

European Guide to Support Businesses  
**Covid-19 Impact**  
Debt Restructuring and Insolvency



April 2021

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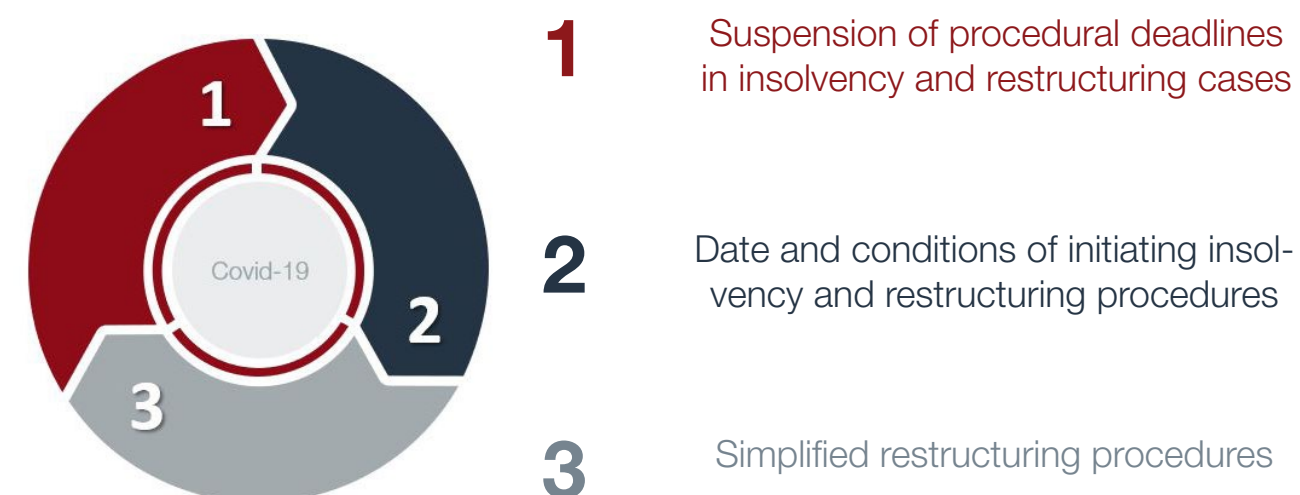
We value open communication, information sharing and inclusive decision making.





The spread of the Covid-19 pandemic in 2020 forced many countries in Europe to implement special legal solutions in order to adjust to the exceptional circumstances and the new reality that continues in 2021.

Andersen, through the member and collaborating firms of Andersen Global and its European Service Line Restructuring and Insolvency, has prepared this guide to provide an insight into legal solutions adopted by selected European states in a response to the Covid-19 pandemic in the context of insolvency and restructuring procedures. It also encompasses other mechanisms deployed to mitigate negative consequences of the Covid-19 pandemic, such as suspension of contractual obligations as well as optional or obligatory moratoria.



Comparative analysis of mechanisms adopted by certain European states indicates that suspension of procedural deadlines along with significant limitation of courts' activity to urgent cases during the height of the pandemic have affected both insolvency and restructuring procedures. Several states have qualified insolvency and restructuring cases as urgent (which, in principle, have been continued). Many states have also modified conditions and suspended or frozen deadlines to apply for declaration of bankruptcy or to initiate a restructuring procedure. In very few countries, simplified/special restructuring procedures have been implemented with the aim of tackling case overload in insolvency and restructuring cases or new laws were introduced (also with a view to the implementation of the Preventive Restructuring Frameworks Directive (EU) 2019/1023).

We hope this Guide will serve as a practical tool to support European business by providing knowledge on recent developments in insolvency and restructuring procedures.

Should you have any questions or comments, please do not hesitate to reach out to your usual Andersen contact; the guide editors, [Michael Thierhoff](#), [Renate Mueller](#) and [Leszek Rydzewski](#); or a lawyer indicated in each jurisdiction. If the jurisdiction you require information on is not covered by this guide, please let us know, and we will be happy to assist and to introduce you to a specialized advisor in that country.

*This guide is current and does reflect the situation as of February 2021 (unless certain parts refer expressly to other dates); it is intended to be updated on a bi-monthly basis.*



# AUSTRIA



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

According to the Austrian Insolvency Act (*Insolvenzordnung*, hereinafter: "IO") a company is obliged to submit an application to open insolvency proceedings in the event of insolvency (§ 66 IO); certain type of companies shall submit such an application if there is a case of over-indebtedness (§ 67 IO). In principle, insolvency exists if the company is unable to fulfil its mature financial obligations due to a lack of liquid funds. Only short-term payment delays do not constitute insolvency. When establishing whether a company is affected by insolvency, deferred claims are not to be considered. Over-indebtedness is given if there is an arithmetical over-indebtedness, namely if the liabilities outweigh the claims based on liquidation values. There are two basic components to establishing whether a company is over-indebted:

- ♦ a company shall analyze whether a negative forecast regarding the occurrence of a future insolvency of the

company can be detected, i.e. whether a future insolvency is expected. For this purpose, the company shall develop a financial plan for 12 months (primary forecast).

- ♦ a company shall then examine whether a turnaround in the profitability is to be achieved within the following two to three financial years (secondary forecast).

Subject to the initiation of insolvency proceedings due to over-indebtedness are legal entities, registered partnerships, in which no partner with unlimited liability is a natural person (e.g. GmbH & Co KG) and in the case of estates. If either insolvency or over-indebtedness exists, the application to open insolvency proceedings must be submitted without culpable delay, however at the latest 60 days after the occurrence of insolvency.

The above-listed deadlines for the initiation of insolvency proceedings have been alleviated during the Covid-19 pandemic. The 2nd Covid-19 Act (BGBl. II Nr. 16/2020) sets forth that the Covid-19 pandemic falls under the term natural disaster (*Naturkatastrophe*) according to § 69 para. 2a IO. As a consequence, the period for

submitting an application to open insolvency proceedings was extended to 120 days after the occurrence of insolvency, but only in so far as the insolvency has actually been caused by the Covid-19 pandemic, i.e. the insolvency of the company is a direct effect of the Covid-19 measures. If this is not the case, then the company still has to observe the 'normal' legal provisions and submit the application to open insolvency proceedings within the legally established maximum period of 60 days.

With regard to an application to open insolvency proceedings due to over-indebtedness (not for insolvency), there is a relaxation in time, provided that the over-indebtedness has not occurred before March 1, 2020. According to the recently extended deadlines (BGBl. I 113/2020), the Austrian Covid 19-stipulations provide that in the event that over-indebtedness occurs in the period between March 1, 2020 and 31 March, 2021, the affected company is not obliged to apply for the opening of insolvency proceedings; this relaxation applies also to the request of a creditor to open insolvency proceedings against the affected company. In case a company is actually over-indebted at the end of this relaxation time, this company must apply for the opening of insolvency proceedings, either within 60 days after March 31, 2021 or within 120 days after the occurrence of over-indebtedness, whichever period ends later.

Finally, it shall be noted that the Austrian National Council has already adopted additional changes regarding the deadlines in insolvency proceedings. Pursuant to this planned amendment, the relaxation time regarding the application to open insolvency proceedings due to over-indebtedness – which is regulated in § 9 2. Covid-19-Justiz-Begleitgesetz – 2. Covid-19-JuBG

(BGBl. II. Nr. 24/2020) – shall be extended from March 31, 2021 to June 30, 2021. In the event that over-indebtedness occurs in the period between March 1, 2020 and June 30, 2021, the affected company is not obliged to submit an application to open insolvency proceedings. At this point there is no concrete date of entry into force of this provision.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

Insolvency proceedings were one of the exceptions where the court deadlines have not been interrupted until the beginning of May 2020. However, pursuant to Article 37 § 7 para 2 of the 4th Covid-19 Act, court deadlines may be prolonged – by a maximum of 90 days – if the court finds this appropriate or if one of the parties requests this.

From the aspect of material insolvency law there are certain provisions that were relaxed:

- ♦ Protection in the event of delay in fulfilling the reorganization plan (*Sanierungsplan*)

After the acceptance of a reorganization plan by the creditors, the Austrian IO provides for strict rules regarding the fulfilment of such a reorganization plan. If the debtor defaults on fulfilling the payments as provided in the reorganization plan vis-à-vis an individual creditor, any deduction or benefits contained in the reorganization plan will lapse ("revival of the entire claim"). This applies only if the debtor has not paid a debt which had already matured and despite a written reminder sent to him by

the creditor granting him a grace period of at least 14 days (§ 156 paras 1, 2 IO) Pursuant to § 5 of the 1. Covid-19-Justiz-Begleitgesetz (BGBl. II Nr. 16/2020) the consequences of default listed above will not occur if (i) the liability was due starting with March 22, 2020 and (ii) the creditor's written reminder was sent in the period between March 22, 2020 and April 30, 2020.

- ◇ **Deferral of payment plan instalments (*Zahlungsplanraten*) for natural persons**  
If the income and financial situation of a debtor changes as a result of the Covid-19 measures insofar, that he is no longer able to pay scheduled payment plan instalments, such a debtor can apply for a deferral of these payments pursuant to § 11 2. Covid-19-JuBG. Such an application must be submitted either before a written reminder is sent by a creditor or within 14 days after such a reminder has been sent. The deferral of these payments can only be granted for a period of time of up to 9 months. The application is published in the edicts register (*Ediktsdatei*) and each creditor has the possibility to comment such an application within 14 days after publication; failure to comment is deemed as consent. The deferment will be granted if the majority of the creditors of the insolvency proceedings approve the application. Even if the majority of creditors does not agree, the court may still approve the deferment if the deferment would not affect not even one creditor unfairly for personal or economic reasons.

- ◇ **Challenge protection (*Anfechtungsschutz*) for short-time work bridging loans (*Kurzarbeits-Überbrückungskredite*)**

Due to the systematic shut-down of many businesses during the validity of the Covid-19 measures, many companies have applied for subsidies for short-time work (*Kurzarbeitsbeihilfe*). These subsidies will however be paid out retrospectively, so that until such point the affected companies have to finance the salaries of their employees in another way – often by way of bridging loans (*Überbrückungskredite*). Pursuant to § 10 of the 2. Covid-19-JuBG – which was in place until December 31, 2020, the granting of such a loan in the amount of the subsidies for short-time work applied for between March 1, 2020, and December 31, 2020, and its repayment immediately after the receipt of the respective subsidy for short-time work is not subject to challenge under § 31 IO, provided that (i) the borrower has not provided collateral and (ii) the lender was not aware of the borrower's insolvency at the time the loan was granted. This measure was intended to prevent the final assets of the company from being used to secure the bridging loan and thus to thwart a restructuring after the opening of insolvency proceedings. § 10 of the 2. Covid-19-JuBG will – according to recent legislation plans – most likely be reinstated in the near future.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

The Austrian government has developed a multitude of financial subsidies and other measures in order to counteract the massive financial downfall of self-employed persons and companies, for instance:

- ◇ bridging guarantees for working capital loans for individual enterprises (*Einzelpersonenunternehmen*) and small and medium enterprises (SME)

and tourism enterprises, whereby Austria Wirtschaftsservice Gesellschaft mit beschränkter Haftung (AWS) and the Österreichische Hotel- und Tourismusbank GesmbH (ÖHT) respectively assume securities of up to 80% of certain types of loans.

- ◇ one of the most relevant measure is the application for subsidies for short-time work (*Kurzarbeitsbeihilfe*).
- ◇ the financial means of the Corona-Hilfsfonds are used on the one hand for non-repayable grants to cover fixed operating costs of an affected company (e.g. office space rents, electricity and gas costs, insurance premiums, interest expenses) and on the other hand, for guarantees in order to secure working capital loans.
- ◇ the financial means of the Härtefall-Fonds are used for individual enterprises, micro-enterprises (*Kleinstunternehmer*) and self-employed persons. The funding instrument is intended to support enterprises with regard to the payment of their personal living costs. The amount of the respective payments from the Härtefall-Fonds is based on the net earnings of the applicant, whereby the subsidies will substitute between 80 and 90% of the applicant's net earnings in the form of a non-repayable grant.
- ◇ for people or companies, which were affected by Covid-19 measures, it is also possible to apply for deferral or installment payments regarding taxes and also for reduction of the deferral interest to zero.
- ◇ consumers and micro-enterprises (*Kleinstunternehmer*) also have the possibility to apply for a postponement of the maturity of payments for loan agreements (§ 2 of the 2. Covid-19-JuBG). Such an application is relevant for consumer loan agreements (*Verbraucherkreditverträge*) concluded before March 15, 2020. Any repayment claims, interest or principal payments which mature between April 1, 2020 and January 31, 2021, shall be deferred for

10 months from the maturity date if the consumer suffers a loss of income due to the Covid-19 pandemic, insofar that the consumer can no longer respect the agreed payments. Different agreements are also permitted (i.e. partial payments, adjustments to interest rate/maturity and debt rescheduling) and depend on the affected contractual partners. These rules shall also apply to micro-enterprises employing fewer than 10 persons and whose annual turnover or annual balance sheet does not exceed EUR 2 million.

- ◇ it is also possible to facilitate the consequences of default for contractual relationships concluded before April 1, 2020 (§§ 3-4 of the 2. Covid-19-JuBG) as follows:

- default interest: if the debtor does not ensure that a payment obligation, which matured between April 1, 2020 and June 30, 2020, is fulfilled on time or if the debtor does not pay it in full because his economic capacity has been significantly impaired as a result of the Covid-19 pandemic, he must pay no more than the statutory interest (4% per annum) for the default and is not obliged to reimburse the costs of extrajudicial debt enforcement or recovery measures,
- contractual penalties: if the debtor is in default because his economic capacity is either considerably impaired as a result of the Covid-19 pandemic or he is unable to render performance due to restrictions of his working situation, he is not obliged to pay an agreed contractual penalty. This only applies to agreements concluded before April 1, 2020. ■



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# CROATIA



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

Starting from April 30, 2020, the *Croatian Intervention Measures in Enforcement and Bankruptcy Proceedings in Contingencies Act* (the "Act") entered into force to regulate special interventional measures in enforcement and bankruptcy proceedings for the duration of the contingency in connection with the Covid-19 pandemic. The Act estimates the duration of such contingency at up to three months after its entry into force with a possibility of extension for a further three months if necessary. After such 3-month period expired, the Croatian Government decided to extend the duration of the contingency for a further three months until October 18, 2020.

According to the Act, bankruptcy reasons presented during the contingency period will not be considered grounds for bringing bankruptcy proceedings. However, a motion for bringing bankruptcy proceedings during the contingency period was only allowed to be filed for the purpose of protecting the

interests and security of the Republic of Croatia, its nature, the human environment, and human health. No default interest accrued during this contingency period. After October 18, 2020, this Act has no longer applied to enforcement and bankruptcy proceedings.

The Croatian Government implemented a similar measure with regard to enforcements against bank accounts (for both legal and natural persons) by temporarily suspending such enforcement proceedings for the duration of the contingency (as prescribed in the Act). By amending the governing act, the Croatian Government suspended enforcement proceedings until October 18, 2020 (pending proceedings were interrupted with no default interest accruing and new proceedings were merely filed by the implementing body but not initiated). As most of the enforcement proceedings were not related to the pandemic (in particular those that had been ongoing prior to the pandemic), such general restriction on enforcement proceedings had to be limited in its duration and was lifted completely after October 18, 2020.

Due to a significant increase in the number

of Covid-19 positive patients in October and November 2020, the Croatian Government implemented economic and other restrictions to reduce the spread of infection. These measures were modified to regulate and help organize the operation of courts. On November 2, 2020, the Croatian Supreme Court rendered its Instruction on the Measures to Prevent the Spread of Covid-19 Disease Caused by SARS-CoV-2 Virus by dividing the organization into first and second instance courts in Croatia during the pandemic with two possible models (Models A and B). According to the operating arrangements under Model A, all judges will have specific days to hold hearings in larger courtrooms (in proportion to the number of participants) but will be working from home on other days. According to the operating arrangements under Model B, all court hearings will be postponed within the next 14 days and only judges working on urgent cases will be present and working at the courts.

Although such measures implemented by the Croatian Government to reduce the spread of infection at the end of November 2020 are still in place, it seems that this has not significantly affected the operation of courts, especially since new ways of electronic communication with courts have been implemented. Moreover, such electronic communication has become mandatory for many participants in court proceedings (lawyers, state attorneys, court expert witnesses, etc.), which has accelerated the document submission and thus resulted in more expedient operation of the courts. In addition, some courts in Croatia have gone as far as to conduct online hearings, which is a new development that was most likely put into practice so soon because of the pandemic.

