RESTRUCTURING & INSOLVENCY

Hungary

LEXOLOGY
Getting The Deal Through

Consulting editor

Freshfields Bruckhaus Deringer LLP

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Quick reference guide enabling side-by-side comparison of local insights, including a general overview; types of liquidation and reorganisation processes; insolvency tests and filing requirements; directors' and officers' regime; stays of proceedings and moratoria; doing business during reorganisations; asset sales; creditor remedies, involvement and proving claims; security; clawback and related-party transactions; treatment of groups of companies; international cases; and recent trends.

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GENERAL

Legislation

What main legislation is applicable to insolvencies and reorganisations?

The main provisions concerning the insolvency of an economic operator are regulated in:

- Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings (the Bankruptcy Act);
- Act CXXXII of 1997 on Hungarian branch offices and commercial representative offices of foreign-registered companies;
- Act LXXXVIII of 2014 on insurance business activity;
- Act I of 2012 on the Labour Code;
- Act V of 2013 on the Civil Code;
- Act CXXX of 2016 on the Code of Civil Procedure;
- Act XXXVII of 2014 on the further development of the institutional system promoting the security of certain actors of the financial intermediary system;
- Act V of 2006 on public company information, company registration and winding-up proceedings (the Companies Act);
- Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises;
- Act CXXXIX of 2013 on the National Bank of Hungary;
- Government Decree No. 106/1995 (IX 8) on the requirements of environmental and nature protection during liquidation and bankruptcy proceedings;
- Act LVIII of 2020 on transitional arrangements connected to the cessation of the state of emergency and on epidemiological preparedness;
- Act XXVIII of 2017 on private international law;
- Act LXIV of 2021 on restructuring and on the amendment of certain acts for legal harmonisation (entering into force as of 1 July 2022);
- Government Decree No. 345/2021 (VI 18) on the reorganisation of undertakings and the diverging application of the bankruptcy act and the companies act; and
- Act XCIX of 2021 on the transitional rules connected to the state of emergency.

Law stated - 26 November 2021

Excluded entities and excluded assets

What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The Bankruptcy Act applies to all economic operators and their creditors. For the purpose of the Bankruptcy Act, economic operator means:

- business associations, private pension funds, cooperative societies, associations, etc, established in Hungary; and
- all other legal entities and unincorporated organisations qualified as business associations under national law, as well as any other organisation pursuing economic activities that has its centre of main interests within the territory of the European Union according to Regulation (EU) 2015/848 and of which the insolvency proceedings to which it is subject fall within the scope of Regulation (EU) 2015/848.

All assets held by the economic operator in bankruptcy or under liquidation proceedings at the time of the opening of proceedings, as well as all assets acquired during the proceedings, shall be realised in bankruptcy and during liquidation proceedings. The assets of an economic operator comprises all assets that it owns or controls.

Assets such as natural preservation areas, land reserved for compensatory purposes and taxes and other similar dues taken out of the wages of employees shall not be construed to comprise the economic operator's assets.

Special provisions apply to banks, municipalities and major economic operators of preferential status for strategic considerations.

Law stated - 26 November 2021

Public enterprises

What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The provisions of the Bankruptcy Act also apply to government-owned enterprises. The creditors of government-owned enterprises have the same remedies as the creditors of private enterprises.

However, the Bankruptcy Act contains special provisions to major economic operators of preferential status for strategic considerations. Those provisions deviate in certain aspects from the general provisions of the Bankruptcy Act. Major economic operators of preferential status for strategic considerations refers to any economic operator that:

1. operates in fields that may be construed to be of national importance for reasons of public health, infrastructure development, defence, law enforcement, military, energy safety, energy supply, etc;
2. is involved in the implementation of, or undertook to execute, priority projects in consideration of the national economy;
3. is involved in discharging public functions conferred by law nationwide;
4. received large amounts of state aid for restructuring, credit guarantees, surety facilities or export credit insurance, or is engaged in the pursuit of, or undertook to carry out, concession-bound activities and is, therefore, engaged under contract with the state or specific public bodies (including government-owned enterprises established for carrying out the aforesaid functions) in connection with the above;
5. carries out waste management activity; or
6. is engaged in the pursuit of activities considered to carry strategic importance for national economic purposes and not falling under the scope of points (1) to (5).

The government may classify as major economic operators of preferential status for strategic considerations economic operators to which the following criteria apply:

- settlement of the debts of those operators, composition with creditors or reorganisation is in the interests of the national economy or is of particular common interest; or
- the winding-up of those operators without succession, where the lack of funding and insolvency cannot presumably be resolved, in a simplified, transparent and standardised procedure is given priority because of economic considerations.

According to the relevant provisions of Government Decree No. 345/2021 (VI 18) and Act XCIX of 2021, during the

liquidation of a major economic operator of preferential status for strategic considerations, the liquidator may simultaneously operate the parts of the debtor's assets that are suitable for the continuation of the economic activity during the liquidation procedure and that are suitable for sale as a self-operating unit. The operation shall take place by means of a business association being established as a result of demerger, provided that the substantial law applicable to the debtor allows for the establishment of a business association by means of the demerger of the debtor.

No approval is necessary from the creditors' committee. Holders of creditors' claims with mortgages, independent liens and other types of securities shall be notified in writing of the liquidator's intent of detachment. Detachment proceedings are generally governed by the rules applicable to the transformation, merger and demerger of legal persons; however, certain exceptions are set forth by law. For example, decisions shall be adopted by the liquidator rather than the supreme body of the debtor; only a limited liability company or a private limited liability company can be established as a result of detachment; and the debtor shall be the sole quota holder or shareholder of this entity.

Law stated - 26 November 2021

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

To maintain the stability of the financial sector, the Hungarian parliament adopted Act XXXVII of 2014, which introduced a resolution system based on the EU Bank Recovery and Resolution Directive. The Hungarian resolution authority is the Hungarian National Bank (MNB). The MNB shall order and launch the resolution proceedings in respect of an institution if all of the following conditions have been met:

- the MNB acting in its scope of authority for the supervision of the financial intermediary system establishes that the institution is failing or likely to fail;
- according to the judgement of the MNB, apart from the resolution actions, no other measure is likely to prevent the insolvency of the institution under the circumstances; and
- according to the judgement of the MNB, the resolution is justified by public interests.

The Resolution Fund, which comprises the contributions of market participants (credit institutions and investment firms), finances the costs incurred in the resolution phase of institutional crisis management (ie, the application of the resolution tools). MSZVK Hungarian Resolution Property Management Private Company Limited by Shares, which is fully owned by the Resolution Fund, was set up in 2015 for the purpose of receiving some of or all the assets, liabilities, rights and obligations of institutions under resolution or bridge institutions.

Law stated - 26 November 2021

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Bankruptcy and liquidation proceedings are non-contentious proceedings falling within the competence and exclusive jurisdiction of the general court responsible for the place where the debtor's Hungarian registered office of record is located on the day when the request for opening the proceedings has been submitted. The Metropolitan Tribunal shall

have competence and jurisdiction to open and conduct main insolvency proceedings instituted against economic operators covered by Regulation (EU) 2015/848, established in a place other than Hungary.

With regard to procedural issues, unless otherwise provided by the Bankruptcy Act, the provisions of the Code of Civil Procedure on non-contentious judicial civil actions apply, subject to the derogations stemming from the special characteristics of non-contentious proceedings, as well as the general provisions of Act CXVIII of 2017 on the rules applicable to non-contentious civil actions and on non-contentious court proceedings.

The Bankruptcy Act stipulates provisions concerning the redress options in the case of the opening of the insolvency procedure. In bankruptcy proceedings, the court decision ordering the opening of bankruptcy proceedings may not be appealed separately. An appeal against the decision for the refusal of the petition for the opening of bankruptcy proceedings must be lodged within eight days. No justification is accepted in priority proceedings after 15 days. In liquidation proceedings, the court decision ordering the opening of the liquidation may be appealed separately.

