

Restructuring & Insolvency 2021

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Restructuring & Insolvency 2021

Contributing editors**Catherine Balmond and Katharina Crinson**Freshfields Bruckhaus Deringer

Lexology Getting The Deal Through is delighted to publish the 14th edition of *Restructuring & Insolvency*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ireland and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine Balmond and Katharina Crinson of Freshfields Bruckhaus Deringer, for their assistance with this volume.



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Hungary

Zoltán Varga and Zóra Lehoczki

Nagy és Trócsányi

GENERAL

Legislation

1 | What main legislation is applicable to insolvencies and reorganisations?

The main provisions concerning the insolvency of an economic operator are regulated in:

- Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (the Bankruptcy Act);
- Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies;
- Act LXXXVIII of 2014 on Insurance Business Activity;
- Act I of 2012 on the Labour Code;
- Act V of 2013 on the Civil Code;
- Act CXXX of 2016 on the Code of Civil Procedure;
- Act XXXVII of 2014 on the Further Development of the Institutional System Promoting the Security of Certain Actors of the Financial Intermediary System;
- Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (the Companies Act);
- Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises;
- Act CXXXIX of 2013 on the National Bank of Hungary;
- 106/1995 (IX.8) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings;
- Act LVIII of 2020 on Transitional Arrangements Connected to the Cessation of the State of Emergency and on Epidemiological Preparedness; and
- Act XXVIII of 2017 on Private International Law.

Excluded entities and excluded assets

2 | What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The Bankruptcy Act shall apply to all economic operators and their creditors. For the purpose of the Bankruptcy Act, economic operator shall mean: (i) business associations, private pension funds, cooperative societies, associations etc established in Hungary; and furthermore (ii) all other legal entities and unincorporated organisations qualified as business associations under national law, and any other organisation pursuing economic activities who have their centre of main interests within the territory of the European Union according to European Parliament and Council Regulation EU/2015/848, and the insolvency proceedings to which it is subject fall within the scope of Regulation 2015/848/EU.

All assets held by the economic operator in bankruptcy or under liquidation proceedings at the time of the opening of proceedings, as well as all assets acquired during the proceedings, shall be realised in bankruptcy and during liquidation proceedings. The assets of an economic operator shall comprise all assets that it owns or controls.

Assets such as natural preservation areas, land reserved for compensation purposes and taxes and other similar dues taken out of the wages of employees shall not be construed to comprise the economic operator's assets.

Special provisions apply to banks, municipalities and major economic operators of preferential status for strategic considerations.

Public enterprises

3 | What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The provisions of the Bankruptcy Act apply to government-owned enterprises too. The creditors of a government-owned enterprise have the same remedies as the creditors of a private enterprise.

However, the Bankruptcy Act contains special provisions to Major Economic Operators of Preferential Status for Strategic Considerations, which deviate in certain aspects from the general provisions of the Bankruptcy Act. Major Economic Operator of Preferential Status for Strategic Considerations shall mean any economic operator:

- 1 that operates in fields that may be construed to be of national importance for reasons of public health, infrastructure development, defence, law enforcement, military, energy safety, energy supply etc;
- 2 that is involved in the implementation of, or undertook to execute, projects given priority for national economy consideration;
- 3 that is involved in discharging public functions conferred by law nationwide; or
- 4 that received large amounts of state aid for restructuring, credit guarantees, surety facilities or export credit insurance, or that is engaged in the pursuit of, or undertook to carry out, concession-bound activities, and is therefore engaged under contract with the state or specific public bodies (including the government-owned enterprise established for carrying out the aforesaid functions) in connection with the above; or
- 5 that is engaged in the pursuit of activities considered to carry strategic importance for national economy purposes, other than those under points (1) to (4).

The government may classify as Major Economic Operators of Preferential Status for Strategic Considerations those economic operators to which the following criteria applies:

- settlement of the debts of such operators, composition with creditors or reorganisation is in the interests of the national economy or is of particular common interest; or

- the winding up of such operators without succession, where the lack of funding and insolvency cannot presumably be resolved, in a simplified, transparent and standardised procedure is given priority because of economic considerations.

Protection for large financial institutions

4 | Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

To maintain the stability of the financial sector, the Hungarian parliament adopted the Act XXXVII of 2014 on the further development of the institutional system promoting the security of certain actors of the financial intermediary system, which introduced the resolution system based on the Bank Recovery and Resolution Directive of the European Union. The Hungarian resolution authority is the Hungarian National Bank (MNB). The MNB shall order and launch the resolution proceeding in respect of an institution if all of the following conditions have been met:

- the MNB acting in its scope of authority for the supervision of the financial intermediary system establishes that the institution is failing or likely to fail;
- according to the judgment of the MNB, apart from the resolution actions no other measure is likely to prevent the insolvency of the institution under the circumstances; and
- according to the judgment of the MNB, the resolution is justified by public interests.

The Resolution Fund, which is composed of the contributions of market participants (credit institutions and investment firms) finances the costs incurred in the resolution phase of institutional crisis management (ie, the application of the resolution tools). The Hungarian Resolution Asset Management Company, which is fully owned by the Resolution Fund, was set up in 2015 for the purpose of receiving some or all of the assets, liabilities, rights and obligations of one or more institutions under resolution or bridge institutions.

Courts and appeals

5 | What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Bankruptcy and liquidation proceedings are non-contentious proceedings falling within the competence and exclusive jurisdiction of the general court responsible for the place where the debtor's Hungarian registered office of record is located on the day when the request for opening the proceedings has been submitted. The Metropolitan Tribunal shall have competence and jurisdiction to open and conduct main insolvency proceedings instituted against an economic operator covered by European Parliament and Council Regulation EU/2015/848, established in a place other than Hungary.

As regards procedural issues that are not otherwise provided in the Bankruptcy Act, the provisions of the Code of Civil Procedure on non-contentious judicial civil actions shall apply, subject to the derogations stemming from the special characteristics of non-contentious proceedings, as well as the general provisions of the Act CXVIII of 2017 on the Rules Applicable to Non-Contentious Civil Actions and on Non-Contentious Court Proceedings.

The Bankruptcy Act stipulates provisions concerning the redress options in the case of the opening of the insolvency procedure. In bankruptcy proceedings, the court decision ordering the opening of bankruptcy proceedings may not be appealed separately. An appeal against the decision for the refusal of the petition for the opening of bankruptcy proceedings shall be lodged within eight days. No justification shall be

accepted determined in priority proceedings, at the latest within 15 days. In liquidation proceedings, the court decision ordering the opening of the liquidation may be appealed separately.

Under Hungarian law, there is no requirement to post security to proceed with an appeal; however, duty shall be paid when submitting an appeal. The amount of the duty is determined by Act XCIII of 1990 on Duties.

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

6 | What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Debtors may request the opening of liquidation proceedings if unable or unwilling to enter into bankruptcy. The petition may be submitted in possession of the prior consent of the supreme body of the debtor economic operator exercising founders' (shareholders') rights. In the case of sole proprietorships, the petition may be submitted by the owner at his or her own discretion. Employees and the trade unions defined in the Labour Code or the competent works councils shall be duly informed when the petition is filed. Legal representation shall be mandatory with regard to submission of the application. Commencing a voluntary liquidation has the same effect as commencing liquidation by the creditors.

