INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

EMERGENCY MEASURES IN INSOLVENCY LEGISLATION IN RESPONSE TO THE COVID-19 CRISIS

A report by the AIJA Insolvency Commission - November 2020

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Preface

The COVID-19 pandemic has plunged businesses around the world into financial difficulty and led to an unprecedented surge of emergency legislation in virtually all jurisdictions. In many jurisdictions, these measures include direct intervention in the debt enforcement and insolvency system. Governments have been quick to adopt sweeping changes to Insolvency regimes to avoid viable businesses collapsing, including relaxing rules on directors' duties pre-insolvency and preventing creditors from seeking to place businesses into insolvency processes.

In light of this unique situation and as a helpful tool for its members, the AIJA Insolvency Commission has assembled a compilation of short factsheets providing an overview of what has happened in our members' jurisdictions. Members have volunteered and contributed to this compilation by providing a short factsheet for their respective jurisdictions, in which they have all responded to the following three questions:

What emergency measures in insolvency or restructuring legislation has your country adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Do you expect these measures to have any lasting impact on your country's insolvency legislation or court decisions after the COVID-19 crisis?

Has your country adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

We hope that this contribution will be able to provide you with a useful insight into what is happening or has happened in other jurisdictions and wish you a pleasant reading.

November 2020

Roman D. Graf

ARGENTINA

Ignacio Alberto Sanchez Vaqueiro, GFM

1. **What emergency measures in insolvency or restructuring legislation has Argentina adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

Argentina's government declared mandatory lockdown from 20 March 2020, compelling their citizens to stay at their homes except for essential services, such as food or health. The Supreme Court of the Nation joined the exceptional measures established by the executive branch and issued a resolution suspending all judicial proceedings and filings, applicable to insolvency and restructuring.

Later on, the Supreme Court encouraged national and federal courts to take account of as much matters as possible, always in compliance with health and safety measures and, as a response, on 12 May 2020 the National Chamber of Appeals for Commercial Matters resolved to resume partial activity and allow digital filings for insolvency proceedings in the City of Buenos Aires. Late proofs of claim, prompt payment of labour credits, approval of individual agreements, injunctive relief, preliminary measures, rulings, and approval of professional fees are also permitted by this resolution, as long as filings are made completely in digital format. As a consequence, although normal activity was not resumed at courts, companies were able to file for insolvency or bankruptcy and some filings are possible.

The activity of the courts was resumed on 27 July 2020, although filings remain digital and physical attendance is only allowed in special cases and with an appointment.

It is important to note that, to this date, no emergency measures can be found in insolvency legislation in Argentina. However, there is a legislative project under treatment regarding emergency measures for insolvency proceedings and amendment of current Restructuring and Bankruptcy Act. Among the main proposals of the draft, it is worth to mention the introduction of a "Simplified Corporate Restructuring Proceeding" allowing companies to negotiate their debt for up to 180 days in order to enter into an agreement with their creditors; the possibility to obtain credit facilities; and the suppression of current prohibition for creditors to file for insolvency for a year. As of this date, the bill was passed by the Chamber of Deputies and it is now awaiting its discussion by the Senate.

2. **Do you expect these measures to have any lasting impact on Argentina's insolvency legislation or court decisions after the COVID-19 crisis?**

If the legislative project is finally enacted by the Congress, measures will have a lasting impact as the Restructuring and Bankruptcy Act will be permanently amended. However, court decisions will be likely influenced by the crisis and all deadlines in insolvency proceedings are now being rescheduled as a consequence of the resumed judicial activity.

3. **Has Argentina adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?**

The Government enacted multiple decrees with measures intended to mitigate the economic impact of the pandemic: the imposition of fines and closure of bank accounts in connection with return of checks was suspended until 30 April 2020, eviction proceedings were also suspended and lease agreements were extended, both until 30 September 2020. Moreover, companies which social object is in relation to services considered essential - such as production of medical supplies- are able to receive financial assistance from the Government.

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AUSTRALIA

Mark Giddings, Tim Bost, Lipman Karas, Australia

1. What emergency measures in insolvency or restructuring legislation has Australia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Australia has implemented a number of changes through the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (***Omnibus Act***), which consolidated measures contained in eight bills. Most of the changes commenced on 25 March 2020 and were to remain in force until 25 September 2020. However, certain measures have been extended until 31 December 2020. Links to the legislative materials including the explanatory memoranda are available here.

The *Omnibus Act* introduced measures to defer or delay the commencement of creditor actions against personal debtors under the *Bankruptcy Act 1996* (Cth) and its regulations. The monetary threshold for a creditor to issue a bankruptcy notice was increased from AU$5,000 to AU$20,000. The time a debtor has to respond to a bankruptcy notice was increased from 21 days to 6 months. The time for which a debtor is protected from enforcement action following presentation of a declaration of intention to present a debtor's petition was extended from 21 days to 3 months.

Similar measures were implemented under the corporate insolvency regime via amendments to the *Corporations Act 2001* (Cth) and its regulations. The monetary threshold for a creditor to issue a statutory demand against a corporation was increased from AU$2,000 to AU$20,000. The time a corporation has to respond to a statutory demand before it is presumed to be insolvent was increased from 21 days to 6 months.

Additionally, the Australian Government temporarily suspended liability for insolvent trading. Australia has traditionally had a comparatively strict insolvent trading regime. In September 2017 the Australian Government introduced safe harbour provisions for directors to protect them from liability if at the time a debt was incurred the directors were developing a course of action reasonably likely to lead to a better outcome for the company. The *Omnibus Act* further eases pressure on directors during the COVID-19 crisis by providing that an additional safe harbour applies where a debt is incurred in the ordinary course of the company's business between 25 March 2020 and the expiry of the suspension, and before the appointment of an administrator or liquidator.

Finally, there has been temporary relief from regulatory requirements under the *Corporations Act 2001* (Cth). A first determination was made on 6 May 2020 permitting meetings to be conducted electronically, which includes meetings convened by administrators, and providing certainty that electronically signed documents are taken to have been validly executed. A second determination was made on 26 May 2020 relaxing continuous disclosure obligations for listed companies. Each determination will remain in effect for 6 months.

2. Do you expect these measures to have any lasting impact on Australia's insolvency legislation or court decisions after the COVID-19 crisis?

Most of the measures Australia has taken were due to expire on 25 September 2020. However, the measures concerning statutory demands and the temporary suspension of liability for insolvent trading have been extended until 31 December 2020. As originally enacted, the legislation was expected to come to a “hard end”, but the extension of these measures will serve to facilitate a more gradual and orderly transition back to the previous legislative regime.

Regardless, it is expected that there will be an increase in creditor actions brought in both the personal and corporate insolvency spheres upon the resumption of the respective legislative regimes. Insolvency statistics released by the Australian Securities and Investments Commission (**ASIC**) show that during July 2020 the number of companies entering into voluntary administration was down 65% compared to the same time in 2019. Further, court ordered and creditor initiated wind-ups were down 79% and 47% respectively. This potentially indicates that companies may be seeking to trade out of financial difficulty rather than engaging with formal insolvency mechanisms. It is yet to be seen whether any judicial leniency will be afforded under the circumstances once the legislative schemes resume.

It is anticipated that changes to regulatory requirements permitting virtual meetings and the electronic execution of documents will be extended or made permanent. Prior to the COVID-19 crisis there had been calls for clarification on the validity of documents signed electronically on behalf of companies.

3. Has Australia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The temporary changes described above were part of a wider package of measures aimed at dealing with the economic impact of the crisis. Through its JobSeeker and JobKeeper programmes the Australian Government has provided payments to persons who have become unemployed and financial support to employers to retain staff.

Further steps by the Australian Government included cash flow support for business, guaranteeing up to 50% of loans issued to Small and Medium Enterprises, tax relief, rent waivers/deferrals and a moratorium on commercial tenancy evictions. These measures coincided with steps taken by banks to defer loan repayments.

Prior to the temporary changes, ASIC had adopted a ‘no-action’ approach to non-compliance with annual general meeting requirements. Courts had also been granting orders for the holding of meetings online, including permitting company administrators to hold meetings of creditors by telephone or audio-visual conference.

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AUSTRIA

Georg Wabl, BINDER GRÖSSWANG, Vienna

1. What emergency measures in insolvency or restructuring legislation has Austria adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

The Austrian legislator has enacted several COVID-19 Acts to mitigate an economic downturn, including several measures relating to insolvency law. The strongest focus has been on preventing companies affected by the pandemic from filing for insolvency. Austrian law generally provides for an arguably strict duty to file. Companies and their directors must file for insolvency proceedings at the latest within 60 days after the company's illiquidity (*Zahlungsunfähigkeit*) and/or over-indebtedness (*Überschuldung*). Directors of illiquid and/or over-indebted businesses are further subject to a strict prohibition of payments (*Zahlungsverbot*) forcing them to treat creditors equally.

The first legislative response was made by doubling the duty to file period from 60 to 120 days in March 2020. Already before that, law provided for a 120 days filing period if illiquidity or over-indebtedness was at least indirectly caused by floods, avalanches, snow pressure, landslides, rockslides, hurricanes, earthquakes or similar catastrophes of comparable magnitude. Now the terms "epidemic and pandemic" have been added to this list in order to make clear that this also applies for COVID-19. This legislative change will remain also after the crisis caused by this pandemic.

The legislator quickly realised that more measures are needed and decided to temporarily suspend the duty to file for insolvency for companies which are "only" over-indebted, but not illiquid. The suspension does not require a causal link to the pandemic but is only applicable if over-indebtedness occurs in the period between 1 March and 31 October 2020[1] (when exactly over-indebtedness occurred may therefore lead to discussions in case of dispute). Correspondingly, during the same period, the opening of insolvency proceedings on the basis of over-indebtedness upon application of a creditor is also excluded. Should the company still be over-indebted after 31 October 2020, an insolvency petition must be filed the later of (i) 60 days after 31 October 2020 or (ii) 120 days after the occurrence of over-indebtedness.

In cases where the duty to file in relation to over-indebtedness is suspended, also a potential liability of directors linked to the prohibition of payments is excluded. In case of illiquidity, neither the duty to file nor the liability under the prohibition of payments are suspended.

In addition, insolvency avoidance law has been limited in the case of bridge loans granted in the period until 31 October 2020[2] to finance COVID-19 short term work assistance. Regarding any other types of financings, all avoidance rules are still applicable (the effect of this measure is therefore very limited). Further measures relate to the facilitation of shareholder loans (which might otherwise be treated equity replacing), payment reliefs in

[1] At the time this factsheet was prepared (17 September 2020), the Austrian government was planning to pass a bill to extend this period from 31 October 2020 to 31 January 2021. This extension would also apply to other related measures (exclusion of creditor insolvency applications, exclusion of liability linked to prohibition of payments in case of over-indebtedness).

[2] A possible extension of this period until 31 January 2021 was announced by the government as well.

relation to already court approved restructuring plans (*Sanierungspläne*) or payment plans in private insolvencies (*Zahlungspläne*).

Besides the exclusion of creditor applications in case of over-indebtedness mentioned before, no moratorium or other restrictions regarding individual enforcement actions were provided (certain institutional creditors such as tax and social security authorities declared to temporarily refrain from creditor applications, though). Still, procedural deadlines were generally and therefore also in enforcement proceedings partly interrupted and under certain circumstances, enforcement acts may be suspended upon request of debtors affected by the pandemic.

Finally, a moratorium for loan agreements of consumers and micro enterprises has been introduced if a borrower has suffered a loss of income due to the pandemic, which makes it unreasonable to continue the debt service. The moratorium is applicable for loan agreements which were entered into prior to 15 March 2020. Lender's claims on capital and interest payments due between 1 April 2020 and 31 October 2020 shall be deferred for a period of seven months from the original due date.[3]

2. Do you expect these measures to have any lasting impact on Austria's insolvency legislation or court decisions after the COVID-19 crisis?

The above measures have mostly only been adopted for a limited period. It remains to be seen if the legislator introduces other changes to the law, adopts current provisions or further extends existing measures to mitigate the impact of COVID-19 to companies (most of the above measures were initially limited until 30 June 2020 and have already been extended). The suspension of the duty to file in relation to over-indebtedness might lead to new discussions on whether over-indebtedness shall generally be abolished as mandatory insolvency ground. As the EU Directive on restructuring and insolvency (Directive 2017/1132/EU) has not been implemented into Austrian law yet, further dynamic may be expected in the course of the implementation (to be made until July 2021).

3. Has Austria adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Among many other measures the Austrian legislator has set up several state funds to mitigate financial distress of companies and individuals by providing support up to an amount of EUR 50 billion. The support measures included in this package are constantly widened and include a Corona Assistance Fund, a Hardship Fund, funding for COVID-19 short-term work, deferrals of tax and social security payments etc. Support is given in different ways, e.g. by up to 100% state guarantees granted for bank loans, public non-refundable grants or government loans.

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[3] At the time this factsheet was prepared, the Austrian government was planning to pass a bill to extend this date to 31 January 2021 and to defer lender's claims on capital and interest payments to ten months from the original due date.

BELGIUM

Jean-Luc Hagon, CMS

1. What emergency measures in insolvency or restructuring legislation has Belgium adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In the field of insolvency law, the Belgian government, which has been entrusted with special powers, enacted a specific royal decree (royal decree n°15) on 24 April 2020.

This royal decree provides a statutory moratorium that comes into play automatically as of 24 April until 17 June 2020 included.

To put it another way, the Belgian government is trying to freeze the current situation by means of this moratorium to prevent any bullwhip effect on the Belgian economy resulting from a significant increase of bankruptcies.

Concretely, from 24 April on, enterprises that were not in a state of (virtual) bankruptcy on 18 March 2018 (*i.e.* date which is considered as the beginning of the COVID-19 outbreak in Belgium) will benefit from a statutory moratorium mainly consisting of:

- A protection against attachments with the exception of attachments on immovable goods and attachments on sea-going and inland navigation vessels;
- A protection against any forced realisation of assets;
- A protection against any petition in bankruptcy, with limited exceptions (*e.g.* petition filed by a Public Prosecutor);
- A suspension of directors' duty to file for bankruptcy when the conditions thereof are met (*i.e.* no directors' liability for failing to file timely for bankruptcy);
- A protection against judicial winding-up;
- A protection against termination of agreements entered into due to non-payments of outstanding debts.

It is worth pointing out that financial collaterals as defined under the Belgian Collateral Act of 15 December 2004 remain in full force and effect. The same applies, among others, to ENAC clauses, set-off right and right of retention.

2. Do you expect these measures to have any lasting impact on Belgium's insolvency legislation or court decisions after the COVID-19 crisis?

The statutory moratorium is, by definition, temporary so that the exceptional measures adopted by the Belgian government will not secure in any way the future of Belgian enterprises severely hit by the current crisis. As a matter of fact, the statutory moratorium will merely postpone bankruptcies.

By contrast, the unprecedented covid-19 crisis will have, beyond doubts, lasting effects on the global economy and on the Belgian economy in particular. In my opinion, structural changes should be under way to facilitate the access to restructuring tools to benefit as many enterprises as possible. At this stage, it seems that the Belgian government is reluctant to take that path...

In any case and in practice, several Belgian courts' already announced that they may be less stringent while assessing whether or not an enterprise meets the formal criteria to benefit from insolvency proceedings with a view to rescuing its activities (*a.o.* whether or not they will be granting a moratorium in the framework of a judicial reorganisation which is the main rescue proceeding in Belgium).

3. Has Belgium adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Several other measures have been taken from the outset of the COVID-19 crisis, such as payment deferrals of various taxes or state guarantees to cover any losses on new loans granted by banks.

However, even with the measures in place, it turns out that according to recent studies, a significant number of enterprises will not be able to restart their activities and will, therefore, end up bankrupt.

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BRAZIL

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1. What emergency measures in insolvency or restructuring legislation has Brazil adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Notwithstanding the fact that lockdown or simple reduction of business activities have been adopted only in a few regions in Brazil, the impact of the pandemic on our economy, which was already facing a recession scenario, is evident.

