

# On the new Insolvency Act



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The new Insolvency Act (also labelled as the act on bankruptcy and methods of settlement) has entered into force just in time - some of its provisions can expressly rescue enterprises drowning in the financial crisis. "Many debtors can fully avoid winding-up or at least rescue a functioning part of the company. At the same time creditors have a better chance to get back their money and to influence the insolvency proceedings to a much greater degree. Compared to the past, the whole proceedings are much faster," says Miroslav Dubovský, of the law office Lovells.

## Helping hand: moratorium

Enterprises may attempt to avert their bankruptcy using a new legal instrument - the so-called moratorium. Its goal is to protect the company against creditors, but this type of protection can be active for only three months. "The debtor therefore gets a kind of time-out during which it should actively seek to overcome the bankruptcy. A bankruptcy decision cannot be issued during the moratorium, but the effects associated with the commencement of the insolvency proceedings are still in place," explains Filip Hanzlík, of the law office Lovells. The insolvency court can only deal with the debtor's petition for moratorium if it is approved by more than a half of the debtor's creditors (measured not as the number of creditors, but as the amount of their receivables). The moratorium will end upon expiry of the court-appointed period, but can be cancelled by the court even before that. "Especially if a majority of the creditors ask for it or if the debtor turns out to have specified wrong information in the petition for moratorium or to have sought unfair goals with it," Filip Hanzlík adds. On the other hand the debtor can submit to the court a petition for extension of the moratorium by another 30 days at most, subject to consent of a majority of all creditors.

## Protection against creditors

The new Insolvency Act also allows the debtor to satisfy preferentially payables essential for keeping its enterprise in operation. However, this only applies to payables generated 30 days before the moratorium and after its commencement. "This is a special case of preference of certain creditors permitted by law. The act specifies that it is not possible to terminate certain contracts or withdraw from them on the grounds of the debtor's default in payment of its payables arising out of such contracts. In practice, this most often involves contracts of supply of energy and raw materials," says Filip Hanzlík. This protection may be applied to other contracts of supply of goods and services as well on condition that they have been in force for at least three months on the moratorium date. "However, this is contingent upon the debtor

paying at least those payables arising out of these contracts and generated during the moratorium in order to keep the enterprise running,” Hanzlík explains.

### **At least a part...**

Solving bankruptcy through reorganization is another way how to avoid full winding-up and protect at least a part of the company. Reorganization allows large bankrupt companies to restructure their payables under court supervision and continue their business. “However, reorganization can be only used by debtors whose annual turnover in the last accounting period reached CZK 100 million and which employ at least 100 full-time employees,” says Filip Hanzlík, and adds: “The purpose of this filter is to apply reorganization only in companies where a meaningful reorganization and fulfilment of its purpose can be expected.”

However, reorganization can be permitted by court even to companies that do not meet the specified turnover and workforce criteria. The court may grant an exception if the debtor submits a reorganization plan approved at least by a majority of the creditors within the set period.

### **Stronger position of creditors**

The new Insolvency Act does not bring new things only for debtors; the legislators also kept the creditors in mind. Thanks to the new rules creditors may influence the whole insolvency proceedings much more. For example under certain conditions they can repeal the insolvency administrator and have a stronger say in his/her appointment. “Creditors can also choose the method of bankruptcy settlement applied against the debtor. If they disagree, the court will decide on the method of settlement by itself within three months of the creditors’ meeting,” Filip Hanzlík, of the law office Lovells, explains other options available to creditors.

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