However, we can safely assume that some proceedings (such as major insolvency proceedings and other proceedings involving many parties) were postponed in the last few months due to a lack of appropriately large courtrooms that can accommodate all parties as required to prevent the spread of Covid-19 infection.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

There were no specific developments in the legislation of any Croatian jurisdictions that might be directly relevant to the matter in question.

However, the Croatian Government implemented new measures to help the economy overcome the corona crisis, which include ongoing job preservation and liquidity aid measures and Covid loans for businesses.

These measures include co-financing part-time employment and granting aid for micro-enterprises until December 31, 2020 of up to HRK 2,000 per employee if the business suffered a drop in turnover by more than 50 percent.

For activities that are particularly vulnerable, the aid of HRK 4,000 per employee is still available, especially for passenger transport and hospitality activities, tour operators, and activities related to recreation and cultural, business or sporting events if they suffered a decrease in turnover by more than 60 percent. This aid includes writing off the related debt for social security contributions (health and pension insurance).



In addition to such affected activities, the aid of HRK 4,000 per employee is also awarded to corporations and businesses that were forced to close their operations pursuant to such decisions of local or national Civil Protection HQs.

Additionally, after a devastating earthquake that hit central Croatia on December 29, 2020 and further subsequent earthquakes and tremors, the Croatian Government has been implementing new measures for social and economic revitalization and to remediate the consequences of this disaster caused by the earthquake. A Reconstruction Bill is in the process of being enacted by the Croatian Parliament.

While there were no specific developments in the laws of any Croatian jurisdictions directly relevant to insolvency and restructuring courts, the measures that are being implemented are intended to reduce the impacts of the corona crisis and the consequences of the earthquake. Without

such a measure in place, a vast majority of corporations and businesses would most likely be in serious financial difficulties, which would ultimately result in bankruptcy and insolvency proceedings.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

Besides the measures described above, the Croatian Government has also recommended to the Croatian Bank for Reconstruction and Development (HBOR), commercial banks and leasing companies to grant a 3-month moratorium on loans. According to the Act Amending the General Tax Act dated April 7, 2020, all taxpayers who are prohibited from conducting their business due to the contingency, or whose operations have been impeded or significantly impeded, may be exempted from paying all or part of the relevant public contributions and their VAT liability only applies to supplies actually paid for by their customers.

Additionally, the Croatian Government has granted firms whose operations were suspended due to measures to prevent the spread of the Covid-19 virus the right to be reimbursed for their inevitable operating expenses (overhead).

The right to be reimbursed for all or part of the overhead paid for December 2020 is being exercised by businesses whose operations were suspended by the Decision of the Civil Protection Headquarters of the Republic of Croatia of November 27, 2020 and whose revenue earned in December of 2020 decreased by at least 60% compared to the revenue earned in December of 2019.

In addition, the right to be reimbursed for overhead paid is also being exercised by businesses that started operating in 2020 if the revenue they earned in December of 2020 decreased by at least 60% compared to the revenue earned in November of 2020.

Firms whose revenue dropped by 60% to 90% are entitled to be reimbursed for the overhead pro rata to the revenue decrease and those whose revenue dropped by more than 90% will have all their paid operating expenses (overhead) reimbursed.

Such overhead includes:

- ◇ monthly rent, lease or concession charges for business premises where business is conducted;
- ◇ statutory reserve costs;
- ◇ monthly charges for electricity, water including relevant surcharges, gas, heat from the heat plant, and municipal waste disposal;
- ◇ utility charges;
- ◇ monthly monument annuity;
- ◇ monthly subscription charge for HRT (Croatian Radiotelevision), monthly

charge for public reproduction of music, monthly subscriptions to daily, weekly and monthly publications;

- ◇ monthly charge for the internet and telephone landline;
- ◇ monthly bookkeeping service rate; and
- ◇ 1/12 of the annual charge payable for organizing games of chance in casinos and gaming clubs and betting games, except for the annual charge payable for online betting and online casinos.

Businesses whose employment suspension measure was extended by the Decision of the Civil Protection Headquarters of the Republic of Croatia of January 8, 2021 and whose revenue decreased by at least 60% in January 2021 compared to January 2020 are entitled to be compensated for all or part of their overhead for January 2021. Likewise, businesses that started operating in 2020 are entitled to be reimbursed for their overhead if their revenue earned in January 2021 dropped by at least 60% compared to November 2020. ■



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# CYPRUS



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

Apart from the limited access to the Cypriot judicial courts that would attend to any civil and or criminal matter of urgency, such as the matters listed below, there has been no specific development with regards to insolvency procedures as such. This approach was effective during the first lockdown and also during the second lockdown period from January 8, 2021 up to January 31, 2021.

Measures implemented with regard to civil cases:

- ◇ applications for interim orders in extremely urgent cases. The urgency of the trial is judged by the competent judge, from whom relevant leave is obtained.
- ◇ appeals concerning real estate auction procedures.
- ◇ applications for Habeas Corpus prerogative writs.

- ◇ proceedings for the extradition of fugitives or wanted persons.
- ◇ emergency orders, at the discretion of the court.
- ◇ proceedings concerning political asylum of an emergency nature at the discretion of the court, and
- ◇ urgent appeals, at the discretion of the court.

Nevertheless, it is worth stressing that the legal procedures for voluntary corporate liquidations that are initiated either by creditors or the members of a company continued to be processed as usual as this process is undertaken by the Registrar of Companies and licensed insolvency practitioners.

On the other hand, court applications for liquidations under the supervision of the court (and any other matters needing court procedure) could be filed but would not be set for a hearing or any matters addressed until the restrictive measures were lifted. Only certain matters would be addressed by the court as listed above. As from January

8, 2021, and the second lockdown, the above restrictive measures were once again imposed and ended on January 31, 2021 and the courts are fully functional.

With regards to special debt moratoria, the Ministry of Finance announced once again when the new, second lockdown was imposed, a new suspension of loan repayments for a period of six months, i.e. until June 30, 2021. Borrowers who did not take advantage of the first installment suspension during the previous nine months and first moratorium, will be able to take advantage of this new suspension.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

So far, no such measures have been enacted in Cyprus. However, the Cypriot judicial system, courts and so forth are under reform and bills are soon to be discussed for the much needed and long overdue restructuring of the courts in general. The aim is to establish more courts of different nature to try certain types of cases and matters in order to tackle the current backlogs faced by the courts at all levels.

A presentation of the pilot e-justice system was presented to the members of the Cyprus Bar Association and is a very welcomed and positive step for e-justice to finally be introduced into the legal system that will tackle not only the overload and backlog the local courts are experiencing but will provide more transparency and efficiency in filing claims, applications and so forth generally.

What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?

In summary, and during the second lockdown, the government announced on January 9, 2021 a new support package for the Cypriot economy, that aims to support both businesses and the workforce from the adverse effects of the Covid-19 pandemic.

New measures:

- ◇ Government Grant for VAT-registered businesses & self-employed. This grant covers rents, instalments or other operating expenses of businesses and self-employed. This grant is in addition to any payroll support under the schemes of the Ministry of Labour. • Maximum grant: EUR 300,000; Minimum grant: EUR 1,000.
- ◇ Special Subsidy Scheme for certain categories of non-VAT-registered self-employed. This subsidy covers rents, instalments, or other operating expenses of self-employed who are not VAT-registered. The condition for self-employed individuals who are not VAT-registered, is that the value of their taxable transactions is less than EUR 15,600 per annum, and that they were affected by the restrictive measures taken to deal with the Covid-19 pandemic.
- ◇ Suspension of repayment of loan instalments (new moratorium) for a period of 6 months, i.e. from January 1, 2021 up to June 30, 2021.
- ◇ Additional measures to support tenants: Two month suspension of professional lease rentals and a suspension for 2 months, January and February 2021 (or February and March 2021, in case January has already been paid), of the obligation to pay 70% of the rent of professional leases, for companies or self-employed individuals whose operations are fully suspended pursuant to the Quarantine law decree No 2 of 2021, including those who are in full suspension but are allowed to provide



delivery and/or take away services. •  
The aforementioned obligations must be repaid in equal instalments the latest by February 2022.

- ◇ Government Interest Subsidy Scheme for New Business Loans: extended for 6 months for loans to cover liquidity needs for working capital and/or Investment.
- ◇ Incentives to landlords to reduce rents by granting a tax credit equal to 50% of rent reduction within 2021.
- ◇ Delivery of diagnostic medical devices in vitro products and vaccines for the Covid-19 disease.
- ◇ Reduction of the VAT rate from 9% to 5% from July 1, 2020 to October 31, 2021.
- ◇ Interest Subsidy Scheme for New Housing Loans – extended for 6 months. Interest rate subsidy for new housing loans, for the purposes of owner occupancy. The Interest Subsidy Scheme for New Housing Loans is extended for a period of six months, from January 1 until June 30, 2021. ■



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# GERMANY

During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

On March 27, 2020 "The Act to Mitigate the Consequences of the Covid-19 Pandemic under Civil, Insolvency and Criminal Procedure Law" was enacted in Germany.

Article 1 of this law is "The Act to temporarily suspend the obligation to file for insolvency and to limit director's liability in the event of insolvency caused by the Covid-19 pandemic," (Covid-19 Insolvency Suspension Act (CovInsAG)). The Covid-19 Insolvency Suspension Act has been amended on September 30, 2020, December 22, 2020 and just recently on February 15, 2021.

## 1. Temporary suspension of the duty of management to file for insolvency (debtor application)

- ◇ The suspension concerns a company's own application for insolvency.
- ◇ The suspension was initially limited to the period from March 1 to September 30, 2020. From October 1, 2020 until December 31, 2020 the duty

of management to file for insolvency was subsequently suspended, if the company was only overindebted, but not already illiquid, i.e. if the company was illiquid on or after October 1, 2020 the pre-Covid-19 obligation of management to file for insolvency and corresponding liabilities were applicable again. From January 1 until April 30, 2021 the duty to file for insolvency is suspended again for managers of companies that are entitled to receive financial support under government assistance programs to mitigate the consequences of the Covid-19 pandemic. This is subject to the condition that a corresponding application for support is submitted in the period from November 1, 2020 to February 28, 2021. If an application was not possible for legal or factual reasons within this time frame, the insolvency filing requirement is also suspended. However, the obligation to file for insolvency shall not be suspended if there is obviously no prospect of obtaining the support or if the support that can be obtained is insufficient to eliminate the insolvency reasons.

- ◇ If the company was still solvent on December 31, 2019, it is assumed that



insolvency was triggered due to the effects of the Covid-19 pandemic and that there are prospects of overcoming insolvency (reason for suspension).

- ◇ Otherwise, the party claiming the existence of an obligation to file for insolvency must demonstrate and, where appropriate, prove that there are no grounds for suspension.

## 2. Consequences of the suspension

In order to protect management from further liability risks, to motivate creditors to maintain the business relationship and to provide incentives for granting credit, accompanying regulations provide for a number of privileges limiting clawback and personal liability:

- ◇ Payments which are made during the suspension period in the ordinary course of business are deemed to be compatible with the diligence of a prudent and conscientious manager and are therefore not subject to the payment restrictions of sec. 15b German Insolvency Code (sec. 15b German Insolvency Code was enacted on January 1, 2021 and is replacing the former sec. 64 German Limited Liability Companies Act (*GmbHG*) and the parallel provisions for other forms of corporations). These include those payments which serve to maintain or resume business operations or to implement a restructuring concept.
- ◇ The repayment of new loans granted during the suspension period until September 30, 2023 and the provision of collateral for such loans is not considered to be unfair to creditors (and therefore not to be considered as antecedent for this reason). The same shall apply to the repayment of new shareholder loans and payments on claims arising from transactions which are economically

equivalent to such loans, e.g. from the staying of other shareholder claims. The provisions regarding the subordination of new shareholder loans under insolvency law are also not applicable to insolvency proceedings of the debtor which are applied for on or prior to September 30, 2023. However, these privileges do not apply to providing assets of the company as collateral for shareholder loans.

- ◇ During the period of suspension, the granting of credit and collateral shall not be regarded as an action deepening insolvency.
- ◇ Furthermore, payments made to other contractual partners, e.g. lessors, landlords or suppliers during the suspension period or collateral provided, are not subject to clawback, provided that these payments were in line with the contractual agreements. On the other hand, a clawback is not excluded if the other party was not in good faith and well aware that the debtor's restructuring and financing efforts were not suitable to overcome an insolvency that had occurred.
- ◇ Moreover, payments made to creditors until March 31, 2022 on the basis of a deferral agreement granted during the suspension period up to February 28, 2021, shall not be considered to be unfair to other creditors (and therefore not to be considered as antecedent for this reason), unless insolvency proceedings have been opened against the debtor's assets before the amendment entered into force.
- ◇ The easing of clawback and liability rules applies not only to companies qualifying for suspension of filing, but also to all other business, such as sole traders and limited partnerships with an individual as general partner, and also to

enterprises facing serious difficulties as a result of the Covid-19 pandemic which are not yet insolvent.

- ◇ The time restrictions - granting of credit during the suspension period and repayment by September 30, 2023 - do not apply to financing under state aid programmes at federal or state level, nor do they apply to the share to be provided by third parties in this connection. As a result, loans granted under the government assistance programmes are protected even after the suspension period has expired, as are repayments without time limit.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

The Association of Insolvency Administrators in Germany (VID e.V.) has launched an initiative in December 2020 to introduce simplified protective shield proceedings (a special form of debtor in possession insolvency proceedings) for small and medium-sized companies affected by the Covid-19 pandemic. So far, the legislator has not taken up this initiative, but has introduced a few temporary special rules for companies that have been particularly affected by the Covid-19 pandemic:

- ◇ There is currently considerable planning uncertainty for many companies. In order to prevent insolvency applications from having to be filed solely on the basis of forecast uncertainties, the forecast period for the over-indebtedness balance sheet was reduced from 12 to 4 months for the year 2021 in the event of a sharp drop in sales in 2020 by more than 30 percent and a few further conditions.

- ◇ Due to the Covid-19 pandemic, particularly in the hardest-hit industries, companies may become insolvent that would not have become insolvent had it not been for the effects of the pandemic. In these cases, the insolvency that has occurred is not an indication of improper crisis management that is likely to call into question confidence in the debtor's willingness and ability to align management with the interests of creditors. In these cases, companies will be granted easier access to the protective shield proceedings and debtor in possession proceedings in 2021 if a positive operating result was generated in 2019 and sales slumped by more than 30 percent in 2020.

With respect to the Directive (EU) 2019/1023 of the European Parliament dated June 20, 2019 German parliament (Bundestag) adopted the new restructuring framework with the "Act on the Further Development of the Restructuring and Insolvency Law" (*Sanierungs- und Insolvenzrechtsfortentwicklungsgesetz - SanInsFoG*) on December 18, 2020. The German restructuring framework already came into force on January 1, 2021 and is a new and flexible tool-box for an early restructuring with the goal to avoid formal insolvency proceedings. The second draft law to reduce the discharge period after which insolvent entrepreneurs and consumers are fully discharged from their debts from generally six years to three years has also been adopted by the German parliament on December 18, 2020. This reduction applies to insolvency proceedings filed after Oct. 1, 2020 and gives debtors who have become insolvent a much sooner second chance.



**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

As part of the Act to Mitigate the Consequences of the Covid-19 Pandemic under Civil, Insolvency and Criminal Procedure Law Article 240 of the Introductory Act of the German Civil Code provides for some temporary contractual rules triggered by the Covid-19 Pandemic. These rules have been amended on December 22, 2020.

### 1. Moratorium on liabilities from continuing obligations

#### a. Scope and deadline

- ◇ This concerns consumers' right to refuse to make payments in order to satisfy a claim relating to a consumer contract which constitutes a substantial continuing obligation and is essential to maintain basic living standards (e.g., electricity, gas, etc.).
- ◇ Contract must have been concluded prior to March 8, 2020.
- ◇ This does not apply to rent, lease and loan agreements, or employment contracts.
- ◇ The beneficiaries are consumers and micro enterprises (less than 10 employees and annual turnover up to EUR 2 m).

#### b. Right to refuse performance

- ◇ Prerequisite: Due to circumstances arising from the Covid-19 pandemic, payment is not possible without jeopardising the adequate livelihood of a beneficiary or his dependants.
- ◇ The right to refuse performance was limited in time until June 30, 2020, this period has not been extended.
- ◇ On the other hand, the consequences of exercising the right to refuse performance must not be unreasonable for the creditor, which is the case if the

failure to perform would jeopardise the economic basis of his business.

Suppliers of services affected by the right to refuse performance should assess the extent to which they can accept this and at what point the right to refuse performance becomes unacceptable for the supplier. Appropriate guidelines should be issued to staff involved.

