

## Insolvency - Hungary

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#### 1 Who may insolvency proceedings be brought against?

Insolvency proceedings for legal persons are governed by Act XLIX of 1991 on bankruptcy and liquidation proceedings (Bankruptcy Act).

The Bankruptcy Act regulates two types of insolvency proceedings: bankruptcy and liquidation proceedings.

**Bankruptcy** proceedings are reorganisation proceedings the purpose of which is to grant a debtor facing insolvency a stay of payment with the view to agreeing on a voluntary arrangement and to making an attempt to enter such an arrangement in order to re-establish solvency.

**Liquidation** proceedings are proceedings the purpose of which is for creditors to obtain satisfaction according to specific rules when an insolvent debtor is dissolved without a legal successor – in the course of a proceeding aimed at distributing the total assets of the insolvent estate of the debtor among the creditors. However, the liquidation proceeding must be terminated, if the debtor has paid in full their debt and the costs of the proceeding or if a voluntary arrangement on the conditions of debt settlement is entered into with their creditors and the arrangement has been approved by the court.

Laws governing the Hungarian branches of undertakings with foreign registered offices, civil society organisations and undertakings of the financial sector (credit institutions, financial undertakings, insurance undertakings, investment firms, public warehouses), for instance, include special, derogating rules.

Bankruptcy proceedings do not exist for undertakings of the financial sector, however supervisory bodies have the possibility to intervene as soon as the early stages of any deterioration in their financial standing in order to avoid insolvency and funds must be created (Damage Settlement Fund, Investor Protection Fund, Deposit Insurance Fund) to protect customers and to compensate them.

In the case of undertakings of the financial sector, liquidation may be brought before a court by the Hungarian National Bank acting under its powers of financial supervisory authority after it has revoked their license for pursuing such activities.

The Act on civil society organisations includes some derogating rules concerning the bankruptcy and liquidation proceedings of civil society organisations (associations, foundations), otherwise the provisions of the Bankruptcy Act apply.

### **Debt settlement proceedings of natural persons (personal bankruptcy)**

Act CV of 2015 on debt settlements of natural persons entered into force on 1 September 2015. The Act aims to lay down a legal framework for debt settlement in addition to providing bankruptcy protection through cooperation between a debtor and their creditors. The Act primarily protects mortgage debtors, in particular those who have been in arrears long-term, are indebted to several creditors and whose residential property is threatened by a forced sale.

The proceedings start out of court, coordinated by the first mortgage lender. Court bankruptcy proceedings are opened if there is no settlement out of court. At first, the court proceedings also aim for an agreement to be reached, but if such agreement is not voted in favour of, the court determines the conditions for settling the debt.

The Government has established the Family Insolvency Service of the State. This organisation plays an important role in debt settlement proceedings. The Family Insolvency Service verifies whether the debtor meets statutory requirements, keeps State records of the proceedings' data and employs family administrators. Family administrators carry out preparatory and collaborative tasks for the court in the course of debt settlement before the court, enforce the court's decisions, support the debtor, oversee the management of the debtor's household, sell the debtor's commercially valuable assets and pay the creditors.

The outcome of successful debt settlement is that debt discharged in the course of the proceedings cannot be claimed later on from the debtor and the creditors receive a specific proportion of their claim within a predictable period of time.

The debt settlement proceedings of natural persons are not yet notified under Regulation (EU) No 2015/848 of the European Parliament and of the Council.

In accordance with the Bankruptcy Act **bankruptcy proceedings** may be initiated by the debtor organisation with the approval of its principal decision-making body, using a form – legal representation is compulsory during the proceedings. The debtor may not submit such an application if they are the subject of a pending bankruptcy proceeding or a decision of first instance has been passed ordering the debtor to be liquidated. The conditions and time limitations for the admissibility of a renewed application for initiating bankruptcy proceedings are the satisfaction of creditor's claims which existed or arose during the previous bankruptcy proceeding, the lapse of two years from the final conclusion of the previous bankruptcy proceeding or in case the previous application was rejected ex officio, the lapse of one year since the final order in that matter was announced.

As a general rule, if the debtor is insolvent **liquidation proceedings** may be brought at the request of the debtor or their creditors or ex officio by the court in certain cases specified under the Bankruptcy Act. The Bankruptcy Act explicitly states who may bring liquidation proceedings and regulates the rules for proceeding either at request or ex officio.

