NAGY & TRÓCSÁNYI

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

HUNGARY

Viktor Jeger
Partner
jeger.viktor@nt.hu
+361 487 8761

Zóra Lehoczki
Associate
lehoczki.zora@nt.hu
+361 487 8711

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The general provisions concerning the restructuring and insolvency of an economic operator are regulated in:

- *2015/848/EU Regulation* on insolvency proceedings (recast);
- *Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings* (Bankruptcy Act);
- *Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings* (Companies Act);
- *Government Decree no. 106/1995 (IX.8) on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings*;
- *Act LXIV of 2021 on Restructuring and on the Amendment of Certain Acts for the Purpose of Approximation* (Restructuring Act);
- *Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies*;
- *Act XCIX of 2021 on the transitional rules connected to the state of emergency*;
- *Act CXXX of 2016 on the Code of Civil Procedure* (CPC).

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The Bankruptcy Act laying down the fundamental provisions applicable to liquidation and bankruptcy proceedings entered into force on January 1, 1992, thus, it has been in force for more than 30 years.

While the principles of the Bankruptcy Act remained much the same, the legal regime governing restructuring and insolvency has seen multiple revisions over the years. The Bankruptcy Act has been amended numerous times since its inception and there were other legislative changes in the area as well, e.g., specific transitional provisions have been introduced due to the COVID-19 pandemic and also the Restructuring Act, extending the arsenal of potential measures for restoring the debtor's financial stability, entered into force on July 1, 2022.

It must be noted that codification works have been carried out for a new Bankruptcy Act since 2018, but its adoption is not expected in the near future.

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1.3. Are there any special regimes applying to specific sectors?

In addition to the general laws listed in Section 1.1., other pieces of legislation provide for special rules applicable to the restructuring and insolvency matters of specific sectors and entities, see inter alia certain provisions of the following laws:

- *Act LXXXVIII of 2014 on Insurance Business Activity*;
- *Act XXXVII of 2014 on the Further Development of the Institutional System Promoting the Security of Certain Actors of the Financial Intermediary System*;
- *Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises*;
- *Act CXXXIX of 2013 on the National Bank of Hungary*.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

Certain changes have been introduced in the Hungarian restructuring and insolvency regulation as a response to the COVID-19 pandemic. Some of these amendments have already ceased to be effective, while others shall be applied until December 31, 2022. Due to the numerous amendments and legislative changes during the course of the last two and a half years, only some of the measures introduced as a response to the global pandemic are described below.

As an example of the measures that are no longer effective, legal persons and independent contractors qualifying as undertakings experiencing financial difficulties might file an application for a stay of payment with regard to a payment obligation arising from a business-to-business loan agreement.

Other measures remain in force until December 31, 2022, under the current regulation. *Inter alia*, certain provisions of the Bankruptcy Act shall be applied differently, e.g., the application for liquidation may only be filed on certain grounds if the claimed amount exceeds HUF 400,000 and the grace period of 75 days has lapsed.

In the case of liquidation proceedings of strategic importance, the part of the debtor's assets suitable for continuation of the economic activity during the liquidation procedure and suitable for sale as an independently functioning unit shall be operated independently by the liquidator, the provisions of which are detailed in *Act XCIX of 2021 on the transitional rules related to the state of emergency*.

Moreover, in view of the COVID-19 pandemic, a special reorganization procedure, that may be initiated by a business

organization threatened by insolvency, has been introduced as a new type of procedure. The objective of this reorganization procedure is to restore the solvency of the undertaking concerned, therefore, a reorganization plan shall be prepared and accepted by the creditors and the court. There are a number of similarities between the reorganization procedure and the bankruptcy procedure, however, the deadlines applicable to the procedural steps of the reorganization procedure are shorter than the ones applicable in bankruptcy procedures. An application for the reorganization may be filed only until December 31, 2022.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

According to the publicly available information, a few minor changes are expected in the provisions of the Bankruptcy Act as of October 1, 2022, and February 1, 2023. The latter changes are triggered by the new *Land Register Act* entering into force.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

No, Hungary has not yet adopted the *UNCITRAL Model Law on Enterprise Group Insolvency* and no public information is available on the consideration of its potential adoption in the near future.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

There is no specific insolvency test prescribed by the respective laws, however, the liability of the former executives of the economic operator may be established upon the action of any creditor or the liquidator (in the debtor's name) alleging that the former executives failed to exercise their management functions in the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying the potential danger of insolvency. The liability may only be established if, as a direct consequence of the actions or negligence of the former executives, the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons. The courts have interpreted this liability clause and concluded that an executive, disregarding the interests of creditors, shall bear liability in two instances: **(1)** if the debtor's assets decreased as a result of his actions, and/or **(2)** if his actions frustrated the satisfaction of creditors' claims in any other manner. Such other manner can be, for example, if he undertook obligations burdening the debtor, he accumulated debts, etc.