In April 2020, the number of requests for court-supervised reorganisation and bankruptcy increased significantly. Comparing it with March figures, requests for court-supervised reorganisation increased 46% and requests for liquidation increased 25%. Requests involving small and medium companies played a key role for such index increase.

As the pandemic only reached Brazil later on, i.e., by the end of February, there is no doubt that the economic situation is yet bound to worsen and that the number of judicial proceedings resulting from bankruptcy is still bound to increase significantly within the next few months. Analysts indicate that the number of bankruptcy proceedings in 2020 should easily exceed the 2016 figures, our historical mark and most critical moment of economic crisis in Brazil.

The Congress is currently discussing potential changes in the statutes to assist companies in distress. One of the measures to be approved would be the legal suspension of the debtors' obligations up to 90 days to allow negotiations with creditors. If approved, this provision will refrain creditors from (i) requesting the liquidation of debtor and (ii) terminate contracts for default during the suspension period.

For debtors already under court-supervised reorganisation, the bill seeks to authorise (i) the suspension of obligations under approved reorganisation plans up to 120 days and (ii) the filing of amendment proposals to adjust the plan to a new reality.

While the bill is not approved by the Congress, The National Council of Justice (Federal authority responsible for establishing standards for the development of the Judiciary Branch activities) recommended that the judges (i) prioritise the release of judicial deposits, (ii) hold creditors' meetings remotely, (iii) extend the stay periods, (iv) avoid attachments or seizures of bank accounts and assets (v) allow the temporary suspension of performance of obligations under the reorganisation plans; and (iv) allow amendments to the plan in order to adjust the obligations to the new financial scenario of the debtors.

2. Do you expect these measures to have any lasting impact on Brazil's insolvency legislation or court decisions after the COVID-19 crisis?

In practice, the aforementioned recommendation to allow the temporary suspension of the obligations assumed in the plan has given rise to a huge number of requests for suspension made by debtors. In general, the judges have concluded that, if debtors provide evidence that the pandemic has affected their activities and their revenues, enforceability of obligations resulting from court-supervised reorganisation can be suspended, in whole or in part.

Creditors have been against such position. According to the Brazilian bankruptcy law (Law No. 11,101/2005), noncompliance with obligations provided in the reorganisation plan must give rise to debtors' liquidation. After all, as the original obligations had already been unfulfilled, the plan constitutes a second chance, in which haircuts and new deadlines are offered to debtors, reason why new default shall not be allowed.

Moreover, creditors in court-supervised reorganisation proceedings may be classified in different categories. In addition to financial creditors, there are creditors that depend mostly upon the plan's successful performance, such as workers and small suppliers, for which suspension of the performance of the plan may further mean worsening of their own crisis, as they need to receive their credits to perform their ordinary financial obligations.

The upcoming events should indicate whether the courts will maintain their opinion on allowing suspension of the performance of the plans and authorising amendments to already approved plans.

3. Has Brazil adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The government has created lines of credits to promote loans for small entrepreneurs. The BNDES (National Bank for Economic and Social Development) is in charge of these loans.

Also, there are new rules supporting employers who need to lay off staff temporarily (furlough).

The payment by businesses of their income taxes and VAT liabilities may also be delayed.

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BULGARIA

Tsvetelina Georgieva, Dimitrov, Petrov & Co

1. What emergency measures in insolvency or restructuring legislation has Bulgaria adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Bulgarian Government has not taken particular measures directly affecting the insolvency proceedings. If a company registered in Bulgaria has become indebted, it is obliged to file for insolvency within 30 days, no matter if the indebtedness is caused by the COVID-19 pandemic or any other reason. No amendments were made in this respect.

The measures adopted in Bulgaria to mitigate the repercussions of the COVID-19 spread are rather aimed at preventing indebtedness. By the following measures the state is trying to reduce the financial burden on companies and avoid their insolvency, when possible:

- the State of Emergency Act (SEA) adopted by the Bulgarian Parliament on 24.04.2020 provides that **no interest for delay and penalties shall be charged, the respective obligations may not be accelerated** and the contract may not be cancelled due to default, for the duration of the state of emergency (from 13 March to 13 May) and two months after its end. The rule applies only to **debtors under credit agreements** and other forms of financing, including where claims have been acquired by other banks, financial institutions or third parties**. The rule is quite controversial – it does not explicitly limit its application only to natural persons but according to the parliamentary debates it is intended to protect individuals only, and not entities. Insolvency of individuals is not known to Bulgarian legislation, unless the individual is acting as a sole traders.**

- The SEA also envisages amendments in the *Tax and Social* Insurance *Procedure Code. Coercive enforcement may not be initiated during the emergency state.* The enforcement procedures already started are being suspended for the same period.

- The Bulgarian National Bank (BNB) has adopted a procedure for deferring payment of obligations to banks and financial institutions. The deferral scheme applies **to obligations to banks and financial institutions which are subsidiaries of the banks.** Companies that are bank subsidiaries and provide quick loans will also fall within this category. **The rules approved by the BNB** constitute the so-called private moratorium on bank loan payments. This means that such rules are **recommendable and any commercial bank in the country wishing to apply them shall explicitly state and announce it.** Most banks in the state have already done this.

- The Government introduced several types of loans especially purposed to financially support the business. One of them is the unsecured loan for small and medium-sized enterprises, which will be managed by the Bulgarian Development Bank through commercial banks. The maximum amount of loan is up to BGN 300,000 (EUR 150,000), the grace period is up to 36 months, no collateral is necessary.

- Another group of measures protects state's interests to the detriment of business entities. For example, according to art. 193 para 4 of the *Tax and Social* Insurance *Procedure Code if the state's debtor is insolvent and the public enforcer has not sold the debtor's assets within 6 months as of opening the insolvency proceedings, then these assets shall be handed to the trustee. They become part of the* *insolvency estate and shall be sold and the proceeds distributed among the creditors in the insolvency proceedings. However, by the* SEA the indicated 6-month period is suspended during the emergency state. By this, the state has a broader opportunity to take advantage of the assets at issue.

2. Do you expect these measures to have any lasting impact on Bulgaria's insolvency legislation or court decisions after the COVID-19 crisis?

If the companies manage to take benefits from the introduced measures, that could determine to a great extent their chance to avoid insolvency. Even if a company has stopped paying off its debts, it shall not be declared insolvent if the court finds that this suspension of payments was not permanent. In other words, if the COVID-19 economic crisis has triggered a company's financial distress, but after a few months or a year the debtor has started to gradually reinstate, then the prerequisites for declaring it insolvent shall not be present.

Furthermore, even if a company is declared insolvent but its management proves that the insolvency was a result of the unforeseen and insurmountable COVID-19 situation, and not by of a negligent management of the company, then the members of the management body will be able to hold management positions in other companies in the future. Failure to prove that the indebtedness was caused by the crisis would entail a prohibition for the management to hold such positions after the company has been declared insolvent – this follows from the Commercial Act.

3. Has Bulgaria adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

One of the adopted amendments relates to the so-called "60:40" scheme for payment of compensations to employers aiming to preserve the employment during the state of emergency. The amendment stipulates that the state will pay not only 60% of the insurable income of each employee for whom compensation is claimed for, but also 60% of the social security contributions due by the employer.

The measure helps companies in keeping the employees and timely paying their salaries. The Commercial Act states that one of the grounds for filing a request for opening an insolvency proceedings against a company is when the latter has not paid salaries to one third of its employees for two months. Therefore, the "60:40" measure is helping companies to avoid such a negative development.

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FINLAND

Olli Mäkelä, Hannes Snellman Attorneys

1. What emergency measures in insolvency or restructuring legislation has Finland adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Temporary limitation on *creditors' right to file for bankruptcy*

The most significant legislation enacted by Finland has been a temporary amendment to the Bankruptcy Act, limiting the rights of creditors to file a debtor for bankruptcy.

In order for a debtor to be placed into bankruptcy, it must be insolvent (unable to pay its debts as they fall due on a non-temporary basis). Where a creditor files for a debtor's bankruptcy, it can show that the debtor is insolvent by invoking one of three alternative assumptions of insolvency as set out in the Bankruptcy Act: short-term payment default, interruption of payments, or failure to collect funds in enforcement proceedings. Alternatively, the creditor can seek to show the debtor's insolvency by submitting other evidence of the debtor's insolvency.

Pursuant to the first assumption (short-term payment default), a debtor is deemed insolvent if the debtor, within one week of the receipt of a payment reminder invoking the threat of bankruptcy, has not repaid a clear and undisputed claim that has fallen due. In practice, most bankruptcy filings by creditors are made using this assumption, whereas the latter two assumptions or the submission of evidence are rarely used.

The recent reform temporarily removed this assumption. Although creditors can invoke the other assumptions or submit evidence of the debtor's insolvency, the change makes it considerably more cumbersome for creditors to apply for a debtor's bankruptcy, which was the legislator's intent.

Temporary amendments to the Enforcement Code

Finland has enacted a temporary amendment to the Finnish Enforcement Code, amending the relevant provisions of the Code to allow the exceptional circumstances arising from the COVID-19 pandemic and the resulting financial difficulties for debtors to be taken into account more flexibly in the reduction, limitation, and postponement of enforcement proceedings.

Continuation of restructuring proceedings despite payment default

Corporate restructuring proceedings under the Finnish Restructuring of Enterprises Act must, as a main rule, be discontinued when the debtor is unable to repay debts arising during the proceedings (so-called new debts). In effect, this typically results in the bankruptcy of the debtor.

Because of the COVID-19 outbreak, the Advisory Board for Bankruptcy Affairs (the "Advisory Board") has issued a recommendation proposing that the debtor's inability to repay new debts should not necessarily lead to discontinuation of the restructuring proceedings. The Advisory Board proposes that administrators should discuss with creditors whether to assess the payment of new debts over a longer period (i.e. as opposed to a more mechanical view where any default on new debts is viewed as an inability to repay new debts).

The recommendation has the status of "soft law", but Finnish restructuring administrators typically follow the guidelines set by the Advisory Board. The recommendation will be in force until further notice.

**2. Do you expect these measures to have any lasting impact on Finland's insolvency legislation
or court decisions after the COVID-19 crisis?**

The amendments to the Bankruptcy Act and the Enforcement Code above have specifically been prepared as temporary amendments that will expire on 31 October 2020. The recommendation above is very context-specific and will likely be retracted at some point if/when the economic situation normalises.

Given the specific nature of the above measures, we do not expect these measures to have any lasting impact on Finland's insolvency legislation or court practice. However, the broader economic hardship brought on by COVID-19 could potentially affect future legislation and/or legislative changes to be enacted in the future. For example, Finland is currently reviewing the changes required by the EU Directive on preventive restructuring frameworks on national legislation.

3. Has Finland adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

There have been various government funding and aid packages to businesses, all of which are not practical to discuss here. Some are relevant from an insolvency perspective insofar as they lead to further indebtedness of companies and can therefore postpone a company's insolvency instead of preventing it. For example, the government has organised fast-track guarantees for bank loans by Finnvera (a state-owned financing / export credit company) to support businesses. The tax administration has also made it possible to extend tax return deadlines and make payment arrangements, and the pension insurance companies have offered possibilities to postpone pension insurance payments for up to 3 months.

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FRANCE

Marine Simonnot, UGGC Avocats

1. **What emergency measures in insolvency or restructuring legislation has France adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

Some amendments to the insolvency legislation have been decided by several ordinances who applied to on-going proceedings to deal with the consequences of the coronavirus crisis on the insolvency proceedings but without major changes (Main ordinances: ordinance n°2020-341 dated on 27 March 2020, ordinance n°2020-596 dated in 20 May 2020). This is temporary measures at this stage whose main ones are below mentioned.

In France the difficulties can be resolved through two different mechanisms:

- (i) preventively, on a confidential way in order to avoid the opening of an insolvency proceedings and the publicity that occur in view to deal with the main creditors (“*mandat ad hoc”* and “*conciliation”,* being specified that this latter can benefit two companies that are insolvent for less than 45 days) and;

- (ii) with publicity via an insolvency proceedings whose main effect is to freeze all the liabilities and to restructure the companies (“*sauvegarde”* that applies to solvent companies that have difficulties who will lead to insolvency “*redressement judiciaire”* and “*liquidation judiciaire”* that apply to insolvency companies).

First of all, in order to prevent insolvencies, the attractiveness and efficiency of preventive measures have been reinforced.

The duration of the conciliation, that may last as a principle 5 months as a maximum and whose end was on 23 August 2020 was extended of 5 months. The aim of this modification was to grant extra time to companies to discuss with their creditors in order to avoid their bankruptcy and to reach an agreement.

Besides, as a principle, the opening of a conciliation doesn’t suspend the liabilities to the contrary to the opening of an insolvency proceedings that freeze all debts. In order to win in terms of efficiency, the legislation has been amended in order to allow until 31 December 2020 the debtor to request the President of the court to suspend the liabilities of some targeted creditors during the conciliation.

Second of all, the state of suspension of payments was also determined regarding to the debtor’s situation on 12 March 2020 until 23 August 2020. This amendment didn’t prevent the possibility for the debtor from opening a receivership procedure, a judicial liquidation, or a proceeding of professional recovery. It didn’t exclude the fixation of a later date for cessation of payments, in the event of fraud. This freezing of the situation, which mainly affected conciliation and safeguard proceedings, enables companies whose financial situation is so deteriorated that they would then be in suspension of payments to benefit from these preventive procedures.

Third of all, the duration of on-going insolvency proceedings were also extended:

- (i) for the companies that were subject to an insolvency proceedings and in observation period during the health state period and whose plan wasn't approved, the observation period was extended for 3 months.
- (ii) for the companies that are submitted to an insolvency proceedings and whose recovery plan was adopted prior to the pandemic situation, an extension of the duration of the plan of a maximum of 2 years may be requested until 31 December 2020; this measure is a way to give some oxygen to companies that can avoid to pay what the owe on the basis of their current plan ;

Fourth of all, in order to facilitate the adoption of recovery plans, some financing granted to the company during the observation period has got a preferential rank (except funds provided by the shareholders via a capital increase for instance). The measure applies for insolvency proceedings opened ad from 21 May 2020 and until the ordinance that will amend a bill called "Loi Pacte" or until 17 July 2021.

Until 31 December 2020, the duration of the consultation of the creditors prior to the adoption of the plan may be reduced by the judge (15 days vs 30 days)

Fifth of all, the legislator also accepts the submission of a bid of acquisition of the assets by the director of the insolvent company. This will be to the court to approve or not the bid depending on the existence of competitive offers, the quality of the bid, etc... Until then, the director wasn't allowed to submit such a bid unless the approval of the prosecutor let the director because one considers that the director can't get the assets at a very low purchase price without paying back the liabilities for which he might be responsible. This faculty exists until 31 December 2020.

Finally, on a more practical way, during the first lock-down the relationships with the court were facilitated. Indeed, the seizure of the court in order to open a preventive procedure or an insolvency proceeding was facilitated because the court could be seized by any means, for instance by e-mail. The courts have also implemented in the insolvency field the video-conference or telco hearings which very useful and very used. Those measures haven't been taken in place for the second lock-down because the courts remain opened. At least, at this stage.

2. Do you expect these measures to have any lasting impact on French insolvency legislation or court decisions after the COVID-19 crisis?

The extension of the duration of the proceedings were exceptional and due to the crisis. Because of the second lockdown that has recently been decided, the temporary extension of some of the measures above mentioned could be decided.

However, this is very likely that some of those measures will last in French insolvency legislation.

In particular, for the ones that were in the calendar of the legislator and that have been implemented by emergency earlier than planned because of the situation, they should be incorporated permanently, within the context of the update of (i) the French insolvency legislation due to the transposition of the UE directive or (ii) of some laws whose amendment are in course of discussions.

