

This regional overview provides brief information regarding the duty of directors/management to file for insolvency, should the company become insolvent during the Covid-19 pandemic or because of its impacts.

Effects of Covid-19 pandemic on director's duties to file for insolvency

A regional perspective

Slovenia / Croatia / Serbia / Bosnia &
Herzegovina / North Macedonia/ Montenegro

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Because of the COVID-19 epidemic, some companies may face insolvency. In majority of jurisdictions, management of an insolvent company has a duty to file for insolvency in certain timeframes, should all attempts to restore solvency by out-of-court measures fail. On the one hand, the COVID-19 epidemic is a temporary condition and thus a temporary impediment to the business, and on the other hand, the measures imposed to contain the spread of the virus may impede restructuring and other rescue activities. Several countries have adopted measures to support the company's rescue attempts, e.g., by prolonging the deadline for filing for insolvency, thereby extending the time available to rescue the company.

We took a closer look at the management's duties to file for insolvency in case insolvency arises during the COVID-19 epidemic, or because of its impacts, as regulated in several jurisdictions.

JURISDICTIONS COVERED:

1. SLOVENIA
 2. CROATIA
 3. SERBIA
 4. BOSNIA & HERZEGOVINA
 5. NORTH MACEDONIA
 6. MONTENEGRO
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SLOVENIA:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p>Within one month from the onset of insolvency (i.e., the day on which the management has or would have established insolvency had it acted with required diligence), the management has to draw up a report on financial restructuring measures - "FRM Report" (description of financial position, reasons for insolvency, assessment of possible restructuring measures and assessment of feasibility of the measures) and deliver it to the supervisory board / shareholder meeting.</p> <p>If the FRM Report finds that no identified restructuring measures are feasible, the management of the company has to file for bankruptcy within one month and 3 working days from the onset of insolvency.</p> <p>If increase in the share capital is identified in the FRM Report as possible and feasible restructuring measure, then:</p> <ul style="list-style-type: none"> - shareholders meeting has to be held within one month and 8 working days from the day the FRM Report was delivered to the supervisory board, and - if shareholders meeting adopted a decision on an increase of share capital by new monetary contributions, the new shares must be paid-in within 15 days following the call (the call has to be made within 3 working days following the decision by the shareholders meeting was adopted). <p>If the attempt to increase share capital fails and, according to the FRM Report, compulsory settlement is not feasible, the company's management has to file for bankruptcy within 3</p>	<p>A. If insolvency arises as a result of the declaration of the COVID-19 epidemic:</p> <p>If insolvency arises as a result of the declaration of the COVID-19 epidemic, the obligation of the management to file for compulsory settlement or for bankruptcy is suspended until end of August 2020, except if there are no prospects for restoration of solvency. The insolvency is deemed a result of the declaration of the COVID-19 epidemic (i) if the company engages in an activity that was temporarily banned, or significantly restricted, by a state or municipal ordinance due to the epidemic, or (ii) if on 31 December 2019 the company was not insolvent.</p> <p>If a creditor files for bankruptcy of a company on or before 30 July 2020, then, in case insolvency arose as a result of the declaration of COVID-19 epidemic, the court may postpone deliberation on the creditor's petition for four months (in the non-COVID-19 insolvencies the suspension period is two months).</p> <p>B. If insolvency is not a result of the declaration of the COVID-19 epidemic:</p> <p>In case insolvency is not resulting from declaration of COVID-19 epidemic, the deadlines for filing for insolvency are not extended generally.</p> <p>All insolvency proceedings in Slovenia were put on hold until 31 May 2020. During this time, the procedural time limits as well as material time limits for the exercise of rights of clients in these proceedings are</p>

working days following the day the attempt to increase the share capital failed.

If according to the FRM Report compulsory settlement is feasible and attempts to restore solvency by out-of-court restructuring failed, a **proposal for compulsory settlement has to be filed within 3 months following the onset of insolvency.**

suspended, and any proposal to start insolvency procedure filed during this time will be handled by court only after the suspension ends. In our opinion, the suspension does however not affect the general deadlines for exercising the duties of an insolvent company's management.

By way of exemption, if an increase in share capital is identified by the FRM Report as one of the feasible restructuring measures and, due to objective consequences of the epidemic, the shareholders meeting cannot be held and/or the new shares cannot be subscribed and paid-in in time, these activities must be commenced no later than on 30 June 2020.

