Insolvency/bankruptcy

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Czechia

Legal framework

Insolvency proceedings in the Czech Republic are primarily regulated by Act No 182/2006 on insolvency and insolvency procedures (Zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení) (the Insolvency Act), supported by Act No 99/1963, the Code of Civil Procedure (Zákon č. 99/1963 Sb., občanský soudní řád).

Another important instrument is Act No 312/2006 on insolvency administrators (Zákon č. 312/2006 Sb., o insolvenčních správcích), which (in conjunction with the Insolvency Act) establishes a legal framework for the profession of insolvency practitioner.

The current version of these provisions can found here.

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be initiated against natural and legal persons, irrespective of whether they are business entities.

The individual types of insolvency proceedings (bankruptcy, reorganisation, debt relief) differ from each other in terms of the entities they are intended for. While a bankruptcy petition may be filed against all entities, reorganisation is aimed exclusively at businesses and debt relief primarily at non-business entities (as explained below).

Insolvency proceedings cannot be brought against the state, autonomous local authorities, political parties and movements during elections, and other selected entities of a predominantly public nature. Special rules apply in respect of financial institutions and insurance companies.

2 What are the conditions for opening insolvency proceedings?

Insolvency or impending insolvency

Insolvency proceedings are judicial proceedings that address a debtor's insolvency or impending insolvency and how to deal with it. The basic premise is therefore the existence of a state of insolvency or impending insolvency.

A debtor is insolvent if *(these are cumulative conditions)*:

- the debtor has multiple creditors;
- the debtor has pecuniary liabilities that are more than 30 days overdue;
- is not able to perform those commitments.

Debtors are considered to be insolvent in particular if they have stopped paying off a substantial portion of their debts or fail to settle such liabilities for more than three months after they fall due, or if any of the due monetary claims against the debtor cannot be met by enforcement or distraint.

A debtor who is a business entity (whether as a legal or a natural person) is also insolvent if over-indebted. Debtors are over-indebted if they have multiple creditors and the sum of their liabilities exceeds the value of their assets.

Impending insolvency means a situation where, taking into account all of the circumstances, it can reasonably be assumed that debtors will be unable to meet a substantial part of their pecuniary liabilities in a due and timely manner.

Types of insolvency proceedings

Czech law distinguishes three basic ways of dealing with a debtor's insolvency or impending insolvency in insolvency proceedings:

- bankruptcy (konkurs);
- reorganisation (reorganizace);
- debt relief (oddlužení).

The Insolvency Act does not dictate which of the different insolvency methods is to be used by a particular debtor, but leaves the choice open. Besides the liquidation procedure (bankruptcy), there is also an element of rehabilitation (reorganisation and debt relief). The choice of method appropriate to address a debtor's insolvency should be guided by concern for the best possible outcome for creditors.

Bankruptcy is a general way of dealing with insolvency where, on the basis of a bankruptcy order, creditors' established claims are largely met from the proceeds of asset realisation. Unmet claims or parts thereof are not extinguished unless the law provides otherwise. This insolvency method is always used when it is impossible to use reorganisation or debt relief as more moderate procedures against the debtor, or if it becomes clear in the course of proceedings that these methods cannot be continued.

Reorganisation may be used to deal with the insolvency or impending insolvency of debtors who are business entities. It involves reorganising the business. It is usually expected that creditors' claims will steadily be satisfied while the debtor's business remains in operation in accordance with measures to revitalise its management under a reorganisation plan approved by the insolvency court. Creditors monitor how the plan is progressing.

Debt relief is a way of dealing with insolvency or impending insolvency for debtors who are either natural persons (involved in business or not) or legal persons that are not business entities. This insolvency method is more sympathetic to social considerations than economic aspects. The aim is to give debtors a 'fresh start' and motivate them to participate actively in the redemption of their debt. Generally, debtors are required to have at least the capacity to cover in full the remuneration and cash expenses of the insolvency practitioner, at least the same amount to other creditors and, in addition, the full amount of any statutory maintenance claims and the fees of the person who drew up the application for debt relief. Certain categories of debtors (recipients of old-age or disability pensions, or those capable of satisfying creditors to a set percentage level) may be granted debt relief over a shorter period. It is assumed that secured creditors' claims will be satisfied from the collateral security. A parallel aim here is to reduce public budget spending on the rehabilitation of those who find themselves in social crisis. Debt relief can be accomplished by monetisation of the insolvency estate, or by repayment scheduling together with monetisation of the insolvency estate.

Who may bring insolvency proceedings?

Insolvency proceedings may only be initiated once a petition has been filed. They are opened on the date on which the insolvency petition reaches a court with due jurisdiction in the case. Insolvency petitions may be filed by debtors or creditors alike, except in cases of impending insolvency, when they may be filed only by the debtor.

Debtors who are business entities (whether a natural or a legal person) are required to file an insolvency petition without undue delay after they learn or, with proper care, should have learned of their insolvency.