Voluntary reorganisations

7 | What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

The directors of debtor economic operators may submit an application for the opening of bankruptcy proceedings at the court of law. Legal representation for the debtor shall be mandatory with regard to submission of the application. The debtor may not file a petition for bankruptcy if already adjudicated in bankruptcy, or if a request for its liquidation has been submitted, and a decision has already been adopted in the first instance for the debtor's liquidation. The debtor may not file another petition for bankruptcy:

- before the satisfaction of any creditor's claim that existed at the time of ordering the previous bankruptcy proceedings or that was established by such proceedings; and
- inside a period of two years following the time of publication of the final and definitive conclusion of the previous bankruptcy proceedings; or
- if the court ex officio refused the debtor's request for the previous bankruptcy proceedings pursuant to the provisions of the Bankruptcy Act, and if inside the one year period following the time of publication of the final ruling thereof.

If the court did not refuse the request for the opening of bankruptcy proceedings, it shall forthwith adopt a ruling for the opening of bankruptcy proceedings, and shall consequently provide for having the ruling thereof published in the company gazette and for having the indication 'cs. a.' entered in the register of companies next to the company's name. The court shall ex officio appoint an administrator from the register of liquidators in its ruling on the bankruptcy and unless otherwise provided for in the Bankruptcy Act, no remedy shall lie against such ruling.

As a consequence of the opening of bankruptcy proceedings, the debtor is granted a stay of payment with a view to seeking an arrangement with creditors. The objective of stay of payment is to preserve the assets under bankruptcy protection with a view to reaching a composition with creditors, during which the debtor, the administrator, the financial institutions carrying their accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment.

Successful reorganisations

- 8 | How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

Composition means the debtor's agreement with the creditors laying down the conditions for debt settlement, such as in particular any allowances and payment facilities relating to the debt, on the remission or assumption of certain claims, on receiving shares in the debtor company in exchange for a debt, on guarantees for the satisfaction of claims and other similar securities, on the approval of the debtor's programme for restructuring and for cutting losses, and any and all other action deemed necessary to restore or preserve the debtor's solvency, including the duration of and the procedures for monitoring the implementation of the composition arrangement.

A composition agreement (reorganisation plan) shall separate creditors into classes. In particular, it shall distinguish between secured and unsecured creditors. A reorganisation plan may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights.

In the composition conference, voting rights shall be held by any creditor who registered its claim by the deadline specified in the Bankruptcy Act, who paid the registration fee, and whose claim is shown under recognised or uncontested claims. The composition agreement shall be signed by the parties, and by their legal representatives or proxies, and shall be countersigned by the administrator and by the select committee, if there is one.

If the composition arrangement is in conformity with the relevant legislation, the court shall grant approval by way of a ruling and shall 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 in the liquidation proceedings and shall order the liquidation of the debtor.

The composition agreement shall not release non-debtor parties from liability. However, because of the accessory nature, a guarantor or surety etc shall be released from liability to the extent of the reduction of the claim secured by the guarantor or surety.

Involuntary liquidations

- 9 | What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

If the liquidation is requested by the creditor, the petition to the competent court shall specify the debtor's liabilities (the amount of the claim), the date of maturity (due date) and a summary of the reasons for claiming that the debtor is deemed insolvent.

The documents in proof of the contents of the petition shall also be attached, including a copy of the written notice sent to the debtor. If the court has not rejected the petition, it shall notify the debtor by sending a copy of the petition. The debtor shall, within eight days of receipt of the notice, declare before the court whether he or she acknowledges the contents of the petition. If the debtor acknowledges the claim, he or she shall also simultaneously declare whether he or she wishes a respite for the settlement of the debts. If the debtor fails to respond to the court within the above-specified deadline, his or her insolvency shall be presumed.

Upon the request of creditor, the court shall appoint a temporary administrator without delay if the requesting creditor evidences that

satisfaction of its claim at a later date is in jeopardy, proves the contract underlying the extent and expiry of the claim, with full probative document, and has advanced the fee of the temporary administrator (200,000 forints if the debtor has no legal personality and 400,000 forints for legal persons) and deposited it at the time of lodging the request.

Commencing an involuntary liquidation has the effect that upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette.

Once the proceeding is opened, there are not any material differences to proceedings opened voluntarily.

Involuntary reorganisations

- 10 | What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Hungarian law does not regulate the kind of reorganisation that creditors could commence.

Expedited reorganisations

- 11 | Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

No expedited reorganisations exist under Hungarian law.

Unsuccessful reorganisations

- 12 | How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

During the opening session of the composition conference, the creditors may express their refusal to support the composition proposal. If the debtor refuses to rework the composition proposal, the meeting shall be declared closed and so recorded in the minutes, and it shall be sent to the court and the supreme body of the debtor without delay. If no composition is arranged with the creditors, 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 and shall order the liquidation of the debtor.

The composition agreement shall be made in writing and, if the composition arrangement is in conformity with the relevant legislation, the court shall grant approval by way of a ruling and shall declare the bankruptcy proceedings dismissed. However, if the debtor did not fulfil his or her payment obligation as stipulated in the composition agreement concluded in bankruptcy proceedings, creditors have the right to request the court to declare the debtor insolvent, since the debtor did not fulfil his or her payment obligation as stipulated in the composition agreement concluded in bankruptcy. Pursuant to several rulings of the Supreme Court, the creditors' claim does not cease to exist from the point of view of contract law with the approval of the composition agreement, only the right of their claim against the debtor in excess of the amount specified in the arrangement ceases. The creditor's entire claim against the debtor therefore does not cease until he or she has fulfilled all his or her obligations under the composition arrangement against all his or her creditors. Upon the creditors' request, the court shall declare the debtor insolvent and order the liquidation of the debtor by way of a ruling if the debtor fails to fulfil his or her obligations. In this case, creditors shall be able to notify their claims in the liquidation notified, recognised or uncontested during previous bankruptcy or liquidation proceedings that they were unable to recover.

Corporate procedures

13 | Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Act V of 2006 (the Companies Act) contains the rules for dissolution proceedings. According to the Companies Act, a company, if not insolvent, may be wound up without succession by way of dissolution proceedings. Dissolution proceedings may be opened by decision of the supreme body of the company.

The company's supreme body may elect any person to serve as the receiver, if in conformity with the requirements set out for the director, and if this person accepts the assignment. If the receiver concludes that the company's assets are insufficient to cover the creditors' claims, and the members fail to supply the funds lacking within 30 days, a request for liquidation must be submitted without delay. The request for liquidation may be submitted in the absence of the consent of the supreme body.

Conclusion of case

14 | How are liquidation and reorganisation cases formally concluded?

In the case of bankruptcy, the debtor and his or her creditors may establish a composition arrangement. If this composition arrangement is in conformity with the relevant legislation, the court shall grant approval by way of a ruling and shall 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 consequently declare the debtor insolvent ex officio in the liquidation proceedings and order the liquidation of the debtor. Also, if the debtor fails to fulfil his or her obligations according to the composition arrangement, the court shall declare the debtor insolvent upon the creditor request and order the liquidation of the debtor.

