

## DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – SLOVENIA

WHAT DUTY?	WHAT DOES IT MEAN?	WHEN DOES IT APPLY?
MAINTENANCE OF SOLVENCY MANAGEMENT OF BUSINESS RISKS	<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>specific <b>duty to take known crises into account</b> for liquidity management purposes <ul style="list-style-type: none"> <li><b>CAVEAT:</b> liquidity support via <b>shareholder loans</b> if a company is in "crisis" may entail <b>equitable subordination</b> of such loans (resulting in a repayment ban during "crisis" and/or subordinated status) in potential subsequent insolvency</li> </ul> </li> </ul>	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"> <li><b>non-essential payments</b> are <b>no longer permitted</b></li> <li><b>permitted payments are limited</b> and include: <ul style="list-style-type: none"> <li><b>employment-related expenses</b> (such as wages and related social contributions, severance payments etc.)</li> <li>regular <b>operating expenses</b> (electricity, water etc.)</li> <li><b>regular/scheduled payments to suppliers</b> and</li> <li><b>tax liabilities</b></li> </ul> </li> <li>general <b>prohibition of unequal treatment of creditors</b></li> <li>transactions resulting in <b>preferential treatment of certain creditors</b> and/or <b>reduction of value of company's assets</b> may be challenged/subject to claw-back in hypothetical subsequent insolvency proceedings</li> </ul>	Onset of Insolvency * ("T")
PREPARATION OF RESTRUCTURING REPORT	<ul style="list-style-type: none"> <li>preparation of <b>financial restructuring measures report ("Report")</b>: <ul style="list-style-type: none"> <li>description of financial position / <b>reasons for insolvency</b> and</li> <li>assessment as to <b>possible out-of-court (including capital increase) restructuring</b> and <b>court-sponsored restructuring measures</b></li> </ul> </li> <li>Report must be <b>delivered to supervisory board / shareholders' meeting</b> of company</li> </ul>	T + 1 month ("T2")
CAPITAL INCREASE	<ul style="list-style-type: none"> <li>if Report establishes that <b>capital increase is required/feasible</b>, management <b>must call a shareholders' meeting</b> (notice period can be shortened to 15 days)</li> </ul>	T2 + 8 days OR C-19 END ** + 1 month
FILING FOR COMPULSORY SETTLEMENT	<ul style="list-style-type: none"> <li>if: <ul style="list-style-type: none"> <li>attempts of share <b>capital increase / out-of-court restructuring fail</b> but</li> <li>Report nonetheless establishes <b>&gt;50%</b> chance of <b>success of compulsory settlement</b></li> </ul> </li> <li>management must file for compulsory settlement (<i>prisilna poravnava</i>)</li> </ul>	T + 90 days OR C-19 END + 3 months
FILING FOR BANKRUPTCY	<ul style="list-style-type: none"> <li>if Report <b>establishes &lt;50%</b> chances of <b>success of compulsory settlement</b> and <b>no prospect of out-of-court restructuring</b> / share capital increase, management <b>must file for bankruptcy</b> (<i>stečaj</i>)</li> <li>if (1) Report <b>establishes &lt;50%</b> chances of <b>compulsory settlement success</b> (if share capital increase attempt fails) and (2) <b>capital increase attempt fails</b>, management must file for bankruptcy (<i>stečaj</i>)</li> </ul>	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?
<b>OUT-OF-COURT RESTRUCTURING</b>	<ul style="list-style-type: none"> <li>arrangement between <b>company</b> and <b>its creditors</b> (typically financial creditors) where: <ul style="list-style-type: none"> <li>creditors agree to postpone enforcement of payment claims for limited period of time such that terms of restructuring can be agreed ("<b>stand-still</b>") <i>and</i></li> <li>if negotiations are successful, creditors and company enter into master restructuring agreement ("<b>MRA</b>")</li> </ul> </li> <li>freedom of contract: <ul style="list-style-type: none"> <li>parties are <b>free to shape contents</b> of standstill/MRA <i>but</i></li> <li><b>all affected parties</b> (company and relevant creditors) <b>must agree to stand-still and MRA</b></li> </ul> </li> </ul>	<b>Consent by all affected creditors</b>