Initiation of bankruptcy

An insolvency court issues a bankruptcy order as a separate ruling. In exceptional cases, this ruling may be

combined with the insolvency decision (if the debtor is a person unable to draw on reorganisation or debt relief). A declaration of bankruptcy takes effect when the bankruptcy order is published in the insolvency register.

Initiation of reorganisation

Reorganisation is initiated by permission of the insolvency court, issued further to an application from the debtor or a registered creditor.

Permission for reorganisation may be granted if *(these are non-cumulative conditions)*:

- the debtor's total annual net turnover in the last accounting period preceding the insolvency petition was at least CZK 50 000 000; or
- the debtor has at least 50 employees; or
- the debtor presents the insolvency court, together with the insolvency petition, or no later than the date the insolvency decision is handed down, with a reorganisation plan endorsed by at least half of all secured creditors (calculated according to the aggregate amount of the claims) and by at least half of all unsecured creditors (again calculated on the basis of the amount of the claims).

Reorganisation is inadmissible if the debtor is a legal person in liquidation, a securities dealer or an entity authorised to trade on a commodities exchange under specific legislation.

The insolvency court permits reorganisation if the corresponding legal conditions are met. There is no right of appeal.

The insolvency court rejects an application for permission to reorganise if: (a) taking into account all circumstances, it can reasonably be assumed that there is dishonest intent; (b) the application has been re-filed by a person who has already had a previous application for permission to reorganise heard by the court; or (c) the application has been filed by a creditor but has not been approved by the creditors' meeting. Appeals against such rulings may be lodged only by those who submitted the application.

Initiation of debt relief

An application for debt relief is filed by the debtor using a prescribed form and, where appropriate, is submitted together with an insolvency petition (if insolvency proceedings have not been initiated by a creditor). There are restrictions regarding when an application for debt relief can be filed on behalf of the debtor by a lawyer, a notary, a bailiff, an insolvency practitioner or a person accredited in the public interest. Debtors are entitled to file the application themselves if they have a university degree in law or economics.

A debt relief application and its annexes must contain, in particular, data on debtor's past and expected future income, a list of assets, and a sworn statement indicating that, when drawing up the insolvency petition, they were informed of their obligations in the insolvency proceedings, that in the discharge of debt they will properly pay creditors' claims, that they will make every effort that may reasonably be demanded of them to satisfy them in full, that they will comply with all obligations under the Insolvency Act and the decision approving the debt relief, and that they will declare all their income in full.

The insolvency court grants permission for debt relief if the conditions are met. It rejects a debt relief application if, taking into account all circumstances, it can reasonably be assumed that there is dishonest intent, or that the debtor is not able to make the minimum repayment. The minimum repayment must fully cover the remuneration and expenses of the insolvency practitioner, outstanding and ongoing maintenance, the remuneration of the person who draws up the application for debt relief, and a certain amount payable to ordinary unsecured creditors. The insolvency court also rejects a debt relief application if the results of the proceedings to date show that the debtor has been reckless or negligent in fulfilling obligations in insolvency proceedings. The court also rejects applications if the debtor (a) has been granted debt relief in the previous ten years, (b) has had debt relief terminated in the previous five years because of dishonest intent, or (c) has terminated proceedings in the previous three months by withdrawing the application. Applications are not rejected for the above reasons if the debtor entered into the obligation for justified reasons or if there is a significant imbalance between the amount of the debt and the service provided. Only the debtor has the right of appeal against the rejection of an application.

When does the initiation of insolvency proceedings have effect

The initiation of insolvency proceedings takes effect upon publication of a notice announcing the initiation of insolvency proceedings in the insolvency register (see below). The effects of initiation last until the end of the insolvency proceedings, unless the law provides otherwise for any of the insolvency methods.

Interim measures pending an insolvency decision

The insolvency court may order interim measures ex officio pending its decision on an insolvency petition, unless otherwise provided by law. Anyone seeking an interim measure that the insolvency court may otherwise order on its own motion is not obliged to lodge a security. The debtor, when applying for an interim measure, is not required to lodge a security.

By way of such interim measures, the insolvency court may inter alia:

- appoint an interim trustee;
- limit some of the effects associated with the initiation of insolvency proceedings;
- order any of the insolvency petitioners to lodge a security covering compensation for damage or other loss incurred by the debtor.

Register of Insolvencies

Insolvency proceedings are publicised in the insolvency register managed by the Ministry of Justice (Ministerstvo spravedlnosti). This is an electronic public administration information system accessible at https://isir.justice.cz.

The insolvency register exists primarily so that there is maximum publicity for insolvency proceedings and so that their progress can be monitored. The register is used to publish insolvency court decisions issued in insolvency proceedings and in incidental disputes, case-file submissions, and other information, where so provided by the Insolvency Act or decided by the insolvency court.

The insolvency register is accessible to the public (except for certain details), and everyone has the right to peruse it, make copies, and take extracts from it.

