A&O SHEARMAN

Restructuring across borders
Slovakia

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | APRIL 2025

Contents

Introduction

The Slovak insolvency rules are embodied in three pieces of legislation: (i) Act No. 7/2005 Coll. on Bankruptcy and Restructuring (the **Insolvency Act**), which lays down the rules for insolvency proceedings; (ii) Act No. 8/2005 Coll. on Insolvency Receivers (the **Insolvency Practitioners Act**), which provides the framework for the business conduct of insolvency practitioners.; and (iii) Act No. 111/2022 Coll. on resolving imminent insolvency (the **Preventive Restructuring Act**) which lays down the rules for preventive restructuring proceedings.

As a follow-up to the reform of insolvency legislation in the Slovak Republic in 2004 and its consequent change in autumn 2011, which has significantly altered the dynamics of the bankruptcy and restructuring process and the relationships between the parties involved in bankruptcy and restructuring proceedings, the Slovak Parliament enacted in April 2015 a significant amendment to the Insolvency Act (the 2015 Amendment) as a response to the problematic restructuring of a major Slovak construction company. The purpose of the 2015 Amendment was to react to the concerns arising out of insolvency proceedings in the Slovak Republic and to other related problems in commercial relations and the social impact thereof. The essential objective of the 2015 Amendment was to restrict harmful behaviour towards creditors and strengthen the responsibility of the business community.

The key areas covered by the 2015 Amendment are as follows:

- a revised definition of the cash flow insolvency test;
- a re-defining of the monetary sanction payable by statutory representatives of the debtor for failing to file the bankruptcy petition on time;
- a mechanism facilitating the filing procedure for an employer's bankruptcy by its employees;
- the imposition of additional conditions that must be met by a debtor in order for an insolvency receiver to recommend its restructuring;
- rules restricting the distribution of profit in companies in restructuring;
- a mechanism for awarding creditors voting rights by the court in bankruptcy and restructuring proceedings;
- additional rules regarding quasi-security (retention of title and financial leasing);
- rules restricting changes to be made to the corporate structure (such as fusions, mergers or de-mergers) of companies in bankruptcy and restructuring without consent; and
- the ability to change the restructuring plan in the approval meeting.

Introduction (cont.)

A further significant amendment to the Insolvency Act came into effect in March 2017 (the **2017 Amendment**). The main objective of the 2017 Amendment was to introduce a separate insolvency regime for natural persons. This factsheet is limited to corporate insolvency, and as such the new regime is not discussed.

The 2017 Amendment reflects the creation of a public sector partners register, which is explained below.

In May 2022 the Preventive Restructuring Act came into force as transposition of Directive (EU) 2019/1023 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, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). The Preventive Restructuring Act sets out the rules for public preventive restructuring, private preventive restructuring and temporary protection of businesses.

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

- bankruptcy (*konkurz*);
- restructuring (*reštrukturalizácia*); and
- informal restructuring.

Bankruptcy (*konkurz*)

PURPOSE OF PROCEEDINGS

The purpose of bankruptcy proceedings is to resolve the debtor's insolvency by realising its assets and collectively satisfying the debtor's creditors. Either the debtor itself or its creditors have the right to file a petition for bankruptcy. However, the debtor must apply for its own bankruptcy within 30 days of the day on which it became aware of, or (if it acted with professional care) could have become aware of its own insolvency (ie the debtor meets the balance sheet insolvency test or the cashflow insolvency test). The same duty applies to the persons authorised to act for and on behalf of the debtor (ie its statutory representative or liquidator in any solvent liquidation). The latest amendments to the Insolvency Act adjusted the cashflow insolvency test so that a legal entity is deemed to be cashflow solvent if, taking into account all circumstances, it can be reasonably assumed that it is possible to continue with the operation of its business and the management of its assets and the difference between the amount of its due financial liabilities and financial assets ("coverage gap") is less than 1/10 of the aggregate amount of its due financial liabilities, or the coverage gap has not decreased below this level for a period longer than 60 days.

If a person responsible for applying for bankruptcy on behalf of the debtor (ie its statutory representative or liquidator in a solvent liquidation) fails to do so in a due and timely manner, he or she is liable (i) for any damage caused to the creditors of such debtor by such failure to apply for bankruptcy and (ii) to pay a penalty of EUR12,500 under Section 11(2) of the Insolvency Act (being an amount equal to half of the lowest required value of registered capital for a joint stock company). Unless a different amount of damage is proved by the respective creditor, it is deemed that the amount of damage caused to a creditor equals the amount of such creditor's claim as remains outstanding after the bankruptcy proceedings are stopped or terminated due to insufficiency of the debtor's assets. A valid and enforceable court decision imposing an obligation to compensate for such damage is treated as a 'decision on exclusion' of a statutory representative, meaning that this statutory representative may not perform the functions of a statutory representative or be a member of a supervisory body in any company or cooperative in the Slovak Republic for a period of three years from the date on which this court decision becomes enforceable.

A court decision imposing a fine for failing to cooperate with the receiver under Section 74(6) of the Insolvency Act has the same consequences.

Bankruptcy (*konkurz*) (cont.)

COMMENCEMENT OF PROCEEDINGS

When the court ascertains that the debtor's or creditor's petition for a declaration of bankruptcy formally complies with the statutory requirements, the court must decide to commence the bankruptcy proceedings by issuing a resolution within 15 days from receipt of the petition. Otherwise, the court must request that the applicant remedy the defects within ten days and, if the applicant fails to do so, the court will reject the petition within 15 days thereafter. The court resolution on the commencement of the bankruptcy proceedings must be published in the Commercial Bulletin without delay after it has been issued. The commencement of the bankruptcy proceedings takes effect the day following the publication.

The major effects of the commencement of bankruptcy proceedings are as follows:

(i) the debtor must restrict its activities to ordinary legal acts only;

(ii) a resolution on the fusion, merger or de-merger of the debtor cannot be adopted and any change resulting from such resolution cannot be registered in the commercial register;

(iii) there is an automatic stay of individual court or administrative enforcement proceedings in respect of the assets owned by the debtor, and new proceedings cannot commence;

(iv) there is an automatic stay of enforcement actions by individual secured creditors (save for enforcement of a security interest over bank accounts, government bonds, transferable securities or continued enforcement of a security right by a public auction), and new proceedings cannot commence; and

(v) there is an automatic stay of proceedings on the termination of the debtor without liquidation.

The above effects are a consequence of the first phase of the two-step procedure the court must follow when deciding on the declaration of bankruptcy. In the first phase, the court merely decides whether or not to commence the proceedings.

This should be a relatively straightforward process, as the only requirement for the court to commence the proceedings is the receipt of a complete petition (ie the court only assesses whether the petition meets the statutory requirements). This is why the period for a court to decide whether to commence the proceedings is relatively short – within 15 days after the petition has been received. In contrast, the second phase of the decision-making process gives the court some room to consider the substance of the case and to decide whether or not to declare (ie to order) the debtor's bankruptcy.