Regarding the liquidation proceedings, the court shall decide concerning the conclusion of liquidation and the dissolution of the debtor without succession, and also on the dissolution of any subsidiary of the debtor or the trust company, where applicable. An exception from this rule is the special case, when the liquidation proceedings were conducted upon request by the debtor, the creditor or the receiver, the court shall terminate the proceedings without the creditor's consent if the debtor provides proof before the time of the opening of liquidation proceedings of having paid the debt (principal, interests, creditor's expenses incurred during the proceedings) underlying the final ruling ordering liquidation to the creditor in full.

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

15 | What is the test to determine if a debtor is insolvent?

The court shall declare the debtor insolvent:

- upon the debtor's failure to settle or contest his or her previously uncontested and acknowledged contractual debts within 20 days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice;
- upon the debtor's failure to settle his or her debt within the deadline specified in a final court decision or order for payment;
- if the enforcement procedure against the debtor was unsuccessful;
- if the debtor did not fulfil his or her payment obligation as stipulated in the composition agreement concluded in bankruptcy or liquidation proceedings;
- if it has declared the previous bankruptcy proceedings terminated; or

- if the debtor liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets, or the debtor was unable and presumably will not be able to settle its debt (debts) on the date when they are due, and in proceedings opened by the receiver the members (shareholders) of the debtor economic operator fail to provide a statement of commitment, following due notice, to guarantee the funds necessary to cover such debts when due.

A debtor cannot be declared insolvent in the cases defined above inside the deadline specified by the court for the settling of debts.

Mandatory filing

16 | Must companies commence insolvency proceedings in particular circumstances?

Under Hungarian law, there is no such obligation for the companies to commence insolvency proceedings. Companies may initiate bankruptcy or liquidation proceedings voluntarily.

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

17 | If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

Any creditor or, in the debtor's name, the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons.

Criminal liability of the directors may arise if a company carries on business while insolvent.

Directors' liability – other sources of liability

18 | Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

Any creditor or the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings. Financial security may also be demanded with a view to providing satisfaction for the creditor's claims. The creditors' interests shall be considered to have been ignored if the manager failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offenses, or concerning remediation, in consequence of which providing full satisfaction for the creditors' claims may be frustrated. If damage is caused by several persons together, their liability shall be joint and several.

Following the time of publication in the company gazette of the resolution on the final conclusion of liquidation proceedings, any creditor may bring action before the competent court for ordering the debtor's former executive, whose liability was already established based on the action described above, to satisfy the debtor's claim registered in the

liquidation proceedings, that were not recovered in such proceedings, up to the extent of loss suffered.

The court shall impose a fine upon the head of the debtor economic operator for effecting any payment in violation of the provisions of the Bankruptcy Act, or for enabling creditors to obtain satisfaction for their claims in violation of the provisions of the Bankruptcy Act. The fine shall cover 10 per cent of the amount paid out.

According to the Companies Act, if the court of registry removed a company from the register of companies by way of involuntary de-registration procedure, the company's executive officer, including any executive officer removed from the register before the opening of involuntary de-registration, shall bear liability for the outstanding claims of the company's creditors to the extent of his or her contribution to the resulting loss, if found to have failed to properly carry out his or her managerial functions in the wake of any situation of imminent insolvency, in consequence of which the company's assets have diminished or prevented to provide full satisfaction for the creditors' claims. If there is more than one such executive officer, their liability shall be joint and several. A situation is considered to carry potential danger of insolvency as of the day when the executives of the company were or should have been able to foresee that the company will not be able to satisfy its liabilities when due.

Criminal liability of the directors may be established according to the relevant sections of Act C of 2012 on the Criminal Code prescribing the rules of fraudulent bankruptcy. Fraudulent bankruptcy shall be considered a criminal act if committed by a person who has powers to control the assets, or any part thereof, of the debtor economic operator, or has the opportunity to do so, and also if the contract for any transaction with the assets is considered invalid.

Directors' liability – defences

19 | What defences are available to directors and officers in the context of an insolvency or reorganisation?

Both the Bankruptcy Act and the Companies Act establish when the director of the company shall be relieved of liability.

In the case of the Bankruptcy Act, a manager who is able to prove of not having undertaken any business risk that may be considered unreasonable in light of the debtor's financial position, or to have taken all measures within reason, that is to be expected from persons in such positions, upon the occurrence of a situation carrying potential danger of insolvency so as to prevent and mitigate the losses of creditors, and to prompt the supreme body (decision-making body) of the debtor economic operator to take action, shall not be held responsible.

In the case of the Companies Act, an executive officer shall be relieved of liability if able to prove that the threat of insolvency occurred at a time other than his or her term in said executive office or for reasons other than his or her managerial actions, and to have taken all measures within reason, that is to be expected from persons in such positions, upon the occurrence of a situation carrying potential threat of insolvency so as to prevent and mitigate the losses of creditors, and to prompt the supreme body of the company to take action.

Shift in directors' duties

20 | Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Under Hungarian law, any creditor or, in the debtor's name, the liquidator may bring action during the liquidation proceedings before the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake

of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons.

Directors' powers after proceedings commence

21 | What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

In the case of reorganisation, the directors of a debtor economic operator, including its supreme body and owners, shall exercise their respective rights only if it does not violate the powers vested in the administrator.

The administrator shall approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings. The administrator shall have powers to approve any new commitment made by the debtor. After the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the economic operator.

As of the time of the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the economic operator.

In the case of liquidation, the directors of the debtor company, following the temporary administrator taking office, shall be restricted from entering into any contract considered to be in excess of the scope of normal operations where the economic operator'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 performance under an existing contract. As of the time of the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the company. However, the director of the debtor company is only entitled to proceed in the internal legal relationship of the company.

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

22 | What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

In the case of a reorganisation, the debtor is granted a stay of payment period (moratorium) to preserve the assets under bankruptcy protection, during which the debtor, the administrator, the financial institutions carrying their 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 to claims like claims for wages and other similar benefits, claims to any value added tax or to refunds of sums transferred to the debtor's account by mistake.

Under the duration of the stay of payment, as a general rule:

- set-off may not be applied against the debtor; however, a set-off may be adjudged in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings;
- payment orders may not be satisfied from the debtor's accounts, and payment orders may not be submitted against the debtor;
- the enforcement of money claims against the debtor shall be suspended, and the enforcement of such claims may not be ordered;
- no satisfaction may be sought on the basis of a lien on the debtor's assets, the debtor cannot effect any payment for claims existing at the time of the opening of bankruptcy proceedings;

- the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator;
- payments may be made from the debtor's assets subject to authorisation by the administrator, including for the liabilities assumed with a view to continuing the debtor's economic activity;
- the 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; and
- the legal consequences associated with any non-performance or late performance of the debtor's money payment obligations shall not apply.

Judicial enforcement proceedings in progress against the debtor at the time of the opening of liquidation proceedings in connection with any assets realised in liquidation shall be abated forthwith by the court (authority) ordering the enforcement, and the assets seized and the funds yet unpaid, remaining after deducting the costs of the enforcement proceeding, shall be transferred to the appointed liquidator.

Judicial and non-judicial proceedings opened prior to the time of the opening of liquidation proceedings shall continue before the same court.