Besides serving as a source of information, the insolvency register is crucial for the service of documents – it is a vehicle for the delivery of most court rulings and other documents. Insolvency proceedings are generally notified in the insolvency register within two hours of submission of a petition (during the court's working hours). All court rulings and other documents are subsequently published in the insolvency register. This gives everyone an insight into insolvency proceedings conducted in the Czech Republic.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

Insolvency estate

If an insolvency petition is filed by the debtor, the insolvency estate comprises assets belonging to the debtor at the time the effects associated with the initiation of insolvency proceedings come into play, along with assets acquired by the debtor in the course of the insolvency proceedings.

If an insolvency petition is filed by a creditor, the insolvency estate comprises assets belonging to the debtor at the time the insolvency court's interim measure restricting (in whole or in part) the debtor's right of asset disposal takes effect, assets belonging to the debtor at the time the decisions on the debtor's insolvency take effect, and assets acquired in the course of insolvency proceedings by the debtor after those decisions have taken effect.

Where assets are co-owned by the debtor, the debtor's share of such property is included in the insolvency estate. These assets form part of the estate even if they are part of the debtor's joint marital assets.

Assets of persons other than the debtor form part of the estate if so provided by law, especially where they are consideration from ineffective legal acts. For purposes of asset realisation, this property is regarded as part of the debtor's assets.

Unless provided otherwise by law, the insolvency estate mainly consists of cash, movables and immovables, plant and equipment, passbooks, deposit certificates and other forms of deposits, shares, bills, cheques or other securities, shareholdings, the debtor's monetary and non-monetary claims, including contingent claims and claims that are not yet due, the debtor's wages, salary, work bonuses and income in lieu of the debtor's work-related remuneration, other rights, and other assets with a value that can be expressed in monetary terms. The insolvency estate also includes items such as interest, gains, fruits and benefits pertaining to the above assets.

Unless otherwise provided by law, assets that are not attachable in enforcement or distraint proceedings are not part of the estate. This issue is governed by Act No 99/1963, the Code of Civil Procedure. Of the assets owned by debtors, enforcement cannot apply to those that debtors urgently need to satisfy their and their family's material needs or to perform their work tasks, as well as other items whose sale would be contra bonos mores (especially everyday garments, common household items, wedding rings and other similar objects, medical supplies and other items required by debtors due to illness or physical disability, cash in an amount equivalent to twice the subsistence rate for individuals, and animals kept as pets). However, items used for a debtor's business operations are not excluded from the estate. Unless otherwise provided by law, the estate does not include assets that, under specific legislation, may only be disposed of in a specifically intended manner (e.g. targeted grants and repayable assistance from central or local government budgets or a state fund).

Treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings

Broadly speaking, assets acquired by or devolving on the debtor after the opening of insolvency proceedings are included in the insolvency estate; depending on the insolvency method applied, this may be modified. Debtors may dispose of estate assets only if, in doing so, they abide by the constraints of that particular stage of the insolvency proceedings and the insolvency method.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Mission and status of the insolvency practitioner

The insolvency practitioner's main mission is to manage the debtor's insolvency estate and handle incidental and other disputes. The insolvency practitioner aims to achieve the proportional, swift, economical and highest possible satisfaction of creditors.

Insolvency practitioners are duty-bound to act conscientiously and with due diligence. They are required to make every effort that may reasonably be demanded of them to satisfy creditors to the fullest possible extent. They must prioritise the common interest of creditors over their own and others' interests.

In bankruptcy proceedings, the insolvency practitioner assumes authorisation to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency practitioner exercises shareholder rights attached to shares in the insolvency estate, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency practitioners are as a rule tasked with monetising the estate.

In reorganisation proceedings, insolvency practitioners primarily supervise the activities of a debtor in possession, continue to identify the estate and draw up an inventory thereof, deal with incidental disputes, compile and add to the list of creditors, and report to the creditors' committee. Insolvency practitioners also act in the capacity of the debtor's general meeting or members' meeting.

In debt relief proceedings, insolvency practitioners work together with the insolvency court and creditors to oversee the debtor and the debtor's operations, realise the debtor's assets, and allocate monthly payments under the repayment schedule among the creditors.

Status of the debtor

In bankruptcy proceedings, debtors lose the authority to dispose of their estate, to exercise other rights and to discharge obligations relating to the estate. This authority passes to the insolvency practitioner. By law, legal

acts executed by debtors in these matters after authority to dispose of the estate has passed to the insolvency practitioner are ineffective in relation to creditors.

In reorganisation proceedings, the debtor remains in possession of the estate, subject to restrictions. Legal acts of fundamental relevance to the disposal and management of the insolvency estate are executed by a debtor in possession only with the consent of the creditors' committee. A debtor who breaches this obligation is liable for damage or any other loss thereby caused to creditors or third parties; the members of the debtor's governing body are held liable for such damage or other loss jointly and severally. 'Legal acts of fundamental relevance' are taken to mean acts significantly changing the value of the estate, the creditors' standing, or the level of creditor satisfaction. Insolvency practitioners act in the capacity of the debtor's general meeting or members' meeting.

In debt relief proceedings, the debtor also remains in possession of the estate, subject to restrictions. The debtor is supervised by the insolvency court, the insolvency practitioner and creditors.