If the bankruptcy proceedings are commenced by a petition of one or more creditors, the court will deliver, within five days from the commencement of the bankruptcy proceedings, the counterpart of the petition to the debtor. In addition, the debtor is requested by the court to prove its solvency within 20 days after delivery of the request. A court hearing date will be set, which must take place no later than 70 days after the bankruptcy proceedings have been commenced (unless the debtor waives its right to a court hearing). If the debtor fails to prove its solvency within the specified periods (or if it omits to communicate at all), the court will declare the debtor bankrupt. The court must decide on the declaration of bankruptcy: (i) within seven days after it has examined all the evidence; or (ii) after the debtor has waived its right to a court hearing. Alternatively, if there are circumstances indicating that the debtor may have no assets, before the bankruptcy declaration, the court shall appoint a preliminary receiver (*predbežný správca*) to verify whether the property of the debtor will be sufficient to at least cover the costs of bankruptcy. The debtor and any creditors that have filed the petition can appeal against the court decision terminating the bankruptcy proceedings (ie where the court does not make the bankruptcy declaration). In addition, the debtor can appeal against a court decision declaring the debtor bankrupt. The appellate court must decide the appeal within 45 days of the case being referred to it.

Bankruptcy (*konkurz*) (cont.)

If the bankruptcy proceedings are commenced by the debtor's petition, the court will declare the debtor's bankruptcy within five days from the commencement of the bankruptcy proceedings. Also, if the bankruptcy proceedings are commenced by a petition filed by a liquidator appointed by the court from the list of receivers, the court will, within five days from the commencement of the bankruptcy proceedings: (i) declare the debtor's bankruptcy; or (ii) stop the bankruptcy proceedings due to the lack of debtor assets. If it declares the debtor's bankruptcy, the liquidator will be appointed as the receiver.

Alternatively, the court can appoint a preliminary receiver (if there is any doubt as to whether the property of the debtor will be sufficient to at least cover the costs of the bankruptcy).

If a preliminary receiver is appointed, he or she will produce a report on whether the debtor's property will cover the costs of the bankruptcy. The court will stop the bankruptcy proceedings should the preliminary receiver discover that the debtor has no assets. Otherwise the court shall declare the bankruptcy within ten days from the delivery of the preliminary receiver's report.

In the court resolution by which the bankruptcy is declared, a receiver (*správca podstaty*) is appointed for the purpose of administering and realising the debtor's estate. The receiver appointed by the court is selected randomly. For this purpose the court must use technical equipment specially designed for this task to ensure that the selection of the receiver is impartial. The equipment referred to herein is a computer software that randomly selects the receiver from a list of eligible receivers (those having an office in the district of the bankruptcy court where the proceedings are conducted).

This is similar to the computer software used when court cases are being allocated to judges. If (i) the debtor is a financial institution, (ii) the debtor's turnover in last calendar year prior to declaration of bankruptcy exceeded EUR10 million, (iii) the debtor's assets as evidenced by its latest financial statements exceeded EUR10m, then the receiver can only be appointed if it is entered in the list of special receivers in line with Section 20a(c) of the Insolvency Practitioners Act. A special receiver will also always be appointed in restructurings and public preventive restructurings.

INSOLVENCY REGISTER

Effective as of 1 October 2025, the previously established communication channel – Register of Debtors (*Register úpadcov*) will cease to exist and will be replaced by the Insolvency Register (*Insolvenčný register*). The Insolvency Register will be available on the website of the Slovak Ministry of Justice and will contain more detailed set of information on all proceedings and debtors covered by the Insolvency Act and will become the primary communication channel in relation to insolvency matters (also replacing the Commercial Bulletin (*Obchodný vestník*) to some extent).

Bankruptcy (*konkurz*) (cont.)

CREDITORS' MEETINGS AND COMMITTEE

After the bankruptcy has been declared, the receiver convenes a first creditors' meeting (*schôdza veriteľov*) within 55 days of declaration of the bankruptcy, which will not take place before the 105th day after the declaration of bankruptcy. The receiver shall also convene any subsequent creditors' meeting whenever it receives a request to do so from: (i) creditors holding at least 10% in nominal value of the registered claims; (ii) the creditors' committee; or (iii) the court. This creditors' meeting is to take place no earlier than 20 days and no later than 30 days after the delivery of the request. If the receiver does not convene the creditors' meeting despite its statutory obligation to do so, the creditors' meeting shall be convened by the court instead. The breach of the receiver's obligation to convene the creditors' meeting is deemed to be a material breach of the receiver's obligations – as a result, the court can remove the receiver. The creditors' meeting can take place via video conference or other methods that allow transmission of video and audio recording if this is approved by the court or the creditors' committee.

The purpose of a creditors' meeting is: (i) to vote on the replacement of the receiver; (ii) to elect a creditors' committee of three to five members (*veriteľský výbor*) to represent the interests of the creditors; and (iii) to express an opinion on any issue related to the bankruptcy. The first creditors' meeting must always consider and vote upon whether it approves the receiver randomly appointed by a court, or whether it will replace that receiver with a new one elected by the creditors' meeting. Any subsequent creditors' meetings may replace the receiver only if: (i) the receiver repeatedly or seriously breaches obligations prescribed by the law; (ii) the voting rights of all creditors have changed materially (by at least 30%) from the last creditors' meeting (eg if the number of votes of all creditors has increased/decreased by at least 30%); or (iii) at least three-quarters of all creditors' votes by value approve the replacement. If the court deems it necessary, it can institute an interim creditors' committee before the first creditors' meeting takes place. The interim creditors' committee has three to five members appointed by the court so that the relevant creditors are represented and so that there is representation for both secured and unsecured creditors. The interim creditors' committee acts as the creditors' committee until the first creditors' meeting.

Bankruptcy (*konkurz*) (cont.)

FILING OF CLAIMS

When the court makes a declaration of bankruptcy, it will also request that the creditors file their claims within 45 days from the bankruptcy declaration. All secured claims must be filed within the 45-day period as any security interest over the debtor's assets will not be taken into account if the claim is not filed within the 45-day period. All claims must be filed electronically to the electronic mailbox of the receiver using a specified form and must be authorized. Both secured and unsecured claims may be filed after this deadline but the creditor is stripped of any voting rights with respect to such claim. Creditors who file their claims late simply take part in any distribution which takes place after their claim is filed and will not catch up with any distributions that have been made before their claim was filed. Both creditors who have filed their claims and the receiver can contest the filed claims. The receiver must investigate each filed claim with professional care and compare it with the debtor's accounting books and list of liabilities'. The receiver must also conduct independent investigations in order to ascertain the status and reasons for disputing a filed claim. A filed claim cannot be contested solely on the ground of discrepancies in the accounting books of the debtor or on the basis of statements made by the debtor or other persons whose interests may be aligned with the interests of the debtor (eg the debtor's current or previous legal, accounting or tax advisors). If a creditor contests a claim of another creditor, the creditor whose claim is contested can request the court (through the receiver) to grant the creditor voting rights with respect to its contested claim, until the court decides whether the objection is justified or not. A special position is granted to: (i) a creditor whose claim is contested by another creditor; (ii) a creditor of a claim confirmed by a court decision or other document which can serve as an execution title; and (iii) a secured creditor. If a claim of any such creditor is contested, the receiver is, upon the request of such a creditor, obliged to submit the creditor's claim to a court to decide on the awarding of voting rights to that creditor

The insolvency legislation encourages the receiver to involve creditors with accepted claims in the key parts of the decision-making process. This is achieved by the legislation prescribing, in quite a detailed manner, the steps that the receiver should follow in this respect. For example, any material actions in relation to secured assets must be discussed with all the stakeholders in such assets (including not just first-ranking secured creditors, but also any other secured, and possibly unsecured, creditors having an economic interest in the residual value of the same assets).

CONTINUATION OF BUSINESS

The receiver can continue the running of the debtor's business only if certain criteria are met. In particular, the business should be kept going only if the receiver can reasonably assume that by running the business the creditors will be better off than if the business was terminated. At the same time, the receiver must be able to pay all post-bankruptcy claims due to public authorities (such as taxes, social security contributions, custom duties etc). Additionally, the value of the assets forming separated bankruptcy estates (ie those assets subject to security interests) must not significantly decrease as a result of running the business.