From the time of the opening of liquidation proceedings, any pecuniary claim against the economic operator in connection with any assets to be liquidated may only be enforced in the framework of liquidation. The creditor – in the proceedings brought by the economic operator – may enforce his or her claim existing at the time of the opening of liquidation proceedings against the economic operator as a setoff claim, provided however, that the beneficiary of the claim was the same creditor at the time of the opening of liquidation proceedings as well.

The creditors cannot obtain relief from such prohibitions, the only exception being the set-off as detailed above.

Doing business

23 When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

In the case of reorganisation, under the duration of the stay of payment, the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator and payments may be made from the debtor's assets subject to authorisation by the administrator. During the reorganisation, the debtor can carry on business only with the supervision of the administrator. During the liquidation, carrying on business by the debtor shall be fit for the purposes of the liquidation proceedings (eg, if needed for the operation of the debtor company).

In a reorganisation, no special treatment is given to creditors doing business after filing.

It is the duty of the administrator to supervise the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with creditors. The court does not supervise the debtor's business activities; however, the approval of the composition agreement falls within the court's exclusive competence.

In liquidation proceedings, if the creditors have formed a select committee or selected a creditors' representative, the consent of the committee (representative) is required to obtain for continuing business operations during liquidation within 100 days of the publication of the opening of liquidation proceedings. If the select committee fails to respond within 15 days of receipt of the liquidator's request, it shall be construed to have granted its consent for the continuing of such business operations.

In a liquidation, no special treatment is given to creditors who supply goods or services after filing unless the costs are in connection with the rational termination of the debtor's business operations.

Post-filing credit

24 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

In the case of reorganisation, according to the general rule, no priority is given for post-filing credits. The debtor shall be allowed to undertake any new commitment – secured or unsecured loans or credit – only with the consent of the administrator.

In the case of liquidation, the Bankruptcy Act does not expressly regulate a debtor's right to obtain secured or unsecured loans or credit. The liquidator, however, is able to contract new obligations, such as a loan or a credit, but only in connection with the rational termination of the debtor's business operations. Such loans granted to the debtor have a priority in the liquidation.

Sale of assets

25 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

In the case of reorganisation, the sale of specific assets out of the ordinary course of business or the entire business of the debtor is subject to the approval of the administrator. By selling assets in reorganisation, the encumbrance on assets will maintain.

In the case of liquidation, the liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market, in which case the highest bidder will acquire the assets free and clear. The liquidator shall effect the sale by way of tender or auction. The liquidator may forego the application of these procedures only upon the prior consent of the select committee formed by creditors, or if the asset in question deteriorates rapidly, or if the estimated proceeds are insufficient to cover the costs of sale, or if the difference between the prospective proceeds and estimated costs is less than 100,000 forints. In this case the liquidator may apply other public forms of sale for the purpose of achieving a more favourable result.

If the assets to be sold include land or a farmstead, their sale shall be governed by the relevant provisions of the Act on Transactions in Agricultural and Forestry Land and the decree implementing it.

Negotiating sale of assets

26 Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Generally, no stalking horse rules or credit bidding apply under Hungarian law regarding insolvency proceedings. In the case of a liquidation proceeding, the debtor is not allowed to dispose of his or her assets. The debtor's assets shall be disposed of by the liquidator through public sales at the highest price that can be obtained on the market. The highest bidder will acquire ownership over the assets. The only kind of credit bidding is when the second tender procedure is declared unsuccessful as well, and the liquidator – in agreement with the creditors' select committee – shall, instead of repeating the tender procedure for the third time, move to sell the asset in question at the appraised value to a creditor holding a lien on the asset and who lays claim to it.

Rejection and disclaimer of contracts

27 Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

The Hungarian insolvency law does not recognise the concept of rejection and the concept of disclaimer of contracts.

In a reorganisation, the debtor or the administrator may challenge the contract before the general court only in accordance with the Hungarian Civil Code and the provisions of the Code of Civil Procedure. Claims arising after the commencement of the insolvency may also be registered.

In the case of liquidation, all debts of the economic operator shall be deemed payable (due) at the time of the opening of liquidation proceedings. In that connection, the liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor, or to rescind from the contract if neither of the parties rendered any services.

Any claim that is due to the other party owing to the above may be enforced by notifying the liquidator within 40 days from the date when the rescission or termination was communicated.

There are no specific regulations with regard to the debtor's breach of contract after the insolvency case is opened. The debtor's breach of contract is governed by the general breach of contract provisions of the Hungarian Civil Code.

Intellectual property assets

28 May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

No specific rules exist under Hungarian law regarding the IP rights in cases of bankruptcy or liquidation.

According to the general rule, during bankruptcy 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. However, if the given contract stipulates that the commencement of bankruptcy proceeding or liquidation proceeding establishes a right to terminate the contract, the licensor or the owner has the right to do so.

The liquidator has the right to terminate any contract of the debtor.

Personal data

29 Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

The Bankruptcy Act does not stipulate special provisions regarding the use of any personal information or customer data collected by a company in liquidation or reorganisation.

In accordance with the provisions of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, personal data may be processed only for specified and explicit purposes, where they are necessary for the implementation of certain rights or obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness. The personal data processed must be essential for the purpose for which they were

recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve their purpose. Personal data may be processed only when the data subject has given consent, or when processing is necessary as decreed by law or by a local authority based on authorisation conferred by law.

The EU General Data Protection Regulation is also applicable in the case of the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data that form part of a filing system or are intended to form part of a filing system.

Arbitration processes

30 How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Bankruptcy and liquidation proceedings are non-contentious proceedings conducted exclusively by the general court of competence and jurisdiction by reference to the debtor's registered office of record on the day when the request for opening the proceedings has been submitted and by the Metropolitan Tribunal. Thus, arbitration courts cannot commence insolvency proceedings.

CREDITOR REMEDIES

Creditors' enforcement

31 Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Claims can be enforced only within the frame and according to the rules of the bankruptcy or liquidation proceedings.

If the debtor provides collateral security under a financial collateral arrangement to secure a claim before the time of the opening of liquidation proceedings, the collateral taker shall be able to realise the collateral directly, irrespective of whether liquidation is opened or not, and shall refund any excess collateral to and settle accounts with the liquidator. If the collateral taker fails to exercise his or her right to direct satisfaction within three months following publication of the opening of liquidation, he or she may seek satisfaction as lien holder. If the collateral taker is under the debtor's majority control, he or she shall release the collateral to the liquidator – acting as the representative of the debtor – upon publication of the notice of liquidation. Collateral security may be arranged on money and securities and on payment account balances.

Unsecured credit

32 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

The Bankruptcy Act does not stipulate special remedies regarding the unsecured creditors. Application of interim measures may be requested in accordance with the provisions of the Code of Civil Procedure.

Although, the regulations on preferred ranking claims secured by lien shall also apply to claims that are satisfied by seized movable property or for which the right of enforcement has been registered before the time of the opening of liquidation proceedings.

In bankruptcy and liquidation proceedings, the rank of the claims of the unsecured creditors will be lower than the rank of the secured ones. However, the place in ranking of those claims under execution shall be

determined consistent with the date of seizure of the movable property or the date of registration of the right of enforcement.

There are no specific statutory provisions dealing with pre-judgment attachments in Bankruptcy Act.

