unable to pay its debts as they become due and is not able to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time.
- Over-indebtedness (*Свръхзадълженост*) exists when a corporate entity's liabilities exceed its assets and the company has a negative prospect.

Both debtors and creditors have the right to file for the opening of insolvency proceedings. Once it is apparent that the criteria for opening insolvency proceedings are fulfilled, the debtor is required to apply for the opening of insolvency or restructuring proceedings without culpable delay and, in any case, not later than 30 (thirty) days after fulfilling the abovementioned criteria. Late filing or failure to file for insolvency may result in civil and/or criminal liability.

3. Types of insolvency proceedings

3.1 Insolvency proceedings

The purpose of insolvency proceedings is the rehabilitation of the debtor's business and, where this is not possible, the fair satisfaction of creditors (to realise the debtor's assets and to distribute the proceeds). An insolvency administrator (*синдик*) is appointed by the court to manage this process. The proceeds remaining after the realisation of the debtor's assets and estate are distributed in accordance with a statutory order, with claims divided into 12 separate classes. The first and second tiers of claims (privileged claims) are those secured by pledge, mortgage or distraint, as well as claims for which a retention right is exercised. After privileged claims, proceeds are allocated to cover the administrative costs of the insolvency, followed by the remaining classes, comprising all non-privileged claims, which are divided into categories according to their material nature (see below).

In general, the termination of insolvency proceedings does not discharge the debtor of debts that have not been satisfied in full. However, with corporate debtors, insolvency will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

3.2 Reorganisation proceedings

A reorganisation scheme can be proposed by any of the debtor in the insolvency proceedings, the insolvency administrator, creditors with at least 1/3 of secured claims, the creditors with at least 1/3 of unsecured claims, the partners/shareholders holding 1/3 of the company's share capital, an unlimited partner or 20 per cent of the debtor's employees. Such a proposal initiates reorganisation proceedings while insolvency proceedings are pending. The scheme must contain the degree of satisfaction of claims, the method and timing of payment and guarantees for the performance of disputed unaccepted claims,

among other things. After a preliminary formal examination by the court, the creditors decide – class by class – if the scheme is to be adopted (voting is conducted class by class with a simple majority required to adopt the scheme). The court must confirm or reject the plan adopted but is not entitled to alter or amend it. By fulfilling the restructuring scheme, the debtor is discharged of its debts.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the insolvency court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides to open, terminate and reopen insolvency proceedings and makes all main decisions during ongoing insolvency proceedings. The insolvency court also supervises the other insolvency authorities, grants securities, appoints and dismisses the insolvency administrator, approves the reorganisation scheme and convenes the creditors' meeting, among other things.

4.2 Insolvency administrator

The insolvency administrator and the interim insolvency administrator (*временен синдик*) (appointed prior to the first meeting of creditors), are appointed by the insolvency court. The court is required to appoint the insolvency administrator elected by the creditors' assembly at its first or subsequent meetings. The insolvency administrator must be a natural person, have the appropriate qualifications and be registered in the relevant register kept by the Ministry of Justice. In particularly complex cases, more than one insolvency administrator can be appointed.

The insolvency administrator has a central oversight and management function in insolvency proceedings. The powers of the insolvency administrator include representing the debtor, managing its day-to-day affairs, participating in debtor proceedings, collecting the debtor's claims, proposing a reorganisation scheme and liquidating the debtor's estate.

The insolvency administrator must act in good faith and with the care of a prudent trader, while also being subject to civil liability towards the insolvent company and the creditors, as well as to general criminal and administrative liability.

4.3 Assembly of creditors

Creditors have certain rights of control in insolvency proceedings, as the creditors' assembly can elect the insolvency administrator, approve reports from the insolvency administrator regarding certain actions, determine the insolvency administrator's remuneration, and determine the procedure and method for the liquidation of the debtor's estate, among other actions.

5. Main effects of the opening of insolvency proceedings

5.1 Effects in relation to the debtor

Once insolvency proceedings are opened, the debtor loses its right to enter into new contracts without the permission of the insolvency administrator. Furthermore, if the actions of the debtor place the interests of the creditors at risk, the court may deprive the debtor of the right to manage and dispose of its property.

5.2 Effects in relation to the debtor's obligations as well as obligations to the debtor

The opening of insolvency proceedings does not automatically terminate existing contracts. However, these can be terminated by the insolvency administrator. One consequence of the insolvency proceedings being opened is that all debts to the debtor become due, regardless of when they mature.

From this point on, all debts owed to the debtor should be recognised by the insolvency administrator. If a debt is repaid directly to the debtor after the insolvency proceedings have commenced, this will be void and no repayment will be deemed to have occurred.

5.3 Inadmissibility of legal actions or enforcement measures (effects in relation to the creditors)

Generally, once insolvency proceedings have been opened, court and arbitration proceedings in property, civil and commercial cases against the debtor are suspended. Enforcement proceedings against the debtor are suspended only if they are directed against property included in the insolvency estate. Exceptions to this are enforcement proceedings relating to securities imposed or enforcement actions commenced under the Bulgarian Tax and Social Security Procedure Code (*"Данъчно-осигурителен процесуален кодекс"*) and enforcement proceedings commenced under the Bulgarian Special Pledges Act (*„Закон за особените залози"*).

5.4 Rights of avoidance

The insolvency administrator can contest legal actions and transactions that have taken place within certain time periods before the opening of insolvency proceedings and that relate to the assets of the insolvent debtor, provided that those acts or transactions have reduced the debtor's funds. The Bulgarian Commercial Act sets forth various circumstances for contestation. The avoidance periods range from six months up to three years prior to the filing of the application to open the insolvency proceedings.

6. Creditors' claims

6.1 General

In terms of distribution, claims are satisfied in the following order (Article 722 of the Bulgarian Commercial Act):

- Privileged first tier creditors: those with a pledge, mortgage or a right to distrain. (with a special privilege);
- Second tier creditors: those with a right of retention (with a special privilege); and
- Creditors without special privileges: for instance, those with claims for administrative insolvency costs, state and municipality claims for public law debts that arose before the date of the decision to open insolvency proceedings, and new claims arising after the date of the decision to open insolvency proceedings that were not paid on their due date; and other creditors whose claims are satisfied only after full satisfaction

of other creditors with claims arising from the specific hypotheses explicitly listed in the Bulgarian Commerce Act.

Privileged creditors are satisfied in the order in which their claim was established, while other creditors are satisfied proportionally.

6.2 Filing of insolvency claims, procedure

Claims must be submitted within one month of the publication of the decision to open insolvency proceedings in the Commercial Register. Any creditor who lodges a claim after that period will not be entitled to contest claims where these have already been accepted or where distribution has already been carried out. If a distribution has already been carried out, such creditors will be satisfied out of the leftover proceeds. If any additional costs are incurred in connection with the acceptance of the claim, they will be borne by the aforementioned creditor.

Filing a claim interrupts the statute of limitations. If a creditor files a claim that is not accepted, it must file a declaratory claim, in which case the statute of limitations is once again interrupted.

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Insolvency Proceedings
in CEE & SEE

Croatia

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1. General overview

Insolvency law in the Republic of Croatia is primarily regulated by the Croatian Bankruptcy Act (*Stečajni zakon*). The Croatian insolvency regime provides for two main types of insolvency proceedings for businesses:

- Bankruptcy proceedings; and
- Restructuring (pre-bankruptcy) proceedings.[1]

While bankruptcy proceedings usually lead to the realisation of the debtor's assets and the liquidation of the entity, restructuring proceedings aim to preserve the debtor's business by constructing an arrangement with creditors in order to prevent insolvency from occurring.

Restructuring and bankruptcy proceedings are urgent court proceedings with precisely defined procedural mechanics and timelines set for the execution of procedural actions.

The Croatian Bankruptcy Act was last amended in March 2022, with the transposition of Restructuring Directive 2019/1023.

2. Insolvency triggers

2.1 Bankruptcy proceedings

The statutory reasons for the opening of bankruptcy proceedings in Croatia are (i) inability to pay (*nesposobnost za plaćanje*), and (ii) over-indebtedness (*prezaduženost*):

- Inability to pay is determined if a debtor is unable to perform its obligations as they fall due; this will especially be the case if the debtor has at least one outstanding monetary obligation registered for direct collection which cannot be executed over the debtor's bank accounts within 60 days, or if the debtor has not paid three consecutive months' wages owed to its worker(s).

1 For natural persons, additional consumer bankruptcy proceedings are available pursuant to the Croatian Consumer Bankruptcy Act.

- Over-indebtedness is determined if the company's obligations exceed the value of its assets and the company has a negative business forecast, except where the debtor's shareholders are natural persons with joint and several liability regarding the company's obligations (provided that no bankruptcy proceedings have been commenced against the shareholders).

It is determined during preparatory proceedings whether the preconditions for the opening of bankruptcy proceedings are met (except for some cases where preparatory proceedings are not necessary).

Both debtors and creditors have the right to file for the initiation of bankruptcy proceedings. Where a debtor has been unable to pay over a prolonged period, the Financial Agency is also required to file an application. The debtor may file to initiate bankruptcy proceedings if threatened with insolvency (i.e. if the debtor will likely be unable to perform its obligations as they fall due).

Late filing for insolvency, or failure to do so by the debtor, may result in civil liability. It may also constitute a criminal offence punishable by a fine or up to 2 years of imprisonment.

2.2 Restructuring proceedings

Restructuring proceedings can only be opened in case of threatening inability to pay (*prijeteća nesposobnost za plaćanje*). This condition is triggered if the debtor proves - on the balance of probability - that it will not be able to settle its existing debts as they fall due.

The Croatian Bankruptcy Act stipulates statutory presumptions where this condition is deemed to have been triggered.

Restructuring proceedings may be opened exclusively upon the application of the debtor.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

Bankruptcy proceedings aim to collectively settle the creditors' claims by realising the debtor's assets and distributing them among its creditors. In general, the proceedings will ultimately lead to the dissolution of the company, which will prevent creditors from enforcing their debts that have not been satisfied in full.

Alternatively, creditors may approve a bankruptcy (restructuring) plan that enables the debtor to continue carrying on its business, similarly to restructuring proceedings.

The bankruptcy plan can encompass a wide range of measures, including the transfer of the debtor's assets to new entities, mergers, distribution of assets among creditors, debt write-off or conversion of debt into loans. The bankruptcy plan should ensure equal treatment of equally ranked creditors. The creditors, divided into separate groups, vote on the proposed bankruptcy plan, which must pass by a qualified majority. The court must then approve the plan. The execution of the approved plan may be subject to monitoring, involving the administrator, creditors and the court.

Following the conclusion of bankruptcy proceedings, the bankruptcy creditors of an individual debtor who is a natural person may, as a rule, continue to enforce their remaining claims. However, the individual debtor may, upon his or her own request, be discharged of any outstanding debts by the court.

The principal condition for discharge is that the debtor must assign his or her eligible receivables to a court-appointed trustee for a period of three (first discharge) or five years (if the debtor has already been granted a discharge). The receivables assigned are earmarked to settle the creditors' claims.

3.2 Restructuring proceedings

The purpose of restructuring proceedings is to stave off insolvency and keep the debtor's business activity going.

An application from the debtor must be accompanied by a restructuring plan which contains the measures for operative and financial restructuring and offers payment modalities to creditors. The creditors, categorised into classes, decide whether to accept the proposal at a court hearing, casting or registering their votes in writing beforehand. The restructuring plan must be accepted by a majority of creditors within each class of creditors, and the value of the claims of creditors who accept the restructuring plan must be at least double the value of the claims of creditors who refused it.

The restructuring plan must also be approved by the court. Under certain conditions, the court can also overrule the refusal of the restructuring plan by some of the creditor classes. New restructuring proceedings cannot be initiated within two years of the fulfilment of the obligations under the previously confirmed restructuring plan. If the restructuring plan is not accepted by the creditors or the restructuring plan fails, the insolvency court will discontinue the proceedings.

4. Actors of insolvency proceedings

The actors of insolvency proceedings are the court, the insolvency administrator and the creditors, acting through the creditors' committee and creditors' assembly.

4.1 Insolvency court

The insolvency court decides on the opening and termination of insolvency proceedings and renders all main decisions during the course of said proceedings. The insolvency court appoints, controls and determines the compensation of the bankruptcy administrator or trustee.

Certain actions in insolvency proceedings are subject to the insolvency court's prior approval, such as distributing proceeds from the sale of the bankruptcy estate, selling all the debtor's assets as a whole and challenging any legal transactions made by the debtor before the opening of bankruptcy proceedings which disrupt the right to equal settlement of creditors.

4.2 Insolvency administrator

The insolvency administrator is appointed by the insolvency court from the list of qualified insolvency administrators. Creditors may decide, at the creditors' assembly, to remove the insolvency administrator and have another administrator appointed. The court may also, *ex officio* or upon notice from the creditors, dismiss an administrator who fails to successfully perform his or her duties or for other significant reasons.

The duties of an insolvency administrator in bankruptcy proceedings include conducting an initial assessment of the debtor's financial position, managing the remaining business activities, legally representing the debtor, cooperating with public authorities, liquidating the bankruptcy estate and making payments to creditors.

In the course of the restructuring proceedings, the insolvency administrator – among other tasks entrusted to them under the Croatian Bankruptcy Act – supervises the activities of the debtor, examines its inventory lists and the claims filed by creditors, supports the process of drawing up the restructuring plan and cooperates with the competent authorities. However, unlike in the bankruptcy proceedings, it is not entitled to formally and legally represent the debtor.

4.3 Creditors

Creditors have certain rights of control and decision-making powers in bankruptcy proceedings.

In bankruptcy proceedings, creditors primarily exercise their rights through the creditors' assembly.

In addition, a creditors' committee may be established by the court or by the creditors' assembly to supervise and assist the insolvency administrator with all management tasks. The creditors' assembly has certain control powers and may decide whether to continue or discontinue the debtor's business and the methods and conditions for the sale of its assets.

In restructuring proceedings, creditors are granted a narrower scope of procedural rights than in bankruptcy proceedings, as they are neither allowed to initiate the proceedings nor authorised to directly decide on and approve the most relevant procedural actions in the proceedings.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once bankruptcy proceedings are opened, the insolvency administrator assumes control of the bankruptcy estate and the debtor loses its right to dispose of assets that belong to the bankruptcy estate. In exceptional cases, the court may allow the debtor to keep its position within the management of the bankruptcy estate, under the supervision of the insolvency administrator.

In restructuring proceedings, the debtor's management retains the right to carry on the business operations of the debtor. However, they can only make payments if they are necessary for the debtor's regular business.

The ensuing overview primarily focuses on the main effects of the opening of bankruptcy proceedings. The restructuring regime envisages slightly different legal effects.

