SQUIRE PATTON BOGGS

Local Connections. Global Influence.

Insolvency Laws:

How Countries Have Revamped Their Insolvency and Restructuring Laws

August 2022

Slovak Republic

	Law on Solving the Likelihood of Insolvency

Overview of the Law	As of 17 July 2022, a new law on solving impending insolvency has become effective and replaced the provisions of the law on temporary protection for companies from insolvency that was enacted in response to COVID-19. The new law transposes the EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). The scope of the law is to solve the likelihood of insolvency due to payment inability of the debtor (who is a legal person) by: • Public preventive restructuring • Non-public preventive restructuring The law also deals with the issue of the insolvency of the debtor that occurred during the public preventive restructuring.
Overview of Certain New Terms Used in the Law	The law provides a list of new terms that are used throughout the law. Among them are definitions of different kinds of creditors: • "Petty creditor" is a creditor whose claims against the debtor are not more than €500. • "Small creditor" is a creditor who has at least 10 employees, and according to the last financial statement has revenue and value of assets lower than €2 million. • "Relevant creditor" is a creditor whose unrelated claims represent at least 20% of all unrelated claims. • "Important creditor" is a creditor whose unrelated claims represent at least 5% of all unrelated claims. • "Disputed creditor" is a creditor whose claims are at least partially disputed by debtor. • "Public-law creditor" is a creditor whose claims against the debtor arose from a public-law relation. • "Known creditor" is a creditor on whom the debtor is to account for as a creditor, as well as a creditor with a claim the debtor knows or must know.

Public Preventive Restructuring (PPR)	PPR is a right of a debtor (that is a legal person) that faces the likelihood of insolvency due to payment inability. The debtor has to be registered in the Register of Partners of the Public Sector. The court shall: • Approve the PPR if the debtor is in the likelihood of insolvency and no other obstacle presumed by the law has occurred • Not approve the PPR if it can be presumed that the enterprise is not viable, especially when: – Reasons for dissolution of the debtor exists – The debtor was dissolved or is in liquidation proceedings – The effects of declaration of bankruptcy or commencement of restructuring are in force towards the debtor – There is an ongoing enforcement proceeding towards the debtor for the payment – The enforcement of lien or other security right toward debtor has commenced – The debtor does not practice sound bookkeeping or does not file the annual financial statement into the collection of documents – The debtor has performed activities that threaten its financial stability and has not repaired their consequences The statutory body of the debtor shall consider the use of a third-party consultant during the solving of the likelihood of insolvency. The third-party consultant shall have relevant knowledge and experience, as well as technical and personal equipment, and shall have the faith of the relevant creditors. The debtor is obliged to use the services of a third-party consultant during the PPR. **Insolvency of the debtor during the PPR:** • If during the PPR the insolvency of the debtor occurs, the statutory body is obliged to inform the court, bankruptcy trustee, creditors' committee and creditors that agreed to the temporary protection. • The debtor may continue with the PPR even after the insolvency occurred, if it can be reasonably presumed that the debtor will be able to pay all of its new obligations in a timely manner, and the public plan will be confirmed by the court or the debtor will avert the insolvency in another way.

Temporary Protection During Public Preventive Restructuring

The new law superseded the previous law on temporary protection of enterprises in financial troubles that was enacted to address the negative impact of COVID-19. The law sets conditions for when the court will grant the temporary protection to the enterprise.

The court will grant a temporary protection for a period of three months, together with the issuing of the decision on approval of PPR, if:

- More than half of the creditors (counted in accordance with the amount of their unconnected claim) agreed with the granting of the temporary protection.
- At least 20% of all creditors (counted in accordance with the amount of their unconnected claims) agreed with the granting of the temporary protection and, in the draft plan, the partial forgiveness of the claim or the recognition of its partial unenforceability does not exceed 20% of the claim for any of the creditors, and the deferment of repayment of any of the claims does not exceed one year.

The temporary protection can be prolonged on the request of the debtor for an additional three months, presuming that all conditions are fulfilled. The total length of temporary protection shall not exceed six months.

Dispositive restrictions during the temporary protection:

- The creditors may set the acts of the debtor that shall be approved by the third-party consultant.
- The debtor is obliged to restrict its activity only to the acts that do not change the nature of their assets, obligations or obligatory relations; other acts may be done only with the consent of the creditors' committee.
- If the debtor makes an act requiring approval by the creditors, the creditors or the bankruptcy trustee may oppose such acts, unless the other party proves that such acts were not detrimental to the creditors.

