

Restructuring & Insolvency

Contributing editor
Bruce Leonard



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GETTING THE
DEAL THROUGH 

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Restructuring & Insolvency 2016

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Legislation

1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

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 III of 1952 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; and
- 106/1995 (IX.8.) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings.

The court shall declare the debtor insolvent:

- upon the debtors failure to settle or contest his previously uncontested and acknowledged contractual debts within 20 days of the due date, and failure to satisfy such debt upon receipt of the creditors written payment notice;
- upon the debtors failure to settle his 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 his 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 debts on the date when they are due, and 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 such debts when due.

Courts

2 What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

Bankruptcy and liquidation proceedings are non-contentious proceedings conducted exclusively by the general court of competence and jurisdiction by reference to the debtors registered office of record on the day when the request for opening the proceedings has been submitted and by the Budapest Metropolitan Court. The Budapest Metropolitan Court shall have exclusive jurisdiction to conduct main and territorial insolvency proceedings under Council Regulation 1346/2000/EC on insolvency proceedings concerning economic operators established in a place other than Hungary. Under Hungarian law, no restrictions apply to matters the courts may deal with.

Excluded entities and excluded assets

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

The Bankruptcy Act shall apply to all economic operators such as business associations, private pension funds, associations and their creditors.

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 shall comprise all assets that it owns or controls.

Assets such as natural preservation areas, land reserved for compensation 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.

Public enterprises

4 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 apply to government-owned enterprises too. The creditors of a government-owned enterprise have the same remedies as the creditors of a private enterprise.

Protection for large financial institutions

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

In order to maintain the stability of the financial sector the Hungarian parliament adopted the Act XXXVII of 2014 on the further development of the institutional system promoting the security of certain actors of the financial intermediary system, which introduced the resolution system based on the Bank Recovery and Resolution Directive of the European Union. Furthermore the Bankruptcy Act also contains provisions regarding major economic operators. The government may grant this status to economic operators if the settlement of the debts of such operators, composition with creditors or reorganisation are in the interests of the national economy.

Secured lending and credit (immovables)

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

The main types of security on immovables are the real property mortgage and the secured lien.

A real property may be charged as a security only in the form of a mortgage. The mortgage agreement is valid only if concluded in writing and in the form required for registration in the Land Register and 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.

The new Civil Code abolished the independent lien. Now, a lien may only be created in connection with a secured claim. However, by introducing the legal institution of 'seceded lien', the new Civil Code has made

possible that once a lien (mortgage) has been created, it may be separated from the original claim: the creditor may transfer it without its secured claim, by a written agreement as a security, to its own creditor.

Secured lending and credit (moveables)

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

The main types of security on moveables are mortgage on moveables, pledge on moveables, floating charge and security deposit in the form of money or securities.

Unsecured credit

8 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Unsecured creditors may choose bankruptcy and liquidation proceedings too, however, in this case the rank of their claims will be lower than the rank of the secured ones. Judicial enforcement is another option to choose. Judicial enforcement shall be ordered by the issue of an enforcement order such as certificate of enforcement issued by the court or a notary public, document with an enforcement clause issued by the court or a notary public or a judicial order or restraint of enforcement. Enforcement shall be suspended in case a liquidation process is commenced against the debtor.

No special provisions exist regarding foreign creditors, except that they might be obliged to provide deposit – with the exception of the EU members – to cover the costs of the court process and the appointment of a delivery agent is necessary.

Voluntary liquidations

9 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 unable or unwilling to enter into bankruptcy. The petition may be submitted in possession of the prior consent of the supreme body of the debtor economic operator exercising founders' (shareholders') rights. In the case of sole proprietorships, the petition may be submitted by the owner at his 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. Commencing a voluntary liquidation has the same effect as commencing liquidation by the creditors.

Involuntary liquidations

10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

If the liquidation is requested by the creditor, the petition to the competent court shall specify the debtor's liabilities, the maturity and a summary of the reasons for claiming that the debtor is deemed insolvent. The documents in proof of the contents of the petition shall also be attached, including a copy of the written notice sent to the debtor. If the court has not rejected the petition it shall notify the debtor by sending a copy of the petition.