Therefore, in order to be exempt from personal liability, managers of the economic operators shall take into account the creditors' interests as well once a situation carrying the potential danger of insolvency arises.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

If an economic operator becomes insolvent, it may be subject to a liquidation procedure. Special provisions apply to simplified liquidation proceedings and liquidation proceedings having strategic importance.

Simplified liquidation proceedings may be applied if the debtor's available assets are insufficient even to cover the foreseeable costs of liquidation, or the liquidation proceedings are technically non-executable according to the general provisions due to discrepancies and deficiencies in the records and/or in the books.

As for liquidation proceedings having strategic importance, the Government may decide – by means of a decree – to apply special liquidation provisions with respect to the economic operators to whom the following criteria apply:

a) settlement of the debts of such operators or composition with creditors is in the interest of the national economy or is of particular common interest, or

b) the winding up of such operators without succession – where the lack of funding and insolvency cannot presumably be resolved – in a simplified, transparent, and standardized procedure is prioritized due to economic policy.

2.3. Who has the right to initiate insolvency proceedings?

Liquidation proceedings may be initiated:

- *ex officio*;
- upon the request of the debtor, creditor, or receiver;
- upon the notification of the court of firms;
- upon the notification of the criminal court.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

The management continues to operate during the course of liquidation proceedings as well. The Bankruptcy Act prescribes

certain obligations to the managers, inter alia to prepare, with the day preceding the opening of liquidation proceedings, a closing inventory, annual accounts, or simplified annual accounts, as well as a closing balance sheet and a tax return. These shall be presented to the liquidator and the tax authority. Managers shall inform without delay the employees, cooperative members, as well as the trade unions, and the workers' council about the opening of liquidation proceedings.

In addition, the debtor is placed under supervision, since the court shall appoint a liquidator company upon the commencement of the liquidation proceedings. The liquidator company is entitled to represent the debtor via a receiver who is a natural person tasked by the liquidator company to carry out the liquidation of the debtor.

The liquidator shall analyze the financial standing of the economic operator and the claims against it. The liquidator enjoys extensive privileges, including the powers to terminate, with immediate effect, the contracts concluded by the debtor as well as to collect the claims of the debtor when due, enforce its claims and sell its assets.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Upon the debtor's request, the court may allow a maximum period of 45 days for the debtor to settle its debt, except if the liquidation proceedings had been opened directly after bankruptcy proceedings. Therefore, there is no mandatory stay of payment, i.e., the court has discretion in allowing a stay of payment to the debtor.

Liquidation proceedings may be suspended, provided that the suspension is requested jointly by the debtor and the creditors filing for the liquidation proceedings. The request shall arrive at the court before the court orders the liquidation of the economic operator.

Both the additional 45 days granted for the debtor and the suspension of the proceedings shall apply to every creditor irrespective of their nationality.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

At the time of the opening of the liquidation proceedings, all debts of the economic operator shall be deemed due. The liquidator has the power to terminate, with immediate effect, the contracts concluded by the debtor. However, there are certain exceptions, e.g., the liquidator may not terminate with immediate effect the tenancy agreements of natural persons, employment contracts, etc.

The other party of the contract may enforce its claim arising from the termination, if any, within the framework of the liquidation procedure by notifying the liquidator within 40 days from the date when the termination was communicated.

The debtor's contracts concluded within a certain time period before the opening of the liquidation proceedings may be challenged by the creditors or the liquidator (acting in the name of the debtor). *Inter alia* contracts may be challenged if they have been intended to conceal the debtor's assets or to defraud any of the creditors, and the other party had or should have had knowledge of such intent or if they have been intended to give preference and privileges to any of the creditors, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that did not have any.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The main steps of liquidation proceedings can be summarized as follows.

Once the liquidation of the debtor is initiated, the court shall assess whether the debtor shall be deemed insolvent. If the court establishes the debtor's insolvency, the court orders the liquidation of the debtor. Once the resolution ordering the debtor's liquidation becomes final and binding, the court appoints a liquidator as well as orders the publication of the resolution on liquidation and on the appointment of the liquidator in the Company Gazette (*Cegkozlony*). The court shall also inform certain authorities and organizations about the ordering of the debtor's liquidation.