As the continuation of the debtor's business is conceptually a rescue measure, it should, due to the risks related to the operation of any business, be used in bankruptcy proceedings only where it is economically justifiable.

Bankruptcy (*konkurz*) (cont.)

REALISATION OF ASSETS AND DISTRIBUTION TO CREDITORS

Another task of the receiver is to realise the debtor's estate in a way that ensures that the highest possible proceeds will be obtained within the shortest possible period whilst incurring the lowest possible costs. When realising the bankruptcy estate, save for certain exemptions, the receiver is free to use any available method of realisation. However, the receiver must always act with professional care and ensure that the objective of realisation mentioned above (ie in respect of proceeds, time and costs) is fulfilled. Except for the sale of perishable goods, the receiver may realise any other material assets only after the first creditors' meeting has taken place (to ensure that the realisation is made by the receiver approved and/or elected by the creditors).

The distribution of proceeds will take place after all or substantially all of the assets have been realised. However, if possible, the receiver should distribute the proceeds after a partial realisation of assets. A secured creditor (with respect to its separated bankruptcy estate) or the creditors' committee (with respect to the general bankruptcy estate) may ask the court to order that the receiver makes a partial distribution of proceeds.

After all the assets have been sold, the receiver is responsible for drawing up the final account and final distribution order. The court will only get involved if objections are raised against this account and order.

TERMINATION OF PROCEEDINGS

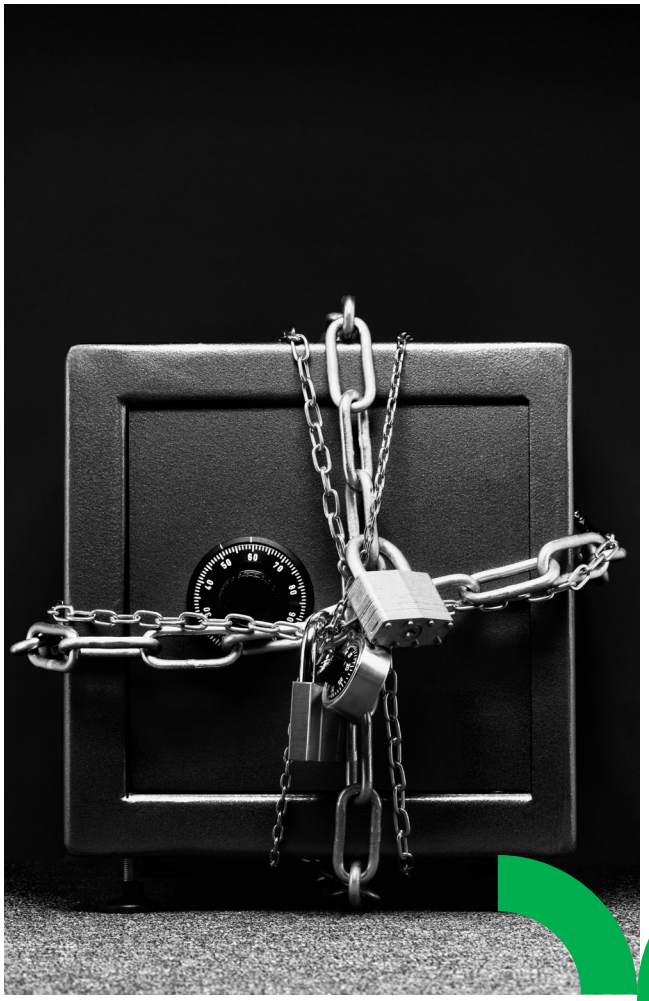
Once all the proceeds from the liquidation of the debtor's estate have been distributed, the bankruptcy proceedings will be terminated by court order. The termination of the proceedings does not have the effect of releasing the claims of creditors who have not been discharged in full. The Insolvency Act does not provide any details as to how the claims could be enforced after the termination of the bankruptcy proceedings if any new assets of the corporate debtor subsequently emerge.

PUBLIC SECTOR PARTNERS REGISTER

As a result of new legislation concerning the partners of the public sector (Act No. 315/2016 Coll. on the public sector partners register), which came into force as of 1 February 2017, the 2017 Amendment introduced a new requirement on creditors of a debtor who is registered on the public sector partners register (the **Register**).

If a debtor is registered on the Register, or it has been registered on the Register in the five years prior to the declaration of its bankruptcy or the opening of its restructuring, any creditor of the debtor who is (a) not a public administration body, a bank, or foreign bank or foreign bank with registered seat in an OECD member state, electronic money institution, insurance company, reinsurance company, health insurance company, asset management company, securities broker, stock exchange or central depository of securities, and (b) whose claims against the debtor exceed the aggregate amount of EUR1m, is considered to be the debtor's affiliated party (within the meaning of Section 9 of the Insolvency Act) until it provides evidence to the insolvency receiver that it has been registered on the Register. The exceptions referring to various entities listed above only apply to Slovak entities within the relevant designation as defined in the Insolvency Act, and as of 1 March 2024 also to branches of foreign banks and foreign banks with a registered seat in an OECD member state.

Bankruptcy (*konkurz*) (cont.)



On this basis, if a creditor does not register, it will be regarded as the debtor's affiliated party and aimed at protecting the rights the debtor's liabilities will be considered related party liabilities. Special considerations apply to related party liabilities. First, such liabilities are automatically and fully subordinated to the liabilities owed by the debtor to its unaffiliated creditors and such related-party liabilities will not be satisfied in the bankruptcy proceedings (in full or in part) before full satisfaction of all other unsubordinated liabilities of the debtor registered in said bankruptcy proceedings. Second, related-party liabilities cannot receive equal or better treatment than unsubordinated liabilities owed to unaffiliated creditors registered in the said restructuring proceedings. Furthermore, any security over the assets of the debtor will be, to the extent that it is securing such related-party liabilities, disregarded in the relevant bankruptcy or restructuring proceedings in the Slovak Republic.

Effective from 1 March 2024, contractual arrangements or statutory rights of a creditor aimed at protecting the rights or legitimate interests of the creditor in connection with the provision of financial services to the debtor (including their collateral) are not to be considered exercise of influence over the management of the debtor and therefore such creditor cannot be considered a creditor of a related-party liability solely on the grounds of such arrangements or statutory rights.

Restructuring (*reštrukturalizácia*)

PURPOSE OF PROCEEDINGS

Rather than filing for bankruptcy, a petition for restructuring may be filed. In legal terms, the purpose of restructuring is to resolve the debtor's insolvency by gradually satisfying the debtor's creditors in the manner agreed in a restructuring plan. The main idea is to rescue financially troubled businesses whenever there is a real chance that the business is economically viable and where the rescue will not be at the expense of creditors.

The key features of the restructuring proceedings are that:

(i) the feasibility of the restructuring must be supported by an expert opinion prepared by a restructuring receiver before the petition for restructuring is filed (the restructuring receiver may be appointed either by a debtor or a creditor with the consent of the debtor);

(ii) there will be a moratorium on creditors' claims against the debtor;

(iii) the debtor remains in possession of its business under the supervision of a restructuring receiver, the court and the creditors;

(iv) the outcome of the restructuring proceedings is a restructuring plan that must be approved by relevant majorities of creditors (and in some circumstances, also by the shareholders) and subsequently confirmed by a court;

(v) there is the option of binding dissenting creditors with the plan (cram-down); and

(vi) "new money" provided in the course of the restructuring proceedings enjoys a priority ranking (but only over the unsecured and not the secured creditors).