### 2. Protection of tenants of land or premises

- ◇ The landlord cannot terminate the tenancy because of the tenants' failure to pay the rent due in the period from April 1 to June 30, 2020. Other termination rights remain unaffected. The non-payment of rent must be a result of the effects of the Covid-19 pandemic and must be substantiated. The rule applies to private and commercial leases of land and buildings. As a regulation for the protection of tenants in the private sector, the rule is understandable. However, the landlord can pursue the claim for payment of the rent without restriction. The purpose of the regulation is to protect both the private and the commercial tenant, probably combined with the assumption that the landlord is protected by the comprehensive auxiliary measures generally available to businesses.
- ◇ With the aim of strengthening the negotiating position of commercial tenants and eliminating existing uncertainties, the legislator has clarified that in the event of a complete or significant restriction of the usability of land, rented and leased premises that are not residential premises as a result of sovereign measures to combat the Covid-19 pandemic, a disturbance of the basis of the lease within the meaning of sec. 313 (1) of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) is presumed, which may result in an adjustment of the lease. But it is

questionable whether the simplification intended by the legislator will actually have an impact in practice as it will continue to be relevant whether the commercial tenant has received public or other subsidies with which the tenant can at least partially compensate for lost sales due to Corona-related restrictions and whether it has saved expenses - e.g. due to short-time working or reduced purchases of goods. Many questions will continue to arise here.

- ◇ In order to expedite a judicial clarification, a priority and expediting requirement has also been introduced, according to which judicial proceedings on the adjustment of rent or lease for relevant land or rented and leased premises due to state measures to combat the Covid-19 pandemic are to be given priority and expedited. An initial court hearing is to be held no later than one month after service of the complaint.

### 3. Deferrals or contract adjustments in respect of consumer loans

#### a. Requirements

- ◇ Consumer loan agreements are included as well as instalment payments for purchases.
- ◇ The loan agreement was concluded before March 15, 2020.
- ◇ Consumers are suffering loss of income due to the spread of the Covid-19 pandemic.
- ◇ As a result of the loss in income, the consumer cannot reasonably be expected to make the payment owed. This applies if the consumer's own livelihood or that of his dependants are at risk.

#### b. Legal consequences

- ◇ Any claims of the Lender for repayment, interest or principal payments due between April 1 and June 30, 2020 (the

Benefits) shall be deferred for a period of three months from the due date.

- ◇ The parties may make deviating agreements, in particular by agreeing partial payments or adjustments of interest or principal payments.
- ◇ The loan may not be terminated for reasons relating to the non-payment or deferral.
- ◇ If the parties cannot agree on a mutually acceptable arrangement for the period after June 30, 2020, the term of the contract shall be extended by three months. The respective due date of the payments shall be postponed by this period.
- ◇ Deferment and exclusion of termination shall not apply if this is not reasonable for the lender, considering all circumstances. ■



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# GREECE



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

Greek Insolvency Law has been radically reformed during the pandemic period. Law 4738/2020 (FEK A' 207/27-10-2020) ("the Law") has been passed in October 2020 under the name "Debt settlement and Second Chance and other provisions" replacing the existing Greek Insolvency Law and all relevant restructuring and out-of-court settlement procedures. In a nutshell, the Law has:

- ♦ transposed Directive 1023/2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency);
- ♦ Codified the Greek debt settlement, restructuring and insolvency legal system which consisted of widely spread provisions and procedural implementing measures set out in various Laws,

Decrees and Ministerial decisions, by the adoption of a Law which substitutes all existing up-to-date rules and regulations.

The Law will gradually enter into force during 2021 as follows:

- ♦ On March 1, 2021 come into effect the provisions relating to the recovery process and the insolvency proceedings -including the debt discharge- in relation to the medium and big enterprises, as well as natural persons having business activities, exceeding EUR 350.000 in total assets and EUR 700.000 and above turnover.
- ♦ On June 1, 2021, come into effect the provisions relating to the out-of-court settlement and the simplified insolvency proceedings -including the debt discharge- in relation to natural persons and small enterprises not exceeding EUR 350.000 in total assets, or EUR 700.000 in net amount of turnover or an average of 10 employees.

The New Insolvency Law is consisted of 308 articles and also divided in five distinct books governing the different rules and regulations as well as the relevant provisions of the respective frameworks; namely the "Preventive restructuring framework" ►

(Book One), "Insolvency" (Book Two), "Measures for efficiency and monitoring purposes-Vulnerable debtors" (Book Three), "Insolvency Practitioners" (Book Four) and "Transitional Law" (Book Five). The main provisions are highlighted herebelow as follows:

**Pre-insolvency proceedings are split up in three sections establishing effective preventive frameworks;**

- ♦ Early warning tools and access to information—debtors will have access to early warning tools which can detect circumstances that could give rise to a likelihood of insolvency and can signal to them the need to act without delay. For the first time, in Greece, early warning tools are to be established and will include electronic alert mechanisms and the provision of advisory services to debtors in risk either by the Service Centers/Offices of Borrowers and/or the Chambers of Commerce, Professional Associations and relevant Institutes.
- ♦ Out-of-court settlement procedure – all individuals and legal entities (small exceptions apply) aiming to settle their debts against financing institutions, servicers, the Greek State and/or the Social Security providers, may be submitted to this out-of-court settlement procedure, upon request, provided that they do not fall under the non-eligibility conditions applicable (e.g. debts should exceed EUR 10,000). The first out-of-court mechanism has been introduced in Greece with Law 4469/2017 and amended thereafter by various rules and regulations. Lessons learned, this out-of-court mechanism will be automated, flexible and fast, anticipated to be concluded in 2 months. The implementing provisions of the procedure in scope are soon expected to be released.
- ♦ Recovery process

Legal and natural persons with business activities in Greece and unable to fulfill their financial obligations overdue may have recourse to and initiate the recovery process; thus, enter into an agreement with their creditors and then proceed to the ratification required before the competent court. There are also circumstances provided where it is foreseen that the agreement can be concluded between creditors and without the debtor's consent. Evidently, the pre-existing recovery process has been amended with the introduction of changes, inter alia, in the percentages required on the consenting creditors, the implied consent of the Greek State, the Experts' Register, the preservations of employees' rights.

**Insolvency proceedings are amended implementing international practice and providing a Second Chance:**

- ♦ Both legal and natural persons are eligible to insolvency, if in cessation of payments i.e. the debtor is generally and finally unable to meet its monetary liabilities as they fall due. The Law is providing further guidance in this respect setting out the cases where the debtor is presumed to be in cessation of payments e.g. unpaid obligations to financial institutions, the State and Social Security authorities at least 40% of its total liabilities (60% re the small-scale insolvencies), for a period of at least six months and where the unpaid portion is at least EUR 30,000.
- ♦ Upon cessation of payments, the debtor or the debtor's management is required to file for insolvency within 30 calendar days. Delay for the filing may result to the indemnification of damages towards creditors. In case of intentional or fraudulent delay, the prescription period is ten years. In case the debtor is in imminent cessation of payments, the ►

debtor can opt for a voluntary insolvency.

- ◊ Upon insolvency, the sum total of the debtor's assets form the insolvency estate and will be liquidated for the satisfaction of the creditor's claims. For individuals and provided that certain conditions are being met, part of the debtor's annual income may also form part of the insolvency estate.
- ◊ Simplified procedure for small-scale insolvencies is introduced for both legal and natural persons; Small-scale insolvencies are referring to natural persons and small enterprises not exceeding EUR 350.000 in total assets, EUR 700.000 in net amount of turnover or an average of 10 employees; with regards to natural persons, the criterion of reference is based on the value of the

debtor's assets. Simplified procedure is also introduced to the application and the publication of the decision in small-scale insolvencies as well as the competent court (Magistrate Court).

- ◊ Discharge of debts. The debtor is discharged from any debt towards its bankruptcy creditors after 3 years from the insolvency declaration or the registration of the debtor's name in the digital insolvency registry. Under circumstances the period required for a debtor to be discharged is shortened and may take place after 1 year. Persons in management of the insolvent enterprise are also discharged from the debts of the insolvent entity towards the bankruptcy creditors.

### Highlighting other provisions in Book Three, Four and Five

- ◊ The Electronic Insolvency Registry is introduced and used for all announcements, creditors' communications and registrations of procedural actions.
- ◊ Vulnerable debtors declared insolvent and whose main residence runs the risk to be seized are protected by mechanisms assisting them to preserve their main residence while avoiding liquidation.
- ◊ The Bankruptcy Trustee is nominated with the insolvency application, also by the creditors and a fast and simple procedure is being established.
- ◊ Insolvency Practitioners (that may be nominated as bankruptcy trustees) are subject to a set of rules and regulations concerning their qualifications and certification required, relevant registration in the Certified Parties' Registry and the Insolvency Practitioners' Registry, their lump-sum or success-fee.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

Excessive indebtedness and the overload problems in insolvency and restructuring that may result from post-pandemic economic crisis are tackled with the provisions of the New Insolvency Law 4738/2020 (see question 1 above). Technology is being taken full advantage for reducing the disadvantages of bureaucracy towards the State's digital transformation and ensuring speed and automation in the preventive framework solutions provided and the amended insolvency process introduced. Under this Law, debtors and businesses:

- a. are warned in circumstances giving rise to the likelihood of insolvency where they need to act without delay;
- b. settle their debts towards banks, Servicers and the State through fast and automated out-of-court procedures and mechanisms;
- c. have recourse to the new recovery process allowing them to restructure the totality of their obligations and preserving their employees' rights;
- d. are provided a Second Chance through the discharge of all their debts, following liquidation of their estate and review of their financial situation;
- e. are financially supported, if vulnerable, by the State either in the pre-insolvency or insolvency proceedings.

The Law passed in October 2020 aims to support businesses in the adoption and implementation of their restructuring plan injecting viability into their business projects and enabling them to continue operating. In parallel, honest insolvent or over-indebted entrepreneurs can benefit from a full discharge of debt after a reasonable period of time, thereby allowing them a second chance. Through the application of the provisions of the New Insolvency law, the long-lasting issue of non-performing loans for credit institutions is also expected to be reduced allowing the banking system to effectively contribute to the financing of economy.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

- ◊ Due to the pandemic, the Greek Government has proceeded to a range of measures to support businesses and persons being affected by Covid-19.
- ◊ Suspension of instalment payments. Greek banks have decided to suspend





instalment payments on capital and interest for natural and legal persons that are evidently affected by the pandemic, upon conditions being met. Interested debtors are required to submit a request to their relevant credit institution in this regard (Hellenic Bank Association, Announcement dated July 7, 2020 and December 3, 2020)

- ◊ Ban on auctions and freezing of enforcement measures. Currently, all enforcement measures such as the freezing of accounts and the auctions have been suspended (Ministerial decision FEK B' 4899/6.11.2020 as in force).
- ◊ *The Programme GEFIRA.* The Programme GEFIRA has been introduced on August 1, 2020 by Law 4714/2020 primarily targeting natural persons, including natural persons with business activities. Eligible borrowers are those affected by Covid-19 on the basis of strict eligibility factors along with property value and borrower income lines. Such borrowers receive a State contribution on their monthly loan payment depending on their income and other conditions, provided that their loans are secured against their primary residence and that they resume paying the residual part of their monthly payment. The Programme has ended on October 31, 2020. The fast, simple and electronically submitted application, the automatic retrieval of the requested information from the tax authorities and documentation applicable has been the key to the success of the Programme GEFIRA and effectively contributed to the financial support of the affected parties during Covid-19.

In line to the above, a new Programme GEFIRA 2 has been launched in April

2021 (Law 4790/2021) now targeting legal entities and natural persons with business activities; eligible borrowers, proven to be affected by Covid-19, under strict eligibility factors and depending on the size of their business, receive a State contribution on the monthly payments of their business loans in accordance with the Law; the GEFIRA 2 Programme is open until May 9, 2021. ■



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# HUNGARY



**D**uring the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

Currently, there are no special regulations containing differences regarding the regulation on insolvency procedures and all courts continue to operate undisturbed.

According to the Act 107 of 2020 on the transitional measures to stabilize certain priority social groups and enterprises in financial difficulties, a general credit moratorium is in force until June 30, 2021. Originally it was aiming to protect the most vulnerable individuals (retired, child-raising parents, unemployed and public workers) and the entrepreneurs facing with financial difficulties and there has been a wide-range protection from termination also introduced. Based on a Government Decree (No. 637/2020) the credit moratorium (relating to the debt service of bank loans and financial lease) became available for all individual and corporate clients regardless of the nature of the activity pursued and the financial status. The participation is automatic and only those have to apply for the moratorium who opted

out from the first moratorium ended on December 31, 2020.

This a unique solution in Europe, the purpose of which is to prevent the temporary liquidity difficulties occurring during the pandemic situation (with no respect to the reason) from leading to lasting and deepening economic problems by temporarily exempting debtors from paying their debts owed to credit institutions. According to the Act, unless the parties state otherwise, the debtor's obligation to pay principal, interest or fees arising from a credit and loan agreement or a financial lease agreement (only if the service is provided as a business activity) is deferred until June 30, 2021. The payment moratorium does not affect the debtor's right to perform under the original terms of the contract. The accrued interests and charges may not be capitalized and the installments after the moratorium may not exceed the installments as otherwise provided by the agreement – the tenor will automatically be amended with a term to comply with these principles. Notarial deeds need not to be amended, obligations (and related undertakings - e.g., collaterals) will be amended by virtue of law.

According to the Government Information

Portal the number of companies participating in the credit moratorium (i.e. whose repayment obligation is suspended) is around five hundred thousand.

Since most of the forced liquidation (insolvency) procedures are started by credit institutions and the debt service is usually a significant part of the companies' regular payment obligations, the courts are not facing with a dramatic increase of the new procedures. As a benefit of this system the debts expired before the moratorium can also be enforced and be a basis of an insolvency procedure therefore the pandemic crisis can not serve as a relief to debtors who already had overdue debts before the crisis.

Until December 31, 2020 there were a few (but not significant) special rules for starting an insolvency procedure, i.e. the procedure could be started only after a 75-day grace period and the minimum amount of the debt was the double as before but these rules have expired and still not been extended.

As a summary: the court foreclosure and liquidation procedures can be started in the same manner and with reasons as before but the credit moratorium prevents many companies from becoming insolvent and have more liquidity to use for maintaining operation.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

So far, the Hungarian Government have not introduced any other simplified insolvency or restructuring procedure. The economic difficulties caused by the pandemic have increased since September, however, due

to the general credit moratorium, we do not see a boom in the inability of payment and bankruptcy or insolvency cases.

One of the biggest issues for the upcoming period is how the payment moratorium will be lifted, the proper timing of which is a key aspect, as if it is not carried out properly, it could result in a dramatic growth in the number of procedures, which could pose a significant challenge to courts.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

There are several measures that help to mitigate the consequences of the pandemic for the businesses:

- ♦ There are transitional regulations on tax and contribution allowances for certain sectors (restaurants, hotels, film industry, sports, art and museums, conference organizers), closed hotels, restaurants and bus passenger transporters are exempted from payment of two-third of labor costs in December 2020 and January 2021.
- ♦ Local business tax for SMEs up to a balance sheet total or net income of HUF 4 Bln is maximum 1% for the fiscal year of 2021 (it is not automatic, the SMEs have to apply for the lower rate if it is set higher by the local government).
- ♦ Tourism development contribution and tourist tax are suspended for the period from January 1, 2021 until the end of the state of danger.
- ♦ 80% of net income of hotels and accommodation service providers are refunded for reservations made until November 8, 2020 for the period ending on December 11, 2020 (subject to the maintaining of employees).
- ♦ Transitional regulations on tax administration.
- ♦ Support on job-retention - to maintain the employment capacity of businesses

facing temporary difficulties.

- ♦ Transitional regulations on home office (remote working) – the occupational safety rules are not applicable and there is a special tax discount for cost refund until February 22, 2021.
- ♦ 5% VAT for food and beverages sold for takeaway and home delivery.
- ♦ 5% VAT for new residential properties.
- ♦ HUF 3 million state subsidy and additional 3 million preferential loan for households (raising at least one child) for home renovation which can have a boosting effect on the building and construction industry.
- ♦ Around HUF 4000 billion subsidies and investments in all sectors.
- ♦ Certain provisions of the Act 53 of 1994 on judicial enforcement are applicable differently.
- ♦ Simplified procedural rules in certain administrative procedures (verified notification, which means that some activities requiring an administrative permit may be started based on a notification instead of the issuing of a permit).