Both types of proceeding are **collective debt settlement proceedings**, the debtor's creditors must participate in the proceedings and they may not seek the enforcement of their claims in another manner or in other proceedings against the debtor during these proceedings.

## **2 What are the conditions for opening insolvency proceedings?**

**Bankruptcy proceedings:**

Bankruptcy proceedings may be petitioned by the director of the debtor, while representation by a lawyer or legal counsel is compulsory.

At any one time only one bankruptcy proceeding may be initiated against the debtor and no liquidation proceeding against them may be pending either. Renewed bankruptcy proceedings may only commence if the debtor has settled their debts claimed in the previous proceeding and two years have not lapsed since. And if the court rejected the previous bankruptcy proceeding ex officio for formal defects, no renewed bankruptcy proceedings may be initiated for one year.

### **Liquidation proceedings**

Liquidation proceedings may be brought by the debtor, a creditor, the administrator who participated in the previous voluntary winding-up proceeding or a court or administrative authority in cases specified by law. For instance, a liquidation proceeding is brought by the court if no voluntary arrangement was entered into in the course of the bankruptcy proceeding or if the dissolution of a firm seriously infringing the law is ordered under its powers of legal supervision as the commercial court.

### **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?**

The debtor's assets of the insolvent estate are the sum of all fixed assets and current assets within the meaning of accounting legislation.

Any increases in assets obtained during the bankruptcy proceedings also form a part of the assets of the insolvent estate.

The debtor retains rights related to the management of the assets of the insolvent estate, but under oversight by the administrator. In liquidation proceedings the debtor does not retain the rights related to the management of the assets of the insolvent estate: those rights are transferred to the liquidator. The liquidator is the legal representative of the debtor organisation and carries out the registration and assessment of creditors' claims, the realisation of assets and the distribution of proceeds among creditors under court oversight.

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

In bankruptcy and liquidation proceedings a **debtor** within the meaning of the Bankruptcy Act may be an economic operator listed in the Act. In bankruptcy proceedings the proceeding is brought by the debtor, who may continue their economic activities during the proceeding. The executive officers and owners of the debtor are not restricted in the exercise of their rights, but they may only exercise their rights without infringing the rights provided for the administrator by law. The debtor carries out the registration and ranking of claims in collaboration with the administrator and with the involvement of the administrator prepares a programme and a proposal for composition negotiations for the purpose of obtaining a composition aimed at restoring or preserving solvency. The composition contains the agreement between the debtor and the creditors on the conditions of the settlement of the debt and all else they deem important for the reorganisation.

Up to their commencement, a **creditor** in bankruptcy and liquidation proceedings means a person who has past due pecuniary claims or claims expressed in monetary terms based on a final and enforceable decision of a court or public authority or that are recognised or not contested by the debtor. In bankruptcy proceedings creditor also means any person whose claims falling due during the bankruptcy proceeding or afterwards have been registered by the administrator or any person whose claims have been registered by the liquidator in a liquidation proceeding.

An **administrator** in bankruptcy proceedings is a legal person appointed by a court, authorised to carry out the tasks of an insolvency practitioner. The administrator must appoint a person employed by them with the appropriate qualifications to carry out the activities of administrator. This person's duty is to monitor the debtor's economic activities for the purpose of agreeing on a composition, while keeping in mind the creditors' interests, to register creditors' claims, to collaborate in the drafting of a proposal for the composition and to countersign the minutes of resolutions adopted at the composition negotiations.

**Liquidator** means a liquidator organisation (a legal person authorised to carry out the tasks of an insolvency practitioner) appointed by the court, who is the legal representative of the organisation under liquidation and who at the same time guarantees the creditors' interests and carries out tasks prescribed by law. Legislation prescribes strict personal and professional requirements for liquidator organisations, including regular professional training.

The liquidator organisation appoints an insolvency administrator to conduct the activities of a liquidator.

The name of the liquidator organisation and the insolvency administrator are also entered in the court register of legal persons.

