Implementation of the EU Restructuring Directive in Slovakia and the Czech Republic: A brief comparison

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In order to ensure the transposition of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks (the "Directive"), Slovakia and the Czech Republic have initiated the process of adopting their respective implementing legal acts.

While Slovakia has recently adopted Act No. 111/2022 Coll., on resolving imminent insolvency (**Slovak Act**), the bill on preventive restructuring (**Czech Bill**) is yet to be adopted in the Czech Republic and there is unfortunately no clear indication about any timing. The aim here is to provide an overview of the main principles of both texts.

In line with the Directive, both the Slovak Act and the Czech Bill deal with imminent insolvency in preventive proceedings, which serves as an effective tool for resolving the debtor's financial situation in a timely manner so that it can keep existing as a going concern and carry on its business. This helps, in particular, to avoid bankruptcy and subsequent liquidation proceedings. Under both Slovak and Czech law, only legal entities are eligible for preventive restructuring. The Slovak Act sets out also a condition for the debtor to be registered in the Public Sector Partners Registry (evidencing ultimate beneficial owners).

Implementation of the Directive in both countries effectively distinguishes between public and non-public preventive restructuring. In Slovakia, proceedings are generally public (open to any affected creditor) and non-public proceedings are available only to debtors with creditors under supervision of the national bank. The Czech Bill defaults to non-public proceedings, where the debtor is allowed to choose which groups of creditors are involved – though the debtor might opt for a public preventive restructuring.

In accordance with the Directive, all of the above proceedings also involve adoption of a restructuring plan, which includes, in particular, description of restructuring measures, the creditors and their classes and other information, though these differ under the Slovak Act and the Czech Bill. A restructuring advisor also plays a key role in the preparation of the restructuring plan. Classes of creditors vote on the adoption of the plan, which also has to be confirmed by the court.

A crucial tool in preventive restructuring proceedings is the moratorium, which provides the debtor temporary protection from effects of insolvency proceeding and enforcement proceeding. The Czech Bill, unlike the Slovak Act, stipulates that the debtor does not have to obtain creditor approval when requesting a moratorium. Apart from the general moratorium, the Czech Bill also offers the possibility of an individual moratorium, applicable only to a specific creditor.

One of the differences between the Czech and the Slovak processes is the degree of formality of the proceedings. While in Slovakia, judicial intervention is necessary from the very beginning, preventive restructuring may be approved in the Czech Republic without court intervention if the debtor and all the relevant creditors agree. However, in practice, formal court approval is expected in order to give effect to the restructuring plan. As regards granting a moratorium, the court's decision is still necessary under the Czech Bill.

Courts are involved under the Slovak Act also in relation to the committee of creditors. After approval of the preventive restructuring, Slovak law requires the court to establish the committee of creditors. The committee may, *inter alia,* determine certain material acts of the debtor which will be subject to the approval of the creditors committee or the debtor's advisor.

The main principles and procedures of preventive restructuring under the Slovak and Czech implementations are also summarised in the following table, which highlights in more detail the main differences between the Slovak Act and the Czech Bill. ■

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Table 1: Selected differences between Slovak and Czech implementations of the Directive