Under Hungarian law, there is no requirement to post security to proceed with an appeal; however, duty shall be paid when submitting an appeal. The amount of the duty is determined by Act XCIII of 1990 on duties.

Law stated - 26 November 2021

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Debtors may request the opening of liquidation proceedings if the company is unable or unwilling to enter into bankruptcy. The petition may be submitted with the prior consent of the supreme body of the debtor economic operator that exercises founders' or shareholders' rights.

In the case of sole proprietorships, the petition may be submitted by the owner at its own discretion. Employees and the trade unions defined in the Labour Code or the competent works councils shall be duly informed when the petition is filed. Legal representation is mandatory with regard to submission of the application. Commencing a voluntary liquidation has the same effect as commencing liquidation by the creditors.

Law stated - 26 November 2021

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

The directors of debtor economic operators may submit an application for the opening of bankruptcy proceedings at the court.

Owing to the covid-19 pandemic, a new type of proceedings called reorganisation has been introduced; however, the two types of proceedings are different. The new reorganisation is pre-insolvency reorganisation.

With regard to the submission of the application, legal representation for the debtor is mandatory. The debtor may not file a petition for bankruptcy if it has already been adjudicated bankrupt or if a request for its liquidation has been submitted, and a decision has already been adopted in the first instance for the debtor's liquidation. The debtor may not file another petition for bankruptcy:

- before the satisfaction of any creditor's claim that existed at the time of ordering the previous bankruptcy

proceedings or that was established by those proceedings; and
- within a period of two years following the time of publication of the final and definitive conclusion of the previous bankruptcy proceedings; or
- if the court ex officio refused the debtor's request for the previous bankruptcy proceedings pursuant to the provisions of the Bankruptcy Act and if it was made inside the one-year period following the time of publication of the final ruling.

If the court did not refuse the request for the opening of bankruptcy proceedings, it shall forthwith adopt a ruling on the opening of bankruptcy proceedings and appoint an administrator from the register of liquidators. The ruling will be published in the company gazette and the indication 'cs.a.' will be entered next to the company's name in the Company Register. The indication 'cs.a.' reflects the fact that the undertaking is in bankruptcy. No remedy shall lie against the court's order.

As a consequence of the opening of bankruptcy proceedings, the debtor is granted a stay of payment with a view to seeking an arrangement with creditors. The objective of a stay of payment is to preserve the assets under bankruptcy protection to reach a composition with creditors, during which the debtor, the administrator, the financial institutions carrying their accounts and the creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment.

Law stated - 26 November 2021

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

Composition refers to the debtor's agreement with the creditors. It lays down the conditions for debt settlement, such as:

- any allowances and payment facilities relating to the debt;
- the remission or assumption of certain claims;
- the receipt of shares in the debtor company in exchange for a debt;
- guarantees for the satisfaction of claims and other similar securities;
- the approval of the debtor's programme for restructuring and for cutting losses; and
- any and all other action deemed necessary to restore or preserve the debtor's solvency, including the duration of and the procedures for monitoring the implementation of the composition arrangement.

A composition agreement (reorganisation plan) separates creditors into classes. In particular, it distinguishes between secured and unsecured creditors. A reorganisation plan may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights.

In the composition conference, voting rights are held by any creditor who registered its claim by the deadline specified in the Bankruptcy Act and paid the registration fee and whose claim is shown under recognised or uncontested claims. The composition agreement must be signed by the parties and their legal representatives or proxies, and It must be countersigned by the administrator and the creditors' committee, if there is one.

If the composition arrangement conforms with the relevant legislation, the court will grant approval by way of a ruling

and declare the bankruptcy proceedings dismissed.

If no composition is arranged or the arrangement fails to comply with the relevant regulations, the court will dismiss the bankruptcy proceedings, declare the debtor insolvent ex officio in the liquidation proceedings and order the liquidation of the debtor.

The composition agreement shall not release non-debtor parties from liability; however, because of the accessory nature, a guarantor or surety, etc, shall be released from liability to the extent of the reduction of the claim secured by the guarantor or surety.

Law stated - 26 November 2021

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

If liquidation is requested by the creditor, the petition to the competent court must specify the debtor's liabilities (the amount of the claim), the date of maturity (due date) and a summary of the reasons for claiming that the debtor is insolvent. The latest published annual report of the debtor must also be attached, provided that the report is available.

In addition, the documents necessary to prove the contents of the petition must be attached, including a copy of the written notice sent to the debtor. If the court has not rejected the petition, it will notify the debtor by sending a copy of the petition. The debtor must, within eight days of receipt of the notice, declare before the court whether it acknowledges the contents of the petition.

If the debtor acknowledges the claim, it will simultaneously declare whether it wishes a respite for the settlement of the debts. If the debtor fails to respond to the court within the above-specified deadline, its insolvency shall be presumed.

Upon the request of the creditor, the court will appoint a temporary administrator without delay if the requesting creditor:

- evidences that satisfaction of its claim at a later date is in jeopardy
- proves the contract underlying the extent and expiry of the claim, with full probative documentation; and
- has advanced the fee for the temporary administrator (200,000 forints if the debtor has no legal personality and 400,000 forints for legal persons) and deposited it at the time of lodging the request.

Commencing an involuntary liquidation has the effect that upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette.

Once the proceedings are opened, there are no material differences to proceedings opened voluntarily.

Law stated - 26 November 2021

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Hungarian law does not regulate the kind of reorganisation that creditors could commence.

Law stated - 26 November 2021

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

A new type of insolvency proceedings was introduced owing to the state of emergency triggered by the covid-19 pandemic. These proceedings can be referred to as pre-insolvency reorganisation. It had been regulated by Government Decree No. 345/2021 (VI 18); however, as of 1 December 2021, Act XCIX of 2021 on the transitional rules connected to the state of emergency establishes the provisions applicable to these proceedings. These provisions are temporary: pre-insolvency reorganisation can be requested until 31 December 2022.

Non-public reorganisation can be considered pre-packaged reorganisation owing to its nature.

Pre-insolvency reorganisation proceedings can be initiated by a business organisation that is threatened by insolvency, with exceptions set out by the applicable law. The pre-insolvency reorganisation itself is a non-contentious civil proceeding, the conduct of which falls under the exclusive powers of the Metropolitan Tribunal.

The objective of pre-insolvency reorganisation proceedings is to restore the solvency of the undertaking concerned; therefore, there are a number of similarities between pre-insolvency reorganisation proceedings and bankruptcy proceedings. However, the deadlines applicable to the procedural steps of pre-insolvency reorganisation proceedings are shorter than the deadlines provided for bankruptcy proceedings (eg, in the case of bankruptcy proceedings, the stay of payment period lasts until the second business day after the 180th day following the publication of the ruling ordering the bankruptcy proceedings to be conducted, whereas it lasts 90 days in the case of non-public pre-insolvency reorganisation proceedings.

There are two types of pre-insolvency reorganisation proceedings: public and non-public pre-insolvency reorganisation. Non-public pre-insolvency reorganisation covers only the creditors involved in the proceedings. In the case of public pre-insolvency reorganisation, the name of the undertaking shall be supplemented with an 'r.a.' indication, meaning that the undertaking is under pre-insolvency reorganisation, and the provisions of the Bankruptcy Act shall apply, albeit with certain differences, namely:

- no creditors' classes are formed;
- no administrator shall be appointed as its duties are fulfilled by the reorganisation expert; and
- the creditors shall notify their claims within 30 days after the publication of the resolution ordering the pre-insolvency reorganisation.