In general, the Hungarian Government still seems to avoid the direct intervention into the legal relationships and procedures and is more focusing on economic measures that can have an invigorating effect on investments, employment, consumption, etc. by e.g. preferential loan constructions such as the NHP Hajrá distributed by the commercial banks from the funds provided by the National Bank of Hungary or a special program of Eximbank by providing loans for the mitigation of damages. The National Bank of Hungary has previously announced an action plan consisting of 50 points – 50 proposals for treating the economic effects of the Covid-19 pandemic, which is basically concentrated on the following: determined and coordinated fiscal, monetary and competitiveness policy, protection of the workplaces and family, tax reduction and encouraging the investments.

The Government recently announced an economic restart action plan which also includes a loan construction for SMEs managed by the MFB Hungarian Development Bank with a framework of HUF 100 billion (HUF 10 million for 10 yrs with a grace period of 3 years and zero interest) which can be used for wages, social contributions, operation expenses and inventory financing.

The legal regulations relating to personal hygiene (e.g. obligations to wear a mask in public and detailed rules to be applied by schools), access and border control still apply, also, additional stricter regulations have been introduced (e.g. all secondary schools have been closed as have hotels and restaurants except for takeaway meals, a partial curfew has been in place, and all gatherings have been banned).

The endeavors of the Government seem to be admitted by the market, the rating of the long term debts of Hungary is Baa3 with a positive outlook at Moody's, BBB with stable outlook at S&P and Fitch Ratings. ■



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During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

The Italian Government adopted several measures in the legal framework directly or indirectly related to the restructuring topics. First of all, Articles 83 and 84 of Decree Law No. 18/2020 (with effective date March 17, 2020), so called *Cura Italia*, and signed into Law on April 24, 2020, ordered the suspension of all civil (bankruptcy and executive included), criminal, tax and administrative hearings and all procedural deadlines, from the beginning of the "lock-down" (e.g. March 9, 2020) until April 15, 2020: as mentioned, suspension took place with regard to all civil and penal proceedings and to the deadlines set for the preliminary investigation stages, for the adoption of judicial measures and the filing of statement of reasons, for the lodging of all the introductory acts of the proceedings and executive proceedings, for appeals and, in general, for all procedural deadlines.

Then, the Decree Law No. 23/2020 (with effective date April 9, 2020), at Article 36,

extended the above-mentioned suspension until May 11, 2020.

The Decree Law No. 23/2020, so called *Decreto Liquidità*, and signed into Law on June 5, 2020, in Chapter II, also introduced measures to ensure the going concern of companies (including those in crisis) affected by Covid-19 emergency:

- ◊ Article 5 provided the procrastination of entry into force of the new Code of Business Crisis and Insolvency to September 1, 2021.
- ◊ Article 9 intended to regulate the subject matter of arrangements with creditors and restructuring agreements:
  - Paragraph I: the deadlines for fulfilling arrangements with creditors, restructuring agreements, crisis settlement agreements and approved consumer plans expiring after February 23, 2020, shall be extended by six months.
  - Paragraph II: in proceedings for arrangements with creditors and restructuring agreements that are pending on February 23, 2020, the debtor may, until the approval hearing,

apply to the Court for a period of not more than 90 days for the filing of a new arrangement or a new agreement. This time limit may not be extended anymore. The filing is ineligible if it is submitted in an arrangement with creditors where the majority of the creditors' votes for approval have not been reached.

- Paragraph III: if the debtor shall intend to modify only the terms of fulfillment of the arrangement with creditors or the restructuring agreement, it is provided the possibility, until the court hearing, to lodge a statement of defense containing an indication of the new terms of fulfillment. The statement may contain also with supporting evidence of the need. The deferment of the terms of fulfillment may not exceed six months.
- Paragraphs IV and V: the debtor who obtained the terms for filing an arrangement with creditors or a restructuring agreement, which have already been extended, may - before the deadline of the terms - file an application with the Court for a further extension of up to 90 days, even in the event of an application for bankruptcy. The application must provide evidence of the elements that would make it necessary to grant the extension with specific reference to the events that have occurred because of the Covid-19 emergency. The Court, having obtained the opinion of the Judicial Commissioner, shall grant the extension if it considers the request to be based on justified grounds.
- Paragraph V-bis: the debtor who, by December 31, 2021, has obtained the time limits for filing a composition or restructuring agreement may waive the procedure by declaring that he has filed a recovery plan, giving evidence; thereof. the Court shall rule on the

inadmissibility of the procedure.

- Paragraph VI: in the case of applications for the granting of the terms for filing the arrangement plan filed by December 31, 2020 in constancy of pre-bankruptcy proceedings, the time limits provided for by law do not operate.
- ◊ Article 10 provided that all applications for a declaration of bankruptcy or insolvency filed between March 9, 2020, and June 30, 2020 shall be inadmissible. The Law converting the Decree (effective June 7, 2020) introduced the following exceptions:
  - The applications are submitted by the entrepreneur on his own, when the insolvency is not a consequence of the Covid-19 emergency.
  - The application submitted as a consequence of an established ineligibility of the arrangement plan, evidence of acts of fraud or rejection of the arrangement.
  - The application submitted by Public Prosecutor and containing issuance of provisional and protective measures on the debtor's assets.
  - Article 11 provided for the suspension of the time limits, falling due or starting to run from March 9, 2020 to August 31, 2020, for bills of exchange, promissory notes and any other instrument of credit (bank cheques) or instrument with enforceable force throughout the national territory.

Finally, the Decree Law No. 34/2020, so called *Decreto Rilancio*, at Article 51, also provided for the extension of the time limits for a further six months for the execution of extraordinary administration procedures expiring after February 23, 2020. Moreover, the Decree Law No. 34/2020 also provided

for the deferral of payment deadlines until September 16, 2020 (without the application of interest and penalties):

- ◇ the amounts relating to VAT and social security and contribution withholdings, already subject to suspension during the lock-down (articles 126 and 127)
- ◇ amounts subject to collection (direct and indirect taxes) accrued as a result of automatic and formal controls by the Revenue Agency (article 144) expiring during the period March 8, 2020 and May 31, 2020
- ◇ amounts relating to tax assessment deeds, mediation agreements, settlement deeds, conciliation agreements whose payment deadlines, also in instalments, were fixed between March 9, 2020 and May 31, 2020 (article 149)

Decree Law No. 34/2020, art Article 154, also suspended the activities of the Collection Agent until August 31, 2020, and specifically provided:

- ◇ the deferral to August 31, 2020 of all payments due as of March 8, 2020
- ◇ the recovery of the forfeiture of unexecuted instalments
- ◇ the reorganization of existing scrapping procedures in case of payment of instalments for the year 2020 by December 10, 2020
- ◇ the possibility of requesting new instalments also for persons forfeited by the benefit

Finally, it shall be pointed out that the Italian Parliament is currently studying bills that will provide taxpayers with additional benefits to encourage the payment of direct and indirect taxes accrued as a result of assessments by the Revenue Agency.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

At present, the operation of the courts is very limited, so no measures to tackle the logistics case overload problems in insolvency/restructuring Courts are being assessed.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

The Decree Law No. 18/2020, so called *Cura Italia*, signed into Law on April 24, 2020, introduced some measures to support liquidity through banking system, as follows:

- ◇ Through the Central PMI Guarantee Fund and for a duration of nine months from the entry into force of the decree, the guarantee will be granted free of charge and the maximum amount guaranteed per company will be EUR 5 million. In the case of direct guarantee operations, the coverage percentage will be 80% of the amount of each financing operation for a maximum guaranteed amount per individual enterprise of EUR 1.5 million. Loans arising from debt rescheduling operations are eligible for the Fund's guarantee provided that the new loan provides for additional credit equal to at least 10% of the outstanding debt. Companies with positions classified as *non-performing or probable default* pursuant to the banking regulations or *companies in difficulty* pursuant to Article 2, point 18 of Regulation (EU) 651/2014 are excluded. No commission is due for failure to complete financial transactions.
- ◇ In the event that a company transfers, for consideration, by December 31, 2020, pecuniary receivables due from

defaulting debtors, it may transform into a tax credit the assets for prepaid taxes referred to tax losses not yet computed as a reduction in taxable income at the date of the sale or referred to the amount of the notional return exceeding the total net income not yet deducted or enjoyed by means of a tax credit at the date of the transfer.

- ◇ Companies whose debt exposures are not classified as *deteriorated*, will be able to use, after a notification, some financial support measures, like as extension of the contracts, together with the respective ancillary elements, until September 30, 2020, under the same conditions, in case non instalment loans with contractual maturity date before September 30, 2020, or suspension until September 30, 2020 of payments of mortgages, other loans repayable in instalments and rents falling due before September 30, 2020.
- ◇ It was provided for the suspension, for up to 12 months, of payments of principal and interest on the repayment instalments of subsidized loans issued through the Fund set up by Law 394/1981 expiring in 2020, with consequent deferral of the amortization plan for a corresponding period.

The Decree Law No. 23/2020, so called *Decreto Liquidità*, signed into Law on June 5, 2020, supported those whose liquidity has been compromised by the current measures to contain the spread of the Covid-19 pandemic, introducing some measures to ensure the going concern of the companies (including those in crisis) affected by the emergency, as follows:

- ◇ It was provided that credit and payment service agreements concluded between April 9, 2020 and July 31, 2020 will

meet the requirement of effectiveness also through the expression of the customer's consent by ordinary e-mail or other appropriate means. This provision will give legal certainty to relations concluded with the most widespread communication tools during the emergency period.

- ◇ Article 7 provided that for the financial statements for the year ending December 31, 2020, it will in any case be possible to evaluate the items on a going concern basis if this principle was respected in the last financial statements for the year closed before February 23, 2020. This assessment will must be specifically explained in Explanatory Notes to the financial statements, also by referring to the results of the previous financial statements.
- ◇ Article 6 provided that, with effect from the date of entry into force (e.g. April 9, 2020) until December 31, 2020, the regulations relating to the reduction of capital for losses for corporations, governed by articles No. 2446, 2447, 2482-bis and 2482-ter of the Civil Code, are not applied. As a result, even the cause of termination of the company due to reduction or loss of share capital below the legal minimum (articles 2484 and 2545 duodecies of Civil Code) will not be considered operational for the same period.
- ◇ Article 8 provided that the suspension of the mechanism of deferral of shareholder loans in limited liability companies and in the area of management and coordination from the entry into force of the Decree until December 31, 2020.

The Decree Law No. 34/2020, also known as *Decreto Rilancio*, signed into Law on July 18, 2020, introduced new financial measures, to help companies, mainly as follows:



- ◇ For taxpayers with revenues of less than EUR 250 million in 2019, the payment obligations for the IRAP (Regional tax on production activities) balance for the 2019 tax period and the IRAP advance for 2020 were cancelled. While the obligations to pay the IRAP advance for the 2019 tax period were still maintained.
- ◇ A non-refundable contribution, not less than EUR 1,000 or EUR 2,000, was introduced for taxpayers with VAT numbers and with revenues of less than EUR 5 million in 2019. In order to benefit from the contribution, it will be necessary to prove the reduction in turnover of more than 33% towards the same period of the previous year.
- ◇ In order to improve the balance sheet of companies with revenues of between EUR 5 million and EUR 50 million that, due to the emergency situation, suffered a reduction in their operating turnover of more than 33% compared to the same period last year, a new capital contribution tax credit was introduced. The tax credit is granted to companies that have approved a capital increase of more than EUR 250,000, and it is equal to 20% of the contributed capital, calculated on a maximum of EUR 2 million.
- ◇ It was planned to set up a fund called the *Fondo Patrimonio PMI*, through which debt securities issued by Italian companies are subscribed; however, the credit provided must be used to cover personnel costs and investments in productive activities in Italy.
- ◇ A tax credit for non-residential rental agreements was provided. The tax credit will apply to companies with a maximum of EUR 5 million revenues of 2019 and with no limits to hotels and agritourism. The tax credit is the 60% of the rent paid

for March, April and May. To get the tax credit, companies must have a reduction of at least 50% of the revenue related to the same month of the previous year. In case of lease of business, the tax credit is of 30%.

The Decree Law No. 104/2020, also known as *Decreto Agosto*, introduced further measures to support business, mainly as follows:

- ◇ Abolition of second instalment of Municipal Property tax - IMU for 2020 was provided for some types of property. For buildings intended for performing arts, IMU will be not required for 2021 and 2022 as well.
- ◇ Companies whose debt exposures are not classified as *deteriorated*, will be able to use, after a notification, some financial support measures, like as extension of the contracts, together with the respective ancillary elements, until January 31, 2021, under the same conditions, in case non instalment loans with contractual maturity date before January 31, 2021, or suspension until January 31, 2021 of payments of mortgages, other loans repayable in instalments and rents falling due before January 31, 2021.
- ◇ The deadline for payment of the second or single instalment of IRES and IRAP was extended to April 30, 2021 for *Isa* entities with a decrease in revenues of at least 33% in the first half of the year 2020 compared to the same period of the previous year.
- ◇ the possibility of revaluation of company assets and shareholdings was provided, with the exception of real estate directly used in business activities, as shown in the financial statements on December 31, 2019.

The Decree Law No. 137/2020, also known as *Decreto Ristori*, introduced significant economic measures to help workers and enterprises affected by the new restrictions for pandemic, mainly as follows:

- ◇ Article No. 5 provided measures to support Italian tourism operators and workers of cultural sector. In particular, the fund to support entertainment, cinema, and audio-visual sectors was increased by EUR 100 million. The fund to support operators in the tourism sector such as tour operators, travel agencies, or tour guides, was increased by EUR 400 million. The fund to support bookshops, the entire publishing industry, as well as museums and other cultural institutions, was refinanced by a further EUR 50 million. Finally, tickets for live shows, scheduled from October 24, 2020 to January 2021, not performed due to the new anti-Covid restrictions, will can be refunded with vouchers.
- ◇ Article No. 6 allocated new resources to the fund “394” and the fund “for integrated promotion” dedicated to the internationalization of SMEs, the promotion and communication to supporting Italian exports and internationalization of national economic system in the agro-food sector.
- ◇ Article No. 8 provided new provisions for tax credit relating to rental of non-residential buildings. The tax credit is due for operators who carry out, for example, hotel, passenger transport and catering activities, also for October, November and December 2020. The tax credit related to rental fee is equal to 60% of the monthly rental fee for buildings dedicated to the performance of industrial and business activities and others. For company lease, the measure is 30% of rent.

- ◇ Article No. 15 recognized an indemnity of EUR 1.000 to workers in temporary employment and seasonal employees in tourism sector and thermal establishments, to seasonal employees belonging to sectors other than tourism and factories, to intermittent workers, to employed for home sales and to self-employed workers, without VAT number, who have ceased involuntarily the employment relationship in the period between January 1, 2019, and the date of entry of Decree Law. Workers must had worked for at least thirty days in the same period and must hadn't benefited a pension nor an employment relationship, on the date of entry into force of provision.
- ◇ A further 6 weeks of payroll subsidies were provided. This provision will apply from November 16, 2020 to January 31, 2021. The 6 weeks of unemployment benefit will be free for companies which in the first half of 2020 had a reduction in revenues equal to or greater than 20% compared to the corresponding half of 2019, for companies that started their business after January 1, 2019 and for the companies affected by the restrictions imposed by the Prime Minister's Decree dated October 24, 2020. In the other cases, an additional grant will be due.
- ◇ Dismissals were suspended until January 31, 2021. This limitation will not apply to companies that had run out of business, companies in bankruptcy proceeding and in case of a union agreement, to workers who adhered to this.
- ◇ In exception of agricultural sector, for private employers, who didn't require any wage integration treatments for Covid-19 emergency, the exemption from the payment of social security contributions was provided for a maximum period of 4 months, to be applied within January 31,

2021.

- ♦ The deadline for submission of the 770 model, initially scheduled on November 2, 2020, was postponed to December 10, 2020.

The Decree Law No. 149/2020, also known as *Decreto Ristori bis*, introduced further corrective measures for those provided in the previous decree, widening categories of companies and workers affected by the support measures due to pandemic.

The Decree Law No. 154/2020, also known as *Decreto Ristori ter*, increased by EUR 1.45 billion the endowment for 2020 of fund envisaged by previous decrees to aid economic activities operating in Italian regions with higher-risk band. Moreover, it included footwear retail activities among those which, in high-risk areas, had been recipients of non-repayable contributions, and it set up a fund with an endowment of EUR 400 million to be disbursed to the municipalities for adoption of urgent measures of food solidarity.