After the publication of the debtor's liquidation in the Company Gazette, the creditors have 40 days to notify their claims to the liquidator. The liquidator shall assess the financial status of the debtor as well as register the creditors' claims notified to him within the deadlines specified by the Bankruptcy Act. The liquidator has the right *inter alia* to terminate the debtor's contracts and to sell the assets of the debtor for the highest price possible on the market.

The creditors and the debtor shall have the right to conduct negotiations for the purpose of a settlement and to conclude a settlement agreement as a result of the negotiations.

Provided that the amount of money received during the liquidation procedure is sufficient to cover the claims of creditors, the liquidator shall prepare an interim liquidation account and he shall send it to the creditors and the court. The court

shall adopt a decision on the acceptance or the refusal of the interim account. If the court accepts the interim account, the liquidator shall satisfy the claims in accordance with it.

Upon conclusion of the liquidation proceedings the liquidator shall prepare the final liquidation balance sheet, the statement of revenues and expenditures, the final tax returns, the closing report, and a proposal for the distribution of assets, and shall send all these to the court and fulfill other obligations, e.g., arrange the placement of the economic operator's documents.

The court shall deliver the liquidation balance sheet, the closing report, and the proposal for the distribution of assets to the creditors. The creditors are entitled to raise objections to these documents. The court adjudicates the objections by holding a hearing.

Finally, based on the final liquidation balance sheet and the proposal for the distribution of assets, the court shall rule on the bearing of costs, the liquidator's fee, the satisfaction of the claims of creditors, and the closing of bank accounts. Furthermore, it shall oblige the liquidator to perform any additional measures that are still necessary for the closure of the liquidation proceedings. Simultaneously, the court shall adopt a decision on the conclusion of the liquidation and the dissolution of the debtor without succession as well as on the dissolution of any subsidiary of the debtor.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

The Bankruptcy Act determines the debt classes and the order of their satisfaction as listed below:

a) liquidation costs;

b) claims secured by a pledge up to the amount of the proceeds from the sale of the pledged property;

c) alimony, life annuity claims as well as claims for personal injury benefits and income supplement of miners;

d) with the exception of claims arising from bonds, other claims of private individuals not originating from economic activities (in particular claims resulting from lack of conformity of performance, compensation for damages or restitution, including amounts due to warranty as expected in the usual course of trade), claims of small and micro companies and small-scale agricultural producers, and the receivables of the Common Capital Fund of Cooperative Credit Institutions (*Szovetkezeti Hitelintezetek Tokefedezeti Kozos Alapja*) originating from the Common Capital Fund of Cooperative Credit Institutions receiving the rights and obligations of covered depositors;

e) debts owed to social security funds, taxes and outstanding public dues enforced as taxes, claims falling under the *Act on General Public Administration Procedures*, creditor's claims arising from criminal actions, and repayable State aid and financial aid from the European Union and other international resources by virtue of international agreements, as well as public utility charges and condominium maintenance fees, and the further claims of the Common Capital Fund of Cooperative Credit Institutions;

f) other claims;

g) irrespective of the time and grounds of occurrence, default interests and late charges, as well as surcharges and penalties and similar debts;

h) claims – with certain exceptions - held by:

ha) any member (shareholder) of such an economic operator with majority control,

hb) any executive officer of the economic operator,

hc) any executive employee,

hd) the close relatives and domestic partners of the persons mentioned above,

he) an economic operator under the debtor's majority control,

hf) a body (person) benefiting from the debtor's gratuitous contract.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Although the legal regime applicable to insolvency proceedings lays down certain deadlines as detailed below, the length of the proceedings depends on many factors, including the caseload of the court, the statements, and motions of the parties, as well as the remedies exhausted by them against certain decisions of the court and the actions of the liquidator.

The court shall adopt its resolution on the liquidation of the debtor within 60 days after the receipt of the application for the opening of liquidation proceedings. Once the resolution becomes final and binding, the court shall arrange for its publication in the Company Gazette without delay.

The creditors have 40 days to notify their claims to the liquidator, however, the liquidator shall register those claims too, which have been notified within 180 days after the publication of the resolution on liquidation, but these delayed claims may only be satisfied under special circumstances.

Specific deadlines apply to the actions of the liquidator as well, e.g., in the case of public sale of the debtor's assets, the public tender notice shall be published at least 15 days prior to the

public sale.

