

Restructuring across borders
Hungary

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | JANUARY 2024





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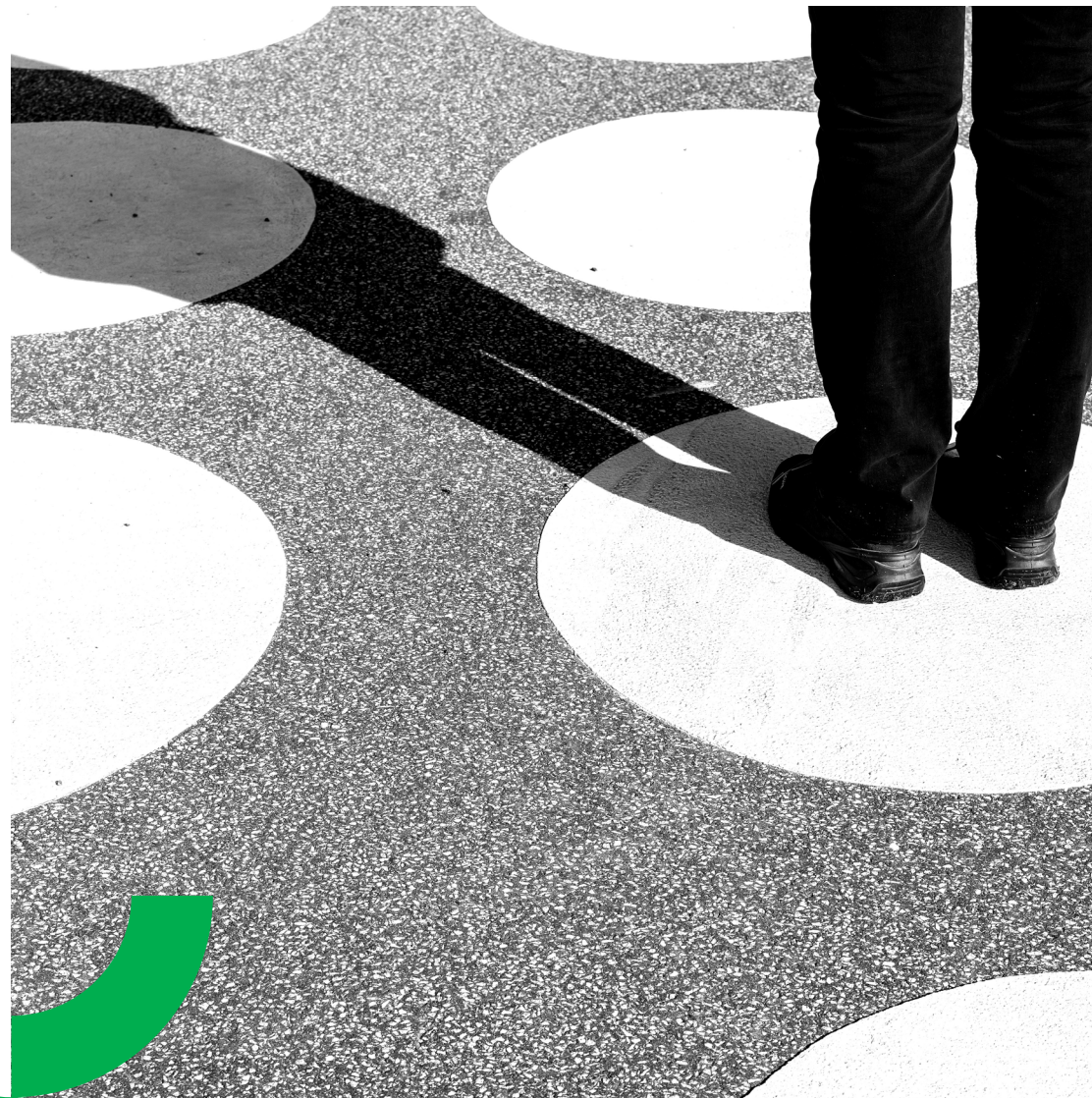
Introduction

Insolvency proceedings in Hungary are regulated by Act XLIX of 1991 on bankruptcy and liquidation proceedings (as amended) (the Bankruptcy Act).

The three principal restructuring and insolvency regimes for companies under Hungarian law are:

- bankruptcy (csődeljárás);
- liquidation (felszámolási eljárás); and
- voluntary winding-up proceedings (végelszámolás).

Companies threatened by insolvency may apply for reorganisation proceedings (szerkezetátalakítási eljárás).



Bankruptcy (csődeljárás)

Bankruptcy is a voluntary procedure which may only be initiated by the debtor company (with the approval of its shareholders) by applying to the court for a moratorium over its payment obligations in order to reach a composition (csődegyezés) with its creditors and to continue as a going concern. If a composition is reached during the bankruptcy proceedings, the liabilities of the debtor may, in theory, be discharged as provided for in the composition. However, historically this procedure has been very rarely used.