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

33 During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

In the case of bankruptcy, the debtor shall notify its creditors directly within five working days following publication of the ruling ordering the opening of bankruptcy proceedings, and furthermore, shall publish a notice in a daily newspaper of nationwide circulation and also on its website (if available) advising the creditors to register their claims within the time limit specified and to make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, and to attach the documents in proof of their claim.

In the case of liquidation, upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette. The notice published shall contain, among others, a notice sent to the creditors to report their known claims to the liquidator within 40 days of publication of the ruling ordering liquidation.

Moreover, the directors of the company under liquidation are obliged to inform the beneficiaries of the claims specified in the Bankruptcy Act regarding the opening of liquidation proceedings within 15 days from the time of opening. If the director does not comply with the regulations, the court shall impose a fine.

In bankruptcy and liquidation proceedings, the meeting between the creditors and the debtor is called composition conference.

The liquidator shall send a financial statement and give account of his or her activities to the creditors' select committee (creditors' representative) quarterly, and report on the financial status (revenues, expenses) of the debtor and on the costs of liquidation.

Creditor representation

34 What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Creditors may form a creditors' select committee for the protection of their interests and to provide representation, furthermore, to monitor the activities of the administrator and the liquidator. The select committee shall exercise the rights and entitlements conferred by the Bankruptcy Act. The select committee has, among others, the following rights:

- upon a request received during bankruptcy proceedings and liquidation proceedings, the director of the debtor company, the administrator or the liquidator shall, within eight working days, inform the select committee;
- the liquidator shall inform the select committee at least 15 days in advance, or eight working days in advance in justified cases, about any contracts that exceed the scope of day-to-day operations, the termination of valid contracts, and discarding the debtor's stocks, provided however, that the committee shall have the right to comment such actions within eight working days of receipt of notice;

- the liquidator shall send a financial statement and give account of his or her activities to the select committee quarterly, and report on the financial status (revenues, expenses) of the debtor and on the costs of liquidation; and
- upon request, the liquidator shall present the timetable to the select committee, with entitlement to contest it in court, etc.

Only one select committee can be appointed in respect of any one company in debt. Other creditors may subsequently join in the operation of the creditors' select committee. In bankruptcy proceedings, a select committee shall be deemed legitimate if comprising at least one-third of the creditors with voting rights, and if these creditors control at least one-half of the votes. In liquidation proceedings, a select committee shall be deemed legitimate if comprising at least one-third of the notified creditors and these creditors hold at least one-third of all claims of creditors entitled to participate in the composition agreement. If the number of creditors operating the select committee is later reduced, and consequently the rate of participation no longer reaches the percentage required, the select committee shall cease to exist on the 30th day following the time of the occurrence of the said circumstance, except if other creditors have joined up within the said time limit, thereby reaching the required rate of participation. For the purpose of establishing a creditors' select committee or for selecting a creditors' representative, the liquidator shall convene all registered creditors within 75 days following the date of publication of the opening of liquidation.

Pursuant to a new rule of the Bankruptcy Act, the liquidator is obliged to allow the creditor to attend the creditors' meeting by using an electronic means of communication instead of a personal appearance. The rules of participation for using an electronic means of communication are established in the Bankruptcy Act.

The select committee's powers, representation of the creditors operating the select committee, the provision of funding and the rules for the advancing and accounting of costs and expenses shall be laid down by agreement concluded by the creditors. In the process of setting up and operating the select committee, voting rights shall be distributed among the participating creditors. Decisions shall be adopted by open ballot subject to simple majority. A creditors' select committee that was established in bankruptcy may continue to function in the liquidation proceedings, if it is able to meet the conditions specified.

Creditors may also appoint a creditors' representative instead of the creditors' select committee, who will have the same rights and entitlements as the select committee.

The creditors' select committee may request the court to appoint an expert for the cross-verification of the appraised value of the assets offered for sale, and shall advance the costs involved. The court shall decide upon the request within eight days. The fee of the expert shall be claimed under liquidation costs if the appraised value he or she had supplied is accepted. If the expert is of the opinion that the appraised value need not be modified, the expert's fee shall be borne by the creditors participating in the select committee in the percentage shown in their agreement for requesting an expert.

Enforcement of estate's rights

35 If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

The estate's rights are part of the assets of the company under liquidation. In principle, the creditors are not allowed to pursue the estate's remedies in the absence of assets to pursue a claim. It is the liquidator's right and obligation to enforce the claims. As regards the proceeds from assets realised in liquidation, the regulations on satisfying debts shall be applied.

Claims

36 How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

In the case of reorganisation, creditors shall make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, and shall attach the documents in proof of their claim. No claim will be registered in the event of their failure to do so in due time. Claims where any payment obligation of the debtor depends on a future event need not be notified yet. The registration of claims is subject to a registration fee payable by the creditor amounting to 1 per cent of the claim (5,000 forints minimum and 100,000 forints maximum) to the administrator's current account. The administrator shall then categorise and register the claims. The debtor and creditors shall be informed without delay concerning the classification of claims and the amount registered, and they shall be given an opportunity to present their views within a time limit of not less than five working days. Such comments shall be decided by the administrator and the creditor and the debtor shall be notified immediately, upon which they shall have five working days to submit any objection to the court concerning the administrator's action pertaining to the classification process, including the case where the administrator registered a claim of an amount other than the one notified by the creditor. The court shall adopt a decision relating to such objection in priority proceedings. The ruling may not be appealed separately.

In the case of liquidation, the liquidator shall register the claims against the debtor that are notified after 40 days, but within 180 days of the publication of the opening of liquidation proceedings. These claims shall be satisfied if there are sufficient funds remaining following the settlement of the debts notified duly. The general rules on the order of satisfaction shall apply to the creditors notifying their claims past the prescribed time limit.

Set-off and netting

37 To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

For the duration of the stay of payment, set-off may not be applied against the debtor; however, a set-off claim may be heard in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings.

In a liquidation proceeding, only such claims can be set off that have been registered by the liquidator as acknowledged and have not been assigned subsequent to the time of the opening of liquidation proceedings, or, if the claim has occurred at a later date, subsequent to its occurrence. If performance is affected after the time of the opening of liquidation proceedings, the creditor may not exercise the right of set-off with regard to debts assumed under section 6:203 of the Civil Code (assumption of debt), or undertaken under section 6:206 of the Civil Code (undertaking a debt) inside a period of two years prior to the date when the court received the petition for opening liquidation proceedings, or subsequently, nor with regard to performance assumed under section 6:205 of the Civil Code (assumption of performance). The directors and executive employees of the debtor economic operator, their close relatives and their domestic partners, furthermore, any member (shareholder) of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority

control (or the member in the case of single-member companies, the owner in the case of sole proprietorships, or the foreign-registered company in the case of Hungarian branches) may not set off their claims against the debtor.

In addition, in the case of an agreement for close-out netting concluded prior to the time of the opening of liquidation proceedings, the creditor shall notify this net claim to the liquidator, and the liquidator shall enforce this net claim. Contracts underlying close-out netting arrangements or framework contracts may be avoided or cancelled only if done concurrently.

Modifying creditors' rights

38 May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Under Hungarian law, the court may change the rank (priority) of a creditor's claim (which is determined by law) if the creditor appealed the administrator's decision of ranking its claim and the court rules in favour of the creditor.