Law stated - 26 November 2021

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

During the opening session of the composition conference, the creditors may express their refusal to support the composition proposal. If the debtor refuses to rework the composition proposal, the meeting shall be declared closed and so recorded in the minutes, and it shall be sent to the court and the supreme body of the debtor without delay. If no composition is arranged with the creditors, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings, declare the debtor insolvent and order the liquidation of the debtor.

The composition agreement must be made in writing, and if it conforms with the relevant legislation, the court will grant approval by way of a ruling and declare the bankruptcy proceedings dismissed; however, if the debtor did not fulfil its payment obligation as stipulated in the composition agreement concluded in the bankruptcy proceedings, creditors have the right to request the court to declare the debtor insolvent, since the debtor did not fulfil its payment obligation as stipulated in the composition agreement concluded in bankruptcy.

Pursuant to several rulings of the Supreme Court, the creditor's claim does not cease to exist from the point of view of contract law with the approval of the composition agreement; only the right to their claim against the debtor in excess of the amount specified in the arrangement ceases. The creditor's entire claim against the debtor, therefore, does not cease until it has fulfilled all its obligations under the composition settlement arrangement against all its creditors.

Upon the creditor's request, the court shall declare the debtor insolvent and order the liquidation of the debtor by way of a ruling if the debtor fails to fulfil its obligations. In that case, creditors are able to notify their claims in the liquidation notified, recognised or uncontested during previous bankruptcy or liquidation proceedings that they were unable to recover.

Law stated - 26 November 2021

Corporate procedures

Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Act V of 2006 (the Companies Act) contains the rules for dissolution proceedings. According to the Companies Act, a company, if not insolvent, may be wound up without succession by way of dissolution proceedings. Dissolution proceedings may be opened by decision of the supreme body of the company.

The company's supreme body may elect any person to serve as the receiver, if the person conforms with the requirements set out for the director and accepts the assignment. The term of the appointment of the managing director expires as of the starting date of the dissolution proceedings; however, the former managing director of the company may be elected to act as receiver. If the receiver concludes that the company's assets are insufficient to cover the creditors' claims, and the members fail to supply the funds lacking within 30 days, a request for liquidation must be submitted without delay. The request for liquidation may be submitted in the absence of the consent of the supreme body.

Dissolution proceedings may only be initiated if the company at hand is not insolvent, and no resolution on dissolution may be adopted after the receipt of an order establishing that the entity is insolvent.

Law stated - 26 November 2021

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

In the case of bankruptcy, the debtor and its creditors may establish a composition arrangement. If the arrangement conforms with the relevant legislation, the court will grant approval by way of a ruling and declare the bankruptcy proceedings dismissed.

If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings, declare the debtor insolvent ex officio in the liquidation proceedings and order the liquidation of the debtor. If the debtor fails to fulfil its obligations according to the composition arrangement, the court shall declare the debtor insolvent upon the creditor's request and order the liquidation of the debtor.

In the case of non-public pre-insolvency reorganisation, if the undertaking came to an agreement with all its creditors involved in the pre-insolvency reorganisation proceedings and the creditors approved the reorganisation plan, the plan shall be submitted to the tribunal.

In the case of public pre-insolvency reorganisation, if at least 75 per cent of the votes casted supports the pre-insolvency reorganisation plan, the plan shall be submitted to the tribunal. The tribunal shall adopt a decision on the reorganisation plan within 10 business days. If the court approves the plan, it shall render the proceedings terminated. The court may resolve to deny the approval of the reorganisation plan based on the expert report of the reorganisation expert; however, on the basis of refusal, no liquidation proceedings shall be launched automatically.

Regarding the liquidation proceedings, the court shall decide on the conclusion of liquidation and the dissolution of the debtor without succession, as well as the dissolution of any subsidiary of the debtor or the trust company, where applicable. An exception from this rule is that when the liquidation proceedings were conducted upon request by the debtor, the creditor or the receiver, the court shall terminate the proceedings without the creditor's consent if the debtor provides proof before the time of the opening of liquidation proceedings of having paid the debt (principal, interests and creditor's expenses incurred during the proceedings) underlying the final ruling ordering liquidation to the creditor in full.

Law stated - 26 November 2021

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

What is the test to determine if a debtor is insolvent?

The court shall declare the debtor insolvent:

- upon the debtor's failure to settle or contest its previously uncontested and acknowledged contractual debts within 20 days of the due date, and failure to satisfy the debt upon receipt of the creditor's written payment notice;
- upon the debtor's failure to settle its debt within the deadline specified in a final court decision or order for payment;
- if the enforcement procedure against the debtor was unsuccessful;
- if the debtor did not fulfil its payment obligation as stipulated in the composition agreement concluded in bankruptcy or liquidation proceedings;
- if it has declared the previous bankruptcy proceedings terminated; or
- if the debtor liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets, or the debtor was unable and presumably will not be able to settle its debt (debts) on the date when they are due, and if, in proceedings opened by the receiver, the members (shareholders) of the debtor economic operator fail to provide a statement of commitment, following due notice, to guarantee the funds necessary to cover the debts when due.

A debtor cannot be declared insolvent in the cases defined above within the deadline specified by the court for the settling of debts.

Law stated - 26 November 2021

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

Under Hungarian law, there is no obligation for the companies to commence insolvency proceedings. Companies may initiate bankruptcy or liquidation proceedings voluntarily.

Law stated - 26 November 2021

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

The liability of directors towards the company and towards third persons during the operation of the company are regulated by Act V of 2013 on the Civil Code. The executive officer shall be held liable for damage caused to legal persons resulting from his or her management activities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

The legal person shall be liable for damage caused to third parties by the executive officer in that capacity. Liability for any damage caused by the executive officer intentionally lies with the executive officer and the legal person jointly and severally.

With respect to the executive officer's liability towards creditors, the Civil Code prescribes that in the event of a business association's dissolution without succession, creditors may bring action for damages up to their claims outstanding against the company's executive officers on the grounds of non-contractual liability, should the executive officer affected fail to take the creditors' interests into account in the event of an imminent threat to the business association's solvency. This provision is not applicable in the case where the company is wound up without going into liquidation.

Any creditor or, in the debtor's name, the liquidator may bring action during the liquidation proceedings before the court to establish that the former executives of the economic operator failed to represent properly the interests of creditors in the three-year period prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons.

Law stated - 26 November 2021

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

Any creditor or the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the three-year period prior to the opening of liquidation proceedings. Financial security may also be demanded with a view to providing satisfaction for the creditor's claims.

The creditors' interests shall be considered to have been ignored if the manager failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offences, or concerning remediation, in consequence of which providing full satisfaction for the creditors' claims may be frustrated. If damage is caused by several persons together, their liability is joint and several.

Following the time of publication in the company gazette of the resolution on the final conclusion of liquidation proceedings, any creditor may bring action before the competent court for ordering the debtor's former executive, whose liability was already established based on the action described above, to satisfy the debtor's claim registered in the liquidation proceedings, which were not recovered in those proceedings, up to the extent of loss suffered.

The court shall impose a fine upon the head of the debtor economic operator for effecting any payment in violation of the provisions of the Bankruptcy Act or for enabling creditors to obtain satisfaction of their claims in violation of the provisions of the Bankruptcy Act. The fine shall cover 10 per cent of the amount paid out.

According to the Companies Act, if the court of registry removed a company from the register of companies by way of involuntary deregistration procedure, the company's executive officer, including any executive officer removed from the register before the opening of involuntary deregistration, shall bear liability for the outstanding claims of the company's creditors to the extent of its contribution to the resulting loss, if he or she is found to have failed to properly carry out his or her managerial functions in the wake of any situation of imminent insolvency, in consequence of which the company's assets have diminished or fail to provide full satisfaction for the creditors' claims. If there is more than one such executive officer, their liability shall be joint and several. A situation is considered to carry potential danger of insolvency as of the day when the executives of the company were or should have been able to foresee that the company will not be able to satisfy its liabilities when due.