The Decree Law No. 157/2020, also known as *Decreto Ristori quater*, provided for **suspension of some tax / social security payments** with ordinary expiry in December 2020, such as:

- ♦ periodic VAT for the month of November 2020, expiring on December 16, 2020 for monthly taxpayers, and the year-end downpayment of VAT for tax year 2020, expiring on December 28, 2020;
- ♦ Withholding taxes on employee and similar income and withholdings relating to additional regional and municipal personal income tax due on December 16, 2020;
- ♦ Social security and welfare contributions expiring on December 16, 2020.

Those payments will be made by company or professionals who meet distinctive requirements, without the application of penalties and interest, in a single payment by March 16, 2021, or in four monthly installments of same amount, with the first due on March 16, 2021.

The Decree Law No. 3/2021 deferred deadlines for notification, expiration and payment of certain acts issued by Tax Agencies. Particularly, it established that verification notices, tax litigation warnings, sanctioning deeds, recovery acts of tax credits, adjustment and settlement, for which deadlines expired between March 8, 2020 and December 31, 2020, will be notified from February 1, 2021 to January 31, 2022. The Decree also extended by thirteen months the expiry to register notices of payment. ■



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During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

During the last year or so, many have questioned and raised concern on the adequacy or otherwise of its Malta reconstruction, restructuring and insolvency laws during such extraordinary times.

Admittedly, during these unprecedented times, most companies need some level of assistance. Several companies have taken this time as an opportunity to carry out an introspective exercise and consider innovative changes in their operations. Although highly advantageous for a business, this exercise still requires funding. Some companies will manage to ride the wave but others will not and therefore the laws that govern this area need to cater for such times.

Throughout Europe, such concern has been felt too and CERIL (Conference on European Restructuring and Insolvency Law), an independent, non-profit organization focusing on restructuring and insolvency has expressed its concern by highlighting that there might be serious inadequacy in

“the ability of existing insolvency legislation in Europe to provide adequate responses to the extremely difficult situation in which many companies may find themselves in the Covid-19 (corona) crisis”.

#### Malta Reconstruction of Companies Laws

The main law in Malta applicable to reconstruction, insolvency & restructuring is Chapter 386 of the laws of Malta (“the Companies Act or the Act”).

On May 12, 2020, Malta published Legal Notice 192, entitled “Companies Act (Company Reconstructions Fund) Regulations” with the aim of creating and regulating the administration of a fund intended to facilitate Company Recovery Procedures (“CRP”) instituted in accordance with Article 329B of the Companies Act. Such fund was to be known as the Company Recovery Fund, out of which payments would be made to ‘special controllers’ appointed in accordance with the CRP provisions. The fund was to be financed by the Malta Business Registry (MBR) to the tune of an annual budget of EUR 500,000.

#### Malta Restructuring, Dissolution & Winding Up Laws



After more than 6 months well-within the epidemic wave, and as a response to the current situation, in September 2020 Malta enacted rules in relation to company insolvency, which were aimed at alleviating corporations of insolvency consequences and problems in relation to Covid-19 aftermath. Legal Notice 373 of 2020 named 'The Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations' was published on September 15, 2020 with the main aim of granting temporary respite from the risk of insolvency proceedings that are creditor-activated and from the risks related to operating in times of unique financial distress. Such rules relate to, among others:

- ◇ a suspension of creditors' rights to file for debtors' dissolution on grounds of insolvency;
- ◇ counteracting the previous right with a procedure for the filing of a letter by such creditor, showing the intention to file for dissolution, would freeze a date upon which dissolution was intended to take place;
- ◇ halting any winding procedures filed on or after March 2020; and
- ◇ suspending the wrongful trading rule which establishes that directors can be held wrongfully liable for acts of business carried out by such director when there was no reasonable prospect for a company to recover.

It is a sure thing that under the current Malta legal regime, the Company Recovery Procedure ("CRP") is the best means that any struggling company can resort to since this procedure aims at assisting enterprises recuperate from their current economic quandaries whilst simultaneously maintaining other stakeholders' interests in mind.

In the case of insolvency, changes to company officer responsibilities during these exceptional periods has never been more pertinent. Even in fine weather, the wrongful trading provisions of the Companies Act are, many a time, the biggest concern of company directors since they may result in the imputation of personal liability on the directors themselves in the case of eventual insolvency scenarios. Without the suspension clause introduced by virtue of the September regulations, directors of companies in distress due to the Covid-19 pandemic would likely be reluctant to endure in their management of the enterprise and would surely be unwilling to man the company in such period of extraordinary hardship. Therefore, such changes were very much welcome, as they seek to strike a balance between the rights of the diverse stakeholders forging the story of such enterprise during these unprecedented times.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

Not at this date, however several developments have been put in place to assist the Maltese economy to aid businesses.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

In its attempt to aid the Maltese economy get through the unprecedented Covid-19 outbreak, the Maltese Government has announced several initiatives and measures to aid businesses.

**The first set of measures was announced on 18 March 2020:**

- ◇ For businesses who suffered a complete suspension of operations, the government made good for 2 out of every 5 days of work lost.
- ◇ The self-employed, who have also lost work, received a benefit for two days per week, also capped at EUR 800 euro per month per employee. For the self-employed who hire people, the employer also received government coverage for three of five days of lost work.
- ◇ Companies that stalled production by 25 percent were guaranteed pay for one day per week.
- ◇ Income tax, VAT and National Insurance contributions due for March and April 2020 were postponed, a measure valued at EUR 400m to EUR 700m.
- ◇ The Maltese Government was ready to commit a further EUR 900 million in guarantees, providing access to an additional access to credit of EUR 4.5 billion.
- ◇ Local banks accepted all requests for a 3 month moratorium on bank loan payments on all personal and business bank loans.
- ◇ The Maltese Government injected EUR 210 million in assisting the economy and saving jobs. This is equivalent to 1.5% of Malta's GDP in 2019.

**Another package was announced later in March 2020:**

Some sectors were classified as critical for the purposes of this second set of measures, including: wholesale, retail, accommodation, food and beverage service activities, vehicle rentals, employment activities, tour operators, travel agencies and other related enterprises, security companies, building services companies, transport companies, creative, arts, and entertainment activities, personal activities – such as barbers,

beauticians, and other similar enterprises.

- ◇ 60,000 mostly full-time employees and self-employed benefited from a Government salary of EUR 800 per month. Employers need to make up the difference of EUR 400 on top of the government subsidy for employees on salaries of EUR 1,200 per month.
- ◇ For the other sectors, 50,000 employees received EUR 17 million per month for businesses also hit by Covid-19 slowdown. There was also the establishment of a second category of employees, being those hit less directly: manufacturing, wholesale, warehousing and retail, the Government paid the equivalent of one day of a salary of EUR 800. Employees on salaries of over EUR 1,200 as well as their employers need to be flexible to meet as much as possible the larger extent.

**All benefits announced on this day were made to apply retrospectively from March 9, 2020 as long as the employer re-instated any employee who was made redundant.** Due to Gozo's double insularity, being an Island in an Island and due to its dependence on tourism, it is clear that Gozo is hit worse than Malta.

**A third set of measures was announced in June 2020:**

Malta announced its EUR 900 million financial package to be invested in furtherance of economic stability and growth and targeting the reduction of running costs of businesses, boosting local demand and local tourism, helping the real estate industry and generally supporting businesses.

The economic regeneration plan was announced on June 8, 2020 and explained in detail by Prime Minister Dr Robert Abela

alongside Finance Minister Profs Edward Scicluna and Minister for the Economy, Investment and Small Businesses Mr Silvio Schembri.

#### *Reducing the Running Costs for Businesses*

A classification for businesses was set up, in accordance to the extent that businesses were effected with the restrictions and disruptions brought about by the pandemic.

- ♦ Business classified as Annex A and B received a refund of 50% (capped at EUR 1,500) for electricity bills as well as a one-time grant of up to EUR 2,5000 to cover the cost of rent incurred during the summer months (July, August and September).
- ♦ Any commercial license fees paid by businesses to the Commerce Department and/or the Malta Tourism Authority for the year 2020 were refunded.
- ♦ A 33% reduction in port charges and a 10% refund on container discharge fees was also been announced.

#### *Supporting Businesses*

- ♦ The wage supplement which has been explained above was also extended depending on the area of business. In relation to tourism-dependent businesses there was no change to the current EUR 800 per month for full-time employees and EUR 500 per month for part-time employees, whereas for all business in Annex A which are not tourism-dependent, as from July 2020 the wage supplement decreased to EUR 600 per month for full-time employees and EUR 375 per month for part-time employees.
- ♦ An extension of the previously announced tax deferral scheme that was extended

until the end of August 2020. With respect to Final Settlement System and Social Security Contribution payments, these shall resume as from July 2020.

- ♦ A new facility is being worked upon so as to enable the Government to underwrite corporate bonds maturing in 2020.
- ♦ Provision has been made for up to 30% of MicroInvest Tax Credits (capped at EUR 2,000 for Malta-based businesses and EUR 2,500 for Gozo-based or women-led businesses) to be converted into Cash Grants.
- ♦ Each enterprise shall be eligible for support of up to EUR 5,000 to assist in the development of business plans and business re-engineering.
- ♦ Enterprises carrying out digital promotion in new markets can request assistance up to EUR 10,000 per enterprise. Support has also been provided to companies looking to export to new markets through an export credit guarantee scheme.
- ♦ Other measures include assistance to certain homes for the elderly, skills development training schemes for entities employing less than 50 employees, grants to companies undertaking digital campaigns in foreign markets, reimbursement of costs incurred for international fairs that have been cancelled, as grants to construction enterprises to invest in modern equipment. ■



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**D**uring the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

The Moldovan National Commission for Emergency Situations Decision No. 1 dated March 18, 2020, suspended all period of limitations and deadlines of any kind related to legal proceedings (including insolvency proceedings) for the period of the state of emergency, which ended on May 15, 2020. Within the pending insolvency procedures, the courts deferred the hearings for a period after the end of the state of emergency. No specific legal measures on the merits in the insolvency procedures were developed.

The Law 141 dated July 6, 2020 on amending the Insolvency Law entered into force on September 14, 2020. The amendments to the law were addressed to the Parliament of Moldova yet in 2018, but were approved quite spontaneously only in July 2020, one of the factual reasons being the circumstances related to spread of Covid-19.

Under the new provisions the requirements related to the application for initiating the

insolvency procedure were amended. The relevant amendments introduce a presumption of the incapacity of payment when the debtor is in delay of paying monetary obligations more than 60 days. Also, under the new rules, the creditors are not anymore required to attach to the application for insolvency a decision of the court or the writ of execution confirming the claim against the debtor.

**I**s there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

The Law 141 dated July 6, 2020 on amending the Insolvency Law entered into force on September 14, 2020. Under the new provisions, as part of the accelerated restructuring procedure, the possibility for debtor to initiate extrajudicial negotiations with creditors was introduced. Thus, the debtor could initiate negotiations with creditors after filling a notification to the court. Along with submission of the notification the debtor may request the insolvency court to suspend the enforceability of the judgements over debtor's assets during the negotiations,



a period which shall not exceed 2 months.

In case that, following the negotiations, a restructuring plan is approved, the debtor will submit to the insolvency court an application to commence the accelerated restructuring procedure, attaching, inter alia, the restructuring plan and proof of its acceptance by the creditors affected by the plan.

The law sets short deadlines for summoning creditors, organizing the hearings on validation of the claims, as well as confirming the accelerated restructuring plan by the court.

In case that, following the negotiations, a plan

is not approved, the debtor is obliged and the creditors are entitled to submit an application initiate the insolvency proceedings.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

The Moldovan National Bank Decision dated April 3, 2020, allowed the banks to postpone or to amend the periods of payment or the amounts to be paid until June 30, 2020, for the credits offered to legal entities. The measures could be applied optionally by each bank according to its internal regulations and contracts concluded with legal entities. For this purpose, the borrower should submit with the bank a request by

which to explain the temporary difficulty of payment caused by the state of emergency and spread of Covid-19 and agree with the bank the new graphic of payment.

The Moldovan National Commission for Financial Market statement dated March 24, 2020, encouraged (optionally) all non-banking lenders to diminish the annual effective interest with at least 5% and not apply the penalties and interest of delay for the period between March 17, 2020, and May 31, 2020. Also, it was recommended to provide certain relief of payment until June 30, 2020. The non-banking lenders that implemented recommended measures are granted with special regime for the classification of their provisions, while postponement of payments on credits / leasing contracts should not have the effect of their reclassification in more severe category.

The Law 141 dated July 6, 2020 on amending the Insolvency Law entered into force on September 14, 2020. Under the new provisions the possibility for post-commencement financing was introduced. The insolvency administrator / liquidator has the competence to decide on the post-commencement financing, and if the financing acts exceed the legal proportion value, their conclusion should be approved by the creditor's bodies. The obligations resulting from such financing are qualified as expenses of the insolvency proceedings and are paid with priority over other obligations.

Under the new provisions the insolvency administrator's right to terminate lease or rental agreements in which the debtor is a lessee or renter are extended over movables, previously the right of termination being limited only to the lease and rent of immovable assets.

Another relevant development in the law relates to the secured creditors. It was introduced a limitation of the rights of secured creditors against the insolvent debtor as a third-party guarantor / mortgagor. Such a secured creditor will not enjoy all the rights of a creditor, but will be able to pursue the encumbered assets only under several special provisions from the insolvency law.

Under the new provisions the wording of some other rules related to moratorium of the secured creditors' rights during the restructuring procedure was adjusted. ■



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# POLAND



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

In view of the conditions of Covid-19 (and the formal state of epidemic threat announced as of March 14, 2020, then replaced with the state of epidemic as of March 20, 2020), Poland enacted a set of emergency laws passed through the Polish Parliament in a series of the Acts to counteract negative effects of the coronavirus pandemic and the Amendment Acts, commonly known as *Anti-Crisis Acts 1.0 (et seq.)* or *Anti-Crisis Shields 1.0 (et seq.)* (the first of them was the *Act of March 2, 2020 on Specific Solutions Related to the Prevention, Counteraction and Combating of Covid-19, Other Infectious Diseases and the Crisis Situations Caused by Them*, not addressing the court functioning or insolvency issues at first).

During the first weeks of Covid-19, organizational issues of the court functioning (cancelling the hearings, closing the courts for the public etc.) were dealt with under the administrative powers of the Head Justices of Appellate, Regional and District Courts.

Then, as of March 31, 2020, pursuant to the Anti-Crisis Act 2.0, the civil court procedural time limits in pending cases were suspended with no new periods to start during the state of epidemic threat and the state of epidemic (except for 'urgent matters' listed therein). These suspensions and stays of procedural time limits were repealed by the Anti-Crisis Shield 3.0, with effect as May 23/24, 2020. What is important, the Anti-Crisis Shield 3.0 extended the list of 'urgent matters' on all restructuring and bankruptcy proceedings (and the proceedings to initiate them). Until September 5, 2020, the 'urgent matters' were passed to the operating court in case a competent court was closed due to quarantine measures. Court cases of high importance could have been declared urgent on an individual petition. Furthermore, during the state of epidemic threat or the state of epidemic declared due to Covid-19 and one year after they have ended, all hearings in civil and commercial matters (incl. the insolvency and restructuring proceedings when they require a hearing) will be held via video-conferences (unless a judge decide there is no significant risk to the health of the participants). On September 5, 2020, the aforementioned regulation constraining court hearings only to "urgent matters" expired,

but now a similar list of urgent matters (including the restructuring and bankruptcy proceedings) will apply to the cases where a given court must be closed due to health/epidemic reasons and another court would be indicated to process all urgent cases (the Government bill has been presented to the Parliament in January 2021). Currently, courts are obliged to set dates of hearings in accordance with sanitary and epidemiologic requirements such as keeping safe distance between people present at a courtroom (at least 1,5 m gap) or setting breaks between hearings to sanitize a courtroom. It is also recommended, if possible, to conduct court hearings by means of remote communication. Given another wave of the pandemic, at the end of October 2020, certain Heads Justices of courts have started cancelling the traditional court hearings again. On the other hand, the Ministry of Justice has recently been discussing with the Heads Justice and representatives of the court administration employees introduction of two-shift work model to keep courts functioning during the pandemic and address the case overload. On November 12, 2020, the President of the Polish Supreme Court issued the Regulation No. 130 so now all hearings in civil cases before the Supreme Court would be conducted on-line.

In the period between December 2020 and January 2021 there were no major amendments concerning daily functioning of Polish courts. It is still obligatory to set dates of hearings in accordance with sanitary and epidemiologic requirements such as keeping safe distance between people present at a courtroom (at least 1,5 - 2 m gap), setting breaks between hearings to sanitize a courtroom or summon witnesses separately. It is still recommended to conduct court hearings by means of remote communication when possible. In January 2021, a new bill

of the Government was presented to the Parliament to impose e-mail communication from the courts and attorneys (but not the from attorneys to courts).