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CROATIA:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p>The Croatian Bankruptcy Act regulates preconditions for opening of the bankruptcy proceedings, pre-bankruptcy proceedings and legal consequences of its opening and implementation.</p> <p>According to the Bankruptcy Act, both the creditor and the debtor are eligible to submit a proposal for opening of the bankruptcy proceedings.</p> <p>The company's management shall submit a proposal for opening of the bankruptcy proceedings without delay or no later than within 21 days as of the day of the occurrence of the bankruptcy reason.</p> <p>The main reasons for initiating <u>bankruptcy proceedings</u> are inability to perform payments and over-indebtedness, provided that the debtor is not capable of fulfilling financial obligations over an extended period of time.</p> <p>The debtor shall be deemed unable to perform payments: (i) if in the Payment Transaction Order Register kept by the Financial Agency has one or more registered outstanding third parties' claims over a period that is longer than 60 days; (ii) if it has failed to pay three consecutive salaries to the employees in accordance with the employment agreement, employment by-law, collective bargaining agreement or another act regulating debtor's obligation toward the employees.</p> <p>The bankruptcy proceedings are initiated by: (i) the creditor – if the creditor makes probable the existence of its claim and any of the reasons for bankruptcy; (ii) the debtor (person authorized to represent the debtor that may be a member of the management board, a liquidator or under certain circumstances (<i>e.g.</i> where no management board</p>	<p>The Act on Intervention Measures in Enforcement and Bankruptcy Proceedings for the Duration of Special Circumstances ("the AIM Act") was enacted on 30 April 2020 and entered into force on 1 May 2020 with the purpose to alleviating the financial situation of citizens and businesses facing the severe economic consequences of the COVID-19 pandemic and, even more so, the consequences of restrictions on freedom of work, business and movement that were imposed to combat the pandemic.</p> <p>The AIM Act defines the term "Duration of Special Circumstances" as an unforeseeable event or a situation endangering the life and health of citizens, property of greater value, significantly impairing the environment, economic activity or causing significant economic damage.</p> <p>The duration of special circumstances is determined for the period of three months as of the day of entry into force of the AIM Act (<i>i.e.</i> until 1 August 2020). The Croatian Government may extend the statutory defined term for additional three months.</p> <p>Pursuant to the AIM Act, bankruptcy reasons arising out during the term of special circumstances shall not give rise to submitting a proposal for opening of the bankruptcy proceedings.</p> <p>The result is that during the time of duration of special circumstances, no bankruptcy proceedings will be possible to be initiated.</p> <p>Exceptionally, a proposal for opening of the bankruptcy proceedings may be filed by the debtor while the Financial Agency and the</p>

exists) the members of the supervisory board or the shareholder(s).

In addition, the Financial Agency shall initiate the bankruptcy proceedings against the debtor if it has outstanding payments that are registered in the Payment Transactions Order Register for over a period of 120 days, within the eight days upon expiry of that period, unless prerequisites for the summary bankruptcy proceedings have been met.

The summary bankruptcy proceedings shall be conducted against the debtor if the following prerequisites have been met: (i) the company has no employees; (ii) the entity has outstanding payments registered in the Payment Transactions Order Register over an uninterrupted period of 120 days; and (iii) no prerequisites for any other procedure have been met that would result in deletion of the company from the court register.

By initiating and conducting bankruptcy proceedings all of the rights are transferred from the debtor's management board to the trustee in bankruptcy.

After commencement of the bankruptcy proceedings the debtor may either continue with business operations (e.g. in the case of adoption of the bankruptcy plan) or cease to operate in which case the debtor's assets shall be cashed in and distributed to creditors according to the rules applying to rankings of creditors.

creditor may instigate bankruptcy proceedings only for the protection of the interests and security of the Republic of Croatia, nature, human environment and human health.