5 Under which conditions may set-offs be invoked?

In general terms, set-offs are governed by the Civil Code. As a rule of thumb, if parties have the same types of claims against one other, either may notify the other party that they are setting off their claim against the counterparty's. Set-offs can be invoked as soon as a party has the right both to demand that a claim be met and to pay its own debt. A set-off cancels out the two claims to the extent that they coincide with each other; if they do not cover each other completely, the claim is offset in a similar way as in the case of fulfilment. These effects are produced when two claims become eligible for set-off.

In insolvency proceedings, mutual claims of the debtor and the creditor may be set off following the insolvency decision if the statutory set-off conditions (under the Civil Code) have been met before the decision on the insolvency method is taken, unless otherwise provided by the Insolvency Act (e.g. extension of the time limit for claims arising from the renting of residential property).

Set-off in insolvency proceedings is not admissible, in particular, if the debtor's creditor:

- has not become a registered creditor with respect to the creditable claim; or
- has obtained a creditable claim as a result of an ineffective legal act; or
- knew of the debtor's insolvency at the time the creditable claim was acquired; or
- has yet to pay the debtor's due claim to the extent to which it exceeds the creditor's creditable claim; or
- in cases stipulated by and interim measure of the insolvency court.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Mutual performance contracts

If the debtor, at the time bankruptcy is declared or reorganisation or debt relief is permitted, is party to a mutual performance contract, including a pre-contract, that has yet to be fully implemented by either the debtor or the counterparty at the time bankruptcy is declared or reorganisation or debt relief is permitted, the following applies:

- in bankruptcy or debt relief proceedings, insolvency practitioners may perform a contract instead of the debtor and seek fulfilment by the other party to the contract, or may refuse performance;

- in reorganisation proceedings, a debtor in possession exercises the same authority, subject to the consent of the creditors' committee.

In bankruptcy or debt relief proceedings, an insolvency practitioner who does not state that a contract will be implemented within 30 days of the bankruptcy order or the debt relief permission is regarded as having refused performance; until then, the counterparty cannot withdraw from the contract, unless contractual provisions permit otherwise. In reorganisation proceedings, debtors in possession who do not state that they refuse performance within 30 days of the approval of reorganisation must implement a mutual performance contract.

A counterparty who is required to provide performance first may withhold such performance until such time as mutual performance is provided or secured, except where the contract is concluded by the counterparty after the publication of the insolvency decision.

If the insolvency practitioner or the debtor in possession refuses performance, the counterparty may claim compensation for resulting damage by registering a claim within 30 days of the refusal of performance. The counterparty's claims deriving from the continuation of the contract after the declaration of bankruptcy are claims against the insolvency estate.

The counterparty cannot seek the reimbursement of partial performance provided prior to the insolvency decision because performance was not reciprocated by the debtor.

Fixed contracts

If it is agreed that a deliverable with a market price is to be delivered at a precise time or within a fixed time limit, and if the time of performance occurs or the time limit expires only after a declaration of bankruptcy, the fulfilment of the commitment cannot be required; only compensation for damage caused by the debtor's non-fulfilment of the commitment may be sought. 'Damage' means the difference between the agreed price and the market price paid as at the effective date of the bankruptcy declaration in the place designated by the contract as the place of performance. The counterparty may claim damages as a creditor by registering a claim within 30 days of the declaration of bankruptcy.

Loan agreement

If the debtor has entered into a loan agreement, after bankruptcy has been declared the insolvency practitioner may demand the return of the loan before the contractual loan period expires.

Lease, sublease

There are detailed provisions on lease and sublease contracts. Among other things, after the bankruptcy declaration the insolvency practitioner is entitled to terminate lease or sublease contracts concluded by the debtor within a period prescribed by law or the contract, even if concluded for a fixed period; the notice period may not be longer than three months. This is without prejudice to the Civil Code's provisions concerning when and under what conditions the lessor may terminate the lease.

Debtor's draft contracts yet to be accepted by the counterparty when bankruptcy is declared

When bankruptcy is declared, applications by the debtor to conclude contracts that have yet to be accepted and any draft contracts that have been accepted by the debtor but have yet to be concluded are extinguished, where they involve the insolvent estate. Draft contracts not yet accepted by the debtor when bankruptcy is declared may only be accepted by the insolvency practitioner.