Criminal liability of the directors may be established according to the relevant sections of Act C of 2012 on the Criminal Code prescribing the rules of fraudulent bankruptcy. Fraudulent bankruptcy shall be considered a criminal act if committed by a person who has powers to control the assets, or any part thereof, of the debtor economic operator, or has the opportunity to do so, as well as if the contract for any transaction with the assets is considered invalid.

Law stated - 26 November 2021

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

Both the Bankruptcy Act and the Companies Act establish when the director of the company shall be relieved of liability.

In the case of the Bankruptcy Act, a manager shall not be held responsible if he or she is able to prove that he or she has not undertaken any business risk that may be considered unreasonable in light of the debtor's financial position or he or she has taken all measures within reason that are to be expected from persons in such positions upon the occurrence of a situation that may lead to insolvency to prevent and mitigate the losses of creditors and to prompt the supreme body (the decision-making body) of the debtor economic operator to take action.

In the case of the Companies Act, an executive officer shall be relieved of liability if he or she is able to prove that the threat of insolvency occurred at a time other than its term in the executive office or for reasons other than his or her managerial actions, and he or she has taken all measures within reason that are to be expected from persons in such position, upon the occurrence of a situation carrying potential threat of insolvency to prevent and mitigate the losses of creditors and to prompt the supreme body (the decision-making body) of the debtor economic operator to take action.

Law stated - 26 November 2021

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

There is no provision in the Hungarian regulation on the basis of which creditors may take over the duties of the executive directors, even when insolvency or bankruptcy proceedings is likely.

Law stated - 26 November 2021

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

In the case of reorganisation, the directors of a debtor economic operator, including its supreme body and owners, shall exercise their respective rights only if the powers vested in the administrator are not violated.

The administrator shall approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings. The administrator has powers to approve any new commitment made by the debtor. After the opening of liquidation, only the liquidator is authorised to make any legal statements in connection with the assets of the economic operator.

As of the time of the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the economic operator.

In the case of liquidation, the directors of the debtor company, following the temporary administrator taking office, shall be restricted from:

- entering into any contract considered to be in excess of the scope of normal operations where the economic operator's assets are concerned without the prior consent and endorsement of the temporary administrator; or
- entering into any other commitment, including where the debtor is compelled to perform under an existing contract.

As of the time of the opening of liquidation, only the liquidator is authorised to make any legal statements in connection with the assets of the company; however, the director of the debtor company is only entitled to proceed in the internal legal relationship of the company.

Law stated - 26 November 2021

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

In the case of bankruptcy proceedings, the debtor is granted a stay of payment period (moratorium) to preserve the assets under bankruptcy protection. During this period, the debtor, the administrator, the financial institutions carrying

their accounts and the creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment. The stay of payment does not apply to claims such as claims for wages and other similar benefits, claims for any value added tax or claims for refunds of sums transferred to the debtor's account by mistake.

Under the duration of the stay of payment, as a general rule:

- set-off may not be applied against the debtor; however, set-off may be adjudged in judicial proceedings initiated by the debtor and still in progress if submitted before the time of the opening of bankruptcy proceedings;
- payment orders may not be satisfied from the debtor's accounts, and payment orders may not be submitted against the debtor;
- the enforcement of money claims against the debtor is suspended, and the enforcement of such claims may not be ordered;
- no satisfaction may be sought on the basis of a lien on the debtor's assets: the debtor cannot effect any payment for claims existing at the time of the opening of bankruptcy proceedings;
- the debtor is allowed to undertake any new commitment subject to the consent of the administrator;
- payments may be made from the debtor's assets subject to authorisation by the administrator, including for the liabilities assumed, with a view to continuing the debtor's economic activity;
- the contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of payment of its debts incurred before the term of the temporary stay of payment; and
- the legal consequences associated with any non-performance or late performance of the debtor's money payment obligations shall not apply.

Judicial enforcement proceedings in progress against the debtor at the time of the opening of liquidation proceedings in connection with any assets realised in liquidation shall be immediately abated by the court ordering the enforcement. The assets seized and the funds yet unpaid, remaining after deducting the costs of the enforcement proceedings, shall be transferred to the appointed liquidator.

Judicial and non-judicial proceedings opened prior to the opening of liquidation proceedings shall continue before the same court.

From the time of the opening of liquidation proceedings, any pecuniary claim against the economic operator in connection with any assets to be liquidated may only be enforced in the framework of liquidation. The creditor – in the proceedings brought by the economic operator – may enforce its claim existing at the time of the opening of liquidation proceedings against the economic operator as a set-off claim, provided that the beneficiary of the claim was the same creditor at the time of the opening of liquidation proceedings.

The creditors cannot obtain relief from such prohibitions, the only exception being the set-off as detailed above.

In the case of pre-insolvency reorganisation proceedings, the court has the power to resolve on a stay of payment lasting for 90 days. The provisions applicable to the stay of payment in pre-insolvency reorganisation proceedings are very similar to the relevant provisions of the Bankruptcy Act; however, there are certain differences, such as the following:

- the order on the stay of payment is not published in the company gazette, and it is effective as of the receipt of the order;
- the executive officer of the undertaking shall notify the financial institutions holding its accounts without delay on the order, as well as the creditors and their claims concerned by the stay of payment, in writing; and
- the undertaking is entitled to the stay of payment against the creditors involved in the pre-insolvency reorganisation as of the time of receipt of the order resolving the moratorium.

Law stated - 26 November 2021

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

In the case of bankruptcy, under the duration of the stay of payment, the debtor is allowed to undertake any new commitment subject to the consent of the administrator, and payments may be made from the debtor's assets subject to authorisation by the administrator.

During bankruptcy, the debtor can carry on business only with the supervision of the administrator. During liquidation, the conduct of business by the debtor must be fit for the purposes of the liquidation proceedings (eg, if needed for the operation of the debtor company).

In bankruptcy, no special treatment is given to creditors doing business after filing.

It is the duty of the administrator to supervise the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with creditors. The court does not supervise the debtor's business activities; however, the approval of the composition agreement falls within the court's exclusive competence.

In liquidation proceedings, if the creditors have formed a select committee or have selected a creditors' representative, the consent of the committee (representative) is required for the continuance of business operations during liquidation. If the select committee fails to respond within 15 days of receipt of the liquidator's request, it shall be construed to have granted its consent for the continuance of business operations.

The consent shall be in effect for one year. If the liquidator intends to continue operations after the one-year period, the consent of the select committee (creditors' representative) must be obtained anew within 30 days before the end of the one-year period. In liquidation, no special treatment is given to creditors who supply goods or services after filing unless the costs are in connection with the rational termination of the debtor's business operations.

Law stated - 26 November 2021

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

In the case of reorganisation, according to the general rule, no priority is given for post-filing credits. The debtor shall be allowed to undertake any new commitment – secured or unsecured loans or credit – only with the consent of the administrator.

In the case of liquidation, the Bankruptcy Act does not expressly regulate a debtor's right to obtain secured or unsecured loans or credit. The liquidator, however, is able to contract new obligations, such as a loan or credit, but only in connection with the rational termination of the debtor's business operations. Such loans granted to the debtor have priority in the liquidation.

Law stated - 26 November 2021

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

In the case of reorganisation, the sale of specific assets out of the ordinary course of business or the entire business of the debtor is subject to the approval of the administrator. By selling assets in reorganisation, the encumbrance on assets will persist.

In the case of liquidation, the liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market, in which case the highest bidder will acquire the assets free and clear. The liquidator shall effect the sale by way of tender or auction. The liquidator may forego the application of these procedures:

- upon the prior consent of the select committee formed by creditors;
- if the asset in question deteriorates rapidly;
- if the estimated proceeds are insufficient to cover the costs of sale; or
- if the difference between the prospective proceeds and estimated costs is less than 100,000 forints.