The court will automatically grant a temporary moratorium from the business day immediately following the date on which the application for bankruptcy proceedings was filed with the court.

This order will be published in the Companies Gazette (Cégek Közlöny) on the business day immediately following the date of filing for bankruptcy. The temporary moratorium will be effective from the date of this publication.

The purpose of the temporary moratorium is to provide immediate but temporary bankruptcy protection to the debtor until the court issues an order granting or denying a payment moratorium to the debtor (the **Bankruptcy Order**). The Bankruptcy Order will be published in the Companies Gazette on the next business day and the date of publication will mark the commencement of bankruptcy proceedings and the first day of the 180 calendar day moratorium. The duration of the moratorium can be extended to 240 or 365 calendar days from the commencement of the bankruptcy proceedings if a majority of secured creditors with voting rights and a majority

of unsecured creditors with voting rights consent to that extension.¹

Any application for the liquidation of the debtor submitted to the court simultaneously with, or following, any submission of an application to the court for bankruptcy must be stayed until the final closure (termination) of the bankruptcy proceedings. As a result of the moratorium and the stay of liquidation proceedings, if the debtor resorts to bankruptcy proceedings, this is often referred to, in practice, as an “escape into bankruptcy protection”.

If the bankruptcy proceedings are successful, the debtor will continue as a going concern. However, bankruptcy proceedings are typically unsuccessful and are followed by liquidation proceedings.

Financial institutions (including credit institutions, investment firms, insurance companies and voluntary mutual insurance funds) may not be subject to bankruptcy proceedings. Instead, the National Bank of Hungary (Magyar Nemzeti Bank) may take certain measures in relation to a financial institution with a view to ensuring its liquidity or reorganisation.



Liquidation (felszámolási eljárás)

The main purpose of liquidation proceedings is to satisfy the creditors' claims in the manner set out in the Bankruptcy Act.

If the court orders the liquidation of the debtor, it will also appoint a liquidator who will, under the court's supervision, take over the management of the debtor, sell its assets with a view to achieving the best recovery possible, and distribute the proceeds among the creditors. The debtor's debts shall be satisfied from its assets subject to liquidation in the following order:

- costs of the liquidation;
- secured claims;
- annuity liabilities;
- non-business claims of private individuals;
- social security debts;
- other claims;
- additional costs – interest, surcharges and penalties; and
- specific entitlements claims.

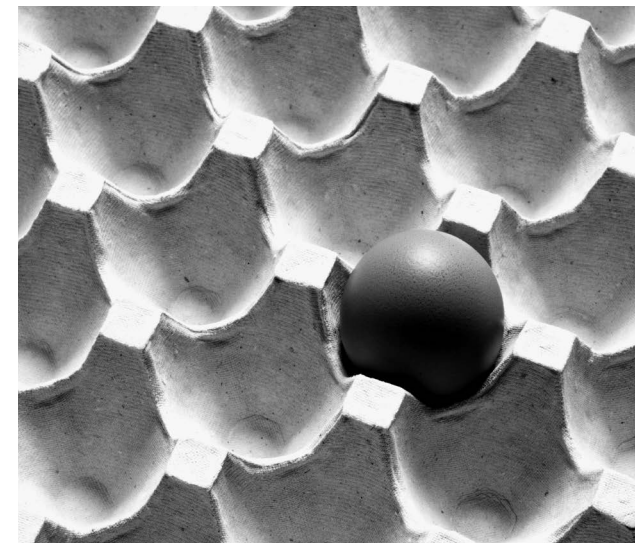
In liquidation proceedings, no formal discharge of debts occurs when the proceedings are closed. However, as the proceedings are designed to liquidate the debtor company and, after distribution of all the assets the corporate existence of the debtor will be terminated, normally there would not be a debtor left in existence against which claims could be enforced.



Adapted proceedings in respect of companies of strategic importance

Adapted bankruptcy and liquidation proceedings apply to business organisations which are specified by a government decree as being strategically significant. In the main, the same rules apply as in standard bankruptcy and liquidation proceedings. An entity may be considered to be of strategic importance if its operations are related to national security, defence, law enforcement, military technology, energy security, energy supply, industrial safety, disaster management, nature protection, environmental protection, public health, public utilities, infrastructure development, cultural heritage protection, mass media, communications, transport, transport safety, research development, public health, or for the supply of basic public services or basic food to the population, or for reasons of national importance, or for reasons of internal or external economic policy, employment policy, or for the supply of district heating or other public utilities to the population.

Entities that carry out projects of national economic importance, that perform a national public task as defined by law, or which carry out waste treatment activities may also be included in this category. An entity that has received large amounts of state restructuring aid, loan guarantees, warranties or export credit insurance, or is engaged in activities that are subject to a concession and has a legal relationship with the state may also fall within this category.



