

## DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – CZECH REPUBLIC

WHAT DUTY?	WHAT DOES IT MEAN?	WHEN DOES IT APPLY?
<b>ACT WITH DUE CARE</b>  <b>MANAGEMENT OF BUSINESS RISKS</b>	<ul style="list-style-type: none"> <li>• best efforts to <b>preserve</b> company's <b>liquidity</b> and <b>sound financial structure</b></li> <li>• <b>duty to manage</b> and continuously assess <b>credit risk, market risk, operational risk</b> and <b>liquidity risk</b></li> <li>• act carefully, based on reliable information, taking into account <b>business risks</b></li> <li>• take all necessary and reasonably expected steps to avoid insolvency               <ul style="list-style-type: none"> <li>◦ <b>NOTE:</b> liquidity support via <b>shareholder loans</b> is <b>not restricted under Czech law</b> (no concept of compulsory (equitable) subordination)</li> </ul> </li> </ul>	<b>Pre-crisis and post-crisis</b>
<b>DISTRIBUTIONS TO SHAREHOLDERS - SOLVENCY TEST</b>	<ul style="list-style-type: none"> <li>• <b>prior to any payment of the share in profit or other distributions to shareholders (including any advances / interim dividends)</b> the director has to perform a solvency test<sup>1</sup> – the relevant payments <b>may not result in insolvency</b> of the company</li> </ul>	<b>Pre-crisis and post-crisis</b>
<b>CONFLICT OF INTERESTS</b>	<ul style="list-style-type: none"> <li>• <b>report potential conflicts of interest</b> of the management and the company to the supervisory body (if established) and/or general meeting of shareholders</li> </ul>	<b>Pre-crisis and post-crisis</b>
<b>CONVENING GENERAL MEETING PROPOSAL OF MEASURES TO SHAREHOLDERS</b>	<ul style="list-style-type: none"> <li>• limited liability companies: if the company is in the vicinity of insolvency or for other serious reasons, company directors are obliged to <b>convene a general meeting of shareholders</b> and <b>propose a dissolution of the company</b> or other <b>appropriate measures</b> (these may include recapitalisation and/or shareholder loans)</li> <li>• joint stock companies: if the accumulated loss of the company (after application of profits/distributable reserves against such loss) exceeds half of the company's registered share capital or for other serious reasons, the board of directors is obliged to <b>convene a general meeting</b> and <b>propose dissolution of the company</b> or other <b>appropriate measures</b></li> </ul>	<b>Crisis on the horizon</b>
<b>PROHIBITION OF UNEQUAL TREATMENT OF CREDITORS AVOIDANCE RULES</b>	<ul style="list-style-type: none"> <li>• general <b>prohibition of unequal treatment of creditors</b> – this rule applies regardless of whether or not the company is (near) insolvent (and no specific restrictions on trading apply in the vicinity of insolvency); <b>preferential or fraudulent transactions</b> and/or <b>undervalue transactions</b> may be challenged/subject to claw-back in hypothetical subsequent insolvency proceedings</li> </ul>	<b>Anytime / Crisis on the horizon</b>
<b>DUTY TO FILE FOR INSOLVENCY</b>	<ul style="list-style-type: none"> <li>• directors are obliged to file an insolvency petition <b>without undue delay</b> upon <b>discovering that the company is insolvent*</b></li> </ul>	<b>Without undue delay after the onset of insolvency</b>
<b>COVID-19: SUSPENSION OF DUTY TO FILE FOR INSOLVENCY</b>	<ul style="list-style-type: none"> <li>• directors <b>duty to file an insolvency petition**</b> without undue delay upon discovering that the company is insolvent and associated risk of personal liability is <b>suspended</b></li> <li>• suspension lasts from 24 April 2020 until expiration of six (6) months after the termination of the extraordinary anti-epidemic measure (in any case the suspension will end on 31 December 2020 at the latest)</li> <li>• suspension will not entirely shield directors from potential liability in connection with financial distress caused by the pandemic, in particular where directors knew or should have known about the likelihood of insolvency and failed to take all necessary steps to prevent it</li> </ul>	<b>From 24 April 2020 until end of extraordinary anti-epidemic measure + 6 months (31 December 2020 latest)</b>
<b>COVID-19: SUSPENSION OF CLAW-BACK PERIODS IN INSOLVENCY PROCEEDINGS</b>	<ul style="list-style-type: none"> <li>• on the other hand, claw-back periods (i.e. periods within which preferential or fraudulent transactions or undervalue transactions may be challenged in subsequent insolvency proceedings of the company – see above) will be suspended for the duration of suspension of the duty to file for insolvency</li> </ul>	<b>During suspension of duty to file for insolvency (see above)</b>

\* Under Czech law, a company is considered **insolvent** if it is either **illiquid** (cashflow test) or **over-indebted** (balance sheet test). A company is over-indebted if (i) it has several creditors, and (ii) its obligations exceed the value of its assets. A company is illiquid if it (i) has several creditors, and (ii) has overdue financial obligations outstanding for more than 30 days, and (iii) is unable to fulfil such obligations.

\*\* Please note that also a **creditor's right to file an insolvency petition** has been suspended – until the **end of August 2020**. A petition filed by the creditor will not be published in the insolvency register and will not have any procedural consequences. In practical terms, it is only the debtor who can initiate insolvency proceedings before the end of August 2020.