**Bankruptcy and liquidation proceedings are non contentious civil proceedings before a court.** In matters not regulated by the Bankruptcy Act, the rules of the Code of Civil Procedure apply, with derogations arising from the specificities of non-contentious

proceedings. Bankruptcy proceedings are ordered by the court while liquidation proceedings are ordered by the court as a result of the debtor being declared insolvent or in other cases specified by law or on the basis of a request from another court, public authority or the administrator. At the opening of the proceeding the court appoints the administrator or liquidator from the list of liquidators. When liquidation proceedings are brought, the court appoints – at the request of the creditors – a liquidator with the competence of a temporary administrator to supervise the activities of the debtor until the liquidation is ordered.

Objections submitted against any unlawful measures or omissions by the administrator or liquidator are adjudged by the court and in case of an unlawful measure or omission the court requires the administrator or liquidator to conduct their activities in accordance with the law and in case this is breached, the administrator or liquidator is removed from the proceeding and a new administrator or liquidator is appointed.

During bankruptcy proceedings the debtor is due bankruptcy protection, enforcement proceedings are suspended and the debtor is granted a stay of payment or a moratorium on the payment of previously incurred debts.

If the majority prescribed by the Bankruptcy Act accepts the voluntary arrangement and the arrangement is in compliance with statutory requirements, the court approves the arrangement and the debtor is bound by it.

If a voluntary arrangement is not agreed upon, the court orders the debtor to be wound up ex officio.

An agreement between the debtor and the creditors may also be reached in liquidation proceedings. The court sets the date for composition negotiations in the course of the liquidation proceeding and if the vote on the voluntary arrangement is favourable and the arrangement is in compliance with legislation, the court approves it. In liquidation, the conditions for the approval of a voluntary arrangement are that through the arrangement the debtor will cease to be insolvent and priority claims will be settled or cover for such claims is available.

The court decides on registering the bankruptcy or liquidation proceedings as closed or on the termination of the proceedings.

If the liquidation proceedings are closed without a legal successor to the debtor, upon notification from the court the commercial court strikes the debtor dissolved by liquidation off the commercial register, or the civil society organisation from the register of civil society organisations.

In liquidation proceedings the payment of employees' salaries is guaranteed from funds from the Wage Guarantee Fund, subject to the conditions laid down in the Act on the Wage Guarantee Fund.

Legal consequences of bringing the proceedings:

In the course of bankruptcy proceedings, the court takes steps to publish an immediate **temporary stay of payment** in the Companies' Gazette at the debtor's request, in accordance with the Bankruptcy Act. The merits of the request are subsequently examined, when the court takes its decision to reject the request ex officio in cases determined by law, or if this is not the case, takes a decision to order bankruptcy proceedings. Bankruptcy proceedings begin with the publication of the order to that effect in the Companies' Gazette. As a consequence of the opening of the bankruptcy proceedings the debtor is due a **stay of payment** for the performance of monetary claims up to 0 hours on the second working day following the 120<sup>th</sup> day (with a few exceptions) and the moratorium may even be extended for up to 365 days. During the period of the stay of payment only the payment of claims indicated in the legal act may be effected, legal consequences related to non-performance or late performance of payment obligations do not occur, the enforcement of monetary claims against the debtor are suspended, thus the debtor gains a realistic opportunity to prepare a programme aimed at restoring solvency and settling their debts.

If the court declares the debtor insolvent because any **reason for insolvency** defined under the legal act exists, the liquidation of the debtor is ordered in an order and following its entry into force a liquidator is appointed through an order published in the Companies' Gazette which also contains a call for creditors to notify their claims. Ownership rights cease when the liquidation proceeding is ordered, which serves to protect the assets of the insolvent estate, and from the starting date of the liquidation only the liquidator acting as the debtor's representative may make legal statements concerning the debtor's assets. On the starting date of liquidation every debt of the economic operator expires (becomes overdue).

Liquidation is aimed at distributing all assets of the debtor among their creditors and even enforcement proceedings against assets subject to the liquidation proceedings must be terminated. Contentious and non-contentious proceedings begun before the starting date of the liquidation continue before the court seized. Following the starting date of the liquidation any monetary claim related to the assets of the insolvent estate may only be asserted under the liquidation proceeding. Any restraint on alienation and encumbrance established on the debtor's real property or other assets ceases on the starting date of liquidation, while repurchase rights and options to purchase, as well as liens cease when the asset is sold. A person entitled may satisfy their claim from a security deposit provided by the debtor up to the starting date of liquidation, afterwards the person entitled must hand over the remaining amount to the liquidator.