As to the insolvency merits, in normal circumstances, according to the Polish Bankruptcy Law, an entrepreneur (debtor) is obliged to file a petition for declaration of bankruptcy within 30 days from the date on which the basis for declaring insolvency has occurred. As of April 13, 2020, the Anti-Crisis Act granted a relief, whereby the period for filing the petition for bankruptcy does not commence (and, if it has already commenced, it is suspended) if the grounds for declaration of bankruptcy arise during the period of the state of epidemic threat or the state of epidemic and the insolvency results from the Covid-19 outbreak. Upon lifting of the state of epidemic, the period for filing the bankruptcy petition resumes. If the insolvency has arisen during the state of epidemic threat or the state of epidemic announced in relation to Covid-19, it is presumed it has been caused by Covid-19.

For certain practicalities of two Polish Acts – Restructuring Law and Bankruptcy Law (such as fast publication of bankruptcy and restructuring court decisions, official announcements, at present still made in the Polish Official Gazette, and communications between courts and insolvency officers), a new register was intended to be launched, with certain information component available to public (via Internet). After a few conceptual changes and implementation delays, this system now named the Central Register of Indebted (Persons) was to be launched on December 1, 2020. However, in a recent Covid-19 related special amendment Act, the launch of this system has been postponed until July 1, 2021.



As of the date hereof, the formal state of epidemic has not been lifted. During the summer 2020, certain restrictions focused locally (with areas marked as “yellow” or “red” zones determining the level of restriction both to people and businesses) were re-introduced. In October, 2020, the whole country was announced the red zone and at the end of 2020 another set of restrictions was imposed on public and certain sectors of business (fitness, HoReCa, entertainment and shopping malls). Although in early 2021, shopping malls and hotels (up to 50% of room capacity) were opened, but due to another, third hit of the pandemic on Poland, they were closed again (now also with furniture and DIY materials megastores and hairdressers) in a partial lock-down at the end of March 2021.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

The Polish Restructuring Law of May 15, 2015 has set out four types of restructuring proceedings. Pursuant to the Anti-Crisis Shield 4.0, as of June 24, 2020, Poland introduced special (and temporary) fifth type: simplified restructuring procedure (SRP), based in the least formalized of four existing ones (a procedure to approve the creditors arrangement). In a nutshell, the SRP allows a debtor to enter into negotiations with creditors on the arrangement proposal, without involving a court in the opening of proceedings, and for the 4-month period become, by operation of law, insulated from individual enforcement by creditors and termination of key agreements.

A debtor can initiate the SRP only until June 30, 2021 and only once. In order to

open the SPR, it is required to publish the announcement in the Polish Official Gazette (it is the sole decision of a debtor to publish it), and before it a debtor must conclude an agreement with a restructuring advisor (for appointment of the arrangement supervisor) and present to the arrangement supervisor the arrangement proposal, a receivables list and a disputed receivables list.

The arrangement proposal can encompass not only entirety of the unsecured receivables of a debtor existing and due before the arrangement date (the arrangement date is determined by a debtor on not earlier than seven days before, and not later than seven days after, the day on which a debtor applied for the publication of the announcement in the Official Gazette), but also – as an exception to the general principle of the Polish Restructuring Law – the receivable secured with rights *in rem* (mortgages, all types of pledges and security assignments). In order to encompass such secured receivables, the arrangement proposal must either (a) preserve the amount of the receivable principal, with all interest and the like, intact – rescheduling the repayment date only, or (b) offer a creditor the repayment to the extent not lower than the proceeds expected from the foreclosure on creditor's collateral (should a creditor enforce its claim individually).

During the period from the announcement date until the arrangement being approved by a court or termination of the proceedings, the debtor shall not repay debts to be encompassed by the arrangement (and its set-off is restricted), any pending enforcement proceedings are suspended, no new enforcement (or for interim injunction) proceedings may be commenced against the debtor and, without a consent of the arrangement supervisor, key agreements

concluded with the debtor (e.g., loan agreements, bank account agreements, letters of credit, sureties, insurance agreements, leasing and rental agreements) cannot be terminated. During the same period, a debtor is restricted in managing its assets, since any act falling beyond the ordinary course of business requires a consent of the arrangement supervisor. Should these effect of the announcement lead to the detriment of creditors, a creditor or an arrangement supervisor (and a debtor) can apply to a court to annul the effects of the announcement.

A debtor has then four months from the announcement date to agree with creditors on the arrangement and apply to the court for approval of the arrangement. If such an application is not submitted within four months, the SRP is – by operation of law – terminated. The arrangement under the SRP is concluded with creditors under general principles of the procedure for the arrangement approval (by the majority of creditors – more than half of creditors - who hold at least two-thirds of the entirety of receivables encompassed by the proposal). The secured creditors form a separate group so, additionally, the arrangement is concluded where in each group of creditors, the majority of creditors who have at least two-thirds of the group receivables is in favor of it. The arrangement is concluded despite not being approved in a given group provided that the arrangement provides such a group of creditors repayment to the extent not lower than expected in case of the debtor's bankruptcy. The conclusion of the arrangement is confirmed by the arrangement supervisor who submit a report accompanying the debtor's petition to the court for the approval of the arrangement. Once the application for approval of the arrangement has been submitted, the court

is obliged to decide upon it within two weeks from the date of delivery of the application.

Lastly, the SRP enables the possibility of providing the debtor with new financing after opening it, with a new security granted to new creditor provided it has been consented by the arrangement supervisor. If such financing and security rights were revealed in the application to the court for the approval of the arrangement and the court approved it, they cannot be challenged later if the restructured debtor becomes insolvent or enters the remedial (*sanation*) procedure.

In February 2021, in parallel to Poland notifying the European Commission the intention of extending time for the implementation of the Directive on Preventive Restructuring Frameworks, the Ministry of Justice presented the draft Bill amending the Act on the National Register of the Indebted Entities, whereby certain features of the SRP are to be introduced into one of four ‘basic’ restructuring procedures under the Polish Restructuring Law – the proceedings for arrangement approval. It is now planned that the proceedings for arrangement approval (as before initiated by a debtor without engaging a court) will be able to protect a debtor against creditors' enforcement and contract termination if the arrangement supervisor makes the official announcement of the arrangement cut-off date (similarly to a debtor's announcement of the simplified restructuring proceedings). The Amendment Act was submitted to the Parliament and is intended to enter into force on July 1, 2021 (in continuation of the SRP applicable until June 30, 2021).

## What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?

The Anti-Crisis Laws introduced, gradually, a number of reliefs/suspensions to minimize effects of the Covid-19 pandemic on entrepreneurs; among the most important are:

- ◊ Special temporary expiration of the mutual obligations under the contracts for lease of commercial premises as long as the prohibition to operate commercial premises was imposed (subject to a few exceptions, the Government prohibited, for several weeks in the high of pandemic restrictions, operations of almost all shops in the commercial centers of the sale area exceeding 2,000 sq.m.). This expiration is conditional on the tenant delivering to the landlord an offer to extend the lease period for the sum of the duration of the prohibition and six months. Such an offer must be delivered within three months since the end of the prohibition and, if it has not been handed in, the landlord is not bound by the temporary expiration of obligations.
- ◊ Postponement (optional) of the deadline for payment of tax on revenue from buildings for March-May 2020 to July 20, 2020 (when revenues are at least 50% lower).
- ◊ Postponement of the payment of advance payments of income tax on salaries paid in March and April 2020 CIT (until June 1, 2020).
- ◊ Loss deduction mechanisms enabling CIT and PIT payers who suffer negative economic consequences of Covid-19 to deduct the loss incurred in 2020 from their operating taxable income obtained in 2019 - when, in 2020, they achieve at least 50 % less revenue than in 2019.
- ◊ Extended deductions from the income

(revenue) of donations made for Covid-19.

- ◊ Partial subsidization of certain wage costs of employees and social security contributions due.
- ◊ Introducing the possibility of renegotiation of bank credit conditions by all entrepreneurs, regardless of their size (final solutions to be the result of negotiations between the parties to the credit agreement). In mid-March 2020, the Polish Bank Association recommended and declared its members readiness to support their clients (both consumer and businesses) during the pandemic turbulences and, among others, to suspend for up to three months the repayments of loans and credits (voluntary loan repayment moratorium) and renew the loan and credits to all businesses that had a proper standing at the end of 2019. The Anti-Crisis Shield 4.0 introduced as an option for the consumers a right to suspend their loan/credit repayment obligations for up to three months (with automatic rescheduling the final repayment date).

In April 2020, the Polish Government presented the so-called Financial Shield aimed at protecting the labor market in Poland by means of financial support for companies through the Polish Investment Fund (*PFR*, a governmental development institution); as a public aid program, it was approved by the European Commission partly at the end of April (SMEs) and later (large enterprises). The *PFR* Financial Shield is comprised of three segments worth PLN 100 billion (appr. EUR 23 billion): PLN 25 billion of partly non-repayable financial assistance for micro-enterprises, PLN 50 billion of partly non-repayable financial assistance for SMEs and PLN 25 billion dedicated to large enterprises (by means of

loans or bonds for the period of two years, preferential loans for the period of three years partially non-refundable or acquisitions of shares or stocks of underperforming entities on an arm's length basis or as part of public aid worth). Several other governmental agencies also offered financial assistance for example BGK (state development bank) offers bank guarantees to provide businesses for up to 80% security cover of their liquidity loans granted by commercial banks and subsidizes loan interests to businesses and ARP (state industry development agency) offers refinancing of the vehicle leasing agreements for the transport companies.

In addition, the Act of July 16, 2020 on Granting Public Aid for the Purpose of Rescuing or Restructuring of the Enterprises was adopted and it will become effective on August 10, 2020. This Act supplements the Financial Shield since this public aid can be offered to the enterprises during the restructuring proceedings (the Financial Shield is not available to businesses that have already applied for restructuring and bankruptcy). There will be three groups of instruments granted by the Development Ministry and ARP (Industry Development Agency): rescue aid in the form of liquidity loans, temporary restructuring assistance (in the form of loans granted on the basis of a preliminary restructuring plan) and the aid for restructuring permitted in various forms (and assuming participation from market investors or the shareholders). The Industry Development Agency has already invited enterprises to apply for the state-aid support in the 2020 portion of this program.

On September 23, 2020 another amendment to the Anti-Crisis Laws was published. The new law (also known as the "Industry Shield") created a mechanism for returning funds for a tourist event that did not take place as a

result of the Covid-19 to travelers who did not decide or did not receive a voucher (to be used for another tourist event within a year of its receipt), by creating a Tourist Return Fund and a Tourist Assistance Fund. The new regulations entered into force on October 1, 2020. This new law, with effect of October 15, 2020, also extended eligible beneficiaries of special benefit (in the amount of 80% of the minimum wage for work) to entities operating as agents and tour guides. "Industry Shield" extended the catalog of entities that are exempt from social security contributions to the payers of the tourism and hotel sector, payers dealing with organization and service of fairs, conferences and exhibitions, for the period from July 1, 2020 to September 30, 2020.

After announcement of another set of restrictions imposed on certain businesses, in November 2020, the Government has enacted new anti-crisis instruments (including the Financial Shield of the Polish Development Fund accepted in December 2020 by the European Commission) to the businesses in need. Adopted measures are a continuation, with certain modifications, of programs for large companies, micro-enterprises and the SME sector announced during the first wave of the pandemic. Its main purpose is to help entrepreneurs maintain liquidity and financial stability by providing them with financing on preferential term. Those measures are intended to help industries that were forced to limit or suspend their activities during the pandemic. Micro-enterprises can apply for financial subsidies in the amount of PLN 18.000 or PLN 36.000 per employee. The maximum amount of subsidy depends on the number of employees and the decrease in turnover and shall not exceed PLN 324.000. However, if an entity obtained a subsidy under the first Financial Shield, the maximum amount



of subsidies received from both Shields cannot exceed PLN 72.000 per employee. Such measures are non-refundable on the condition that beneficiaries will maintain its economic activity till December 31, 2021, and will keep average employment in 2021 on similar level as in 2020. Furthermore, SME can apply for a subsidy in the amount not exceeding PLN 3.500.000. The amount of subsidy is additionally limited to PLN 72.000 per employee, if the company has already received aid from the first Financial Shield. The maximum amount of aid from both Shields cannot exceed PLN 144.000 per employee. The exact amount of subsidy depends on the forecast of costs and revenues and gross loss. The aforementioned subsidy will be non-refundable on the condition that the business activity is continued and the subsidy is settled on a financing basis 70% of the gross loss. Turning to large enterprises, new instruments envisage update of the conditions and extension of the existing scheme and introduction of a new version of the promotional loan, simultaneously setting a new damage period of Covid-19 until March 31, 2021.

Also, in December 2020, new rules of support (the Financial Shield 6.0) were adopted for the industries most affected by Covid-19, primarily by expanding the scope of industries entitled to receive support (e.g. fitness, retail (stalls and markets), culture and entertainment, recreation, photography, physiotherapy and education companies, transport, shoe stores or laundries). Also, the new regulation envisages such measures as:

- ◇ co-financing of salaries for employees of selected industries up to PLN 2.000 per month for one employee,
- ◇ one-time additional subsidy for entrepreneurs in the amount of PLN 1.300 or PLN 2.080,

- ◇ additional subsidies for the tourism and recreation industry,
- ◇ one-time subsidy up to PLN 5.000 from the so-called Labor Fund for micro and small entrepreneurs,
- ◇ exemption from paying social welfare contributions for November 2020,
- ◇ compensation for municipalities for lost revenues from a market fee. ■



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During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

#### Moratorium

On April 1, 2020 Russian federal law "On insolvency" was supplemented by Article 9.1 that introduced the frame for moratorium on bankruptcy proceedings for a certain category of legal entities that suffered from the consequences of the Covid-19 the most (for instance, hotel businesses, catering and entertainment venues, air companies etc.) Bankruptcy moratorium was introduced on April 3, 2020 by the government of the Russian Federation and was lifted only on January 7, 2021.

Bankruptcy moratorium led to the following consequences:

- ◇ suspension on the duty to file an application for its own bankruptcy by the debtor;
- ◇ creditors are not allowed to initiate bankruptcy proceedings petition, charge penalties and fines for breach of

contracts of such debtors;

- ◇ all enforcement proceedings were suspended.

Certain limitations were posed on the debtors as well:

- ◇ Payment of dividends as well profit distribution (depends on the form of the legal entity in Russia) are suspended;
- ◇ Obligations could not be terminated via offset if creditors' priority order is violated.

The debtors can voluntarily waive its right for bankruptcy moratorium to retain its rights in relation to profit distribution. Moratorium does not disrupt entities' ordinary business practice. The transactions made during moratorium can be contested. The transaction can be recognized as null and void in accordance with general provisions of the Bankruptcy law. However, the terms, specified in chapter III.1 of the Bankruptcy law will be shifted respectively for the time period of moratorium + 3 months since it ends. This extended term is aimed to prevent the entities from abusing the moratorium in order to alienate their assets.

## Cramdown

In addition to the moratorium the cramdown was introduced on June 8, 2020 in order to protect the debtors. Cramdown procedure was applicable only in the period of moratorium. It is applicable not only to a certain category of debtors, but to any debtor if its revenue in the taxable period decreased by 20% or more compared with the same period of the previous calendar year and if the debtor initiated its bankruptcy proceedings voluntarily not earlier than a month after the introduction of moratorium.

Additionally, to be eligible for cramdown the debtor is obliged to have no creditors of the first and second order of priority (damage to health, wages).

Cramdown (judicial installment plan) is provided upon an application of the debtor. Based on this application, the court issues a ruling containing conditions for approval of the judicial installment plan. It can be applied only in case the debtor filed voluntarily for its own bankruptcy. Once judicial installment plan is granted, bankruptcy proceeding shall be terminated.

Installment of payments is applicable for all financial obligations that are overdue on the date of initiation of bankruptcy proceedings, as well as those slated to become due within one, from the date of the court's approval of the judicial installment plan.

After the court issued a ruling approving judicial installment plan, certain restrictions that were imposed in with the supervision procedure stay in force:

- ◊ it is not permitted to satisfy the debtor's shareholders claims for the appointment of a share or payment of the actual value

of their shares, or to redeem or pay for the debtor's outstanding shares;

- ◊ it is not permitted to terminate the debtor's monetary obligations by the means of set-off;
- ◊ it is not permitted to pay dividends, share income and to distribute profit among the debtor's participants;
- ◊ no penalties or other pecuniary sanctions accrue for default in monetary obligations and compulsory payments, except for current payments.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

A new bill is proposed to reform bankruptcy proceedings in Russia. The bill was introduced in March 2020. It is currently being under development by the Government and has not been transferred to the Parliament (State Duma) yet.