Restructuring (*reštrukturalizácia*) (cont.)

COMMENCEMENT OF PROCEEDINGS

A debtor may file a petition for the declaration of restructuring if a restructuring receiver has prepared a restructuring opinion and in the prepared opinion (which must not have been written more than 30 days prior to the date of the filing of the petition) the receiver recommended the restructuring.

The debtor may appoint the receiver to prepare the opinion if it is insolvent. The purpose of the opinion is to see whether the preconditions for the debtor's restructuring are satisfied. The opinion must be prepared by a receiver who is included in the list of qualified insolvency practitioners. The receiver must prepare the opinion in an impartial manner using professional care. The persons who instructed the receiver to prepare the opinion must provide the receiver with the required cooperation, especially with all documents, information and explanations necessary for a proper preparation of the opinion.

The debtor's creditors are allowed to appoint the receiver and to file a petition for restructuring themselves. However, in practice, this requires substantial cooperation on the part of the debtor. Therefore, unless the debtor agrees with the use of restructuring proceedings, the successful initiation of this type of insolvency proceeding by the creditors may be somewhat hypothetical.

In the opinion, the receiver will recommend a restructuring of the debtor only if the following conditions are met:

- the debtor is a legal entity;
- the debtor performs a business activity;
- the debtor is insolvent;
- it is reasonable to expect that at least a material part of the operation of the debtor's business can be preserved; and
- it is reasonable to expect that if a restructuring is permitted, the extent of satisfaction of the debtor's creditors will be higher than if bankruptcy was declared.

One of the goals of the 2015 Amendment was to increase the transparency of insolvency proceedings in the Slovak Republic. New terms under which the receiver can recommend restructuring were introduced: only a company which keeps its accounts in accordance with applicable regulations will be able to enter into the restructuring process. A list of all legal acts of the debtor with its related parties, the value of which exceeds the statutory threshold, must be attached to the petition for the declaration of restructuring. In addition, the debtor company will be obliged to describe all transactions and legal acts with related parties that caused the company damage prior to the restructuring. The receiver can only recommend restructuring if at least two years have passed since any previous restructuring or public preventive restructuring (if it ended other than by confirmation of a public plan) of the debtor or its legal predecessor.

Restructuring (*reštrukturalizácia*) (cont.)

The opinion must contain a detailed analysis of the debtor's legal acts with related parties and the persons providing a guarantee for, or securing, the debtor's obligations, together with a list of the assets securing the obligations. These new requirements are aimed at simplifying the circumstances under which the court and creditors are able to reasonably consider the proposed restructuring, and the likely rate of return, compared to its alternative, bankruptcy. Additional information which must be contained in the opinion includes data on the amount of net income and other own resources of the debtor which have been distributed to the debtor's shareholders during (as a minimum) the preceding two years, and a statement of an auditor or an expert witness confirming that the debtor's f inancial statements attached to the petition for the declaration of restructuring provide a true and complete picture of the debtor's financial situation.

In its schedule, the opinion must contain an agreement on the fees to be paid to the receiver for the preparation of the opinion and its further cooperation in connection with the restructuring. It may also contain a draft restructuring plan and binding declarations of the debtor and of one or more creditors agreeing to the proposed plan (ie the concept of a pre-packaged plan).

If the court ascertains that the petition for restructuring complies with the statutory requirements, the court must decide to commence the restructuring proceedings within 15 days of receipt of the petition. Otherwise it shall reject the petition within the same period of time. The court resolution on the commencement of the restructuring proceedings must be published in the Commercial Bulletin without delay after it has been issued. The commencement of the restructuring proceedings takes effect the day following such publication.

The effects of the commencement of restructuring proceedings are as follows:

- the debtor must restrict its activities to ordinary legal acts only – any other legal acts of the debtor are subject to approval by the receiver who prepared the opinion;
- a resolution on the fusion, merger or de-merger of the debtor cannot be adopted and any change resulting from such resolution cannot be registered in the commercial register;
- there is an automatic stay of individual court or administrative enforcement proceedings in respect of the claims of unsecured creditors, and new proceedings cannot commence;
- there is an automatic stay of enforcement actions by individual secured creditors (without any exceptions), and new proceedings cannot commence;
- counterparties may not terminate or rescind an agreement entered into with the debtor due to the debtor's default in any payment or performance that the other party became entitled to before the commencement of the restructuring proceedings – any termination or rescission of the agreement for this reason is ineffective;
- any contractual provisions or stipulations allowing the other party to terminate or rescind an agreement entered into with the debtor due to restructuring proceedings or bankruptcy proceedings are ineffective; and
- no claim that originated before the commencement of the restructuring can be set off against the debtor.

Restructuring (*reštrukturalizácia*) (cont.)

After the restructuring proceedings have been commenced, the next step for the court is to ascertain whether all preconditions to ordering a restructuring have been satisfied. However, the court does not analyse the economic feasibility of the restructuring, as it is bound by the recommendation of the receiver as expressed in their opinion. In other words, unless the opinion suffers from any formal deficiencies, if the receiver has recommended the restructuring, the court is obliged to issue a resolution pursuant to which the restructuring is ordered. The court must decide whether or not to order a restructuring within 30 days of their commencement of the restructuring proceedings.

RELATIONSHIP WITH BANKRUPTCY

In the case of concurrent petitions for bankruptcy and restructuring, the Insolvency Act prefers the latter, allowing, in certain circumstances, bankruptcy proceedings to be suspended in favour of restructuring proceedings (but only up until the stage where bankruptcy is declared – once bankruptcy is declared it is no longer possible to suspend bankruptcy proceedings in favour of restructuring proceedings).

Where the debtor is preparing an application for restructuring proceedings, the court shall suspend any ongoing bankruptcy proceedings if requested to do so by the debtor and if the debtor submits sufficient evidence that the restructuring receiver appointed by the debtor is preparing an opinion on the feasibility of restructuring. The court will automatically continue with the suspended bankruptcy proceedings after the 60th day from the suspension of the bankruptcy proceedings (this means that the debtor has 60 days' breathing space to obtain a court order commencing restructuring proceedings).

If the court has commenced restructuring proceedings during ongoing bankruptcy proceedings that were initiated by an earlier petition, the ongoing bankruptcy proceedings are automatically suspended until the court orders the restructuring or until the restructuring proceedings are terminated. The restructuring proceedings will be terminated if, for example, the petition for restructuring does not meet the statutory requirements. If the court terminates the restructuring proceedings, the suspended bankruptcy proceedings shall resume. If, on the other hand, the court orders the restructuring, it will also terminate the suspended bankruptcy proceedings.

Restructuring (*reštrukturalizácia*) (cont.)

In contrast, if certain conditions are met, the conversion of a restructuring into a bankruptcy is possible even after the restructuring has been ordered. This could happen, for example, if the financial situation or the business situation of the debtor has changed to the extent that the successful completion of the restructuring can no longer be reasonably expected. The other triggers for the conversion into bankruptcy are, for example, if the debtor or the restructuring receiver seriously or repeatedly breach their respective obligations prescribed by the Insolvency Act or if there are material procedural defects and/or breaches of applicable law during the restructuring proceedings. Creditors can also bring about a conversion if, at the request of a creditor having at least 10% of all votes by value, the creditors by a simple majority of votes by value approve the conversion.