5.2 Contracts

Generally, the opening of bankruptcy proceedings does not automatically terminate the debtor's existing contracts. For bilateral contracts which have not yet been fully satisfied by both parties, the insolvency administrator may choose whether or not to fulfil the contract and request its fulfilment by the other party. When the insolvency administrator refuses to fulfil the contract or does not respond to the other party's enquiry in a timely manner, the other party can file its claim only as a bankruptcy creditor.

Special rules apply to fixed, financial, employment and lease contracts.

In restructuring proceedings, the debtor's creditors from bilateral contractual arrangements may not refuse to fulfil their obligations or to terminate or amend the contract on the same grounds that triggered the restructuring proceedings.

5.3 Suspension of legal actions and inadmissibility of enforcement

In general, legal actions and judicial proceedings involving the debtor are suspended with the opening of insolvency proceedings. Litigations relating to claims registered in insolvency

proceedings cannot be continued until the claims have been examined. Moreover, except in exceptional circumstances, creditors cannot initiate enforcement proceedings and seek security measures concerning the debtor's assets once insolvency proceedings have been initiated. Any such proceedings already in progress cannot then be continued. In bankruptcy proceedings, the insolvency administrator takes over litigation and arbitration proceedings regarding the estate assets.

5.4 Rights of avoidance

Legal actions and omissions by the debtor which cause damage to creditors or give preferential treatment to certain creditors, and which have taken place before the opening of bankruptcy proceedings, may be challenged by the insolvency administrator or the creditors. Depending on the circumstances for contestation, avoidance periods range from between one month and ten years before the application to initiate bankruptcy proceedings was filed.

6. Creditors' claims

6.1 General

Creditors' claims must be registered as insolvency claims if the creditor is to take part in insolvency proceedings. Any debts of the debtor that are not yet due are assumed to be due for the purposes of the bankruptcy proceedings. Croatian law distinguishes between several categories of creditors in bankruptcy proceedings. This overview primarily focuses on the regime applicable in regular bankruptcy proceedings, noting the procedural specifics applicable to the restructuring proceedings.

6.1.1 Creditors with separation rights

Creditors with separation rights (*izlučni vjerovnici*) are creditors who can prove, based on their proprietary or personal right, that a certain asset should not be part of the insolvency estate. Therefore, they do not take part in the insolvency proceedings and the separation right will be enforced by these creditors outside the insolvency proceedings.

6.1.2 Secured creditors

Secured creditors (*razlučni vjerovnici*) are creditors who have a right to separate satisfaction with respect to the collateral established in their favour. If the debtor is personally liable to them, secured creditors may also participate in bankruptcy proceedings as unsecured creditors if they choose to waive their rights of separate satisfaction or if this would be insufficient for the creditor's claim to be fully satisfied.

6.1.3 Unsecured creditors

Following the sale of the bankruptcy estate, the claims of unsecured creditors are satisfied according to their position in the ranking of creditors. In the higher rank, top ranking claims include claims of current and former employees, claims for severance pay and damage claims for work-related injuries or occupational illness. The next higher-ranking claims include all remaining claims, except those assigned a lower ranking. If the value of the bankruptcy estate is not sufficient to fully satisfy all claims within the same higher rank, they must be settled proportionally.

After all higher-ranking claims have been fully satisfied, the claims falling within the lower rank can be satisfied in the following order: interest accrued on claims of bankruptcy creditors since the opening of bankruptcy, creditors' participation costs in proceedings, monetary fines imposed for criminal offences or misdemeanours, claims for gratuitous performance by the debtor, and claims for repayment of shareholder loans used to substitute the capital of the debtor.

6.2 Filing of insolvency claims, procedure

Upon the initiation of bankruptcy proceedings, creditors must register their claims with the insolvency administrator using a prescribed form within a period of 60 days. Claims may be disputed by: (a) the insolvency administrator, (b) the debtor; or (c) the bankruptcy creditors.

If a claim has been disputed by the insolvency administrator, the creditor must file a lawsuit for determination. Any creditor whose claim, although recognised by the administrator, was disputed by another creditor, must also initiate litigation against the creditor disputing its claim. However, if the claim is based on an enforceable title, it is the disputing party that must initiate the litigation.

A shorter deadline of 21 days is prescribed for registering claims in restructuring proceedings. Unlike bankruptcy proceedings, restructuring claims must be registered with the Financial Agency, a special public authority entrusted to perform certain technical and procedural tasks in the restructuring proceedings to assist the insolvency court. Similar considerations as those regarding the contestation mechanics in bankruptcy proceedings apply.

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Insolvency Proceedings
in CEE & SEE

Czech Republic

Wolf Theiss

1. General overview

Insolvency law in the Czech Republic is primarily regulated by the Czech Insolvency Act (*Insolvenční zákon*). For businesses,[1] the Czech insolvency regime provides for the following types of insolvency proceedings:

- Bankruptcy proceedings (*Konkurz*); and
- Restructuring proceedings (*Reorganizace*).

Upon receiving an application to open insolvency proceedings, the insolvency court first determines whether the debtor is indeed insolvent. If so, it is then decided which type of proceedings will be used to resolve the insolvency.

In all types of proceedings, an insolvency administrator (*Insolvenční správce*) is appointed. The tasks of the insolvency administrator vary according to the type of proceedings. While bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate (*Majetková podstata*), restructuring proceedings aim at the continuation of the debtor's business and the discharge of debts.

In general, the Czech insolvency regime follows the principle of uniform and proportionate satisfaction of (unsecured) creditors. Aside from the distinction between secured and unsecured creditors, the Czech insolvency regime only recognises a classless creditors' collective. In restructuring proceedings, on the other hand, the restructuring plan might divide creditors into classes where appropriate.

Recently, the Czech Republic transposed the Restructuring Directive (2019/1023) into its legal system and adopted a new Restructuring Act (*Zákon o preventivní restrukturalizaci)* complementing the Czech insolvency regime. The Restructuring Act offers businesses a new flexible tool to avert imminent bankruptcy and rescue viable business entities at an early stage. Among other things, it allows for a non-public procedure which includes a restructuring plan and a suspension of individual enforcement measures (moratorium). Prior to the adoption of the new Restructuring Act, restructuring proceedings were only available to businesses that were already eligible to file for insolvency and, as such, were only an alternative to pending insolvency proceedings.

1 For natural persons, additional type of proceedings is applicable: debt relief. This overview will focus on the applicable regime for businesses only.

2. Insolvency triggers

The precondition for the opening of insolvency (bankruptcy or restructuring) proceedings is that the debtor must be illiquid, or in cases where the debtor is a corporate entity, either illiquid or over-indebted in insolvency law terms:

- Illiquidity means that the debtor is unable to pay its debts in due time and is not able to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time.
- Over-indebtedness, in insolvency law terms, exists when a corporate entity's liabilities exceed its assets and the company has a negative prospect.

Both debtors and creditors have the right to file for the opening of insolvency proceedings. Once it is apparent that the criteria for opening insolvency proceedings are fulfilled, the debtor is required to apply for the opening of bankruptcy or restructuring proceedings without culpable delay. The debtor may already file for the opening of restructuring proceedings where under threat of illiquidity. Late filing or failure to file for insolvency may result in civil liability.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realize the debtor's assets and to distribute the proceeds among its creditors; this is the task of the bankruptcy administrator appointed by the court. The proceeds remaining after the administrative expenses and secured claims have been satisfied are distributed among the (unsecured) creditors on a *pro rata* basis.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. However, with corporate debtors, bankruptcy will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

3.2 Restructuring proceedings

Restructuring proceedings are initiated by approval of the insolvency court, following an application from the debtor or a registered creditor.

Approval for restructuring proceedings may be granted if:

a.) the debtor's total annual net turnover in the last accounting period preceding the insolvency application was at least CZK 50,000,000;

b.) the debtor has at least 50 employees; or

c.) the debtor files a restructuring plan endorsed by at least half of all secured creditors and by at least half of all unsecured creditors.

The application must be followed by a restructuring plan unless the restructuring plan is a precondition for approval for opening of restructuring proceedings under c) above. The creditors decide at a creditors' hearing whether to accept the proposed restructuring plan, requiring a quorum of both a simple majority of the creditors attending the hearing and a simple majority based on the value of their claims in each creditor class. The restructuring plan must also be approved by the court. Under some conditions, the court can overrule the rejection of the restructuring plan by some of the creditor classes.

If the restructuring plan is not accepted by the creditors or the restructuring plan fails, the court will reclassify and continue the proceedings as bankruptcy proceedings. In restructuring proceedings, the tasks of insolvency administrators are primarily to: supervise the activities of any debtor that is authorised to manage its own assets; continue to identify the estate and draw up an inventory of it; contest creditors' claims in incidental disputes; compile and add to the list of creditors; and report to the creditors' committee. Insolvency administrators also act in the capacity of the debtor's general meeting.

Restructuring proceedings end when the insolvency court formally pronounces that the restructuring plan – or substantial parts thereof – has been fulfilled. The debtor is then discharged of debts.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the insolvency court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides to open and terminate insolvency proceedings and takes all main decisions during ongoing insolvency proceedings. The insolvency court appoints and oversees the insolvency administrator. Certain actions in the insolvency proceedings – i.e. any sale of the debtor's assets other than by public auction – are subject to approval by the insolvency court (and, if appointed, the creditor's committee).

4.2 Insolvency administrator

The insolvency administrator is appointed by the insolvency court from a list of potential appointees. Most of the insolvency administrators appointed in Czech Republic are attorneys. The creditors may decide at a creditors' meeting to remove the insolvency administrator appointed by the insolvency court and to appoint a new insolvency administrator.

The insolvency administrator has a central oversight and management function in insolvency proceedings and primarily represents the creditors' interests. The insolvency administrators' duties – in both bankruptcy and restructuring proceedings – include assessing the debtor's economic position and determining the reasons that led to the debtor's insolvency, as well as representing the debtor in all legal disputes concerning the debtor's estate. In bankruptcy proceedings, a bankruptcy administrator must additionally liquidate the debtor's estate.

4.3 Creditors

Creditors have certain rights of control in insolvency proceedings as the creditors' committee must approve certain actions taken by the administrator. Creditors' committees are established in nearly all relevant insolvency proceedings.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the debtor's rights to manage assets that belong to the insolvency estate are restricted.

5.2 Contracts

The opening of insolvency proceedings does not automatically terminate existing contracts. However, it does terminate all of the debtor's pending offers and/or acceptances of contracts that have not yet been delivered to and received by the other contracting party. Any contract proposal that the debtor has not yet accepted at the time of the declaration of bankruptcy can only be accepted by the insolvency administrator.

The insolvency administrator may choose whether to honour contracts that:

- were agreed between the contractual parties prior to the opening of bankruptcy proceedings; and
- were not yet fully performed by any of the parties.

Where the insolvency administrator does not respond in a timely manner, contracts are deemed terminated. Special regimes apply to lease, employment, fixed-term and loan contracts.

5.3 Inadmissibility of legal actions or enforcement measures

Generally, once insolvency proceedings have been opened, legal actions or enforcement measures concerning the insolvency estate cannot be initiated or continued against the debtor. Exceptions to this are legal proceedings that do not affect the debtor's estate, proceedings relating to rights to segregate assets and rights to separate satisfaction, proceedings relating to claims disputed by the administrator, and legal proceedings resulting from transactions concluded after the commencement of the bankruptcy proceedings.

From the date of the commencement of insolvency proceedings, no new security rights may be established with respect to assets that form part of the insolvency estate (with some exceptions).

5.4 Rights of avoidance

The insolvency administrator can contest legal actions and transactions which have taken place within certain time periods before and after the opening of insolvency proceedings and which relate to the assets of the insolvent debtor, provided that those acts or transactions have reduced the funds of the debtor. The Czech Insolvency Act sets forth various circumstances for bringing challenges, with the avoidance periods ranging from one year up to three years prior to the opening of the insolvency proceedings.

6. Creditors' claims

6.1 General

Any debts of the debtor that are not yet due are assumed to be due for the insolvency proceedings. Creditor's claims must be filed as insolvency claims to form part of the insolvency proceedings. Czech insolvency law distinguishes between secured and unsecured creditors.

6.1.1 Secured creditors

Secured creditors are creditors with existing rights to separate satisfaction. A creditor's right to separate satisfaction derives from a creditor's security rights over the assets of the debtor. Secured creditors have the right to issue instructions regarding the liquidation of collateral, which can only be overruled if the insolvency administrator believes a more profitable solution is available.

6.1.2 Unsecured creditors

All unsecured creditors whose claims are registered and recognised receive the same *pro rata* quota of their insolvency claim.

6.2 Filing of insolvency claims, procedure

Creditors lodge their claims with the insolvency court on the prescribed form and may do so from the opening of insolvency proceedings until the expiry of the time limit set in the insolvency decision. For all types of proceedings, this time limit is two months. The authenticity, amount and ranking of all claims lodged may be disputed by:

a.) the insolvency administrator;

b.) the debtor; or

c.) a registered creditor.

The insolvency administrator must declare whether it recognises or disputes the filed claims. If a creditor's claim has been disputed by the insolvency administrator, the creditor must file an action for determination with the insolvency court. However, if the claim is based on an enforceable title obtained prior to the commencement of insolvency proceedings, it is the insolvency administrator that must file such action. To the extent that a claim has either been recognised or determined by the court in special determination proceedings, the claim becomes part of the proceedings as an insolvency claim.

Any registered creditor may challenge the authenticity, amount or ranking of another creditor's claim using the prescribed form, which must fulfil the same formal requirements that apply to actions under the Code of Civil Procedure. Once the challenge is filed, the creditors concerned become parties to an ancillary dispute. Insolvency administrators have the right to intervene in support and assistance of one of the parties in the ancillary dispute. To the extent the challenge is successful, the challenged claim will not form part of insolvency proceedings.

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Insolvency Proceedings
in CEE & SEE

Hungary

Wolf Theiss

1. General overview

Insolvency proceedings in Hungary are generally governed by the Hungarian Insolvency Act (*Csődtörvény*). For businesses, the Hungarian Insolvency Act provides for the two following types of insolvency proceedings:

- Bankruptcy proceedings (*felszámolási eljárás*); and
- Restructuring proceedings (*csődeljárás*).

While restructuring proceedings aim to restore the solvency of companies and ensure that the debtor can continue to operate its business by reaching an agreement with creditors, the purpose of bankruptcy proceedings is to realise and wind up the debtor's estate and distribute the assets among the creditors.

In restructuring proceedings, the debtor is granted a moratorium, during which the debtor may settle with creditors to discharge its payment obligations. If the restructuring proceedings prove to be unsuccessful, the court will initiate bankruptcy proceedings *ex officio*.