In case of the above, the liquidator may apply other public forms of sale for the purpose of achieving a more favourable result.

If the assets to be sold include land or a farmstead, the sale shall be governed by the relevant provisions of Act CXXII of 2013 on transactions in agricultural and forestry land and the decree implementing it.

Law stated - 26 November 2021

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Generally, no stalking horse rules or credit bidding apply under Hungarian law regarding insolvency proceedings. In the case of liquidation proceedings, the debtor is not allowed to dispose of its assets. The debtor's assets shall be disposed of by the liquidator through public sales at the highest price that can be obtained on the market. The highest bidder will acquire ownership over the assets.

The only kind of credit bidding is when the second tender procedure of the same asset is also declared unsuccessful, and the liquidator – in agreement with the creditors' select committee – shall, instead of repeating the tender procedure for the third time, move to sell the asset in question at the appraised value directly to a creditor holding a lien on the asset and who lays claim to it.

The party acquiring ownership or any other rights of value may not apply a set-off at the public sale with the debtor, unless the sale concerns the debtor's residential property, the purchase price of which had been paid by the buyer, if a private individual, in part or in full, but ownership title had not been transferred by the time of the ordering of liquidation.

Law stated - 26 November 2021

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

The Hungarian insolvency law does not recognise the concept of rejection and the concept of disclaimer of contracts.

In a reorganisation, the debtor or the administrator may challenge the contract before the general court only in accordance with the Civil Code and the provisions of the Code of Civil Procedure.

In the case of liquidation, all debts of the economic operator shall be deemed payable (due) at the time of the opening of liquidation proceedings. In that connection, the liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor or to rescind from the contract if neither of the parties rendered any services.

Any claim that is due to the other party owing to the above may be enforced within the framework of the liquidation procedure by notifying the liquidator within 40 days of the date when the rescission or termination was communicated.

There are no specific regulations with regard to the debtor's breach of contract after the insolvency case is opened. The debtor's breach of contract is governed by the general breach of contract provisions of the Civil Code; however, the claims arising from the breach of contract and acknowledged by the debtor or resolved by the competent court may only be enforced in the liquidation proceedings.

Law stated - 26 November 2021

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

No specific rules exist under Hungarian law regarding the IP rights in cases of bankruptcy or liquidation.

According to the general rule, during bankruptcy a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure, during the term of the stay of payment, to settle its debts incurred before the term of the temporary stay of payment; however, if the contract stipulates that the commencement of bankruptcy proceeding or liquidation proceedings establishes a right to terminate the contract, the licensor or the owner has the right to do so.

The liquidator has the right to terminate any contract of the debtor.

Law stated - 26 November 2021

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

The Bankruptcy Act does not stipulate special provisions regarding the use of any personal information or customer

data collected by a company in liquidation or reorganisation.

In accordance with the provisions of Act CXII of 2011 on the right of informational self-determination and on freedom of information, personal data may be processed only for specified and explicit purposes, where it is necessary for the implementation of certain rights or obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness.

The personal data processed must be essential for the purpose for which it was recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose. Personal data may be processed only when the data subject has given consent, or when processing is necessary as decreed by law or by a local authority based on authorisation conferred by law.

The EU General Data Protection Regulation is also applicable in the case of the processing of personal data wholly or partly by automated means and to processing other than by automated means of personal data that form part of a filing system or are intended to form part of a filing system.

Law stated - 26 November 2021

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Bankruptcy and liquidation proceedings are non-contentious proceedings conducted exclusively by the general court of competence and jurisdiction by reference to the debtor's registered office of record on the day when the request for opening the proceedings has been submitted and by the Metropolitan Tribunal.

Pre-insolvency reorganisation proceedings are also non-contentious proceedings falling under the exclusive powers of the Metropolitan Tribunal.

Arbitration courts cannot commence insolvency proceedings.

Law stated - 26 November 2021

CREDITOR REMEDIES

Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

As a general rule, creditors' claims can be enforced only within the frame and according to the rules of the bankruptcy or liquidation proceedings.

If the debtor provides collateral security under a financial collateral arrangement to secure a claim before the time of the opening of liquidation proceedings, the collateral taker shall be able to realise the collateral directly, irrespective of whether liquidation is opened, and shall refund any excess collateral to and settle accounts with the liquidator.

If the collateral taker fails to exercise its right to direct satisfaction within three months of publication of the opening of liquidation, it may seek satisfaction as a lien holder. If the collateral taker is under the debtor's majority control, it shall release the collateral to the liquidator – acting as the representative of the debtor – upon publication of the notice of liquidation. Collateral security may be arranged on money and securities and on payment account balances.

Law stated - 26 November 2021

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

The Bankruptcy Act does not stipulate special remedies regarding unsecured creditors. Application of interim measures may be requested in accordance with the provisions of the Code of Civil Procedure.

Although, the regulations on preferred ranking claims secured by lien also apply to claims that are satisfied by seized movable property or for which the right of enforcement has been registered by a court bailiff before the opening of liquidation proceedings.

The place in ranking of those claims under execution shall be determined in accordance with the date of seizure of the movable property or the date of registration of the right of enforcement.

There are no specific statutory provisions dealing with pre-judgment attachments in the Bankruptcy Act.

Law stated - 26 November 2021

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

In the case of bankruptcy, the debtor shall notify its creditors directly within five working days of publication of the ruling ordering the opening of bankruptcy proceedings. Furthermore, a notice shall be published in a nationally circulated daily newspaper and on its website (if available) advising creditors to register their claims within the time limit specified, make the payment charged for the registration of claims to the payment account of the administrator appointed by the Supervisory Authority for Regulated Services and attach the documents in proof of their claim.

In the case of liquidation, upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette. The notice published shall contain, among other things, a notice sent to the creditors to report their known claims to the liquidator within 40 days of publication of the ruling ordering liquidation.

Moreover, the directors of the company under liquidation are obliged to inform the beneficiaries of the claims specified in the Bankruptcy Act regarding the opening of liquidation proceedings within 15 days of the time of opening. If the director does not comply with the regulations, the court shall impose a fine.

In bankruptcy and liquidation proceedings, the meeting between the creditors and the debtor is called composition conference.

The liquidator shall send a financial statement and give account of its activities to the creditors' select committee (creditors' representative) quarterly and report on the financial status (revenues and expenses) of the debtor and the costs of liquidation.

Law stated - 26 November 2021

Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Creditors may form a creditors' select committee for the protection of their interests and to provide representation to monitor the activities of the administrator and the liquidator. The select committee shall exercise the rights and entitlements conferred by the Bankruptcy Act. The select committee has, among other things, the following rights:

- the director of the debtor company, the administrator or the liquidator must, within eight working days, inform the select committee upon a request received during bankruptcy proceedings and liquidation proceedings;
- the liquidator must inform the select committee at least 15 days in advance, or eight working days in advance in justified cases, of any contracts that exceed the scope of day-to-day operations, the termination of valid contracts and the discardment of the debtor's stocks, provided that the committee has the right to commence those actions within eight working days of receipt of notice;
- the liquidator must send a financial statement and give account of its activities to the select committee quarterly and report on the financial status (revenues and expenses) of the debtor and on the costs of liquidation; and
- upon request, the liquidator must present the timetable to the select committee, with entitlement to contest it in court, etc.

Only one select committee can be appointed in respect of any one company in debt. Other creditors may subsequently join in the operation of the creditors' select committee.

In bankruptcy proceedings, a select committee shall be deemed legitimate if it comprises at least one-third of the creditors with voting rights, and if those creditors control at least one-half of the votes. In liquidation proceedings, a select committee shall be deemed legitimate if it comprises at least one-third of the notified creditors, and the creditors hold at least one-third of all claims of creditors entitled to participate in the composition agreement.