FILING OF CLAIMS

In the resolution by which the court has ordered the restructuring, the court will appoint a receiver (*reštrukturalizačný správca*), request the creditors to file their claims within 30 days of the court order, and determine the scope of those legal acts of the debtor that will be subject to prior approval by the receiver. The receiver appointed by the court is selected randomly using the technical equipment specially designed for this task.

The requirement to file claims within 30 days applies to both unsecured and secured creditors. If a creditor fails to meet this deadline, it shall not be able to exercise its rights in the proceedings or participate in the restructuring plan. The filing of claims after the expiration of the deadline has no effect – the creditor cannot remedy the failure to file the claim in time by filing after the deadline. The claims have to be filed with the receiver electronically and must be authorised.

A filed claim can be contested only by the receiver, and within 30 days from the date on which the time period for filing of claims lapses. The debtor and any creditor that has filed a claim can submit a suggestion to the receiver to contest any filed claim. The receiver has an obligation to investigate each such suggestion with professional care.

CREDITORS' MEETINGS AND COMMITTEE

After the restructuring has been ordered, the receiver will convene a creditors' meeting (*schôdza veriteľov*) within 30 days of ordering the restructuring so that the meeting takes place no earlier than on the 30th and no later than on the 45th day after the date on which the time period for contesting claims lapses (ie no earlier than on the 90th and no later than on the 105th day after the court orders the restructuring). The creditors' meeting can take place virtually if the court approves the receiver's request for the meeting to take place in this manner. The purpose of the creditors' meeting is to express an opinion on any issue related to the restructuring and to elect a creditors' committee (*veriteľský výbor*). The creditors' committee, consisting of either three or five members, represents the interests of both the secured and unsecured creditors. If the court ordered the restructuring on the basis of a creditor's petition, the creditor who filed the petition is always a member of the creditors' committee.

However, unlike in bankruptcy proceedings, it is not mandatory for the creditors' meeting to vote on the approval or replacement of the receiver. In fact, a change of receiver is possible only if the originally appointed receiver dies, ceases to exist (if the receiver is a legal person) or if a statutory obstacle prevents the receiver from performing its office. In this case the court will remove the original receiver and appoint a new receiver on the basis of a random selection made by the technical equipment specially designed for this task. The 2015 Amendment sets out that the receiver can also withdraw from its function on grounds other than the grounds for which the court may remove the receiver. In this case, a new receiver will be appointed on the basis of a random selection made by the technical equipment specially designed for this task.

Restructuring (*reštrukturalizácia*) (cont.)

The ordering of a restructuring does not deprive the debtor of the control over its business. The debtor remains in possession of its business – however, it is under the supervision of a restructuring receiver, the court and the creditors. In addition, in the resolution ordering the restructuring, the court may determine the scope of those legal acts of the debtor that will be subject to prior approval by the receiver. The scope of these legal acts may be extended by the creditors' committee at any time during the restructuring proceedings.

RESTRUCTURING PLAN

As already mentioned above, the key idea and the desired outcome of the restructuring proceedings is a restructuring plan (the Plan), which needs to be approved by the relevant majorities of the creditors (and, in some circumstances, also by the shareholders) and subsequently confirmed by the court.

In legal terms, the Plan is a document providing for the creation, variation or termination of rights and obligations of persons identified in it as well as the scope and method of satisfaction of those parties to the Plan who are either creditors with filed claims or the debtor's shareholders. Once the court approves the Plan, the Plan is binding on all parties to the Plan. The Plan consists of a descriptive part and a binding part.

The Plan has to be drafted so that it provides for the highest possible extent of satisfaction of the creditors. The satisfaction of the claims of unsecured creditors under the Plan must be at least 20% higher than it would be in bankruptcy in order for the Plan to be admissible.

The measures to be adopted by the Plan are very flexible. For example, they may include a typical plain vanilla restructuring of the debtor's financial debt, the conversion of debt to equity, the transfer of the debtor's assets or business to a newly established entity, the merger, amalgamation or de-merger of the debtor or a change in its legal form. The 2015 Amendment introduced a limitation that can have a positive effect on the rate of creditors' satisfaction under the restructuring plan. After completion of the restructuring, the debtor or its legal successor cannot distribute profits or other own resources to shareholders until it has satisfied unsecured creditors' claims up to the amount of confirmed claims. For this purpose, 50% of the value of the creditor's original claim continues to exist and the remaining part is considered a separate ownership right of the respective creditor, to be satisfied from the debtor's profits or other own resources. These claims are enforceable only after the fulfilment of the restructuring plan or its ineffectiveness. If the court orders a restructuring on the basis of debtor's petition, the Plan will be prepared by the debtor. In contrast, if the court orders a restructuring on the basis of creditor's petition, the Plan will be prepared by the receiver.

Before all the creditors (and in some cases, the shareholders) vote on the approval of the Plan, it must first be submitted to the creditors' committee for preliminary approval. The party submitting the Plan must submit the final draft Plan to the creditors' committee within 120 days of the ordering of restructuring. If the party submitting the Plan makes a justified request, the creditors' committee may extend this period of time by 60 days. If the creditors' committee does not approve the draft Plan on a preliminary basis within the statutory period of time or if it refuses to approve the Plan, the court must convert the restructuring into a bankruptcy. Conversely, if the Plan is approved, the creditors' committee will request that the receiver convene a confirmatory creditors' meeting (where the creditors of all filed claims, and in some cases also the shareholders, will vote on the approval of the Plan).

Restructuring (*reštrukturalizácia*) (cont.)

The voting at the confirmatory creditors' meeting takes place in at least two groups – one for secured creditors whose rights are affected by the Plan and the second for the other creditors. If there are any subordinated creditors these will also form a separate group. Where the rights and obligations of the shareholders are affected by the Plan, the shareholders will also form a separate group. The party submitting the Plan may divide the above groups into further separate groups so that the claims of creditors or shareholders having identical economic interests will belong to the same group. This means that, unless the secured creditors agree otherwise, a separate group shall be formed with respect to each secured creditor where there is a reasonable chance that such creditor would be satisfied from the proceeds of the sale of assets securing its claim.

In simplified terms (as the exact formula for calculating the relevant majorities is more complex), the following is necessary for the confirmatory creditors' meeting to adopt the Plan:

- for secured claims, 100% approval;
- in each group for unsecured claims, a simple majority of votes by value;
- in each group for subordinated creditors, a simple majority of votes by value;
- in each group for shareholders, a simple majority of votes by number; and
- in aggregate, a simple majority of the creditors by value attending the confirmatory creditors' meeting.

In some circumstances, even if the required majority in one of the groups has not been reached, at the request of the party submitting the Plan, the court may order the adoption of the Plan if:

- the position of the creditors or shareholders in the dissenting group is not worse than their position if the Plan had not been adopted;
- the majority of groups voted for the adoption of the Plan by the required majority; and
- in aggregate, a simple majority of the creditors attending the confirmatory creditors' meeting voted for the adoption of the Plan.

In order for the Plan to become effective, it still needs to be confirmed by the court. The court will confirm the Plan if the Plan was approved by the confirmatory creditors' meeting (or if the dissenting group was successfully "crammed down" as referred to above) and if there are no reasons for its rejection. The court can reject the Plan only on specific grounds, including that:

- there were defects in the process of restructuring or if any other provision of applicable law was breached and such a defect or breach adversely affected any party to the Plan;
- the Plan is not equally fair in relation to all groups of creditors as it anticipates the creation of, changes to, or the termination of rights or obligations in the restructuring plan which will mean that the unsecured creditors' groups will be satisfied over a longer period of time than the secured creditors in the absence of a fair reason;
- the Plan was adopted due to a fraudulent act or because any party to the Plan has been given a special advantage;
- the Plan materially conflicts with the joint interest of all the creditors;
- the extent of satisfaction of any unsecured claim, with the exception of the claims in the subordinated claims group, is lower than 50% of the amount of the claim, unless the creditor agrees with the lower extent of satisfaction; or
- the considerations to be used for satisfaction of any of the unsecured claims, with the exception of subordinated claims, are to be provided for a period of longer than five years, unless the relevant creditor agrees with the longer maturity period for the satisfaction of its claim.

