

# Restructuring & Insolvency

*Contributing editors*

**Catherine Balmond and Katharina Crinson**



2019

GETTING THE  
DEAL THROUGH

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*Contributing editors*

**Catherine Balmond and Katharina Crinson**  
**Freshfields Bruckhaus Deringer**

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# Preface

## Restructuring & Insolvency 2019

Twelfth edition

**Getting the Deal Through** is delighted to publish the twelfth edition of *Restructuring & Insolvency*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, Japan and Korea.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine Balmond and Katharina Crinson of Freshfields Bruckhaus Deringer, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
November 2018

# Hungary

Zoltán Varga and Bendegúz Horváth

Nagy és Trócsányi

## General

### 1 Legislation

#### What main legislation is applicable to insolvencies and reorganisations?

The main provisions concerning the insolvency of an economic operator are regulated in:

- Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (the Bankruptcy Act);
- Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies;
- Act LXXXVIII of 2014 on Insurance Business Activity;
- Act I of 2012 on the Labour Code;
- Act V of 2013 on the Civil Code;
- Act CXXX of 2016 on the Code of Civil Procedure;
- Act XXXVII of 2014 on the Further Development of the Institutional System Promoting the Security of Certain Actors of the Financial Intermediary System;
- Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings;
- Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises;
- Act CXXXIX of 2013 on the National Bank of Hungary; and
- 106/1995 (IX.8) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings.

### 2 Excluded entities and excluded assets

#### What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The Bankruptcy Act shall apply to all economic operators and their creditors. For the purpose of the Bankruptcy Act, economic operator shall mean (i) business associations, private pension funds, cooperative societies, associations etc established in Hungary, furthermore (ii) all other legal entities and unincorporated organisations qualified as business associations under national law, and any other organisation pursuing economic activities who have their centre of main interests within the territory of the European Union according to European Parliament and Council Regulation EU/2015/848, and the insolvency proceedings to which it is subject fall within the scope of Regulation 2015/848/EU.

All assets held by the economic operator in bankruptcy or under liquidation proceedings at the time of the opening of proceedings, as well as all assets acquired during the proceedings, shall be realised in bankruptcy and during liquidation proceedings. The assets of an economic operator shall comprise all assets that it owns or controls.

Assets such as natural preservation areas, land reserved for compensation purposes and taxes and other similar dues taken out of the wages of employees shall not be construed to comprise the economic operator's assets.

Special provisions apply to banks, municipalities and major economic operators of preferential status for strategic considerations.

### 3 Public enterprises

#### What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The provisions of the Bankruptcy Act apply to government-owned enterprises too. The creditors of a government-owned enterprise have the same remedies as the creditors of a private enterprise.

However, the Bankruptcy Act contains special provisions to Major Economic Operators of Preferential Status for Strategic Considerations. Major Economic Operator of Preferential Status for Strategic Considerations shall mean any economic operator: (i) that operates in fields that may be construed to be of national importance for reasons of public health, infrastructure development, defence, law enforcement, military, energy safety, energy supply etc; (ii) that is involved in the implementation of, or undertook to execute, projects given priority for national economy consideration; (iii) that is involved in discharging public functions conferred by law nationwide; or (iv) that received large amounts of state aid for restructuring, credit guarantees, surety facilities or export credit insurance, or that is engaged in the pursuit of, or undertook to carry out, concession-bound activities, and is therefore engaged under contract with the state or specific public bodies (including the government-owned enterprise established for carrying out the aforesaid functions) in connection with the above.

The government may classify as Major Economic Operators of Preferential Status for Strategic Considerations those economic operators to which the following criteria applies: (i) settlement of the debts of such operators, composition with creditors or reorganisation is in the interests of the national economy or is of particular common interest; or (ii) the winding up of such operators without succession – where the lack of funding and insolvency cannot presumably be resolved – in a simplified, transparent and standardised procedure is given priority because of economic considerations.