<b>PREVENTIVE RESTRUCTURING</b>	<ul style="list-style-type: none"> <li>legal tool aimed at enabling eligible <b>distressed Slovenian companies</b> to <b>avoid insolvency</b> by entering into MRA with <b>financial creditors</b> outside compulsory settlement proceedings: <ul style="list-style-type: none"> <li>if creditors holding <b>30% of company's financial claims</b> agree to start proceedings, this will result in <b>compulsory stand-still</b> for entire class of financial creditors (3-8 months)</li> <li>if creditors holding <b>75% of company's financial claims</b> agree to MRA (separate voting in secured and unsecured creditor class), <b>terms of MRA are compulsory</b> for all ("<b>cram-down</b>")</li> </ul> </li> <li><b>new financing</b> will have <b>statutory super seniority</b> status in case of subsequent compulsory settlement/bankruptcy</li> <li><b>stand-still</b> and <b>cram-down</b> will apply to <b>Slovenian and non-Slovenian creditors</b></li> </ul>	<ul style="list-style-type: none"> <li><b>30% of financial creditors agree to moratorium</b></li> <li><b>75% of financial creditors within affected class agree to MRA</b></li> <li><b>limited involvement of court</b></li> </ul>
<b>COVID-19 MORATORIUM</b>	<ul style="list-style-type: none"> <li>legal tool (emergency COVID-19 measure) enabling COVID-19 affected <b>Slovenian companies</b> to apply for <b>suspension of payment obligations</b> under <b>bank loan agreements</b> maturing after 12 March 2020 (date official declaration of COVID-19 epidemic in Slovenia) <b>for a period of 12 months</b></li> <li>affected company must <b>file application with bank</b> setting out amongst others: <ul style="list-style-type: none"> <li>confirmation of <b>inability to make scheduled loan payments</b> and description/<b>evidence of business deterioration</b> due to COVID-19 crisis and <b>plan for re-establishing liquidity</b></li> <li>confirmation of <b>no outstanding tax/social contributions</b></li> </ul> </li> <li>companies having received the benefit of the moratorium are subject to <b>restrictions</b> in relation to <b>dividend pay-out, payment of reward for business performance to management/employees</b> and settlement of <b>financial liabilities to affiliated persons</b></li> <li>dismissal of a complete/justified application will result in <b>fine of up to EUR 250,000 for bank</b></li> <li>moratorium <b>only</b> affects <b>Slovenian banks</b> and <b>branches of EU banks in Slovenia</b></li> </ul>	<ul style="list-style-type: none"> <li><b>Filing of application</b></li> <li><b>Self-certification of COVID-19 related inability to service loan</b></li> <li><b>Slovenian bank lender</b></li> </ul>
<b>COMPULSORY SETTLEMENT</b>	<ul style="list-style-type: none"> <li>legal tool aimed at enabling eligible <b>insolvent Slovenian companies</b> to <b>regain solvency</b> by entering into <b>arrangement with creditors (all or only financial)</b> in context of <b>court-supervised restructuring</b> proceeding</li> <li>key features: <ul style="list-style-type: none"> <li>debtor must demonstrate <b>insolvency</b>, potential for <b>restoring solvency</b>, and that <b>creditor recovery terms will be more favourable</b> than in bankruptcy (to be confirmed by external certified experts)</li> <li>commencement of proceedings will result in restriction of activities to <b>ordinary course of business</b>, supervision by <b>insolvency administrator / court</b></li> <li>opening of proceedings will result in <b>enforcement holiday</b> in respect of the company <i>and</i></li> <li>if <b>approved by requisite majority</b> of affected creditors (separate voting in affected classes), terms of settlement will result in <b>cram down</b></li> </ul> </li> <li><b>new financing</b> will enjoy <b>statutory super seniority</b> in case of subsequent bankruptcy</li> <li><b>stand-still</b> and <b>cram-down</b> will apply to <b>Slovenian and non-Slovenian creditors</b></li> </ul>	<ul style="list-style-type: none"> <li><b>Formal declaration of insolvency of debtor company</b></li> <li><b>Application with court</b></li> <li><b>Eligibility certification by external experts</b></li> </ul>

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