Restructuring (*reštrukturalizácia*) (cont.)

The consent of the debtor is not required for the adoption of the Plan.

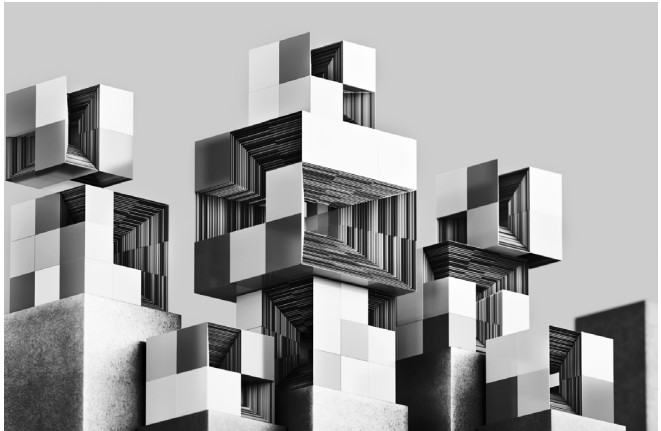
If the Plan is rejected, the court is required to convert the restructuring into a bankruptcy. The decision on conversion is published in the Commercial Bulletin. The person who submitted the plan subsequently has a 15-day period to file an appeal. The relevant insolvency court must hand the file over to the appellate court; however, a statutory period for this handover is not set. The appellate court must then decide on the appeal within 30 days of receipt of the file.

If the court confirms the Plan, it will terminate the restructuring proceedings and publish the relevant resolution in the Commercial Bulletin. As of the date of this publication, the Plan becomes effective and the moratorium connected with the commencement of the restructuring proceedings ceases to exist.

If the Plan so provides, the debtor may be subject to a supervisory regime until the Plan has been fully performed. In such cases, the supervisory regime is performed by the supervisory receiver designated for that purpose in the Plan.

If the Plan is not fulfilled vis-à-vis a particular creditor, all the waivers and reductions of, and other changes in, claims provided in the Plan in respect of this particular creditor terminate. This creditor can also initiate bankruptcy proceedings. If bankruptcy is declared before the Plan has been fulfilled in full, the Plan as a whole becomes ineffective and all the creditors whose claims under the Plan have not yet been discharged can file their claims in the declared bankruptcy in accordance with their original terms. Under the 2015 Amendment, new restructuring proceedings in respect of the same debtor can only start after the expiration of at least two years from the completion of the previous restructuring.

Starting from 1 October 2025, the commencement and completion of restructuring proceedings, as well as the Plan, will be announced in the newly established Insolvency Register instead of the Commercial Bulletin.



INFORMAL RESTRUCTURING

An informal restructuring based on a contractually agreed compromise between the debtor and some of its creditors is not explicitly regulated in Slovak legislation. However, it can be implicitly derived from the legislation that, in addition to using the formal proceedings (whether bankruptcy or formal restructuring), insolvency or threatened insolvency may also be solved by way of an informal restructuring. In particular, it is a requirement under the Insolvency Act that each debtor must prevent its insolvency. In addition, a debtor must continuously monitor its financial situation so that it is able to detect the potential threat of its insolvency and to take measures that will avert the threatened insolvency. This supports the implementation of informal restructurings.

Preventive restructuring (*preventívna reštrukturalizácia*)

Preventive restructuring (*preventívna reštrukturalizácia*) is regulated in the Preventive Restructuring Act and is only available to debtors who are legal entities. The main objectives of the Preventive Restructuring Act are to regulate the imminent insolvency of a debtor, maintain the viability of its business and prevent its insolvency. The Preventive Restructuring Act provides debtors with tools to take action in the early phases of their financial difficulties and provides them with early warning tools. Indirect outcomes are retention of jobs and know-how and greater satisfaction of creditors compared to bankruptcy proceedings.

There are two recognized types of preventive restructuring – public and private. Public preventive restructuring is the general regime available to any debtor who meets the statutory criteria. Private preventive restructuring is a specific regime available only to debtors whose creditors are supervised by the National Bank of Slovakia or an equivalent foreign authority.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*)

COMMENCEMENT OF PROCEEDINGS

A debtor may file an application for public preventive restructuring to the competent court if all conditions under the Preventive Restructuring Act are met. The application must be filed electronically using a designated form, attaching a draft of the public plan (which summarises the outcome of the negotiations between the debtor and the relevant creditors) and required attachments and must be authorised. The debtor must be registered in the public sector partners register at the time of filing the application. The competent court is determined on the basis of the registered seat or place of business of the debtor. Only three courts are competent to conduct preventive restructuring proceedings, being the Municipal Court Košice (for the district of regional courts in Košice and Prešov), the District Court Žilina (for the district of regional courts in Žilina, Trenčín and Banská Bystrica) and the District Court Nitra (for the district of regional courts in Trnava, Nitra and Bratislava).

The court will open public preventive restructuring within 10 days of receipt of the application if the insolvency of the debtor is imminent and the other conditions under the Preventive Restructuring Act are met. The court will reject the application and refuse to open the public preventive restructuring if it is reasonable to assume that the debtor's business is not viable, mainly if:

- there are reasons for dissolution of the debtor;
- the debtor has been dissolved or is in liquidation;
- formal bankruptcy proceedings or restructuring proceedings have been commenced in relation to the debtor;
- there are pending execution proceedings in relation to the debtor;
- enforcement of a security interest has been commenced in relation to the debtor;
- the debtor has failed to keep proper accounting or failed to submit its financial statements to the collection of deeds; or
- the debtor has made other actions endangering its financial stability (mainly if it has distributed profit/paid out dividends in the last 12 months preceding the filing of the application).

LIST OF CREDITORS

Prior to filing the application, the debtor must prepare a list of creditors setting out all known creditors (including those with disputed claims) and the amount of their claims. The list must specify which creditors are affected and which are unaffected by the public preventive restructuring. Each creditor has the right to request the debtor to correct or supplement the list within 30 days from opening of the public preventive restructuring. The updated list must be delivered to the competent court within 15 days of the expiry of the deadline to request correction of the list.

An affected creditor is (i) each creditor whose claim arose before the relevant date (unless it is considered an unaffected creditor under the Preventive Restructuring Act) and (ii) a shareholder, if the public plan envisages the sale, transfer or issuance of new shares, merger or other corporate change of the debtor or change of its constitutional documents.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

An unaffected creditor is (i) each person with an employment law claim against the debtor, (ii) negligible creditor (being a creditor with aggregate amount of claims not exceeding EUR500), (iii) small creditors with claims of up to EUR5,000, (iv) the receiver, (v) advisors up to set amount of their fee, (vi) non-monetary creditors, (vii) disputed unrelated creditors, (viii) tax administrator and (ix) customs authority.

CREDITORS' MEETING AND COMMITTEE

If the court opens the public preventive restructuring, the debtor must convene an informative creditors' meeting so that it takes place no earlier than 15 days and no later than 20 days after opening of the public preventive restructuring. The informative meeting can take place via videoconference or similar means. The purpose of the informative meeting is to inform the affected creditors of the imminent insolvency of the debtor and to present the draft of the public plan to them.