Upon the request of creditor the court shall 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 document, and has advanced the fee of 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 a voluntary liquidation has the effect that upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette.

Voluntary reorganisations

11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

The directors of debtor economic operators may file for bankruptcy at the competent court. Legal representation for the debtor shall be mandatory. The debtor may not file a petition for bankruptcy if already adjudicated in bankruptcy, 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 such proceedings, and inside 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 inside the one-year period following the time of publication of the final ruling thereof.

The petition may be submitted in possession of the prior consent of the supreme body of the debtor economic operator exercising founders (shareholders) rights. In the case of sole proprietorships, the petition may be submitted by the owner at his 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.

If the court did not refuse the request for the opening of bankruptcy proceedings, it shall provide for the opening of bankruptcy proceedings, and shall consequently provide for having the ruling thereof published in the company gazette and for having the indication 'cs. a.' entered in the register of companies next to the company's name. The court shall ex officio appoint an administrator from the register of liquidators in its ruling on the bankruptcy proceedings. The ruling may not be appealed.

Involuntary reorganisations

12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

Under Hungarian law creditors cannot commence the debtor's reorganisation.

Mandatory commencement of insolvency proceedings

13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?

Liquidation proceedings shall be conducted in the event of insolvency of the debtor:

- if no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent ex officio and shall order the liquidation of the debtor;
- upon request of the receiver;
- upon receipt of notice from the court of registry, if the court of registry has ordered the liquidation of the company; or
- upon receipt of notice from a criminal court.

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 span of three years prior to the opening of liquidation proceedings.

Criminal liability of the directors may arise if a company carries on business while insolvent.

Doing business in reorganisations

- 14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? 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? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?**

In case of reorganisation, the debtor is granted a stay of payment period (moratorium) to preserve the assets under bankruptcy protection, during which the debtor, the administrator, the financial institutions carrying their accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment. The stay of payment shall not apply to claims like claims for wages and other similar benefits, claims to any value added tax or to refunds of sums transferred to the debtor's account by mistake.

No special treatment is given to creditors doing business after filing. The directors of a debtor economic operator, including its supreme body and owners, shall exercise their respective rights only if it does not violate the powers vested in the administrator.

The administrator shall approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings. The administrator shall have powers to approve any new commitment made by the debtor. However, the administrator may grant approval for a commitment, or for a payment, if they serve the debtors interest in terms of operations, and for the preparation of composition arrangements, and may provide guarantees for such commitments only if agreed by the creditors representing the majority of the claims held by creditors with voting rights.

Stays of proceedings and moratoria

- 15 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?**

Under the duration of the stay of payment as a general rule set-off may not be applied against the debtor, payment orders may not be satisfied from the debtors accounts, the enforcement of money claims against the debtor shall be suspended, and the enforcement of such claims may not be ordered, no satisfaction may be sought on the basis of a lien on the debtors assets, the debtor cannot effect any payment for claims existing at the time of the opening of bankruptcy proceedings, the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator, payments may be made from the debtors assets subject to authorisation by the administrator, and the contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtors failure to settle during the term of the stay of payment its debts incurred before the term of the temporary stay of payment.

Post-filing credit

- 16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?**

According to the general rule, in case of reorganisation, the debtor shall be allowed to undertake any new commitment – secured or unsecured loans or credit – subject to the consent of the administrator and priority rank is given to the secured ones.

In case of liquidation, the head of the debtor economic operator shall be restricted from entering into any contract considered to be in excess of the scope of normal operations where the economic operators assets are concerned without the prior consent and endorsement of the temporary administrator, or from entering into any other commitment, including where the debtor is compelled to perform under an existing contract.

See questions 14 and 15.

Set-off and netting

- 17 To what extent are creditors able to 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 a liquidation proceeding only such claims can be set-off that 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. The executive officers and executive employees of the debtor economic operator, their close relatives and their domestic partners, furthermore, any member of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority control, may not set off their claims against the debtor.