Reservation of title

If the debtor has sold an item with reservation of title and delivered it to the buyer before bankruptcy is declared, the buyer may either return the item or insist on proceeding with the contract. If, before bankruptcy is declared, the debtor purchases and takes receipt of an item with reservation of title, the seller cannot seek the return of the item provided that the insolvency practitioner fulfils obligations under the contract without undue delay after being invited to do so by the seller.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

The opening of insolvency proceedings has the following effects:

- claims and other rights related to the estate cannot be invoked by bringing an action if they can be invoked by registration;
- the right to satisfaction from collateral related to assets owned by the debtor or assets belonging to the insolvent estate may be exercised and newly acquired only under the conditions set out in the Insolvency

Act. This also applies to the establishment of a judicial or distraint lien on real estate proposed after the initiation of insolvency proceedings;
- enforcement or distraint affecting assets owned by the debtor, as well as other assets belonging to the estate, may be ordered or initiated, but cannot be implemented. For claims against the estate and claims of equivalent status, however, enforcement or distraint affecting assets belonging to the debtor's estate may be implemented on the basis of an insolvency court ruling, subject to the restrictions established by that ruling;
- it is not possible to exercise a right, established by agreement of the creditor and the debtor, to garnishment in respect of wages or other income treated as wages or income in the enforcement of a ruling.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Insolvency decisions create a moratorium on judicial and arbitration proceedings concerning claims and other rights relating to the estate that are to be invoked by registration in insolvency proceedings, or that are viewed as registered in insolvency proceedings, or concerning claims not met in insolvency proceedings. Unless otherwise provided, it is impossible to continue these proceedings while an insolvency decision remains in effect.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Principles associated with the participation of creditors

Insolvency proceedings are based, inter alia, on the following principles affecting the participation of creditors:

- insolvency proceedings must be conducted in such a way that none of the parties is unfairly injured or unlawfully advantaged, and that the swift, economical and highest possible satisfaction of creditors is achieved;
- creditors who, by law, essentially have the same or similar status have equal opportunities in insolvency proceedings;
- unless otherwise provided by law, a creditor's rights acquired in good faith prior to the initiation of insolvency proceedings cannot be restricted by a ruling of the insolvency court or as a result of the procedure followed by the insolvency practitioner;
- creditors are obliged to refrain from acts aimed at satisfying their claims outside of insolvency proceedings, unless permitted by law.

Creditor bodies

Creditor bodies are:

- the creditors' meeting;
- the creditors' committee (or the creditors' representative).

The creditors' meeting is responsible for electing and removing members and alternate members of the creditors' committee (or a creditors' representative). The creditors' meeting may reserve for its competence anything falling within the remit of creditor bodies. If no creditors' committee or creditors' representative is appointed, the creditors' meeting acts in that capacity instead, unless otherwise provided by law.

If more than 50 creditors are registered, the creditors' meeting must set up a creditors' committee. If it is not obliged to do this, a creditors' representative may take the place of the committee.

The creditors' committee exercises the powers of creditor bodies, except in matters that are within the remit of the creditors' meeting or have been reserved by the creditors' meeting for its own competence. In particular, the creditors' committee supervises the insolvency practitioner's activities and is entitled to submit proposals to the insolvency court regarding the insolvency proceedings. The creditors' committee protects the common interest of creditors and, in cooperation with the insolvency practitioner, helps to achieve the purpose of the insolvency

proceedings. The provisions on creditors' committees apply mutatis mutandis to creditors' representatives.

Category of creditors

The law makes a distinction between secured and unsecured creditors.

A secured creditor is a creditor whose claim is secured by assets belonging to the estate in the form of a lien, right of retention, conveyancing restriction, fiduciary transfer of a right, assignment of a claim to the collateral, or similar right under foreign law.

Secured creditors are in a position to wield significant influence over the course of the insolvency proceedings. Where the debtor is a business entity that may be reorganised under the Insolvency Act, the adoption of a resolution on the insolvency method (bankruptcy or reorganisation) requires the votes of at least half of all those secured (and, likewise, unsecured) creditors present at the creditors' meeting, measured by the amounts of their claims, unless at least 90% of the creditors present, calculated according to the amount of their claims, vote for the resolution. A secured creditor may also instruct a person in possession on how to manage the security binding that person, provided that such instructions are geared towards good governance. The insolvency practitioner is also bound instructions from secured creditors aimed at the monetisation of the security. Insolvency practitioners may reject such instructions if they believe that the subject of the security can be monetised more favourably, in which case they petition the insolvency court to review the instructions as part of its supervisory activity. The monetisation of an item, right, claim or other asset in insolvency proceedings extinguishes the security of the secured creditor's claim, even if that creditor did not register the claim.

Secured creditors' claims are in principle satisfied from the full amount of the proceeds from monetisation, less the insolvency practitioner's fee and the costs of management and monetisation, at any time during the proceedings, taking account of the time of inception of the security. Any portion of secured creditors' claims in bankruptcy that is left unsatisfied does not expire, but is satisfied on a pro rata basis alongside the claims of unsecured creditors.

All other creditors are unsecured. Their status in the insolvency proceedings is weaker and the projected level at which their claims will be met, according to statistical data, is usually much lower.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Insolvency practitioners may use estate assets in bankruptcy proceedings. The insolvency practitioner assumes authorisation to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency practitioner exercises shareholder rights attached to shares in the insolvency estate, takes decisions on trade secrets and other areas of confidentiality, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency practitioners are as a rule tasked with monetising the estate.

In reorganisation and debt relief proceedings, the debtor continues to hold these rights, subject to significant restrictions.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

Claims against the estate and equivalent claims may be paid in full at any time after the insolvency decision has been taken.