For instance, this is already stated that the preferential rank provided to the financing granted during the observation period will last until the amendment of a bill – "Loi Pacte" - whose modification is currently under discussion. We can expect to have this temporary measure being part of the amendment to the bill being effective.

Some other measures that will be considered to be efficient could also be incorporated in the insolvency legislation at its next amendment, for instance the possibility to freeze some liabilities during the conciliation.

3. Has France adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Very quickly, the French State has decided to support massively the companies and many measures have been taken and constantly updated until then.

The disposal has been reactivated within the context of the second lock down that has been recently decided at least until November and probably December 2020.

The number of insolvency is currently very low (- 36%) but the plans in place have mainly for effect to postpone payment or to increase the indebtedness and the companies will have to face to it one day or another. An increase of the number of insolvency is expected for 2021 when the state perfusion would end.

The list below doesn't intend to be exhaustive at all. The French ministry of Economy has drafted a document that mentions all the mechanism in place (www.economie.gouv.fr: faq-mesures-soutien-economique.pdf).

Among those measures there is the **French liquidity program**.

Banks are able to issue loans to French businesses that are impacted by COVID-19 up to 25% of their turnover with a guarantee of the State between 70 to 90% depending on the size of the companies. Such loans are called "PGE". This is this tool that was used to grant € 7 bn to Air France. Some criteria must be met in order to be eligible to such loans that the banks will double-check. The companies that are submitted to an insolvency proceedings as from 31 December 2019 or whose recovery plan is adopted when the loan is granted may apply to those loans. Initially, this mechanism that was effective until 31 December 2020 but an extension until 30 June 2021 has been recently granted. On 4 October 2020, loans that amount to € 121,8 bn were granted to more than 588,000 companies.

For companies that are not eligible to PGE for instance, there are other tools and for instance the French State my grant direct loans that might amount to 3 months of turnover. The envelop dedicated amounts to € 500,000,000. This mechanism also applies until 30 June 2021.

During the lockdown, some businesses can also get a subvention from a **solidarity fund**. For instance, the subvention may now amount to € 10,000 per business and per month (vs. € 1,500 initially) that are administratively closed and that have less than 50 employees whatever their activities are. There are also specifics funds in various sector (tourism, hotels and restaurants, entertainment, sport, etc…).

There are also other sectorial financial assistance for business that are the most impacted (tourism, aeronautics sector, hotels and restaurants, start up, sport, etc…).

The French government has also decided to authorize **partial activity** in order to avoid redundancy plan where the salaries were paid by the State up to 84% of their net salary. Employees paid at minimum wages are fully covered. The threshold is limited to brut salary that amount 6,927 per month. During the first lockdown, more than 11 million employees where subject to these measures (the French population is 66 million…). The disposal has been reactivated during the second lockdown that has been decided.

The government authorized the report of the payment **of social and taxes charges** for March until July and the mechanism has recently been restarted for November and probably December. A payment plan may be granted until 36 months and sometimes for more time. For companies of less than 50 employees that are closed by the government, there is an exoneration of social and tax charges that has been decided during the second lock down.

The landlords are also invited to be alongside their tenants. For the companies of less than 250 employees that are closed by the government or that belong to the hotel and restaurants sector, there will have a credit tax in 2021 for the landlords that will have agreed to waive to 1 month of rents; the credit will amount to 30% of the amount if the exoneration.

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GERMANY

Dr. Daniel Becker, Heuking Kühn Lüer Wojtek

1. **What emergency measures in insolvency or restructuring legislation has Germany adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

Under German law illiquidity as well as over-indebtedness generally result in an obligation to file for insolvency, in particular in respect of limited liability companies (GmbH) and stock corporations (AG). Violations are a criminal offense. In addition, directors are subject to considerable liability risks, if the obligation to file for insolvency is not complied with. On 27 March 2020 the German Bundestag passed the law to mitigate the consequences of the COVID-19 pandemic in civil, insolvency and criminal proceedings. Article 1 contains the law on the temporary suspension of the obligation to file for insolvency and to limit the liability of directors in the event of insolvency caused by the COVID-19-pandemic, which came into force with retroactive effect from 1 March 2020.

The main aspect of the law is the suspension of the obligation to file for insolvency until 30 September 2020. The suspension may be extended by statutory order until 31 March 2021 at the most. The suspension does not apply, if insolvency is not due to the consequences of the COVID-19 pandemic or if there is no prospect of eliminating an existing illiquidity. However, if the debtor was not illiquid on 31 December 2019, it is assumed that insolvency is due to the effects of the COVID-19 pandemic and that there are prospects of eliminating an existing illiquidity. According to the legislative materials, high requirements should be set for the disproval of the presumption. It is therefore expected that the disproval of the presumption will rarely succeed in court proceedings.

In the case of third-party applications filed between 28 March 2020 and 28 June 2020, the opening of insolvency proceedings is now subject to the condition that the reason for opening the proceedings already existed on 1 March 2020.

The main consequence of the suspension of the obligation to file for insolvency is that payments by the debtor that are made in the ordinary course of business during the suspension do not lead to personal liability of directors. Furthermore, the law exempts payments of the debtor as well as the facilitation of restructuring loans from challenges by a later insolvency administrator.

The federal Government has decided to extend the suspension of the obligation to file for insolvency for over-indebted companies until 31 December 2020. In cases of illiquidity, however, the obligation to file for insolvency will apply again from 1 October 2020. In order to avoid criminal and civil liability of the management, appropriate steps should already be taken now for companies affected.

2. **Do you expect these measures to have any lasting impact on German insolvency legislation or court decisions after the COVID-19 crisis?**

The measures outlined above are temporary and tailored to the specifics of the COVID-19 pandemic. Therefore, the measures itself will not have effect on insolvency legislation or court decisions outside their intended scope. However, many companies that are currently exempt from the obligation to file for insolvency will probably be over-indebted when the COVID-19 measures expire due to the debt burden that is now accumulating. Therefore, there is a reasonable expectation that a reform of the very strict concept of over-indebtedness, which has been discussed for some time, could now be realised. Furthermore, the EU directive on preventive restructuring frameworks might be implemented in German law earlier than originally planned due to the COVID-19 pandemic.

3. Has Germany adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The law to mitigate the consequences of the COVID-19 pandemic in civil, insolvency and criminal proceedings also provides for a time-limited exclusion of termination of rental and lease agreements in cases of late payment. Landlords may not terminate leases solely on the grounds that tenants have failed to pay rent due in the period from 1 April 2020 to 30 June 2020, if the non-payment is due to the effects of the COVID-19 pandemic. The relation between the COVID-19 pandemic and non-payment must be made credible by the tenant. Other termination rights remain unaffected. However, the obligation to pay rent will in principle continue to exist during the COVID-19 pandemic. The law does not provide for rent reductions or deferrals.

In labour law, the requirements for applying for short-time work and short-time allowance (KUG) were lowered. Short-time work is the temporary reduction of working hours with a corresponding reduction in the remuneration of the employees concerned. The unemployment insurance covers up to two thirds of the resulting loss of income of the employees.

In addition, employers can apply for a deferral of social security payments due in a simplified procedure. This is of particular relevance, as failure to pay social security payments due will lead to personal and criminal liability of the directors.

The Federal Government has introduced express loans by the state development bank (KfW), which are disbursed by the respective house bank and are 100% guaranteed by the federal government. However, a particular prerequisite for drawing on these loans is that the applying company was not in economic difficulties as of 31 December 2019. In addition, some federal states have set up emergency support programmes under which limited one-off payments were made to affected companies, small businesses and self-employed persons.

In order to create respectively preserve liquidity of businesses the tax authorities are instructed to make straightforward and quick adjustments of tax prepayments upon request. Upon application and to the extent that tax payments cannot be made due to the effects of the COVID-19 pandemic, tax payments due are generally supposed to be deferred without interest until 31 December 2020. In addition, the tax authorities have been instructed to suspend the enforcement of overdue tax debts (corporate income tax and income tax) until then.

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GREECE

Eleni Skoufari & Olga Maria Kyritsi, Zepos & Yiannopoulos

1. What emergency measures in insolvency or restructuring legislation has Greece adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

As a preliminary note, before the outbreak of the pandemic, Greece was under the process of introducing a new, revised Insolvency Code regulating the debt of both natural persons and legal entities, as well as the protection of the principal residence. The relevant law was to be passed no later than 30.04.2020, but the voting process was postponed as a result of COVID-19 pandemic and its impact in Greece. On 10.09.2020, the public consultation on the draft bill of the Ministry of Finance entitled: "Code of Debt Settlement and Provision of a Second Chance" was successfully completed and the submission of the relevant bill to the parliament is pending.

Greek Government did not take any measures in relation to insolvency and restructuring procedures in Greece. However, court hearings (with the exception of interim orders of urgent nature defined in the law) and all enforcement measures were suspended as of 13.03.2020 until 31.05.2020. Especially as regards interim measures, the relevant hearings concerning registration, release or amendment of prenotation of mortgage, provisional seizure and judicial sequestration were suspended until 28.04.2020. As a result, creditors had not been able to initiate any debt enforcement measures against debtors in Greece during the suspension period.

It is also noted that public auctions were suspended as of 13 March 2020 until 31 July 2020.

2. Do you expect these measures to have any lasting impact on Greece's insolvency legislation or court decisions after the COVID-19 crisis?

The above measures were only adopted for a restricted period of time; most of them were lifted as of 1 June 2020 and did not have a lasting impact on Greece’s insolvency legislation.

3. Has Greece adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

- On 17 March 2020 the Hellenic Bank Association decided the suspension (until at least 30.09.2020) of the repayment of loan principal for business loans, provided that such loans were performing as of 31 December 2019 (the suspension is provided upon the borrower’s request). Interest is payable during such period; On 7 July 2020 it was decided to extend the suspension until at least 31 December 2020. In particular, the Greek banks will proceed with the suspension of payment of any capital or interest-bearing instalments for legal entities and individuals who have been affected by the pandemic until 31 December 2020.

- On 18 March 2020 the Greek Government announced the granting of a three months (i.e. April, May and June 2020) interest rate subsidy to SME businesses of the sectors of the economy that are directly affected by COVID-19. The subsidy was decided to be granted under the National Strategic Reference Framework 2014-2020 (in Greek: ESPA 2014–2020) financed by the Hellenic Republic and European Union. The subsidy is capped to Euro 800,000 per undertaking; On 22 June 2020, a two months extension of the granting of the interest rate subsidy was decided (i.e. July and August 2020).

- On 31 March 2020 the Greek Government announced the suspension of the time-limits for the submission, expiry and payment of cheques and other negotiable instruments issued by businesses which had suspended their operations or had been severely affected due to the spread of COVID-19, by setting a suspension of 75 days as of the relevant date referred to on the body of said negotiable instrument (thus clearly resolving also the issue of the 'post-dated cheques');

- As of 3 April 2020 to 21 April 2020, either businesses (with 1 up to 500 employees) or businesses without employees which operate under specific business forms (i.e. partnerships, private companies (IKE) and limited liability companies) had the opportunity to apply in order to receive financing in the form of refundable advance payments of a total amount of EUR 1 billion with low interest rate and 5-year maturity; On 07.07.2020 the Ministry of Finance initiated a second programme of financing in the form of refundable advance payments for a total amount of EUR 1.4 billion. On 10.09.2020 a third programme was announced in order that businesses severely affected by COVID-19 receive financing in the form of refundable advance payments.

- Payment of February, March and April social security businesses' contributions was extended until 30 September 2020, 31 October 2020 and 30 November 2020 respectively. During the suspension period, no interest and surcharges applied on social security contributions due.

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INDIA

Arun Gupta, Factum legal

1. What emergency measures in insolvency or restructuring legislation has India adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

The COVID-19 pandemic pronounced by the WHO has caused numerous troubles for organisations and people in doing their business exercises around the world, resultant of which several corporate borrowers found themselves in financial crises. The either possible way to resolve the situation is to enter a negotiation or restricting of debt financing. To support the borrower to revive itself and not to turn insolvent, the Government of India, has been announcing various measures, which are as described below:

a. The Central Government on 24 March 2020 has amended section 4 of the IBC, which stipulate the minimum threshold for invoking Corporate Insolvency Resolution Process (CIRP), thereby the minimum limit of default shall be Rs. 1 Crore which was earlier Rs. 1 Lakh;

b. The President of India on 5 June 2020 has promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 vide its extended power under Article 123 of the Constitution of India in order to implement the relief measures which were announced by the Hon'ble Finance Minister on 17 May 2020. The insertion of Section 10A in Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") were notified by Central Government dated 25 March 2020 to support corporate persons who are badly impacted by an unprecedented situations imposed by COVID-19 and then by mandatory lockdowns imposed by Central Government as well as by state governments. Accordingly, the newly inserted section 10A has practically suspended the applicability of section 7, 9 and 10 of the IBC, 2016 for initiation of fresh bankruptcy proceeding by financial creditors/ Operational Creditors/ Corporate debtors at least for six months, up to a maximum term of 1 year for those corporate person who are in default of payment of its debts due to COVID-19 distress w.e.f. 25 March 2020.

c. The Finance Minister has announced on 17 May 2020, pronouncement of special framework dealing with the insolvency of Micro, Small, and Medium Enterprises (hereinafter referred as "MSME"). This is yet to be formalised.

2. Do you expect these measures to have any lasting impact on India's insolvency legislation or court decisions after the COVID-19 crisis?

Yes, the measures that have been undertaken by the government of India, would ensure ease of doing business in India and revival of corporates from the financial distresses during prevailing situation of COVID-19. There are numerous reliefs as announced by government of India and Reserve Bank of India (RBI), however, the success of these reliefs is dependent upon; (a) preparedness of banks and financial institutions for effective implementation of changes; (b) execution by banks, regulatory authorities and businesses itself to reap all benefits aligned with these measures.

3. Has India adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Apart from measures as delineated in above reply no.2 there are other some measures as announced by Government/RBI/judiciary, as mentioned hereinunder:

a. Another significant announcement by the Finance Minister on 17 May 2020 was regarding introduction of pre-packaged insolvencies as a fast track resolution process under IBC as an alternative to detailed and time-consuming standard CIRP. The objectives which pre-packaged insolvency may serve include out-of-court resolution between parties, cost & time flexibility etc and mutual resolution of dispute regarding default in payment of debt. It is yet to be notified.

b. RBI on 7 June 2019 had issued circular on Prudential Framework for Resolution of Stressed Assets which prescribed that any principal, interest or any other amount remained unpaid for 1 to 30 days, 31 to 60 days or 61 to 90 days would be termed as Special Mention Account-0, Special Mention Account-1 or Special Mention Account-2, respectively. If such default continues beyond 90 days that account would be termed as Non-Performing Assets (NPA), which triggers the lender to undergo review of account and plan for resolution, which is termed as Review Period of 30 days and Resolution Period of 180 days, respectively. Seeing situations as imposed by COVID-19, the RBI vide circular dated 23 May 2020 extended the timelines as prescribed under earlier circular dated 7 June 2019 whereby:

   – Period from 1 March 2020 to 31 August 2020 would be excluded in respect of those account which were under review period as on 1 March 2020, the residual period would begin from 1 September 2020 and usual period of 180 days for resolution would be available upon completion of said 30 days;
   – Additional 180 days would be available to those accounts for which 180 days has not been expired on 1 March 2020 which shall commence from the date on which an original 180 days were set to expire.

c. Further, the RBI has issued a notification date 27 March 2020 & 17 April 2020, and 17 May 2020 prescribing provisions of “Moratorium of three months on payment of all instalments falling due between 1 March 2020 to 31 August 2020 to extend support to borrowers (including principal and/or interest thereon, bullet payment, credit cards dues, monthly instalments). Also, the said notification directed the existing banks to defer interest recovery on working capital loans during such period, provided the interest will continue to accrue during this period. Additionally, such moratorium period shall be excluded from calculation of the overdue period for asset classification and for the determination of status of borrower as per the provisions as prescribed under RBI Prudential Norms.

d. Courts in India are granting temporary reliefs including enforcement of security, non-declaration of loan accounts as non-performing assets (NPAs).

e. The Finance Minister on 13 May 2020 has announced certain stimulus packages as a relief measures for those sectors which are immensely affected by the COVID-19, for instance MSME, workmen, businesses etc. which include; (a) Revision of Classification of MSME, as these entities are vested with many benefits including loans, compliance, tax exemptions etc; INR 3 Lakh crore collateral free automatic loan, one of the objectives was to protect MSME from becoming insolvent, hence to prevent initiation of CIRP of these small business players even after expiry of moratorium period.

