

Article

AMENDMENT TO CZECH BANKRUPTCY ACT

April 2000

This memorandum briefly summarizes the primary positive aspects and remaining limitations of the amendment to the Bankruptcy Act, as amended (Act No. 328/1991 Coll.), which comes into force on May 1, 2000, which incidentally is the thirteenth amendment of this Act since it was initially adopted in 1991.

Primary positive aspects

- Introduction of a preliminary (interim) trustee in bankruptcy, whose main role is to document the debtor's assets and secure such assets until such time as the proposed bankruptcy order is made.
- The trustee in bankruptcy is given additional powers, particularly in respect of the documentation of the debtor's assets.
- Introduction of criminal liability for negligence in respect of the breach of obligations in bankruptcy proceedings and breach of the obligation to file a bankruptcy petition. Such liability concerns primarily the executives and members of the board of directors.
- Lowering of the threshold in respect of composition from 45% to 30% and in respect of forced composition¹ from 33% to 15%. In conjunction with the other statutory rights and alternatives now available to creditors, this may serve as a way out of certain deadlocked situations.
- The role of the creditors' committee is strengthened.
- Reclassification of claim priority such that the former second priority (primarily dealing with claims of state authorities, bodies or other institutions) has been omitted, and claims ensuing from labor relations have been moved to first priority.

New and remaining limitations

- Secured creditors are to receive satisfaction of their claims up to a maximum of 70% of the proceeds gained from the sale of the respective security. The balance of their claims may be satisfied pro rata with unsecured creditors.
- The Bankruptcy Act still does not provide for an effective alternative to bankruptcy. Corporate reorganization, such as a U.S. Chapter 11-type process, which would allow potentially viable companies to be revived rather than put into liquidation, remains unavailable.
- No time limits are imposed on courts for making bankruptcy related decisions (except in respect of proceedings commenced by debtors). Bankruptcy proceedings will continue to be time consuming affairs, in respect of creditors seeking the appointment of an interim trustee in bankruptcy or a preliminary injunction in urgent circumstances.
- The powers of creditors have not been expanded to a great degree.
- The part of the Bankruptcy Act which deals with procedural matters has unintentionally been left out of the amendment to the Bankruptcy Act.

Notes:

¹Forced composition, as an alternative to bankruptcy, may be approved by a court within the framework of a bankruptcy proceeding on the basis of a petition by the debtor, approved by a three-fourths majority of unsecured creditors. Once bankruptcy proceedings have commenced, it is not clear whether the debtor or

the trustee in bankruptcy files the petition.

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