Both types of proceedings require the appointment of an insolvency administrator and the assistance of the courts acting within the framework of non-contentious proceedings. The tasks of the administrator vary in both proceedings. The conduct of the proceedings is governed mainly by the Hungarian Insolvency Act. For procedural issues not covered by the Hungarian Insolvency Act, the courts should apply the Act on Non-Contentious Civil Actions and on Non-Contentious Court Proceedings (*Bírósági nemperes eljárásokról szóló törvény*). The Code of Civil Procedure (*Polgári perrendtartás*) also serves as relevant background legislation in the context of insolvency proceedings.

Recently, the Reorganisation Act (*Szerkezetátalakítási törvény*) implementing the Restructuring Directive (2019/1023) was adopted. By adopting the Reorganisation Act, the Hungarian legislator introduced an additional procedure allowing for a pre-restructuring procedure ahead of insolvency. The purpose of the Reorganisation Act is to enable debtors in a difficult financial situation, and their creditors, to adopt and implement a restructuring plan. The restructuring plan may involve all of the debtor's creditors, or even a small group of them. The adoption of the plan is intended to protect the debtor from insolvency.

2. Insolvency triggers

At the outset, the probability of potential insolvency arises in situations where there are reasonable grounds to believe that, without further action, the debtor will not be able to meet its outstanding payment obligations when they fall due and will become illiquid.

Over time, if the upcoming situation is not addressed and the debtor is no longer able to satisfy all its liabilities when due, insolvency is triggered.

However, it is not necessary for the debtor to be actually insolvent for the court to declare insolvency, but only that the conditions laid down by law are met. If the conditions are not met, the court cannot declare the debtor insolvent.

Finally, the Hungarian Insolvency Act specifically stipulates the circumstances under which a debtor is considered insolvent and the insolvecny can be declared, which include the following:

a.) the debtor has failed to settle or contest its previously uncontested and acknowledged contractual debts within 20 days of the due date, and has failed to satisfy the debt upon receiving a creditor's written payment notice;

b.) the debtor has failed to comply with a final court decision or order for payment;

c.) the enforcement procedure against the debtor was unsuccessful;

d.) the debtor has failed to fulfil its payment obligation as stipulated in the settlement agreement concluded either (i) in restructuring or bankruptcy proceedings as part of the court-approved reorganisation plan, (ii) in reorganisation procedures or (iii) in the court-approved restructuring plan in restructuring procedures under the Restructuring Act;

e.) the court has declared the previous restructuring proceedings terminated;

f.) the debtor's liabilities in proceedings initiated by the receiver exceed the debtor's assets; or the debtor was unable or, it is presumed, will be unable to settle its debts on the date when they are due; and the debtor's members (shareholders) fail to provide a statement of commitment to provide the funds necessary to cover such debts when due.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The aim of bankruptcy proceedings is total enforcement; or more specifically, to satisfy the claims of the debtor's creditors after the insolvent debtor has been dissolved without a legal successor.

Bankruptcy proceedings can be initiated upon application of the debtor, a creditor or, in the case of voluntary liquidation, the receiver. Proceedings can also be initiated *ex officio*. Bankruptcy proceedings are opened as soon as the application is filed, but the bankruptcy itself begins when it is finally adjudicated by the court based on one of the circumstances listed under Section 2 above. The debtor may satisfy the creditor's claim at any time up to the date of the declaration of insolvency, in which case the proceedings must be terminated. After a declaration of insolvency, the debtor may reach an agreement with its creditors who have registered for the proceedings. However, it can no longer satisfy the creditor's claims.

If the court declares the debtor insolvent, it will immediately appoint an insolvency administrator and arrange to make the required publications about the bankruptcy proceedings in the Company Gazette.

During the bankruptcy proceedings, the debtor and creditors may reach an agreement at any time between the expiry of the 40-day deadline following the publication of the court order in the Company Gazette and the submission of the closing balance sheet by the insolvency administrator at the end of bankruptcy proceedings. Such agreement must be submitted to the court for approval. If the debtor satisfies all registered claims of all creditors, the insolvency court must terminate the bankruptcy proceedings.

If no agreement with creditors is reached or the debtor has not settled the debts in bankruptcy proceedings, the insolvency administrator will sell the debtor's assets and enforce the debtor's claims. The court will order the dissolution of the debtor once the closing balance sheet has been submitted. In the same order, the court will acknowledge the distribution of assets and the final liquidation balance sheet submitted by the insolvency administrator. After the court order, the insolvency administrator will distribute the proceeds of the sale and the claims to the creditors in the order stipulated by the Hungarian Insolvency Act and established in the asset distribution plan accepted by the court.

3.2 Restructuring proceedings

The aim of restructuring proceedings is to reorganise the debtor and to ensure that the debtor can continue its business operations in accordance with the agreement reached with its creditors.

Unlike with bankruptcy, restructuring proceedings can only be initiated by the debtor. An application for restructuring may be filed with the competent court by the director(s) of the debtor after the application for restructuring has been approved by the debtor's decision-making body.

During restructuring proceedings, the debtor's management and decision-making body continue to exercise their rights and duties. The debtor is managed by its directors under the supervision and oversight of the insolvency administrator. The debtor's directors are required to cooperate with the insolvency administrator. Any new commitments and payments from the debtor's assets require the consent and/or approval of the insolvency administrator.

During the moratorium (a period of the so-called "*automatic stay*"), the debtor must try to reach an agreement with creditors. Indeed, this moratorium is the incentive for debtors to initiate bankruptcy proceedings in the first place, as it provides them with considerable relief in the event of insolvency. For example, it prevents any offsetting against the debtor, it suspends all enforcement proceedings against the debtor, it prevents any new enforcement proceedings to be ordered, and, as a general rule, it prevents contracts with the debtor from being terminated.

During the moratorium, a meeting of creditors must be convened, to which the debtor will present its settlement offer and reorganisation plan. If the creditors reject the settlement offer, the debtor can modify the offer within a time limit set by the creditors. If an agreement is reached, the creditors' claims are satisfied in accordance with the terms of the agreement. If no agreement is reached or the concluded agreement does not comply with the law, the court will open bankruptcy proceedings *ex officio*.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency court and the insolvency administrator has an important role in the proceedings. Additionally, the Hungarian Insolvency Act grants special rights to the creditors.

4.1 Insolvency court

Bankruptcy and restructuring proceedings are non-contentious proceedings. The court where the debtor has its registered seat at the time of filing the application to commence the proceedings has exclusive jurisdiction. The insolvency court decides to open and terminate insolvency proceedings, monitor and control the acts of the insolvency administrator, and rule on claims against the insolvency administrator.

4.2 Insolvency administrator

The insolvency administrator is appointed in the same way in both proceedings, by means of an electronic system that uses a random selection principle and is operated by the authority supervising the activity of the insolvency administrators.

The insolvency administrator in bankruptcy proceedings is called the liquidator (*felszámoló*). The insolvency administrator is appointed by the court in the order declaring the debtor insolvent and bankrupt. After the appointment, the insolvency administrator is solely entitled to represent the debtor in matters concerning the debtor's assets and make statements in relation to those assets (i.e. the insolvency administrator replaces the directors in this regard). The insolvency administrator is responsible for conducting the bankruptcy proceedings. His or her duties lie in selling the debtor's assets, enforcing the debtor's claims and satisfying the creditors from the proceeds of the sale and the claims.

The insolvency administrator in restructuring proceedings is called the administrator (*vagyonfelügyelő*). The role of the insolvency administrator in restructuring proceedings is mostly to supervise and monitor the debtor's business activities, as well as to approve any new commitments of the debtor and the disposal of the debtor's assets. However, the insolvency administrator does not replace the directors of the debtor in restructuring proceedings.

4.3 Creditors

In insolvency proceedings, creditors may establish a creditors' committee to protect their legitimate interests, to represent themselves before the competent court and to monitor the activities of the insolvency administrator. A creditors' representative can be appointed instead of a creditors' committee. The rules applicable to the creditors' committee also apply to the creditors' representative.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once the insolvency court has opened the bankruptcy proceedings, the debtor's director(s) can no longer manage the assets belonging to the insolvency estate. The insolvency administrator is solely empowered to represent the debtor with regard to its assets and financial situation.

In restructuring proceedings, the debtor's directors retain their positions, but their actions and activities are supervised by the insolvency administrator.

5.2 Contracts

In bankruptcy proceedings, the insolvency administrator is entitled to terminate the debtor's contracts with immediate effect and withdraw from contracts if there has been no previous performance. Creditors may enforce their contractual claims in the bankruptcy proceedings by lodging a claim with the insolvency administrator within 40 days of notice of termination or withdrawal. The right of immediate termination or withdrawal referred to above cannot be exercised in certain cases specified in the Hungarian Insolvency Act, such as apartment leases in the name of natural persons, employment contracts and collective agreements.

In restructuring proceedings, a moratorium applies to the debtor's payment obligations, suspending the debtor's contractual performance. The moratorium has a significant impact on the contracts previously entered into by the debtor, as the debtor's contractual partners cannot terminate or withdraw from these contracts during the moratorium period on grounds relating to the debtor's insolvency.

5.3 Inadmissibility of legal actions or enforcement measures

Any enforcement proceedings pending at the time of the opening of bankruptcy proceedings must be terminated. If a bailiff has collected a certain amount of money in previous enforcement proceedings, but this amount has not yet been paid to the creditor, the amount collected should be transferred to the insolvency administrator and will form part of the insolvency estate. Once the bankruptcy proceedings have been opened, the enforcement rights attached to immovable property or other property registered in the official register terminate. Legal proceedings initiated prior to the bankruptcy proceedings continue in the competent courts. A creditor who has previously filed a lawsuit is not exempted from filing its claim in the bankruptcy proceedings. However, once bankruptcy proceedings are opened, monetary claims against the debtor can only be enforced in the context of those bankruptcy proceedings.

During the restructuring proceedings (as indicated above), the debtor is granted a moratorium on payments. Enforcement proceedings against the debtor are suspended during the moratorium and no further enforcement may be ordered.

5.4 Rights of avoidance

Under the Hungarian Insolvency Act, creditors and the insolvency administrator acting on behalf of the debtor have a period of one year following the opening of the bankruptcy proceedings to challenge certain contracts of the debtor. Contestable contracts may include legal transactions aimed, among other things, at a bad-faith reduction of the debtor's assets or an unjustified prioritisation of certain creditors. In the event of a successful action for avoidance, the legal consequences of nullity under the Hungarian Civil Code will apply to the transaction in question, including the restoration of the *status quo ante* and the annulment of rights registered in official registers in relation to the asset after the contested transfer.

6. Creditors' claims

Once bankruptcy proceedings are opened, the debts of the debtor become due.

6.1 Secured and unsecured creditors

Under the Hungarian Insolvency Act, creditors are required to lodge their claims with the insolvency administrator following the opening of restructuring proceedings. The insolvency administrator, with the assistance of the debtor, registers the creditors' claims. During the registration, the claims of secured creditors and unsecured creditors must be separated and registered in separate registers. The Hungarian Insolvency Act defines which claims are considered secured, including claims secured by a lien or security right of purchase in favour of the creditor prior to the restructuring proceedings. In Hungarian insolvency law, the distinction between secured and unsecured creditors' claims is made also to ensure that the restructuring agreement can only be concluded or the moratorium extended if both the secured and unsecured classes of creditors agree, in the proportions specified by law.

The Hungarian Insolvency Act sets out the order in which creditors' claims should be satisfied in bankruptcy proceedings. In the bankruptcy proceedings, the insolvency administrator is required to register the creditors' claims in their order of satisfaction. Furthermore, the insolvency administrator must take into account the secured and unsecured nature of the creditors' claims. Different satisfaction rules apply in bankruptcy proceedings for pledges.

6.2 Filing of insolvency claims, procedure

In bankruptcy proceedings, creditors can lodge their claims with the insolvency administrator within 40 days of the bankruptcy order's publication in the Company Gazette. Creditors are required to pay a registration fee when filing their claims. No creditor claims may be filed more than 180 days after the bankruptcy order, and claims lodged more than 40 days but not more than 180 days after the bankruptcy order may be satisfied only if all creditors who have filed claims within the 40-day deadline have been completely satisfied.

In restructuring proceedings, creditors have 30 days from the restructuring order's publication in the Company Gazette to file their claims with the debtor and the insolvency administrator. Upon filing their claims, creditors are required to transfer a registration fee to the administrator's bank account.

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Insolvency Proceedings
in CEE & SEE

Poland

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1. General overview

In Poland, insolvency and restructuring proceedings are regulated by two separate statutes: (i) the Polish Insolvency Law (*Prawo upadłościowe*) and (ii) the Polish Restructuring Law (*Prawo restrukturyzacyjne*).

The Polish Insolvency Law provides for only one type of bankruptcy proceedings (*postępowanie upadłościowe*), whereas the Polish Restructuring Law four types of proceedings are available to the debtor:

- Proceedings for approval of an arrangement (*postępowanie o zatwierdzenie układu*);
- Accelerated arrangement proceedings (*przyspieszone postępowanie układowe*);
- Arrangement proceedings (*postępowanie układowe*); and
- Deep reform restructuring proceedings (*postępowanie sanacyjne*).

In bankruptcy proceedings, an insolvency administrator (*syndyk*) is appointed, whereas in restructuring proceedings or a court supervisor (*nadzorca sądowy*) an arrangement supervisor (*nadzorca układu*), court supervisor (nadzorca sądowy) or restructuring administrator (zarządca) is appointed, depending on the type of proceedings. Their powers and tasks will also differ according to the type of restructuring proceedings.

While bankruptcy proceedings lead to the liquidation of the debtor's assets (unless an arrangement is adopted in bankruptcy proceedings), restructuring proceedings aim at the continuation of the debtor's business and the repayment of debts in accordance with a scheme of arrangement adopted by creditors and approved by the restructuring court.

The regulations give priority to restructuring proceedings over bankruptcy proceedings. This is reflected in the provision ordering insolvency courts not to consider a bankruptcy petition until a final decision has been rendered to open restructuring proceedings against the same debtor.

2. Insolvency triggers

The precondition for the opening of insolvency proceedings is that the debtor must be insolvent, where the mere threat of insolvency is sufficient for the opening of restructuring proceedings. Any debtor who has become insolvent should be declared bankrupt. A debtor is deemed to be insolvent when:

- It lost the ability to meet its monetary obligations as they fall due (illiquidity). A debtor is presumed to have lost the ability to pay its monetary obligations as they fall due if the delay in the payment of liabilities exceeds three months.
- Its liabilities exceed the value of its assets (regardless of whether the debtor is performing its obligations in a timely manner) and this situation continues for more than 24 months (over-indebtedness).