A distinction is made between the following:

- claims against the estate arising after the opening of insolvency proceedings or after the declaration of a moratorium (in particular the reimbursement of cash expenses and the fee of the interim trustee, the debtor's liquidator and members of the creditors' committee, and creditors' claims deriving from credit

financing);
- claims against the estate arising after the insolvency decision (in particular the cash expenses and fee of the insolvency practitioner, taxes, charges, social security contributions, state employment policy contributions and public health insurance contributions);
- claims equivalent to claims against the estate (in particular the labour-law claims of the debtor's employees, and creditors' claims to statutory maintenance).

12 What are the rules governing the lodging, verification and admission of claims?

Lodging of claims

Creditors lodge their claims with the insolvency court using a prescribed form, and may do so from the opening of insolvency proceedings until expiry of the time limit set in the insolvency decision, which is identical for all types of proceedings: two months. Claims lodged after the deadline are disregarded by the insolvency court, and not settled in insolvency proceedings. Claims that have already been raised with the court, and enforceable claims, including those that are being recovered by enforcement or distraint, are also lodged. A creditor who lodges claims or who is regarded as a registered creditor may withdraw the claim at any time during the insolvency proceedings.

An application to lodge a claim must explain how the claim arose and what the amount is. A claim must always be quantified in monetary terms, even if it is a non-monetary asset. Any documents to which the claim application refers need to be attached to the application. The enforceability of a claim must be demonstrated by an authentic instrument.

For the purposes of the limitation period or the time limit until the extinction of rights, an application to lodge a claim has the same effects as an action or other invocation of a right before a court; this period starts on the date on which the application is submitted to the insolvency court.

The creditor is responsible for the accuracy of information contained in an application to lodge a claim. The insolvency court, acting on a recommendation from the insolvency practitioner, may impose penalties if the real amount of a claim is overstated (by more than 100%), by ordering payment of an amount to the estate that is determined with regard to all of the circumstances relating to the lodging of the claim and a review of the claim itself, up to the amount by which the sum for which the claim was lodged exceeded the actual value ascertained.

A creditor's right to have a claim met from the security is disregarded if it is lodged in a different order from that in which it should have been, or if, when reviewed, it is found that the level at which it was secured has been overstated by more than 100%. In this case, the creditor may be penalised by the insolvency court by being ordered to pay a (monetary) amount in favour of secured creditors who lodged claims with security pertaining to the same assets. The amount of that payment is set by the insolvency court with regard to all of the circumstances in which the right to have the claim met from security was exercised and reviewed, up to the amount by which the value of the security indicated in the application exceeded the security value ascertained .

Verification of registered claims

Claims lodged are first reviewed by the insolvency practitioner, who mainly cross-checks them against the accompanying documents and the debtor's accounts or records kept in accordance with specific legislation. The insolvency practitioner then invites the debtor to comment on the claims. Where appropriate, the insolvency practitioner conducts the necessary investigation into the claims, in cooperation with the authorities, which are obliged to provide such cooperation.

If a claim lodged is defective or incomplete, the insolvency practitioner invites the creditor to correct or complete it within 15 days (a longer time-limit may be set), and advises on how to do so. Claims that are not supplemented or corrected in a due and timely manner are submitted by the insolvency practitioner to the insolvency court for a decision determining that the application is to be disregarded. The creditor must be informed accordingly.

The insolvency practitioner draws up a list of the claims lodged. Secured creditors are listed separately. If claims

are denied by the insolvency practitioner, this must be explicitly stated. For all creditors, the information necessary to identify them and to assess how the claim arose and the amount and ranking thereof must be indicated. In addition, for secured creditors the reason for and method of security must be stated.

The list of claims lodged is published by the insolvency court in the insolvency register prior to the verification hearing. The insolvency court also immediately publishes any change to the list of claims lodged in the insolvency register.

The claims lodged are then verified at a verification hearing ordered by the insolvency court. The date and place of the hearing are set by the insolvency court in its insolvency decision. Creditors have until the end of the verification hearing to change the amount of the claim they are lodging, unless it is secured. However, they cannot change the reason why the registered claim occurred or its ranking.

Denial of claims

The authenticity, amount and ranking of all claims lodged may be denied by: (a) the insolvency practitioner; (b) the debtor; or (c) a registered creditor.

The denial of a creditor's claim by another registered creditor must have the same particulars as an action under the Code of Civil Procedure, and must make it clear whether the authenticity, amount or ranking of the claim is being denied. A denial is served on a prescribed form.

The Insolvency Act recognises the following types of denial:

- denial of the authenticity of a claim – it is argued that the claim never arose or that it has been completely extinguished or completely time-barred;
- denial of the amount of the claim – it is argued that the debtor's liability is less than the amount registered (the person denying the claim amount must also state the actual amount of the claim);
- denial of the ranking of the claim – it is argued that the claim has a less favourable ranking than that indicated in the claim lodged, or the right to have the claim met from the security is denied (the person denying the ranking of the claim must also specify the ranking in which the claim should be met).

