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Insolvency Proceedings under the new Lex Covid Justice – Covid-19 legal update

Developments related to COVID-19 are occurring rapidly. Wolf Theiss will continue to distribute regular Client Alerts via email and publish up-to-date analysis on our website. A list of daily updated resources can be found here:

<https://www.wolftheiss.com/covid19/>

On 31 March 2020, the Czech Government approved a draft law aiming to mitigate the impact of the COVID-19 pandemic on persons involved in various legal proceedings (known in Czech as the *Lex Covid Justice*). The draft legislation significantly **improves the position of debtors affected by the pandemic in insolvency proceedings**. The draft law is now waiting for approval by the Chamber of Deputies and by the Senate and will most likely be heard in a condensed hearing. This means it may become effective within the next few days. As soon as the draft law is passed, we will provide you with update.

The draft law provides for four basic instruments:

1. CREDITOR'S INSOLVENCY PETITION

Any insolvency petition filed by a creditor between the effective date of this Act and 31 August 2020 **will not be acted upon**. This means that an insolvency petition filed by a creditor will be deemed as if it had not been filed. Consequently, the insolvency proceedings cannot be initiated by a creditor.

2. DEBTOR'S INSOLVENCY PETITION

The draft law suspends **the debtor's obligation to file an insolvency petition in case of its bankruptcy** for the duration of the national emergency (declared on 12 March 2020) and for six months thereafter. However, the suspension will not extend beyond 31 December 2020.

This rule only applies if the debtor's bankruptcy objectively occurred after the declaration of national emergency or in connection with the COVID-19 pandemic. Governing bodies of the bankrupt entities can thus avoid the adverse consequences of not complying with the duty to file an insolvency petition in the event of bankruptcy – namely the obligation

(where relevant) to compensate the creditors whose satisfaction in the insolvency proceedings has been reduced to a small extent, or, in certain circumstances, the possibility of guaranteeing the debts of the bankrupt legal entity.

3. EMERGENCY MORATORIUM

Under the draft law, a debtor who is an entrepreneur (under the condition that this debtor was not bankrupt on or before 12 March 2020) may file an application for emergency moratorium with the insolvency court until 31 August 2020.

The emergency moratorium may be declared for a period of 3 months upon the application filed together with an insolvency petition or in the course of insolvency proceedings. As compared to the already existing provisions governing moratorium, creditor's consent is not required and certain documents required may be replaced by affidavits.

The emergency moratorium offers **faster and more effective protection of the businesses**: no insolvency decision may be issued during this period (the insolvency proceedings are "suspended") and the debtor is entitled to run its business (although it is forbidden to take actions that would amount to "major changes" in the assets). The emergency moratorium automatically allows the debtor to utilise any benefits, alleviations and other types of financial aid provided from public resources without any restrictions. The debtor is also protected against having the energy supplies agreements and other agreements for the supply of goods and services terminated by the other party due to the debtor's default in payment for the goods or services, which occurred before the declaration of the moratorium, subject to certain restrictive conditions.

Following the end of the moratorium, **a record in the insolvency register becomes publicly inaccessible**, which prevents potential negative publicity.

4. REORGANISATION PLAN

Finally, in the insolvency proceedings, the debtor may file an application for **temporary suspension of the implementation of the reorganisation plan**, under the condition that the reorganisation plan was approved no later than 12 March 2020. The debtor may file the application within a period of 6 months after the national emergency status is cancelled, but no later than 31 December 2020.

Does your business need support in implementing a work from home policy? We are pleased to offer our online collaboration platform WT Space to support you during the current COVID-19 pandemic.

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