

With respect to the dynamic course of events regarding the coronavirus disease 2019 (COVID-19) – commonly known as the “coronavirus” – we address the threat of insolvency and related liability of the statutory bodies (Directors), and provide a list of practical mitigating steps.



Test the Liquidity of Your Company

The company is insolvent in a form of illiquidity (in Czech: *úpadek*) if (a) it has **several creditors**; (b) due and payable debts for more than **30 days**; and (c) it is **not able to fulfil** them. Therefore, keep up-to-date records about due payments and remaining periods.

Be Aware of the Directors’ Duties

- Once the company is insolvent, the Directors are obliged to file an insolvency petition. If they fail to do so, they are obliged to compensate the creditors for the damage amounting to the difference between the amount of receivables registered and the amount received by the creditor in the insolvency proceedings.
- The current and the former Directors may (a) become a guarantor of the debts of the company toward its creditors, or (b) be required to return all benefits received from the company within the two preceding years, if it is decided that the company is insolvent, and they had known, or should have known, that the insolvency was imminent.
- If the Directors breach their duties, they must compensate the company for any damage and/or harm caused to the company resulting from such breach.

Mitigate the Risks

1. Extend the Payment Terms

- Maintain good lines of communication on a regular basis with your suppliers, logistics providers and end customers as to what you are doing and the steps you are taking to mitigate the impact of the virus on your business.
- Under the Czech law (implementing the Late Payment Directive), the contractual parties can agree on the payment terms longer than 60 days (30 days in the case of agriculture goods) only if such payment terms are not grossly unfair to the creditor. Agreeing on the extended payment terms could be considered as a legitimate tool for maintaining the running of the business and avoiding the illiquidity of the company under the current circumstances.
- Consider also the use of payments in instalments with respect of which the rules above apply accordingly.

2. Cover Your Back

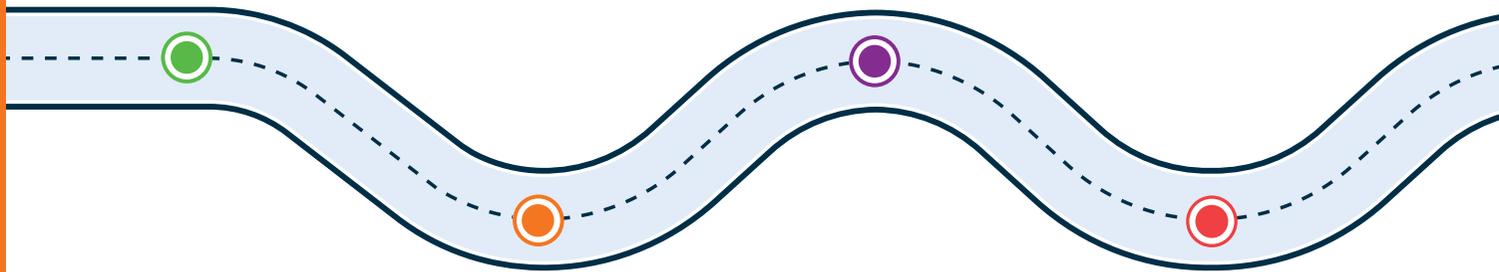
- Pursuant to Section 182 (limited liability company) and Section 403 (2) (joint stock company) of Act no. 90/2012 Coll., the Directors shall (a) call a shareholders’ meeting immediately once they know that the insolvency of a company is imminent; and (b) suggest some appropriate measures as to how to face such a situation.
- Request an instruction for the business management (in Czech: *obchodní vedení*) from the shareholders’ meeting. This will not fully limit your liability, but will serve as evidence that the company was aware and approved your action. This could be considered as a mitigating factor.
- There is only so much a business can do to mitigate the possible impact of the spread of the virus. If, ultimately, the economic and social impact of restrictions cause cash flow issues that cannot be managed, Directors must seek professional advice. Keeping records of key decisions will help Directors should the company not survive and they later have to justify why those decisions were made.

3. Get a Zero Interest Rate Loan

- If you are an SME, get a loan of up to CZK15 million with a **zero interest** rate from the Czech-Moravian Guarantee and Development Bank. Loans are granted up to 90% of eligible expenditure, with a maturity of two years, including the possibility of deferred repayment for up to 12 months. Applications can be sent from March 16, 2020, onwards through CMGDB e-registry only. More information (in Czech) is available [online](#).

4. Avoid Preferential Treatment of Creditors

- Pre-insolvency transactions that had been entered into by the company as the debtor before the insolvency started may be challenged by the insolvency trustee and found ineffective, if these transactions gave preferential treatment to a certain creditor.
- If a company is in financial difficulties, Directors may be committing a crime if they frustrate the satisfaction of some creditors by giving the preferential treatment to others.



Advocate for Temporary Measures

To avoid unnecessary bankruptcies due to the virus, the German Ministry of Justice is discussing and planning the new law and/or respective amendments to other laws to suspend a rule obliging companies to apply for insolvency within three weeks of failing to meet an obligation until the end of September 2020. The new rules shall be in force in the next couple of days. Join us in our effort to advocate for temporary measures, which will help the Czech economy to keep running, either directly or through your industry interest groups/chambers. The first discussions with the Czech government regarding similar temporary measures are taking place this week.

Further Updates

This alert reflects our perspective as of March 17, 2020. We will continue to monitor the situation carefully and keep this advice note under review. This is to provide you with the very latest guidance on the practical steps to take, given that the situation is an evolving one and the government and public authorities' guidance and advice may well change.

We have also set up a [dedicated resource hub](#) for businesses on the legal, regulatory and commercial implications of COVID-19.

If you would like to discuss any of the issues raised in this advice note, please contact any of our team listed below.

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