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ISRAEL

Adam Salkin, Herzog, Fox & Neeman

1. What emergency measures in insolvency or restructuring legislation has Israel adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

The primary insolvency legislation in Israel is the recently enacted Insolvency and Rehabilitation Law 2018 (the "2018 Law"). At the current time, there have been no amendments to the 2018 Law as a result of COVID-19 crisis. However, we do note that the Israeli Ministry of Justice has prepared a non-public proposal for amending the 2018 Law, by which a new 'track' for dealing with outstanding debts would be created for companies that have suffered as a result of the crisis. This new track would reportedly provide companies with some protection from formal insolvency proceedings for a defined period of time in order to help them to come to a compromise with creditors. The proposal is at a very early stage and has not yet been published in public. In order to take effect, this proposal would need to be passed by Israel's parliament ('Knesset'), which may be more likely to happen now that a permanent government was sworn in to office in May 2020.

2. Do you expect these measures to have any lasting impact on Israel's insolvency legislation or court decisions after the COVID-19 crisis?

It's difficult to take a view on the lasting impact of these potential changes to the 2018 Law until the proposal has been made public.

3. Has Israel adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

We note that:

- The activities of the Israeli enforcement and collection authority ('Hotzaa'lpoel) (the "Enforcement Authority") were substantially reduced as a result of the wider emergency measures taken by the Israeli government during recent months. This meant that new files for the enforcement of debts were not being opened by the Enforcement Authority except in extraordinary circumstances. The Israeli government has now substantially pared back the emergency measures but there is still likely to be a backlog of new files, which may cause delays in the months to come;

- The Israeli Commissioner of the Israeli Banks ordered an easing of the restrictions on the bank accounts of customers whose cheques bounced as a result of the crisis;

- The Israeli Commissioner for Credit Data Sharing at the Bank of Israel ordered credit providers to identify any negative data that is reported to the credit score systems as a result of the crisis. The idea being that credit providers should be able to make an informed view on the creditworthiness of borrowers by distinguishing between negative data deriving from the crisis and negative data that was pre-crisis.

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ITALY

Armando Perna, Pozzi & Partners – Giuseppe Salsarulo, Donativi e Associati

1. **What emergency measures in insolvency or restructuring legislation has Italy adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

Before the pandemic, a substantial reform of the Italian bankruptcy law (the new "Crisis and Insolvency Code") was scheduled to enter into force on 15 August 2020. Said new Code, already approved by the Italian Parliament, introduces new tools and procedures for preventing or restructuring economic crisis and introduces new duties for directors. One of the first urgency measures adopted by the Italian legislator has been to **postpone** the coming into effect of the new Code to 1 September 2021. The coming into effect of said reform during the current situation would have been not efficient in view of the unexpected upcoming crisis and would have caused a complicated coordination with the others urgent measures adopted in the meantime by the government for helping businesses.

By means of a Law Decree of 8 April 2020 (called "**Liquidity Decree**"), the Italian government has adopted several measures that directly affect the insolvency and restructuring legislation.

First of all, a **suspension** of insolvency procedures has been ordered. By means of article 10 of the Liquidity Decree all petitions for insolvency filed between 9 March 2020, and 30 June 2020, were **not admissible**. The only exemption was in case the Public Prosecutor filed the request for the declaration of insolvency along with the application of precautionary and protective measures.

As concerns composition with creditors and debt restructuring procedures, an automatic **six-month extension** of terms has been granted for the fulfilment of plans **already approved before the epidemic** (i.e. before 23 February 2020) and only for the plans expected to be closed within 31 December 2021. With reference to the restructuring and composition with creditors procedures that were not already approved before the epidemic and that are still pending for their approval, the Liquidity Decree has also provided for the possibility for the debtor to request a **new term** to the Court either to submit a **new plan of composition (**that takes into account the new economic situation) or to simply request a **delay of terms** for the fulfilment of the plan of composition.

In addition to the above, a temporary suspension of certain rules of corporate law related to the loss of liquidity. Pursuant to the Italian Civil Code, mandatory equity recapitalisation is provided for in case of losses that effect on the share capital. Moreover, when losses cause a reduction of the share capital below the minimum amount of capitalisation requested by the law, lacking a recapitalisation such a situation brings to **an automatic cause of liquidation** of the company. A **temporary suspension** of said rules of law has been adopted for the period between 8 April 2020, to 31 December 2020. Also, in order to allow the continuation of the business and preserves companies that were not distressed before the epidemic, by means of Article 7 of the Liquidity Decree companies may assume a situation of **business continuity** in their 2019 financial statement if such continuity occurred at the date of 23 February 2020.

These measures relieve directors from their duty to declare the liquidation of a company if the capital loss is related to the current situation of crisis due to the pandemic and also avoid their personal liability for losses accrued by the company between 8 April 2020, to 31 December 2020.

2. Do you expect these measures to have any lasting impact on Italy's insolvency legislation or court decisions after the COVID-19 crisis?

It is foreseeable that in a very first moment these measures will minimise the access to insolvency procedures and will allow companies to preserves their business during the current year. This notwithstanding said impact will probably be **temporary** if the other measures adopted by the government to help businesses to obtain financial aids or to be recapitalised will not be effective.

A lasting impact may come from the enforcement of other measures supposed to ease the recapitalisation of companies and the access to financial aids.

From the courts' perspective, given that the above-mentioned measures are temporary, if a new legislation does not occur and such measures are not extended, it is still probable that courts' decisions on insolvency proceedings will take into account the different general economic scenario and the effects of the pandemic on the companies (for example in terms of evaluation of the responsibilities of the directors and auditors). From another perspective, in insolvency litigation some decisions based (*inter alia*) on the effects of the COVID-19 crisis have already been given (*e.g.* concerning the in-bankruptcy composition) and we expect others to come in the nearest future.

3. Has Italy adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The Italian government adopted a wide range of measures aimed at helping enterprises of all sizes.

In order to encourage the capitalisation of companies, Article 7 of the Liquidity Decree suspended the provisions of articles 2467 e 2497 *quinquies* of the Italian Civil code. Therefore, shareholders' loans occurred 9 April 2020 and 31 December 2020 shall not be considered as low-ranking credits, but equated to ordinary unsecured credits.

As far as the debt securities (*e.g.* promissory notes, bills of exchange) - issued before 9 April 2020 - are concerned, the payment deadlines have been suspended between 3 March 2020 to 30 April 2020.

By means of the Liquidity Decree and a following last Law Decree of 19 May 2020, the government adopted further economic measures aimed at sustaining enterprises by **reducing costs** and **cutting taxes**.

Among them, article 26 of Law Decree of 19 May 2020, is interesting also under an insolvency law perspective given that it provides for **tax discounts in favour of shareholders** that subscribes capital injection in medium enterprise. This will facilitate the recapitalisation of companies and prevent their insolvency.

In addition, the massive application of a special regime of the Redundancy Fund for all companies (including the ones with only one employee) and the suspension of the dismissals for economic reasons are sustaining companies in order to prevent insolvency.

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LATVIA

Valters Diure, Ellex Klavins

1. **What emergency measures in insolvency or restructuring legislation has Latvia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

The legislation in relation to COVID-19 was introduced in Latvia starting from 12 March 2020; and in relation to insolvency limitations have been introduced which prohibit creditors, until at least 1 September 2020, from filing a petition for insolvency of a company to the court. There are several preconditions stated in the Latvian Insolvency Act, which provide grounds when the insolvency proceedings can be initiated and the legislation in relation to COVID-19 has limited the following two legal preconditions (i) the debt obligations (principal amount of which exceeds €4,268 for limited liability companies or joint stock companies) are not settled, and (ii) the company has not paid the full salary to a single employee (including compensation for any damages or mandatory social insurance payments within two months).

2. **Do you expect these measures to have any lasting impact on Latvian insolvency legislation or court decisions after the COVID-19 crisis?**

The legislation in relation to COVID-19 currently is in force until at least 1 September 2020; however, there remains a risk that these restrictions will be prolonged, or new restrictions will be introduced.

3. **Has Latvia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?**

Abovementioned restrictions are the main legislative novelties that have a direct impact on the spere of insolvency. Other related legislation measures are indirectly related to the sphere of insolvency. For example, the enforcement of the securities may be limited by legal restrictions introduced in response to the COVID-19 outbreak. For example, in Latvia a minimum term of 60 days has been set for commercial pledge and mortgage enforcement without court involvement and undisputed enforcement of obligations, meaning that proceedings for enforcement of commercial pledges and mortgages take twice as long time or longer than before the legal restrictions were introduced. These restrictions will also be in place until 1 September 2020. However, there remains a risk that these restrictions will be extended, or new restrictions will be introduced.

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LITHUANIA

Marius Devyžis, PR1MUS DERLING

1. What emergency measures in insolvency or restructuring legislation has Lithuania adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

On 25 April 2020 the Law on consequences of the new coronavirus (COVID-19) on the application of the Law on Insolvency of the Republic of Lithuania (hereinafter, the Law on application of the Law on Insolvency) came into force. The main emergency measures established in this law are the following:

- The Law on application of the Law on Insolvency does not release the manager from the obligation to initiate insolvency procedure in general, however, the manager's obligation to apply to the court regarding initiation of restructuring or bankruptcy case is temporarily (during the quarantine and 3 months after its revocation) suspended. Thus, the manager of a legal entity still has the obligation to make a first step and initiate insolvency procedure, i.e. submit a notice to creditors and offer to conclude an agreement for financial aid (in Lithuanian: susitarimas dėl pagalbos), but after properly doing that the manager is able to make use of the emergency measures established in the Law on the application of the Law on Insolvency. Accordingly, deadline for concluding an agreement on financial aid is extended. Nevertheless, managers should still assess the situation and react appropriately even though the obligation to apply to the court regarding initiation of insolvency case is suspended. Managers still have the right to apply to the court and should not abuse the new regulation in cases where there are clear signs that the financial situation of a legal entity will not improve even after the quarantine or in cases where the manager does not intend to actively seek to restore the solvency of a legal entity or to negotiate fairly with creditors.
- The term for creditors, who intend to initiate insolvency case, to conclude an agreement on financial aid is extended for as long as the quarantine continues, i.e. the deadline for concluding an agreement on financial aid is extended.
- The Lithuanian law establishes several grounds for terminating restructuring proceedings, among them are situations if the restructuring plan is not properly implemented or if a legal entity fails to pay all or part of taxes due. Under the Law on application of the Law on Insolvency, the deadline after which the court should terminate legal entity's restructuring case if restructuring plan is not properly implemented or a legal entity fails to pay all or part of taxes, is extended by adding the quarantine period.

2. Do you expect these measures to have any lasting impact on Lithuania 's insolvency legislation or court decisions after the COVID-19 crisis?

The above described measures, such a s suspension period of a manager's obligation to apply to the court, will give companies the extended possibility to seek for solutions with their creditors as well as to recover without being threatened with a sudden insolvency case. At the same time, the adopted emergency measures will encourage managers of legal entities not to ignore their creditors and seek out-of-court settlements with them. The above-mentioned measures, however, are not expected to have any significant lasting impact on Lithuania's insolvency regulation or court decisions as they are clearly of a temporary nature and will cease to be implemented shortly after the quarantine is officially over.

3. Has Lithuania adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Lithuania has adopted several additional measures, such as possibility for small and medium-sized legal entities to apply to state authorised institution for compensation of loan interest and / or partial compensation of non-residential lease payments, possibility for small and medium-sized companies to apply for loans to cover running costs (e.g. to settle with suppliers all overdue amounts that were uncovered due to suspended activities. Also, small and medium-sized legal entities that have experienced difficulties with COVID-19 are able to apply for loans to maintain their liquidity. Moreover, in order to reduce economic impact of COVID-19, Lithuania has set up a Business Support Fund, which will help ensure the liquidity of small and medium-sized legal entities, their access to finance and their faster recovery from economic crisis.

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LUXEMBOURG

Max Mailliet, E2M S.à r.l.

1. **What emergency measures in insolvency or restructuring legislation has Luxembourg adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

On 18 March 2020, the Luxembourg government declared a state of crisis by Grand-Ducal regulation and consequently put in place extraordinary measures to limit commercial activities in order to curb the spread of COVID-19.

In order to help businesses cope with the aftermath of such measures, the Luxembourg government, by Grand-Ducal Regulation of 25 March 2020 (hereinafter the "GDR"), announced the suspension of time limits in jurisdictional matters and the adaptation of certain other procedural modalities. Thus article 1 of the GDR notably suspended deadlines in judicial proceedings, including bankruptcy proceedings. In a second phase such suspension of deadlines was also extended in order to include petitions to have bankruptcy proceedings opened voluntarily. As a result, all debt collection cases and the serving of judgements which are subject to time limits were suspended until 24 April 2020.

Moreover, the Luxembourg Bar has also shown solidarity with the measures put in place by the government in order to cope with the economic fallout. In this regard, the President of the Luxembourg Bar Association by way of circular enjoined lawyers not to initiate cases that are not of an extremely urgent nature. However, the solidarity measures put in place by the Luxembourg bar have, in the meantime, been lifted.

By law of 20 June 2020, and in light of the state of crisis coming to an end on 24 June 2020, certain procedural modalities in line with the measures already taken during the state of crisis by means of GDR were introduced. More specifically, regarding the deadlines for initiating proceedings, any time limits which expired during the state of crisis were postponed by two months and the deadlines for submitting petitions to have bankruptcy proceedings opened voluntarily have been suspended for six months.

As the deadlines regarding admission of bankruptcy will likely run again by the end of the six-month suspension, business owners subject to such deadlines will have to be weary of taking into account the days of the deadline that accrued prior to the GDR and the law of 20 June 2020.

Finally, the Luxembourg government has introduced a number of economic measures to help businesses in distress, ranging from subsidies to pay employees over non-refundable small aids in case of severe hardship, to the participation of the Luxembourg State in the financing of consulting for companies that have been hit by the economic consequences of the crisis.

2. **Do you expect these measures to have any lasting impact on Luxembourg's insolvency legislation or court decisions after the COVID-19 crisis?**

We extend our deepest hopes that the crisis will have a positive impact on insolvency proceedings, predominantly in light of the modernisation project of the judicial system whose aim is to achieve a fully digital justice system, and thus a more efficient justice system with shorter procedural delays. But, sadly, the outlook in this area is rather dim for the time being.

We have however observed a positive development in that the commercial court has been a bit more digitised, making it possible, for the time being, to file petitions for voluntary bankruptcy remotely and without the presence of the parties.

3. Has Luxembourg adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Apart from the State aid mechanism described in short above, no real measures have been adopted. Despite the urgent need to put into place high quality legislation to protect and restructure distressed companies, no changes have been made in that area, meaning that the older tools, which have become useless, are the only tools available.

The aftermath of the state of crisis may be an opportunity to revive protective measures such as the suspension of payments, controlled management or the scheme of composition with creditors to prevent bankruptcy.

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MALAYSIA

Daniel J. Albert, Edmond Chek & Nicholas Yap, Daniel & Wong

1. What emergency measures in insolvency or restructuring legislation has Malaysia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In April 2020, the Malaysian Government had raised the threshold of indebtedness (i.e. the prescribed amount for a statutory demand) from RM 10,000.00 to RM50,000 as well as extended the period for companies to respond to statutory demands from 21 days to 6 months, before the commencement of winding up proceedings. These measures were directed at staving off the commencement of winding up proceedings against distressed businesses and providing additional time to such businesses to manage cash flow issues.