Voluntary winding-up proceedings (végelszámolás)

Voluntary winding-up proceedings are initiated by the members of a company to wind up solvent companies without legal succession. The creditors of the company are required to report their claims to a so-called administrator (végelszámoló), who is the equivalent of a liquidator, but is appointed by the members of the company rather than the court. In the course of the winding-up proceedings, all reported claims must be satisfied in full. Voluntary winding-up proceedings typically last for six to twelve months, but in any case must be concluded within three years. If this deadline is not met, compulsory winding-up proceedings will be initiated against the company, ie the court will start a process ex officio to delete the company from the company registry.



Liquidation (felszámolási eljárás)

Reorganisation, like bankruptcy, is a voluntary procedure which may only be initiated by the debtor company. However, unlike bankruptcy, reorganisation is only available to solvent, but financially distressed, debtors.

The main purpose of reorganisation is to reach a settlement (as approved by the court) with one or more creditors and ensure the continued operation of the debtor. To this purpose, the debtor may apply for a moratorium of generally 90 days or more over its payment obligations. If the moratorium affects all creditors of the debtor, then the reorganisation proceedings will be publicised. If only select creditors are involved in the reorganisation, then the reorganisation may be kept confidential.

Similarly to the rules of bankruptcy, financial institutions may not be subject to reorganisation.

Reorganisation proceedings were introduced in Hungary with effect from July 2022, therefore, there is limited case law available on their application or success in practice.



European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency “rescue” proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings but secondary proceedings are no longer restricted to a separate list of winding up proceedings - secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, bankruptcy (*csődeljárás*) and liquidation (*felszámolási eljárás*) were available as main proceedings under the Original Regulation.

Only liquidation (*felszámolási eljárás*) was available as a secondary proceeding under the Original Regulation. It was thought that the adapted proceedings in respect of companies of strategic importance would also be available as main or secondary proceedings as relevant.

Under the Recast Regulation, both bankruptcy (*csődeljárás*) and liquidation (*felszámolási eljárás*) are listed in Annex A, as well as public reorganisation (*nyilvános szerkezetátalakítási eljárás*).



Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email rab@aoshearman.com

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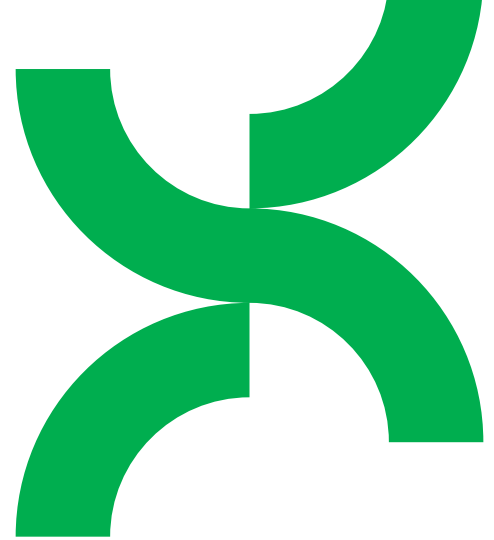
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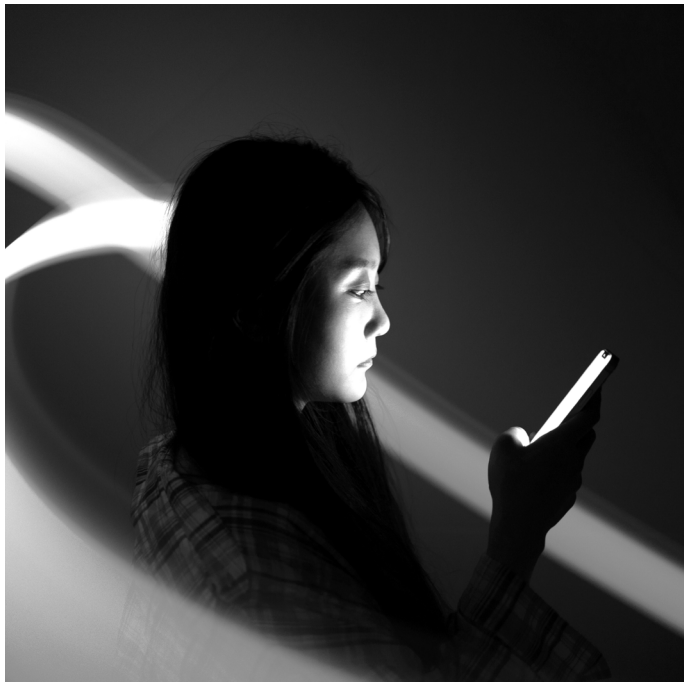
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Further information

Developed by A&O Shearman's market-leading Restructuring group, "**Restructuring Across Borders**" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please [click here](#).



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