

# Tax Newsletters

## Corporate Law



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## New rules in bankruptcy proceedings 1.

**The modified rules of bankruptcy proceedings entered into force on 1 September 2009. This issue of our Newsletter provides a summary of the new features of insolvency proceedings from the perspective of the debtors.**



Dr. János Borsy

### Insolvency proceedings

Under the Hungarian provisions of law currently in effect there are two types of insolvency proceedings:

- bankruptcy proceedings are aimed at restoring the solvency of the debtor,
- while liquidation proceedings result in the dissolution of the debtor.

Certain new provisions of **Act LI of 2009** on the amendment of the act on bankruptcy and liquidation proceedings and other related laws entered into force on 1 September 2009. It is a clear aim of the changes to make bankruptcy proceedings more attractive and – by way of avoiding liquidation resulting mostly in the dissolution of the company – to facilitate the satisfaction of claims towards companies having difficulties in meeting their payment obligations.

In the course of bankruptcy proceedings, the debtor is granted – in the interest of concluding a composition agreement – a deferment of payments (moratorium), and will attempt to conclude a composition agreement. The debtor, if submitting a request to this effect, is automatically granted a temporary moratorium.

The current amendment of the law introduces the institution of a moratorium that the debtor is entitled to by the power of the law. The objective of such moratorium is the protection of the assets of the debtor in the interest of concluding a composition agreement with its creditors. The chief tool towards achieving this objective is that the enforceability of the claims towards the



debtor is temporarily suspended.

The most important new provision is that now not only the debtor, but also the creditors are entitled to initiate bankruptcy proceedings against the debtor.

## Bankruptcy proceedings initiated by the debtor

The authorized representative of the debtor company may file a petition with the competent court requesting that bankruptcy proceedings be initiated. Such a petition may not be filed if the liquidation of the company has already been ordered, or bankruptcy proceedings against the debtor are under way, or less than two years have elapsed since the completion of the previous bankruptcy proceedings.

## Bankruptcy proceedings initiated by the creditor

A creditor may file a petition for bankruptcy proceedings against the debtor if it has a claim against the debtor and wishes to enforce such claim in bankruptcy rather than liquidation proceedings.

Regardless of which party initiates the proceedings, the petition for bankruptcy proceedings must be submitted on a form, electronically after 1 July 2010.

Simultaneously with submitting the petition for bankruptcy proceedings, the debtor is required to notify the financial institution managing its account of the fact that a petition for bankruptcy proceedings has been filed. The financial institution managing the account may not enforce its claims against the debtor after such notice or take any other measures that would place itself or any third party in a more favourable situation.

## The moratorium

### Temporary moratorium

If the petition is submitted by the debtor, the court will publish the request for bankruptcy proceedings in *Cégközlöny* [the Company Gazette] within one working day from the receipt of the same. Upon such publication, the debtor is entitled to an immediate moratorium on payments, which fact will also be published. As a next step, within five working days of the receipt of the petition, the court will examine whether the petition meets all the formal requirements under the law. If the petition is rejected by the court, the temporary moratorium ends.

If the petition for bankruptcy proceedings is not rejected by the court, then it will issue a bankruptcy order immediately and publish this order in *Cégközlöny*.

The commencement date of the bankruptcy proceedings will be the date of publication of the bankruptcy order.

From such commencement date, the suffix "cs.a." (under bankruptcy proceedings) must be indicated after the company name of the debtor.

### Statutory moratorium

The debtor is entitled to payment moratorium for 90 days after the publication of the bankruptcy order. The rights and obligations are not terminated during this moratorium, only special rules are applicable to their enforcement.



In the course of the composition negotiations, the length of the moratorium can be extended to a maximum period of 365 days from the commencement date of the bankruptcy proceedings upon the consent of two-thirds of the creditors having voting rights (in the classes of both secured and unsecured creditors). The maximum length of the moratorium will be 180 days provided that half of the creditors (in both the secured and the unsecured class) consent to such extension. The creditors may set as a condition to the extension of the moratorium that the debtor grants the administrator joint authority to sign for the company and joint power to dispose over the bank accounts of the company.

### Negotiations with the creditors

Within 45 days of the commencement date of the bankruptcy proceedings, the debtor is required to invite the administrator and the creditors to negotiations with an eye to reaching a composition agreement. The debtor is required to prepare a programme for the restoration and preservation of its solvency and to draw up a proposed composition agreement. Several negotiation meetings may be held during the moratorium period. If the creditors do not approve the proposed composition agreement, then the court is required, within 8 working days from the receipt of the minutes of the negotiation meeting, to issue a ruling on the closing of the bankruptcy proceedings and the expiry of the moratorium. The debtor and the creditors can conclude a composition agreement if the majority of the creditors having voting rights (in the classes of both secured and unsecured creditors) give their consent. The composition agreement must be drawn up in writing and countersigned by the administrator. If the composition agreement complies with all statutory requirements, then the court will approve it in a ruling and declare the bankruptcy proceedings to be closed. If no agreement is concluded or it does not comply with the statutory requirements, then the court will terminate the bankruptcy proceedings, declare the insolvency of the debtor *ex officio* and order its liquidation.

Should you have any question about the topic discussed in this Newsletter, we are always happy to be of service.

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