

DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – HUNGARY

WHAT DUTY?	WHAT DOES IT MEAN?	WHEN DOES IT APPLY?
MAINTENANCE OF SOLVENCY	<ul style="list-style-type: none"> best efforts to preserve company's liquidity and sound financial structure 	Pre-crisis and post-crisis
MANAGEMENT OF BUSINESS RISKS	<ul style="list-style-type: none"> duty to manage and continuously assess credit risk, market risk, operational risk and liquidity risk 	
TAKING CREDITORS' INTERESTS INTO ACCOUNT	<ul style="list-style-type: none"> executive officers are required to perform their duties based on the interests of the company's creditors prohibition of certain payments, notably: <ul style="list-style-type: none"> non-essential payments (in terms of Hungarian legislation, 'payments without justifiable contracts') or payments without corresponding performance certificates (i.e. certificate in which the receiver of the goods/services certifies that it has in fact received such goods/services) executive officers might be held personally liable (i.e. civil and criminal liability) 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 <ul style="list-style-type: none"> CAVEAT: liquidity support via shareholder loans if a company is under imminent threat of insolvency may entail equitable subordination of such loans resulting in repayment ban and/or subordinated status in potential subsequent insolvency. 	Imminent threat of insolvency*
CONVOCAION OF GENERAL MEETING	<ul style="list-style-type: none"> management board must call a general meeting with simultaneous notice to the supervisory board upon occurrence of any of the below trigger events: <ul style="list-style-type: none"> the company's equity has decreased to half (limited liability companies) or two-thirds (private limited companies and public companies) of the share capital due to losses the company's equity has decreased below the amount limit of HUF 3 million (limited liability companies) or HUF 5 million (private limited companies) or HUF 20 million (public companies) it is foreseeable that the company will not be able to perform payment obligations when they are due or has stopped making payments or the company's assets do not cover its liabilities shareholders shall pass a resolution to eliminate the above trigger events or decide on the company's transformation, merger or division, or in the absence of these, on its dissolution <ul style="list-style-type: none"> resolutions of the general meeting shall be carried out within 3 months from the management becoming aware of the relevant trigger event 	Without any delay (limited liability companies) or within 8 days (private limited companies and public companies) of becoming aware of a trigger event
FILING FOR INSOLVENCY [Not a legal obligation but an option]	<ul style="list-style-type: none"> no express legal obligation of management to file for insolvency insolvency proceedings may either entail insolvent reorganisation (in-court restructuring/bankruptcy – see below) or insolvent liquidation only the company may apply for insolvent reorganisation – the company's creditors may not only the creditors can apply for insolvent liquidation 	Insolvency**

* **imminent threat of insolvency:** A situation which occurs on the day that the executives of the company were able to foresee or had reasonable grounds to foresee that the company would not be able to satisfy its liabilities when due.

** **insolvency:** The company is unable to pay its debts when they are due (i.e. (i) company is in 20 days delay with at least one payment obligation and (ii) did not contest the payment obligation and (iii) did not perform in accordance with the payment obligation after it has been notified of this by the lender).

RESTRUCTURING TOOLBOX – CRISIS MANAGEMENT CHECKLIST – HUNGARY

WHAT TOOL?	WHAT DOES IT DO?	WHAT IS REQUIRED?
OUT-OF-COURT CONSENSUAL 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 due date and enforcement of payment claims for limited period of time such that terms of restructuring can be agreed ("stand-still") and ◦ if negotiations are successful, creditors and company enter into restructuring agreement • freedom of contract: <ul style="list-style-type: none"> ◦ parties are free to shape contents of standstill/restructuring agreements but ◦ all affected parties (company and relevant creditors) must agree to stand-still and restructuring agreement 	Consent by all creditors
COVID-19 MEASURES	<ul style="list-style-type: none"> • payment moratorium applies automatically to all Hungarian debtors under loan, credit and financial leasing agreement with financial institutions until 31 December 2020 • moratorium applies to both domestic and cross-border debts • debtors may opt-out from the payment moratorium (continuation of payments should suffice; in practice, notice to the bank is advisable for reasons of legal certainty) • equal treatment of banks is not expressly required; however, providing advantages to a creditor may be subject to claw-back and hardening period in an insolvency proceeding (i.e. selecting lenders/loans arrangements when opting out must be carefully considered) 	N/A
INSOLVENT REORGANISATION (BANKRUPTCY)	<ul style="list-style-type: none"> • aimed at enabling eligible insolvent Hungarian companies to regain solvency by entering into arrangement with creditors in context of court-supervised restructuring proceedings • filing is not mandatory; only the debtor company may file • key features: <ul style="list-style-type: none"> ◦ debtor must demonstrate potential for restoring solvency ◦ 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 ◦ if approved by requisite majority of affected creditors (separate voting in affected classes), terms of settlement will result in cram down 	<ul style="list-style-type: none"> • Formal declaration of insolvency of debtor company • Application with court • Consent of each creditors' class

Legal notice: the above summary, prepared by Schoenherr Attorneys at Law, is for informational purposes only and does not constitute legal advice which should be sought in relation to specific situations. In case of questions, please contact g.szaloki@schoenherr.eu.