Separately, the Central Bank of Malaysia (Bank Negara Malaysia) announced that all licensed banking institutions in Malaysia will provide small & medium sized enterprises and individuals a six months moratorium for repayment of loans with effect from 1 April 2020 (subject to certain stipulated requirements being met). This was directed at helping small & medium sized businesses and individuals mitigate the financial impact of COVID-19.

The Central Bank of Malaysia also directed all financial institutions to consider requests by companies to defer or restructure their loans in a way that will allow financially viable companies to swiftly resume business and mitigate the financial impact of COVID-19.

In August, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 was tabled and passed by the House of Representatives of the Malaysian Parliament ("**Bill**"). The measures introduced vide the Bill include amongst others relief for inability to perform certain contractual obligations, extension of the limitation period to sue under specified legislation, greater protection on indebtedness under the Malaysian Insolvency Act 1967 [raises the threshold of personal indebtedness from RM 50,000 (currently) to RM 100,000.00 in order for a bankruptcy petition to be commenced], a temporary suspension of rights to repossessed goods for hire-purchase agreements and for warrants of distress by landlords who are owed rent in arrears. The Bill provides that these measures shall only be applicable for a period of 2 years. The Bill is currently awaiting approval by the Senate of the Malaysian Parliament. It will thereafter be presented for Royal Assent and become law once published in the Malaysian Government Gazette.

2. Do you expect these measures to have any lasting impact on Malaysia's insolvency legislation or court decisions after the COVID-19 crisis?

The measures at this stage remain temporary in nature and of limited impact.

The moratorium for repayment of loans are only for a period of 6 months and are not automatically applicable to large corporate entities. Such larger entities require the consent of their banking institutions to restructure their facilities or to obtain extensions of repayments.

It is also noteworthy that the measures above do not prevent other forms of legal proceedings from being commenced against distressed businesses such as civil proceedings for contractual breaches.

3. Has Malaysia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The Malaysian Government has, amongst others, announced a Special Relief Facility ("SRF Fund") to help alleviate short-term cash flow issues plaguing small & medium sized businesses affected by the COVID-19 crisis. The SRF Fund allows eligible businesses to obtain financing of up to RM 1 million for a tenure of up to 5.5 years at a favorably low fixed interest rate.

The Malaysian Government has also allocated funds to provide small & medium sized businesses with loan guarantees through a government guarantee scheme. This is to assist businesses that are unable to obtain loans from financial institutions as a result of insufficient collateral.

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MALTA

George Bugeja, Ganado Advocates

1. What emergency measures in insolvency or restructuring legislation has Malta adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

The main focus of the Government of Malta in the immediate months following the COVID-19 outbreak has been that of seeking to assist businesses by providing cash grants and by introducing certain tax deferrals in hope that businesses will keep their workers employed without facing insolvency.

Suspension and Interruption of Time Periods

As from the 2 April 2020 regulations issued under the Legal and Other Time Periods (Suspension and Interruption) Act, interrupted the running of time:

a. Under any substantive or procedural law, including any period of prescription and any peremptory period;

b. Decreed or otherwise ordered by any court, government department, government agency or public authority;

c. Established in any agreement (whether a private or a public deed), including any time period for the performance of any obligation set out in such agreement, and if and to the extent that the closure of the Courts of Justice has a direct effect on the ability of any party to exercise its rights or to perform its obligations in terms of the same agreement.

The suspensions and interruptions introduced by this Act were gradually eased and repealed throughout the months of May and June 2020.

Amendments to Insolvency Related Laws

Following on Bill 128 of 2020 published on the 13 May 2020, new regulations were issued on the 15 September 2020 entitled the *Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, 2020* (the "**Regulations**"). These Regulations introduce the following amendments to Maltese law:

a. The Regulations suspend the rights of creditors and debenture-holders to file for the dissolution of their debtor companies, with this suspension lasting until 40 days following an order to be issued by the Minister to lift the suspension established by the Regulations. Nevertheless, if a Court is satisfied (on a *prima facie* basis) that the alleged ground for dissolution arose prior to 16 March 2020, then the Court can allow the filing of a winding-up application.

b. The Regulations introduce the possibility of establishing a date of "*deemed dissolution*" during the suspension for the benefit of creditors and debenture-holders given that these are prohibited from filing a winding-up application (as mentioned in (a) above). Creditors or debenture holders may therefore still file a judicial letter in Court against their debtor company informing it of the grounds for dissolution (typically being an inability to pay debts). Should a winding-up order eventually be successful, the company will be deemed to have been dissolved as at the date of the first judicial letter filed by the creditor/ debenture holder.

c. The Regulations impose a stay on any pending dissolution proceedings filed by a creditor or debenture holder that were instituted by an application filed in Court on or after the 16 March 2020, which suspension is to last until 40 days following an order to be issued by the Minister to lift the suspension established by the Regulations. If a Court is however satisfied (on a *prima facie* basis) that the causes underlying the request for dissolution arose prior to 16 March 2020, then the Court has discretion to allow the hearing of the application.

d. The right of a liquidator of a dissolved company to bring an action against one of the company's directors for wrongful trading has also been suspended with retroactive effect (as from 16 March 2020) until 40 days following the lifting of the suspension established by the Regulations. The Regulations also establish that directors will not be expected to have taken certain steps to minimise potential losses to creditors during this suspensive period, including (i) filing an application to dissolve the company of which they are a director; or (ii) incurring debts in good faith on behalf of the company; unless it is shown that such actions or omissions were deliberately intended to prejudice the prior *pari passu* ranking of creditors of the company.

2. Do you expect these measures to have any lasting impact on Malta's insolvency legislation or court decisions after the COVID-19 crisis?

The aforementioned measures are specifically linked to the COVID-19 crisis.

Nevertheless these amendments come at a time when Malta needs to introduce certain amendments to its insolvency laws as a result of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

3. Has Malta adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The Government of Malta has established a number of schemes providing cash grants (and wage supplements) and possibilities for tax deferral (especially for those companies which were directly hit by the COVID-19 crisis).

A COVID-19 Guarantee Scheme was also set up in order for the Government to guarantee loans granted by commercial banks to businesses in Malta facing a sudden acute liquidity shortage as a result of the COVID-19 outbreak.

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NETHERLANDS

Frans Crul, Dentons Amsterdam

1. What emergency measures in insolvency or restructuring legislation has the Netherlands adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Dutch government has not enacted specific insolvency or restructuring legislation for the sole purpose of helping businesses cope with the economic crisis caused by the COVID-19 pandemic.

However, on Tuesday 26 May 2020 the Dutch lower house voted in favour of the introduction of a ‘Dutch Scheme of Arrangement’ (Dutch acronym**, WHOA**). The legislative process with regard to WHOA as adopted has been underway since mid-2019. At the beginning of the outbreak of COVID-19 in the Netherlands, the Ministry of Justice marked the bill as urgent.

Simply put, the WHOA enables debtors outside bankruptcy to offer a (binding) tailor-made restructuring plan on their creditors. This means that a minority of opposing parties can be bound to accept a discount on their claims. Moreover, under circumstances, WHOA offers the possibility - in extreme cases - to terminate agreements prematurely. As such, the WHOA can be compared to the English scheme of arrangement or the ‘Chapter 11 procedures’ in the United States.

WHOA will provide for a dual-track approach. A plan can be offered through a public procedure which is available for debtors having its centre of main interest (**COMI**) in the Netherlands; or a private procedure that is also open to debtors with a branch in the Netherlands or another ‘sufficient connection’ to the Netherlands. Plans offered and executed through a public procedure will automatically be recognised within the EU.

The WHOA is currently dealt with in the Dutch senate. It is expected that the senate will vote on WHOA in the coming months and that WHOA will enter into force ultimately 1 January 2021.

In addition, the Dutch courts published temporary alternative rules of procedure with regard to insolvency proceedings. The most notable change is that, in principle, physical hearings will not take place and all hearings will be through audio or video conference or in writing. All courts will take into account that protection of rights and protection against abuse of rights remain of great importance, especially in insolvency proceedings. Consequently, we observe that courts are still hesitant to declare bankruptcy at creditor’s requests.

On 4 June 2020, the Ministry of Justice submitted a draft bill for public inspection that should protect debtors against creditors requesting its bankruptcy or enforcing its debts if the debtor can provide ‘prima facie’ evidence that its inability to pay is caused by COVID-19 related measures (‘Temporary Payment Deferral Act 2020’). The consultation period ended on 11 June 2020. The current status of the bill is unclear and is unknown whether the bill is still expected to enter into force, as it was envisaged that the Act would only apply until 31 October 2020.

2. Do you expect these measures to have any lasting impact on Dutch insolvency legislation or court decisions after the COVID-19 crisis?

We expect WHOA, as it is not specifically designed with regard to COVID-19, to have a great impact on Dutch and international insolvencies and restructurings. Since WHOA is available for all debtors with sufficient connection to the Netherlands and as such can also have a lasting impact on international restructuring, especially taking into account Brexit making it less likely that English schemes will easily be recognised within the EU.

3. Has the Netherlands adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

In order to mitigate the economic consequences of the COVID-19 pandemic, the Dutch government presented a substantial aid package on Tuesday 17 March 2020. The main purpose of these aid measures was to limit acute liquidity issues in affected companies as much as possible. This concerned, for example, the possibility to temporarily suspend payment of (turnover) tax or the extension of the Business Finance Guarantee Scheme and the SME Credit Guarantee Scheme. Meanwhile, five major Dutch banks have also announced that they will give companies a six-month break on repaying their loans.

Except for the Temporary Emergency Bridging Measure to Preserve Employment (*Noodmaatregel Overbrugging voor Werkbehoud*, Dutch acronym: **NOW**), which temporarily replaces the short-time working arrangements, the measures in principle do not reduce the indebtedness of companies. It can be expected that these measures postpone insolvency of companies until the end of the aid package.

Recently, the Dutch government presented its third aid package (NOW-3), which mainly builds on the first and second aid package and runs until 1 July 2021. The newly presented aid package also allows (and to some extent forces) companies to adjust to the 'new normal' as the allowances under NOW-3 will gradually decrease over the nine-month period. Another notable measure, is that the Dutch government reinsures the risks for credit insurance companies up to 100% for 2020. Consequently, credit insurers can continue to provide full coverage and normal trade worth EUR 200 billion can continue without interruption. It may be expected that this measure will effectively limit bankruptcies of companies as a consequence of defaulting trading partners.

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NIGERIA

Abimbola M. Adekoya, Lagos

1. What emergency measures in insolvency or restructuring legislation has Nigeria adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Nigeria has not introduced or adopted any new insolvency rules or legislation to help businesses cope with the economic crises caused by Covid-19 pandemic.

Businesses will have to rely on the existing laws that govern insolvency and restructuring in Nigeria. The legislations that primarily deal with insolvency and restructuring include the Companies and Allied Matters Act 2020 ("CAMA"); Company Winding-up Rules 2012; the Federal Competition and Consumer Protection Act, 2018 ("FCCPC"); the Investment and Securities Act 2007; the Asset Management Corporation Act 2010 (as amended in 2015) etc.

Even though none of these laws specifically provide for the incidence of a pandemic such as the Covid-19. However, there were calls for the amendment of the insolvency provisions in the Companies and Allied Matters Act 1990 (the "Repealed Act") a major legislation on restructuring and insolvency in Nigeria, to cushion the effect of the pandemic and adequately protect companies from winding-up actions in these challenging times. Fortunately, on the 7 of August, 2020 the President of Nigeria signed into law the Companies and Allied Matters Act 2020 ("CAMA 2020") an act which repeals and replaces the Repealed Act to change the general outlook of doing business in Nigeria.

CAMA 2020 introduces an extensive insolvency regime applicable to the changing times as follows:

a. The financial threshold for deeming that a company is unable to pay its debt has been increased to N 200,000 ($513 Dollars) from N2000 ($5 Dollars). Similarly, for unregistered companies, the threshold is now N100,000 ($256 Dollars) against the previous threshold of N1000 (3 Dollars) provided in the Repealed Act.

b. CAMA 2020 creates an avenue for prioritising and exploring business rescue options before receivership and involuntary liquidation. These options are:

   – Company Voluntary Arrangement: This arrangement allows the directors of a financially distressed company (or a company on the verge of financial distress) to make a proposal to its creditors for a composition in satisfaction of its debts or a scheme of arrangement for its debt. This rescue mechanism serves to allow an insolvent entity to continue to carry on its business.

   – Appointment of an Administrator: Before commencement of receivership and involuntary liquidation, CAMA 2020 now allows for the appointment of an administrator in order to rescue a financially distressed company, the whole or any part of its undertaking, as a going concern; and in order to achieve a better result for the company's creditors as a whole than would be likely, if the company were wound up, without first being in administration.

c. Moratorium on creditors voluntary winding up in a scheme of arrangement: CAMA 2020 prohibits winding up petition or enforcement action by a creditor (secured or unsecured) against any company or its assets that has commenced a process of arrangement and compromise with its creditors for 6 months from the time that the relevant company, by way of affidavit, provides all the requisite documents for such arrangement or compromise, to the Court. However, a creditor may apply to the court to discharge the 6 months' moratorium if certain prescribed conditions are met.

2. Do you expect these measures to have any lasting impact on Nigeria's insolvency legislation or court decisions after the COVID-19 crisis?

The above amendments to the insolvency provisions in the Repealed Act even though yet to take full effect will have lasting impact on insolvency practice and court decisions in Nigeria after the Covid-19 crises. The introduction of business rescue provisions in CAMA 2020 is commendable as it will provide succour for companies in distress and fend off potential avalanche of insolvencies that may arise as a result of the pandemic.

3. Has Nigeria adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The Nigerian federal government adopted several further emergency measures aimed at cushioning the adverse effects of the COVID-19 pandemic on Nigerian businesses. The Nigerian government through the Central Bank of Nigeria, (apex regulatory authority of the Nigerian financial system) ("CBN") introduced emergency measures to help businesses cope which include:

- Extension of moratorium period for all CBN intervention facilities by 1 (one) year effective, 1 March 2020;
- Reduction of interest rate from 9% to 5% on all CBN intervention facilities;
- Granting regulatory forbearance to banks to restructure tenor and terms of facilities for businesses and household most affected by the outbreak of Covid-19;
- Granting 3 (three) month repayment moratorium for the beneficiaries of the Government Enterprise and Empowerment Programme (GEEP), an initiative designed to help petty traders expand their trade through the provision of collateral free loans (also known as "TraderMoni", "MarketMoni" and "FarmerMoni" loans), Federal Government funded loans, and Federal Government funded loans issued by Nigeria's Bank of Industry, Bank of Agriculture and the Nigeria Export Import Bank.

Also, a N50 Billion Naira ($131 Million Dollars) Targeted Credit Facility was created. This facility was created to provide support to target sectors of the economy, particularly households and the micro, small and medium-sized enterprises ("MSMEs") with verifiable evidence of livelihood, business activities or bankable plans, that are particularly affected by the COVID-19 outbreak. The credit facility, established through the NIRSAL Microfinance Bank (a national Microfinance bank), is also open to other vulnerable entrepreneurs including hoteliers, airline service providers and healthcare merchants.

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NORWAY

Øyvind Dehli, Advokatfirmaet Thommessen AS, Oslo

1. What emergency measures in insolvency or restructuring legislation has Norway adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

No changes to bankruptcy (liquidation) proceedings pursuant to the Norwegian Bankruptcy Act of 8 June 1984 No. 58. However, Part 1 of the Bankruptcy Act, pertaining to voluntary and compulsory debt settlement proceedings, has been replaced by a provisional Reconstruction Act.

