

DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – SLOVENIA

| WHAT DUTY? | WHAT DOES IT MEAN? | WHEN DOES IT APPLY? |
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| MAINTENANCE OF SOLVENCY MANAGEMENT OF BUSINESS RISKS | <ul style="list-style-type: none"> • best efforts to preserve company's liquidity and sound financial structure • duty to manage and continuously assess credit risk, market risk, operational risk and liquidity risk • specific duty to take known crises into account for liquidity management purposes <ul style="list-style-type: none"> ◦ CAVEAT: liquidity support via shareholder loans if a company is in "crisis" may entail equitable subordination of such loans (resulting in a repayment ban during "crisis" and/or subordinated status) in potential subsequent insolvency | Pre-crisis and post-crisis Enhanced scrutiny in respect of known crises |
| SUSPENSION OF NON-ESSENTIAL PAYMENTS PROHIBITION OF UNEQUAL TREATMENT OF CREDITORS | <ul style="list-style-type: none"> • non-essential payments are no longer permitted • permitted payments are limited and include: <ul style="list-style-type: none"> ◦ employment-related expenses (such as wages and related social contributions, severance payments etc.) ◦ regular operating expenses (electricity, water etc.) ◦ regular/scheduled payments to suppliers and ◦ tax liabilities • general prohibition of unequal treatment of creditors • transactions resulting in preferential treatment of certain creditors and/or reduction of value of company's assets may be challenged/subject to claw-back in hypothetical subsequent insolvency proceedings | Onset of Insolvency * ("T") |
| PREPARATION OF RESTRUCTURING REPORT | <ul style="list-style-type: none"> • preparation of financial restructuring measures report ("Report"): <ul style="list-style-type: none"> ◦ description of financial position / reasons for insolvency and ◦ assessment as to possible out-of-court (including capital increase) restructuring and court-sponsored restructuring measures • Report must be delivered to supervisory board / shareholders' meeting of company | T + 1 month ("T2") |
| CAPITAL INCREASE | <ul style="list-style-type: none"> • if Report establishes that capital increase is required/feasible, management must call a shareholders' meeting (notice period can be shortened to 15 days) | T2 + 8 days OR C-19 END ** + 1 month |
| FILING FOR COMPULSORY SETTLEMENT | <ul style="list-style-type: none"> • if: <ul style="list-style-type: none"> ◦ attempts of share capital increase / out-of-court restructuring fail but ◦ Report nonetheless establishes >50% chance of success of compulsory settlement management must file for compulsory settlement (<i>prisilna poravnava</i>) | T + 90 days OR C-19 END + 3 months |
| FILING FOR BANKRUPTCY | <ul style="list-style-type: none"> • if Report establishes <50% chances of success of compulsory settlement and no prospect of out-of-court restructuring / share capital increase, management must file for bankruptcy (<i>stečaj</i>) • if (1) Report establishes <50% chances of compulsory settlement success (if share capital increase attempt fails) and (2) capital increase attempt fails, management must file for bankruptcy (<i>stečaj</i>) | T2 + 3 days OR C-19 END + 3 months 3 days upon establishing failure of share capital increase OR C-19 END + 3 months |

* **ONSET OF INSOLVENCY:** Deemed to have occurred when the debtor's management should have, acting diligently, established that the debtor is insolvent within the meaning of Slovenian law. Under Slovenian law, a company is **insolvent** if it is either **illiquid** (cashflow insolvency) or **over-indebted** (balance-sheet insolvency).

- **Illiquidity** – presumed if (i) company is more than two months late with payment obligations amounting to 20%+ of its total liabilities (as per annual statements for preceding business year); (ii) balance on company bank accounts does not suffice for execution of court order for enforcement for 60 days+; or (iii) company is more than two months late with payment of minimal wages (up to the amount of minimum wage) to employees or prepayment of employees' income taxes and social contributions; or (iv) **[COVID-19 Measure]** the company is more than one month late with payment of wages and social contributions **if state support was received** within the COVID-19 emergency framework to fund these payments **[Presumption applies for four months following C-19 END]**.

- **Over-indebtedness** – presumed if (i) company's liabilities exceed its assets; or (ii) current losses plus losses carried forward reach 50% of company registered share capital and cannot be covered by reduction of carry-forward profits or reserves (reduction of net assets to 50% of registered capital).