	The Slovak Act	The Czech Bill
Eligibility	Legal entities, excepting those not subject to the Slovak Act on Bankruptcy and Restructuring (the State, banks, financial institutions, insurance companies etc.)	Legal entities, except banks, financial institutions, insurance companies etc.
Disqualification from the process (examples)	• A debtor whose business is not viable, • A debtor in liquidation or dissolved, • A debtor with declared bankruptcy or restructuring proceedings commenced, • A debtor subject to pending execution proceedings, • A debtor subject to pending enforcement of security, or • A debtor not listed in the UBO register.	• A debtor whose business is not viable, • A debtor pursuing dishonest intentions, • A debtor in liquidation, • A debtor declared bankrupt within the last 5 years, or • A debtor initiating preventive restructuring in the last 5 years ending with a declaration of inadmissibility due to dishonesty.
Types of proceedings	Public and non-public (private) preventive restructuring. The use of private preventive restructuring depends on whether creditors are subject to supervision by the Slovak National Bank (or similar body elsewhere).	Apart from general preventive restructuring envisaged both for creditors and debtors, a debtor can opt for a public preventive restructuring. Under certain circumstances, publicity of proceedings is needed (e.g., if a general moratorium is declared).
Commencement of proceedings	When the debtor files a motion with the court attaching a draft restructuring plan.	When the debtor deliver to affected parties of written notice of intent to negotiate a restructuring plan, attaching a restructuring project detailing, inter alia, the cause of financial difficulties, and outlining measures to be taken in order to preserve or renew business operations.
Restructuring advisor	Although the Slovak Act provides for significant involvement by a restructuring advisor in preparing the restructuring plan, the debtor cannot delegate preparation completely.	The debtor can wholly or partially delegate preparation of the restructuring plan to a restructuring advisor.
Voting on plan adoption	Affected creditors adopt the restructuring plan if: (i) each class of secured creditors has voted for the adoption, (ii) in each class of unsecured creditors, at least 75% of the voting creditors have voted for the adoption, (iii) in each class of unsecured creditors, a majority of the creditors with receivables exceeding 1% of the sum of receivables of voting creditors in that group have voted for the adoption (where a rule of one creditor-one vote applies), (iv) in each class of creditors with related receivables and subordinated creditors, more than 50% of voting creditors have voted for the adoption and (v) in each class of shareholders, more than 50% of the voting shareholders have voted for the adoption. Cramdown is available to overcome dissenting creditors.	Majority voting is by the amount of claims, not number of persons. A group of affected parties adopts the restructuring plan if at least three-quarters of them have voted for the adoption. Cross-class cramdown is available if a group of creditors disagrees.
Effectiveness of the restructuring plan	The restructuring plan is given effect by the court decision confirming it.	In most cases, it is expected that the restructuring plan will be given effect by a court decision confirming it. This is because a court order is required when the restructuring plan (i) affects any dissenting party directly, (ii) includes provision of new financing measures or (iii) envisages reduction of employees by at least 25%. Otherwise, the restructuring plan is effective as at the day of its acceptance.

Table 2: Selected differences with regard to the (general) moratorium

	The Slovak Act	The Czech Bill
Application for a moratorium	The court may grant a moratorium as part of a resolution approving the preventive restructuring, if the debtor has applied for it. The court will grant a general moratorium if the debtor evidences creditor approval (certain thresholds apply). An individual moratorium is not envisaged in the Slovak Act.	A debtor may file an application for a general moratorium from the commencement of the preventive restructuring until the restructuring plan is effective. It may be combined with an individual moratorium, which can be applied for before proceedings are initiated.
Basic rules on duration	A moratorium is effective for 3 months. With creditors' committee approval, it can be extended for up to 3 months.	A general moratorium is effective for 3 months. It may be extended for up to 3 months. The combined effects of any moratorium (general and/or individual) against any creditor may last only up to 12 months (e.g., when a general moratorium follows an individual moratorium or when an additional general moratorium is declared).
Effects on court proceedings	A moratorium avoids a declaration of bankruptcy or formal restructuring over a debtor. Any such proceedings opened have already been initiated, they will be stayed. Execution or security enforcement proceedings cannot be initiated.	A creditor cannot open insolvency proceedings against the debtor, nor can enforcement proceedings be initiated against the debtor's assets.
Offsetting of mutual claims	Certain limitations on offsetting of mutual claims (related receivables) between the debtor and the creditor apply.	Offsetting of mutual claims between the debtor and the creditor can occur, unless the restructuring court determines otherwise through an interim measure.
Effects on security	The debtor's secured assets cannot be used to satisfy a creditor's claim during the term of the moratorium. The Slovak Act does not generally prevent the creation of new security rights.	The debtor's collateral cannot be used to satisfy a creditor's claim. A security right can be acquired only in relation to specific claims (under agreements providing for business viability).