



SK Legal Alert

December 2020

Weinhold Legal

NEW LEGAL REGULATION ON TEMPORARY PROTECTION OF ENTREPRENEURS AND OTHER SUPPORT

In the Legal Alert from April 2020, we introduced an institute of Temporary Protection, the purpose of which is to mitigate the negative impact on entrepreneurs of the measures of the Slovak Government adopted in the fight against COVID-19. The currently applicable legal regulation on temporary protection is only of a temporary character (as it can be provided only till the end of this year) and does not provide sufficient protection for entrepreneurs facing financial difficulties across the board. Hence on December 8, 2020 the Slovak Parliament passed a Government Bill on temporary protection of entrepreneurs in financial difficulties and on the amendment of certain other acts ("act"). The main objective of the Act is provision of sufficient timeframe for entrepreneurs facing financial difficulties in order to continue their business activities under temporary protection. In addition, the act contains an amendment of the legal regulation of small bankruptcies in Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on amendment of certain other acts as amended, the aim of which is the improvement of key parameters concerning the bankruptcy proceedings.

TEMPORARY PROTECTION

According to the new legislation, temporary protection can be

applied for by an entrepreneur who runs business and has a registered office or a place of business in the territory of the Slovak Republic, in particular if:

- ▶ a majority (more than half) of creditors (counted according to the number of receivables based on the financial statement the applicant is obliged to elaborate within no more than 60 days before submitting an application) agrees with the temporary protection (their written consent not older than 30 days, has to be attached to the application);
- ▶ the entrepreneur is neither affected by the initiation of the bankruptcy proceeding, declaration of bankruptcy, nor is an enforcement proceeding led towards him;
- ▶ the entrepreneur is not aware of any reasons for its cancellation, if being a legal person;
- ▶ during the last 12 months before submitting the application the entrepreneur did not pay out profits nor any other own funds, or he/she has eliminated consequences of such conduct;
- ▶ during the last 12 months before submitting the application the entrepreneur did not adopt any measures threatening its financial stability or removed consequences thereof;
- ▶ the entrepreneur maintained proper accounts and stores the financial statements in the collection of documents in accordance with the Commercial Code.

Banks, insurance companies, health insurance companies, securities traders, etc. remain ineligible to apply for the temporary protection. The temporary protection will continue to be provided to entrepreneurs based on a decision of a court¹

¹ The jurisdiction for provision of temporary protection is as follows: District Court in Trnava for the district of the Regional Court in Trnava and Bratislava, the District Court in Žilina for the district of the Re-

gional Court in Žilina and Trenčín, the District Court in Banská Bystrica for the district of the Regional Court in Banská Bystrica and Nitra and the District Court in Prešov for district of the Regional Court



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competent according to the registered office of the legal entity/ place of business of the natural person at the time of application submission ("**Court**"). Pursuant to the current legal regulation natural persons may submit the application in person or by post. According to the new regulation, both natural and legal persons are obliged to submit the application electronically with authorized electronic signature to the electronic mailbox of the competent court, otherwise the application will not be considered.

As long as the application meets the statutory requirements, the Court will grant temporary protection to the entrepreneur and publish the relevant information in the Commercial Bulletin without delay pursuant to both the current and new regulation. Temporary protection shall be deemed to have been granted on the day following the day of publication of the relevant information in the Commercial Bulletin. If the Court rejects the application (due to a failure to meet the requirements/submission to an incompetent court), it is possible to file objections within 15 days from its delivery on a prescribed electronic form to the electronic mailbox of the competent court.

The provision of temporary protection to an entrepreneur will have in particular the following effects for the period of its duration:

- ▶ **Bankruptcy:** (i) a bankruptcy proceeding cannot be initiated against an entrepreneur under the temporary protection, (ii) neither the entrepreneur (nor the persons obliged to file the petition on declaration of bankruptcy on his behalf) is obliged to file a petition on declaration of bankruptcy on his/her property;

- ▶ It will not be possible to start **enforcement proceedings or the exercise of a pledge** to an enterprise, objects, rights or other proprietary values belonging to the enterprise;
- ▶ **Setting off a claim** which arose against the entrepreneur before the provision of temporary protection, if it is a claim belonging to a person related to the entrepreneur under the Bankruptcy and Restructuring Act, will not be possible against a claim that arose to the entrepreneur after the granting of temporary protection;
- ▶ **Notice/withdrawal from contract/denial of performance due to the entrepreneur's delay, which occurred before the provision of temporary protection** will not be possible for the other party to a contract safe for some exceptions (e.g., if it directly jeopardizes the operation of the other party's business or if the fulfilment to which the other party is obliged shall not be used in relation to the common business activity);
- ▶ The entrepreneur and its statutory body will be obliged to make a sincere **effort to satisfy its creditors** and to give priority to the common interest of the creditors over their own interests (they must not pay out profits, they must refrain from disposing of their assets etc.) effective from the submission of the application;
- ▶ The entrepreneur is **entitled to settle obligations directly related to the maintenance of operation of its enterprise**, which arose after the granting of temporary protection, **in preference** to the obligations previously due.



