

DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – CROATIA

WHAT DUTY?	WHAT DOES IT MEAN?	WHEN DOES IT APPLY?
<p>MAINTENANCE OF SOLVENCY</p> <p>MANAGEMENT OF BUSINESS RISKS</p>	<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 act in case of known crises – capital inadequacy <ul style="list-style-type: none"> ○ CAVEAT: <i>liquidity support via shareholder loans if a company is in "crisis" may entail equitable subordination of such loans resulting in subordinated status and susceptibility to claw-back in potential subsequent insolvency</i> 	<p>Pre-crisis and post-crisis</p> <p>Enhanced scrutiny in respect of known crises</p>
<p>SUSPENSION OF NON-ESSENTIAL PAYMENTS</p> <p>PROHIBITION OF UNEQUAL TREATMENT OF CREDITORS</p>	<ul style="list-style-type: none"> • non-essential payments are no longer permitted • permitted payments 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 ○ tax liabilities <i>and</i> ○ the cost of preparing the documentation required to initiate and implement the pre-bankruptcy settlement • general prohibition of unequal treatment of creditors • transactions resulting in preferential treatment of certain creditors and/or reduction of net value of company's assets may be challenged/subject to claw-back in hypothetical subsequent bankruptcy proceedings 	<p>Illiquidity*</p>
<p>PREPARATION OF RESTRUCTURING PLAN</p> <p>[not a strict obligation but needed for filing for pre-bankruptcy (see below)]</p>	<ul style="list-style-type: none"> • preparation of restructuring plan ("Plan") containing among others: <ul style="list-style-type: none"> ○ reasons for threatening debtor's inability to pay ○ financial restructuring measures and calculation of their effects on liquidity shortfalls ○ operational restructuring measures and calculation of their effects on business operations ○ business plan for the period until the end of the current year and for the next two calendar years, with a detailed explanation of the underlying factors ○ analysis of creditors' claims together with an offer to the creditors for settlement of their claims under exact conditions and within specified deadlines <i>and</i> ○ announcement of new financing, if applicable 	<p>Threatening inability to pay**</p>
<p>FILING FOR PRE-BANKRUPTCY</p> <p>[not a strict obligation, but recommended depending on circumstances]</p>	<ul style="list-style-type: none"> • proposal for initiation of pre-bankruptcy together with: <ul style="list-style-type: none"> ○ the Plan ○ financial statements not older than three months before the date of proposal's submission ○ statement on the number of employees on the last day of the month preceding the date of submission of the proposal <i>and</i> ○ true and complete list of assets and liabilities 	<p>Threatening inability to pay**</p>
<p>FILING FOR BANKRUPTCY</p>	<ul style="list-style-type: none"> • if the company becomes insolvent within the meaning of Croatian law, i.e.: <ul style="list-style-type: none"> ○ the company is permanently unable to fulfil its payment obligations as they fall due (inability to pay), and especially if the Croatian Financial Agency (central organisation for payment collection/debt enforcement) has recorded one or more instances of unsuccessful enforcement via collection from the company's accounts, or the company did not pay three consecutive wages to employee(s) <i>or</i> ○ company's liabilities exceed the company's assets (over-indebtedness), unless: (i) under the circumstances it may be reasonably assumed that the company will continue to settle its liabilities as they fall due if it maintains its business operations; or (ii) shareholder of the company, who is a natural person uninvolved in bankruptcy, assumes joint liability for company's liabilities • management must file for bankruptcy within 21 days • COVID-19: if insolvency is a result of the COVID-19 pandemic, no obligation to file 	<p>Onset of inability to pay / over indebtedness + <21 days</p>

* **ILLIQUIDITY** (*nelikvidnost*): Debtor is unable to fulfil its payment obligations as they fall due in certain periods - presumed if (i) debtor is more than 60 days late with payment of one or more monetary obligations amounting to 20%+ of its short-term liabilities (as per financial statements for the preceding year); or (ii) debtor is more than 30 days late with payment of wages and related social contributions and taxes.