Sale of assets

- 18 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 practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?**

In 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.

In case of liquidation, the liquidator shall dispose of the debtors 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 only upon the prior consent of the select committee, or 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 this case 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, their sale shall be governed by the relevant provisions of the Act on Transactions in Agricultural and Forestry Land and the decree implementing it.

No stalking horse rules and credit bidding apply under Hungarian Law regarding insolvency proceedings.

Intellectual property assets in insolvencies

- 19 May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?**

No specific rules exist under Hungarian law regarding the IP rights in case 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 debtors failure to settle during the term of the stay of payment its debts incurred before the term of the temporary stay of payment, however if the given contract stipulates that the commencement of bankruptcy proceeding or liquidation proceeding 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.

Rejection and disclaimer of contracts in reorganisations

- 20 Can a debtor undergoing a 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?**

According to the general rule, no contracts can be rejected or terminated on the account of reorganisation. The debtor or the administrator may challenge the contract before ordinary court only in accordance with the Hungarian Civil Code and the provisions of the Civil Procedure. Claims arising after the commencement of the insolvency may also be registered.

Arbitration processes in insolvency cases

- 21 How frequently is arbitration used in insolvency proceedings? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?**

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 Budapest Metropolitan Court, thus arbitration courts cannot commence insolvency proceedings, however, the administrator or the liquidator may submit a claim regarding disputes arising between the debtor and the creditor.

Successful reorganisations

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

A composition agreement (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.

The composition agreement shall be made in writing and shall contain, in particular:

- a list of the creditors participating, their classification, the amounts of their claims and the number of their voting rights;
- settlement and restructuring program approved by the creditors, and the method of execution and oversight;
- any modification in the time limits of performance; and
- the name and mailing address of each creditor.

The composition arrangement shall be signed by the parties, and by their legal representatives or proxies, and shall be countersigned by the administrator and by the select committee, if there is one.

The composition agreement shall not release non-debtor parties from liability.

Expedited reorganisations

- 23 Do procedures exist for expedited reorganisations?**

No expedited reorganisations exist under Hungarian law.

Unsuccessful reorganisations

- 24 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. 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 and shall

consequently declare the debtor insolvent and shall order the liquidation of the debtor.

Insolvency processes

- 25 During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings 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 insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?**

In case of bankruptcy the debtor shall notify its creditors directly within five working days following publication of the ruling ordering the opening of bankruptcy proceedings, and – furthermore – shall publish a notice in a daily newspaper of nationwide circulation and also on its website (if available) advising the creditors to register their claims within the time limit specified and to make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, and to attach the documents in proof of their claim.

In case of liquidation, upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette. Publication in the company gazette shall take place in the form of display on the website of company gazette, updated on a daily basis.

Moreover the head of an economic operator is obliged to inform the beneficiaries of the claims specified in the Bankruptcy Act regarding the opening of liquidation proceedings within 15 days from the time of opening. If the head of an economic operator does not comply with the regulations, the court shall impose a fine.

The creditors may not pursue the estate's remedies against third parties.

Enforcement of estate's rights

- 26 If the insolvency administrator 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?**

In the event of any illegal action or negligence by the liquidator, the creditors' select committee and the creditors' representative may file a complaint at the court that has ordered liquidation. If the court entails the hearing of the parties or the admission of other evidence, the court shall order suspension of the measures contested. If the complaint is found substantiated the court shall overturn the measures of the liquidator and restore the original conditions, or shall order the liquidator to revise his or her actions. If the complaint concerns the allocation of liquidation costs, the court – if so requested – may order the liquidator to provide compensation for the debtor for any liquidation costs that have been charged unlawfully.

Creditor representation

- 27 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, furthermore, to monitor the activities of the administrator and the liquidator. The select committee shall exercise the rights and entitlements conferred by the Bankruptcy Act.

