

Czech Republic: Second wave of changes to insolvency law



With the numbers of active cases of coronavirus SARS CoV-2 rising in the Czech Republic, a new law aiming once again to further mitigate the impact of the measures in combating the coronavirus SARS CoV-2 epidemic was adopted on 11 November 2020 (the Covid Act II).

The Covid Act II concerns three main areas: (a) extending the time of the suspension of the debtor's duty to file for insolvency; (b) renewing the time period for debtors to apply for an extraordinary moratorium protecting them from certain creditor actions; and (c) removing the condition to obtain creditors' approval of an extension of an already declared extraordinary moratorium.

Duty to file insolvency petitions suspended

The debtor's obligation to file for insolvency if statutory conditions have been met had been suspended for the duration of the relevant measures taken by the Czech government, as well as for six months following their expiry. The Covid Act II amends this rule by extending the maximum time period for which the debtor's duty to file for insolvency is suspended until 30 June 2021.

During this period, directors of an affected debtor company would not be liable for a failure to

file for insolvency. However, their other duties and related liabilities under the Corporations Act would remain unaffected by the Covid Act II. A condition for application of this rule is that it applies only to those companies whose insolvency was caused mostly by the epidemic. Creditors will, however, still be able to file insolvency petitions against debtors, as the protection that lasted until 31 August 2020 has not been renewed.

Extraordinary moratorium

Any debtor company with its centre of main interests in the Czech Republic and which was solvent as of 12 March 2020 had the opportunity, until the end of August 2020, to file for an extraordinary moratorium which could have lasted for up to three months, but could be extended by an additional three months with the consent of a majority of its creditors.

The Covid Act II sets out that debtor companies are again entitled to file for an extraordinary moratorium until 30 June 2021, provided that they were not insolvent on 5 October 2020 and had not used this safe harbour previously. The Covid Act II also, quite surprisingly, stipulates that if an extraordinary moratorium was declared before the end of August 2020, the condition requiring the approval of creditors for an

extension of the extraordinary moratorium will not apply and the court may extend the duration of the extraordinary moratorium by no more than an additional three months solely upon the company's request. Though it has been enacted, this particular change is the subject of discussion between relevant stakeholders.

The effects of the extraordinary moratorium remain the same. In particular, while the extraordinary moratorium is in place:

- the debtor company can be sued although judgments cannot be enforced against it;
- it would not be possible to create new security over the assets or to enforce existing security;
- the court will not be in a position, for the period of the extraordinary moratorium, to declare the company insolvent, even after a creditor files an insolvency petition;
- set-offs would generally be permitted;
- the debtor company should generally refrain from undertaking any substantial transactions, unless they are within the ordinary course of the business; and
- counterparties would not be entitled to terminate or refuse to perform certain essential pre-existing contracts as long as the company continues to pay at least its claims arising during the moratorium.

Close-out Netting and Financial Collateral

The protection enjoyed by close-out netting and financial collateral arrangements under the Czech insolvency law by close-out netting and financial collateral arrangements would remain unaffected by the proposed changes. ■



PETR SPRINZ
Counsel, Allen & Overy,
Czech Republic



JIŘÍ RAHM
Associate, Allen & Overy,
Czech Republic



A condition for application of this rule is that it applies only to those companies whose insolvency was caused mostly by the epidemic