A bankruptcy application may be filed with the court by the debtor itself or by any of its creditors. Once it is apparent that the criteria for opening insolvency proceedings are met, the debtor should file a bankruptcy application within thirty days, otherwise its directors may in some cases become liable for payment of the debtor's debts and may also be subject to criminal liability.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

In general, the insolvency regime in Poland demonstrates bias towards creditors. It is a general rule of the Polish Insolvency Law that bankruptcy proceedings must be conducted in such a way as to enable creditors' claims to be satisfied to the greatest possible extent. In general, the Polish Insolvency Law governs the principles of joint collection of debts by creditors and provides that the joint interests of the creditors prevail over the interests of the debtor, whose assets must be used to satisfy creditors to the greatest possible extent.

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realise the debtor's assets and to distribute the proceeds among its creditors; this is the task of the court-appointed insolvency administrator. The proceeds remaining after administrative expenses and secured claims have been satisfied are distributed among the (unsecured) creditors on a *pro rata* basis.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. However, bankruptcy of corporate debtors will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

The Polish Insolvency Law also provides for the possibility of making an arrangement in bankruptcy proceedings. Arrangement proposals may be submitted by the debtor, creditors and the insolvency administrator. Once the terms of the arrangement are agreed, the judge-commissioner (*sędzia-komisarz*) convenes a meeting of creditors to vote on the arrangement (if it is credibly determined that the arrangement will be accepted by the creditors and will be implemented). Upon final approval of the arrangement, the insolvency court will issue a decision terminating the bankruptcy proceedings.

3.2 Pre-packaged sale

A pre-packaged sale of an enterprise is a type of a partially expedited bankruptcy procedure. Within the pre-packaged sale, the disposal of all or part of company's business or assets is negotiated with a purchaser before filing the bankruptcy application and appointing an insolvency administrator. The terms of the pre-packaged sale are then approved by the court simultaneously with the declaration of bankruptcy. An administrator effects the sale of the debtor's business shortly after the company is declared bankrupt.

Although pre-packaged sales in bankruptcy are yet to be properly tested under Polish law, such a sale should allow an investor to purchase the distressed assets free of any encumbrances in a fairly short period of time without engaging in lengthy bankruptcy proceedings.

3.3 Restructuring proceedings

Unlike insolvency proceedings, restructuring proceedings are biased towards the debtor.

The Polish Restructuring Law regulates four proceedings aimed at debtor restructuring:

- **Proceedings for approval of an arrangement** (*postępowanie o zatwierdzenie układu*) are available to debtors whose disputed claims do not exceed 15 per cent of their total debt and who, on their own (i.e. without court participation), are capable of obtaining the approval of the arrangement terms by creditors whose votes constitute at least two thirds of all creditors;

- **Accelerated arrangement proceedings** (*przyspieszone postępowanie układowe*) are fast-track arrangement proceedings, which can only be conducted if the sum of disputed claims does not exceed 15 per cent of the total claims carrying an entitlement to vote on the arrangement;
- **Arrangement proceedings** (*postępowanie układowe*) are available to debtors who exceed the 15 per cent of disputed claims; and
- **Deep reform restructuring proceedings** (*postępowanie sanacyjne*) are the most creditor-driven restructuring proceedings in Poland under restructuring law. It is available to debtors regardless of the percentage of disputed claims.

The structure of the restructuring proceedings is designed to reflect the rule of proportionality, where the scope of protection given to the debtor and the restructuring instruments available in the relevant proceedings are proportional to the scope of managerial powers that the debtor needs to give up.

4. Actors of insolvency proceedings

Insolvency proceedings are conducted by the insolvency administrator, who is supervised by a judge-commissioner appointed by the insolvency court. The creditors' committee, if appointed, may also take part in the proceedings.

4.1 Insolvency court

The insolvency court decides to open and terminate insolvency proceedings. The insolvency court appoints a judge-commissioner and an insolvency administrator.

4.2 Judge-commissioner

The judge-commissioner is an insolvency judge who directs the bankruptcy or restructuring proceedings, supervises the actions of the insolvency administrator or court supervisor or restructuring administrator, defines the actions that the insolvency administrator / court supervisor / restructuring administrator is not allowed to perform without his or her authorisation or without the authorisation of the creditors' committee and draws attention to any misconduct committed by them.

The judge-commissioner also performs other activities specified in the Polish Insolvency Law and the Polish Restructuring Law such as:

- In insolvency proceedings: ruling to declare the bankrupt's actions ineffective, actions relating to the hearing of objections to the list of claims and approving the list of claims, resolving objections and approving and correcting the distribution plan; and
- In restructuring proceedings: ruling to declare the debtor's actions ineffective, actions relating to the hearing of objections to the inventory of claims and approving the inventory of claims, approving the restructuring plan and declaring the acceptance of the arrangement.

4.3 Insolvency administrator

The insolvency administrator is appointed by the insolvency court, which usually selects administrators from a list of potential candidates who are licensed restructuring advisors.

In some cases of selected categories of debtors (i.e. those that employ a significant number of employees, have huge assets or are of particular importance to the national economy), the person appointed as insolvency administrator must be licensed as a qualified restructuring advisor (*kwalifikowany doradca restrukturyzacyjny*).

The insolvency administrator has a central supervisory and management function in bankruptcy proceedings, and primarily represents the interests of creditors. The insolvency administrator takes possession of the bankruptcy estate, administers and protects it from destruction or seizure by third parties and conducts its liquidation.

The insolvency administrator's activities are supervised by the judge-commissioner, to whom the insolvency administrator submits a report on his activities and a reasoned accounting report.

4.4 Court supervisor and administrator appointed in the restructuring proceedings

4.4.1 Court supervisor

The court supervisor is appointed by the restructuring court in the accelerated arrangement procedure and in the arrangement procedure. Unlike the appointment of an insolvency administrator in bankruptcy proceedings, the debtor can influence who will be appointed as court supervisor. If the debtor succeeds in obtaining support for its nominated supervisor from creditors with a sufficient number of all claims (those that can be considered), then the restructuring court will appoint the debtor's nominee as court supervisor.

The task of the court supervisor is the day-to-day supervision of the debtor's activities. The consent of the court supervisor is required for the performance of acts exceeding the scope of the debtor's ordinary course of business (unless the law requires the consent of the creditors' committee), otherwise the debtor's actions are invalid. In addition, the court supervisor also notifies creditors that restructuring proceedings have been opened, prepares documents such as the restructuring plan and the inventory of claims (or disputed claims) and evaluates the arrangement proposals prepared by the debtor.

4.4.2 Restructuring administrator

The restructuring administrator is appointed by the restructuring court in the deep-reform restructuring proceedings. The restructuring administrator's primary duty is to immediately assume the management of the debtor's estate (the debtor's assets) and to secure the assets both against destruction, damage or taking by third parties and against potentially fraudulent actions by the debtor to the detriment of creditors.

In addition, the restructuring administrator prepares and implements a restructuring plan, and prepares an inventory of claims. The restructuring administrator also notifies creditors that restructuring proceedings have been opened and takes steps to ensure that creditors cast as many valid votes as possible. Furthermore, the restructuring administrator evaluates the arrangement proposals, participates at the meeting of creditors and submits an opinion on the feasibility of the arrangement.

4.5 Creditors

Creditors have certain control powers in insolvency proceedings and in some restructuring proceedings (except for the proceedings for approval of an arrangement) in the form of a creditors' committee. However, a creditors' committee is not appointed in all proceedings. On the other hand, its appointment is mandatory if the debtor or at least three creditors request it.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the debtor loses its right to dispose of the assets that form part of the insolvency estate.

5.2 Right to avoid contracts

The opening of insolvency proceedings does not automatically terminate existing contracts. Nevertheless, the insolvency administrator may, with the consent of the judge-commissioner, choose whether to fulfil or avoid contracts (except for financial term operations) if, on the date of bankruptcy, the obligations under the contract have not been performed in whole or in part.

The other party to the contract may require the insolvency administrator to submit a statement in writing within three months as to whether the insolvency administrator is withdrawing from the contract or demanding its performance. If the insolvency administrator does not make a statement within this period, he or she will be deemed to have withdrawn from the contract.

5.3 Contractual clauses invalid or ineffective under the Polish Insolvency Law

Any contractual provision stipulating that a solvent party may terminate, modify or avoid an agreement if the counterparty files for bankruptcy or the court declares it bankrupt is invalid.

In addition, the Polish Insolvency Law provides that any contractual provision that makes it impossible (or harder) to achieve the purpose of the insolvency proceedings (i.e. satisfaction of the creditors to the fullest possible extent) is ineffective with regard to the insolvency estate.

5.4 Inadmissibility of legal actions or enforcement measures

After a debtor is declared bankrupt, creditors are entitled to pursue their claims only through the bankruptcy proceedings. Lawsuits initiated against the debtor before the declaration of bankruptcy may be resumed by creditors against the insolvency administrator (and not the bankrupt) only if, after having exhausted all legal means available under the Polish Insolvency Law, the creditors' claims are still not recorded on the list of claims.

On the date of the declaration of bankruptcy, all enforcement proceedings (whether court or administrative) commenced against the bankrupt prior to the declaration are suspended by operation of law (and subsequently discontinued when the declaration of bankruptcy ruling becomes unappealable). The sums obtained under the suspended enforcement proceedings are transferred to the bankruptcy estate.

Moreover, during pending bankruptcy proceedings, no enforcement proceedings may be commenced concerning the debtor's assets included in the bankruptcy estate.

After the declaration of bankruptcy, the debtor's assets forming part of the bankruptcy estate cannot be encumbered by a mortgage, pledge, registered pledge or other security for the purposes of securing any receivables that came into being before the declaration of bankruptcy.

5.5 Rights of avoidance

In certain circumstances, security instruments and legal transactions performed by the debtors prior to the bankruptcy application can be invalidated and made ineffective, if they were made within the time limit specified in the Polish Insolvency Law, counted from the date of the legal transaction in question. In this case, the concerned assets will become part of the debtor's bankruptcy estate.

Similar restrictions also apply to the deep reform restructuring proceedings.

6. Creditors' claims

6.1 General

Claims in the insolvency proceedings are any monetary claims against the debtor. All obligations against a debtor become due and payable at the date of the bankruptcy declaration. Non-monetary obligations are converted into monetary obligations and become payable at the date the bankruptcy is declared, even if they are not yet due for performance.

The bankrupt's creditors who wish to participate in the bankruptcy proceedings must present their claims to the insolvency administrator, together with all supporting evidence, within the time limit specified in the insolvency court's decision.

6.1.1 Secured creditors

Secured creditors can file their claims with the judge-commissioner. If they fail to do so, their claims will be recorded on the list of claims *ex officio*.

Creditors' claims over the bankrupt's assets that are secured by a mortgage, pledge, registered pledge or fiscal pledge, and any other rights or claims secured on real property, will be satisfied from the amount received from the sale of the encumbered assets, after decreasing the costs related to the liquidation of the assets and other costs of the bankruptcy proceedings.

Claims will be satisfied in order of priority; the claims secured earliest over an asset will be satisfied before claims that were secured later.

If the proceeds from the collateral are insufficient to satisfy all secured claims, the unsatisfied part will be satisfied according to the categories for satisfaction applicable to non-secured claims.

6.1.2 Unsecured creditors

Claims of unsecured creditors must be filed as insolvency claims in order to take part in the insolvency proceedings. After the liquidation of the bankruptcy estate, the claims listed in the list of claims will be satisfied according to one out of four categories of priority

of claims. Higher-category claims must be fully satisfied before satisfying lower-category claims. If the funds in the bankruptcy estate are not sufficient to fully satisfy all claims included in the same category, these must be satisfied proportionally.

6.2 Filing of insolvency claims, procedure

Once a creditor submits its claim, the insolvency administrator will verify the claims against the bankrupt's books and statements. Finally, the insolvency administrator will prepare a list of claims in which the insolvency administrator acknowledges and/or rejects each claim. Creditors whose claims have been rejected or dismissed (in whole or in part) may file an objection with the judge-commissioner no later than two weeks after the list of claims is announced. Creditors can also object to the recognition of another creditor's claim. Any creditor whose objections have been dismissed or rejected is entitled to appeal to the insolvency court.

If neither the bankrupt nor any of its creditors files an objection against the list of claims, or if the court issues a final binding decision in the appeal proceedings initiated by the filing, the judge-commissioner approves the draft list of claims. The final list of claims specifies the amount (in Polish currency) of each claim to be satisfied from the bankruptcy estate.

6.3 Creditors' claims in the restructuring proceedings

In restructuring proceedings – unlike in bankruptcy proceedings – there is no procedure for filing claims. The court supervisor or restructuring administrator prepares the inventory of claims (*spis wierzytelności*) according to the debtor's books, other documents, entries in the land records and other registers. Creditors may only challenge decisions to include or omit their claims in two types of restructuring proceedings: arrangement and deep-reform restructuring proceedings.

The inventory of claims will include the claims against the debtor that originated before the date on which the restructuring proceedings were opened. Each entry in the inventory of claims specifies the amount for which the creditor participates in the restructuring proceedings.

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Insolvency Proceedings
in CEE & SEE

Romania

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1. General overview

Insolvency proceedings in Romania are primarily regulated by the Romanian Insolvency Act (Law No 85/2014 on insolvency prevention proceedings and insolvency proceedings). For businesses,[1] the Romanian Insolvency Act provides for the following types of insolvency prevention and insolvency proceedings:

- Early Warning (*Avertizarea Timpurie*);
- Restructuring Agreement (*Acord de Restructurare*);
- Preventive Composition Procedure (*Concordatul Preventiv*);
- Insolvency (*Insolventa*) in one of the following forms:

  a.) Simplified proceedings (*Procedura Simplificata*), when there is certainty, even at the outset of proceedings, that the debtor cannot continue its activity (e.g. the company has no assets);

  b.) Restructuring proceedings (*Reorganizarea*), when the creditors approve a restructuring plan (*Plan de Reorganizare*) aimed at paying the creditors and continuing the debtor's business; and

  c.) Bankruptcy proceedings (*Falimentul*), when the restructuring of the debtor is not possible and all assets have to be liquidated and the company wound up.

The Romanian insolvency regime is guided by the principles of maximising the capitalisation of assets and recovery of creditors' claims, as well as giving debtors a chance for business recovery.

The Romanian Insolvency Act was recently amended to implement the Restructuring Directive (2019/2023). Romanian companies experiencing difficulties in conducting their business now have the possibility to opt for the following restructuring proceedings to prevent insolvency proceedings: (i) restructuring agreement and (ii) court-ordered preventive composition procedure.

