Czech Republic: Insolvency Act undergoes substantial overhaul

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On 1 July 2017, a far-reaching amendment to the Czech Insolvency Act will come into force.

This will bring the following changes, among others:

(i) Negative assumption of bankruptcy.
(ii) Barriers intended to curb what is known as 'forum shopping'.
(iii) A preliminary review of insolvency petitions.
(iv) The obligation to provide evidence for one's receivables as to their existence and amount.

The Insolvency Act in its current manifestation determines in what situation a given debtor is bankrupt (i.e., when they are assumed to be unable to honor their payment obligations), whereas the actual existence of bankruptcy is to be substantiated by the petitioner (be it the debtor or one of the creditors).

In the new Act, one may also take as one's point of departure the statutory assumption that the debtor is able to meet its obligations (i.e., that it is *not* bankrupt). This statutory assumption will come into play in cases in which a debtor (who must be an entrepreneur who keeps regular accounts) shows that "the hole in the budget" (i.e., the difference between disposable funds and due liabilities) is no bigger than 1/10 of the overall debt.

The territorial jurisdiction of the insolvency court will also be determined, based upon the address at which the debtor had his or her registered office, on the day which precedes the moment of commencement of the insolvency proceedings by six months. This should greatly limit the number of cases in which a debtor relocates his or her seat, with the nefarious objective to "move" a future insolvency procedure into the district of another court, in order to obtain more favourable conditions or, as it were, worse conditions for the creditors.

Under the current rules, insolvency proceedings are commenced as of the moment in which the insolvency petition is delivered to the court. The insolvency court must publish such petitions within two hours from the moment of delivery. In this manner, the very existence of an insolvency procedure becomes a public matter, even though the petition has in no way been examined in terms of its substance. This has often adverse consequences for debtors (in the form of a "run on the debtor", or their exclusion from public tenders). In the future, if the insolvency court has reason to doubt the legitimacy of an insolvency petition, it may hold back publication until it has reached a decision on whether to dismiss the petition for manifest lack of reasons.

Last but not least, we ought to mention a new obligation imposed on creditors to be found in the role of insolvency petitioners (though only if they are a legal entity that keeps accounts or tax records) – namely, to prove the existence of their purported receivable, either by way of a written acknowledgement by the debtor (with certified signature), by way of an enforceable title (court decision or notarial deed with direct enforceability), or by way of a confirmation by the auditor according to which the receivable is properly accounted for in the creditor's books. The lawmaker here seeks to prevent situations in which the case for insolvency as presented in the petition was built on a doubtful receivable.

However, it remains to be seen whether this new obligation will really lead to the desired decline in the number of frivolous insolvency petitions or whether it will merely mean burdening honest creditors with additional red tape.

THE TERRITORIAL JURISDICTION OF THE INSOLVENCY COURT WILL ALSO BE DETERMINED, BASED UPON THE ADDRESS AT WHICH THE DEBTOR HAD HIS OR HER REGISTERED OFFICE