Without undue delay after the opening of the public preventive restructuring the court will appoint a creditors' committee (unless the creditors' committee is appointed upon opening of the public preventive restructuring on request from the debtor or a qualified group of creditors). The creditors' committee has three or five members of whom at least three must be unaffiliated creditors. The creditors' committee represents the joint interests of all creditors.

The competences of the creditors' committee include, for example, determining which actions of the debtor are subject to creditors' committee approval or approval of the advisor, approving crisis financing or commenting on the public plan.

If the public preventive restructuring is opened, the debtor must also convene an approval creditors' meeting so that it takes place no earlier than 60 days and no later than 70 days after the opening of the public preventive restructuring. The purpose of the approval meetings is to inform the affected creditors of the reasons of the imminent insolvency of the debtor and to present the public plan and vote on its adoption. Any creditor who claims to be an affected creditor has the right to participate in the approval meeting, which is also attended by the receiver, advisor and the competent judge.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

PUBLIC PLAN

As mentioned above, the agreed outcome of the public preventive restructuring is summarized in a public plan (the Plan), which needs to be approved by the relevant majorities of creditors. The Plan must ensure that the debtor's assets are fairly distributed among the relevant creditors and be clear, realistic, sustainable and contain all information needed for the relevant creditors to be able to vote on it.

The Plan is split into introductory part, a descriptive part and a binding part and it must not materially deviate from the draft plan submitted to the court with the application for public preventive restructuring. It should specify the restructuring measures to be implemented to avert the debtor's insolvency and ensure the viability of the debtor's business. The Preventive Restructuring Act contains a demonstrative list of some of the measures, such as extension of maturity of claims, their partial release or waiver, restructuring of the debtor's assets (including by way of sale, transfer, creating security over the assets, business or part of business of the debtor), restructuring capital structure of the debtor or restructuring of human resources.

The Plan can also envisage the provision of new financing to be used to finance the restructuring measures. If a bankruptcy of the debtor is declared, the claims from such new financing are treated as super priority claims and satisfied before other unsecured claims against the debtor (same as "new money" provided to a debtor during restructuring).

The Plan creates groups of creditors with separate groups for each secured creditor, unsecured creditors, related party creditors, subordinated creditors and shareholders.

The Plan has to be approved by the affected creditors so that:

(i) each group of secured creditors has voted in favour of adoption of the Plan;

(ii) in each group of unsecured creditors, at least 3/4 majority of the voting creditors (by value) has voted in favour of adoption of the Plan;

(iii) in each group of unsecured creditors, a majority of creditors with claims exceeding 1% of the aggregate value of all claims of voting creditors (by value) in that group has voted in favour of adoption of the Plan (in line with the rule that each creditor has one vote);

(iv) in each group of related party claims and subordinated creditors, a simple majority of the creditors (by value) has voted in favour of adoption of the Plan;

(v) in each group of shareholders, a simple majority of the shareholders has voted in favour of adoption of the Plan.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

If any of the groups do not vote in favour of adoption of the Plan, the debtor has the right to request that the consent is replaced by a court decision (cram down). The court will replace the consent if:

- a majority of the groups voted in favour of adoption of the Plan and at least one of these groups was the secured creditors group and unsecured creditors group or if at least a majority of the groups which could in the best alternative scenario be partially satisfied voted in favour of adoption of the Plan;
- the group whose consent is being replaced is being treated at least as favourably as each other group of the same class and more favourably than each subordinated group and no group is to get more than the original benefit under the Plan.

For the Plan to become effective, it still needs to be confirmed by the court. The debtor can request the court to confirm the Plan within seven days of the end of the approval meeting.

The court can reject the Plan only on specific grounds, including that:

- the request for confirmation of the Plan was not filed in a timely manner;
- the Plan is vague or incomprehensible;
- the Plan has not been approved by the affected creditors or by the court in all groups;
- the Plan has not been approved by the affected creditors or by the court in all groups;
- a qualifying group of dissenting creditors asserts in a statement that the Plan does not have reasonable prospects of averting the imminent insolvency of the debtor and ensuring the viability of its business, unless the debtor demonstrates otherwise;
- the new financing necessary for implementation of the Plan unfairly harms the interests of creditors.

If the court confirms the Plan, it becomes effective against the debtor and each affected creditors listed in the list of creditors. The rights of the affected creditors against third parties are not impacted by the Plan (such as the right to demand satisfaction of their claims from third parties by way of enforcement of existing security rights, from co-debtors, guarantors, etc).

The court can, upon request of an affected creditor, terminate the Plan if its approval or confirmation was achieved by a criminal act. The request must be submitted within three years of the confirmation of the Plan by the court, otherwise it will not be considered.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

SUSPENSION OF PUBLIC PREVENTIVE RESTRUCTURING PROCEEDINGS

The court will suspend the public preventive restructuring proceedings on the basis of a qualifying request (ie a request meeting various statutory criteria specified in the Preventive Restructuring Act) if the debtor, for example, did not meet the statutory conditions for the opening of a public preventive restructuring, knowingly provided false or incomplete information or statements, the list of creditors was not duly prepared, it failed to include a significant creditor in the list of creditors even though it knew or could have known about it, or if the debtor repeatedly or seriously violated its obligations under the Preventive Restructuring Act. The court will also suspend the proceedings without undue delay upon request of the debtor.

TERMINATION OF PUBLIC PREVENTIVE RESTRUCTURING

Public preventive restructuring terminates upon the following court decisions becoming valid and binding:

- a decision on rejection of the application for public preventive restructuring or on suspension of the proceedings; or
- a decision on confirmation of the Plan.

TEMPORARY PROTECTION
(*dočasná ochrana*)

Temporary protection of businesses was initially introduced as a response to the COVID-19 pandemic, aiming to create a time-limited framework for protection against creditors and instruments to support entrepreneurs in financial difficulty to enable them to continue doing business.
It is now only available as part of the public preventive restructuring proceedings.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

Temporary protection is granted by the court in its decision on opening the public preventive restructuring. The court can grant the debtor temporary protection if this has been approved by (i) majority of all creditors (by value of their non-related claims) or (ii) at least 20% of all creditors (by value of their non-related claims) if the draft public plan does not anticipate release or unenforceability of more than 20% of any creditors' claims and the extension of maturity of any claim does not exceed one year.

The legal effects of providing temporary protection to a debtor are specified in Section 20 of the Preventive Restructuring Act:

(i) the debtor is not obliged to comply with its statutory obligation to file for bankruptcy;

(ii) it is not possible to declare bankruptcy or open restructuring in respect of the debtor, and ongoing bankruptcy or restructuring proceedings are suspended;

(iii) it is not possible to continue execution or other enforcement proceedings in respect of the debtor, and ongoing execution or other enforcement proceedings are suspended (except in relation to claims such as claims relating to EU funds, unpaid tax, customs duties or sanctions);

(iv) it is not possible to commence enforcement of security against the debtor or complete such enforcement;

(v) the debtor can primarily satisfy claims that arose after the temporary protection was granted before claims that arose before the temporary protection was granted, the same applies to related party liabilities;

(vi) set-off of related party liabilities against the debtor is not possible;

(vii) if the debtor is in default which arose before the temporary protection was granted, its contractual counterparty is not allowed to rescind or terminate the relevant agreement or decline to perform its obligations under this agreement during temporary protection; any contractual provisions to the contrary are disapplied. There are certain statutory exemptions to this rule, eg if the counterparty's business could be endangered by complying with this rule;

(viii) a creditor cannot terminate the financing of the debtor if this was arranged before the temporary protection was granted due to the debtor's non-compliance with financial covenants; the debtor is not allowed to draw funds from this financing without the consent of the creditors' committee;

(ix) statutory periods for exercising rights, including for challenging voidable legal acts (*odporovateľné právne úkony*) against the debtor, do not run during temporary protection.