1 This overview will focus on the applicable regime for businesses only.

Preventive composition procedures are initiated by decision of a judge and negotiations are then conducted with the creditors. Opening a preventive composition procedure suspends the enforcement procedure initiated against the debtor and no other procedures can be initiated in the next four months.

2. Insolvency triggers

Under the Romanian Insolvency Act, a corporate entity is considered insolvent in either of the following situations:

- Illiquidity/presumed insolvency (*Insolventa Prezumata*), where the debtor is unable to pay its debts to one or more creditors within 60 days after they fall due; or
- Over-indebtedness/imminent insolvency (*Insolventa Iminenta*), where there is evidence that the company will not be able to pay its debts once they fall due, out of the funds available to it on such due date.

The initiation of the insolvency procedure:

- must be requested by the insolvent company (the debtor) within 30 days of occurrence of a state of insolvency;
- can be requested by non-insolvent companies that are "*threatened*" by insolvency (i.e. in a state of imminent insolvency); or
- can be requested by creditors with a claim to over RON 50.000 (approx. EUR 10,000) that is certain, liquid and has been due for more than 60 days.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to liquidate the debtor's assets and to distribute the proceeds among its creditors; this is the task of the bankruptcy administrator (*Lichidator*) appointed by the insolvency judge (*Judecatorul Sindic*) and then confirmed by the creditors.

The debtor's assets are liquidated by the bankruptcy administrator under the supervision of the insolvency judge. The assets can be sold at public auction or by direct negotiation. The sale strategy and regulation should be approved by the creditors at the creditors' meeting.

The proceeds from the sale of the assets are distributed among creditors according to their preference rights (according to the creditors' list); taxes and costs of the proceedings are paid first.

After the sale of all assets of the bankrupt company, or when the assets of the company are insufficient to meet the administrative expenses and the creditor refuses to cover such expenses, the insolvency judge will close the proceedings, leading to the dissolution of the company.

3.2 Restructuring proceedings

Restructuring proceedings can be initiated based on a restructuring plan approved by the creditors at the creditors' meeting. A restructuring plan can be proposed by:

- the insolvent company, with the approval of its General Shareholders' Meeting;
- the insolvency administrator (*Administrator Judiciar*); or
- one or more creditors holding at least 20% of the total value of the claims registered in the creditors' list.

The restructuring plan must include appropriate measures for the recovery of the debtor's business and a payment plan for the existing claims, and cannot have a duration of more than three years (four years in exceptional cases). It is then voted on by each of the creditor classes. The Romanian Insolvency Act provides specific rules on the approval of plans in terms of voting categories, treatment of non-favoured claims and the majority of claims required for approval. The restructuring plan must also be confirmed by the insolvency judge.

After approval and confirmation of the restructuring plan, this will be implemented under the supervision of the insolvency administrator. The special administrator (see 4.2 below) is tasked with managing the company's operations.

The successful implementation of the restructuring plan will result in the closure of the insolvency proceedings. Failure of the plan, on the other hand, will result in the initiation of bankruptcy proceedings.

4. Actors of insolvency proceedings

There are three main actors controlling the conduct of insolvency proceedings in Romania, each of which have different duties and powers: creditors take the majority of business/organisational decisions about the conduct of insolvency proceedings; the insolvency administrator has either a supervisory role or a managerial role in the procedure; and the insolvency judge has the duty of ensuring the legality of all measures and decisions taken in the procedure.

4.1 Insolvency judge

The insolvency judge is a specialised judge who handles all disputes arising from the insolvency proceedings of a given debtor. It is the insolvency judge's role to ensure that the proceedings are conducted in compliance with law. The insolvency judge is assigned a specific insolvency proceedings and resolves any disputes between creditors and the insolvency administrator.

The insolvency judge decides to open and terminate insolvency proceedings and takes all main decisions during ongoing insolvency proceedings on matters such as challenges by creditors, the appointment and replacement of provisional insolvency and bankruptcy administrators, claims to cancel fraudulent transactions and claims against persons liable for insolvency status.

4.2 Insolvency/Bankruptcy administrator

The insolvency/bankruptcy administrator is provisionally appointed by the insolvency judge upon the initiation of the procedure. The provisional insolvency administrator must be confirmed by creditors or, if not confirmed, the creditors can appoint their own nominee to replace the provisional insolvency administrator. The insolvency/bankruptcy administrator must be an insolvency practitioner registered with the National Union of Insolvency Practitioners.

Depending on the insolvency judge's decision on how the management rights of the company will be exercised, the insolvency administrator may act either as supervisor or as manager of the debtor's activities.

Moreover, the insolvency/bankruptcy administrator has specific duties relating to the conduct of proceedings, depending on the stage and circumstances of the proceedings. The administrator's main duties are:

- determining the causes of insolvency, liable persons, lists of creditors and if the company has any chance of continuing its activity; and
- convening and presiding over the meetings of creditors.

In bankruptcy proceedings, the bankruptcy administrator must also:

- conduct an inventory and seal the debtor's estate;
- propose the sale strategy and regulation; and
- liquidate the debtor's estate.

4.3 Special administrator

Provided that the management rights over the company have not been terminated by the insolvency judge, it is the special administrator's task to manage the day-to-day business of the company during the observation period (*Perioada de Observatie*) – during which the insolvency administrator evaluates which type of insolvency proceedings are most suitable for the company based on its circumstances. The special administrator is appointed by the General Meeting of Shareholders upon the initiation of the procedure and can be replaced anytime by shareholders.

Where a restructuring plan is being implemented and the management rights over the company have not been terminated by the insolvency judge, the task of the special administrator is to direct the management the debtor during the implementation of the restructuring plan.

4.4 Creditors

Creditors have rights of control in insolvency proceedings, as their approval is required for majority of the actions taken in the insolvency proceedings. The creditors take the most important decisions regarding the insolvency proceedings at the creditors' meeting.

5. Main effects of the opening of insolvency proceedings

5.1 General

Insolvency proceedings are opened by decision of the insolvency judge, whereby the judge will establish deadlines for the main actions in the proceedings (i.e. notifications to creditors, filing of the administrator's mandatory reports, registration of claims, filing of the creditors' list), appoint the provisional insolvency/bankruptcy administrator and decide whether to terminate the management rights.

Once the insolvency proceedings are initiated, any payments to be made by the insolvent company are subject to the approval of the insolvency administrator, who will open a sole insolvency account (*Cont Unic*) and all other bank accounts of the debtor will be closed.

5.2 Suspension of all judicial and extrajudicial actions or enforcement proceedings

All judicial or extrajudicial actions or enforcement proceedings submitted by the creditors against the debtor will be stayed once the insolvency proceedings are initiated. The creditors can enforce their claims against the debtor only within the framework of the insolvency proceedings.

Creditors holding a right of priority over certain assets of the insolvent company (e.g. a mortgage over an asset of the insolvent company) may apply to the insolvency judge for relief of the suspension with regard to their claims and to continue enforcement against the assets over which they have priority.

5.3 Contracts

The opening of insolvency proceedings does not automatically terminate existing contracts, as the Romanian Insolvency Act explicitly provides that these are deemed to be maintained at the date the insolvency proceedings are initiated. Any contractual clauses regarding termination of ongoing contracts, lapse of the term benefit or declaration of the chargeability on the grounds of the opening of the insolvency proceedings are null and void.

For the purpose of maximising the value of the debtor's estate, the insolvency administrator can terminate any contract, unexpired leases or other long-term contracts within a statute of limitation period of three (3) months from the date of the opening of the insolvency proceedings, as long as these contracts have not been fully or substantially implemented by all parties.

5.4 Claims for cancellation of previous transactions concluded by the insolvent company

The insolvency administrator may challenge "*fraudulent*" transactions which have taken place prior to the initiation of insolvency proceedings and which relate to the assets of the insolvent debtor. The Romanian Insolvency Act provides for different grounds and circumstances when a transaction performed by the debtor before the initiation of the insolvency proceedings is presumed to be "*fraudulent*".

Transactions executed within the two (2) years preceding the initiation of the insolvency proceedings can be cancelled following such challenges.

6. Creditors' claims

6.1 General

The Romanian Insolvency Act establishes various categories of creditors (e.g. secured, budgetary, unsecured, indispensable suppliers etc.). Inclusion in a given category can be significant both for voting on the Reorganisation Plan and for the order of priority in recovering claims from the sale of company's assets.

The creditors will take the main decisions relating to the insolvency proceedings in the creditors' meeting, which is usually convened by the insolvency/bankruptcy administrator whenever the law explicitly provides that a specific action requires the approval of the meeting or whenever is deemed necessary to conduct the procedure.

6.2 Secured creditors

Secured creditors are creditors whose claims benefit from a preferential title (i.e. are accompanied by a privilege and/or a right of mortgage and/or rights assimilated to the mortgage, and/or a right of lien on the assets of the debtor's estate).

If the debtor is a third-party guarantor, the creditor benefitting from a preferential title will exercise only the rights connected to the respective asset or right.

Secured creditors can apply for an exemption to the suspensive effect relating to their claims and request the continuation of enforcement proceedings against the asset over which they have a privilege.

6.3 Unsecured creditors

Unsecured creditors are creditors:

- that do not benefit from a preferential title; or
- that benefit from a preferential title but whose claims are not fully covered by the value of the privileges, mortgages or pledges held, in which case they are unsecured only for the uncovered part of the claim.

Unsecured creditors usually obtain a *pari passu* (ranking equally) distribution out of the liquidated assets of the debtor according to the size of their claim, but only once the secured creditors have enforced their security and the preferential creditors have exhausted their claims. Unsecured creditors will usually recover the smallest proportion of their claims in the insolvency proceedings.

6.4 Current claims

The law grants a super-priority right to any creditor who provides a loan to the debtor during the observation period or during insolvency proceedings. This may lead to an automatic reduction in the recovery rate of other secured creditors.

Any other entity to which the debtor must make payments relating to receivables accrued after the initiation of insolvency proceedings (the current creditors) will have to wait to receive payments according to their agreed due date. If the payments are not made accordingly, those current creditors can apply for the bankruptcy of the debtor.

6.5 Filing of insolvency claims, procedure

Creditors must apply to the insolvency administrator for inclusion in the creditors' list. To be included, claims must have arisen prior to the initiation of the insolvency proceedings. The accrual of interest – whether contractual, statutory or of any other nature – on principals owed by the insolvent debtor prior to the opening of the insolvency proceedings automatically stops.

If a claim is based on an enforceable title obtained prior to the commencement of insolvency proceedings, the insolvency administrator will have to register it automatically. If this cannot be done automatically, the insolvency administrator must assess the merits of the claim submitted by the creditor in view of the documents received from the debtor.

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Insolvency Proceedings
in CEE & SEE

Serbia

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1. General overview

Insolvency proceedings in Serbia are primarily regulated by the Serbian Insolvency law (*Zakon o stečaju*). For legal entities,[1] insolvency proceedings can take the following forms:

- Bankruptcy proceedings (*bankrotstvo*); or
- Restructuring proceedings (*reorganizacija*).

While bankruptcy proceedings are aimed at securing the ultimate dissolution of the debtor's estate, restructuring proceedings have as their goal the continuation of the debtor's business – in accordance with a restructuring plan – by implementing various restructuring measures.

Regardless of their type, the aim of all insolvency proceedings is to ensure the most favourable collective and proportionate settlement of creditors' claims in the shortest timeframe possible, while also generating the least amount of procedural and other related expenses. To this end, an insolvency administrator (*stečajni upravnik*) is appointed by the court to undertake different tasks according to the stage and type of insolvency proceedings.

In general, the Serbian insolvency regime follows the principle of uniform and proportionate satisfaction of creditors whose claims have been classed within the same payment rank (*isplatni redovi*). There are four main payment ranks provided under the law. An additional distinction between secured and unsecured creditors is also made with respect to creditors' rights, priority of settlement and other matters.

2. Insolvency triggers

Insolvency proceedings in Serbia are instigated only if one or more of the following grounds for insolvency are met:

- Long-standing illiquidity, which is deemed to be met if the debtor: a) cannot settle its monetary obligations within 45 days from the date they fall due; or b) completely suspends all of its payments for a continuous period of 30 days;

1 The Serbian insolvency regime does not recognise insolvency proceedings for natural persons.

This ground is also assumed to exist where insolvency proceedings are sought by a creditor who previously failed to collect its claim against the debtor through court or tax enforcement proceedings in Serbia;

- Imminent illiquidity, which is deemed to be met if the insolvency debtor proves that it is unlikely that its existing monetary obligations will be met once they fall due;
- Over-indebtedness, which is deemed to be met if the assets belonging to the insolvency debtor are less than its liabilities; and
- Breach of restructuring plan, or fraudulent or unlawful adoption of restructuring plan.

An application to open insolvency proceedings may be filed by the debtor or its creditors, depending on which grounds for insolvency are met. An application may also be filed by a liquidation administrator (*likvidacioni upravnik*), if the existence of any grounds for insolvency is determined during voluntary liquidation proceedings of the company.

Upon receiving the insolvency application, the insolvency court issues a decision to instigate preliminary insolvency proceedings (*prethodni stečajni postupak*) in order to evaluate the application and determine whether the grounds for insolvency are met. Preliminary insolvency proceedings can last for a maximum of 30 days from the date the insolvency court receives the application. If the petition is deemed well-founded, the insolvency court issues a decision to instigate the (main) insolvency proceedings.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

Bankruptcy proceedings are the primary and most common form of insolvency proceedings in Serbia and their general purpose is to determine the value of the debtor's estate and to dissolve that estate through the sale of the debtor's assets and/or the sale of the debtor as a legal entity, either by public bidding, public collection of bids or direct bargaining.

The insolvency court decides to conduct insolvency proceedings by way of bankruptcy if: (i) the decision is demanded by creditors whose claims are likely to amount to more than 50 per cent of the total claims against the insolvency debtor; (ii) no restructuring plan is filed within 90 days from the date on which insolvency proceedings are opened; or (iii) no restructuring plan is adopted at the hearing scheduled for the adoption of a restructuring plan.

When disposing of assets belonging to the insolvency estate, the insolvency administrator must act in accordance with the national standards (*Pravilnik o utvrđivanju nacionalnih standarda za upravljanje stečajnom masom*), which contain special rules on the management and dissolution of the insolvency estate.

Once the procedural expenses and the specific obligations of the insolvency estate have been settled, the remaining proceeds of the insolvency estate are distributed among the debtor's creditors on a *pro rata* basis according to the classification of their claims into payment ranks, culminating in the ultimate dissolution of the insolvency debtor as a legal entity.