Priority claims

39 Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

In the liquidation process, the following priority groups of claims exist:

- liquidation costs;
- claims secured;
- claims as alimony and life-annuity payments, compensation benefits, income supplement to minors, which are payable by the economic operator, furthermore monetary aid granted to members of agricultural cooperatives in lieu of household land or produce for which the beneficiary is entitled for his or her lifetime;
- claims of private individuals not originating from economic activities, claims of small and micro companies;
- debts owed to social security funds, taxes;
- other claims;
- default interests and late charges, as well as surcharges and penalty and similar debts; and
- claims, other than wages and other similar benefits.

In bankruptcy proceedings, the administrator shall categorise the claims as per the following:

- claims with regard to stay of payment; and
- secured and unsecured claims notified within the time limit.

Employment-related liabilities

40 What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

According to the Hungarian Labour Code, the employer shall be permitted to terminate an employment relationship by notice if undergoing liquidation or bankruptcy proceedings; thus, without stipulating differently in the contract, no claims will arise from termination. In the case of different contractual obligations, the employee may submit a claim. The employer is entitled to collective redundancy according to the provisions of the Labour Code.

The employer shall be liable to pay up to six months' absentee pay due to the executive employee from the remuneration payable upon termination of his or her employment, if the notice of termination is delivered after the opening of bankruptcy or liquidation proceedings. Any additional sum shall be payable upon the conclusion or termination of bankruptcy proceedings, or upon the conclusion of liquidation proceedings.

Pension claims

- 41 | What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

Debts owed to social security funds shall be satisfied from the economic operator's assets, if its assets are enough to cover these debts as well. Other pension-related claims may not be enforced against employers in insolvency or reorganisation; however, in the case of liquidation, the court shall notify the health insurance agency and pension insurance administration agency competent for the place where the debtor's registered office is situated when ordering liquidation. In connection with data disclosure requirements relating to pension insurance, the liquidator shall disclose data relating to the relationship of insured persons relevant for pension insurance in the form of a declaration submitted in accordance with other specific legislation. Information on payments made subject to social security obligations shall be provided to the state tax authority. The liquidator shall send the certificate issued by the competent pension insurance administration agency and the state tax authority on its fulfilment of the obligation of declaration to the court.

Environmental problems and liabilities

- 42 | Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

The 106/1995 (IX.8.) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings stipulates the provisions regarding environmental protection, the requirements and the manner of resolving environmental damage and contamination; furthermore, the types of expenses arising therefrom. According to the general rule, the liquidator shall provide for damage and contamination of the environment proven to originate from before the time of the opening of liquidation proceedings. This means that the costs of the necessary measures to be taken, even in the lack of the debtor's assets, to eliminate dangerous waste shall be borne by the central budget of the state.

Any creditor or, in the debtor's name, the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons. In the application of this provision, creditors' interests shall be considered to have been ignored if the executive failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offenses, or concerning remediation, in consequence of which providing full satisfaction for the creditors' claims may be frustrated. If damage is caused by several persons together, their liability shall be joint and several.

Liabilities that survive insolvency or reorganisation proceedings

- 43 | Do any liabilities of a debtor survive an insolvency or a reorganisation?

In the case of reorganisation, the qualified composition agreement shall decide about the survival of any liability, while in the case of liquidation, after the proceeding is concluded, the economic operator ceases to exist, thus no liability survives.

Distributions

- 44 | How and when are distributions made to creditors in liquidations and reorganisations?

In the case of reorganisation, distribution is made in accordance with the composition plan. In the case of liquidation, distribution is made in accordance with the distribution plan prepared by the liquidator and approved by the court or the decision of the court. The time of the distribution depends on the claim. Generally, the claims shall be distributed within 30 days upon the approval of the closing balance sheet or the closing simplified balance sheet. In certain cases, the claim can be satisfied upon maturity (eg, working capital loans).

The rank of the claims is governed by the relevant provisions of the Bankruptcy Act.

SECURITY

Secured lending and credit (immovables)

- 45 | What principal types of security are taken on immovable (real) property?

The main types of security on immovables are the real property mortgage and the independent lien.

The mortgage agreement is valid only if concluded in writing and in the form required for registration in the real estate register and goes into effect when it is registered. Priority is determined according to the date of registration; if more than one request is submitted on the same day, the priority is determined according to the date on which the mortgage agreement was concluded.

According to a recent amendment of the new Civil Code, 'seceded lien' has been abolished and independent lien has been introduced. A mortgage may be filed on a real estate property on a financial institution's behalf also by way of pledging the mortgaged property to secure a specific sum other than the secured claim (independent lien). The agreement on establishing the independent lien shall contain a description of the pledged property and indicate the specific sum up to which satisfaction may be sought from the pledged property. That sum shall be entered in the real estate register as well.

The conditions for exercising the right to satisfaction from the pledged property shall be fixed in a guarantee agreement between the lien holder and the lienor. The guarantee agreement shall be made out in writing and shall specify the reason for which the independent lien is filed, the terms and conditions for, and the extent of, exercising the right to satisfaction, or if the right to satisfaction opens upon cancellation, the conditions for exercising the right of cancellation, including the notice period. The right to satisfaction may be exercised as laid down in the guarantee agreement.

An independent lien may be transferred to another financial institution in whole or in part, or in instalments. The party to whom the independent lien is transferred shall replace in the guarantee agreement the transferor, as commensurate according to the extent of the transfer. If the independent lien is transferred in part or in instalments, the acquiring party may request that the division of the independent lien is indicated in the real estate register.

Secured lending and credit (movables)

46 | What principal types of security are taken on movable (personal) property?

The main types of security on movables are mortgage on movables, pledge on movables, floating charge and security deposit in the form of money, securities or payment account balances (possessory lien).

The pledge agreement contains an arrangement between the lienor and the lien holder on pledging a specific item and to secure a specific claim. Under the pledge agreement, the lienor undertakes the obligation to transfer possession of, or control over, the pledged property to the creditor in the case of a possessory lien, or grant approval for the registration of a mortgage.

Mortgages are registered in the collateral register in the case of movable properties. The collateral register contains the mortgages established on non-registered movable properties, rights and claims separately for each lienor, as well as other security rights established by the Civil Code.

Where ownership of a movable property is recorded in a public register (eg, the registry of boats), the mortgage shall be considered established if registered in the relevant registry.

The holder of the property subjected to possessory lien shall keep the pledged property in his possession and keep it in good condition.

The lien holder's right to satisfaction shall open in the case of default, when the claim secured by a pledge falls due.

The rules related to these securities are established by the Civil Code.

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

47 | What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

The following transactions can be annulled or set aside:

- contracts concluded by the debtor within five years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to conceal the debtor's assets or to defraud any one creditor or the creditors, and the other party had or should have had knowledge of such intent;
- contracts concluded by the debtor within three years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to transfer the debtor's assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtor's assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party;
- contracts concluded by the debtor within 120 days preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to give preference and privileges to any one creditor, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that does not have any; and
- contracts concluded by the debtor within three years before the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if made for the purpose of transfer of ownership by way of guarantee, or the assignment of a right or claim by way of a guarantee or exercising a collateralised option to buy, where the beneficiary exercised such acquired right by failing to fulfil his or her obligation of accounting

toward the debtor, or did so improperly, or failed to pay the amount remaining after the secured claim is satisfied; if the right-holder did not have the acquisition of ownership, or the assignment of a right or claim by way of a guarantee registered in the collateral register, or his or her buy option in the real estate register, the conditions for lodging a contest shall be presumed to exist.

