

# INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—Czech Republic final provisions

28/04/2020

**Restructuring & Insolvency analysis:** The Parliament of the Czech Republic, in response to the economic impact of the current crisis resulting from the government measures related to the coronavirus (COVID-19) epidemic, adopted the Act No 191/2020 Coll, on certain measures to mitigate the effects of the SARS CoV-2 coronavirus epidemic on parties involved in legal proceedings, harmed persons, crime victims and legal entities, and to amend the Insolvency Act and the Enforcement Code (hereinafter the 'Act on the Mitigation of the Impact of an Epidemic'). Written by V-clav Kment of Kinstellar, s.r.o., advokátní kancelář, Prague.

The Act on the Mitigation of the Impact of an Epidemic is effective as of 24 April 2020.

The Act on the Mitigation of the Impact of an Epidemic contains a number of significant changes, particularly in the areas of procedural, insolvency and corporate law. The changes seek to respond to the consequences of the emergency measures taken by public authorities as a result of the coronavirus (COVID-19) (hereinafter the 'Coronavirus') epidemic (hereinafter the 'Epidemic').

Most of the changes will be temporary for the duration of (i) the economic and social consequences of the Epidemic, (ii) the state of emergency declared by the government of the Czech Republic due to health threats associated with the occurrence of coronavirus (COVID-19) (hereinafter the 'State of Emergency') and (iii) related to the emergency measures taken by public authorities.

Emergency measures, according to the Act on the Mitigation of the Impact of an Epidemic means:

measures taken by the government of the Czech Republic during the State of Emergency  
emergency measures by the Ministry of Health enacted in 2020 to protect the population and prevent the risk of the spread of coronavirus (COVID-19), and  
emergency measures of the Regional Hygiene Authority enacted in 2020 to prevent the further spread of coronavirus (COVID19),  
(hereinafter the 'Emergency Measures' or individually the 'Emergency Measures')

Consequently, the Act on the Mitigation of the Impact of an Epidemic does not contain generally applicable measures. Relief granted to its recipients merely aims to mitigate the situations caused by the Epidemic for the duration of its consequences.

Changes in Czech insolvency law include:

- a preference for delivering documents by way of their publishing in the insolvency register in order to reduce the administrative burden on insolvency courts
- the obligation of the insolvency court to remit a procedural deadline, provided that the procedural act is missed for an excusable reason based on the Extraordinary Measures unless the case has already been decided
- the application for remission must be submitted to the court together with the missed act within seven days from the date of termination of the relevant Emergency Measure, but the period for the submission will not end earlier than seven days after the end of the State of Emergency
- abolition of the obligation to file a debtor's insolvency petition as of the effect of the Act on the Mitigation of the Impact of an Epidemic and until six months after the termination of the Emergency Measures (however, no later than by 31 December 2020), if the insolvency occurred as a result of such a situation
- it will not be possible to effectively file a creditor's insolvency petition (petitions will have no legal effect) as of the effect of the Act on the Mitigation of the Impact of an Epidemic up to 31 August 2020
- the possibility to apply for a temporary suspension of a re-organisation plan during the effectivity of the Emergency Measures. The application is only possible in the event that a plan has been approved by 12 March 2020 at the latest and has not yet been fully performed. If granted, the re-organisation cannot be turned into bankruptcy proceedings during this period

excluding the duration of the Emergency Measures and a further six months from their termination to the relevant period with regards to action for the relative ineffectiveness of an act (Actio Pauliana)

a debtor-business operator who is not insolvent as at 12 March 2020 will have the opportunity to file a proposal for an extraordinary moratorium which can last (if extended) up to six months (hereinafter the 'Extraordinary Moratorium'); the Extraordinary Moratorium will be newly introduced directly in Act No 182/2006 on insolvency procedures (hereinafter the 'Insolvency Act').

Below is a summary of the main differences between the Extraordinary Moratorium and an ordinary moratorium:

a proposal for an Extraordinary Moratorium may be submitted by 31 August 2020 at the latest and the reason for its proposal must be based on the Extraordinary Measures; the debtor must provide an affidavit affirming that the Extraordinary Moratorium was proposed due to the Emergency Measures

the scope of documents necessary for the approval of the Extraordinary Moratorium is limited compared to an ordinary moratorium

it will not be necessary to approve the Extraordinary Moratorium by an absolute majority of creditors (however, an extension of up to six months is subject to the consent of the majority of creditors) with some exceptions, most of the effects normally associated with the initiation of insolvency proceedings are suspended (generally only effects that are for the benefit of the debtor remain in place)

the Extraordinary Moratorium will not be granted in the event that the debtor has paid extraordinary dividends or other extraordinary payments (eg early loan repayments) to its controlling entities within two months prior to 12 March 2020, or any time after, unless such a payment has been returned

the debtor can apply for public subsidies provided to business operators for the duration of the Extraordinary Moratorium to mitigate the effects of the Epidemic

Prior to the approval of the Act on the Mitigation of the Impact of an Epidemic, a draft amendment to the Insolvency Act was also submitted by judges of the Insolvency Section of the High Court in Prague. The draft aims to both mitigate the effect of the Epidemic and to introduce provisions to protect debtors in the event of any future crisis or emergency situation. Its authors argue that the current regulations contained in the Insolvency Act do not reflect and anticipate crisis situations of the current type, including the wide-scale potential insolvency of business owners in the Czech Republic. However, amendments in the form proposed by the judges of the High Court in Prague have not been implemented in the Act on the Mitigation of the Impact of an Epidemic.

## **INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms**

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available—[Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.