### 4 Protection for large financial institutions

#### Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

To maintain the stability of the financial sector, the Hungarian parliament adopted the Act XXXVII of 2014 on the further development of the institutional system promoting the security of certain actors of the financial intermediary system, which introduced the resolution system based on the Bank Recovery and Resolution Directive of the European Union. The Hungarian resolution authority is the Hungarian National Bank (MNB). The MNB shall order and launch the resolution proceeding in respect of an institution if all of the following conditions have been met:

- the MNB acting in its scope of authority for the supervision of the financial intermediary system establishes that the institution is failing or likely to fail;
- according to the judgment of the MNB, apart from the resolution actions no other measure is likely to prevent the insolvency of the institution under the circumstances; and
- according to the judgment of the MNB, the resolution is justified by public interests.

The Resolution Fund, which is composed of the contributions of market participants (credit institutions and investment firms) finances the costs incurred in the resolution phase of institutional crisis management (ie, the application of the resolution tools). The Hungarian Resolution Asset Management Company, which is fully owned by the Resolution Fund, was set up in 2015 for the purpose of receiving some or all of the assets, liabilities, rights and obligations of one or more institutions under resolution or bridge institutions.

## 5 Courts and appeals

**What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?**

Bankruptcy and liquidation proceedings are non-contentious proceedings falling within the competence and exclusive jurisdiction of the general court responsible for the place where the debtor's Hungarian registered office of record is located on the day when the request for opening the proceedings has been submitted. The Budapest Metropolitan Court shall have competence and jurisdiction to open and conduct main insolvency proceedings instituted against an economic operator covered by European Parliament and Council Regulation EU/2015/848, established in a place other than Hungary.

As regards procedural issues that are not otherwise provided in the Bankruptcy Act, the provisions of the Code of Civil Procedure on non-contentious judicial civil actions shall apply, subject to the derogations stemming from the special characteristics of non-contentious proceedings, as well as the general provisions of the Act on the Rules Applicable to Non-Contentious Civil Actions and on Non-Contentious Court Proceedings.

The Bankruptcy Act stipulates provisions concerning the redress options in the case of the opening of the insolvency procedure. In bankruptcy proceedings, the court decision ordering the opening of bankruptcy proceedings may not be appealed separately. An appeal against the decision for the refusal of the petition for the opening of bankruptcy proceedings shall be lodged within eight days. No justification shall be accepted determined in priority proceedings, at the latest within 15 days. In liquidation proceedings, the court decision ordering the opening of the liquidation may be appealed separately.

Under Hungarian law, there is no requirement to post security in order to proceed with an appeal; however, duty shall be paid when submitting an appeal. The amount of the duty is determined by Act XCIII of 1990 on Duties.

## Types of liquidation and reorganisation processes

### 6 Voluntary liquidations

**What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?**

Debtors may request the opening of liquidation proceedings if unable or unwilling to enter into bankruptcy. The petition may be submitted in possession of the prior consent of the supreme body of the debtor economic operator exercising founders' (shareholders') rights. In the case of sole proprietorships, the petition may be submitted by the owner at his or her own discretion. Employees and the trade unions defined in the Labour Code or the competent works councils shall be duly informed when the petition is filed. Legal representation shall be mandatory with regard to submission of the application. Commencing a voluntary liquidation has the same effect as commencing liquidation by the creditors.

### 7 Voluntary reorganisations

**What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?**

The directors of debtor economic operators may submit an application for the opening of bankruptcy proceedings at the court of law. Legal representation for the debtor shall be mandatory with regard to submission of the application. The debtor may not file a petition for bankruptcy if already adjudicated in bankruptcy, or if a request for its liquidation has been submitted, and a decision has already been adopted in the first instance for the debtor's liquidation. The debtor

may not file another petition for bankruptcy before the satisfaction of any creditor's claim that existed at the time of ordering the previous bankruptcy proceedings or that was established by such proceedings, and inside a period of two years following the time of publication of the final and definitive conclusion of the previous bankruptcy proceedings, or if the court ex officio refused the debtor's request for the previous bankruptcy proceedings pursuant to the provisions of the Bankruptcy Act, and if inside the one-year period following the time of publication of the final ruling thereof.

If the court did not refuse the request for the opening of bankruptcy proceedings, it shall forthwith adopt a ruling for the opening of bankruptcy proceedings, and shall consequently provide for having the ruling thereof published in the company gazette and for having the indication 'cs. a.' entered in the register of companies next to the company's name. The court shall ex officio appoint an administrator from the register of liquidators in its ruling on the bankruptcy and unless otherwise provided for in the Bankruptcy Act, no remedy shall lie against such ruling.