** **C-19 END** means the end of duration of the COVID-19 epidemic emergency legislative package (currently envisaged to stay in force until 31 May 2020). **IMPORTANT: prolonged deadline** applies **only** to companies who **became insolvent as a result of the COVID-19 pandemic** (this is **presumed** in case a company was **subject to compulsory / official closure order**) and, in respect of capital increase, if the requisite corporate acts could not have been adopted due to objective circumstances resulting from the COVID-19 pandemic.

RESTRUCTURING TOOLBOX – CRISIS MANAGEMENT CHECKLIST – SLOVENIA

| WHAT MEASURE? | WHAT DOES IT DO? | WHAT IS REQUIRED? |
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| OUT-OF-COURT RESTRUCTURING | <ul style="list-style-type: none"> arrangement between company and its creditors (typically financial creditors) where: <ul style="list-style-type: none"> creditors agree to postpone enforcement of payment claims for limited period of time such that terms of restructuring can be agreed ("stand-still") <i>and</i> if negotiations are successful, creditors and company enter into master restructuring agreement ("MRA") freedom of contract: <ul style="list-style-type: none"> parties are free to shape contents of standstill/MRA <i>but</i> all affected parties (company and relevant creditors) must agree to stand-still and MRA | Consent by all affected creditors |
| PREVENTIVE RESTRUCTURING | <ul style="list-style-type: none"> legal tool aimed at enabling eligible distressed Slovenian companies to avoid insolvency by entering into MRA with financial creditors outside compulsory settlement proceedings: <ul style="list-style-type: none"> if creditors holding 30% of company's financial claims agree to start proceedings, this will result in compulsory stand-still for entire class of financial creditors (3-8 months) if creditors holding 75% of company's financial claims agree to MRA (separate voting in secured and unsecured creditor class), terms of MRA are compulsory for all ("cram-down") new financing will have statutory super seniority status in case of subsequent compulsory settlement/bankruptcy stand-still and cram-down will apply to Slovenian and non-Slovenian creditors | <ul style="list-style-type: none"> 30% of financial creditors agree to moratorium 75% of financial creditors within affected class agree to MRA limited involvement of court |
| COVID-19 MORATORIUM | <ul style="list-style-type: none"> legal tool (emergency COVID-19 measure) enabling COVID-19 affected Slovenian companies to apply for suspension of payment obligations under bank loan agreements maturing after 12 March 2020 (date official declaration of COVID-19 epidemic in Slovenia) for a period of 12 months affected company must file application with bank setting out amongst others: <ul style="list-style-type: none"> confirmation of inability to make scheduled loan payments and description/evidence of business deterioration due to COVID-19 crisis and plan for re-establishing liquidity confirmation of no outstanding tax/social contributions companies having received the benefit of the moratorium are subject to restrictions in relation to dividend pay-out, payment of reward for business performance to management/employees and settlement of financial liabilities to affiliated persons dismissal of a complete/justified application will result in fine of up to EUR 250,000 for bank moratorium only affects Slovenian banks and branches of EU banks in Slovenia | <ul style="list-style-type: none"> Filing of application Self-certification of COVID-19 related inability to service loan Slovenian bank lender |
| COMPULSORY SETTLEMENT | <ul style="list-style-type: none"> legal tool aimed at enabling eligible insolvent Slovenian companies to regain solvency by entering into arrangement with creditors (all or only financial) in context of court-supervised restructuring proceeding key features: <ul style="list-style-type: none"> debtor must demonstrate insolvency, potential for restoring solvency, and that creditor recovery terms will be more favourable than in bankruptcy (to be confirmed by external certified experts) commencement of proceedings will result in restriction of activities to ordinary course of business, supervision by insolvency administrator / court opening of proceedings will result in enforcement holiday in respect of the company <i>and</i> if approved by requisite majority of affected creditors (separate voting in affected classes), terms of settlement will result in cram down new financing will enjoy statutory super seniority in case of subsequent bankruptcy stand-still and cram-down will apply to Slovenian and non-Slovenian creditors | <ul style="list-style-type: none"> Formal declaration of insolvency of debtor company Application with court Eligibility certification by external experts |

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