

LEX COVID – PART I

New governmental proposals to mitigate certain impacts of Covid-19

On March 31, 2020, the Czech Government adopted the Draft **Act on Particular Measures to mitigate the Impact of the Coronavirus Pandemic on persons participating in court and other proceedings, injured persons, victims of crime and legal entities** (the COVID Lexicon for Justice, Insolvency and Enforcement), known as Lex Covid.

I. The Insolvency Act

The proposed amendments to the Insolvency Act focus on help to (i) **Entrepreneurs** whose undertaking can be threatened due to the Covid-19 situation and (ii) **Debtors** (natural persons having no debts from an entrepreneurial activity) in already initiated discharges who face a reduction or loss of income.

The amendments in relation to **Entrepreneurs** are the following:

- The **deadline for the mandatory submission of insolvency motions of debtors** suffering insolvency will be extended for a **period of 6 months following the termination or cancellation of the extraordinary measures** adopted by the Czech Government, the Ministry of Health and Regional Hygienic Authority with the aim of tackling the Coronavirus Pandemic (“**extraordinary measures**”) **or until 31 December 2020 at the latest**; at this moment, the debtor is obliged to submit an insolvency motion immediately after it becomes insolvent within the meaning set by the Insolvency Act. This extension is very important as the particular legal regulations set further consequences for the late submission of an insolvency motion by the debtor (e.g., the liability of a statutory board for any damage caused in connection with such late submission, etc.).
- **The creditors’ insolvency motions filed until 31 August 2020 will be disregarded**; this provides entrepreneurs with additional time to deal with their financial situations;
- An “**extraordinary moratorium**” shall be **more effective and faster than a standard moratorium**, in particular, declaration on an extraordinary moratorium will not be subject to creditors’ approval and some mandatory documents could be replaced by a debtor’s affidavit;

The **Insolvency Court declares an extraordinary moratorium**, if:

- the debtor provides the court with the **required information**;
- the extraordinary moratorium shall be issued as the **result of the extraordinary measures**;
- the debtor **was not insolvent as of 12 March 2020**;
- the **debtor did not provide** its controlling person(s) or person(s) controlled by it with **any profits or other payments** during the period of 2 months before 12 March 2020, or after this date, unless such person returned such payment or profit back to the debtor.

The **extraordinary moratorium is issued for 3 months** and the **Insolvency Court may extend it for another 3 months**.

The debtors can apply for a moratorium until 31 August 2020.

- In the case of insolvency proceedings, in which the **reorganization plan** was approved until 12 March 2020, and was not paid up at the same time, the debtor may ask the Insolvency Court to suspend

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fulfilment of the approved reorganization plan; the deadline for such submission is similar to the deadline mentioned under point i) above.

The main amendments for the **Debtors** mentioned under point (ii) above are that the Insolvency Court does not cancel the discharges, if the debtor does not fulfil the payment schedule due to the COVID-19 situation; or it can decide on exemption of the debtor from the payment of debts, even if the debtor pays less than 30% of his/her debts due to the COVID-19 situation.

II. Execution Proceedings

The measures adopted by the Draft are aimed at the postponement of executions by the sale of moveable and/or immovable property or limiting the debiting of receivables from the account of a financial institution.

In particular, executions by the sale of moveable assets and by sale of immovable assets, in which the debtor has his/her permanent residency, shall not be made until 30 June 2020.

However, this shall not apply, if:

- the debtor informs the court/court executor that it shall continue with such execution; or
- maintenance claims, compensation for personal injuries are to be enforced.

As to executions by debiting receivables from accounts of financial institutions, debtors will be entitled to withdraw funds from his/her account and use the funds for payments or treat them in any other manner to the amount up to quadruple of the living wage of an individual set by the particular legal regulation (i.e., EUR 575); at this moment, the debtor has the right to use the funds only to the amount of double the living wage.

This limitation, according to the previous sentence, shall be applicable from the effective date of the Draft and until 31 December 2020.

III. Particular measures related to the possibility of waiving the absence of time limits

Lex Covid extends the use of the existing procedural instrument which allows the waiving of missed procedural terms set, by particular procedural regulations, to terms which cannot be waived now (e.g., for extraordinary appeal), if the term was missed as a result of a constraint imposed by the extraordinary measures adopted to mitigate the outbreak of COVID-19.

This **applies specifically to the terms set by the following proceedings:**

- civil proceedings;
- insolvency proceedings;
- enforcement proceedings;
- administrative proceedings;
- criminal proceedings;
- proceedings before the Constitutional Court and the Ministry of Justice.

The period for submission of an application for remission of a missed procedural term will vary depending on the type of proceedings, e.g., 15 days in the case of civil court proceedings and 3 days in the case of criminal proceedings, and will start after the termination or cancellation of the relevant extraordinary measure; the applicant will also be obliged to enclose the missed act with an application.

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It will also be guaranteed that these periods shall not expire earlier than some given period from the end of the state of emergency.

The courts shall decide on each application individually and namely assess whether the extraordinary measures limited the applicant to such an exceptional extent that he/she was not able to meet the legal term.

IV. Particular measures related to delays

If the Debtor proves that the measures limited or made the due fulfilment of its debt impossible, the Creditor will be entitled only to interest for delay to the maximum amount set by the respective legal regulations.

The abovementioned shall apply only to delays which occurred after 12 March 2020 and be valid until 30 June 2020 at the latest. It shall not be applicable to new contracts concluded after 12 March 2020.

Any stipulations, which derogate from the abovementioned, will be disregarded.

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This document reflects the status as of April 14, 2020.

Lex Covid is now being discussed and adopted by the Parliament of the Czech Republic, and some amendments may occur.

We are closely monitoring the situation and will keep you updated.

This document is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case.