Once the final liquidation balance sheet, the statement of revenues and expenditures, the final tax returns, the closing report, and a proposal for distribution of assets are prepared by the liquidator and are sent to the court, the court shall send the liquidation balance sheet, the closing report and the proposal for the distribution of assets to the creditors within 30 days of receipt and the creditors shall have 30 days to raise objections to the beforementioned documents.

The court concludes the liquidation procedure by adopting a resolution on its conclusion, the satisfaction of the creditors, and the dissolution of the debtor without succession.

Due to the fact that liquidation proceedings include many steps and remedies, it may take years before they come to an end.

2.8. Are there any liabilities that survive the insolvency proceedings?

When the liquidation proceedings are concluded, the economic operator ceases to exist without a successor, thus no liability survives.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

The two main types of restructuring proceedings in Hungary are the bankruptcy proceedings governed by the Bankruptcy Act and the restructuring proceedings governed by the provisions of the Restructuring Act.

Bankruptcy shall mean the proceedings where the debtor is granted a stay of payment with a view to entering into a composition arrangement with creditors.

Restructuring shall mean measures aimed at restoring a debtor's financial stability that include changing the composition, conditions, or structure of the debtor's assets and liabilities or any other part of the debtor's capital structure. Restructuring can be carried out by selling the debtor's assets or parts of the business, selling shares held in the debtor, and selling the business as a going concern, as well as by making any operational changes necessary, or by a combination of these measures.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

Bankruptcy proceedings:

Executive officers of the debtor may submit an application to the court of law for opening bankruptcy proceedings. The debtor shall provide for its legal representation when submitting the application.

The debtor may not file an application for bankruptcy if

a) a procedure is pending for its restructuring;

b) the time period for implementing a restructuring plan having the necessary approvals has not elapsed yet;

c) before filing an application for bankruptcy, a restructuring procedure was in progress where the debtor was given a moratorium and one year has not elapsed from the date when the restructuring failed;

d) bankruptcy proceedings are pending against it; or

e) an application for its liquidation has been submitted, and a decision has already been adopted in the first instance on the debtor's liquidation.

The Bankruptcy Act lists the mandatory content and annexes of the application for opening bankruptcy proceedings as well as the subjects on which the debtor shall make statements.

Within 90 days of the opening of bankruptcy proceedings, the debtor shall call the creditors for a meeting to negotiate a composition, and shall invite the administrator (see Section 3.4.1.) and all known creditors directly by delivering them the documents specified in the Bankruptcy Act.

Composition means an agreement between the debtor and the creditors laying down the conditions for debt settlement, in particular, any allowances and/or payment facilities relating to the debt, remission or assumption of certain claims, receiving shares in the debtor in exchange for a debt, guarantees for the satisfaction of claims and other similar securities, approval of the debtor's program for financial recovery and for cutting losses, etc. A composition may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights according to certain provisions of the Bankruptcy Act, in respect of secured and unsecured claims alike. The composition agreement shall be made in writing.

The composition shall be filed with the court that shall deliver its decision on the approval of the composition arrangements within 15 working days of its receipt.

Restructuring proceedings:

The debtor may initiate restructuring when there is a likelihood of insolvency. The purpose of restructuring is for the debtor to adopt and implement a restructuring plan with certain specific creditors or all creditors, capable of preventing the insolvency of the debtor and ensuring the viability of the business.

Restructuring cannot be initiated if – *inter alia* –

a) a restructuring procedure or a reorganization procedure as defined by the law is in progress against the debtor in Hungary;

b) the debtor is undergoing dissolution proceedings;

c) in respect of the debtor a final decision to open

ca) bankruptcy proceedings or liquidation proceedings under the Bankruptcy Act was published,

cb) involuntary de-registration proceedings under *Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings* was published,

cc) compulsory winding-up proceedings, simplified de-registration proceedings under *Act CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations* was published,

cd) main proceedings or territorial proceedings listed in Annex "A" of *Regulation (EU) 2015/848* of the European Parliament and of the Council in a Member State was published.

Restructuring and its date shall be decided by the debtor's decision-making body. The Restructuring Acts lists the mandatory content and annexes of the application for opening restructuring proceedings.