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SERBIA:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p>Serbian legal system does not explicitly define the term “<i>company's insolvency</i>”, nor are there stipulated legal conditions and deadlines that oblige company's management to initiate bankruptcy proceedings in the event of insolvency.</p> <p>However, the Insolvency Law prescribes the following legal reasons for initiating bankruptcy proceedings:</p> <ul style="list-style-type: none"> - permanent inability to make payments (if a company cannot respond to its financial obligations within 45 days from the date of maturity of the obligation and/or company completely suspended all payments for a period of 30 consecutive days); - threatening inability to make payments (existence of reasonable possibility that a company would not be able to meet its financial obligations upon their maturity); - over-indebtedness (if company's assets are less than its obligations); - failure to act in accordance with the adopted reorganization plan and if the reorganization plan was obtained in a fraudulent or illegal manner. <p>Bankruptcy proceedings may be initiated by: (i) the company itself (as a debtor), (ii) creditors of the insolvent company, as well as (iii) the liquidator of a company.</p> <p>Upon opening the procedure, function of legal representatives of a company ceases, since a bankruptcy trustee is appointed (a person who has a license to perform such activities in</p>	<p>Among adopted by-laws provided for assisting and supporting the economy, Serbia did not adopt specific regulations relating to the insolvency of companies and implementation of bankruptcy proceedings.</p> <p>However, having in mind that this procedure is conducted by the competent court, certain measures provided by the state have an indirect impact on this issue as well. Thus, as the High Judicial Council issued recommendation to suspend the work of courts (except in specific proceedings), this measure delayed the possibility of initiation of bankruptcy proceedings toward insolvent companies.</p> <p>Also, postponement of deadlines and court hearings during the state of emergency indirectly affected bankruptcy proceedings already pending before the courts (for example, preclusive deadlines to undertake actions before the bankruptcy court ceased to run, etc.).</p>

accordance with the relevant law) and conducts business and represents the company until this procedure is ended.

In that regard, if insolvency of a company is determined, Bankruptcy courts are competent to conduct such procedures by: (i) allowing reorganisation of a company, or (ii) determining bankruptcy of a company.

Company's reorganisation plan can be submitted to the Bankruptcy Court simultaneously with a proposal on initiation of bankruptcy proceeding, or after such proceeding is initiated (within 90 days). The reorganization, as an alternative to bankruptcy, serves for the settling of a company's creditors through various financial measures aimed at the company's assets.

If the court adopts the reorganization plan, the bankruptcy proceedings are suspended, and the company's management is obliged to act in accordance with the adopted plan until the expiration of the period for which it was adopted (with maximum duration of five years). In case of company's non-compliance with the adopted reorganization plan, suspended bankruptcy proceeding may be initiated again.

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BOSNIA & HERZEGOVINA:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p><u>Federation of Bosnia and Herzegovina ("FBH")</u></p> <p>In FBH, similar to Serbia, insolvent company or its creditor may initiate bankruptcy proceeding, while the reorganization of an insolvent company may be carried out as a particular phase during the bankruptcy proceeding, in order to regulate legal position of insolvent company towards its creditors and maintain its businesses.</p> <p>Legal grounds for the initiation of bankruptcy proceeding are:</p> <ul style="list-style-type: none"> - <i>insolvency of a company</i> (if a company is unable to meet its due payment obligations); - <i>threatening insolvency</i> - representing reasonable expectations that a company will be unable to meet its payment obligations upon their maturity. In this case, only the insolvent company may initiate bankruptcy proceeding. <p>This procedure is conducted by the competent court, thus legal representatives and company's management have limited rights upon appointment of the bankruptcy trustee.</p> <p><u>Republic of Srpska Entity ("RS")</u></p> <p>In RS, restructuring proceeding represents a previous alternative to bankruptcy and a special proceeding. Reorganisation may be initiated due to the <i>threatening</i> insolvency of a company, whereby bankruptcy procedure may be initiated in case of a company's <i>insolvency</i>.</p> <p>It is considered that threatening insolvency exists if a company: (i) is late with settlement of its</p>	<p>During COVID-19 pandemic in Bosnia and Herzegovina, entities adopted laws and by-laws on deadlines and acting in court proceedings during pandemic. Therefore, although there are no regulations with direct impacts on bankruptcy proceedings, possibility of postponement of court hearings and deadlines may as well be of indirect influence on companies over which the bankruptcy procedure shall be conducted or initiated.</p> <p>Also, FBH announced adoption of the new Law on Bankruptcy, which would be more favourable towards company reorganisation procedures. The new law shall govern reorganisation procedure in the similar manner as the relevant law in RS, which is considered more favourable for insolvent companies.</p>

financial obligations for up to 60 days; (ii) according to the plan of monetary obligations will not be able to settle future obligations upon their maturity in the upcoming 12 months period.

Restructuring procedure is conducted before the District Commercial Court and may last up to 5 months from the date of opening, with a possibility of additional 90 days extension.