The new provisional Reconstruction Act's (of 7 May 2020, effective as of 11 May 2020 and until 1 January 2022) (the "Act") objective is to mitigate financial difficulties resulting from the COVID-19 outbreak. The Act replaces Part 1 of the Bankruptcy Act for as long as the Act remains in effect.

The main objective of the Act is to reduce the risk of unnecessary bankruptcy of viable businesses that have suffered a sudden loss of revenues as the result of the COVID-19 outbreak and is available for debtors that "is encountering, or will in the foreseeable future encounter, severe financial difficulties" and includes inter alia:

- Debtor in possession proceedings, under supervision of court appointed reconstructor/ reconstruction committee.
- Simplified procedural provisions.
- An automatic bankruptcy/enforcement protection throughout the proceedings.
- A freeze (stay) of service of pre-petition debt.
- "DIP" financing on super priority
- Voluntary/compulsory reconstruction, which includes i.a. moratorium, reduction of debt, conversion of debt to equity (with a simple majority (>50%) at the general meeting) and a sale of the business.
- Compulsory reconstruction requires a simple majority (>50% by debt) among creditors.

There is also, by administrative regulations, provided a temporary exemption (limited to COVID-19) from the statutory priority of corporation tax claims and VAT claims. Further, there is also new administrative regulations pertaining to smaller businesses which includes simplified procedures and the possibility of pre-pack proceedings.

2. Do you expect these measures to have any lasting impact on Norway's insolvency legislation or court decisions after the COVID-19 crisis?

Yes, as the Act is based on a proposal for new legislation from 2016 and was adopted in an accelerated process following the outbreak of COVID-19, it is provided that the Act will be replaced by a new permanent Act no later than 1 January 2022. It is stated in the preparatory works of the Act that the long-term focus should be on developing permanent restructuring provisions, which will be based on, and refine, the solutions in the Act, that on a permanent basis will replace Part 1 of the Bankruptcy Act.

3. Has Norway adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Several governmental packages to support the industry and commerce, both directed towards specific industries (e.g. the oil and gas industry) and more generic measures to cover the losses/costs of different kind of industries. This includes economic packages to establishments within culture, sport and also self-employed.

There are also implemented several governmental guarantee and loan schemes in order to improve the liquidity of Norwegian companies, inter alia for the airline industry.

The governmental support also includes postponed deadlines for payment of several taxes and changes to the temporary lay-off regulations where the government provides for a larger part of the payment to the employees (being temporary laid-off).

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POLAND

Anna Czornik, Olesiński & Wspólnicy, Cracow

1. **What emergency measures in insolvency or restructuring legislation has Poland adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?**

In the first Polish COVID-19 legislations (so called anti-crisis shields), there were no regulations strictly meant for insolvency or restructuring legislation. The first measures occurred roughly in the anti-crisis shield 2.0 (The Act of 16 April 2020 on Special Support Measures In Response to the SARS-CoV-2 Outbreak; further as: anti-crisis shield 2.0 Act). This anti-crisis shield 2.0 Act suspended the obligation to file for bankruptcy until the end of the COVID-19 epidemic. According to the new Article 15zzra(1) introduced by the anti-crisis shield 2.0 Act, during the state of the epidemic emergency (i.e. as of March 14, 2020) or state of epidemic (i.e. as of March 20, 2020), both introduced because of COVID-19, the deadlines for filing for bankruptcy do not start and the deadlines, which already started to run are interrupted. This means that, for insolvent undertakings which meet certain conditions (see below), the start of the regular 30-day deadline for filing for bankruptcy is postponed and will only start afresh when the states of the emergency or epidemic are recalled.

In order to take advantage of the possibility to file for bankruptcy at a later date, the following must be met:

- The grounds for insolvency must have arisen during the period of the epidemic emergency state or epidemic state announced because of COVID-19, i.e. 14 March 2020 at the earliest (date of introduction of the state of the epidemic emergency);
- Insolvency must have arisen because of COVID-19 – there was a legal presumption introduced, which implies that if the insolvency occurred during the state of the epidemic emergency or state of epidemic declared because of COVID-19, it is presumed to have occurred because of COVID-19.

In a situation where the financial problems are not related to COVID-19 or existed earlier, a motion for bankruptcy should be submitted on a regular basis. It is therefore important to accurately assess the real causes of insolvency and determine whether they were related to COVID-19.

The anti-crisis shield 2.0 Act does not modify the very grounds for insolvency.

The provision of the anti-crisis shield 2.0 Act related to insolvency entered into force retroactively as of 13 April 2020, thus suspending the obligation for all undertakings that meet the above mentioned conditions.

The anti-crisis shield 2.0 Act also regulates deadlines for calculating terms of e.g. ineffectiveness of actions undertaken by the debtor. Thus, if the deadline for filing for bankruptcy postponed to the end of the epidemic (in accordance with the abovementioned provisions) and the bankruptcy motion is filed by the debtor within this shifted deadline with no previous bankruptcy motion, the deadlines set out in the provisions of the Polish Bankruptcy Law Act related to actions for the calculation of which the date of filing for bankruptcy is relevant, shall be extended by the number of days between the date of filing for bankruptcy and the last day when the motion should be filed pursuant to the regular deadlines resulting from the Bankruptcy Law Act.

There is also a separate Act On Granting Public Aid For Rescuing Or Restructuring Businesses. In accordance with the Act, the businesses are able to apply for financial support in three forms of aid:

a. to rescue the business at the stage of developing a restructuring or liquidation plan and carrying out the necessary analyses (rescue aid),
b. for the time necessary to implement restructuring measures (temporary restructuring aid for the business – only for SME),
c. to ensure the implementation of the restructuring plan (restructuring aid).

The basic form of aid envisaged by the Act is a loan, however, a number of additional solutions are provided for entities applying for restructuring aid (e.g. taking up shares in the increased share capital, taking up bonds, relief from administrative fines).

Moreover additional regulations on Simplified Restructuring Proceedings were introduced to the Polish legal framework. Under the simplified restructuring procedure there is no need to obtain a court's consent to open arrangements with creditors, as well as start the restructuring and recovery procedures. Restructuring proceedings are to be commenced only once two conditions are met - the debtor concludes an agreement with a restructuring advisor (who will act as the supervisor of the arrangement with creditors) and an announcement is published in the Court and Economic Journal (Monitor Sądowy i Gospodarczy). The initiation of restructuring proceedings by the business is to suspend the enforcement of liabilities, up to a maximum of four months and for the time of the court approval of the arrangement to be concluded with the creditors. During this period, the creditors will not be able to terminate agreements important for the enterprise, e.g. the lease agreement or real estate lease. On the other hand, the debtor will not be able to take more serious property actions without the consent of the restructuring advisor.

2. Do you expect these measures to have any lasting impact on Poland's insolvency legislation or court decisions after the COVID-19 crisis?

The abovementioned anti-crisis shields regulations are temporary and introduced specifically for the time of the epidemic emergency state or epidemic state. There are no signals or possibilities for the abovementioned regulations to be maintained.

At the same time, the Act On Granting Public Aid For Rescuing Or Restructuring Businesses, the legislative processing of which has in a way gained momentum during the COVID-19 crisis, has a chance to constitute real and permanent financial aid for undertakings facing financial crisis.

The regulations of the Act On Simplified Restructuring Proceedings are valid until 30.06.2021.

3. Has Poland adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

According to the anti-crisis legislations during the epidemic emergency state or epidemic state announced because of COVID-19 until 16 May 2020, procedural and judicial deadlines shall not start and shall be suspended for that period. The suspension did not concern "urgent cases". In the course of the legislative changes, restructuring proceedings were first included as urgent cases (from 18.04), later also bankruptcy proceedings were added (from 14.05). These cases were however, not on the list of urgent cases from the beginning, so that many restructuring and bankruptcy proceedings could not be proceeded.

It is also worth noting, that the beneficiary of all legal measures introduced by the anti-crisis shield 2.0 Act which were aimed at stimulating financial liquidity of businesses, could not be an enterprise facing insolvency. The anti-crisis shield 2.0 Act did not apply to businesses that have been declared bankrupt and businesses that have been subject to restructuring proceedings. In the case of undertakings with respect to which motions were submitted in the relevant proceedings, the procedure for granting support specified in the anti-crisis shield 2.0 Act were to be suspended until they were legally decided. However, the aim of the mentioned measures was also to stimulate financial liquidity, i.e. prevent the loss of liquidity as one of the grounds for insolvency. The anti-crisis shields legislation offered, among others, liquidity financing (loans, bonds, guarantees or purchase of receivables), preferential financing (with possible debt reliefs), leasing programmes (refinancing of lease contracts), working capital loans, subsidies to employee salaries and more.

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ROMANIA

Paul Banzea, Marieta Avram, Bucharest

1. What emergency measures in insolvency or restructuring legislation has Romania adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In Romania the state of emergency has been declared on 16 April 2020, by Presidential Decree and has been replaced by the state of alert on 15 May, 2020, through the Government Decision No. 24/2020. Similarly to other countries in the region and in the world, Romania has also experienced a powerful economical backlash from the measures applied by the governing bodies in order to prevent the spread of the SARS-CoV2 virus.

The postponement of payments for rents. In an attempt to meet the business environment half-way, the Romanian legislator has created the possibility for business enterprises to opt for postponing payment of rents, without any penalties or interest. Law no. 62/2020 provides that the business enterprises which cannot carry on providing goods and services as a result of the COVID-19 pandemic and/or the measures taken in order to prevent the spread of the virus, suffering from a drop of income of at least 15% in March, 2020, in comparison with the average income for the previous 12 months, may postpone on demand, without any penalties for late payment or interest, the payment of rent for spaces used as main headquarters or branch offices. The postponement is possible until 31 December 2020, the longest. If the conditions established by the law are met, the authorities may also perform payment to the tenants, upon request.

The postponement of payments for bank loans. Seeing that many enterprises fall short of their financial objectives as a result of obligations towards the banks (in the case of bank loans or other banking services), the Government has adopted Emergency Ordinance no. 37/2020 which allows for companies having contracted bank loans to postpone payment of due monthly instalments, upon request, for a period of up to nine months, without any penalties.

Technical unemployment. According to Emergency Ordinance no. 32/2020, during the state of emergency (and the state of alert) period, the State offers support to local companies by paying the income of the employees forced into technical unemployment due to the economical complications caused by the SARS-CoV2 pandemic. The State covers 75% of the gross average income.

IMM Invest. Romanian authorities have made it possible through the Guiding Rules for the Emergency Ordinance no. 110/2017 for small and medium size businesses to opt for State guaranteed loans, in the highly debated project known as ”IMM INVEST”. This project has the objective of allowing the grant of preferential bank loans to medium and small businesses (referred to as ”beneficiaries”) guaranteed by the State, in a transparent and indiscriminatory way. Such loans are not possible for debtors with late payments for credit loans.

Law no. 55/2020. Debtors in a state of insolvency have the obligation to file a request for insolvency before the Tribunal. Pending the state of urgency/alert, this obligation became an option. In other words, for a debtor in a state of insolvency it is no longer mandatory to file for insolvency during the state of emergency/alert.

The law also provides that if the state of insolvency is a result of the COVID-19 pandemic or of the measures taken in order to prevent the spread of the virus, should the debtor file for insolvency, the debtor will have to prove the prior attempt to renegotiate payment conditions with creditors. Last but not least, the law extends certain time periods in favour of debtors, such as the time limit for the observation period and the time limits for the reorganisation period.

2. Do you expect these measures to have any lasting impact on Romania's insolvency legislation or court decisions after the COVID-19 crisis?

At a glance, the measures are meant to be temporary, for the time of the emergency and alert periods. However, long term effects may be expected considering that many debtor companies may be caught unprepared when all the postponed payments will become payable at once. The same can be said for the moment when all employers will have to start paying all employees in technical unemployment. It remains to be determined if the governing authorities will establish any further facilities in order to prevent such effects.

3. Has Romania adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

It is worth mentioning that through the Presidential Decree of 16 March, all judicial court proceedings which do not classify as urgent have been stayed, pending the state of emergency (which ended on 14 May 2020). Court terms in insolvency procedures do not fall under the umbrella of urgent matters, which means that all Court measures necessary in pending insolvency procedures had also been stayed. However, because the Presidential Decree did not refer to the management of the insolvency procedures between Court hearings, by the insolvency professionals, many extra judiciary insolvency matters have been carried out in cases where Court intervention was not mandatory. We also refer to the impossibility of starting new forced enforcement proceedings during the state of emergency period, seeing that in Romania forced enforcement starts with a court order (which did not classify as an urgent matter). Although this has stalled in many cases certain extra judiciary insolvency measures, this limitation is no longer applicable in the state of alert period.

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RUSSIA

Sergey Klimenko, Avangard, Moscow

1. What emergency measures in insolvency or restructuring legislation has Russia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

Main measures in insolvency legislation resulted in amendments to Insolvency Ordinance and introduction of a new type of insolvency moratorium for businesses recognised as suffered of COVID-19 or specifically defined by Russian federal government.

When company or sole entrepreneur falls within lists issued by Russian federal government the following types of restrictions and regulations are applicable:

- Regarding shareholdings: dividend payments, profit distribution or withdrawal from the company and payment of the real value of a shareholder's (member's) stake in company shall be prohibited;

- In respect of debt recovery the following is prohibited:

    a. insolvency claim proceedings initiation against the debtor and enforcement against its assets;
    b. charging debtor with sanctions, including ones for delayed performance of financial obligations;
    c. any enforcement against assets of the debtor shall be suspended (seizure and other restriction on disposal of assets is preserved);
    d. foreclosure;
    e. any set-off to avoid any disruptions in the priority of creditors' claims.

- Company's officer duty to file petition on company's insolvency due to over-indebtedness suspended for moratorium period;

- Limitation periods for transactions that are subject to scrutiny and challenge in insolvency proceedings to be extended for moratorium period;

- Right to apply for approval of a judicial instalment plan for repayment of debt. Usual timeframe such repayment is 1 year, in case of decrease in the debtor's income by 50% or more - 2 years, and if the debtor belongs to strategic enterprises and organisations - 3 years. Debtor has an obligation to provide extra securities for approval of instalment plan by the court.

Measures mentioned above are applicable on sectoral basis in accordance with a number of lists issued by Russian federal government. Such lists cover systematic companies, strategic companies and types of business activities suffered the most from COVID-19 (COVID-19 List). The latest is subject to amendments as certain types of business actually suffered from COVID-19 do not fall within the list and moratorium is not applicable to them.

Company can opt-out from moratorium if it does not want to be limited, more than 800 businesses have done so up to the end of August 2020.

Special programmes on debt restructuring were adopted by Russian Federal Government to help banks to restructure credits and to back part of credit's interest for six months. Such programmes cover businesses from lists of Russian federal government along with businesses and citizens suffered of COVID-19 and met specific criteria.

New type of out-of-court insolvency procedure appeared for small insolvency proceedings with total of debt not exceeding fixed amount (around USD 7000). For other cases judicial insolvency proceedings order is applicable.

2. Do you expect these measures to have any lasting impact on Russia's insolvency legislation or court decisions after the COVID-19 crisis?

Highly likely such legislation will remain and might be used in future as a universal tool in emergency cases. Efficiency of moratorium and other measures value for economy to be considered lately and relevant amendments to be made to improve them to apply in future.

Moratorium on bankruptcy proceedings against COVID-19 List companies already highlighted absence of unified approach on initiation of bankruptcy proceedings. Force majeure and other issues on restructuring and renegotiation of agreements are yet to be considered by the courts.

Some businesses definitely will try to take advantage of COVID-19 by way of support from federal and regional governments. Court will have to decide upcoming disputes on losses shifting from one companies to another, to regional and federal budgets to keep business activity balanced and curtail any abuse.

3. Has Russia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

There is a number of other regulations helping businesses such as self-employed income tax return programme, extension of deadlines for filing of finance reports and tax payments, suspension of tenancy payments to all state-owned landlords were and other efforts to help business on federal and regional levels.