Effects of the temporary protection means that during the temporary protection:

- The debtor is not obliged to file for insolvency.
- Insolvency or restructuring cannot be declared in accordance with the general law on insolvency.
- It is not possible to undergo enforcement proceedings against the debtor – such proceedings shall be interrupted, except for the enforcement of:
  - A claim that occurred during the realisation of the joint program of the Slovak Republic and the EU financed from EU funds
  - Claims arising out of the decision of the EU body, institution, office or agency
  - Tax arrears, customs duty, fines or other payments levied by customs bodies
- The debtor is entitled to fulfill the new obligation before the old one, and unrelated obligations before related obligations.
- It is not possible to commence the enforcement of the security right for the debtor's assets.
- It is not possible to set-off related claims with the debtor.

Crisis financing:

- The debtor may, for the purposes of securing the standard operation of its enterprise with the approval of the creditors' committee during the temporary protection, accept crisis financing. Crisis financing is financing that was agreed upon prior to the granting of temporary protection and the financial means were drawn by the debtor with the approval of creditors' committee after the granting of the temporary protection.
- The means of crisis financing may be used only for the purposes of securing the proper operation of the enterprise during the temporary protection. It cannot be used for the purposes of the refinancing of other financing that was provided to the debtor prior to the temporary protection.

Public Plan	The public plan shall be drafted in a way to ensure that the just division of the value of the assets of the debtor among the affected creditors is certain, clear, real, sustainable and, if possible, consensual. The public plan shall contain all data that the affected creditors need to vote on. The public plan shall not diverge from the draft concept of the plan in a substantial way. Substantial diversion is understood in particular if the expected level of satisfaction of the creditor in the group, according to the public plan, differs by more than 10% from the lower limit of the range of the expected level of satisfaction in the concept of the plan. Legal acts made during the PPR that provide an affected creditor with an advantage not presumed by the public plan are invalid. **Restructuring measures:** • These are measures of an economic and legal nature that aim to avert the insolvency of the debtor and secure the viability of the enterprise. • Examples: - Restructuring of obligations of the debtor against the affected creditors (e.g. adjournment of payments or partial forgiveness) - Restructuring of assets of the debtor (e.g. selling off assets) - Restructuring of the capital structure (e.g. issuing of new shares, changing of articles of association) - Restructuring of human resources (e.g. termination of employment contracts) - Financing of restructuring measures **Assessment, approval and confirmation of the public plan:** • Assessment: - The public plan shall be assessed by the bankruptcy trustee who has also the right to fix incorrect provisions. • Approval: - The public plan shall be approved by the creditors on the meeting of creditors, which shall take place no earlier than 60 days and no later than 70 days from the day of approval of PPR. - The public plan is approved if every group of creditors voted for its approval with quorums set out for each group in the law. - If any group of creditors do not approve the public plan, the debtor is entitled to ask the court to replace the consent of the group by the court's decision. • Confirmation of the court: - The debtor is entitled to file the plan for the court's approval within 7 days of the end of the approval meeting, and also send the electronic version of the plan to every creditor who didn't approve the plan. Any creditor that did not vote for approval has the right to send their comments within 10 days. - The court decides on confirmation of the plan within 30 days from the lapse of the period allowed for sending the statement to creditors that did not approve the plan, as noted above.

Non-public Preventive Restructuring (NPR)	The provisions relating to NPR may apply to the debtor who is in the likelihood of insolvency, and the effects of a declaration of bankruptcy or the initiation of restructuring proceedings do not apply to them. These debtors can agree on a non-public plan in a non-public preventive restructuring with one or more creditors who are subject to the supervision of the National Bank of Slovakia or another similar institution abroad. If the creditors agree with the NPR, the NPR will commence after the debtor notifies the court on the commencement of NPR. The debtor is obliged to file a non-public plan to the court within three months of the commencement of NPR, otherwise the NPR proceedings end. Assessment of the non-public plan by court: • The non-public plan is confirmed by the court if, within 15 days of the filing of the non-public plan, the court does not decide on rejection of the plan. • The court will reject the non-public plan if it finds that the non-public plan could harm the asset interests of the creditors that are not participants of the non-public plan. Effects of the confirmed non-public plan: • The confirmed non-public plan can be opposed only in the case that at the time of the agreement of the non-public plan, conditions for such agreement were not fulfilled. • The non-public plan is binding only to the creditors who agreed with it in writing.

SQUIRE
PATTON BOGGS

squirepattonboggs.com

52544/09/22