

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

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**Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Ukraine prompted by the coronavirus (COVID-19) pandemic. Written by Anton Molchanov and Oleksander Plotnikov of Arzinger, Ukraine, members of INSOL Europe.**

### **Introduction**

Both before and after the coronavirus pandemic, Ukraine has been pursuing a number of reforms aimed to improve domestic insolvency legislation. Although a significant part of the pending reform has not yet been transformed from draft bills to the fully-adopted laws, introduction of the first Ukrainian Insolvency Code in 2019 was warmly praised by the country's key foreign lenders (International Monetary Fund, World Bank and the European Bank for Reconstruction and Development (EBRD)), as well as by the domestic banking & finance community.

### **Pre-coronavirus (COVID-19) crisis reform**

The country's first Insolvency Code entered into force on 21 October 2019. The Code's main changes had been clearly aimed at the three following goals:

- strengthening creditors' rights
- increasing responsibility of the debtors' management and shareholders in respect of early warning tools and wrongful trading
- preventing any excessive delays in court-driven insolvency proceedings

Despite various challenges, practical usage of the Code starting from October 2019 has shown that all these goals have mostly been achieved. In particular, following the Code's introduction:

- debtors' management is obliged to pursue early warning tools in pre-insolvency estates by either filing for insolvency or convening the shareholders' general meeting where there is significant net asset decrease. The latter reflects Ukraine's commitments to Article 19 of the Second Directive 2012\30 (EU), however as of now, it is only applicable to limited liability companies
- creditors (including secured ones often being domestic or international lenders) have a right to open insolvency proceedings against non-performing debtors without pre-litigating or enforcing their claims. Two previous Ukrainian Insolvency laws required a creditor requesting the debtor's insolvency to provide a court decision ordering the principal debt repayment and, starting from 2013, evidence of non-execution of such court decision within three months from the beginning of an official enforcement. This obviously put an unjustified time and cost burden over creditors and gave the debtors an opportunity to avoid insolvency and keep free access to their assets. A debt threshold for opening corporate insolvency proceedings is also absent, meaning that the court should determine balance—or cash flow insolvency signs in each particular case, disregarding the initial creditors' claim value
- clawback claims against debtors' asset disposals are extended for three-year pre-insolvency period. The grounds for clawing back pre-insolvency agreements and asset disposal was also extended to prevent snowballing of affiliated creditors' claims and wrongful\reckless trading
- each stage of the court-guided insolvency proceedings is limited within the fixed time to avoid substantial delays. This allows an initial administration stage to last up to 170 days and liquidation no longer than 12 months. Remarkably a turnaround stage (if approved by creditors and the court) has no time limitations as soon as a proper performance under the turnaround plan continues

- secured creditors are able to take possession over their security to avoid it being fire-sold at a discounted price. This provides creditors with an option to sell the security outside the formal insolvency proceedings and thereby to increase their repayment ratio

Apart of corporate insolvency changes, for the very first time in the country's modern history the Ukrainian Insolvency Code introduced personal insolvency proceedings. Being primarily based on consumer (non-commercial) debts exceeding EUR 4100 (or half of the monthly loan payments being in default for at least two months), the personal insolvency proceedings are accessible for debtors only and provide two possible scenarios:

- a court-approved personal scheme of arrangement (providing haircuts\instalment plan\write off for certain creditors)
- a court-guided bankruptcy with repayments from fire sales of the debtor's assets and subsequent write-off of non-paid debts

### **Coronavirus crisis-related initiatives. Bill 3322**

As of now, the Ukraine has not introduced any insolvency-related measures connected with the coronavirus pandemic. A draft Bill 3322 has been pending before the Ukrainian Parliament and contains the following proposals:

- e-voting of creditors' general meetings and creditors' committees (valid as long as the nationwide quarantine is)
- release of liability for the debtors' management and administrators\liquidators being unable to perform their insolvency duties resulting the nationwide quarantine
- moratorium on insolvency requests (lasting for the period of the nationwide quarantine plus 90 days) for creditors whose claims matured after 12 March 2020
- provide a right of postponing fire sales to either the creditors' committee (for non-secured assets) or a secured creditor
- suspending default interest accruals for non-performed turnaround plans or personal schemes of arrangement

A number of the Bill's stakeholders (including domestic banks) heavily criticised the Bill for providing debtors with wide grounds for possible omissions with the insolvency moratorium. Instead of the moratorium, cancellation of management's duty to file for insolvency is claimed by the Bill critics to be sufficient and potentially effective.

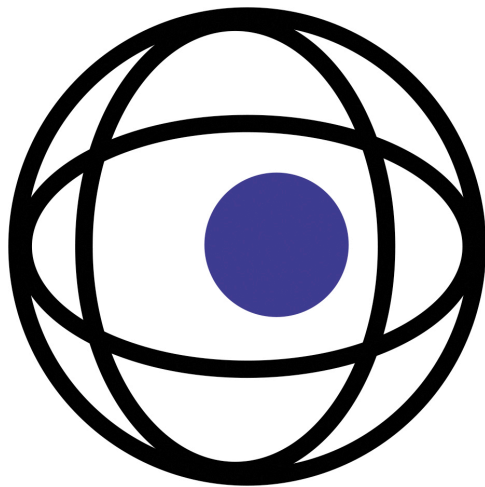
### **Non-coronavirus pandemic reforms. Law 2276**

On 5 June 2020, the Ukrainian Parliament passed Law 2276 allowing both debtors and creditors to propose a candidate for administrator\liquidator appointment when filing for insolvency. This approach replaces earlier random computer selection of the candidate and is declared to be of temporary nature (being valid prior to a new state e-justice platform has been launched).

As of today, Law 2276 is expected to be signed by the Ukrainian President and officially published. It has not entered into force yet.

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

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



# INSOL EUROPE

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.

## **INSOL Europe webinars: COVID coffee breaks**

INSOL Europe in partnership with LexisPSL are pleased to present a series of free webinars: 'COVID Coffee Breaks'.

The COVID Coffee Breaks are short, 20 minutes webinars, in which two or three INSOL Europe Country Coordinators share their personal experiences of the coronavirus crisis in their countries and give highlights of reforms and changes to their national insolvency framework to address the current crisis.

The webinars published to date (and available on demand) are accessible on INSOL Europe's website here: <https://www.insol-europe.org/publications/web-series>.