** **THREATENING INABILITY TO PAY** (*prijeteća nesposobnost za plaćanje*): It is plausible that the debtor will not be able to fulfil its payment obligations as they fall due – presumed to have occurred when: (i) the Croatian Financial Agency (central organisation for payment collection/enforcement) has recorded one or more instances of unsuccessful enforcement via collection from the company's accounts; or (ii) the debtor is more than 30 days late with payment of wages to employees; or (iii) the debtor is more than 30 days late with payment of social contributions and taxes on wages.

RESTRUCTURING TOOLBOX – CRISIS MANAGEMENT CHECKLIST – CROATIA

WHAT TOOL?	WHAT DOES IT DO?	WHAT IS REQUIRED?
OUT-OF-COURT RESTRUCTURING	<ul style="list-style-type: none"> arrangement between company and all or a number of its creditors where: <ul style="list-style-type: none"> creditors may agree to enter into a restructuring agreement with the company ("RA") creditors may agree to postpone enforcement of payment claims for limited period of time such that RA can be agreed ("stand-still") freedom of contract: <ul style="list-style-type: none"> parties are free to shape contents of RA and/or standstill <i>but</i> all affected parties (company and relevant creditors) must agree to RA and/or stand-still 	Consent by creditors
PRE-BANKRUPTCY SETTLEMENT	<ul style="list-style-type: none"> legal tool aimed at enabling eligible Croatian companies to enter into arrangement with creditors in context of a court-supervised restructuring proceeding with limited involvement of the Croatian Financial Agency key features: <ul style="list-style-type: none"> debtor must demonstrate threatening inability to pay, the application may not be submitted before expiry of two years after fulfilment of debtor's obligations under the previous pre-bankruptcy settlement filing for pre-bankruptcy proceedings will result in prohibition of non-essential payments and asset disposals without prior approval from the court/pre-bankruptcy trustee opening of pre-bankruptcy proceedings will result in enforcement holiday (i.e. prohibition of new litigation, administrative proceedings and enforcement proceedings against the company and interruption-of pending proceedings) as of the day of the opening of the pre-bankruptcy proceedings opening of pre-bankruptcy proceedings will not affect existing security for claims (rights to separate settlement), workers' claims, security measures in criminal proceedings and certain tax inspection proceedings <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 Croatian and non-Croatian creditors 	<p>Formal declaration of threatening inability to pay by the debtor company</p> <p>Application with court</p>
COVID-19 MORATORIUM	<ul style="list-style-type: none"> no statutory moratoria on loan payments was introduced by the Croatian Government Croatian National Bank relaxed its supervisory policies allowing Croatian commercial banks to re-negotiate terms of outstanding loans with clients (including deferral of payments and/or refinancing) and introduce moratoria on enforcements in cases of delays in payments of three consecutive loan instalments starting from April 2020: <ul style="list-style-type: none"> commercial banks are allowed to use proposed measures solely for purposes of special purpose financings (continuity of business and employees' costs) caused by the coronavirus pandemic until 31 March 2021 specific options available to companies depend on each individual commercial bank – no standardised approach <i>and</i> only available in respect of liabilities owed to Croatian bank lenders separate legal tool for companies to file for moratoria on tax obligations: <ul style="list-style-type: none"> companies with a decline in revenues of at least 20% compared to the same month of the preceding year, or companies that expect their revenues to likely decline by 20% in the next three month period compared to the same period of the preceding year, are eligible to file for suspension of due tax liabilities, provided they do not have outstanding tax debt of over HRK 200 (approx. EUR 25) and (in relation to VAT), are VAT taxpayers based on a so-called criteria of issued invoices 	Filing of application with bank and/or tax authority
COVID-19 SUPPORT MEASURES	<ul style="list-style-type: none"> various support measures available that aim at preventing companies from becoming insolvent due to the COVID-19 pandemic financing support measures include COVID-19 loans for working capital provided by the Croatian Bank for Reconstruction and Development ("HBOR") together with commercial banks 	Filing of application with the commercial bank

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