If a registered creditor denies the claim of another registered creditor, these creditors become parties to an ancillary dispute. Insolvency practitioners who wish to assist a party to an ancillary dispute in which they are not participating have the right to intervene.

Decisions on the authenticity, amount and ranking of denied claims are taken by the insolvency court.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The insolvency estate is monetised in bankruptcy proceedings. This means that all assets pertaining to the estate are converted into cash for the proportional satisfaction of creditors. The estate is monetised by the insolvency practitioner. This step may be taken only after the bankruptcy order becomes final and the first creditors' meeting has been held. Assets at imminent risk of perishing or spoilage are exempt; exemption on other grounds may also be permitted by the insolvency court. The monetisation of the estate extinguishes all effects of an enforcement or distraint order and other defects tied to the realisation of assets, unless otherwise provided by law.

The insolvency estate may be monetised by:

- public auction;
- the sale of movables and immovables under the enforcement provisions of the Code of Civil Procedure;
- the sale of assets outside of an auction.
- an auction held by the court bailiff.

If the proceeds from the monetisation of the estate are not enough to meet all of the claims, the insolvency practitioner's fee and cash expenses are settled first, followed by creditors' claims arising during the moratorium, creditors' claims from credit financing, then (pro-rata) costs associated with the maintenance and

administration of the estate and the labour-law claims of the debtor's employees, then creditors' claims to maintenance, and finally claims to compensation for damage to health. Other claims are satisfied proportionally.

After the decision approving the final report becomes final, the insolvency practitioner submits a draft order on the distribution of the estate to the insolvency court, stating how much should be paid for each claim in the revised list of registered claims. On that basis, the insolvency court issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. Before the distribution, as yet unpaid claims which may be met at any time during the bankruptcy proceedings are met, specifically:

- claims against the estate – the cash expenses and fee of the insolvency practitioner, costs associated with the maintenance and administration of the debtor's estate, taxes, charges, social security contributions, the state employment policy contribution, public health insurance contributions, etc.;
- equivalent claims – the labour-law claims of the debtor's employees, creditors' claims to compensation for damage to health, government claims, etc.;
- secured claims.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Closure of bankruptcy

Once the estate has been monetised, the insolvency practitioner submits a final report to the insolvency court. The final report must describe the overall characteristics of the insolvency practitioner's activities, and include a quantification of the financial results thereof. It must quantify the amount to be distributed among the creditors and designate those creditors, indicating the amount of their shares in the total amount. Along with the final report, the insolvency practitioner submits a statement of the fee and expenses to the insolvency court.

The insolvency court reviews the insolvency practitioner's final report and invoice, and after a hearing with the insolvency practitioner corrects any errors and omissions therein. The insolvency court notifies the insolvency practitioner's revised final report to the parties by publishing it in the form of a public notice. After the decision approving the final report becomes final, the insolvency practitioner submits a draft order on the distribution of the estate to the insolvency court, stating how much should be paid for each claim in the revised list of registered claims. The insolvency court then issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. In the distribution order, the insolvency court sets the insolvency practitioner a deadline for fulfilment, which must not be more than two months from the date on which the distribution order acquires legal force.

Bankruptcy proceedings end with the delivery of the insolvency practitioner's report on the fulfilment of the distribution order and the insolvency court's decision to close the proceedings. The court also decides to close the bankruptcy proceedings in certain other situations prescribed by law, e.g. if it is found that the debtor's assets are clearly inadequate to satisfy creditors. When the decision bringing the bankruptcy proceedings to an end becomes final, the insolvency proceedings are closed.

Closure of reorganisation

Reorganisation ends with the insolvency court's decision acknowledging the fulfilment of the reorganisation plan or substantial parts thereof. There is no right of appeal against that decision.

Reorganisation may also be terminated by an insolvency court decision to convert reorganisation into bankruptcy, which occurs in cases stipulated by law, in particular when problems arise in the approval of and compliance with the reorganisation plan. The insolvency court cannot take a decision to convert reorganisation into bankruptcy if the important aspects of the reorganisation plan have been carried out. Appeals against a court decision to convert reorganisation into bankruptcy may be lodged by the debtor, the reorganisation applicant, the insolvency practitioner or the creditors' committee. When the insolvency court decides to convert reorganisation into bankruptcy, the effects associated with a declaration of bankruptcy are established unless the insolvency court, in its decision, lays down different conditions for this conversion.

Closure of debt relief

Debt relief ends with the insolvency court's decision either acknowledging the implementation of debt relief or alternatively its non-implementation. An appeal may be lodged against that decision by the debtor, the insolvency practitioner or the creditors. If the insolvency court adopts a decision acknowledging the implementation of debt relief, and the debtor complies with all obligations under the approved debt relief method in a due and timely manner, the insolvency court adds to that decision an order freeing the debtor from the payment of claims included in the debt relief procedure to the extent to which they have not yet been met. Such an order does not apply to claims arising after the insolvency decision.