If the number of creditors operating the select committee is later reduced, and consequently the rate of participation no longer reaches the percentage required, the select committee shall cease to exist on the 30th day following the time of the occurrence of those circumstances, unless other creditors have joined up within the time limit, thereby reaching the required rate of participation.

For the purpose of establishing a creditors' select committee or for selecting a creditors' representative, the liquidator shall convene all registered creditors within 75 days of the date of publication of the opening of liquidation.

Pursuant to a new rule of the Bankruptcy Act, liquidators must allow creditors to attend creditors' meetings using an electronic means of communication rather than in-person appearance. The rules of participation for using electronic means of communication are established in the Bankruptcy Act.

The select committee's powers, the representation of the creditors operating the select committee, the provision of funding and the rules for the advancing and accounting of costs and expenses shall be laid down by agreement concluded by the creditors. In the process of setting up and operating the select committee, voting rights shall be distributed among the participating creditors. Decisions shall be adopted by open ballot subject to simple majority. A creditors' select committee that was established in bankruptcy may continue to function in the liquidation proceedings if it is able to meet the conditions specified.

Creditors may also appoint a creditors' representative instead of the creditors' select committee, who will have the same rights and entitlements as the select committee.

The creditors' select committee may request the court to appoint an expert for the cross-verification of the appraised value of the assets offered for sale and shall advance the costs involved. The court shall decide upon the request within eight days. The fee of the expert shall be claimed under liquidation costs if the appraised value it had supplied is accepted. If the expert is of the opinion that the appraised value need not be modified, the expert's fee shall be borne by the creditors participating in the select committee in the percentage shown in their agreement for requesting an expert.

Law stated - 26 November 2021

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

The estate's rights are part of the assets of the company under liquidation. In principle, the creditors are not allowed to pursue the estate's remedies in the absence of assets to pursue a claim. It is the liquidator's right and obligation to enforce the claims. In respect of the proceeds from assets realised in liquidation, the regulations on satisfying debts shall be applied.

Law stated - 26 November 2021

Claims

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

In the case of reorganisation, creditors shall make the payment for the registration of claims to the payment account of the administrator appointed by the Supervisory Authority for Regulated Services and shall attach the documents in proof of their claim. No claim will be registered in the event of their failure to do so in due time. Claims where any payment obligation of the debtor depends on a future event need not be notified.

The registration of claims is subject to a registration fee payable by the creditor that amounts to 1 per cent of the claim (5,000 forints minimum and 100,000 forints maximum) to the administrator's current account. The administrator then categorises and registers the claims. The debtor and creditors shall be informed without delay of the classification of claims and the amount registered, and they shall be given an opportunity to present their views within a time limit of not less than five working days.

Such comments shall be decided by the administrator, and the creditor and the debtor shall be notified immediately, upon which they shall have five working days to submit any objection to the court concerning the administrator's action pertaining to the classification process, including where the administrator registered a claim of an amount other than the one notified by the creditor. The court shall adopt a decision relating to the objection in priority proceedings. The ruling may be appealed separately.

In the case of liquidation, the liquidator shall register the claims against the debtor that are notified after 40 days, but within 180 days of the publication of the opening of liquidation proceedings. These claims shall be satisfied if there are sufficient funds remaining following the settlement of the debts duly notified. The general rules on the order of satisfaction apply to the creditors notifying their claims past the prescribed time limit.

Law stated - 26 November 2021

Set-off and netting

To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

For the duration of the stay of payment, set-off may not be applied against the debtor; however, a set-off claim may be heard in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings.

In liquidation proceedings, claims can only be set off if they have been registered by the liquidator as acknowledged and have not been assigned subsequent to the time of the opening of liquidation proceedings or, if the claim has occurred at a later date, subsequent to its occurrence. If performance is affected after the time of the opening of liquidation proceedings, the creditor may not exercise the right of set-off with regard to debts assumed under section 6:203 of the Civil Code (assumption of debt) or undertaken under section 6:206 of the Civil Code (undertaking a debt) within a period of two years prior to the date when the court received the petition for opening liquidation proceedings, or subsequently, nor with regard to performance assumed under section 6:205 of the Civil Code (assumption of performance).

The following may not set off their claims against the debtor:

- directors and executive employees of the debtor economic operator, their close relatives and their domestic partners; or
- any member (shareholder) of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority control (or the member in the case of single-member companies, the owner in the case of sole proprietorships or the foreign-registered company in the case of Hungarian branches).

In addition, in the case of an agreement for close-out netting concluded prior to the time of the opening of liquidation proceedings, the creditor shall notify this net claim to the liquidator, and the liquidator shall enforce this net claim. Contracts underlying close-out netting arrangements or framework contracts may be avoided or cancelled only if done concurrently.

Law stated - 26 November 2021

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Under Hungarian law, the court may change the rank (priority) of a creditor's claim (which is determined by law) if the creditor appealed the administrator's decision of ranking its claim and the court rules in favour of the creditor.

There are no publicly available databases on how creditors appeal the administrator's decision or how many cases the court rules in the creditor's favour.

Law stated - 26 November 2021

Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

In the liquidation process, the following priority groups of claims exist:

- liquidation costs;
- claims secured;
- claims as alimony and life annuity payments; compensation benefits; income supplement to minors, which is payable by the economic operator; and monetary aid granted to members of agricultural cooperatives instead of household land or produce for which the beneficiary is entitled for its lifetime;
- claims of private individuals not originating from economic activities and claims of small and micro companies;
- debts owed to social security funds and taxes;
- default interest and late charges, as well as surcharges and penalty and similar debts; and
- claims, other than wages and other similar benefits.

In bankruptcy proceedings, the administrator shall categorise the claims in accordance with the following:

- claims with regard to stay of payment; and
- secured and unsecured claims notified within the time limit.

Law stated - 26 November 2021

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Pursuant to the Bankruptcy Act, from the opening of the liquidation proceedings, employer's rights shall be exercised and obligations shall be fulfilled by the liquidator within the framework of the relevant legislation, the collective agreement, and internal regulations and contracts of employment. As a general rule, the liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor; however, the liquidator may not exercise the right of termination with immediate effect with regard to employment contracts.

The Labour Code expressly provides that the employer shall be permitted to terminate a fixed-term employment relationship by notice if undergoing liquidation or bankruptcy proceedings; thus, without stipulating differently in the contract, no claims will arise from termination. In the case of different contractual obligations, the employee may submit a claim. The employer is entitled to collective redundancy according to the provisions of the Labour Code.

The employer shall be liable to pay up to six months' absentee pay owed to the executive employee from the remuneration payable upon termination of its employment, if the notice of termination is delivered after the opening of bankruptcy or liquidation proceedings. Any additional sum shall be payable upon the conclusion or termination of bankruptcy proceedings, or upon the conclusion of liquidation proceedings.

Law stated - 26 November 2021

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

Debts owed to social security funds shall be satisfied from the economic operator's assets if its assets are enough to cover these debts as well. Other pension-related claims may not be enforced against employers in insolvency or reorganisation; however, in the case of liquidation, the court shall notify the health insurance agency and pension insurance administration agency competent for the place where the debtor's registered office is situated when ordering liquidation.

In connection with data disclosure requirements relating to pension insurance, the liquidator shall disclose data relating to the relationship of insured persons relevant for pension insurance in the form of a declaration submitted in accordance with other specific legislation. Information on payments made subject to social security obligations shall be provided to the state tax authority. The liquidator shall send the certificate issued by the competent pension insurance administration agency and the state tax authority on its fulfilment of the obligation of declaration to the court.

Law stated - 26 November 2021

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Government Decree No. 106/1995 (IX 8) on the requirements of environmental and nature protection during liquidation and bankruptcy proceedings stipulates the provisions regarding environmental protection, requirements and the manner of resolving environmental damage and contamination, as well as the types of expenses arising therefrom.