Specific COVID-19 Ordinance came into force in June 2020. Along with regulation of different social, health and other issues amendments to tenancy regulation for small and medium business were made, tenants suffered from COVID-19 in some cases have a right of unilateral cancellation of agreement without sanctions when landlord is inflexible on reconsideration of agreement. Some amendments to insolvency regulation are intended to provide debtor with a right to seek for court approval of debt restructure under specific circumstances.

Due to controversies in COVID-19 crisis regulations Supreme Court of Russian Federation issued several legislative reviews explaining relevant law enforcement during COVID-19 situation which is very helpful for courts to deal with on-line court hearings.

Russian commercial courts started to practice on-line remote hearings what brings more efficiency to costs in the proceedings, including complex insolvency proceedings. Hopefully trend towards e-filing and electronic case management will help practitioners to improve costs efficiency and judicial system to gain new level in administering justice.

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SERBIA

Natalija J Popovic-Maksimovic, Popovic Popovic & Partners, Belgrade

1. What emergency measures in insolvency or restructuring legislation has Serbia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

First, the National bank of Serbia on 17 March 2020 adopted decisions on moratorium on loan and leasing repayments. It concerns all debtors that apply for it and provides a moratorium in payment of liabilities that cannot be shorter than 90 days or term of state of emergency introduced due to a pandemic of Covid-19 virus. In this period, the debtors are not obliged to settle their liabilities stemming from the loan or leasing but were free to do so if able. During the term of state of emergency (that ended on 6 May 2020), the bank or leasing company could not calculate default interest on due but unsettled liabilities nor initiate enforcement collection procedure or any other legal measure for collecting of receivables from the clients.

Second, on 9 April 2020 the National Bank of Serbia cut the key policy rate from 1.75% to 1.5% in order to alleviate the negative effects of the coronavirus (Covid-19) on economic activity, while at the same time ensuring that inflation remains within the bounds of the target in the medium term.

Third, The Government of Serbia brought a Decree that entered into force on 16 April 2020, on Establishment of a Guarantee Scheme as a Measure of Support to the Economy to Mitigate the Impact of the Covid-19 Disease Pandemic Caused by the Sars-Cov-2 Virus. The purpose of loans secured by a guarantee is to finance liquidity and working capital.

The maturity of the loan is limited to a period of 36 months.

Loans cannot be used for refinancing and early repayment of outstanding instalments of existing loans in a bank's portfolio, or for refinancing loans with other banks.

The loans are intended to entities incorporated in Serbia (including farms), registered with the Serbian Business Registers Agency: entrepreneurs, or micro, small and medium-sized enterprises in accordance with accounting legislation. Also, to any person who has been granted a new loan or renewal of an existing loan in accordance with the bank's credit policy, for which the Republic of Serbia may guarantee the bank in accordance with the Decree.

The above leads to conclusion that large legal enterprises are not beneficiaries of these loans. Certain entities are not entitled to the loan benefits, for example: entities in difficulties as of 31.12. 2019; entities in default status per regulations of the National Bank of Serbia as of 29.02.2020; entities in tax default in Serbia; entities with in more than 50% of ownership of the Rep. Serbia.

Fourth, Serbian Government has rendered a Programme of Financial Aid to Commercial Entities for Maintenance of Liquidity and Current Assets Stemming from COVID-19 Pandemic that are to be implemented in cooperation with Development Fund of Serbia. The goal of the Programme is to support financing of current assets and maintaining of liquidity for the purpose of settlement of liabilities towards business partners, employees and the state.

Funds from the Programme may be used by: entrepreneurs, certain Cooperatives, micro, small and medium enterprises that are in majority private or cooperative ownership and that perform production, service, trade and agricultural activities.

Funds cannot be used for certain activities, like for organising games of chance, trade of oil.

The main condition for these loans is the retention of the number of employees. Up to 10% deviation is accepted until the date of application and during the use of the loan.

Additional conditions are: that they are not in difficulty, bankruptcy proceedings have not been initiated against them, that they are not subject to the procedure for the pre-prepared reorganisation plan or that measures from the pre-prepared reorganisation plan are not in force, that it is not subject to a reorganisation plan or that no measures from the reorganisation plan, financial restructuring or liquidation procedure are in force.

The Programme provides the following terms: the annual interest rate is 1%, repayment period of up to 36 months (which includes a grace period of up to twelve months), loans are approved and repaid in dinars, repayment of the loan will be made in monthly annuities, within the grace period, interest is calculated and credited to the principal debt.

2. Do you expect these measures to have any lasting impact on Serbia's insolvency legislation or court decisions after the COVID-19 crisis?

Many companies have applied for the programme. 93% of the legal entities have applied for moratorium. Around 89% of micro and small enterprises and 11% of the medium enterprises have applied for the loan. The results are yet to be evaluated and judged. Tourism is most affected so far. The tourist sector considers that the measures are not sufficient for their needs.

3. Has Serbia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

On 11 April, 2020, the Government of Serbia brought a Decree on Fiscal Benefits and Direct Payments to Commercial Entities in Private Sector and Monetary Support to the Citizens for the Purpose of Mitigating the Economic Consequences Stemming from COVID-19. The fiscal benefits are:

– Deferral of payment of salary tax and contributions for March, April and May 2020, or for April, May and June (on the choice of taxpayers); advance CIT payments due on 15 April, 15 May and 15 June 2020 until submission of final CIT return for FY 2020; advance payment of tax and contributions for entrepreneurs’ profit tax in a same manner as for CIT payments. These taxes and contributions are due for payment as of 4.1.2021 in 24 monthly instalments without interest;

– Direct payments: Private micro, small or medium enterprises may exercise the right for monthly non-refundable payment in the amount of minimal net salary for March 2020 per full time employee, from May until July. For large enterprises, the amount is 50% of minimal net salary.

– On 30 July 2020, the government of the Republic of Serbia adopted a conclusion regarding direct and fiscal benefits to economic entities in the private sector, which refers to the second aid package for the economy to mitigate economic consequences of COVID-19. This package includes the payment of 60% of the minimum wage twice, as well as the postponement of taxes and contributions on wages for one month.

– The condition for the use of measures is that employers are obliged not to reduce the number of employees by more than 10 percent in the period of three months from the payment of the last direct benefit, i.e., by the end of the year.

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SLOVENIA

Urh Šuštar, Rojs, Peljhan, Prelesnik & Partners, Ljubljana

1. What emergency measures in insolvency or restructuring legislation has Slovenia adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In Slovenia, the bulk of COVID-19 related measures that directly influence the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (**Insolvency Act**) was enacted by the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (**Intervention Measures Act**), which amends the substantial aspects of the Insolvency Act, and by the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (**Provisional Measures Act**), which temporarily amended the procedural aspects of the Insolvency Act. A short overview of the measures that directly influenced the Insolvency Act is the following.

First, the Provisional Measures Act enacted a comprehensive suspension of time limits, i.e. in addition to limitation periods (likely) suspended under the Obligations Code, it introduced suspension of substantial law time limits for exercising of rights of creditors, and procedural time limits in non-essential judicial matters. Thereafter, on 31 March 2020, all bankruptcy proceedings, compulsory settlement proceedings and preventive restructuring proceedings were stayed and the courts undertook no action in relation to such proceedings. These proceedings partially continued on 5 May 2010, whereas the stay ceased on 1 June 2020.

Second, the Intervention Measures Act provided for an exception to the obligation of the directors (management) to file a request for opening of bankruptcy procedure and/or compulsory settlement procedure in case they establish that the company became insolvent because of the reasons connected to the epidemic. This measure continues to be valid for 3 months after the epidemic ends.

Third, the same act also doubled the period (from 2 to 4 months) for which the court may defer ruling on creditor's request for opening of the insolvency proceedings, in case the insolvent company requests deferral to have its share capital increased or to otherwise remedy the insolvency, which is a consequence of the epidemic. Also this measure continues to be valid for 3 months after the epidemic ends.

Fourth, another measure that affects the insolvency legislation is the obligation of the Slovenian banks to grant a 12-month moratorium on repayment of loans, if so requested by the company.

The enacted measures focus on rescue of the companies with the aim to avoid a wave of bankruptcy proceedings, such as the one that followed the 2009 financial crisis. However, the measures listed above are available to the companies only if they meet various conditions, among others, the condition that they were not in financial difficulties and/or insolvent as of 31 December 2019. Moreover, the Intervention Measures Act provides for an additional irrebuttable presumption that a company is insolvent, if it is in default with payment of salaries (and contributions) for 1 month after receiving the state subsidy for the salaries. Although the measures are a welcome assistance to many companies during the epidemics, several limitations as to the eligibility raise concern if the measures will help the companies that need the assistance most. It is expected that the efficiency of the proposed measures will be put to the test after the end of epidemics when the market conditions start to normalise.

2. Do you expect these measures to have any lasting impact on Slovenia 's insolvency legislation or court decisions after the COVID-19 crisis?

The above measures aimed at avoiding insolvency were implemented as a part of emergency legislation package following the reduced business activity connected with the efforts to contain the spread of the virus. Therefore, the majority of the measures is temporary in their nature (such as suspension of time limits) and the measures ceased or are expected to cease within a few months after the end of epidemic. That being said, the above-described temporary measures show the (renewed) rescue focus of the legislator with regard to the insolvency legislation. Whether or not this will result in any further amendments of the Insolvency Act to facilitate timely turnaround, it remains to be seen.

3. Has Slovenia adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Apart from the measures that directly amend the Insolvency Act, the Slovenian parliament adopted several measures to increase the liquidity of the companies, such as purchasing of claims against Slovenian companies, suspending the prepayment of corporate income tax and the payment of self-employment income tax, reducing deadlines for payments to private suppliers in the public sector, redirecting unused ESF funds, and a state guarantee for up to 80% of a new loan, the purpose of which is financing of new investments or finalising ongoing investments, capex, or refinancing of debt from loan agreements entered into after 12 March 2020.

Moreover, the parliament adopted several measures aimed at job preservation, which mainly include a new scheme for co-financing wage compensations, rewarding the persons employed and activated in critical sectors during the epidemic, sick pay and additional funds for already subsidised employments.

Furthermore, several additional measures to stimulate the economy (especially tourism) and to preserve jobs by subsidising reduced work-hours arrangements are expected to come into force early June.

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SPAIN

Héctor Sbert, Lawants, Barcelona

1. What emergency measures in insolvency or restructuring legislation has Spain adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

On 30 April 2020, new emergency measures on insolvency law came into force, in response to the serious crisis of COVID-19.

These measures are mainly directed to address the most likely increase of insolvency proceedings as a result of the health and economic crisis, and to avoid the liquidation of businesses facing critical situations.

The most important measures are:

- The suspension until 31 December 2020 of the obligation of the debtor to apply for voluntary insolvency, in the event of current or imminent insolvency, even if the debtor has already communicated to the Court that negotiations with creditors were being carried out to reach a preventive, restructuring agreement;

- Courts will not admit petitions filed by creditors for mandatory insolvency until 31 December 2020. The voluntary insolvency petitions filed by the debtor prior to 31 December 2020 will be processed with priority over the creditor's petitions, even if the latter have been previously filed;

- The debtor will be able to request the renegotiation of creditors', restructuring and out-of-court agreements reached, instead of being forced to apply for mandatory liquidation in case of risk of default. In addition, the petitions of the creditors regarding non-compliance of such agreements will also be suspended;

- Measures aimed at reducing the length or complexity of insolvency proceedings currently pending or initiated have also been enacted.

Moreover, on 7 May 2020, the Spanish Insolvency Act Recast was published in the Spanish Official Gazette; it will enter into force on 1 September 2020. Thus, both the emergency measures referred to above and the Recast will coexist for some time.

Finally, Spain has to transpose, before 17 July 2021, the Directive (EU) 2019/2013 on restructuring and insolvency. The transposition of this Directive will mean new reforms of Spanish insolvency law.

2. Do you expect these measures to have any lasting impact on Spain's insolvency legislation or court decisions after the COVID-19 crisis?

Some of the measures mentioned above will be applicable way beyond the state of emergency currently in force.

For example, the right of the debtor to request the renegotiation of creditors', restructuring and out-of-court agreements reached will be in force up until one year after the declaration of the state of emergency.

In addition, within nine months from the state of emergency, the petitions of the creditors regarding non-compliance of such agreements will also be suspended.

Also, the enacted measures to reduce the length or complexity of insolvency proceedings currently pending or initiated will be in force up until two years after the declaration of the state of emergency.

Furthermore, one can expect that the suspension, until 31 December 2020, of the obligation of the debtor to apply for voluntary insolvency will have an impact on the workload of insolvency courts as from 1 January 2021, as the number of insolvencies will likely increase from that date onwards, unless companies have been able to deal with their financial issues prior to that date.

3. Has Spain adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

A significant measure of company law that has been introduced is that of not considering the potential losses for the financial year 2020 for the purposes of determining whether a company incurs in a winding-up cause, applicable when the company's net assets are reduced below half of the share capital due to said losses.

This, combined with the suspension of the obligation of the debtor to file for insolvency, will have a positive, relieving impact on the legal sphere companies' directors suffering financial losses. Indeed, directors will be spared from being held personally liable for their company's financial obligations during the financial year 2020, whether the company becomes technically insolvent as a result or not.

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SWEDEN

Siri Mårtensson Hjälmberg, Morris Law, Gothenburg-Stockholm

1. What emergency measures in insolvency or restructuring legislation has Sweden adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In Sweden there are no emergency measure incorporated in the insolvency or restructuring legislation per se enforceable due to crisis in general and no specific emergency measures have been adopted to cope with the economic crisis caused by COVID-19. On the other hand, Sweden work actively to adopt new measures and changes in the existing legislation where it is deemed necessary and executable in accordance with the constitution with purpose to support the society and business. For example, Sweden has instead adopted certain reliefs for instance in tax law and labour law and launched various emergency support packages targeted to various sectors, which is explained further below. However, changes can arise in the insolvency and restructuring legislation onwards since Sweden aim to ensure that the right measures are taken at the right time.

2. Do you expect these measures to have any lasting impact on Sweden 's insolvency legislation or court decisions after the COVID-19 crisis?

With reference to the current legal position it is hard to foretell about the future. New measures taken due to the COVID-19 pandemic are set to a limited period and currently no indications are presented regarding permanent changes of legislations. However, it is not unlikely that current situation will be weight in when legislations are been updated or changed – it is certain that current situation will leave remarks.

3. Has Sweden adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

Sweden has taken several emergency measures to combating the effect on businesses and other areas due to the COVID-19 crisis. Some examples of taken measures are presented below but these are likely to change with short notice and be complemented if needed.

Support for businesses based on loss of turnover. Support is given to businesses with need to reorient and adapt their activities. The support will depend on how large loss of turnover a business has had. The support may vary between 22.5 and 75 per cent of the business's fixed cost excluding wage costs for March and April 2020. Some limitations exist regarding minimum turnover from past year and loss of turnover. Business with F-tax can apply, and companies registered in tax havens are excluded. Maximum amount per business is set to 150 million SEK. It is predicted that it will enter in force 1 July 2020 and the companies must have applied before 31 August 2020. Further specific support programmes have been launched for the culture activities, events, sports and other association activities which has been cancelled due to the pandemic.

The Swedish Government has also presented a **Loan guarantee programme** for small and medium-sized enterprises and possibilities to secure financing through Almi Företagspartner AB (a company owned by the Swedish state conducting venture capital activities).

Temporary discount for fixed rental costs in vulnerable sectors. Vulnerable sectors allocated with this support are for example hotels, retailers, logistical activities, restaurants, consumer services. It is directed towards landlords whom can apply for aid if they reduce fixed rents between 1 April 2020 to 30 June 2020. Another measure is that the government are taken of the payment responsibility to different social contributions such as sick-leave and employer's contributions.