Debt relief may also be terminated by a court cancelling debt relief that had been approved. It will then also decide either to handle the debtor's insolvency through bankruptcy proceedings or to stop the insolvency proceedings if the debtor is completely insolvent. Approved debt relief proceedings may be cancelled in cases stipulated by law, in particular when the debtor fails to comply with the debt relief conditions.

15 What are the creditors' rights after the closure of insolvency proceedings?

In bankruptcy proceedings concerning the assets of a natural person (at any time after the closure of bankruptcy proceedings) or a legal person (until its dissolution by deletion from a public register), after the proceedings have been closed a distraint or enforcement order may be made in relation to a claim that has been established and not been denied by the debtor, and not met in the course of the bankruptcy proceedings. When an enforcement application is submitted, only a validation sheet and a report on the validation of the claim in question in the bankruptcy proceedings need be submitted. This right becomes statute-barred ten years after the closure of bankruptcy proceedings, with the limitation period starting on the effective date of the order closing the proceedings.

In cases of reorganisation, after the reorganisation plan takes effect enforcement or distraint may be ordered and implemented against the debtor, in order to recover a claim stipulated in the reorganisation plan. However, if the claim has been denied, enforcement or distraint is only possible if the insolvency court's decision establishing the claim has become final; this decision must be attached to the application.

In cases of debt relief, at the end of debt relief and the release from payment of the remaining claims, it is no longer possible to seek satisfaction of creditors' remaining claims by enforcement or distraint. It is immaterial whether creditors have partially satisfied in the debt relief proceedings or indeed whether they even registered their claim in the insolvency proceedings.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Costs – particularly the insolvency practitioner's fee and cash expenses – should be covered from the estate, i.e. they should be borne by the debtor.

As the insolvency estate is not always large enough to cover the costs, the insolvency court may, before deciding on an insolvency petition, order the insolvency petitioner to pay an advance on the costs of the insolvency proceedings by a set deadline, where this is necessary to cover the costs of proceedings and the necessary resources cannot be secured by other means. This applies even if it is clear that the debtor has no assets. The law sets an upper limit for the amount of such advances. If there are multiple insolvency petitioners, they are required to pay an advance jointly and severally.

If the estate is unable to cover the costs, the remainder is covered by the advance on the costs of insolvency proceedings, i.e. borne by the petitioner.

If the advance does not cover the costs either, the bill is footed by the state, up to a maximum, however, of CZK 50 000 in remuneration for the insolvency practitioner and CZK 50 000 for the cash expenses of the insolvency practitioner.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Legal acts by the debtor to reduce the chances that creditors will be satisfied or to favour certain creditors over others are unenforceable. Any omission by the debtor in this respect is also treated as a legal act. There are three categories of such unenforceable acts: (a) legal acts without adequate consideration; (b) preferential legal acts resulting in a situation where one creditor, to the detriment of other creditors, receives greater satisfaction than they would otherwise have obtained in the bankruptcy proceedings; (c) legal acts where the debtor intentionally curtails the satisfaction of a creditor, if this intention was known to the counterparty or, in view of all of the circumstances, must have been known to it.

Unless otherwise provided for in the Insolvency Act, the unenforceability of the debtor's legal acts, including those described by the Insolvency Act as unenforceable and which the debtor executed after the effects associated with the opening of the insolvency proceedings became applicable, is established by an insolvency court ruling on an action brought by the insolvency practitioner protesting the debtor's legal acts (an action to set a transaction aside). The insolvency practitioner may bring an action to set a transaction aside within one year from the date on which the insolvency decision takes effect. If an action is not brought within that time limit, the title to have a transaction set aside lapses. The debtor's consideration from unenforceable legal acts forms part of the estate once the ruling upholding the action to set a transaction aside becomes final.

The unenforceability of a legal act does not prejudice its applicability. However, in insolvency proceedings, the debtor's consideration from unenforceable legal acts forms part of the estate. If the debtor's original consideration from an unenforceable legal act cannot be surrendered to the estate, equivalent compensation must be provided.

The insolvency court is not bound by the decision of another court or another authority finding, in the course of insolvency proceedings, that a legal act relating to the assets or liabilities of the debtor is null and void, or by such a finding arising in any other way. In the course of insolvency proceedings, only the insolvency court examines the voidness of such a legal act. If the final ruling subsequently finds that a legal act relating to the assets or liabilities of the debtor is null and void, the economic benefit gained in the form of the consideration must be surrendered back to the estate.

If a legal act relating to the assets or liabilities of the debtor is found to be null and void by a court ruling that became final before the opening of insolvency proceedings, the legal act addressed by the ruling is also treated as null and void in the insolvency proceedings.

Specific rules on certain categories of claims

Specific rules apply to the following categories of claims:

- claims against the estate arising after the opening of insolvency proceedings or after the declaration of a moratorium;
- claims against the estate arising after the insolvency decision;
- claims equivalent to claims against the estate;
- subordinate claims;
- the claims of the debtor's shareholders or members arising from their participation in the company or cooperative;
- claims that are entirely excluded from satisfaction in insolvency proceedings.

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