According to the general rule, the liquidator shall provide for the damage and contamination of the environment that is proven to originate from before the time of the opening of liquidation proceedings. This means that the costs of the necessary measures to be taken, even in the lack of the debtor's assets, to eliminate dangerous waste shall be borne by the central budget of the state.

Any creditor or, in the debtor's name, the liquidator may bring action during the liquidation proceedings before the court to establish that the former executives of the economic operator failed to represent properly the interests of creditors in the three-year period prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons.

In the application of the above provision, creditors' interests shall be considered to have been ignored if the executive failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offences, or concerning remediation, in consequence of which providing full satisfaction of the creditors' claims may be frustrated. If damage is caused by several persons, their liability shall be joint and several.

Law stated - 26 November 2021

Liabilities that survive insolvency or reorganisation proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

In the case of reorganisation, the qualified composition agreement outlines the survival of any liability.

In the case of liquidation, after the proceedings are concluded, the economic operator ceases to exist without successor; thus, no liability survives.

Law stated - 26 November 2021

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In the case of reorganisation, distribution is made in accordance with the composition plan. In the case of liquidation, distribution is made in accordance with the distribution plan prepared by the liquidator and approved by the court or the decision of the court.

The time of the distribution depends on the claim. Generally, the claims shall be distributed within 30 days of the approval of the closing balance sheet or the closing simplified balance sheet. In certain cases, the claim can be satisfied upon maturity (eg, working capital loans).

The rank of the claims is governed by the relevant provisions of the Bankruptcy Act.

Law stated - 26 November 2021

SECURITY

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

The main types of security on immovables are real property mortgages and independent liens.

The mortgage agreement is valid only if concluded in writing and in the form required for registration in the real estate register. It goes into effect when it is registered. Priority is determined according to the date of registration; if more than one request is submitted on the same day, the priority is determined according to the date on which the mortgage agreement was concluded.

According to an amendment of the Civil Code effective as of October 2016, 'seceded liens' have been abolished, and independent liens have been introduced. A mortgage may also be filed on a real estate property on a financial institution's behalf by way of pledging the mortgaged property to secure a specific sum other than the secured claim (independent lien). The agreement on establishing the independent lien shall contain a description of the pledged property and indicate the specific sum up to which satisfaction may be sought from the pledged property. That sum shall be entered in the real estate register.

The conditions for exercising the right to satisfaction from the pledged property shall be fixed in a guarantee agreement between the lien holder and the lienor. The guarantee agreement shall be made in writing and shall specify the reason for which the independent lien is filed, the terms and conditions for, and the extent of, exercising the right to satisfaction or, if the right to satisfaction opens upon cancellation, the conditions for exercising the right of cancellation, including the notice period. The right to satisfaction may be exercised as laid down in the guarantee agreement.

An independent lien may be transferred to another financial institution in whole or in part, or in instalments. The party to whom the independent lien is transferred shall replace the transferor in the guarantee agreement, as commensurate according to the extent of the transfer.

If the independent lien is transferred in part or in instalments, the acquiring party may request that the division of the independent lien is indicated in the real estate register.

Law stated - 26 November 2021

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

The main types of security on movables are mortgage on movables, pledge on movables, floating charge and security deposit in the form of money, securities or payment account balances (possessory liens).

The pledge agreement contains an arrangement between the lienor and the lien holder on pledging a specific item and to secure a specific claim. Under the pledge agreement, the lienor undertakes the obligation to transfer possession of, or control over, the pledged property to the creditor in the case of a possessory lien or grant approval for the registration of a mortgage.

Mortgages are registered in the collateral register in the case of movable properties. The collateral register contains the mortgages established on non-registered movable properties, rights and claims separately for each lienor and other security rights established by the Civil Code.

Where ownership of a movable property is recorded in a public register (eg, the registry of boats), the mortgage shall be considered established if registered in the relevant registry.

The holder of a property subjected to a possessory lien shall keep the pledged property in his or her possession and keep it in good condition.

The lien holder's right to satisfaction shall open in the case of default, when the claim secured by a pledge falls due.

The rules related to these securities are established by the Civil Code.

Law stated - 26 November 2021

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

The following transactions can be annulled or set aside:

- contracts concluded by the debtor within five years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if intended to conceal the debtor's assets or to defraud any one creditor or the creditors, and the other party had or should have had knowledge of such intent;
- contracts concluded by the debtor within three years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if intended to transfer the debtor's assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtor's assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party;

- contracts concluded by the debtor within 120 days preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if intended to give preference and privileges to any one creditor (eg, the amendment of an existing contract to the benefit of a creditor) or to provide financial collateral to a creditor that does not have any; and
- contracts concluded by the debtor within three years before the date when the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if made for the purpose of transfer of ownership by way of guarantee, or the assignment of a right or claim by way of a guarantee or exercising a collateralised option to buy, where the beneficiary exercised such acquired right by failing to fulfil its obligation of accounting toward the debtor, or did so improperly, or failed to pay the amount remaining after the secured claim is satisfied; if the right-holder did not have the acquisition of ownership, or the assignment of a right or claim by way of a guarantee registered in the collateral register, or its buy option in the real estate register, the conditions for lodging a contest shall be presumed to exist.

The above transactions can be contested before the court by the creditor and, on behalf of the debtor, the liquidator within a one-year limitation period from the date of publication of the notice of liquidation.

If the contest is successful, the provisions of the Civil Code pertaining to invalid contracts shall apply. The liquidator and the creditor may request on the grounds of invalidity to have the original state restored, and to have any right registered in a public register on the asset after the alienation of the asset stricken from the records.

Law stated - 26 November 2021

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Bad faith or gratuitous promise shall be presumed if the debtor enters into an agreement with a company that is under its majority control, with a shareholder or directors of the company, or with their relatives, the agreement is intended to conceal the debtor's assets or to defraud the creditors or to transfer the debtor's assets without any compensation, and such agreement is contested before the court. Furthermore, bad faith or gratuitous promise is also presumed when this contract is concluded between economic operators that are not directly or indirectly connected by way of affiliation, but are controlled by the same person or the same company.

The following may not set off their claims against the debtor:

- directors and executive employees of the debtor economic operator, their close relatives and their domestic partners; or
- any member (shareholder) of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority control (or the member in the case of single-member companies, the owner in the case of sole proprietorships or the foreign-registered company in the case of Hungarian branches).

Law stated - 26 November 2021

GROUPS OF COMPANIES

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

In the case of groups of corporations, if any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if it is able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy. Majority control means a relationship where a natural or legal person (holder of a participating interest) controls over 50 per cent of the voting rights in a legal person, or in which it has a dominant influence. The holder of a participating interest is deemed to have dominant influence on a legal person if it is a member of or shareholder in that company and:

- it has the right to appoint and recall the majority of the executive officers or supervisory board members of the legal person; or
- other members of or shareholder in that legal person are committed under agreement with the holder of a participating interest to vote in concert with the holder of a participating interest, or they exercise their voting rights through the holder of a participating interest, provided that together they control more than half of the votes.

Insolvency proceedings initiated against the foreign parent company abroad shall only apply to the Hungarian branch office under an international agreement or state of reciprocity or in accordance with Regulation (EU) 2015/848.

If the branch office is not involved in the insolvency proceedings initiated against the foreign parent company abroad under the laws of that country because of the lack of an international agreement or state of reciprocity or if the provisions of Regulation (EU) 2015/848 apply, the general court responsible for the place where the branch office is registered shall order dissolution of the branch office ex officio on the basis of notification by the court of registry.

Law stated - 26 November 2021

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

There are no combined insolvency proceedings under Hungarian law. If any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy.

