



Legal Alert

1. April 2020

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Lex covid – proposals for changes in insolvency law and corporate law

On March 31, 2020, the Government of the Czech Republic passed a bill on certain measures to mitigate the effects of the coronavirus SARS CoV-2 epidemic (lex covid). The proposed amendments concern:

- ▶ **insolvency proceedings**, especially possibilities and obligations to file an insolvency petition and a new institution of extraordinary moratorium;
- ▶ **enforcement proceedings**, in particular the suspension of executions running for more than 3 years;
- ▶ **other legal proceedings**, in particular the possibility of relief from time limits
- ▶ **the functioning of business corporations**, in particular the holding of general meetings and the duration of the functions of the members of the company's bodies.

The Government asked the Parliament of the Czech Republic to discuss the proposal as soon as possible in an abridged procedure in a state of legislative emergency and the discussion in the Chamber of Deputies is expected on April 7, 2020. The proposed effectiveness of the changes is **the day of their promulgation**, with the exception of amendments to the Enforcement Code which should enter into force on the first day of the month following the announcement.

Changes in insolvency law

The insolvency proceedings should undergo several significant changes.

The first concerns the **filing of insolvency petitions**.

In relation to the insolvency petitions filed by a **debtor**, the bill envisages the temporary abolition of the obligation of legal entities and natural persons – entrepreneurs - to file insolvency petitions when they become aware or should become aware of their bankruptcy. This obligation should be **waived for the period from the entry into force of lex covid until six months after the end of the emergency**

measures against the epidemic, with the deadline fixed until December 31, 2020. However, there are two exceptions to the waiver – **the obligation to file an insolvency petition will continue for debtors** who (i) **have been bankrupt before the introduction of emergency measures** against the epidemic, or (ii) whose **bankruptcy was not largely due to the consequences of such measures**.

On the other hand, **creditors** should be able to successfully **file an insolvency petition after 31 August 2020 at the earliest**. Indeed, from the effective date of lex covid until that date, those proposals would not be taken into account. If, however, the creditor had filed such insolvency petition, he would have been informed of the fact that the petition would not be taken into account by a resolution of the insolvency court and would have the possibility to file it again after 31 August 2020.

The bill also newly introduces an institute of so-called **extraordinary moratorium**. The filing of a petition for its declaration will be made possible until August 31, 2020, for a self-employed debtor who was not in bankruptcy before 12 March 2020. It will be possible to file a petition both before the insolvency proceedings and after the petition has been initiated, however, in that case within 15 days from the delivery of the insolvency petition to the debtor.

The following conditions are set as additional conditions to be met by the debtor:

- ▶ the debtor proposes to impose an extraordinary moratorium only **due to the extraordinary measures against the epidemic** and
- ▶ **the debtor did not pay extraordinary profit shares, distributed own resources or provided other extraordinary benefits to its members, partners or shareholders**, directly or indirectly to persons controlled by them or controlling them or members of the company's bodies within a two-month period preceding 12 March 2020, or if debtor provided such benefits, it was returned to the debtor by the time of filing the application.

The debtor confirms the truthfulness of these facts by a solemn declaration and is liable for any damage caused by a false declaration. The members of the debtor's statutory body



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shall be jointly and severally liable for such damage.

An electronic form will be used to submit the proposal, which should be published by the Ministry of Justice after the adoption of the law.

The insolvency court shall decide on the petition by the end of the business day nearest to the day on which it receives such a petition.

If an extraordinary moratorium is declared and published in the insolvency register, the debtor will be obliged to do its utmost to satisfy creditors and to give creditors a common interest over their own interests or those of others.

Due to an extraordinary moratorium, debtors will not lose the possibility to use state aid to mitigate the effects of the epidemic. On the other hand, the right of creditors to be satisfied as well as the possibility of enforcement or execution will be restricted. The above acts will be subject to the restrictions set out since the announcement of an extraordinary moratorium according to Section 109 et seq. Of the Insolvency Act.

In addition, **debtors will be allowed to give preference to paying liabilities intended to keep their business running** over prior due liabilities.