The above transactions can be contested before the court by the creditor and, on behalf of the debtor, the liquidator within a one-year limitation period from the date of publication of the notice of liquidation.

If the contest is successful, the provisions of the Civil Code pertaining to invalid contracts shall apply. The liquidator and the creditor may request on the grounds of invalidity to have the original state restored, and to have any right registered in a public register on the asset after the alienation of the asset stricken from the records.

Equitable subordination

48 | Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Generally, there is no such restriction. However, if the debtor enters into an agreement with a company that is under its majority control, with a shareholder or directors of such company, or with their relatives, which agreement is intended to conceal the debtor's assets or to defraud the creditors, or to transfer the debtor's assets without any compensation, and such agreement is contested before the court, bad faith or gratuitous promise shall be presumed. Furthermore, bad faith or gratuitous promise shall also be presumed when this contract is concluded between economic operators that are not directly or indirectly connected by way of affiliation, but are controlled by the same person or the same company.

GROUPS OF COMPANIES

Groups of companies

49 | In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

In the case of groups of corporations, if any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy. Majority control means a relationship where a natural or legal person (holder of a participating interest) controls over 50 per cent of the voting rights in a legal person, or in which it has a dominant influence. The holder of a participating interest is deemed to have dominant influence on a legal person if it is a member of or shareholder in that company and:

- it has the right to appoint and recall the majority of the executive officers or supervisory board members of the legal person; or
- other members of or shareholder in that legal person are committed under agreement with the holder of a participating interest to vote in concert with the holder of a participating interest, or they exercise their voting rights through the holder of a participating interest, provided that together they control more than half of the votes.

Insolvency proceedings initiated against the foreign parent company abroad shall only apply to the Hungarian branch office under an international agreement or state of reciprocity or in accordance with European Parliament and Council Regulation EU/2015/848 on insolvency

proceedings. If the branch office is not involved in the insolvency proceedings initiated against the foreign parent company abroad under the laws of that country because of the lack of an international agreement or state of reciprocity or if the provisions of European Parliament and Council Regulation EU/2015/848 apply, the general court responsible for the place where the branch office is registered shall order dissolution of the branch office ex officio on the basis of notification by the court of registry.

Combining parent and subsidiary proceedings

- 50 In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

There are no combined insolvency proceedings under Hungarian law. If any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy.

INTERNATIONAL CASES

Recognition of foreign judgments

- 51 Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

The general rules regarding foreign judgments apply (with the provisions of the Insolvency Regulation of the EU). Hungary is not a signatory to any treaties on international insolvency or on the recognition of foreign judgments.

UNCITRAL Model Law

- 52 Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted in Hungary.

Foreign creditors

- 53 How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors are dealt the same in liquidations and reorganisations as any other creditor.

Cross-border transfers of assets under administration

- 54 May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

The rules governing the sale of the debtor's assets are set out in detail in the Bankruptcy Act, and it is not possible to transfer the debtor's property in any other way. The liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market. The liquidator shall effect the sale by way of tender or auction. The buyer shall pay the purchase price in order to acquire ownership over the debtor's asset.

COMI

- 55 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

No test is officially used to determine the COMI of a debtor company or group of companies. The Bankruptcy Act follows the applicable EU Regulation with respect of determining the COMI.

Cross-border cooperation

- 56 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

Pursuant to the relevant provisions of Act XXVIII of 2017 on Private International Law, the recognition of judgments in insolvency proceedings is subject to reciprocity between Hungary and the state of the court that delivered the judgment. Recognition of main insolvency proceedings conducted abroad shall not preclude the opening of secondary insolvency proceedings before a Hungarian court.

No court statistics are available regarding refusals.

Cross-border insolvency protocols and joint court hearings

- 57 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Cooperation in cross-border cases is based on the applicable EU laws in insolvency proceedings.

The Metropolitan Tribunal shall have competence and jurisdiction to open and conduct main insolvency proceedings instituted against an economic operator covered by European Parliament and Council Regulation EU/2015/848, established in a place other than Hungary.

There is no publicly available information on any joint hearings.

Winding-up of foreign companies

- 58 What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

According to the Bankruptcy Act, in respect of the Hungarian branches of foreign companies, the provisions of the Bankruptcy Act regarding liquidation proceedings shall apply subject to the exceptions set out in the Act on the Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies.

To the liquidation of Hungarian branches of foreign companies, generally the relevant EU regulation shall apply. In the event that a foreign company becomes insolvent in connection with business activities performed by its Hungarian branch and the insolvency proceedings to which it is subject does not fall within the scope of Regulation 2015/848/EU, and there is no reciprocity with the state where the foreign company is established in respect of insolvency proceedings, creditors may request dissolution of the branch by the general court at which the branch is registered. In these proceedings,

the provisions of the Bankruptcy Act on liquidation proceedings shall apply with certain derogations. The court shall terminate the liquidation proceedings if the foreign company or the branch provides guarantees for settlement of the creditors' claims notified in the proceeding.

After the conclusion of the branch's liquidation proceedings, the assets remaining shall be at the foreign company's disposal.

The main rules of liquidation of Hungarian branches of foreign companies are the following:

- the foreign company is to be regarded as the debtor in relation to debts incurred through its branch office;
- the assets of the branch office shall be understood as all of the assets of the foreign company (invested assets or current assets) which are used (administrated) by the branch office according to the accounting records of such;
- where the Bankruptcy Act refers to the executive officer of an economic organisation, it shall be understood as the director of the branch office; and
- where the Bankruptcy Act, in relation to liquidating proceedings, refers to the organs or bodies of the company, it shall be understood as the person or body acting as the managing director as delegated by its deed of foundation, or, in respect of insolvency proceedings initiated abroad, the liquidator authorised to dispose over the assets of the foreign company.

Insolvency shall be declared, in the event that the foreign company or the branch office has not paid non-disputed or acknowledged debts, within 60 days of due date, or execution proceedings conducted in Hungary against such party were unsuccessful.

Liquidation proceedings shall be initiated if requested by the creditor or upon notification by the Court of Registry. A branch office shall be considered dissolved upon removal from the company registration records.

UPDATE AND TRENDS

Trends and reforms

59 Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

The latest amendments of the Bankruptcy Act are related to the promotion of using electronic means of communication. According to one of the latest amendments of the Bankruptcy Act, creditors may attend the creditors' meeting by using an electronic means of communication, provided that their identification is still ensured. Another relevant amendment is that if a member of the creditors' select committee or the creditors' representative has communicated his or her email address to the administrator or the liquidator for electronic communication, the administrator or liquidator is entitled to send relevant notifications, other legal statements or documents to this email address.

The provisions of the Bankruptcy Act applicable to major economic operators of preferential status for strategic considerations have also been amended. According to a new provision, upon the sale of the assets of a major economic operator of preferential status for strategic considerations in liquidation proceedings, the Hungarian state has pre-emption right under the Bankruptcy Act, which is preceded by the pre-emption right granted by laws.

Owing to the coronavirus pandemic and its legal consequences, certain special provisions have been established related to restructuring and insolvency.