During the restructuring procedure, the debtor shall register and classify the known claims of affected creditors. The restructuring plan shall be made in writing and shall contain everything prescribed by the Restructuring Act as to the content of the restructuring plan. The debtor shall discuss the restructuring plan with the affected creditors and, after the conclusion of the negotiations, submit the restructuring plan for adoption by the affected creditors with voting rights. A draft of a restructuring plan may be submitted for adoption, which has been approved by the debtor in advance, specifically by the debtor's decision-making body, or, if the debtor is a single-member legal person, founder, or sole member. The debtor and the affected creditors with voting rights shall participate in the adoption of the restructuring plan. The restructuring plan shall be considered adopted if supported in each class of creditors by the majority of all affected creditors with recognized or undisputed claims of that class of creditors.

The debtor shall submit the adopted restructuring plan to the court for confirmation. After the receipt of the request, the court shall call upon dissenting creditors, and in certain cases other persons and the equity holders to submit their counter-statement. After the receipt of the counter-statements (if any) and following the specific procedural steps set forth by the Restructuring Act, the court shall decide on the confirmation or the rejection of the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement.

3.3. Who has the right to initiate formal restructuring proceedings?

Both bankruptcy proceedings and restructuring proceedings may be initiated by the debtor itself.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

In the case of bankruptcy proceedings, the management continues to operate the business, however, an administrator is appointed by the court after the opening of the bankruptcy procedure. The directors and owners of a debtor economic operator may only exercise their respective rights if it does not violate the powers vested in the administrator.

The administrator shall execute its functions so as to monitor the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with the creditors. Accordingly, the administrator shall *inter alia*:

a) review the debtor's financial standing, which may entail inspection of the debtor's books, assets and liabilities, contracts, and bank accounts, requesting information from the directors and owners of the economic operator, supervisory board members, and the auditor,

b) inform the creditors about his findings;

c) carry out – with the assistance of the debtor - the tasks relating to the registration and categorization of claims;

d) approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings;

e) advise the debtor to enforce its claims and shall oversee the way it is executed, and in the event of the debtor's failure to comply he shall notify its owners, supervisory board, and auditor;

f) contest, at its discretion, any contract or legal statement the debtor made in the absence of his approval or endorsement and shall initiate or open proceedings for the recovery of any payments effected unlawfully or arising out of or in connection with any unlawful claim;

g) categorize the claims registered and inform the creditors concerning the registration and categorization of their claims;

h) exercise joint power of representation and joint right of disposition over the bank accounts in certain cases specified by the Bankruptcy Act;

i) move to request an extension of stay of payment.

In the case of restructuring proceedings, the management continues to operate the business. Following the decision on the initiation of a restructuring process, the debtor's executive officer shall be liable to take all necessary measures within his scope of responsibility in the interests of the creditors and for the relevant resolutions of the debtor's decision-making body, in particular for avoiding insolvency, and shall, furthermore, refrain from unduly favoring certain creditors, and from undertaking any business risk that may be considered unreasonable in light of the debtor's financial position.

There are certain cases, where the court appoints a practitioner in the field of restructuring or approves its participation upon request. The responsibilities of the practitioner in the field of restructuring shall include:

a) participating in the preparation of a restructuring plan;

b) providing assistance to the debtor and the creditors affected in the arrangement, negotiation, and adoption of the restructuring plan;

c) supervising the debtor's actions related to the negotiation of the restructuring plan and its adoption by the creditors affected;

d) during the negotiations on the restructuring plan, supervising the debtor's management.

The responsibilities of the practitioner in the field of restructuring shall cover the supervision of the debtor's financial affairs if the application for approval of the practitioner in the field of restructuring so specifies, or this is requested by the creditors. When the debtor's financial affairs are supervised by the practitioner in the field of restructuring:

a) the practitioner in the field of restructuring

aa) shall be given access to the debtor's documents, accounting records, and books and shall have the right to inspect the debtor's bank accounts, securities portfolio and goods stock, including his contracts,

ab) may request information from executive officers, members of the supervisory board, and employees of the debtor,

ac) shall monitor the debtor's foreseeable and actual income,

ad) shall request the executive officer to enforce the debtor's claims and shall monitor the implementation thereof,

ae) shall inform the creditors affected of the irregularities or deficiencies he has detected and which have not been remedied by the debtor, and of the measures he has taken, and

af) shall check the conditions of interim or new financing arrangements;

b) the debtor shall be allowed to undertake a new contractual (permanent) legal obligation, other than interim or new financing arrangements, only if the practitioner in the field of restructuring has consented in writing in advance; furthermore

c) the debtor shall be allowed to enter into a contract considered to be in excess of the scope of normal operations regarding its assets only upon the prior written consent of the practitioner in the field of restructuring, and in certain cases the holder of security and the affected creditor.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

In case of bankruptcy proceedings, the debtor is granted a stay of payment (moratorium) to preserve the assets under bankruptcy protection, during which the debtor, the administrator, the financial institutions carrying the accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment.