Another advantage for debtors should be **the prohibition of a supplier to terminate contracts for the supply of energy and raw materials, or other goods and services that last at least three months from the time of establishing an extraordinary moratorium due to any delay in payment** or which would lead to a worsening of the debtor's financial circumstances. A supplier is prohibited from withholding performance of such a contract or its continuation, with some exceptions.

Conversely, any period for exercising a creditor's rights against the debtor will not start, or if they have already started will be suspended for the duration of an extraordinary moratorium.

The basic **duration** of the extraordinary moratorium will be a **maximum of three months**, with the possibility of filing an extension for another three months. In order for such a proposal to be successful, it will be necessary to attach both

a list of debtors' commitments and a written declaration by most creditors that they agree to its extension.

The end of an extraordinary moratorium can then come from one of the following facts:

- ▶ filing of the insolvency petition by the debtor;
- ▶ termination by the insolvency court, if the debtor provided false data in the petition to on which it based its application for an extraordinary moratorium, eventually if he pursued a dishonest intention by his proclamation;
- ▶ the insolvency court's decision on its termination on the basis of the debtor's proposal;
- ▶ declaration of a "standard" moratorium;
- ▶ expiry of the extraordinary moratorium.

If the duration of the extraordinary moratorium has been extended, the court may also cancel it at the request of a majority of creditors.

An important change worth noting is also the proposal that the period when debtors are exempted from filing an insolvency petition should not be included in **the time of decisive for filing a counterclaim**. In this way, creditors should not be deprived of the possibility of claiming the ineffectiveness of the debtor's legal acts, which would reduce the possibility of their satisfaction or the favour some of the creditors over others.

Changes in the Enforcement Code

The bill envisages that **bailiffs will be able (not obliged) to suspend enforcement without a request, in which, in the last 3 years, no recovery has been made to cover the costs of enforcement**, or where at the same time no assets punishable by the execution have been identified or seized, which would at least cover the costs of execution.

The beneficiary will generally be able to prevent this suspension by paying an additional deposit for the costs of the enforcement at the bailiff's request. However, for many types of receivables (e.g. alimony or health damage), further information from the creditor will be sufficient to continue the enforcement.



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In our opinion, this measure is not directly related to the current situation regarding coronavirus and has been considered for a some time.

Waiver of missed time limits in court proceedings

The bill envisages accepting the possibility of **requesting the waiver of a missed deadline** or the return of a deadline for an excusable reason consisting of an emergency measure in an epidemic that prevented or substantially hindered a party or its representative from taking action in:

- ▶ civil proceedings,
- ▶ enforcement proceedings,
- ▶ in administrative justice,
- ▶ proceedings before the Constitutional Court

(in all these cases **within 15 days** of the cessation of the obstacle),

- ▶ in insolvency proceedings (**within 7 days** from the cessation of the obstacle),
- ▶ in criminal proceedings (**within 3 days** of the cessation of the obstacle) and related proceedings.

Crisis measures concerning the functioning of commercial corporations

For the duration of extraordinary measures, the bill provides for the possibility for business corporation bodies (e.g. general meeting or collective statutory body) **to make decisions outside meetings in writing or using technical means (e.g. video conferencing)** even if this is not allowed by the statutes or articles of association. However, this does not affect situations where the law requires the adoption of a certain decision in the form of a notarial deed.

If the term of office of a member of the elected body of a legal entity expires within 1 month of the day following the end of the emergency epidemic, **the term of office shall be extended for 3 months from the end of the emergency measures adopted due to the epidemic**. If a member of an elected body disagrees with the extension, he / she shall **deliver its objection before the expiry of his / her term of office** to the legal entity.

If the term of office of a member of an elected body has

expired **in the period between the adoption of an emergency measure and the date of entry into force of the Act, its function shall be restored** according to the bill **if he / she agrees** and if no other member of the body has been elected or appointed in the meantime. The office of a member of the body shall be restored upon delivery of the consent to the restoration of office to a business corporation and shall expire 3 months after the end of the emergency measure.

If the statutory **deadline for discussing the final accounts** of a business corporation should expire less than 3 months after the end of the emergency measure, it shall **expire 3 months after the end of the emergency measure, but no later than December 31, 2020**.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. At the same time, the information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences. Furthermore, it should be noted that there are various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions. It cannot therefore be ruled out that in the future an interpretation other than the one we give us will prevail.

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