3.2 Restructuring proceedings

A restructuring plan may be filed with the insolvency court at the time of submitting the insolvency application (so-called "pre-pack" restructuring plan) or at a later date, albeit not later than 90 days after the opening of the insolvency proceedings.

The restructuring plan should include, among others, (i) a list of proposed measures and the means for its implementation (e.g. disposal of debtor's assets, settlement of claims, termination of certain agreements or employments, debt-to-equity swaps, mergers/demergers); (ii) a list of assets that are to be used for the full and/or partial settlement of creditors' claims, including all necessary steps and a proposal of how the settlement will work; (iii) a detailed list of all creditors divided into classes and the criteria for forming each creditor class, as well as other information that is relevant for the successful implementation of the plan, (iv) a period for implementing the restructuring plan, which cannot be longer than five years, etc.

Each restructuring plan is reviewed by the creditors, who are subsequently granted a right to vote – in proportion to their claims within their given creditor class – on whether to adopt the restructuring plan. The plan is adopted once it is accepted by a majority of votes in each creditor class.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency court and the insolvency administrator. Additionally, creditors exercise certain rights of control in the proceedings through the creditors' assembly and the creditors' committee.

4.1 Insolvency court

The insolvency court oversees insolvency proceedings and decides to open and terminate proceedings. The insolvency court also appoints the insolvency administrator, generally oversees his/her activities and approves certain procedural and operational actions performed by the insolvency administrator.

4.2 Insolvency administrator

The insolvency administrator is appointed by the insolvency court from the official directory of licensed insolvency administrators. A separate body called the Agency for Licensing of Insolvency Administrators (*Agencija za licenciranje stečajnih upravnika*) is charged with generally supervising the work of insolvency administrators in accordance with the relevant professional standards.

Once appointed, the insolvency administrator is granted central managerial functions over the debtor and its insolvency estate, with the debtor's bodies corporate and other representatives having their functions revoked in favour of the insolvency administrator.

Regardless of the type of insolvency proceedings, the insolvency administrator is tasked with assessing the value of the debtor's assets and liabilities, implementing various measures aimed at protecting the best interest of the debtor's estate, and submitting regular reports on their work to the insolvency court and the creditors' committee.

4.3 Creditors

Under the Serbian insolvency regime, all unsecured creditors make up the creditors' assembly, regardless of whether their claims have been reported as of the date of the creditors' assembly first meeting. Secured creditors may take part in the work of the creditors' assembly only to the extent that they prove themselves likely to have an unsecured claim towards the debtor. Voting rights at the creditors' assembly are distributed proportionally according to the amount of each claim.

In addition to demanding bankruptcy, initiating changes pertaining to the insolvency administrator and performing various other procedural activities, the creditors' assembly is also tasked with appointing the creditors' committee at its first meeting.

The creditors' committee is a smaller body mostly composed of unsecured creditors, as well as a single secured creditor. It may have up to seven members and has more direct authorisations relating to the supervision of the work of the insolvency administrator on behalf of the creditors' assembly. This includes the authorisation of the creditors' committee to issue certain opinions and consents to the insolvency administrator relating to matters concerning the dissolution of the insolvency estate.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the insolvency debtor and its management bodies lose their right to dispose of the insolvency debtor's assets, and all such authorisations are subsequently transferred to the insolvency administrator. All powers of attorney issued by the insolvency debtor in relation to assets belonging to the insolvency estate are terminated as of the date on which insolvency is instigated.

5.2 Contracts

In general, contracts entered into prior to the instigation of insolvency proceedings are not automatically terminated by the instigation of insolvency proceedings. However, the insolvency administrator may, at his/her sole discretion, choose to terminate contracts which have not been fully or partially executed prior to the date of instigating the insolvency proceedings.[2] In case of termination of any such contract by the insolvency administrator, the other contracting party may still attempt to exercise its rights as an insolvency creditor.

5.3 Inadmissibility of legal actions or enforcement measures

As of the date on which insolvency proceedings are instigated, all court and administrative proceedings instigated by the insolvency debtor, as well as all administrative and tax proceedings aimed at determining the monetary obligation(s) of the insolvency debtor, are automatically suspended.

2 Certain exceptions to the insolvency administrator's authorisation to terminate are defined in the law (e.g., financial security contracts, etc.).

Moreover, from the date on which insolvency proceedings are instigated, no forced enforcement or collection may be imposed against the insolvency debtor or its assets, with all ongoing security and/or enforcement proceedings being automatically suspended. However, as an exception, enforcement proceedings relating to the settlement of expenses of insolvency proceedings and/or specific obligations of the insolvency estate are still permitted.

The insolvency administrator is authorised to assume control of pending proceedings involving the insolvency debtor under certain terms provided under the law. Furthermore, all pending litigation proceedings which may be continued are thereafter conducted before the insolvency court.

5.4 Right of avoidance

The insolvency administrator and the creditors can contest certain legal actions and transactions undertaken by the insolvency debtor within a certain timeframe prior to its insolvency, ranging from six months to five years before the insolvency application's submission date, depending on the action or transaction being contested. Legal actions (active and/or passive) and transactions carried out prior to the instigation of insolvency proceedings can be contested if they threaten the equanimous settlement of insolvency creditors, if they are damaging to the creditors, or if they put certain creditors in a more favourable position compared to others.

6. Creditors' claims

6.1 General

Any obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are assumed to have fallen due for the insolvency proceedings. Serbian law generally distinguishes between unsecured and secured creditors, although certain other participants in the insolvency proceedings are also recognised.

6.1.1 Secured creditors (*Razlučni poverioci*)

Secured creditors are creditors whose claims against the debtor are secured either by means of a pledge, right of retention or right of priority settlement, with said rights being established on assets that are registered with public records or registries.

Insolvency does not affect the right of secured creditors to proceed to separate collection of their claims from the insolvency debtor's assets. Secured creditors whose claims are only partially secured may still file an insolvency claim, albeit only up to the amount of their claim that is unsecured. If a secured creditor waives their secured creditor status, if they cannot collect their secured claim through no fault of their own, or if a partial distribution of the insolvency estate is conducted prior to the sale of assets on which the secured creditor has security rights, their claim is to be proportionally settled as a claim from an unsecured creditor.

6.1.2 Unsecured creditors (*Stečajni poverioci*)

Only creditors with an unsecured claim against the debtor on the date on which the insolvency proceedings are instigated are considered to have an insolvency claim and are therefore considered creditors with all the rights and obligations that arise from insolvency proceedings, subject to their claims being registered and recognised.

The Serbian insolvency regime separates creditors into four different payment ranks according to the nature of their claims. In general, the **first payment rank** consists of employees' claims for the minimum wage equivalent of their net salaries, for a period of one year prior to insolvency (with additional interest and social security contribution claims); the **second payment rank** consists of any claims for public revenues that fell due within the three months prior to insolvency (with the exception of employees' social security contributions); the **third payment rank** encompasses all other insolvency creditor claims; and the **fourth payment rank** relates to related-party loans and similar claims for a period of two years prior to insolvency. Moreover, subordinated insolvency claims may be settled only after the insolvency claims from the third payment rank have been fully settled. Claims from creditors of a lower payment rank may be settled only upon the complete settlement of claims from creditors of a higher payment rank, while claims of creditors belonging to the same payment rank are settled on a *pro rata* basis.

6.1.3 Other creditors

The Serbian insolvency regime also recognises certain types of participants in the insolvency proceedings who do not have an insolvency or secured claim against the insolvency debtor, but may still exercise certain rights against the insolvency debtor and/or the insolvency estate during the course of the insolvency proceedings:

a.) **Separation creditors** (*Izlučni poverioci*) – third parties who are entitled to demand that certain assets which they own but are currently in possession of the insolvency debtor under a legal title other than ownership, be separated from the insolvency debtor's estate in the course of the insolvency proceedings; and

b.) **Pledge creditors** (*Založni poverioci*) – creditors who have pledge rights over certain assets belonging to the insolvency debtor which are kept in public records or registries, but who do not have any direct claims against the insolvency debtor. These creditors must notify the insolvency court of their pledge rights and the value of their secured claim against the relevant third party within the deadline for the filing of insolvency claims. Although they are not considered secured creditors, the settlement of their secured claims largely corresponds to that of secured creditors.

6.2 Filing of insolvency claims, procedure

The insolvency court formally instigates insolvency proceedings by granting the insolvency application and publishing its decision to instigate the insolvency proceedings on its bulletin board and in the Official Gazette of the Republic of Serbia.

To exercise their rights in the insolvency proceedings, all creditors must report their claims to the insolvency court within the period stated in the court's decision, which can be from 30 to 120 days from the date of publication of the court's decision in the Official Gazette of the Republic of Serbia. Creditors who fail to report their claims within the maximum period of 120 days lose the right to take part in the insolvency proceedings.

All claims reported during said period are evaluated by the insolvency administrator, who is also tasked with classifying them into the appropriate payment ranks. Based on this evaluation, the insolvency administrator may either recognise or challenge a claim (with certain restrictions applicable to claims arising out of enforceable instruments).

A creditor whose claim has been challenged must either instigate litigation proceedings and prove the validity of their claim or continue any previously pending litigation or arbitration proceedings, within 15 days from the date they receive notice that their claim has been challenged. Not to do so could mean losing their right to further participate in the insolvency proceedings. Reported claims may also be challenged by other insolvency creditors, in which case the challenging creditor will be instructed to instigate proceedings to that effect against the creditor that reported the challenged claim.

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Insolvency Proceedings
in CEE & SEE

Slovak Republic

Wolf Theiss

1. General overview

Insolvency law in Slovakia is primarily regulated by Slovak Insolvency and Restructuring Act (Act No. 7/2005 Coll.). For businesses,[1] the Slovak insolvency regime provides for the following types of insolvency proceedings:

- Bankruptcy proceedings; and
- Restructuring proceedings.

An insolvency administrator is appointed in all types of proceedings; the tasks of the insolvency administrator vary according to the type of proceedings. While bankruptcy proceedings typically result in the liquidation of assets belonging to the debtor's estate, restructuring proceedings seek for the debtor's business to continue to operate and for the debtor to settle its debts. In some cases, the liquidation of assets through the sale of a business as a going concern is possible in bankruptcy proceedings.

In general, the Slovak insolvency regime follows the principle of uniform and proportionate satisfaction of (unsecured) creditors and separate satisfaction of secured creditors. Aside from the distinction between secured and unsecured creditors, the Slovak insolvency regime also recognises a subordinated creditors' collective. The same applies to restructuring proceedings, which may additionally create a class of receivables not affected by the restructuring plan.

Slovakia has transposed the Restructuring Directive (2019/1023) by way of adopting Act No. 111/2022 Coll. on the resolution of impending insolvency, which allows debt-ridden businesses that do not yet meet the preconditions to file for insolvency, to restructure. The act offers businesses a flexible tool to resolve imminent insolvency and rescue viable business entities at an early stage.

The Slovak insolvency regime also allows for so-called "small bankruptcy" proceedings, which may be accessible to small businesses that meet certain criteria, such as assets and liabilities not exceeding EUR 1 million according to the last five annual financial statements published by the debtor. The purpose served by the "small bankruptcy" proceedings is the same as in regular bankruptcy proceedings. "Small bankruptcy" proceedings are expected to be more expedient than regular bankruptcy proceedings.

1 For natural persons, additional types of proceedings are applicable, such as debt relief. This overview will focus on the regime applicable to businesses only.

2. Insolvency triggers

A precondition for the opening of insolvency (bankruptcy or restructuring) proceedings is that the debtor/corporate entity must be either illiquid or over-indebted in insolvency law terms:

- Illiquidity means that the debtor is unable to pay at least two receivables which are overdue for more than 90 days to more than one creditor.
- Over-indebtedness in insolvency law terms is determined if a corporate entity's liabilities exceed its assets and the company has more than one creditor.

Both the debtor and its creditors have the right to file for the opening of insolvency proceedings. Once it is apparent that the criteria for opening insolvency proceedings are met, the debtor must apply for the opening of bankruptcy proceedings within 30 days. Late filing for bankruptcy or the omission to do so may result in civil liability. If a creditor files for bankruptcy and, following the initiation of bankruptcy proceedings it is shown that the debtor is not insolvent, said creditor and its director(s) will be liable for damages to the debtor.

The debtor may also ask a restructuring administrator to prepare a restructuring opinion and, if the administrator recommends the restructuring of the debtor, may file a petition for restructuring with the relevant court. The option to file for restructuring is without prejudice to the obligation to file for bankruptcy in a timely manner.

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to liquidate the debtor's assets and to distribute the proceeds among its creditors; this is the task of the bankruptcy administrator appointed by the court. The proceeds remaining after the satisfaction of administrative expenses, certain preferential claims and secured claims, are distributed among the (unsecured) creditors on a *pro rata* basis. If any proceeds remain after the satisfaction of unsecured creditors, those remaining proceeds are distributed on a *pro rata* basis among subordinated creditors.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. However, with corporate debtors, bankruptcy will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

3.2 Restructuring proceedings

Restructuring proceedings are opened by the insolvency court upon application from the debtor or a registered creditor, only after a restructuring opinion has been obtained from a restructuring administrator recommending the restructuring of the debtor. Provided the application has been filed in a timely manner and is complete, the insolvency court will allow the restructuring of the debtor within 30 days of initiating restructuring proceedings.

Once the court has allowed the restructuring, a restructuring plan is drawn up and submitted to the creditors' committee (*veriteľský výbor*) for preliminary approval. If the creditors' committee approves the plan, it will be voted on at the approval meeting (*schvaľovacia schôdza*). In general, the restructuring plan must foresee that at least 50 per cent of the unsecured creditors' receivables will be satisfied.

For the restructuring plan to be approved at the approval meeting, every group of secured creditors as well as a majority of the creditors of other groups must vote in favour of adopting of the plan. The plan adopted by the approval meeting must also be approved by the court. Under certain conditions, the court can also overrule the refusal of the plan.

If the restructuring plan is not accepted by the creditors' committee or the approval meeting, or the restructuring plan unduly favours certain creditors, or certain other conditions are met, the court will reclassify and continue the proceedings as bankruptcy proceedings.

In restructuring proceedings, the restructuring administrator primarily supervises, and where applicable, grants the debtor its consent to contracts and other actions, continues to identify the estate and draws up an estate inventory, deals with incidental disputes, compiles and adds to the list of creditors, and reports to the creditors' committee.