Governing laws of FBH and RS do not stipulate special obligations for the management of an insolvent company to submit a request to initiate the restructuring or bankruptcy procedure, but once it is determined by the court, the company's management must comply with all legally prescribed deadlines (such as submission of financial and operational restructuring plan and other reports to the court, notifying creditors, payment of court fees, etc.).

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NORTH MACEDONIA:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p>According to the Macedonian Law on Bankruptcy, bankruptcy procedure is conducted in the following cases:</p> <ul style="list-style-type: none"> - Insolvency of the debtor, when the debtor is incapable for payment of its due obligations towards the creditors in a period of at least 45 days or - Future, imminent insolvency of the debtor, when there is high level of certainty that the debtor will not be able to pay its due obligations after they become due and payable. In this situation, the bankruptcy procedure is always initiated by the debtor i.e. its management. <p>The bankruptcy procedure is initiated upon the proposal of a creditor, the debtor or another person authorized by law (e.g. liquidator of the company). The procedure is conducted before the primary civil courts which have competence for conducting of such procedures under the Law on Courts (courts with extended competence).</p> <p>Outcome of the procedure could be termination (closing) of the debtor's business or reorganization i.e. restructuring of the debtor, which is subject to a decision that is reached by the Assembly of Creditors (consisted of all creditors).</p> <p>There is explicit obligation under the Law on Bankruptcy for the management of the company to file a proposal for initiating a bankruptcy procedure at the latest within 21 days as of the day of the occurrence of the reasons for initiating of a bankruptcy procedure. The member of the management and supervisory board of the company shall bear a personal and joint, unlimited liability for any damages caused to the creditors of</p>	<p>Pursuant to the Decree with force of law for application of the Law on Bankruptcy during the period of state of emergency reached by the Government of North Macedonia (Official Gazette no. 76/2020):</p> <ul style="list-style-type: none"> - No bankruptcy procedures will be initiated during the period of state of emergency and 3 months after the finishing of the state of emergency period, regardless whether the legal requirements for initiation of such procedures are met; - All activities in the already initiated bankruptcy procedures are stopped and will continue after the expiration of a three-months period after the finishing of the state of emergency. <p>Accordingly, during the period of state of emergency and the next three-months period, there will be no obligation for the companies' management to file for insolvency, regardless of the financial situation of the company.</p>

the company – debtor, if they fail to file a proposal for initiating a bankruptcy procedure, despite knowing or being obliged to know of the excessive indebtedness of the company. The property-related liability for damages shall not exclude and shall not affect any possible penal (criminal) liability of such persons.

With the initiation of the bankruptcy procedure, the rights and authorizations of the managing directors, members of the management boards, representatives and proxies, as well as of the members of the supervisory boards, are ceased. Such rights and authorizations, to the extent required for successful completion of the activities within the bankruptcy procedure, are transferred to the bankruptcy manager.

In some cases of reorganization of the debtor, its management could regain their functions, for the purpose of successful completion of the reorganization plan.

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MONTENEGRO:

Duty of the company's management to file for insolvency - general	COVID-19 amendments
<p>In Montenegro, bankruptcy proceeding is, like in Serbia and FBH, conducted by competent Bankruptcy Court, through: (i) reorganisation of an insolvent company, or (ii) bankruptcy of an insolvent company.</p> <p>Such proceeding may be initiated by an insolvent company as well as its creditors, if the following conditions that indicate the insolvency of the company are met:</p> <ul style="list-style-type: none"> - permanent inability to make payments (company cannot meet its financial obligations within 45 days from the date, and/or has completely suspended all payments for a period of 30 days continuously), and - over-indebtedness (in case company's debts are higher than its assets). <p>As of the day of initiation of the bankruptcy procedure, the management of the company loses most of representation and management rights, except the right to appeal the decision on initiation of the bankruptcy proceeding as well as the right to submit a statement of reorganization plan within 60 days since the bankruptcy proceeding was initiated.</p> <p>If the court adopts the proposed reorganization plan, the company is obliged to act in accordance with such plan until its expiration, which can be no longer than 5 years.</p>	<p>Unlike some countries, Montenegro has not imposed a state of emergency during the COVID-19 pandemic. Although the state adopted various by-laws in order to support the economy, when it comes to insolvency of the companies, the state has not enacted regulations that directly or indirectly affect insolvent company's acting in bankruptcy proceedings.</p>

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