

Restructuring Across Borders

Hungary: corporate restructuring and insolvency procedures

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Introduction

Insolvency proceedings in Hungary are regulated by Act XLIX of 1991 on bankruptcy and liquidation proceedings (as amended) (the **Bankruptcy Act**).

The three principal restructuring and insolvency regimes for companies under Hungarian law are:

- bankruptcy (*csődeljárás*);
- liquidation (*felszámolási eljárás*); and
- voluntary winding-up proceedings (*végelszámolás*).

Bankruptcy (*csődeljárás*)

Bankruptcy is a voluntary procedure which may only be initiated by the debtor company (with the approval of its shareholders) by applying to the court for a moratorium over its payment obligations in order to reach a composition (*csődegyezés*) with its creditors and to continue as a going concern. If a composition is reached during the bankruptcy proceedings, the liabilities of the debtor may, in theory, be discharged as provided for in the composition. However, historically this procedure has been very rarely used.

The court will automatically grant a temporary moratorium from the business day immediately following the date on which the application for bankruptcy proceedings was filed with the court. This order will be published in the Companies Gazette (*Cégközlöny*) on the business day immediately following the date of filing for bankruptcy. The temporary moratorium will be effective from the date of this publication.

The purpose of the temporary moratorium is to provide immediate but temporary bankruptcy protection to the debtor until the court issues an order granting or denying a payment moratorium to the debtor (the **bankruptcy order**). The bankruptcy order will be published in the Companies Gazette on the next business day and the date of publication will mark the commencement of

bankruptcy proceedings and the first day of the 120 calendar day moratorium. The duration of the moratorium can be extended to 240 or 365 calendar days from the commencement of the bankruptcy proceedings with the consent of the creditors.

Any application for the liquidation of the debtor submitted to the court simultaneously with, or following, any submission of an application to the court for bankruptcy must be stayed until the final closure (termination) of the bankruptcy proceedings. As a result of the moratorium and the stay of liquidation proceedings, if the debtor resorts to bankruptcy proceedings, this is often referred to, in practice, as an “escape into bankruptcy protection”.

If the bankruptcy proceedings are successful, the debtor will continue as a going concern. However, bankruptcy proceedings are typically unsuccessful and are followed by liquidation proceedings.

Financial institutions (including credit institutions, investment firms, insurance companies and voluntary mutual insurance funds) may not be subject to bankruptcy proceedings. Instead, the National Bank of Hungary (*Magyar Nemzeti Bank*) may take certain measures in relation to a financial institution with a view to ensuring its liquidity or reorganisation.

Liquidation (*felszámolási eljárás*)

The main purpose of liquidation proceedings is to satisfy the creditors' claims, in the manner set out in the Bankruptcy Act.

If the court orders the liquidation of the debtor, it will also appoint a liquidator who will, under the court's supervision, take over the management of the debtor, sell its assets with a view to best recovery and distribute the proceeds among the creditors.

In liquidation proceedings, no formal discharge of debts occurs when the proceedings are closed. However, as the proceedings are designed to liquidate the debtor company and, after distribution of all the assets the corporate existence of the debtor will be terminated, normally there would not be a debtor against which claims could be enforced.

Adapted proceedings in respect of companies of strategic importance

Adapted bankruptcy and liquidation proceedings apply to business organisations which are specified by a Government Decree as being strategically significant. In

the main, the same rules apply as in standard bankruptcy and liquidation proceedings.

Voluntary winding-up proceedings (*végelszámolás*)

Voluntary winding-up proceedings are initiated by the members of the company to wind up solvent companies without legal succession. The creditors of the company are required to report their claims to the administrator. In

the course of the winding-up proceedings, all reported claims must be satisfied. Voluntary winding-up proceedings typically last for six to twelve months, but in any case must be closed within three years.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency “rescue” proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings but secondary proceedings are no longer restricted to a separate list of winding up proceedings - secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A

and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, bankruptcy (*csődeljárás*) and liquidation (*felszámolási eljárás*) were available as main proceedings under the Original Regulation.

Only liquidation (*felszámolási eljárás*) was available as secondary proceedings under the Original Regulation. It was thought that the adapted proceedings in respect of companies of strategic importance would also be available as main or secondary proceedings as relevant.

Under the Recast Regulation, both bankruptcy (*csődeljárás*) and liquidation (*felszámolási eljárás*) are listed in Annex A.

Further information

For further information on Hungarian restructuring and insolvency procedures, we would refer you to the Sweet & Maxwell book “European Cross Border Insolvency” edited by Allen & Overy. To purchase a copy of this book, please visit www.sweetandmaxwell.co.uk

Allen & Overy has launched an online service for clients focusing on debt restructurings and insolvency issues. Developed by Allen & Overy’s market-leading

Restructuring group, “Restructuring Across Borders” is an easy to use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe and the US.

To request access for your organisation, please contact your usual Allen & Overy contact, or email rab@allenoverly.com

Key contacts

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.



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