

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

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**Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Croatia prompted by the coronavirus (COVID-19) pandemic. Written by Jelenko Lehki of Lehki Law Office, member of INSOL Europe.**

### **Legal framework during pandemic**

[The Act on protection of population](#) from contagious diseases (see: National Gazette 79/07, 113/08, 43/09, 130/17, 47/20), last amended on 17 of April 2020, and [the Act on System of Civil protection](#) (see: National Gazette 82/15, 118/18, 31/20) is the legal framework for extraordinary measures curing the coronavirus pandemic, and gives additional authority to the Republic of Croatia's Civil protection Headquarters, as a government body (consisting of experts in various fields), which make general decisions and recommendations in this kind of emergency situation.

### **Changes in insolvency procedures**

Following the current coronavirus pandemic and its impact on the economy, the regulatory framework for insolvency proceedings is undergoing change with the [Act on Emergency Measures in Enforcement and Bankruptcy Procedures](#) during Special Circumstances (see: National Gazette 53/2020), which came into force on 1 May 2020 and addresses several areas of insolvency and enforcement procedures.

### **Reasons for bankruptcy**

The provisions in the Act on Emergency Measures in Enforcement and Bankruptcy Procedures during Special Circumstances state that reasons for bankruptcy (which under the [Bankruptcy law](#) (see: National Gazette 71/15, 104/17) are insolvency lasting for 60 days or indebtedness) that occurred during the time the Act is in force, are not considered a prerequisite for opening a bankruptcy procedure. An exception is made when a bankruptcy claim is filed on basis of safeguarding the interest of Republic of Croatia, nature, human environment and citizens health.

These provisions also create a moratorium on the initiation of mandatory bankruptcy proceedings that FINA (a financial agency—a government-owned legal entity that (among other things) aids commercial and municipal courts (technical and administrative) in insolvency and enforcement proceedings) initiates at a commercial court after 120 days of continuous insolvency; pursuant to Bankruptcy Law implemented in 2015.

The Act further prescribes a moratorium on all enforcement procedures (including the funds) with the exception of alimony procedures, unpaid salaries, wages or severance pay and in the case of criminal proceedings. This provision has an impact on the above stated period of insolvency according to which the reasons for bankruptcy are determined in most cases.

Another provision of the Act is that no default interest is due during the period of its duration.

### **Duration of measures**

The duration of the Act on Emergency Measures in Enforcement and Bankruptcy Procedures during special circumstances is set to three months from the date on which it came into force, with the possibility of the government extending this period by an additional three months.

## **Other changes in insolvency procedures**

Prior to this law coming into force, a decision was made by the Ministry of Justice suspending electronic public auctions to be conducted by FINA for the sale of assets in court proceedings (including bankruptcy proceedings), as well as enforcement procedures on funds, until the extraordinary circumstances have elapsed.

## **Communication between the courts and the insolvency practitioners**

Due to social distancing and other measures to prevent the spread of coronavirus implemented in the judicial system, as ordered by the Republic of Croatia's Civil protection Headquarters, the Ministry of Justice sent a letter of recommendation to all courts, including commercial courts, which explained on what basis the decision had been made to cancel all non-urgent hearings until 11 May 2020. After 11 May 2020, hearings will be held in order of urgency, with a limited number of court hearings per day and with the minimum number of necessary parties present (the suggestion is that if attorney at law is available and present, there is no need for the client to be present if not scheduled for giving a statement/making a deposition). Due to not being able to go to court in person, all communication (exchange of documents, submitting formal requests and letters, etc) are to be done via the IT system of E-communication which included, and was early adopted by all insolvency practitioners (a system implemented last year and made fully operational, earlier than expected, this year ).

Since the beginning of the emergency measures, the Croatian association of trustees in bankruptcy actively communicate with the Ministry of Justice to propose possible solutions to current extraordinary conditions in which insolvency proceedings need to be conducted. This was particularly important in enabling insolvency practitioners to permit travel due to movement restrictions (outside of their district's administrative borders inside Croatia) which can have an impact on the timely undertaking of insolvency practitioners' duties. Among other topics, emphasis is made on bringing the preparations for implementing the system up to speed in order to have virtual court hearings (ie video conferencing) which is foreseen in the provisions of [Article 115 of Civil proceedings Act](#) (last amended in 2019).

## **Government assistance to entrepreneurs, and changes in due dates for tax obligations in relation to insolvency conditions**

To directly help entrepreneurs that are affected by emergency measures, the government issued a regulation through which it would pay employers an amount of HRK 4,000 (EUR 530) per employee, with an additional payment of a portion of the contributions (in the first month it was HRK 3,250 (EUR 425) without contributions), provided that the employers kept their workers employed for twice the amount of time they received this payment for (the average net salary in the Republic of Croatia in 2019 was HRK 6418 (EUR 855)).

Change is also made in the date when the payment of VAT (value added tax) becomes due, which is now due only after the payment of an invoice, while previously it was prescribed that the VAT payment was due immediately after issuing an invoice (except for lower-income businesses).

## **Impact of changes in legislation and Government measures**

Measures in relation to bankruptcy proceedings as such seem appropriate at the moment, with the assumed intention to provide additional time for entrepreneurs and management to adjust to the new circumstances. The question remains as to how long they will remain in effect, and what the effect on the duration of the proceedings and their final outcome will be, given the deferred time for the initiation of proceedings for businesses that were already eligible for initiating bankruptcy proceedings even before the extraordinary circumstances occurred (an area not covered in transitional and closing provisions of the Act)

As for future insolvency procedures, government measures around payments and tax deferment will surely postpone to some extent, the onset of conditions that require management to file for bankruptcy, and give them more time to undertake urgent restructuring where applicable (and possible) in legal framework of pre-insolvency or outside of it.

## **INSOL Europe/LexisNexis Coronavirus 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.