Restructuring ends with the insolvency court's decision approving the restructuring plan. The publication of the decision in the Commercial Bulletin terminates the effects of the opening of restructuring proceedings. The positions of the creditors' committee and the restructuring administrator also terminate at that time; the creditors' committee can typically continue to operate if the court appoints an insolvency administrator to oversee that the debtor is complying with the restructuring plan.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides to open and terminate insolvency proceedings and makes all the main decisions during ongoing insolvency proceedings. The insolvency court appoints the insolvency administrator and rules on the creditors' objections against rejection of the creditors' claims by the insolvency administrator, as well as contestation of the debtor's actions prior to the opening of the insolvency proceedings. The court also has jurisdiction to oversee the insolvency administrator's management of the case and has the right to order the insolvency administrator to remedy any shortcomings (such as procedural delays).

4.2 Insolvency administrator

The insolvency administrator is appointed by the court from a list of eligible appointees. Many insolvency administrators are attorneys; however, becoming an insolvency administrator requires the passing of a separate exam. The profession is regulated by the Ministry of Justice. Creditors may decide, at the first creditors' meeting, to replace the insolvency administrator. The replacement will be subject to the approval of the court. The insolvency administrator can also be replaced after the first creditors' meeting, but only

in limited circumstances. The court can replace the insolvency administrator on its own initiative, most notably if the insolvency administrator does not perform the role in keeping with the law.

There are two types of insolvency administrators: (i) general insolvency administrators, who are eligible to manage bankruptcy proceedings; and (ii) special insolvency administrators, who are eligible to manage specific types of insolvency proceedings such as insolvencies of financial institutions, insolvencies of large debtors or restructuring proceedings and preventive restructurings.

The insolvency administrator has a central oversight and management function in insolvency proceedings and primarily represents the creditors' interests. The insolvency administrator's duties – in both bankruptcy and restructuring proceedings – include assessing the debtor's economic situation and determining the reasons that led to the debtor's insolvency, as well as representing the debtor in all legal disputes concerning the debtor's estate.

4.3 Creditors

Creditors have certain rights of control in insolvency proceedings, given that the creditors' committee needs to approve certain actions taken by the insolvency administrator.

Creditors have two types of forums in all insolvency proceedings: (i) the creditors' meeting and (ii) the creditors' committee. In bankruptcy proceedings, at least one creditors' meeting is mandatory to allow creditors to vote on whether to replace the insolvency administrator. In restructuring proceedings, the creditors' meeting is required to approve the draft restructuring plan. The creditors' committee is a body of three to five members that represents the interests of the creditors and typically requires regular updates from the insolvency administrator. In some cases, the creditors' committee has the authority to direct the insolvency administrator to perform certain actions.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once insolvency proceedings are opened, the debtor is limited in its right to dispose of assets that belong to the insolvency estate and/or to assume certain liabilities outside the ordinary course of its business.

5.2 Contracts

The opening of bankruptcy proceedings does not automatically terminate existing contracts.

In the context of bankruptcy proceedings, the right to terminate or request the performance of contracts entered into before the opening of insolvency proceedings passes to the insolvency administrator. A third party whom the insolvency administrator requests to perform a contract after the opening of insolvency proceedings may request pre-payment or adequate security; otherwise, its claim for consideration will be ranked among the priority claims against the insolvency estate.

In the context of restructuring, where a creditor has claims against the debtor dating from before the opening of the restructuring proceedings, the creditor cannot terminate the contract on the grounds of payment default by the debtor.

5.3 Inadmissibility of legal actions or enforcement measures

Generally, once insolvency proceedings have been opened, legal actions or enforcement measures concerning the insolvent estate cannot be initiated or continued against the debtor.

Exceptions to this include enforcement of security provided on the debtor's funds, bank account receivables, transferable securities, among others, in addition to continuing the enforcement of security by voluntary auction. In the context of restructuring, the moratoriums on enforcement and legal action do not apply to claims originating after the opening of the restructuring proceedings.

5.4 Rights of avoidance

The insolvency administrator can contest legal actions and transactions that have taken place within certain time periods, before and after the opening of insolvency proceedings, and that relate to the assets of the insolvent debtor, provided those acts or transactions have reduced the funds of the debtor.

The Slovak Insolvency and Restructuring Act sets forth various circumstances for contestation. Avoidance periods range from one year to up to five years prior to the opening of the insolvency proceedings.

6. Creditors' claims

6.1 General

In the context of bankruptcy proceedings, debts which are not yet due at the opening of insolvency proceedings are considered due for the purpose of bankruptcy proceedings.

Creditors' claims against the debtor must be registered with the insolvency administrator. In the context of restructuring proceedings, if the restructuring plan is approved by the court, all claims which were not registered by their creditors (or which were successfully challenged by the insolvency administrator) will become uncollectable against the debtor.

Also, timely registration of claims is necessary if the creditor is to have procedural rights in the insolvency proceedings and be eligible to participate at the creditors' meeting and the creditors' committee.

The Insolvency and Restructuring Act distinguishes between secured, unsecured and subordinated creditors.

6.1.1 Secured creditors

Secured creditors are creditors with a security interest over the debtor's assets, giving said creditor the right to separate satisfaction from such assets. A secured creditor has the right to issue instructions on how to liquidate collateral. If the insolvency administrator

believes the instruction conflicts with the interest of other creditors (e.g. creditors with a lower-ranking security interest or general creditors) and that there is a more profitable way to liquidate the collateral, the insolvency administrator can petition the insolvency court for instruction on how to liquidate the collateral.

6.1.2 Unsecured creditors

All unsecured creditors whose claims are registered and recognised receive the same *pro rata* quota of their insolvency claim, in line with and in order of priority under the Slovak Insolvency and Restructuring Act. The Slovak Insolvency and Restructuring Act prioritises certain general creditors, including employees, tax authorities, health care insurers and the social security agency.

6.1.3 Subordinated creditors

Creditors directly or indirectly connected with the debtor by a shareholding of at least 5 per cent and other affiliated creditors are treated as subordinated.

6.2 Filing of insolvency claims, procedure

Creditors lodge their claims electronically in a prescribed application form. Applications must be filed with the insolvency administrator within 45 days of declaration of bankruptcy in case of bankruptcy proceedings, and within 30 days of approval of restructuring in case of restructuring proceedings.

The insolvency administrator inspects all applications and makes a list of the claims against the debtor. The authenticity, amount and ranking of a creditor's claim may be contested by:

a.) the insolvency administrator; or

b.) a registered creditor (only in bankruptcy proceedings).

The debtor in bankruptcy and in restructuring proceedings, or a creditor in restructuring proceedings, can petition the insolvency administrator to reject an application.

The rejection of a claim application by a creditor (bankruptcy) or by an insolvency administrator (bankruptcy and restructuring) may be challenged in court by the creditor who has had its claim rejected. In bankruptcy proceedings, the creditor must make a down-payment to cover the costs of the legal proceedings in the amount of 2 per cent of the claim at dispute (subject to caps).

If the applicant prevails, its claim will be recognised in the amount and in the ranking determined by the insolvency court. If the applicant loses, its claim will be disregarded or ranked as determined by the insolvency administrator.

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Insolvency Proceedings
in CEE & SEE

Slovenia

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1. General overview

In Slovenia, insolvency proceedings are regulated by the Slovenian Insolvency Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju)*.

For companies, the Slovenian Insolvency Act provides for two main types of insolvency proceedings:

- Bankruptcy proceedings (*stečajni postopek*); and
- Compulsory settlement proceedings (*postopek prisilne poravnave*).

A simplified compulsory settlement proceedings involving less stringent requirements and simplified procedures exists for certain smaller enterprises.

The Slovenian Insolvency Act provides a common framework for all types of insolvency proceedings, including rules governing the parties involved in the proceedings, the appointment, dismissal, responsibilities and liability of the insolvency administrator, the registration and verification of creditors' claims, the voting rights of creditors, the organisation and work of the creditors' committee, and various other basic procedural matters.

As regards pre-insolvency situations, the Slovenian Insolvency Act provides for two preventive restructuring processes. The purpose of these processes is to restructure the financial debts of a debtor that is likely to become insolvent within one year (but is not insolvent yet).

2. Insolvency triggers

The two basic preconditions for the opening of insolvency (bankruptcy and compulsory settlement) proceedings are that the debtor must be illiquid, or where the debtor is a corporate entity, either illiquid or over-indebted. These terms are defined as follows:

- Illiquidity means that the debtor is unable to pay its debts in due time (prolonged illiquidity – *trajnejša nelikvidnost*).

- Over-indebtedness in insolvency law terms (*dolgoročna plačilna nesposobnost*) is established if the sum of the debtor's liabilities exceeds the value of its assets, or if the loss from the current year plus the accumulated loss carried over from previous years reaches half of the registered capital of the company and such loss cannot be covered by carrying over profits or capital reserves.

The Slovenian Insolvency Act provides for several presumptions of insolvency. The most relied on presumptions relate to prolonged illiquidity, such as where:

- the funds in the debtor's bank accounts are insufficient to execute an enforcement decision and said situation persists for more than 60 uninterrupted days or for 60 days in a 90-day period;
- the debtor is in arrears with the payment of one or more obligations in a total amount exceeding 20 per cent of its total liabilities, as set out in the last publicly available annual report of the debtor; or
- the debtor has no bank accounts open in Slovenia and has not repaid a claim under an enforcement decision within 60 days from the day the decision became final.

If any one of the above conditions are met, the debtor is considered insolvent. Additional presumptions of prolonged illiquidity apply to debtors who fail to meet obligations under a previous confirmed compulsory settlement.

The above presumptions of insolvency may be rebutted by the insolvent debtor in preliminary proceedings (i.e. proceedings in which the court decides whether to initiate insolvency proceedings).

However, if the debtor fails to pay at least the minimum salary[1] to its employees or fails to pay the mandatory social contributions and taxes on such salaries for two months, the debtor is considered insolvent without the possibility to demonstrate otherwise.

Both debtors and creditors (as well as personally liable shareholders) have the right to file a petition for insolvency proceedings. The insolvent debtor's management is required by law to file a proposal to initiate insolvency proceedings within 30 days from the occurrence of insolvency.

1 As prescribed by the Minimum Wage Act (*Zakon o minimalni plači*).

3. Types of insolvency proceedings

3.1 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to liquidate the debtor's assets and to distribute the proceeds among its creditors, followed by the dissolution of the company.

3.1.1 Principal characteristics of the proceedings

Given their nature, the main focus of bankruptcy proceedings is the liquidation of the insolvent debtor's estate through the enforcement of its claims and the sale of its assets. This process is led by the insolvency administrator, supervised by the court and is, relatively speaking, strictly regulated.

3.2 Compulsory settlement proceedings

The purpose of compulsory settlement proceedings is the financial restructuring of the debtor to ensure the continuation of the debtor's business (or the part of that business that is profitable).

An application for the initiation of compulsory settlement proceedings must be filed by the debtor, a personally liable shareholder of the debtor or, in the case of medium-sized and large companies, creditors holding at least 20 per cent of the financial claims against the debtor.

The application must, by law, include a subordinate application to initiate bankruptcy proceedings against the debtor if the court refuses to initiate compulsory settlement proceedings. It is not possible to exclude or avoid filing a subordinate bankruptcy application when filing for compulsory settlement proceedings. Hence, as a rule, if the court refuses to initiate compulsory settlement proceedings or they are terminated at any point following their initiation, the bankruptcy proceedings will be initiated against the insolvent debtor.

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

settlement proposal. The compulsory settlement proposal may envisage (i) a reduction (haircut) in the amount of creditors' claims, (ii) postponement of their maturity, and/or (iii) their conversion into equity. Ordinarily, compulsory settlements are intended exclusively for creditors with ordinary unsecured claims. Nevertheless, under certain conditions, secured claims may also be restructured. In compulsory settlement proceedings concerning medium-size and large companies, restructuring can also be limited to unsecured financial claims if all relevant creditors agree to said restructuring or to spin off parts of the debtor.

The financial restructuring plan must be submitted concurrently with the proposal to initiate the compulsory settlement proceedings, or within three months of the initiation of proceedings if the creditors have already proposed to initiate them.

The compulsory settlement proposal is voted on by the creditors. The proposal is successful if creditors holding at least 60 per cent of voting rights vote in its favour (or subscribe to shares in the debtor if a debt-to-equity swap is proposed). Each creditor's voting rights are calculated by multiplying the confirmed amount of the creditor's claim by a specific factor according to the nature of the claim.

If the proposal is successful, the court issues a decision confirming the compulsory settlement. This decision forcibly regulates the claims of all addressed creditors (regardless of how they voted individually) and constitutes an enforceable title for the payment of the creditors' claims, pursuant to the terms agreed under the compulsory settlement.

Once this decision becomes final, the insolvency of the debtor is presumed to have ceased by operation of the law.

If the creditors vote against the proposal, bankruptcy proceedings are initiated.

4. Actors of insolvency proceedings

Insolvency proceedings are generally controlled by the insolvency administrator and the insolvency court. In addition, creditors have certain rights of control.

4.1 Insolvency court

The insolvency court decides on initiating and terminating insolvency proceedings and makes all main decisions during ongoing insolvency proceedings. The insolvency court appoints the insolvency administrator and establishes – if provided for – a creditor's committee. Certain actions in insolvency proceedings are subject to approval by the insolvency court (and, if appointed, the creditor's committee).

4.2 Insolvency administrator

The insolvency administrator is appointed by the insolvency court, usually by selecting the insolvency administrator from a list of potential appointees.

The insolvency administrator has a central oversight and management function in insolvency proceedings and primarily represents the creditors' interests. The administrator's responsibilities and powers are more prominent in bankruptcy proceedings; they include representing the insolvent debtor in its contractual relationships and legal proceedings and managing the debtor's remaining business and the process of liquidating its estate. In compulsory settlement proceedings, the administrator has a more supervisory function and is mostly involved in claim verification processes and voting on the proposed compulsory settlement.

4.3 Creditors

The formation of a creditors' committee is mandatory in compulsory settlement proceedings, whereas in bankruptcy proceedings such committees may be formed upon request by any creditor. The creditors' committees are formed in respect to each class of creditors; the members are voted on by the creditors and are appointed by the insolvency court, which also determines the number of creditors on the creditors' committee.

The creditors' committee is entitled (but not required) under the Slovenian Insolvency Act to provide its consent or opinion on various matters (e.g. the disposal of assets and the continuation of business; it may also force a vote to dismiss the insolvency administrator for no particular reason). One of the most important rights of the creditors' committees is the right to review the books and entire documentation of the insolvent debtor.

5. Main effects of the opening of insolvency proceedings

5.1 General

Once bankruptcy proceedings are initiated, all insolvent debtor payment orders cease by operation of the law, and the powers of representation of the insolvent debtor are automatically transferred to the insolvency administrator. The insolvency administrator may also terminate any lease agreements with a one-month notice period.