Only one select committee can be appointed in respect of any one economic operator 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 comprising at least one-third of the creditors with voting rights, and if these creditors control at least one-half of the votes. In liquidation proceedings, a select committee shall be deemed legitimate if comprising at least one-third of the notified creditors and these creditors hold at least one-third of all claims of creditors entitled to participate in the composition agreement.

The select committee's powers, 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 able to meet the conditions specified.

Insolvency of corporate groups

28 In insolvency 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? May assets be transferred from an administration in your country to an administration in another country?

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.

The transfer of specific assets of the debtor under bankruptcy or liquidation cannot be transferred to another country, only in case of the administrator's (liquidator's) approval. For further information see question 18.

Claims and appeals

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

Creditors shall make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, 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 yet. The registration of claims is subject to a registration fee payable by the creditor amounting to 1 per cent of the claim – 100,000 forints maximum – to the administrator's current account. The administrator shall then categorise and register the claims. The debtor and creditors shall be informed without delay concerning the classification of claims and the amount registered, and they shall be given an opportunity to present their views within 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 days to submit any objection to the court concerning the administrator's action pertaining to the classification process, including the case 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 such objection in priority proceedings. The ruling may not be appealed separately. 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 notified duly. The general rules on the order of satisfaction shall apply to the creditors notifying their claims past the prescribed time limit.

Modifying creditors' rights

30 May the court change the rank 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, see question 31 – if the creditor appealed the administrator's decision of ranking its claim and the court rules in favour of the creditor.

Priority claims

31 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, restitution;
- claims of private individuals not originating from economic activities claims of small and micro companies;
- debts owed to social security funds, taxes;
- other claims;
- default interests 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 as per the following:

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

Employment-related liabilities in restructurings

32 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

According to the Hungarian Labour Code the employer shall be permitted to terminate an employment relationship by notice if undergoing liquidation or bankruptcy proceedings, thus, without stipulating differently in the contract, no claims will arise from termination. In 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 due to the executive employee from the remuneration payable upon termination of his 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.

Pension claims

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

Employers in Hungary have no obligations to offer pension plans, thus no claims arise against employers in case of insolvency proceedings. The administrator, however, is obliged to transfer the relevant data to the competent Hungarian authority, regarding employment relationships. Termination-related costs are considered liquidation costs, which have the highest priority among claims.

Environmental problems and liabilities

34 In insolvency proceedings 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, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

The 106/1995 (IX.8.) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings stipulates the provisions regarding environmental protection, the requirements and the manner of resolving environmental damage and contamination, furthermore, the types of expenses arising therefrom. According to the general rule the liquidator shall provide for damage and contamination of the environment 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.

Liabilities that survive insolvency proceedings

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

In case of reorganisation, the qualified composition agreement shall decide about the survival of any liability, while in case of liquidation, after the proceeding is concluded, the economic operator ceases to exist, thus no liability survives.

Distributions

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

In case of reorganisation distribution is made in accordance with the composition plan. In case of liquidation distribution is made in accordance with the composition plan or the decision of the court. The time of the distribution depends on the claim. In certain cases the claim can be satisfied upon maturity.

See question 31, where the rank of the claims is detailed.

Transactions that may be annulled

37 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

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 his other commitments, if intended to conceal the debtors 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 two years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his 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 90 days preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his other commitments, if intended to give preference and privileges to any one creditor, such as 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. 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.

Proceedings to annul transactions

38 Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

The administrator contest, at its discretion, any contract or legal statement the debtor has made in the absence of his approval or endorsement required, and shall initiate or open proceedings for the recovery of any payments effected unlawfully or arising out of or in connection with any unlawful claim. If the contest is successful, the provisions of the Civil Code pertaining to invalid contracts shall apply.

The creditor, and on behalf of the debtor, the liquidator may file for legal action before the court within 90 days from the time of gaining knowledge or within a one-year limitation period from the date of publication of the notice of liquidation to contest. The liquidator, on behalf of the debtor, shall be entitled to reclaim any service the debtor has provided within a 60-day period preceding the date when the court received the petition for opening liquidation proceedings or thereafter, if it was provided to give preference to any one creditor and if such service is not usually provided under normal circumstances. Prepayment of a debt is, in particular, considered as giving preference or privileges to any one creditor.