As a consequence of the opening of bankruptcy proceedings, the debtor is granted a stay of payment with a view to seeking an arrangement with creditors. The objective of stay of payment is to preserve the assets under bankruptcy protection with a view to reaching a composition with creditors, during which the debtor, the administrator, the financial institutions carrying their accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment.

### 8 Successful reorganisations

**How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?**

Composition means the debtor's agreement with the creditors laying down the conditions for debt settlement, such as in particular any allowances and payment facilities relating to the debt, on the remission or assumption of certain claims, on receiving shares in the debtor company in exchange for a debt, on guarantees for the satisfaction of claims and other similar securities, on the approval of the debtor's programme for restructuring and for cutting losses, and any and all other action deemed necessary to restore or preserve the debtor's solvency, including the duration of and the procedures for monitoring the implementation of the composition arrangement.

A composition agreement (reorganisation plan) shall separate creditors into classes. In particular, it shall distinguish between secured and unsecured creditors. A reorganisation plan may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights.

In the composition conference, voting rights shall be held by any creditor who registered its claim by the deadline specified in the Bankruptcy Act, who paid the registration fee, and whose claim is shown under recognised or uncontested claims. The composition agreement shall be signed by the parties, and by their legal representatives or proxies, and shall be countersigned by the administrator and by the select committee, if there is one.

If the composition arrangement is in conformity with the relevant legislation, the court shall grant approval by way of a ruling and shall declare the bankruptcy proceedings dismissed.

If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent ex officio in the liquidation proceedings and shall order the liquidation of the debtor.

The composition agreement shall not release non-debtor parties from liability. However, because of the accessory nature, a guarantor or surety etc shall be released from liability to the extent of the reduction of the claim secured by the guarantor or surety.

## 9 Involuntary liquidations

**What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?**

If the liquidation is requested by the creditor, the petition to the competent court shall specify the debtor's liabilities (the amount of the claim), the date of maturity (due date) and a summary of the reasons for claiming that the debtor is deemed insolvent.

The documents in proof of the contents of the petition shall also be attached, including a copy of the written notice sent to the debtor. If the court has not rejected the petition, it shall notify the debtor by sending a copy of the petition. The debtor shall, within eight days of receipt of the notice, declare before the court whether he or she acknowledges the contents of the petition. If the debtor acknowledges the claim, he or she shall also simultaneously declare whether he or she wishes a respite for the settlement of the debts and shall supply the numbers of all his or her accounts and the names of the payment service providers carrying such accounts, including the accounts opened following receipt of the petition, and furthermore, in the case of a concession, he or she shall inform the concessionaire concerning the opening of liquidation proceedings. If the debtor fails to respond to the court within the above-specified deadline, his or her insolvency shall be presumed.

Upon the request of creditor, the court shall appoint a temporary administrator without delay if the requesting creditor evidences that satisfaction of its claim at a later date is in jeopardy, proves the contract underlying the extent and expiry of the claim, with full probative document, and has advanced the fee of the temporary administrator (200,000 forints if the debtor has no legal personality and 400,000 forints for legal persons) and deposited it at the time of lodging the request.

Commencing an involuntary liquidation has the effect that upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette.

Once the proceeding is opened, there are not any material differences to proceedings opened voluntarily.

## 10 Involuntary reorganisation

**What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?**

The Hungarian law does not regulate the kind of reorganisation that creditors could commence.

## 11 Expedited reorganisations

**Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?**

No expedited reorganisations exist under Hungarian law.

## 12 Unsuccessful reorganisations

**How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?**

During the opening session of the composition conference, the creditors may express their refusal to support the composition proposal. If the debtor refuses to rework the composition proposal, the meeting shall be declared closed and so recorded in the minutes, and it shall be sent to the court and the supreme body of the debtor. If no composition is arranged with the creditors, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent and shall order the liquidation of the debtor.

If the debtor did not fulfil his or her payment obligation as stipulated in the composition agreement concluded in bankruptcy proceedings, the court shall declare the debtor insolvent and order the liquidation of the debtor by way of a ruling.