The bill proposes to cancel the existing rehabilitation procedures, which are used extremely rare or considered as a transition stage. Instead, the bill proposes to introduce a new procedure – debt restructuring, which will be aimed on preserving the entity, not its liquidation. Debt restructuring is proposed to be extremely long compared to other bankruptcy procedure – 4 years.

Restructuration plan may envisage conversion of the entities' debts into its shares or other securities. In accordance with the restructuring plan only a part of debtor's assets can be sold despite the existing regulation where all assets should be sold.

Additional novel of the bill is that in

restructuration procedure debtor's beneficiaries will retain the right to appoint CEO. Also, two CEOs could be appointed, one of which by the creditors' committee. Their powers will be distinguished in accordance with the restructuring plan.

The Government also proposes to introduce a new system for appointment of the bankruptcy managers. Currently the bankruptcy manager is proposed by the first creditor, however, a new bill plans to introduce a new system where associations of bankruptcy managers propose their candidates voluntarily. This will reduce the importance of the first creditor, as today they usually compete for the right to submit bankruptcy petition first.

**What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?**

Additionally, on April 1, 2020 Federal Law No. 98-FZ "On amending certain instruments of the legislation of the Russian Federation in relation to the forestalling and elimination of emergencies" came into force.

Depending on the situation, the tenant is entitled to request a postponement (rental payment holiday) or reduction of rental payments. The landlord, on the other hand, is obliged to enter into an additional agreement providing such changes if the tenant requests.

These provisions are only related to the tenants from the most suffered spheres of economy (the same to which bankruptcy moratorium is applied). The burden of proof rests with the landlord - the tenant does not have to prove that he or she was unable to use the property. However, the landlord, in turn, can prove that the tenant has not

been de facto affected and evidently will not be, because, for example, he continues to operate using the real property in violation of the established restrictive measures. The courts may consider the actions of the tenant as abuse of right or actions bypassing the law and deny him/her in protection of rights in part or in full. ■



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# SLOVAKIA



During the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

The National Council of the Slovak Republic adopted Act No. 9/2021 Coll., amending certain laws in connection with the second wave of the Covid-19 pandemic, which entered into force and became effective on January 19, 2021. This act mainly amended the original Act No. 62/2020 Coll. on Certain Emergency Measures in Relation to the Spread of the Dangerous Contagious Human Disease Covid 19 and in the Judiciary amending certain laws ("Lex Corona"), which was adopted last year during the first wave of the Covid-19 pandemic.

Based on Act No. 9/2021 Coll. was suspended all statutory limitation periods (i.e. the deadline by which a party must bring its claim) and statutory extinction periods (i.e. deadline by which the concerned right expires) until February 28, 2021. At the same time, deadlines which have expired after December 31, 2020 until the date of entry into force of this Act shall not end earlier than 30 days after the entry into force of this Act.

This measure was meant to ensure that individuals and businesses do not have to exercise their rights during the pandemic or worry about losing their rights as a result of statutory limitation periods or statutory extinction periods.

Procedural time limits set forth by legislation or determined by the courts were suspended until February 28, 2021. Therefore, the time limits set by law or by the court were suspended, including the time limit for filing an appeal, the time limit for completing a submission, and the time limit for commenting on a counterparty's submission. However, if a case cannot withstand delay, the court is entitled to set a new appropriate time period.

At the same time, the courts are obliged to held hearings only to the extent necessary.

The intention of this measure is to reduce the number of court hearings held during the extraordinary situation and the state of emergency to the indispensable minimum. In this sense, The Ministry of Justice of the Slovak Republic on the basis of Lex Corona also adopted Decree No. 24/2021 Coll. on the conduct of hearings, main hearings, and public hearings in times of extraordinary

situation and state of emergency. This Decree exhaustively defines when the court shall conduct hearings, main hearings, and public hearings in times of extraordinary situation and state of emergency.

During the extraordinary situation and state of emergency collective bodies of legal entities (established under civil law and commercial law) could be adopted by correspondence voting and enabling participation at the meeting of these bodies by election even if this does not follow from their internal regulations or articles of association.

Act No. 9/2021 Coll. also establish a temporary ban on auctioning, authorizing the sale of the property, organizing a bidding process or other competitive process, and enforcement by the sale of property (as the competences also of the bankruptcy clerks). If any of these actions were performed between this Act's effective date and February 28, 2021, they would be considered null and void.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

On January 1, 2021, Act No. 421/2020 Coll. on Temporary Protection of Entrepreneurs in Financial Difficulties and on the amendment of certain laws ("Act on Temporary Protection of Entrepreneurs in Financial Difficulties") entered into force.

Act on Temporary Protection of Entrepreneurs in Financial Difficulties directly follows Lex Corona, which established, inter alia, the Institute for Temporary Protection of Entrepreneurs due to Negative Impacts the spread of the dangerous human infection

Covid-19. Original institute for Temporary Protection of Entrepreneurs introduced a temporary legal framework for the rapid provision of protection to entrepreneurs who have found themselves in an unfavorable financial situation as a result of the financial crisis caused by the dangerous human disease Covid-19.

Due to the fact that the Covid-19 pandemic is not in decline and entrepreneurs in several segments cannot carry out their business at all (or do so at a significantly reduced rate) and the negative economic effects are reasonably expected to last for some time, National Council of the Slovak Republic decided to adopt a comprehensive legal regulation on the basis of which is established a legal institute of the so-called Temporary Protection of Entrepreneurs in Financial Difficulties ("Temporary Protection").

The purpose of Temporary Protection is to create a time-limited framework for protection against creditors and instruments to support entrepreneurs in financial difficulties, which should enable them to continue their business and thus prevent, in particular, job losses, know-how, and higher satisfaction of creditors' claims.

## Conditions for Temporary Protection

An Entrepreneur (legal entity, as well as natural person-entrepreneur) is entitled to apply to the court for Temporary Protection provided that fulfills the following formal pre-conditions:

- ◇ center of main interest in Slovakia (seat or business place is in the territory of the Slovak Republic);
- ◇ the entrepreneur is not a bank, the insurance company, broker, or other in law excluded entity,

and declares fulfillment of the following conditions:

- ◇ maintains proper accounting;
- ◇ pursues the purpose of Temporary Protection;
- ◇ does not breach the obligation to deposit the financial statement in the collection of deeds within the statutory period;
- ◇ an absolute majority of business creditors agree to Temporary Protection, except the affiliated creditors (need to provide written consent);
- ◇ no enforcement proceedings were pending against it as per date of application in order to satisfy the claim from its business activities;
- ◇ in relation to its enterprise, asset, right or other property belongs to the enterprise, the exercise of the pledge was not commenced as per the date of application;
- ◇ as per the date of submission of the application, there are no grounds for its termination and effects of bankruptcy declaration or restructuring permit towards the entity;
- ◇ submits application due to significant increase of overdue receivables or significant decrease of revenues compared to the same period in 2019, which significantly jeopardize the operation of the enterprise;
- ◇ in the last 12 months did not distribute profit or other own resources, or did eliminate the consequences of such acts;
- ◇ in the last 12 months, did not take any other measure to jeopardize its financial stability or did remove such consequences;
- ◇ in the last 48 months has not been under Temporary Protection;

is registered in the register of public sector partners (if the applicant is a legal entity).

### Effects of Temporary Protection

Temporary Protection of the entrepreneur has, in particular, the following effects:

- ◇ passive bankruptcy immunity (it is not possible to decide on the opening of bankruptcy proceedings against an entrepreneur for the duration of the Temporary Protection);
- ◇ active bankruptcy immunity (the entity, including the obliged persons on its behalf, is not obliged to file an application for the declaration of bankruptcy on its assets for the duration of the Temporary Protection);
- ◇ the enforcement proceeding against the entrepreneur to satisfy a claim from its business activity is interrupted for the duration of Temporary Protection;
- ◇ the pledge cannot be exercised against the entity in respect of the enterprise, property, right or other assets belonging to the enterprise for the duration of the Temporary Protection;
- ◇ against a receivable of the entrepreneur arising after the provision of Temporary Protection, it is not possible to set off a receivable towards the entrepreneur arising before the provision of temporary protection if it is a receivable that belongs to or belonged to the related person;
- ◇ for the duration of the Temporary Protection, another contractual party may not terminate the contract concluded with the entrepreneur by notice, withdraw from the contract or refuse performance under such a contract due to the entrepreneur's delay elapse, caused by the spread of the pandemic Covid-19, unless the other contractual party would directly endanger the operation

of its enterprise contractual party would directly endanger the operation of its enterprise;

- ◇ time limits for right exercising against the entrepreneur (including time limits for exercising the claims from disputable legal acts) do not elapse for the duration of the Temporary Protection.

### Duration of Temporary Protection

Temporary Protection of entrepreneurs lasts 3 months from the date of its creation i.e. since its publication in the Commercial Bulletin. The law stipulates that an entrepreneur may apply for an extension of Temporary Protection for another 3 months no earlier than 30 days and no later than 10 days before the expiration of Temporary Protection.

Extension of Temporary Protection is possible in the case of:

- ◇ the entrepreneur negotiates with creditors on a change in the content of the commitments, on a partial waiver of the commitments or on credit financing and makes a statement to that effect, which shall accompany the application and at the same time;
- ◇ at least a two-thirds majority of creditors agree in writing to the extension of Temporary Protection.

**W**hat additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?

The relevant measures related to insolvency have been discussed in points 1 and 2 above. Yet, it shall be noted that the above considerations encompass legislative changes and adopted measures in detail since the beginning of the this year. ■



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# SLOVENIA



**D**uring the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

The first epidemic in the Republic of Slovenia was declared with the Ordinance of March 12, 2020 on the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 19/20 in 68/20, hereinafter: "Order of March 12, 2020"). The first epidemic on the territory of the Republic of Slovenia was revoked on May 31, 2020 with the Order of May 14, 2020 on the revocation of the Covid-19 epidemic (Official Gazette of the Republic of Slovenia, No. 33/06 and 49/20, hereinafter: "Order of May 14, 2020").

The pandemic of Covid-19 led to the second declaration of epidemic on the territory of the Republic of Slovenia, which has been declared with the Order of October 18, 2020 on the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 146/20, hereinafter: "Order of October 18, 2020"). Pursuant to the Order of October 18, 2020 the epidemic has been initially

declared for the period of 30 days (i.e. until November 19, 2020) and has been extended several times. Lastly, Slovenian government has extended the second declaration of pandemic of Covid-19 on the territory of the Republic of Slovenia for 60 more days on January 17, 2021 with the Order of January 17, 2021 on the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 5/21, hereinafter: "Order of January 17, 2021"). The pandemic of Covid-19 on the territory of the Republic of Slovenia is currently declared until March 17, 2021.

With regard to special development in our jurisdiction considering the insolvency procedures, the Slovenian legislator adopted the intervention Act of March 20, 2020 on Provisional Measures with Respect to Judicial, Administrative and Other Public-Law Affairs for the Control of the Spread of the Contagious Disease SARS-CoV-2 (Official Gazette of the Republic of Slovenia RS, No. 36/20 and 61/20, hereinafter: "ZZUSUDJZ"). The provisional measures, implemented by ZZUSUDJZ, were relating to court and administrative proceedings, particularly, how to ensure

safe and healthy procedures in front of the competent authorities. ZZUSUDJS served as a legal basis for adopting below described measures regarding the suspension of court procedures, which affected also insolvency proceedings.

With respect to the suspension of court procedures, the president of Slovenian Supreme Court issued the Order of March 30, 2020, on special measures temporarily regulating operation of Slovenian courts during the Covid-19 epidemic (Official Gazette of the Republic of Slovenia, No. 39/20, 47/20 and 62/20, hereinafter: "Order of March 30, 2020"). The Order of March 30, 2020, defined several matters, otherwise classified as urgent, as non-urgent. This means that during the validity of the Order of March 30, 2020, Slovenian courts did neither hold any hearings nor decide in non-urgent matters. Non-urgent matters, included among others, compulsory settlement and bankruptcy proceedings, meaning that until revocation, the Courts have no longer decided on petitions for initiation of bankruptcy or compulsory settlement proceedings from March 30, 2020. Furthermore, the deadlines for filing or examining claims, filing lawsuits for rebuttal, submitting opening reports etc., did not run in insolvency proceedings that have already been initiated.

Moreover, the president of Slovenian Supreme Court issued the Order of May 4, 2020 on special measures temporarily regulating operation of Slovenian courts during the Covid-19 epidemic (Official Gazette of the Republic of Slovenia, 62/20 and 77/20, hereinafter: "Order of May 4, 2020"). The Order of May 4, 2020, which defined in more detail the gradual release of previously established special measures in relation to operations of courts. The Order of May 4, 2020, distinguished between

the possibilities for the courts to operate in non urgent and in urgent matters. In non-urgent matters, Slovenian courts were able to, since the Order of May 4, 2020, had entered into force, conduct hearings, decide and serve court decisions, provided that such acts were able to safely performed in a manner preventing the spread of the virus and ensuring protection of human life and health. Despite serving of documents, procedural deadlines did not run in these matters. In urgent matters on the other hand, Slovenian courts could conduct hearings and adopt decisions, whereby all relevant deadlines in these matters were running. It should be pointed out that under the Order of May 4, 2020, compulsory settlement and bankruptcy proceedings, in which up to and including March 30, 2020, no decision on the initiation of the proceeding was issued, were not included in the scope of urgent matters. Thus, in compulsory settlement and bankruptcy proceedings procedural acts were performed only in case that it was possible to safely perform those acts in a manner preventing the spread of the virus and ensuring protection of human life and health.

With regard to the above-described measures, the Slovenian government adopted the Decision of May 21, 2020 on the finding of termination of temporary measures in relation with judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (Covid-19) (Official Gazette of the Republic of Slovenia, No. 74/20: hereinafter: "Decision of May 21, 2020"). Pursuant to the Decision of May 21, 2020, Slovenian government concluded that there are no more grounds for the measures stipulated in ZZUSUDJZ. Hence, the above-described measures with regard to the suspension of court procedures lapsed on May 31, 2020, as stipulated in the Decision of May 21, 2020.

During the so called second wave of the Pandemic, the President of the Slovenian Supreme Court issued Order of October 19, 2020 on special measures under Article 83a of the Courts Act due to the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 148/20, hereinafter: "Order of October 19, 2020"). Pursuant to the Order of October 19, 2020, in case that the technical and spatial conditions are met, court hearings and sessions may be held by videoconference. Otherwise, the distance between judges, court staff, parties, their representatives and other persons must be at least 1.5 meters. All participants of the hearing or session must wear protective equipment, the court room must be disinfected and ventilated, all in accordance with professional

recommendations. Presence lists with contact details of all present participants are kept. In our experience, court hearings and sessions in insolvency proceedings are frequently cancelled due to the inability of the courts to provide safe court hearing or session for all participants of the procedure or due to safety concerns raised by the parties in the proceedings. The Order of October 19, 2020 ceased applying on November 16, 2020, when the President of the Slovenian Supreme Court adopted Order of November 13, 2020 on special measures under Article 83a of the Courts Act due to the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 165/20, hereinafter: "Order of November 16, 2020"). The Order of November 16, 2020 once again distinguished between the possibilities

for the courts to operate in non-urgent and in urgent matters. Pursuant to the Order of November 16, 2020 compulsory settlement and bankruptcy proceedings were classified as urgent matters. Thus, in case of compulsory settlement and bankruptcy proceedings the courts were able to conduct hearings, decide and serve court decisions, provided that such acts were able to safely performed in a manner preventing the spread of the virus, whereby all relevant deadlines in these matters were running. The Order of November 16, 2020 expired on January 31, 2020 when the Order of January 28, 2021 on special measures under Article 83a of the Courts Act due to the declaration of the Covid-19 epidemic in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 12/21, hereinafter: "Order of January 28, 2021") stepped in force. Pursuant to the Order of January 28, 2021, the courts are able to conduct hearings, decide and serve court decisions, provided that such acts were able to safely performed in a manner preventing the spread of the virus in all matters from February 1, 2021.