The stay of payment shall not apply:

a) to claims for wages and other similar benefits existing at the time of submission of the application for the opening of bankruptcy proceedings and those arising thereafter, as well as the related taxes and other similar charges (including membership payments made to private pension funds), severance pay, maintenance payments, life-annuities, compensation contributions, restitution and miners' income supplement benefits, benefits and allowances of vocational students, furthermore, fees charged for electricity and natural gas (including network access fees) and all other fees charged for utilities due on the basis of certain compulsory services as well as certain costs and expenses of the administrator, which are not covered by the registration fees;

b) to any value added tax, excise tax, and products charges charged to the debtor after the opening of bankruptcy proceedings;

c) to refunds of sums transferred to debtor's account by mistake; and

d) to the payment obligations assumed with a view to carrying on the economic activity, as endorsed by the administrator.

Under the duration of the stay of payment:

a) setoff may not be applied against the debtor, however, setoff may be adjudicated in judicial proceedings initiated by the debtor and still in progress, if submitted before the opening of bankruptcy proceedings;

b) in general, payment orders may not be satisfied from the

debtor's accounts, and payment orders may not be submitted against the debtor;

c) the enforcement of money claims against the debtor – with certain exceptions – shall be suspended, and the enforcement of such claims may not be ordered;

d) in general, no satisfaction may be sought on the basis of a lien on the debtor's asset, moreover, the debtor may not be called to honor any security pledged before the opening of bankruptcy proceedings;

e) with the exception of certain claims, the debtor cannot affect any payment for claims existing at the time of the opening of bankruptcy proceedings, and the creditor – with certain exceptions - may not demand such payments;

f) the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator;

g) payments may be made from the debtor's assets subject to authorization by the administrator, including for the liabilities assumed with a view to continuing the debtor's economic activity; and

h) a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of paying its debts incurred before the term of the temporary stay of payment.

In the case of restructuring proceedings, the court may order, at the debtor's request, a stay of individual enforcement actions (moratorium) in order to support the negotiations of a restructuring plan. The moratorium may be general or restricted. The moratorium may be extended and a new moratorium may also be ordered.

Unless otherwise provided by the Restructuring Act, the moratorium shall cover all claims that may be enforced against the debtor by the affected creditors, falling within the scope of general or restricted moratorium, including claims that fall due or that come into existence during the period of the moratorium.

During the moratorium, the creditor to whom the moratorium applies:

a) may not initiate enforcement against the debtor, and ongoing enforcement initiated after the starting date of the restructuring process shall be suspended;

b) may not initiate liquidation proceedings against the debtor;

c) may not exercise setoff against the debtor, with the exception specified in the Restructuring Act; and

d) shall refrain from making any claims against the debtor that is in breach of the provisions laid down in the Restructuring Act.

For the duration of the moratorium, in the legal relationship between the creditor and the debtor to which the moratorium applies:

a) the creditor shall not be entitled to contractual penalty, interest on late payment, default interest, lump-sum collection charge in connection with claims that became due before the moratorium, however, nominal interest shall apply for such periods as well;

b) the lien holder, the holder of the collateralized option to buy, or the beneficiary of the assignment of a right or claim by way of a guarantee may not exercise his rights related to enforcement, and the creditor may not take action against the obligor provided for in the Restructuring Act;

c) payment orders may not be satisfied from the debtor's accounts, and payment orders may not be submitted against the debtor.

As a general rule, during the moratorium, the creditors to whom the moratorium applies may not suspend the performance of essential contracts due to the non-payment of debts. Furthermore, essential contracts may not be terminated and may not be amended in any way or form to the debtor's disadvantage.

The general moratorium shall apply to every creditor, while the restricted moratorium shall only apply to the creditors specified by the debtor.

3.4.3. How do restructuring proceedings affect existing contracts?

With respect to bankruptcy proceedings, during the stay of the payment period, a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of payment its debts incurred before the term of the temporary stay of payment. The administrator shall approve and endorse any financial commitment of the debtor after the opening of bankruptcy proceedings, therefore, he shall have the right to contest, at its discretion, any contract or legal statement the debtor made in the absence of his approval or endorsement. In addition, the Bankruptcy Act sets forth that the management of the debtor shall be restricted – following the temporary administrator taking office – from entering into any contract considered to be in excess of the scope of normal operations where the debtor's assets are concerned without the prior consent and endorsement of the temporary administrator, or from entering into any other commitment, including where the debtor is compelled to perform under an existing contract.

