



IDEA anti COVID-19 # 4

Insolvency during the Coronavirus period: a proposal for temporary changes to the Insolvency Act¹

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Brief summary

- The economic situation that the Czech Republic is facing and will continue to face for some time, as a result of the Covid-19 epidemic and the restrictions imposed by the government in response to it, is utterly exceptional. This kind of situation demands exceptional counter-measures, not only in terms of budgeting and monetary policy, but also in private law, because the effectiveness of the steps the state takes in terms of fiscal and other policy to mitigate the expected recession should not be weakened by institutions of private law.
- Insolvency proceedings, i.e. the procedural instruments designed to deal with business entities' financial failure, at the individual level rather than at the sectoral level or for the majority of the economy, are one such institution.
- In its current form, which inter alia **(a)** obliges the defaulting entity and its management to launch insolvency proceedings, if the defaulter goes out of business,

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(b) entitles the defaulting entity's creditors to launch insolvency proceedings and **(c)** involves the courts relatively intensively in the process, the insolvency law in force could – regardless of other government measures – potentially trigger a massive wave of business insolvencies. That wave could easily entirely overrun not only the decision-making capacity of the insolvency justice system, but also the capacity of the market for insolvent defaulters' assets.

- This text therefore presents a proposal for discussion, consisting of several temporary measures in Czech insolvency law, which aim to “flatten the curve” of the epidemic of business insolvencies that will very likely follow on from the Covid-19 epidemic. The primary aim is to boost the effectiveness of the country's other anti-crisis measures and so prevent insolvency justice system in the Czech Republic from becoming overrun and obstructed.
- These temporary changes could come into force upon the pronouncement of an amendment to the Insolvency Act, once they had been accepted during the state of legislative emergency. The obligation for defaulting business owners and members of their statutory bodies to submit a motion of insolvency could, for the effective duration of the changes, be temporarily suspended. Similarly, creditors' rights to submit an insolvency motion could also be temporarily suspended. For cases in which these two essential exceptional measures did not suffice, an exceptional automatic moratorium on the individual recovery of debts by creditors could be made available to defaulting businesses. It would seem appropriate to consider, in addition, a temporary moratorium on the fulfilment of previously approved reorganization plans.
- The temporary alterations discussed in detail in the following text have, naturally, a range of pros and cons. Their great “pro” would certainly be that they are very simple changes that would work almost entirely without the need for court decisions: this is the only kind of change that can really help in the present situation. Thanks to their limited scope and temporary validity, they could be adopted swiftly, which is another indisputable advantage in the current situation.