## 13 Corporate procedures

**Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?**

Act V of 2006 (the Companies Act) contains the rules for dissolution proceedings. According to the Companies Act, a company, if not insolvent, may be wound up without succession by way of dissolution proceedings. Dissolution proceedings may be opened by decision of the supreme body of the company.

While in case of dissolution proceedings, the company is not insolvent, and it is the intention of the supreme body to wind up its company without succession. The company's supreme body may elect any person to serve as the receiver, if in conformity with the requirements set out for the director, and if this person accepts the assignment. If the receiver concludes that the company's assets are insufficient to cover the creditors' claims, and the members fail to supply the funds lacking within 30 days, a request for liquidation must be submitted without delay. The request for liquidation may be submitted in the absence of the consent of the supreme body.

## 14 Conclusion of case

**How are liquidation and reorganisation cases formally concluded?**

See questions 8, 32, 33, 35 and 49.

## Insolvency tests and filing requirements

### 15 Conditions for insolvency

**What is the test to determine if a debtor is insolvent?**

The court shall declare the debtor insolvent:

- upon the debtor's failure to settle or contest his or her previously uncontested and acknowledged contractual debts within twenty days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice;
- upon the debtor's failure to settle his or her debt within the deadline specified in a final court decision or order for payment;
- if the enforcement procedure against the debtor was unsuccessful;
- if the debtor did not fulfil his or her payment obligation as stipulated in the composition agreement concluded in bankruptcy or liquidation proceedings;
- if it has declared the previous bankruptcy proceedings terminated; or
- if the debtor liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets, or the debtor was unable and presumably will not be able to settle its debt (debts) on the date when they are due, and in proceedings opened by the receiver the members (shareholders) of the debtor economic operator fail to provide a statement of commitment, following due notice, to guarantee the funds necessary to cover such debts when due.

A debtor cannot be declared insolvent in the cases defined above inside the deadline specified by the court for the settling of debts.

### 16 Mandatory filing

**Must companies commence insolvency proceedings in particular circumstances?**

Under Hungarian law, there is no such obligation for the companies to commence insolvency proceedings. Companies may initiate bankruptcy or liquidation proceedings voluntarily.



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**Directors and officers**


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**17 Directors' liability – failure to commence proceedings and trading while insolvent**

**If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?**

Any creditor or – in the debtor's name – the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons.

Criminal liability of the directors may arise if a company carries on business while insolvent.

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**18 Directors' liabilities – other sources of liability**


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**Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?**

Any creditor or the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings. Financial security may also be demanded with a view to providing satisfaction for the creditor's claims. The creditors' interests shall be considered to have been ignored if the manager failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offenses, or concerning remediation, in consequence of which providing full satisfaction for the creditors' claims may be frustrated. If damage is caused by several persons together, their liability shall be joint and several.

Any executive referred to who is able to verify that they have not taken any business risk that may be considered unreasonable in light of the debtor's financial position, or that they have taken all measures within reason, that are to be expected from persons in such positions, upon the occurrence of a situation carrying potential danger of insolvency so as to prevent and mitigate the losses of creditors, and to prompt the supreme body of the debtor economic operator to take action, shall not be held responsible.

Within a 90-day limitation period following the time of publication in the company gazette of the resolution on the final conclusion of liquidation proceedings, any creditor may bring action before the competent court for ordering the debtor's former executive, whose liability was already established based on the action described above, to satisfy the debtor's claim registered in the liquidation proceedings, that were not recovered in such proceedings, up to the extent of loss suffered.

The court shall impose a fine upon the head of the debtor economic operator for effecting any payment in violation of the provisions of the Bankruptcy Act, or for enabling creditors to obtain satisfaction for their claims in violation of the provisions of the Bankruptcy Act. The fine shall cover 10 per cent of the amount paid out.

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**19 Shift in directors' duties**


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**Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?**

Under Hungarian law, any creditor or – in the debtor's name – the liquidator may bring action during the liquidation proceedings before the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or

providing full satisfaction for the creditors' claims may be frustrated for other reasons. Please see also question 18.

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**20 Directors' powers after proceedings commence**


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**What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?**

In case of reorganisation, the directors of a debtor economic operator, including its supreme body and owners, shall exercise their respective rights only if it does not violate the powers vested in the administrator.