## **5 Under which conditions may set-offs be invoked?**

During a liquidation proceeding each creditor may assert a claim against the debtor only by registering for the proceeding, no set-off can be invoked out of court, except for close-out netting applied on the basis of international trade conventions. If however, there is a previous lawsuit pending between the creditor and the debtor, the creditor may set-off any claims asserted in the lawsuit against his debt towards the debtor.

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

The opening of liquidation proceedings in themselves do not have the legal effect of terminating contracts previously entered into by the debtor. The contracts can be terminated as part of the proceeding, in the case of bankruptcy proceedings under the oversight of the administrator and in the case of liquidation proceedings the liquidator terminates the contracts as the legal representative of the debtor. The liquidator has the right to terminate the contracts with immediate effect or to cancel the contracts.

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

The assets of the debtor cannot be subjected to enforcement, a creditor who is a pledgee cannot sell the pledge, while the debts are settled in the course of the liquidation proceedings.

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

Lawsuits brought previously are concluded by the court seized previously. If the debtor was unsuccessful in the lawsuit, the successful party takes part as a creditor in the liquidation proceeding. If the debtor was successful in the lawsuit, any asset or funds due to them are included in the assets of the insolvent estate. The Bankruptcy Act prescribes in several places that providing information to creditors is the administrator's or liquidator's task.

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

Creditors may form creditors' committees or elect a representative of the creditors with whom the liquidator must consult and whom the liquidator is obliged to inform and whose implicit or explicit consent must be obtained for certain measures.

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

The liquidator may sell the debtor's assets to the buyer making the best offer in a public sales procedure on an audited web-based sales portal.

## **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?**

Both debts incurred previously and those arising after the opening of insolvency proceedings may be asserted by the creditor by notifying their claim in the bankruptcy proceeding or the liquidation proceeding as a creditor.

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

The insolvency practitioner (the administrator in bankruptcy proceedings or the liquidator in liquidation proceedings) registers the creditors' claims and submits contested claims before the court conducting the bankruptcy proceeding or liquidation proceeding for judgment.

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

The liquidator uses the proceeds from the sale of a pledge – after certain expenditures have been deducted – to pay the pledgee. The remaining amount is distributed among the creditors according to the distribution of assets, taking into account the ranking for the satisfaction of creditors determined in the Bankruptcy Act, and based on the interim liquidation balance sheet or closing liquidation balance sheet.

Following the sale of other assets the proceeds may be distributed after the interim liquidation balance sheet or the closing liquidation balance sheet was accepted, taking into account the distribution of assets approved by the court and the ranking for the satisfaction of creditors determined in the Bankruptcy Act.

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

The debtor may agree on a voluntary arrangement with creditors in either a bankruptcy proceeding or a liquidation proceeding. If the arrangement is in compliance with legislation, the court approves it and declares the proceeding to have been closed. In such cases the debtor continues their operations. The creditors' claims are satisfied in the manner and to the extent determined in the arrangement, the debtor is exempt from paying any amount beyond this.

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

In a bankruptcy proceeding closed by a voluntary arrangement approved by the court, the creditors' claims are satisfied in the manner and according to the schedule determined in the arrangement. If the debtor does not respect the arrangement, the creditors may lodge an enforcement proceeding or may initiate the liquidation of the debtor.

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

The creditors pay a registration fee. Lodging an insolvency proceeding (bankruptcy proceeding, liquidation proceeding) is subject to a fee. Otherwise any costs incurred are borne by the debtor.

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

The liquidator or the creditors may challenge such transactions by lodging a petition and may request the transaction to be declared invalid. Any assets thus returned to the debtor increase the assets of the insolvent estate.

The liquidator or the creditors may lodge lawsuits against the debtor's former directors for their activities which were detrimental to the interests of the creditors on the grounds that the former directors did not carry out their managerial functions taking into account the creditors' interests when a situation with the threat of insolvency arose, leading to a decrease in the economic operator's assets, or frustrated the full satisfaction of the creditors' claims or neglected to settle environmental charges. If this is proven, the former director of the debtor must compensate the creditors for the damage thus caused.

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