Law stated - 26 November 2021

INTERNATIONAL CASES

Recognition of foreign judgments

Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

The general rules regarding foreign judgments apply (with the provisions of the EU Insolvency Regulation). Act XXVIII of 2017 on private international law prescribes specific provisions for the recognition of judgments adopted in insolvency proceedings. Pursuant to these provisions, the recognition of judgments in insolvency proceedings is subject to reciprocity between Hungary and the state of the court that delivered that judgment. Recognition of main insolvency proceedings conducted abroad shall not preclude the opening of secondary insolvency proceedings before a Hungarian court.

In Hungary, a foreign judgment opening main insolvency proceedings shall impart legal effects provided for by the law of the state regarding the opening of proceedings only if no secondary insolvency proceedings are opened in Hungary. Additional conditions and special rules of procedure may be established by law regarding the recognition of legal effects related to the main insolvency proceedings conducted abroad.

Hungary is not a signatory to any treaties on international insolvency or on the recognition of foreign judgments.

Law stated - 26 November 2021

UNCITRAL Model Law

Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted in Hungary.

Law stated - 26 November 2021

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors are dealt the same way in liquidations and reorganisations as any other creditor.

Law stated - 26 November 2021

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

The rules governing the sale of the debtor's assets are set out in detail in the Bankruptcy Act, and it is not possible to transfer the debtor's property in any other way. The liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market. The liquidator shall effect the sale by way of tender or auction. The buyer shall pay the purchase price to acquire ownership over the debtor's asset.

Law stated - 26 November 2021

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

No test is officially used to determine the COMI of a debtor company or group of companies. The Bankruptcy Act follows the applicable EU Regulation with respect of determining the COMI.

Law stated - 26 November 2021

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

Pursuant to the relevant provisions of Act XXVIII of 2017 on private international law, the recognition of judgments in insolvency proceedings is subject to reciprocity between Hungary and the state of the court that delivered the judgment. Recognition of main insolvency proceedings conducted abroad shall not preclude the opening of secondary insolvency proceedings before a Hungarian court.

No court statistics are available regarding refusals.

Law stated - 26 November 2021

Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Cooperation in cross-border cases is based on the applicable EU laws on insolvency proceedings.

The Metropolitan Tribunal shall have competence and jurisdiction to open and conduct main insolvency proceedings instituted against an economic operator covered by Regulation (EU) 2015/848, established in a place other than Hungary.

There is no publicly available information on either any joint hearings or on the communication with courts of other countries.

Law stated - 26 November 2021

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

According to the Bankruptcy Act, in respect of the Hungarian branches of foreign companies, the provisions of the Bankruptcy Act regarding liquidation proceedings apply subject to the exceptions set out in the Act on the Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies.

To the liquidation of Hungarian branches of foreign companies, generally the relevant EU regulation applies. In the event that a foreign company becomes insolvent in connection with business activities performed by its Hungarian

branch and the insolvency proceedings to which it is subject does not fall within the scope of Regulation (EU) 2015/848, and there is no reciprocity with the state where the foreign company is established in respect of insolvency proceedings, creditors may request dissolution of the branch by the general court at which the branch is registered. In those proceedings, the provisions of the Bankruptcy Act on liquidation proceedings apply with certain derogations. The court terminates the liquidation proceedings if the foreign company or the branch provides guarantees for settlement of the creditors' claims notified in the proceedings.

After the conclusion of the branch's liquidation proceedings, the assets remaining shall be at the foreign company's disposal.

The main rules of liquidation of Hungarian branches of foreign companies are the following:

- the foreign company is to be regarded as the debtor in relation to debts incurred through its branch office;
- the assets of the branch office shall be understood as all the assets of the foreign company (invested assets or current assets) that are used (administrated) by the branch office according to the accounting records of such;
- where the Bankruptcy Act refers to the executive officer of an economic organisation, it shall be understood as the director of the branch office; and
- where the Bankruptcy Act, in relation to liquidating proceedings, refers to the organs or bodies of the company, it shall be understood as the person or body acting as the managing director as delegated by its deed of foundation or, in respect of insolvency proceedings initiated abroad, the liquidator authorised to dispose over the assets of the foreign company.

Insolvency shall be declared, in the event that the foreign company or the branch office has not paid non-disputed or acknowledged debts, within 60 days of due date or execution proceedings conducted in Hungary against the party were unsuccessful.

Liquidation proceedings shall be initiated if requested by the creditor or upon notification by the Court of Registry. A branch office is considered dissolved upon removal from the company registration records.

Law stated - 26 November 2021

UPDATE AND TRENDS

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

One of the most important current issues of Hungarian insolvency law is the implementation of the provisions of Directive (EU) 2019/1023 on restructuring and insolvency. The provisions are regulated by Act LXIV of 2021 on restructuring and on the amendment of certain acts for legal harmonisation, which will enter into force on 1 July 2022.

With regard to the covid-19 pandemic and its severe negative effects on economic operators, certain measures were implemented to ease the burden on those entities. Among other things, legal persons and independent contractors qualifying as undertakings experiencing financial difficulties may file an application for a stay of payment.

In addition to the loan repayment moratorium, a new type of insolvency proceedings was introduced during the state of emergency: pre-insolvency reorganisation. The proceedings were introduced by government decrees in April 2021, and the provisions were implemented into an act with effect from December 2021.

The provisions are temporary, and pre-insolvency reorganisation can be initiated until 31 December 2022; however, the

introduction of public and non-public pre-insolvency reorganisation was a significant change in Hungarian regulation. Reorganisation is a procedure carried out based on an economic point of view, the aim of which is to improve the wealth and the financial and solvency situation of an undertaking in financial difficulty and ensure its continued operation.

These temporary pieces of legislation also provide for the rules applicable to detachment as a special form of demerger during the course of liquidation that might be applied in the case of major economic operators of preferential status for strategic considerations. As a result of the aforementioned detachment, a new company may be set up to preserve the still viable and operating parts of the debtor.

Law stated - 26 November 2021

Jurisdictions

Australia	Gilbert + Tobin
Austria	Freshfields Bruckhaus Deringer
Belgium	Freshfields Bruckhaus Deringer
British Virgin Islands	Carey Olsen
Canada	Thornton Grout Finnigan
Cayman Islands	Carey Olsen
China	Dentons
Croatia	Schoenherr
Cyprus	CITR Cyprus Ltd
Dominican Republic	Guzmán Ariza
European Union	Freshfields Bruckhaus Deringer
Finland	Waselius & Wist
France	Freshfields Bruckhaus Deringer
Germany	Freshfields Bruckhaus Deringer
Greece	PotamitisVekris
Guernsey	Carey Olsen
Hong Kong	Freshfields Bruckhaus Deringer
Hungary	Nagy és Trócsányi
India	Chandhiok & Mahajan, Advocates and Solicitors
Ireland	Dillon Eustace
Isle of Man	DQ Advocates Ltd
Israel	Yigal Arnon & Co
Italy	Freshfields Bruckhaus Deringer
Japan	Anderson Mōri & Tomotsune
Jersey	Carey Olsen

Malta	Ganado Advocates
Mexico	Oscos Abogados
Netherlands	Freshfields Bruckhaus Deringer
Nigeria	Mike Igbokwe (SAN) & Company
Norway	Kvale Advokatfirma
Romania	CITR SPRL
Russia	Freshfields Bruckhaus Deringer
Slovenia	Jadek & Pensa
Spain	Freshfields Bruckhaus Deringer
Switzerland	Walder Wyss Ltd
Taiwan	Lee and Li Attorneys at Law
Thailand	Weerawong, Chinnavat & Partners Ltd
Ukraine	Vasil Kisil & Partners
United Arab Emirates	Freshfields Bruckhaus Deringer
United Kingdom - England & Wales	Freshfields Bruckhaus Deringer
USA	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Vietnam	Freshfields Bruckhaus Deringer