In the case of restructuring proceedings, if the responsibilities of the practitioner in the field of restructuring cover the supervision of the debtor's financial affairs, he/she has the

power to inspect the debtor's contracts. In addition, if the practitioner in the field of restructuring has supervision, the debtor shall be allowed to enter into a contract considered to be in excess of the scope of normal use of assets only upon the prior written consent of the practitioner in the field of restructuring.

Furthermore, as a general rule, during the moratorium, the creditors to whom the moratorium applies may not suspend the performance of essential contracts due to the non-payment of debts. In addition, essential contracts may not be terminated and may not be amended in any way or form to the debtor's disadvantage. (The creditors affected by the moratorium may exercise their contractual rights if the debtor fails to fulfil its contractual obligations apart from its payment obligation.)

Creditors – regardless of whether their claim is covered by the moratorium – may not withhold or suspend the performance of contracts with reference to a clause contained in the contract concluded with the debtor, and, additionally, contracts may not be terminated or amended in any way or form to the debtor's disadvantage on the grounds that

a) the debtor has decided to initiate restructuring;

b) the debtor has initiated the restructuring procedure;

c) in the restructuring procedure, the debtor applied for a moratorium; or

d) the court ordered a moratorium in the restructuring procedure.

During the moratorium, the scope of obligations a debtor may undertake based on a new contractual (long-term) legal relationship is limited.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

Please see Sections 2.4.3. and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

No. Neither the provisions applicable to bankruptcy proceedings, nor the ones applicable to restructuring proceedings set forth the release of third-party liabilities.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

In the case of bankruptcy proceedings, the debtor shall submit an application for the opening of bankruptcy proceedings to the court of law. The court shall – within one working day – provide for the publication of the application itself and the temporary stay of payment with immediate effect in the Company Gazette. If the court did not refuse the request for opening bankruptcy proceedings, it shall adopt a resolution within 15 days on the opening of bankruptcy proceedings and the appointment of a temporary administrator, as well as provide, without delay, for the publication of the ruling in the Company Gazette and for rendering the indication "cs. a." (under bankruptcy) to the debtor's name in the companies' registry. The provisions applicable to the stay of payment, detailed in Section 3.4.2., shall apply from the publication of the resolution.

The creditors shall register their claims with the debtor and the administrator within 30 days following the publication of the ruling ordering bankruptcy proceedings – or, in the case of claims arising after the opening of bankruptcy proceedings, within eight working days.

Within 90 days of the opening of bankruptcy proceedings, the debtor shall call the creditors for a meeting to negotiate a composition. Once a composition agreement is concluded, the debtor shall notify the court about the outcome of the composition conference and the court shall deliver its decision on the approval of the composition arrangements. If the composition arrangement is in conformity with the relevant legislation, the court shall grant approval and declare the bankruptcy proceedings dismissed. If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent *ex officio*, and shall order the liquidation of the debtor.

In the case of restructuring proceedings, if the debtor decides its restructuring, the debtor may request the adoption of judicial measures related to the restructuring process within the framework of non-contentious civil proceedings. Within five days of the adoption of the decision on restructuring, the debtor is liable to request the initiation of the restructuring proceedings by communicating the decision on initiating restructuring and the starting date thereof. If the application cannot be rejected, the court shall advise the affected creditors of their right to file, within 10 working days of receipt of the court ruling, a submission disputing the probability of the debtor becoming insolvent and thus the condition of the restructuring procedure. The court may order a moratorium at the debtor's request in order to support the negotiations of a restructuring plan. In the case of such resolution, the provisions applicable to the moratorium, detailed in Section 3.4.2., shall apply.

The debtor shall register and classify the known claims of

affected creditors. The restructuring plan shall be discussed with the affected creditors and once the restructuring plan is approved, it shall be filed with the court for confirmation.

The court shall call upon dissenting creditors, and in certain cases the equity holders to submit their counter-statement to the restructuring plan. Following the receipt of the counter-statements, the court shall decide on the confirmation or the rejection of the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement.