Additionally, with regard to a suspension of court procedures, the Slovenian Act of April 2, 2020 on Determining the Intervention Measures to Contain the Covid-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (Official Gazette of the Republic of Slovenia, No. 49/20 and 61/20, hereinafter: "ZIUZEOP") stipulated that a court can postpone the decision on the creditor's motion to initiate bankruptcy over the debtor for four months, if the debtor became insolvent due to the declaration of an epidemic in the Republic of Slovenia. It was considered that the company became insolvent due to the declaration of an epidemic in the Republic of Slovenia, if such company performed an activity (sales

of goods or services) which has been temporarily prohibited under a provision or act issued by the government, ministry or municipality due to the Covid-19 epidemic. According to ZIUZEOP, in all bankruptcy proceedings initiated by creditors no later than August 31, 2020 (i.e., within three months after the cessation of measures), an extended four-month period applied during which the court was able to postpone the creditor's proposal.

With regard to special development in Slovenian jurisdiction affecting insolvency merits/legal basis during the (high) pandemic, pursuant to the beforementioned ZIUZEOP, the employers from the Republic of Slovenia were eligible for reimbursement of the salary compensation for employees temporarily waiting for work and employees who were absent from work due to force majeure. Additionally, the employers were exempted from contribution payments for all social security contributions for the salary compensations.

Considering the above, ZIUZEOP stipulated an additional insolvency merit for the employers that received States Aid. If the debtor has been more than one month, since he received refunds of paid salaries and contributions on the basis of ZIUZEOP, late with the payment of salaries and contributions to his employees, the debtor was considered continuously insolvent. It should be pointed out that ZIUZEOP did not link insolvency measures to the revocation of the epidemic, but to the cessation of measures in accordance with the same act. Therefore, deadlines with respect to the insolvency presumption according and measures to the ZIUZEOP began running on May 31, 2020. Irrebuttable presumption of insolvency, which applies if the employer has been more than a month late with the





payment of salaries and contributions to employees counting from the receipt of the reimbursement of such salaries and contributions, has remained in force for four months after the cessation of measures, which means until September 30, 2020.

With respect to freezing the deadline to apply for declaration of insolvency, pursuant to ZIUZEOP the management was not obliged to file a proposal for the commencement of bankruptcy proceeding or compulsory settlement proceeding if the company became insolvent due to a coronavirus pandemic, unless there were no indications that the company will be able to solve the insolvency situation after the cassation of measures. This measure has applied from declaration of the epidemic in the Republic of Slovenia until the end of the period of three months after the revocation of measures pursuant to ZIUZEOP, therefore until August 31, 2020. With Act of November 25, 2021 on Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of Covid-19 Epidemic (Official Gazette of the Republic of Slovenia, No. 175/20 and 203/20, hereinafter: "ZIUPOPDVE") Slovenian legislator has once again imposed above-mentioned suspension of deadlines to apply for declaration of insolvency. According to ZIUPOPDVE, this measure applies from December 31, 2020 until March 31, 2021.

Moreover, considering a special debt payment moratorium, Slovenian legislator adopted the Act of March 20, 2020, on intervention measures regarding the deferred payments of borrowers' obligations (Official Gazette of the Republic of Slovenia, No. 36/20 and 49/20, hereinafter: "ZIUOPOK") concerning mandatory moratoriums to be approved by Slovenian banks to Slovenian borrowers at their request, with a view of preventing

substantial damage to the economy and maintaining financial stability. According to ZIUOPOK, a bank is obliged to grant to the borrower (at its request) a 12-month suspension of all payment obligations and a corresponding prolongation of repayment schedule (including final maturity date). The measure applies to all payment obligations from loan agreements which have fallen due after March 12, 2020, being the date of official declaration of Covid-19 epidemic in Slovenia. A borrower must submit an application for moratorium to a bank within 6 months as of official termination of the Covid-19 epidemic in Slovenia. Since the epidemic has been declared on the territory of Slovenia for the second time on October 18, 2020 for the period of one month, borrowers will be able to submit an application for moratorium within 6 months after the second epidemic will ceased, i.e. until May 19, 2021, if the declared epidemic will not be extended. It should be pointed out that according to ZIUOPOK, the Republic of Slovenia acts as surety to a bank or savings bank with seat in Slovenia for the performance of the obligations, which are affected by the above discussed moratorium.

**Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?**

As mentioned above, according to ZIUOPOK a bank is obliged to grant to a borrower (at its request) a 12-month suspension of all payment obligations and a corresponding prolongation of repayment schedule (including final maturity date). The maturity of security agreement can also be prolonged. During the moratorium, interest shall accrue on the principal under the regular rate agreed upon conclusion of the loan agreement. As

mentioned above, a borrower will be able to submit an application for moratorium to the bank until May 19, 2021, unless the epidemic in Republic of Slovenia will be extended.

Moreover, considering case overload problems, Slovenian legislator adopted the Act of May 29, 2020 on Determining the Intervention Measures to Mitigate and Remedy the Consequences of the Covid-19 Epidemic (Official Gazette of the Republic of Slovenia, No. 80/20, hereinafter: "ZIUOOPE"). Pursuant to ZIUOOPE, in 2020, Slovenian courts held hearings and decided only in urgent matters in the period from August 1, 2020 to August 15, 2020. Thus, in 2020 the judicial holidays did not last from July 15 to August 15 as usual in the Republic of Slovenia. Considering the above, last year the judicial holidays in the Republic of Slovenia were half as short as before the corona pandemic. Additionally, since compulsory settlement and bankruptcy proceedings were deemed as urgent matters in the matter at hand, both mentioned insolvency procedures were not affected by the judicial holidays. Thus, this measure in some way solved case overload problems with regard to the insolvency procedures.

Notwithstanding the above, current Slovenian legislation does not provide any simplified restructuring/insolvency procedures due to corona virus outbreak.

**What additional relief or suspension has been put in place to help businesses**

As mentioned above, Slovenian legislator has adopted different measures to limit the economic consequences of the coronavirus pandemic. To sum up some measures to help businesses mitigate the consequences of the pandemic which were already mentioned before:

- ◇ reimbursement of the salary compensation: the employers were eligible a reimbursement of the salary compensation for employees temporarily waiting for work and employees who are absent from work due to force majeure,
- ◇ support for part time work instead of full-time work for full-time employed workers,
- ◇ exemption from contribution payments: the employers were exempted from contribution payments for all social security contributions for the salary compensations,
- ◇ suspension of payment obligations: a bank is obliged to grant to an eligible company (at its request) a 12-month suspension of all payment obligations and a corresponding prolongation of repayment schedule. As mentioned before, a borrower can submit an application for moratorium to a bank until May 19, 2021, unless the epidemic in Republic of Slovenia will be extended.
- ◇ reimbursement of salary compensation for employees under quarantine order or for employees unable to perform work due to force majeure due to childcare obligations,
- ◇ emergency assistance in the form of monthly basic income and partially reimbursed lost income for the duration of quarantine or for the duration of inability to perform work due to force majeure due to childcare obligations for a self-employed person, a shareholder of a company or a founder of a cooperative or institute and a farmer.
- ◇ amended payment performance deadlines in transactions involving the public sector,
- ◇ extended deadlines for annual reports and for reporting under environmental legislation,

- ◊ reduction of electricity costs for small business users, which is expected to reduce the electricity bills of for small business users by an average of 20% during this period,
- ◊ a special scheme of state guarantees for bank loans aimed at ensuring the liquidity of Slovenian companies as well as the medium-term liquidity of the Slovenian banking system,
- ◊ scheme of partial funding of uncovered fixed costs of companies,
- ◊ exemption from rent payment when the owner of the property is the Republic of Slovenia or self-governing local community,
- ◊ financial assistance for companies in case of performing Covid-19 rapid tests among its employees in the amount of EUR 40.00 for each performed test,
- ◊ possibility to request a deferral of rent for business premises.

Moreover, Slovenian legislator has adopted additional measures to help businesses face challenging times due to the coronavirus outbreak. For this purpose, Slovenian legislator has adopted the different measures in the tax area, such as:

- ◊ no advance payments of corporate income tax for April and May 2020,
- ◊ the Slovenian tax Administration has the possibility to – upon request of a company and without establishing the criteria for occurrence of severe economic damage – defer tax payments or approve instalment tax payments for up to 24 months if a company is not able to generate income because of the coronavirus outbreak.

It should be noted that the Slovenian government adopted the Decision of June 18, 2020 on declaring cessation of reasons

for intervention measures pursuant to Intervention Measures in the Fiscal Area Act (Official Gazette of the Republic of Slovenia, No. 89/20, hereinafter: “Decision of June 18, 2020”). Pursuant to the Decision of June 18, 2020, some intervention measures in the fiscal area expired on June 20, 2020.

Furthermore, Slovenian Export and Development Bank (“SID bank”) has offered financial products (such as indirect financing, direct corporate financing, export insurance, financing of health care institutions and establishments) to SMEs and large companies in the total amount of EUR 800 million. SID bank has introduced new products in the amount of EUR 200 million while EUR 600 million will come from already existing products. The funds are intended to address liquidity problems, problems due to fall in demand, production fall-out, supply chain difficulties and investment difficulties. Additionally, Slovene Enterprise Fund is planning to introduce a package of measures intended for micro companies and SMEs in a total amount of EUR 115 million. All described financial assistance is aimed at mitigating the effects of the coronavirus pandemic on the Slovenian economy. ■



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**D**uring the pandemic period, is there any special development in your jurisdiction's laws affecting the insolvency procedures through both the court's proceedings and the insolvency merits or legal basis?

The Spanish Royal Decree Act 16/2020 of April 28, 2020, on procedural and organizational measures to face the Covid-19 in the field of Justice contains a number of measures affecting insolvency procedures:

Such Royal Decree, led to the enactment of Act no 3/2020 of September 18, 2020, on procedural and organizational measures to face the Covid-19 in the field of Justice which has been partially amended by the Spanish Royal Decree Act 34/2020, of November 17, 2020, on urgent measures for supporting business solvency and the energy sector, and in tax matters, which contains all such measures and makes certain minor amendments. The most relevant of these are:

#### 1. Commencement of insolvency proceedings:

- ◊ The duty to file for voluntary bankruptcy, which is imposed on any debtor

who is unable to pay its debts on a regular manner as they become due is suspended until March 14, 2021.

- ◊ Any request filed by creditors aimed causing any debtor to become bankrupt against its will (compulsory bankruptcy) from March 14, 2020 onwards shall be repealed by the courts until March 14, 2021.
- ◊ If prior to December 31, 2020 the debtor had served notice to the court that it had initiated negotiations with its creditors to reach a refinancing agreement, an out of court settlement with the creditors or their accession to an anticipated creditors composition (popularly known as a 5bis notice), the debtor will not be obliged to apply for insolvency until 6 months have elapsed from such notice.

#### 2. Refinancing agreements:

- ◊ Amendment of refinancing agreements confirmed by the court: under Spanish law, both debtors and creditors may request from the court that it confirms the refinancing agreement that they may have reached. This court confirmation will protect the agreement from claw-back actions and, if certain conditions



are met, it may cause that certain creditors to be subject to a cram-down effect. Once the agreement has been subject to a court confirmation, it is not possible to request court confirmation of any other refinancing agreement within a year. This provision is aimed at disabling the debtor to use the potential cram-down effect of the refinancing agreement constantly against its creditors. The one-year limitation to request a new court confirmation of a refinancing agreement has been suspended until March 14, 2021.

- ◊ In addition, any action aimed at requesting from the commercial court at declaring that a debtor has breached a refinancing agreement filed prior to January 31, 2021 will be subject to a one-month stay. The debtor may then serve notice to the courts within such term of its intention to amend the refinancing agreement. After such notice, a three-month term stay shall be granted by the court to the debtor to negotiate an amendment of the refinancing agreement.

### 3. Out of court settlement arrangements (*acuerdos extrajudiciales de pagos*):

Debtors unable to meet their obligations under the out-of-court settlement arrangements shall be granted until March 14, 2021 to request an amendment of the agreement.

### 4. Creditor's Composition:

Simplifying to the maximum, a Spanish bankruptcy procedure may have up to three phases:

- ◊ A common phase, where the assets and liabilities of the debtor are assessed.
- ◊ A composition phase, where the

debtor and its creditors try to reach an agreement, basically aimed at a stay on the payment of debts and/or a write-off of such debts.

- ◊ A liquidation phase where, if no composition was possible, or the creditors' composition is breached, the assets of the debtor shall be disposed of and the proceeds shall be distributed to the creditors, on a pro-rata basis.

Generally, the creditor's composition may not be amended after it was agreed, so the only available remedy is to request from the courts the opening of the liquidation phase. However, until March 14, 2021, the debtor shall be entitled to request such amendment. Furthermore, the obligation imposed on the bankrupt debtor to request the liquidation from the courts when it becomes aware that it will not be able comply with its obligations under the creditor's composition is suspended.

Any requests by the creditors to declare the existence of a breach of the creditors' composition filed prior to January 31, 2020 shall be suspended for three months. During such 3-month period, the insolvent debtor shall be entitled to file a proposal for the amendment of the creditors' composition. Such claim shall be heard by the courts with priority to the breach claim.

### 5. Specially related parties:

Under Spanish insolvency law, the credits held by parties who have a close relation to the bankrupt debtor (such as its directors, or shareholders owning more than 10%) rank subordinated. Since there is a very strong chance that only those specially related parties are willing to support financially a potential bankrupt, the facilities aimed at providing liquidity to any debtor granted by



a specially related party shall be deemed ordinary, unless they have any other priority in ranking. This also applies when a credit right arises in favor of a specially related party when such part became a creditor of the bankruptcy debtor as a result of paying certain debts on behalf of the debtor.

This exemption from subordination will only apply in bankruptcy proceedings opened on or prior to March 14, 2022.

Is there any special development in your jurisdiction's laws passed or proposed to tackle the overload problems in insolvency and restructuring courts expected to result from post-pandemic economic crisis?

Other than the measures explained above, no other relevant measures have been implemented.

Although it cannot be considered a measure itself, the government has enacted an

amended and restated text of the Spanish Insolvency act: the Spanish Royal Legislative Decree 1/2020 of May 5, 2020, whereby the amended and restated text of the Insolvency Act is approved.

What additional relief or suspension has been put in place to help businesses mitigate the consequences of the pandemic?

In addition to the above measures, the following moratoria has been put in place:

- ◊ The Spanish Royal Decree-Act 19/2020 of May 26, 2020, on supplementary measures on agricultural, scientific, economic employment, social security and tax measures to mitigate the effects of Covid-19: this legislative instrument contains the regulation of sector agreements which will regulate the granting by financial institutions of moratoria to their clients in cases where such moratoria are not compulsory.

- ◊ The Spanish Royal Decree-Act 8/2020 of March 17, 2020, on urgent and extraordinary measures to face the social and economic impact of Covid-19: this text, as amended, established the possibility to obtain from the bank a 3-month moratorium on mortgage payments, but only affects natural persons falling below a vulnerability thresholds.
- ◊ The Spanish Royal Decree-Act 11/2020 of March 31, 2020, on urgent and supplementary measures in social and economic matters to face the Covid-19: this piece of legislation establishes the possibility to obtain a moratorium on non-mortgage loans, but again only for those falling below a vulnerability thresholds.
- ◊ The Spanish Royal Decree-Act 15/2020 of April 21, 2020, on urgent measures to promote economy and employment establishes a moratorium on lease agreements of up to four months on properties not aimed to be used as homes (e.g., businesses). However, the moratorium will only be compulsory for the lessor if the owner of the leased property owns ten or more properties or its properties amount to 1,500 sq.m. or more and the lessee meets certain vulnerability thresholds.
- ◊ Royal Decree-Act 25/2020 of July 3, 2020, on urgent measures to support the economic reactivation and employment, which establishes specific moratoria for the touristic sector.
- ◊ Royal Decree-Act 26/2020 of July 7, 2020 which increases the time period of the moratoria under Royal Decree-Acts 8/2020, 11/2020.
- ◊ The Spanish Royal Decree-Act of 3/2021 of February 2, 2021 which establishes the possibility to request new moratoria based on the provisions of Royal Decree Acts 8/2020, 11/2020, 25/2020 and

26/2020. The benefits from such decrees may be requested until March 31, 2021 by those debtors which did not request moratoria amounting up to nine months in the period starting on 30 September to the date of the Royal Decree Act coming into force. The maximum time for the new moratoria shall be nine months.

Leaving aside the above measures, it is also worth noting that the main instrument whereby businesses were financially assisted by the Spanish government (public guarantee facilities), may also benefit from maturity extensions for up to three more years (the general period was fixed at five years) and a deferral period of an additional year (in addition to the year already provided by law. ■



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This guide provides an overview of the response to Covid-19 by each country as it relates to Restructuring and Insolvency provisions implemented by local governments. This guide includes information as it pertains to specific countries on general Restructuring and Insolvency measures, in specific countries as provided by the member and collaborating firms of Andersen Global.

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