The main effects of initiating bankruptcy proceedings on the claims of creditors are substantially similar to the effects of compulsory settlement proceedings, albeit the regulation of these effects is somewhat more detailed in view of the main purpose of the proceedings (e.g. additional set-off conditions, regulation of conditional claims, etc.).

5.2 Contracts

The opening of insolvency proceedings does not automatically terminate existing contracts. Nevertheless, the insolvency administrator may (with the consent of the court) terminate mutually unperformed contracts, which is to say contracts that:

- were agreed between the contractual parties prior to the opening of insolvency proceedings; and
- neither party has fully performed prior to the opening of the insolvency proceedings.

The insolvency administrator may terminate mutually unperformed contracts within the three months following the initiation of insolvency proceedings.

Under the latest amendment of the Slovenian Insolvency Act, it is not permissible to terminate certain key contracts that are crucial for the operations of the debtor (e.g. power supply contracts) due to the debtor having become insolvent. Any clauses in contractual documentation that would provide for such terminations are considered null and void.

The law does not explicitly list which types of contracts are subject to the above prohibition, so its applicability should be assessed on a case-by-case basis.

5.3 Inadmissibility of legal actions or enforcement measures

The initiation of insolvency proceedings generally results in the suspension (in the case of compulsory settlement proceedings) or termination (in the case of bankruptcy proceedings) of all ongoing security and execution proceedings against the debtor that have not yet been finally resolved. After the initiation of bankruptcy proceedings, it is also no longer possible to initiate any new enforcement or security proceedings against the debtor.

Some exceptions and special rules apply regarding ongoing execution proceedings that are in the late stages (e.g. assets of the debtor that have already been seized, but not yet sold off, or where the proceeds have not yet been transferred to the creditor).

5.4 Rights of avoidance

A specialised claw-back regulatory framework is an important feature of bankruptcy proceedings. Following the initiation of bankruptcy proceedings, the general civil law claw-back framework no longer applies; any claims must be filed on behalf – and for the benefit – of the bankruptcy estate.

Under the specialised bankruptcy claw-back provisions, legal actions by the insolvent debtor may be contested, if:

a.) such actions result in a net decrease of the assets of the insolvent debtor (and consequently, decrease the possibility of repayment of other creditors' claims); or

b.) the beneficiary obtained more favourable terms of repayment of its claim.

In both situations, the Slovenian Insolvency Act requires that the beneficiary was aware, or should have been aware, that the debtor was insolvent as an additional condition for contestation.

Generally speaking, for a legal act to be subject to contestation, it must have been performed in the period of 12 months prior to the filing of the application for the initiation of bankruptcy proceedings. Any legal acts not performed against compensation (or where the compensation was negligible) must have been performed within 36 months prior to the filing of the application for the initiation of bankruptcy proceedings.

Lawsuits contesting a legal act must be filed (either by the insolvency administrator or a creditor) within 12 months of the decision to initiate bankruptcy proceedings becoming final.

6. Creditors' claims

6.1 General

Upon the initiation of insolvency proceedings, creditors must register their claims and associated rights within one month of the initiation of compulsory settlement proceedings or within three months of the initiation of bankruptcy proceedings.

After the deadline for registration expires, the insolvency administrator composes a list of verified claims in which each claim is either recognised or refused. The creditors then have the possibility to file objections against the list, as well as to refuse claims by other creditors. The administrator then composes an updated list that includes all objections. The insolvency court finally issues a decision on the verification of claims, in which it decides which claims are to be ultimately recognised and which are to be refused. The decision is accompanied by the final list of verified claims.

The Slovenian Insolvency Act provides for several different types of claims in insolvency, namely:

- Ordinary unsecured claims;
- Financial unsecured claims;
- Secured claims (i.e. claims that are secured through a right of separate distribution from the sale of a specific asset of the debtor);
- Separation claims (i.e. claims to separate certain assets from the estate of the insolvent debtor);
- Preferential claims (i.e. claims that have priority in the distribution of the proceeds from the general estate of the insolvent debtor – these are mainly employment related and tax claims); and
- Subordinated claims (i.e. claims that will only be repaid once other claims are repaid – subordination can be either contractual or statutory).

The two most significant classes of claims are unsecured claims and secured claims.

With secured claims, creditors are required to register both the claim and the related right of separate repayment (e.g. a pledge over assets). Both the claim and the right to separate repayment are separately subject to verification under the procedure described above.

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Insolvency Proceedings
in CEE & SEE

Ukraine

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1. General overview

Insolvency law in Ukraine is primarily regulated by the Ukrainian Bankruptcy Code (*Кодекс України з процедур банкрутства*). For businesses, it provides for the following types of insolvency proceedings:

- Preliminary proceedings (*розпорядження майном боржника*)
- Restructuring proceedings (*санація боржника*); and
- Bankruptcy proceedings (*ліквідація банкрута*).

In all these types of proceedings, an insolvency administrator (*арбітражний керуючий*) is appointed; the tasks of the insolvency administrator vary according to the type of proceedings. While bankruptcy proceedings usually lead to a realisation or winding-up of the debtor's estate (*ліквідаційна маса*) and the disappearance of debtor as a legal entity, the aim of restructuring proceedings is to continue the debtor's business and to discharge and/or restructure its debts.

In general, the Ukrainian insolvency regime follows the principle of uniform and proportionate satisfaction of unsecured creditors. Aside from the distinction between secured and unsecured creditors, the Ukrainian Bankruptcy Code provides for a priority ranking of creditors.

Debt-ridden businesses not already fulfilling the preconditions to file for insolvency can engage in different types of restructuring measures:

- The pre-insolvency rehabilitation procedure regulated by Article 5 of the Ukrainian Bankruptcy Code, which can be initiated by any debtor by decision of its owner (shareholder). In general, this procedure is carried out under a restructuring plan, which must have been (i) approved by the creditors' assembly, and (ii) adopted by the commercial court.
- The restructuring procedure envisaged by the Ukrainian Restructuring Law (No. 1414-VIII of 14 June 2016). This procedure can only be initiated by an entity that owes a debt to at least one financial institution and that meets other specific preconditions set forth in the Ukrainian Restructuring Law.

Both procedures are generally recognised by market practitioners as beneficial for debtors for several reasons. For instance, they include a moratorium (*мораторій*) – for a certain period of time – for the satisfaction of the creditors' claims, including on forced debt collection.

2. Insolvency triggers

The Ukrainian Bankruptcy Code defines a debtor as, among others, a legal entity unable to fulfil its monetary obligations that are due. A monetary obligation means an obligation of the debtor to pay a certain amount to a creditor under a contract or on other grounds set forth by law (such as tax debt, social security payments, etc.).

Both debtors and creditors have the right to file an application to initiate insolvency proceedings. The Ukrainian Bankruptcy Code provides different grounds on which the creditor(s) or the debtor can apply to open insolvency proceedings.

The court will open insolvency proceedings on application of the *creditor* where: (i) a monetary obligation (irrespective of the amount) payable to the creditor has fallen due prior to the creditor filing its insolvency application, (ii) there is no dispute between the creditor and the debtor on issues of law, and (iii) the debtor has not satisfied this claim prior to the initial court hearing.

The *debtor* is required to file for insolvency where satisfying the claims of one or several creditors would lead the debtor to be unable to fully satisfy the claims of other creditors. In this case, the debtor must submit a bankruptcy application within one month. Failure to do so may result in the debtor's directors being held jointly liable for creditors' claims which remain unsatisfied.

3. Types of insolvency proceedings

3.1 Preliminary proceedings

This phase of the insolvency proceedings is generally aimed at scrutinising the business activities of the debtor, analysing its financial standing, determining all creditors' claims and taking measures for the supervision and control over the debtor's assets, and determining what will be the next stage in the insolvency proceedings (restructuring or bankruptcy).

Preliminary proceedings are initiated by court ruling and have a duration of up to 170 calendar days.

The court appoints an insolvency administrator, yet the debtor's management continues to perform its functions subject to certain restrictions. By the end of the preliminary proceedings, the creditors' assembly must request for the court either to open restructuring proceedings or to open bankruptcy proceedings.

3.2 Restructuring proceedings

Restructuring is comprised of a system of measures intended to foster the financial rehabilitation of the debtor in order to facilitate the satisfaction of creditors' claims and help avoid the liquidation of the debtor. The list of measures provided for in the Ukrainian Bankruptcy Code is not exhaustive, but includes granting loans, corporate restructuring of the debtor (its debts and assets), and/or changing the debtor's legal form and its business operations, including production reprofiling and employee dismissals. The restructuring measures and other key terms of the restructuring are laid out in a restructuring plan, which must be adopted by the creditors' assembly and then approved by the court.

Restructuring is carried out by the court-appointed insolvency administrator. The debtor's management is dismissed, and the powers of its corporate bodies are terminated and assumed by the insolvency administrator.

The restructuring of the debtor ends with the implementation of all measures laid down in the restructuring plan. The insolvency administrator must prepare a report, which then is submitted to the creditors' assembly. The creditors must request for the court either to: (i) terminate the restructuring proceedings due to the restored solvency of the debtor; or (ii) recognise the debtor as bankrupt and open the bankruptcy proceedings; or (iii) approve modifications to the restructuring plan and extend the term of restructuring.

3.3 Bankruptcy proceedings

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate, to realise the debtor's assets and to distribute the proceeds among its creditors; this is the task of the court-appointed insolvency administrator. The proceeds remaining after the satisfaction of administrative expenses and secured claims are distributed among the (unsecured) creditors on a *pro rata* basis. Under law, the overall period set aside for these proceedings is up to 12 months.

If the debtor does not have any assets remaining (or found) at the end of the brankruptcy proceedings, the debtor will be erased from the companies' register as a legal entity and will cease to exist.

Even after bankruptcy proceedings have been opened, the court may still open restructuring proceedings on its own initiative or at the request of the creditors' assembly or of the insolvency administrator if a restructuring plan has been approved by the creditors.

4. Actors of insolvency proceedings

4.1 Commercial court

The court decides to open and terminate insolvency proceedings and makes all main decisions during the ongoing insolvency proceedings in matters including but not limited to challenges by creditors, the appointment and replacement of the insolvency administrator, claims for declaring the debtor's transactions invalid, claims as to the liability of parties for causing the debtor's bankruptcy and the collection of the debtor's receivables. The role of the court is to ensure that the insolvency proceedings are conducted in compliance with the law.

4.2 Insolvency administrator

The insolvency administrator is one of the key participants in insolvency proceedings and acts in one of three capacities: as an asset administrator (during the preliminary proceedings); as a restructuring administrator (at the stage of the debtor's restructuring); or as a liquidator (at the stage of the debtor's bankruptcy).

The insolvency administrator is appointed by the court using an automated electronic system designed to select the insolvency administrator from among the individuals enrolled in the Uniform Register of Insolvency Administrators (*Єдиний реєстр арбітражних керуючих України*).

4.3 Creditors

Creditors have rights of control in insolvency proceedings, as the creditors' assembly and the creditors' committee must approve certain actions taken during the insolvency proceedings. Creditors make the most important decisions regarding the insolvency proceedings within the creditors' assembly.

5. Main effects of the opening of insolvency proceedings

5.1 Automatic stay (moratorium)

One major consequence of opening insolvency proceedings against the debtor is that it grants an automatic stay or moratorium (*мораторій*) – i.e. a suspension on the payment by the debtor of its monetary obligations and its obligations to pay taxes and mandatory duties which matured before the moratorium was granted, and the termination of measures to secure payment of those obligations. There are certain exemptions from the application of the moratorium, such as claims of current creditors (*поточні кредитори*), wages and certain other payments.

The moratorium applies as long as the case remains ongoing.

5.2 Pre-existing contractual obligations

By operation of law, the opening of insolvency proceedings against a debtor does not affect the debtor's existing contracts, unless specific legal provisions or contractual terms trigger their termination or other specific consequences. For instance, a security holder is entitled by law to require the insolvent debtor to make early payment of the secured obligation.

Generally, the termination and acceleration of contracts is only possible at the bankruptcy stage of insolvency proceedings. Thus, during the preliminary phase, the insolvency administrator has no authority to cancel the debtor's contracts that are as-yet unperformed or that contain outstanding obligations of either party. In restructuring proceedings, the insolvency administrator is authorised to withdraw from agreements executed before the initiation of the insolvency proceedings if they meet specific criteria, in particular if:

(i) contractual performance will cause a loss to the debtor; (ii) the agreement is for a term of more than one year or it is aimed at achieving positive results in the long term; or (iii) the performance of the agreement may impede the restoration of the debtor's solvency.

In bankruptcy proceedings, all agreements are deemed terminated except for those executed to safeguard the debtor's assets or their integrity.

5.3 Rights of avoidance

At any stage of insolvency proceedings, the insolvency administrator or a creditor may contest legal actions and transactions which have taken place in a period of up to three years before the opening of insolvency proceedings if they violated the rights of the debtor or of the creditors and if they meet the grounds set forth by the Ukrainian Bankruptcy Code.

6. Creditors' claims

6.1 Creditor categories

Ukrainian law provides for three categories of creditor in insolvency proceedings: secured creditors (*забезпечені кредитори*), unsecured or scheduled creditors (*конкурсні кредитори*), and current creditors (*поточні кредитори*).

6.1.1 Secured creditors

Secured claims are satisfied from the proceeds received from the sale of collateral to secure the respective claims.

The Ukrainian Bankruptcy Code allows secured creditors to waive their security in part or in whole. If the value of the collateral is insufficient to fully discharge a secured claim, the respective creditor will be considered a secured creditor only for the value of the collateral.

6.1.2 Unsecured creditors

Claims of unsecured creditors must be filed as insolvency claims within 30 days of it being officially announced that insolvency proceedings have been opened against the debtor. If a creditor misses this 30-day deadline, that creditor's claims may still be satisfied in due order of priority, but the creditor will not have a decisive vote at the creditors' assembly and the creditors' committee.

The Ukrainian Bankruptcy Code requires the insolvency administrator to examine the creditors' claims and recognise (wholly or partially) or reject them. The results of this examination must be reported to the court. The claims recognised by the court are included by the insolvency administrator in the creditors' claims register.

Once the claims' register is approved, all payments to creditors within the framework of the insolvency must be made according to the register. Generally, unsecured claims are satisfied on a *pro rata* basis after all protected claim categories have been satisfied. These include wage and employment related payments, compensation for injury and death, social security and tax payments.

6.1.3 Current creditors

Current creditors are those whose claims have matured after the opening of the insolvency proceedings and are not secured by the debtor's assets. Generally, these claims are not covered by the moratorium and, therefore, can be satisfied at any stage of the insolvency proceedings subject to requirements and limitations set forth by the Ukrainian Bankruptcy Code.

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