The effects of the temporary protection do not apply to existing or future employment-related claims of existing or future employees of the debtor.

Public preventive restructuring (*verejná preventívna reštrukturalizácia*) (cont.)

In order to maintain the business, the debtor can (with the consent of the creditors' committee) enter into new loan agreements for the provision of crisis financing. Crisis financing can be provided up to an amount not exceeding the aggregate of six times the debtor's average monthly working capital during the previous calendar year. The proceeds of the crisis financing may only be used for the purpose of maintaining the business during the temporary protection period and it cannot be used to refinance existing financings of the debtor provided before the temporary protection was granted. If the debtor's bankruptcy is declared, the claims from the crisis financing are treated as super-priority claims and satisfied before other unsecured claims against the debtor (just like "new money" provided to a debtor during restructuring).

Temporary protection is granted for a period of three months. The debtor may request an extension of the temporary protection for an additional three months at the earliest 30 days and at the latest ten days before the expiry of the original temporary protection period. The debtor can only request the extension if it has the consent of the creditors' committee, negotiations of the public plan are in progress and the extension is necessary to fulfil the goal of the public preventive restructuring. The temporary protection cannot be granted for more than six months in aggregate.

Temporary protection expires (i) upon delivery of the debtor's request for its termination to the competent court, (ii) once the court decision on approving the public plan has become final and binding, (iii) once the court decision on termination of the public preventive restructuring has become final and binding; or (iv) by lapse of the period for which the temporary protection was granted.

RELATIONSHIP OF PUBLIC PREVENTIVE RESTRUCTURING WITH INSOLVENCY

If the debtor becomes insolvent during the public preventive restructuring, the statutory representatives must without undue delay and in writing inform the court, the receiver, the creditors' committee and all creditors who consented to the debtor being granted temporary protection. The public preventive restructuring may continue after the debtor has become insolvent if it is reasonable to assume that the debtor will be able to duly and timely meet its obligations in a timely manner and the public plan will be approved by the court or that the debtor will otherwise avert insolvency.

Private preventive restructuring (*neverejná preventívna reštrukturalizácia*)

A debtor whose insolvency is imminent, but is not subject to ongoing bankruptcy or formal restructuring, can agree on entering into private preventive restructuring with one or more of its creditors who are supervised by the National Bank of Slovakia or an equivalent foreign institution (ie primarily banks and other financial institutions).

The debtor then notifies the competent court of the commencement of the private preventive restructuring. A draft of the private plan must be submitted to the competent court within three months of the debtor notifying the court of commencement of the proceedings. If the plan is not submitted within the deadline, the proceedings terminate. If the court does not reject the private plan within 15 days of submission, the plan is deemed to be approved. The court will reject the plan if it could potentially harm creditors who are not party to the private plan. Once the plan is approved (or deemed to be approved), it can only be challenged on grounds that the statutory requirements have not been met and the other party was or should have been aware of this non-compliance. The private plan is only binding on creditors who have agreed to it in writing.

New financing can be provided to the debtor under the private plan and the provider of such financing will not be considered a related party creditor even if it meets the statutory criteria.

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 which 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 corporate restructuring and insolvency regimes, bankruptcy (*konkurz*) and restructuring (*reštrukturalizácia*) were available as main proceedings under the Original Regulation.

Under the Recast Regulation, bankruptcy (*konkurz*) and restructuring (*reštrukturalizácia*) are listed in Annex A.

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**.

A&O SHEARMAN

Renátus Kollár
Partner

Tel +421 2 5920 2423
renatus.kollar@aoshearman.com

Matúš Kudlák
Counsel

Tel +421 2 5920 2447
matus.kudlak@aoshearman.com

Katrina Buckley
Global Co-Head of Restructuring

Tel +44 20 3088 2704
katrina.buckley@aoshearman.com

Fredric Sosnick
Global Co-Head of Restructuring

Tel +1 212 848 8571
FSosnick@aoshearman.com

Lucy Aconley
Counsel

Tel +44 20 3088 4442
lucy.aconley@aoshearman.com

Christopher Poel
Senior Knowledge Lawyer

Tel +44 20 3088 1440
christopher.poel@aoshearman.com

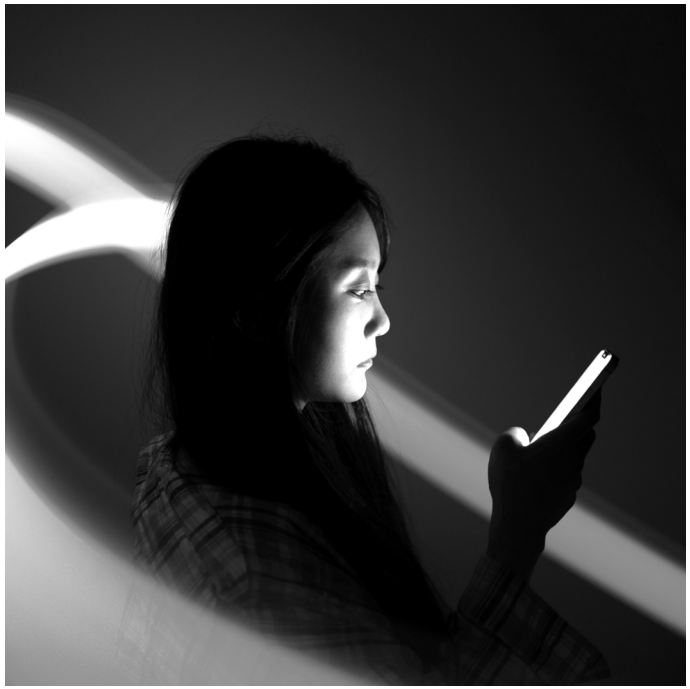
Ellie Aspinall
Associate

Tel +44 20 3088 1124
elena.aspinall@aoshearman.com

Further information

Developed by A&O Shearman's market-leading Restructuring Group, "**Restructuring Across Borders**" is a free and 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**.



For more information, please contact:

BRATISLAVA

Allen Overy Shearman Sterling LLP
Eurovea Central 1, Pribinova 4
Bratislava
81109

Slovakia
Tel +421 2 5920 2400

LONDON

Allen Overy Shearman Sterling LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

Global presence

A&O Shearman is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 28 countries worldwide. A current list of A&O Shearman offices is available at aoshearman.com/en/global-coverage.

A&O Shearman means Allen Overy Shearman Sterling LLP and/or its affiliated undertakings. Allen Overy Shearman Sterling LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen Overy Shearman Sterling LLP (SRA number 401323) is authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or a director of Allen Overy Shearman Sterling (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen Overy Shearman Sterling LLP's affiliated undertakings. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners, and a list of the directors of Allen Overy Shearman Sterling (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

A&O Shearman was formed on May 1, 2024 by the combination of Shearman & Sterling LLP and Allen & Overy LLP and their respective affiliates (the legacy firms). This content may include material generated and matters undertaken by one or more of the legacy firms rather than A&O Shearman.

ROW
CS2406_CDD-78120-ADD-062446 Slovakia

aoshearman.com