

## Covid-19 coronavirus

### Second wave of impending changes to Czech insolvency law

With the numbers of active cases of coronavirus SARS CoV-2 rising each day in the Czech Republic, the Czech government has submitted a proposal for further changes to Czech insolvency law to the Parliament, aiming once again to further mitigate the impact of the measures adopted in combating the coronavirus SARS CoV-2 epidemic (the **Covid Bill II**).

The Covid Bill II, which is likely to become law in short order, would amend or supplement Czech insolvency law.

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

#### Duty to file insolvency petitions suspended

- The debtor's obligation to file for insolvency if statutory conditions are met is currently being suspended for the duration of the relevant

measures taken by the Czech government, as well as for six months following their expiry, but no longer than until the end of 2020.

- The Covid Bill II amends this rule by extending the maximum time period for which the debtor's duty to file for insolvency is suspended until 30 June 2021.
- Directors of the affected debtor would not be liable for a failure to file for insolvency; however, their duties and related liabilities under the Corporations Act would remain unaffected by the Covid Bill II.
- Creditors will, however, still be able to file an insolvency petition against debtors as the protection that lasted until 31 August 2020 has not been renewed.

#### Extraordinary moratorium

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

The Covid Bill II sets out that debtors are entitled to file for an extraordinary moratorium until 30 June 2021 assuming that the debtor was not insolvent as of 5 October 2020 and has not used this safe harbour previously.

The Covid Bill II also quite surprisingly stipulates that if an extraordinary moratorium was declared before the end of August 2020, the condition requiring the approval of creditors for an extension of the extraordinary moratorium will not apply and the court may extend the duration of the extraordinary moratorium by no more than an additional three months solely upon the debtor's request. This particular change is being heavily discussed between all relevant stakeholders and it is quite uncertain whether it will be passed.

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

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

## Close-out netting and financial collateral

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

## Other related changes ahead?

With the contemplated changes to insolvency law, the Czech government has also submitted a proposal for extending the availability of the state guarantee programme (COVID III) for corporations affected by the coronavirus SARS CoV-2 outbreak in order to enable them to finance their operational needs with a state guarantee originally available only until the end of 2020.

The proposal intends not to limit the purpose of the provided financing to which the state support should now be available until the end of December 2021.

We are also monitoring several non-governmental proposals seeking to extend the application of payment moratoria available under the Covid Loan Act. If adopted, these could ultimately result in the extension of payment moratoria and thus may possibly affect the repayment profile of financing provided under certain credit facilities agreements and other finance products irrespective of the law governing these contractual relationships.<sup>1</sup> The situation is currently very fluid and we continue to monitor all proposals as they come in.

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<sup>1</sup> For more detail see <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/covid-19-coronavirus-impending-changes-to-credit-facilities-agreements-of-czech-borrowers>

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