3.7. How are restructuring proceedings normally finalized?

In the case of bankruptcy proceedings, once a composition agreement is reached by the respective parties, the agreement shall be filed with the court for approval. If the court approves the agreement, it shall adopt a resolution thereon and declare the bankruptcy proceedings dismissed. If the respective parties cannot reach an agreement or if the agreement is not approved by the court, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent *ex officio*, and shall order the liquidation of the debtor.

In the case of restructuring proceedings, the restructuring plan shall be submitted to the court, where the dissenting parties have the right to submit their counter-statements. If a counter-statement has been submitted, the court shall *ex officio* appoint a practitioner in the field of restructuring, and if an appointed practitioner in the field of restructuring is already involved, it may also appoint another practitioner in the field of restructuring if this is considered justified considering the exceptional complexity of the restructuring plan or the debtor's economic activity, financial situation, or on account of specific issues related to the counter-statement. Finally, the court shall confirm or reject the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement. If the restructuring plan is rejected by the court, the liquidation of the economic operator may be ordered.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

As a general rule, they do not, since the Bankruptcy Act sets forth that bankruptcy and liquidation proceedings are falling within the jurisdiction of Hungarian courts in the case of Hungarian debtors, and the Hungarian court responsible for the territory where the debtor's seat is registered shall have competence in these proceedings.

However, special provisions apply to the restructuring and insolvency of Hungarian branch offices of foreign-registered companies. If main insolvency proceedings (proceedings whose purpose is reorganization or liquidation) are opened against the foreign parent company abroad, this shall be reported to the competent Hungarian court within eight days from the opening of such foreign proceedings. At the same time, key elements of the foreign judgment opening insolvency proceedings and – where applicable – the decision on the appointment of an insolvency practitioner by the foreign court or authority shall be published on the website of the Company Gazette, including *inter alia*, an indication and address of the foreign court opening the main insolvency proceedings and the foreign insolvency practitioner's name and contact information. Apart from the cases falling within the scope of *Regulation 2015/848/EU*, main insolvency proceedings opened against the foreign parent company abroad shall apply to its Hungarian branch, if there is reciprocity between Hungary and the foreign state where main insolvency proceedings had been opened. If the branch is not involved in the main insolvency proceedings opened against the foreign parent company abroad under national law, the general court responsible for the territory where the branch is registered shall order the dissolution of the branch on its own motion on the basis of notification by the court of registry.

4.2. What are the preconditions for recognizing foreign decisions?

According to the general provisions of *Act XXVIII of 2017 on Private International Law* (PILA), a judgment adopted by a foreign court shall be recognized if **(i)** the jurisdiction of the foreign court is considered legitimate under the PILA; **(ii)** the judgment is construed as definitive (or equivalent) by the law of the state where it was adopted; and **(iii)** neither grounds for denial defined by the respective subsection of the PILA apply (e.g., the recognition of the foreign judgment is not contrary to Hungarian public policy, etc.).

In addition to the general requirements listed above, the recognition of judgments in insolvency proceedings is subject to reciprocity between Hungary and the state of the court which delivered that judgment. The PILA also sets forth that recognition of main insolvency proceedings conducted abroad shall not preclude the opening of secondary insolvency proceedings before a Hungarian court and a foreign judgment opening main insolvency proceedings have legal effects provided for in the law of the state opening proceedings only if no secondary insolvency proceedings are opened in Hungary.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

See Sections 4.1. and 4.2.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Generally, the same rules apply to foreign creditors as to domestic creditors, therefore they are treated in the same manner.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

It is hard to decide whether the overall restructuring and insolvency regime in Hungary is more creditor- or debtor-friendly since the perception differs depending on the type of procedure in question and on the circumstances of the case.

If the debtor has assets or its operation is profitable, liquidation proceedings may serve as effective tools for creditors to enforce their claims. Once the conditions of liquidation proceedings are fulfilled, the debtor may only avoid termination with the payment of its debt.

Bankruptcy proceedings may be viewed as debtor-friendly: if the debtor's assets do not cover the claims, there is significant pressure on the creditors to enter into a composition arrangement. If bankruptcy proceedings turn into liquidation, the termination of the company may take years and generate significant costs that decrease the satisfaction of creditors.

However, there are significant risks in bankruptcy proceedings for both sides.

The relatively new regulation on restructuring proceedings is considered more flexible than the one applicable to bankruptcy proceedings since it has both creditor- and debtor-friendly provisions.

Viktor Jeger
Partner
jeger.viktor@nt.hu
+361 487 8761

Zóra Lehoczki
Associate
lehoczki.zora@nt.hu
+361 487 8711

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