



REORGANIZATION PROCESS

O tom, jaké možnosti připoustí český právní řád v rámci insolvenčního zákona, informují MARTIN DANCŠIN a RADEK DVOŘÁČEK.

A debtor may go into insolvency when it is unable to repay a majority of its debts as they fall due, or when it has ceased to pay its debts in the ordinary course of business. In such cases, the Insolvency Act provides several solutions, such as bankruptcy and reorganization. In the case of bankruptcy, creditors' receivables are settled from the sale of the debtor's assets. The most significant implication of bankruptcy is that the debtor loses control of its assets and ends up in liquidation.

Alternately, insolvency or threatened insolvency may be resolved in accordance with the Insolvency Act by means of reorganization. Reorganization provides the opportunity to carry out changes in the capital and property structure between the debtor and its creditors, with the main aim being to preserve the going concern value of the debtor's business. The most important aspect of reorganization is distinguishing the viable and non-viable parts of the debtor's business.

Reorganization is available to debtors who meet certain criteria prescribed by the Insolvency Act. In addition to the debtor and its creditors, the insolvency trustee is another participant in the proceedings, whose main role is supervising the debtor's activities during the reorganization process. In exercising statutory powers, the insolvency trustee must comply with applicable laws and is appointed either directly in the decision approving reorganization or by the court.

amendment [ə'mendmənt]	dodatek, úprava
assets ['æsets]	majetek
bankruptcy ['bæŋkrʌptsi]	konkurs
commence sth. [kə'mens]	zahájit
comply with sth. [kəm'plai]	vyhovět čemu
creditors' committee ['kreditəz kə,mɪti:]	věřitelský výbor
debtor ['detə]	dlužník
divert from sth. [daɪ'vɜ:t]	odchýlit se od čeho
exclusive right [ek'sklʉ:sɪv 'raɪt]	přednostní právo
exercise sth. ['eksəsaɪz]	vykonávat, provádět
fall due [fɔ:l 'dju:]	stát se splatným
going concern value ['gəʊɪŋ kən,sɜ:n ,vælju:]	tzv. hodnota prosperujícího podniku
insolvency [ɪn'sɒlvənsi]	úpadek
insolvency register [ɪn'sɒlvənsi rɛ,dʒɪstə]	insolvenční rejstřík
Insolvency Act [ɪn'sɒlvənsi ækt]	Insolvenční zákon
insolvency trustee [ɪn,sɒlvənsi trʌs'ti:]	insolvenční správce
material acts [mə'tɪəriəl ækts]	významné, zásadní úkony
merger ['mɜ:dʒə]	fúze
petition [pə'tɪʃən]	návrh, podání
pledge [pledʒ]	zástava
receivables [ri:'si:vəbəlz]	pohledávky
registered creditor [rɛ'dʒɪstəd ,kreditə]	přihlášený věřitel
reorganization [ri:,ɔ:gənəɪ'zeɪʃən]	reorganizace
reorganization plan [ri:,ɔ:gənəɪ'zeɪʃən 'plæn]	reorganizační plán
tool [tu:l]	nástroj
viable ['vaɪəbəl]	perspektivní, životaschopný
voluntary petition [vɒləntəri pə'tɪʃən]	dobrovolný návrh, podání

In order to initiate reorganization proceedings, the debtor files a voluntary petition with supporting documents such as schedules of assets and liabilities, current income and expenditures, business affairs, etc. Alternately, creditors who meet the legal requirements (and with approval of the creditors' committee) may file an involuntary petition against the debtor.

After obtaining the court's approval of reorganization, the debtor must submit a reorganization plan, which is the most important document in the proceedings as it determines the future steps needed to successfully reorganize and must reflect the debtor's truthful financial and legal feasibility.

Reorganization may be performed in several ways, for instance by means of merger, restructuring creditors' claims, sale of the debtor's assets, or with creditors receiving shares in the newly reorganized company. In the reorganization plan, creditors are divided into different types according to their legal status and financial interests. Secured creditors are in the best position to receive satisfaction as they are reimbursed from the proceeds of the sale of the debtor's assets provided to the creditors as security, for example by a pledge.

The debtor has the exclusive right to submit a reorganization plan within 120 days after the court approves reorganization. However, under certain circumstances, the reorganization plan may also be submitted by a registered creditor after the creditors' committee gives its approval. The plan must subsequently be approved by the court.

In principle, the plan goes into effect after the court approves it and it is subsequently published in the insolvency register. The plan is binding on all participants and other persons and entities whose rights and duties are affected by it. Unless an amendment to the plan is approved, no one is permitted to divert from the plan. During reorganization, the debtor may not take any material acts such as concluding credit agreements or entering into new markets. However, once the reorganization plan goes into effect, the debtor is again entitled to dispose with its assets in the full extent, unless the reorganization plan prescribes otherwise.

As soon as all the steps in the plan are successfully completed, the reorganization process comes to a close, otherwise bankruptcy proceedings are commenced.

Reorganization is a new tool in Czech insolvency law and is an opportunity for debtors that fall into insolvency to keep the most viable parts of their business. Intensive negotiations and communications between the debtor and key creditors are the keystone to successful reorganization, keeping the company in business and preserving jobs. BS

Tento text byl připraven ve spolupráci s advokátní kanceláří Glatzová & Co.

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