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A new act on insolvency proceedings is currently under preparation, since the Bankruptcy Act currently in force entered into force nearly 30 years ago and the economic environment has changed dramatically since then, which may justify the creation of a new, modern act drafted with respect to the current economic and digital environment.

Coronavirus

60 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns?

Owing to the coronavirus pandemic and its legal consequences, certain special provisions have been established related to restructuring and insolvency.

Act LVIII of 2020 on transitional arrangements connected to the cessation of the state of emergency and on the epidemiological preparedness entered into force on 18 June 2020. Prior to this Act, on 11 March 2020, the Hungarian government declared a state of emergency. During this period, a number of special provisions were introduced and several laws amended in order to prevent the spreading of coronavirus and minimalise its economic consequences. After the cessation of the state of emergency, Act LVIII of 2020 was implemented to provide a transition period for these temporary rules.

The relevant provisions of Act LVIII of 2020 may be summarised as follows.

The creditor may only file an application for the opening of liquidation proceedings upon the debtor's failure to settle or contest his previously uncontested and acknowledged contractual debts within 20 days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice until 31 December 2020, if the final deadline allowing the debtor to pay his or her debt established in the payment order sent to the debtor and the following 75 days passed without result, so the debtor failed to pay his or her debts. In this case, the court may set a maximum deadline of 15 days to the debtor to pay his or her debts. This deadline is a maximum of 45 days, according to the general rules of the Bankruptcy Act.

In the case of certain debts (eg, upon the debtor's failure to settle his debt within the deadline specified in a final court decision or order for payment), an application for the liquidation of the debtor may only

be filed until 31 December 2020 if the amount of the claim (calculated without interest and contributions) exceeds 400,000 forints.

If the application for the opening of a liquidation proceeding fails to comply with the above-mentioned rules until 31 December, 2020, the court refuses the application without a substantive examination.

Act LVIII of 2020 introduced certain other insolvency-related regulations, such as a payment moratorium.

Unless the parties provide otherwise, the debtor's obligation to pay principal, interest or fees arising from a credit and loan agreement or a financial lease agreement provided commercially by the creditor until 31 December 2020, it is amended that the debtor receives a deferral of payment for the fulfilment of the obligation to pay principal, interest or fees arising from the contract, thus the debtor becomes entitled to the payment moratorium. The payment moratorium does not affect the debtor's right to perform under the original terms of the contract.

The deadline for fulfilling the contractual obligations and the duration of the commitment will be extended with the duration of the payment moratorium. The contract, which expires during the payment moratorium, will be extended until 31 December 2020.

Amendments to the performance of contracts also amend collateral and non-collateral ancillary obligations securing the contract, including the guarantee contract or the guarantor's declaration, regardless of whether the ancillary obligation is included in the contract or in a unilateral declaration of rights.

These provisions shall be applied to loans already disbursed under contracts existing on 18 March 2020.

Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Hungary	
Applicable insolvency law, reorganisations: liquidations	Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (the Bankruptcy Act). Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (the Companies Act).
Customary kinds of security devices on immovables	The real property mortgage and the independent lien.
Customary kinds of security devices on movables	Mortgage on movables, pledge on movables, floating charge and security deposit in the form of money, securities or payment account balances (possessory lien).
Stays of proceedings in reorganisations/liquidations	Reorganisation proceedings shall be divided into two parts: (1) the first part takes from the request to opening the bankruptcy proceedings to the publishing of stay of payment; and (2) the second part is the stay of payment period and is lasts until the publication of the ruling closing the proceedings. Liquidation proceedings shall also be divided into two parts: (1) the first part is the examination of the debtor's insolvency and the declaration of insolvency or the termination of proceedings; and (2) the second part is, in case of the debtor's insolvency, the period of the real liquidation managed by the liquidator which ends with the debtor's dissolution without succession.
Duties of the insolvency administrator	<ul style="list-style-type: none"> • Approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings. • Approve any new commitment made by the debtor. • Supervise the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with creditors. • Categorise and register the claims.
Set-off and post-filing credit	For the duration of the stay of payment, set-off may not be applied against the debtor; however, a set-off claim may be heard in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings. In case of reorganisation, no priority is given for post-filing credits. The debtor shall be allowed to undertake any new commitment only with the consent of the administrator. In a liquidation proceeding, with regard to the debtor's claims, right of set-off may be exercised only with respect to such creditor's claims which have been registered by the liquidator as acknowledged and have not been assigned subsequent to the date when the court received the petition for opening liquidation proceedings, or, if the claim has occurred at a later date, subsequent to its occurrence. In case of liquidation, the Bankruptcy Act does not expressly regulate a debtor's right to obtain secured or unsecured loans or credit. The liquidator, however, is able to contract new obligations, such as a loan or a credit, but only in connection with the rational termination of the debtor's business operations. Such loans granted to the debtor have a priority in the liquidation.
Creditor claims and appeals	The administrator shall categorise and register the claims of creditors. The debtor and creditors shall be informed without delay concerning the classification of claims and the amount registered, and they shall be given an opportunity to present their views. Such comments shall be decided by the administrator and the creditor and the debtor shall be notified immediately, upon which they shall have five working days to submit any objection to the court concerning the administrator's action pertaining to the classification process. The court shall adopt a decision relating to such objection in priority proceedings. The ruling may not be appealed separately. In case of liquidation, the liquidator shall register the claims against the debtor. The liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market. and the debts of the economic operator shall be satisfied from its assets that are subject to liquidation in the order prescribed by the Bankruptcy Act.
Priority claims	In the liquidation process the following priority groups of claims exist: (1) liquidation costs; (2) claims secured; (3) claims as alimony and life-annuity payments, compensation benefits, income supplement to minors, which are payable by the economic operator, furthermore monetary aid granted to members of agricultural cooperatives in lieu of household land or produce for which the beneficiary is entitled for his or her lifetime; (4) claims of private individuals not originating from economic activities, claims of small and micro companies; (5) debts owed to social security funds, taxes; (6) other claims; (7) default interests and late charges, as well as surcharges and penalty and similar debts; and (8) claims, other than wages and other similar benefits. In bankruptcy proceedings, the administrator shall categorise the claims as per the following: (1) claims with regard to stay of payment; and (2) secured and unsecured claims notified within the time limit.
Major kinds of voidable transactions	The Bankruptcy Act lists those contracts that shall be considered invalid if the creditor successfully contests them in court.

Hungary	
Operating and financing during reorganisations	Under the duration of the stay of payment, the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator and payments may be made from the debtor's assets subject to authorisation by the administrator. During the reorganisation, the debtor can carry on business only with the supervision of the administrator.
International cooperation and communication	The general rules regarding foreign judgments apply (with the provisions of the Insolvency Regulation of the EU). The regulations of the EU regarding the recognition of foreign insolvency proceedings apply. In any other case, cooperation and recognition depend on bilateral treaties or on the principle of reciprocity. The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted in Hungary.
Liabilities of directors and officers	Former executives shall bear liability in those cases where they fail to properly represent the interests of creditors.
Pending legislation	A new act on insolvency proceedings is currently under preparation with expected coming into force in 2021. The main goals of the new regulation are to enhance competitiveness and to provide an innovative regulation suitable for the modern economy.

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