Tax relief to small businesses through increased provision to tax allocation reserve. The new rules mean that 100 percent of the taxable profit for 2019 may be set aside for tax allocation reserve, up to a ceiling of SEK 1 million. As a result, many small companies can get back provisional tax that they paid in 2019. The proposal concerns individual traders and natural persons who are partners in Swedish trading companies. Also, an extension of time regarding payment of certain tax bills is established, extension is valid for one year maximum.

Short-term layoffs has been adopted as a supplementary system of support for short-time work schemes. The new rules entered into force on 7 April 2020, but that they apply from 16 March 2020.

Short-term work involves employees temporarily reducing their working hours. The cost is divided between the employer, employee and central government. The new system means that individual employers affected by temporary and serious financial difficulties that could not reasonably have been foreseen or avoided will be able to receive support for a limited period of time.

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SWITZERLAND

Roman D. Graf, Lenz & Staehelin, Geneva

1. What emergency measures in insolvency or restructuring legislation has Switzerland adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

As a first step, the Swiss federal government declared a **suspension of the limitation periods** for the entire Swiss debt collection system. The Swiss Federal Act on Debt Collection and Bankruptcy (DEBA) allows this measure in the case of an epidemic, public calamity or war (Article 62 DEBA). For an entire month, it was not possible to undertake any debt enforcement acts (other than interim measures) against debtors in Switzerland. The government chose not to extend the suspension out of long-term economic considerations. When a suspension of limitation periods was last declared for the entire country, at the outbreak of the First World War in 1914, it had a lasting negative impact on the payment discipline of Swiss businesses.

Instead, the Swiss federal government enacted a specific **COVID-19 Insolvency Ordinance** intended to relieve pressure on Swiss businesses to request the opening of insolvency proceedings. The Ordinance was adopted after a record short consultation proceeding of 1.5 days. It allowed executive bodies of Swiss businesses to **refrain from notifying the courts in case of a balance sheet over-indebtedness** and to continue trading, if they positively assessed the company's ability to restructure its balance sheet by 31 December 2020. Although the company still had to prepare an interim statement in case of a concern of over-indebtedness, these financials no longer needed to be audited. This requirement was sacrificed to avoid an overburdening of the auditors and further delays. The relaxed filing obligations did not apply to businesses that had already been over-indebted on 31 December 2019 (even if they are allowed to continue trading because of sufficient deep subordinations).

In addition, the COVID-19 Insolvency Ordinance also introduced a **new lighter form of moratorium** to protect small and medium-sized enterprises (SME) from creditor action. It was only available to SME that had not been over-indebted per 31 December 2019 (or if such over-indebtedness was covered by deep subordinations). In comparison to the ordinary composition moratorium – which is generally considered unappealing to SME – this COVID-19 moratorium was supposed to be faster, less complex, and thus cheaper. A court-appointed administrator was only the exception, rather than the rule. Importantly, executive bodies who applied for this COVID-19 moratorium were considered to have complied with their filing obligations in case of over-indebtedness.

Finally, the COVID-19 Insolvency Ordinance also brought a few **facilitations for the ordinary composition moratorium** (no requirement to produce a restructuring plan in court given the current uncertainty and an extension of the maximum duration of the provisional moratorium from four to six months).

The application of the COVID-19 Insolvency Ordinance was finally not extended and expired in late October 2020. The COVID-19 moratorium was not a great success, as it was only used in less than two dozen cases. The suspension of the duty to notify the court in case of over-indebtedness played a more important role in the temporary survival of businesses.

Instead, the Swiss federal government permanently extended the maximum duration of the provisional composition moratorium from six to eight months to facilitate the restructuring of businesses. This extension was already planned in the context of a general revision of Swiss insolvency law to be implemented in a few years.

2. Do you expect these measures to have any lasting impact on Swiss insolvency legislation or court decisions after the COVID-19 crisis?

Most of the above urgency measures have only been adopted for a limited period and were extended beyond what was strictly necessary and politically justifiable. If the principles of the COVID-19 Insolvency Ordinance will indeed be transposed into a formal law (to expire at the end of 2022), a lasting impact is certainly foreseeable. The **collective experience gathered** through these measures will certainly carry weight in the current legislative project aiming at revising the Swiss insolvency laws and, in particular, the rules governing the duty to file for insolvency. It is striking to observe how quickly the Swiss government has been able to introduce clear-cut rules –even holding formal consultation proceedings – in comparison to the laggard parliamentary process that has been going for many years with no end in sight.

3. Has Switzerland adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

In the early months of the pandemic, the Swiss federal government has enacted several further emergency ordinances aimed at helping Swiss businesses in financial distress or has eased the conditions on existing legislative tools.

Among these is a **Swiss liquidity programme**, which enabled banks to issue loans to Swiss businesses with credit support from the Swiss federal government in a quick and straightforward manner. The smaller loans of up to CHF 500,000 (at currently 0% interest), which are covered to 100% by a government surety, were available to existing bank customers within a few hours. The loans were only available to companies that could show that they were significantly affected by the COVID-19 crisis, have been formed before 1 March 2020 and were not already subject to insolvency or liquidation proceedings, among other criteria.

Of particular interest in the present context is that, on the balance sheet, these loans **do not count as debt** in the calculation of over-indebtedness. This is relevant, in particular, for smaller businesses that would otherwise be compelled to file for insolvency (see above).

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UKRAINE

Anton Molchanov, Arzinger

1. What emergency measures in insolvency or restructuring legislation has Ukraine adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

On 18 June 2020 the Ukrainian parliament passed Law No. 3322 "On amendments to the Insolvency Code of Ukraine (aimed at prevention and combating of outbreak and spread of the coronavirus disease (COVID-19)".

The law provides the following changes to insolvency procedures:

a. Allowing creditors meetings via videoconferences (a video record of such meeting should be used as an appendix to the creditors' committee's minutes which are to be signed by a bankruptcy trustee only) or by written voting (under the bankruptcy trustee's written request to all creditors. The request should be based on preliminary creditors' committee's decision concerning the proposed issue).

b. Extending (for all the nationwide quarantine period) deadlines for:

   - preliminary bankruptcy court hearings,
   - insolvency-related clawback actions,
   - creditors' claims moratorium validity,
   - fire sales announcements,
   - performance of a turnaround plan,
   - duration of pending insolvency stages (i.e. asset management, turnaround or liquidation).

c. During the nationwide quarantine + 90 days after the quarantine has been cancelled to apply:

   - Temporary national moratorium on creditors' filing for the debtors' insolvency (if a triggering claim originated after 12 March 2020);
   - Extended timing for mandatory filing for insolvency;
   - Suspension of fire sales;
   - Suspension of default interest accrual over those obligations restructured under a turnaround plan;
   - Availability of instalment for overdue payments under a turnaround plan;
   - Suspension of the debtor's management duty to file for insolvency in case of financial distress (if such distress correlates with the pandemic).

The law is expected to be signed by the President and published within next two weeks. It has not entered into force yet.

2. Do you expect these measures to have any lasting impact on Ukrainian insolvency legislation or court decisions after the COVID-19 crisis?

From practical point of view the proposed measures appear to be unbalanced with creditors' rights (who as well as debtors have been suffering corona-associated distress). Moreover, the amendments propose no causal link between the debtor at stake and coronacrisis influence over its business. This creates a broad field for potential omissions for the businesses actually increasing their revenues resulting the pandemic (as PPE producers, food retails etc.).

3. Has Ukraine adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

No, not yet.

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UNITED KINGDOM

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1. What emergency measures in insolvency or restructuring legislation has the United Kingdom adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

On 26 June 2020 the UK's Corporate Insolvency and Governance Act 2020 came into force after being fast-tracked through Parliament by the UK government in response to the COVID-19 pandemic. Some of the measures in the Act are a direct response to the pandemic and will be temporary. Other steps have been under consideration for some years; they are permanent.

The temporary measures are as follows:

– Restrictions on the presentation of winding-up petitions

  Creditors of a company may not present a winding-up petition based on a statutory demand (a formal demand for payment made under UK insolvency legislation) served between 1 March and 31 December 2020 (originally 30 September 2020 but since extended). This applies to petitions presented on or after 27 April 2020. Likewise, from 27 April 2020 to 31 December 2020, a creditor may not present a winding-up petition based on a company's inability to pay its debts unless the creditor has reasonable grounds for believing that COVID-19 had no effect on the company's financial position or its debt problems would have arisen anyway.

– Mitigating director liability for wrongful trading

  Courts may not take into account the worsening of a company's financial position between 1 March and 30 September when considering the contribution a director must make to a company's assets if that director is found liable for wrongful trading. Directors of financial services companies (including banks, investment firms, insurers, etc) may not benefit from this exemption.

The permanent measures include the following:

– A new moratorium on enforcement

  Companies that are (or are likely to become) unable to pay their debts may apply for a moratorium on the enforcement of claims by creditors. To be eligible, an insolvency practitioner (known as a monitor) must certify that the moratorium is likely to rescue the company as a going concern. The measure is free-standing (i.e. outside any formal insolvency process). It lasts for an initial period of 20 business days, but may be extended. Companies that are (or were recently) subject to an insolvency arrangement may not apply for the moratorium. Some financial institutions are also excluded.

– A new restructuring plan procedure

  Companies that are experiencing (or are likely to experience) financial difficulties that threaten their ability to carry on business may propose a restructuring plan to creditors to alleviate these difficulties. The process, which is similar to the existing scheme of arrangement procedure, must be approved by 75% in value of each class of creditors, although a court may approve a plan even if a class of creditors votes against it.

– Preventing suppliers from exercising contractual clauses to terminate contracts

Suppliers of goods and services to companies in an insolvency procedure may not activate contractual clauses to terminate contracts. As a result, suppliers must continue to supply insolvent companies even if they are owed large sums. The provision is an extension of the current restrictions on suppliers who provide essential goods and services. There are exemptions for financial services firms (including banks and insurers). Small suppliers are also temporarily exempt from the restrictions until 30 March 2021.

2. Do you expect these measures to have any lasting impact on the United Kingdom's insolvency legislation or court decisions after the COVID-19 crisis?

The measures introduced as a direct response to COVID-19 (the first two bullet points above) are temporary and not expected to have any lasting impact on the UK's insolvency landscape. The other steps (the third, fourth and fifth bullet points) are permanent and will assist businesses in difficulty beyond the current crisis. The origins of these rules are not to be found in COVID-19, although their introduction has been fast-tracked as a result of the pandemic.

3. Has the United Kingdom adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

As have many other countries, the UK put together an unprecedented package of measures to support businesses and mitigate the financial impact of COVID-19. These include:

- Government-backed loans to businesses on "attractive" terms. Banks cannot refuse to lend on the basis that companies could obtain funding on normal financial terms and cannot require personal guarantees for smaller loans.
- Support for employers who need to lay off staff temporarily (furlough).
- Exempting most shops, bars and restaurants from paying business rates (a tax based on the value of their premises) until March 2021. The payment by businesses of their VAT liabilities may also be delayed.

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UNITED STATES OF AMERICA

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1. What emergency measures in insolvency or restructuring legislation has the United States adopted to help businesses cope with the economic crisis caused by the COVID-19 pandemic?

In March 2020, the U.S. Congress swiftly passed a series of stimulus packages to help stabilise the economy after COVID-19 forced many businesses to shut down and caused millions of Americans to become unemployed. The third (and latest) of these stimulus packages, the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act; P.L. 116-136), was a US$2 trillion stimulus packages passed on 25 March 2020. The CARES Act directs financial assistance to individual tax payers, expands unemployment benefits to persons that normally would not have qualified for unemployment benefits, provides for federal grants, loans, and other assistance for small businesses and other businesses disproportionately affected by the COVID-19 pandemic, and establishes a US$150 billion Coronavirus Relief Fund to make payments to states, tribal governments, and local governments as they respond to the public health emergency.

Specifically, with regard to insolvency or restructuring legislation adopted to help businesses cope with the economic crisis, the CARES Act provides for several amendments to the U.S. Bankruptcy Code. First, it increases the debt ceiling for businesses to be eligible to file under the small business provisions of Chapter 11 of the Bankruptcy Code from US$2,725,625 to US$ 7,500,000. The Small Business Reorganisation Act ("SBRA"), which took effect on 19 February 2020, just a few weeks before the national shutdown, provides a streamlined path through Chapter 11 for small business debtors. This increased threshold will potentially allow more businesses with access to the SBRA to survive. After one year, however, the debt ceiling increase reverts to US$2,725,625. Second, for a period of one year, the CARES Act amends the definition of "income" under Chapters 7 and 13 to exclude COVID-19 related payments from the federal government. Third, applicable to individuals rather than businesses, it clarifies that the calculation of disposable income under Chapter 13 does not include COVID-19 related payments; and, lastly, permits individuals and families in Chapter 13 proceedings to seek payment plan modifications in response to COVID-19 related financial hardship, including extending payments for up to seven years after their initial payment was due.

In addition, the CARES Act provides the authority to the Administrator of the U.S. Small Business Administration ("SBA") to make loans under the Paycheck Protection Program ("PPP") through the commercial banking market. The PPP is designed to provide a direct incentive for small businesses to keep their employees on the payroll and allows loans to be forgiven if all employees of a business are kept on the payroll for eight weeks and the loan proceeds are used for payroll, rent, mortgage interest, or utilities. While the CARES Act does not prohibit PPP loans or grants to be provided to Chapter 11 debtors, the SBA has taken the position that it does, creating uncertainty for companies operating under Chapter 11 protection and leading to litigation. [See Perspectives on COVID-19 Relief Funding and the Reopening of America, ABI Journal, July 2020, at 8.]

Further, small business owners are able to apply for Economic Injury Disaster Loans ("EIDL") and receive an advance of up to US$10,000, designed to provide economic relief to businesses that are experiencing a temporary loss of revenue. Relevantly, the loan advance does not have to be repaid and recipients do not have to be approved for the loan in order to receive the advance. Contrary to the PPP loans, the SBA administers the EIDL programme directly and not through the commercial banking market.

2. Do you expect these measures to have any lasting impact on the United States' insolvency legislation or court decisions after the COVID-19 crisis?

The amendments to the U.S. Bankruptcy Code provided for under the CARES Act sunset after one year, absent further legislation. Congress is in the process of negotiating further coronavirus relief legislation, but the passing of such legislation will be slower given the increased politicisation of coronavirus-related issues and the upcoming presidential election. It is expected that once the measures expire, the United States will see an increase in Chapter 7 (liquidation) and Chapter 11 (reorganisation) filings. The creation and implementation of the Small Business Reorganisation Act will have the longest-lasting impact on the United States' insolvency legislation or court decisions after the COVID-19 crisis.

3. Has the United States adopted any other measures in response to the COVID-19 crisis that are noteworthy from an insolvency perspective?

The CARES Act deals with several other issues aside from the ones described above. For example, it provides relief to certain industries that have been especially affected by the COVID-19 crisis, such as the airline industry. The Act also contain s provisions that provide financial assistance to states and municipalities, who have been severely affected by the lack of cash flow usually collected through sales taxes, hotel occupancy and other taxes. Even well-managed municipalities will experience significant financial problems in the upcoming months as a result of being cut-off from their traditional sources of cash flow.

Aside from legislation, however, some debtors are finding creative ways of using the U.S. Bankruptcy Code to preserve the value of their businesses. For example, debtors are looking to suspend or "mothball" their cases under 11 U.S.C. § 305(a) and/or 105(a) as a result of the pandemic, while others have been forced into Chapter 7 liquidation, unable to convince stakeholders that the company should stay in Chapter 11. [See Eric J. Monzo, COVID-19 and Chapter 11: Suspension Orders and Their Impact on Creditors' Rights, ABI Journal, June 2020, at 16.] Section 305 allows a case to be dismissed or suspended if "the interests of the creditors and the debtors would be better served," and section 105 allows a court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions" of Title 11 of the U.S. Bankruptcy Code. Based on those provisions, some bankruptcy courts have, over the creditors' objections, allowed debtors to defer certain expenses during the suspension of the case and have kept the automatic stay in place to insulate the debtor from further legal actions.

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