## RESTRUCTURING TOOLBOX – CRISIS MANAGEMENT CHECKLIST – CZECH REPUBLIC

WHAT TOOL?	WHAT DOES IT DO?	WHAT IS REQUIRED?
<b>OUT-OF COURT RESTRUCTURING</b>	<ul style="list-style-type: none"> <li>no general regulation or (official/unofficial) guidelines for out-of-court restructurings</li> <li>arrangement between <b>company, its creditors and shareholders</b> usually in the form of a <b>standstill agreement</b> where, typically: <ul style="list-style-type: none"> <li>creditors may agree to postpone enforcement of payment claims for limited period of time</li> <li>distressed company/debtor provides additional security, cuts non-essential costs, etc.</li> <li>shareholder may provide contributions</li> </ul> </li> <li>freedom of contract: <ul style="list-style-type: none"> <li>parties are <b>free to shape contents</b> of the restructuring arrangement <i>but</i></li> <li>all affected parties <b>must agree to the terms of restructuring</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><b>Consent by all affected parties</b></li> </ul>
<b>EXTRAORDINARY MORATORIUM (ENFORCEMENT HOLIDAY DUE TO COVID-19)</b>	<ul style="list-style-type: none"> <li>legal tool allowing eligible <b>distressed Czech companies</b> to apply to the insolvency court for a <b>three-month extraordinary moratorium ("EM")</b> by 31 August 2020 if the company among others: <ul style="list-style-type: none"> <li>was not insolvent on 12 March 2020</li> <li>has financial problems due to the COVID-19 epidemic</li> <li>has not paid profit shares or other extraordinary benefits to shareholders or persons within the group in the last two months before 12 March 2020 (unless such payments are returned to the company before the filing for the EM)</li> </ul> </li> <li>key features: <ul style="list-style-type: none"> <li>suspends the possibility of <b>enforcing collateral</b> and <b>initiating execution</b> against the <b>applicant company</b></li> <li>prevents the possibility of commencement of insolvency proceedings by creditors – even beyond 31 August 2020 (date when the suspension period of a creditor's right to file an insolvency petition ends – see first page/above)</li> <li>allows the company to prioritise the payments immediately necessary for the operation of its business (which have arisen after the declaration of the EM) over financial obligations due earlier / allows the company to use the state aid provided in connection with COVID-19 epidemic</li> <li>the maximum three-month period can be extended for a maximum of another three months if prior consent of the majority company's creditors is obtained (consent of the majority creditors is not required for the initial application for the EM, only for the extension)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><b>Filing the application by 31 August 2020</b></li> <li><b>Prior consent of the majority creditors for extension of EM</b></li> </ul>
<b>REORGANISATION</b>	<ul style="list-style-type: none"> <li>legal tool being one of the two main types of <b>insolvency proceedings</b> (alternative to a bankruptcy) aiming at the <b>continuation of a company's business</b> when creditors are satisfied gradually, based on a <b>reorganisation plan approved by the creditors and the insolvency court</b></li> <li>available not only as solution for insolvency but also for imminent insolvency</li> <li>reorganisation available to the company provided that it has: <ul style="list-style-type: none"> <li>minimum annual turnover of at least CZK 50 million (approximately EUR 1,800,000) <i>or</i></li> <li>at least 50 employees</li> </ul> </li> <li>or alternatively it is <b>pre-packaged reorganisation</b>, i.e. is pre-approved by the majority of secured and unsecured creditors</li> <li><b>pre-packaged reorganisation</b> – the company shall submit to the insolvency court the pre-agreed reorganisation plan together with the insolvency petition / <b>standard reorganisation</b> – either the company or its creditors shall file for reorganisation during the insolvency proceedings</li> <li>for the purposes of <b>voting on the reorganisation plan</b> the creditors are divided into classes – the plan is approved by the creditors if (in each class) the <b>majority of the voting creditors</b> having <b>at least 50% of the total nominal value</b> of the claims of the voting creditors, votes for its approval</li> <li>under certain circumstances, the <b>insolvency court may approve the plan</b> even if it is not accepted by each class of the creditors (<b>cross-class cram down</b>)</li> </ul>	<ul style="list-style-type: none"> <li><b>Ongoing insolvency proceedings</b></li> <li><b>Application with court</b></li> <li><b>Approval by creditors and Insolvency court</b></li> </ul>
<b>MORATORIUM ON LOANS (SUSPENSION OF REPAYMENTS DUE TO COVID-19)</b>	<ul style="list-style-type: none"> <li><b>opt-in moratorium</b> which allows creditors to <b>defer repayment of selected loans</b> until 31 July 2020 or 31 October 2020 if the borrower is affected by COVID-19 epidemic <ul style="list-style-type: none"> <li>available for loan agreements concluded before 26 March 2020 (utilisation after this date is possible)</li> <li>does not apply to credit cards, overdrafts, revolving loans, operating leases or loans related to capital market transactions</li> <li>not available if the loan is overdue more than 30 days as at 26 March 2020</li> </ul> </li> <li>the borrower shall notify its creditor and testify to the negative economic impact of the COVID-19 epidemic (no proof required)</li> <li><b>restrictions during the protection period</b> - once the borrower (being a legal entity) opts in for moratorium, it shall <ul style="list-style-type: none"> <li>refrain from disposing of assets that could serve to satisfy the creditor (no significant changes to the composition, use or designation of these assets or a non-negligible reduction)</li> <li>refrain from encumbering or disposing assets without proper consideration</li> <li>refrain from distributing profit (or pay advances), providing any loans to shareholder, controlled or controlling entities or repaying such loans</li> <li>refrain from providing special bonuses to members of statutory bodies or senior employees</li> <li>refrain from any acts shortening the possibility of satisfaction of creditors or favoring some creditors at the expense of others</li> </ul> </li> </ul> <p>such restrictions shall not apply to actions necessary to fulfil the obligations set out in special legal regulations for the operation of a business enterprise within the ordinary management, to avert imminent damage or to fulfil procedural sanctions</p>	<ul style="list-style-type: none"> <li><b>Opt-in during the COVID-19 epidemic</b></li> </ul>

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