Directors and officers

39 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? 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 span of three years prior to the opening of liquidation proceedings. Financial security may also be demanded with a view to providing satisfaction for the creditor's claims.

Any executive referred to who is able to verify that they have taken all measures within reason, that are to be expected from persons in such positions, upon the occurrence of a situation carrying potential danger of insolvency so as to prevent and mitigate the losses of creditors, and to prompt the supreme body of the debtor economic operator to take action, shall not be held responsible.

Within a 60-day limitation from publication in the company gazette, any creditor may bring action for the court to establish the liability of the debtors former executive and hence to order this executive to satisfy the debtor's claim to the extent of its claims not yet satisfied.

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 for their claims in violation of the provisions of the Bankruptcy Act. The fine shall cover 10 per cent of the amount paid out.

Groups of companies

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

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 members insolvency did not arise as a consequence of the groups common business strategy.

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 Council Regulation 1346/2000/EC on insolvency proceedings. If the branch office is not involved in the insolvency proceedings initiated against the foreign parent company abroad under the laws of that country due to the lack of an international agreement or state of reciprocity or if the provisions of Council Regulation 1346/2000/EC 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.

Insider claims

41 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

If the debtor enters into an agreement with an economic operator that is under its majority control, with a shareholder or executive officer of such economic operator, or with their relatives, bad faith or gratuitous promise shall be presumed. Furthermore, bad faith or gratuitous promise shall also be presumed when a 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 economic operator.

Creditors' enforcement

42 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?

Any assets not realised during the reorganisation or liquidation may be seized outside of court proceedings based on a contractual right.

Corporate procedures

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

There are no specific corporate procedures for the liquidation or dissolution of a corporation.

Conclusion of case

44 How are liquidation and reorganisation cases formally concluded?

See questions 22, 25, 27, 28 and 29.

International cases

45 What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? 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? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

The general rules regarding foreign judgments apply (with the provisions of the Insolvency Regulation of the EU). Hungary is not a signatory to any treaties on international insolvency or on the recognition of foreign judgments. The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted and the adoption of it is not in consideration.

COMI

46 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.

Cross-border cooperation

47 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?

The regulations of the EU regarding the recognition of foreign insolvency proceedings apply. In any other case, cooperation and recognition depend

Update and trends

In 2015 the Hungarian parliament adopted the Act CV on Personal Bankruptcy, which entered into force on 1 September 2015. This new legal instrument stipulates the debt settlement procedures for private individuals.

The Act does not exclude any kind of debt owned by a private individual. The private individual may commence the procedure if (i) their outstanding debt is between 2 and 60 million forints; (ii) the debt exceeds the value of the debtor's assets but it is not more than 200 per cent of such value; (iii) at least 80 per cent of the debt is undisputed by the debtor; (iv) at least one debt is overdue at least by 90 days; (v) the amount of such debt exceeds 500,000 forints; (vi) there are no more than five subordinated debts; (vii) one of the debts is a consumer loan debt; and (viii) none of the debts come from an enforceable court decision based on liability regarding the business organisation's dissolution without successor.

We have no statistical proof yet about whether the introduction of this new legal institution - Hungary is among the first countries that became member states of the European Union in 2004 to implement personal bankruptcy in law - will have the desired effect.

on bilateral treaties or on the principle of reciprocity. No court statistics are available regarding refusals.

Cross-border insolvency protocols and joint court hearings

48 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?

The Hungarian courts have not entered into cross-border insolvency protocols or other agreements to coordinate proceedings with courts in other countries and they have not held joint hearings with courts in other countries in cross-border cases.

The Budapest Metropolitan Court shall have exclusive jurisdiction to conduct main and territorial insolvency proceedings under Council Regulation 1346/2000/EC on insolvency proceedings concerning economic operators established in a place other than Hungary.

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