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Duration and extension of temporary protection:

- ▶ The temporary protection will last for 3 months
- ▶ It will be possible to extend the temporary protection, if the entrepreneur applies for an extension at the court not earlier than 30 days and not later than 10 days before the expiration of the temporary protection.
- ▶ Written consent of 2/3 majority of unaffiliated creditors² has to be attached to the application for the extension of temporary protection,
- ▶ ½ of unaffiliated creditors may apply for termination of the temporary protection,
- ▶ If an entrepreneur has been granted temporary protection according to the applicable legislation which lasts till December 31, 2020, the temporary protection shall be extended till January 31, 2021.

The Act also defines a new **institute of Loan Financing**. The secured creditors of the entrepreneur under the temporary protection will have a priority right to provide loan financing.

SMALL BANKRUPTCY

The Act also regulates an institute of small bankruptcy intended for small businesses and entrepreneurs, whose intention to carry out business did not succeed. Small bankruptcy is a winding-up proceeding with no interest to continue in running the business. It represents a reduction of rules for conducting a bankruptcy which should allow the entrepreneurs and small businesses to leave the market relatively quickly and provide them with considerable advantages in the form of effectiveness, economy and fastness.

According to the applicable legal regulation, the recognition of small bankruptcy is subjected to fulfilment of at least 2 of 3 conditions: the assets subjected to the bankruptcy cannot exceed EUR 165,000, the turnover of the bankrupt cannot exceed EUR 333,000 and the bankrupt probably does not have more than 50 creditors. The new legislation introduces significant changes to these conditions:

- ▶ The obligations of the bankrupt debtor cannot exceed a value of EUR 1,000,000 according to the last 5 financial statements,
- ▶ The assets of the debtor cannot exceed a value of EUR 1,000,000,
- ▶ The initiation of a bankruptcy proceeding or the declaration of bankruptcy cannot have an effect on the debtor,
- ▶ A debtor has to be a legal person with a statutory body,
- ▶ An advance payment to cover the costs of the bankruptcy will have to be deposited with the court.

If the stated conditions are met, the court shall declare a small bankruptcy on the debtor's asset within 15 days from delivery of the application.

Apart from the change in the conditions for small bankruptcy declaration, the new regulation of small bankruptcy:

- ▶ Defines bankruptcy estate as assets that belonged to the bankrupt at the time of declaration of the small bankruptcy and the assets the bankrupt obtained during the small bankruptcy. Assets of the bankrupt to which collaterals pertain are subject to the small bankruptcy only in the extent stipulated by the Act on Bankruptcy and Restructuring. Assets of third parties to which collaterals

² Unaffiliated creditor is a person, that has not been a debtor's related party during the whole period of time from the origin of the receivable. Related parties, which can be natural persons (e.g. close persons)

as well as legal persons (e.g. statutory body) are defined in Section 9 of the Act no. 7/2005 Coll. on Bankruptcy and Restructuring and on amendment of certain acts.



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pertain , however, not subjected to the small bankruptcy.

- ▶ Unlike the bankruptcy regulation; the right to oppose a legal act of the debtor, on which assets small bankruptcy was declared, will belong only to the creditor, even in case the bankruptcy trustee would have this right in standard bankruptcy.

Given to its winding-up character, one of the effects of the declaration of bankruptcy is the termination of authorization to carry out business activity by the operation of law.

If the debtor was deficient in assets before the declaration of the small bankruptcy, and creditors' claims exceeding EUR 50,000 remained unsatisfied after the termination of small bankruptcy, the court will impose a penalty ranging from EUR 1,000 to EUR 10,000 upon the initiative of a creditor, trustee or ex officio. However, the aforesaid does not exclude the liability of statutory body in the case of breach of its obligation to file the petition on declaration of bankruptcy.

The debtor's application for initiation of the bankruptcy proceeding shall be submitted on a form prepared and published by the Ministry of Justice of Slovak Republic on its web site.

The act shall enter into force on January 1, 2021.

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. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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