The administrator shall approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings. The administrator shall have powers to approve any new commitment made by the debtor. After the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the economic operator.

As of the time of the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the economic operator.

In case of liquidation, the directors of the debtor company – following the temporary administrator taking office – shall be restricted from entering into any contract considered to be in excess of the scope of normal operations where the economic operators assets are concerned without the prior consent and endorsement of the temporary administrator, or from entering into any other commitment, including where the debtor is compelled to perform under an existing contract. As of the time of the opening of liquidation, only the liquidator shall be authorised to make any legal statements in connection with the assets of the company. However, the director of the debtor company is only entitled to proceed in the internal legal relationship of the company.

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**Matters arising in a liquidation or reorganisation**


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**21 Stays of proceedings and moratoria**

**What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?**

In the case of a reorganisation, the debtor is granted a stay of payment period (moratorium) to preserve the assets under bankruptcy protection, during which the debtor, the administrator, the financial institutions carrying their accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment. The stay of payment shall not apply to claims like claims for wages and other similar benefits, claims to any value added tax or to refunds of sums transferred to the debtor's account by mistake.

Under the duration of the stay of payment, as a general rule:

- set-off may not be applied against the debtor; however, a set-off may be adjudged in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings;
- payment orders may not be satisfied from the debtor's accounts;
- the enforcement of money claims against the debtor shall be suspended, and the enforcement of such claims may not be ordered;
- no satisfaction may be sought on the basis of a lien on the debtor's assets, the debtor cannot effect any payment for claims existing at the time of the opening of bankruptcy proceedings;
- the contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of payment its debts incurred before the term of the temporary stay of payment; and
- the legal consequences associated with any non-performance or late performance of the debtor's money payment obligations shall not apply.

Judicial enforcement proceedings in progress against the debtor at the time of the opening of liquidation proceedings in connection with any assets realised in liquidation shall be abated forthwith by the court (authority) ordering the enforcement, and the assets seized and the funds yet unpaid, remaining after deducting the costs of the enforcement proceeding, shall be transferred to the appointed liquidator.

Judicial and non-judicial proceedings opened prior to the time of the opening of liquidation proceedings shall continue before the same court.

From the time of the opening of liquidation proceedings, any pecuniary claim against the economic operator in connection with any assets to be liquidated may only be enforced in the framework of liquidation. The creditor – in the proceedings brought by the economic operator – may enforce his or her claim existing at the time of the opening of liquidation proceedings against the economic operator as a setoff claim, provided that the claim has not been assigned.

Generally, the creditors cannot obtain relief from such prohibitions.

## 22 Doing business

**When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?**

In case of reorganisation, under the duration of the stay of payment, the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator and payments may be made from the debtor's assets subject to authorisation by the administrator. During the reorganisation, the debtor can carry on business only with the supervision of the administrator. During the liquidation, carrying on business by the debtor shall be fit for the purposes of the liquidation proceedings (eg, if needed for the operation of the debtor company).

In reorganisation, no special treatment is given to creditors doing business after filing.

It is the duty of the administrator to supervise the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with creditors. The court does not supervise the debtor's business activities; however, the approval of the composition agreement falls within the court's exclusive competence.

In liquidation proceedings, if the creditors have formed a select committee or selected a creditors' representative, the consent of the committee (representative) is required to obtain for continuing business operations during liquidation within 100 days of the publication of the opening of liquidation proceedings. If the select committee fails to respond within 15 days of receipt of the liquidator's request, it shall be construed to have granted its consent for the continuing of such business operations.

In liquidation, no special treatment is given to creditors who supply goods or services after filing unless the costs are in connection with the rational termination of the debtor's business operations.

## 23 Post-filing credit

**May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?**

In case of reorganisation, according to the general rule, no priority is given for post-filing credits. The debtor shall be allowed to undertake any new commitment – secured or unsecured loans or credit – only with the consent of the administrator.

In case of liquidation, the Bankruptcy Act does not expressly regulate a debtor's right to obtain secured or unsecured loans or credit. The liquidator, however, is able to contract new obligations, such as a loan or a credit, but only in connection with the rational termination of the debtor's business operations. Such loans granted to the debtor have a priority in the liquidation.

See questions 21 and 22.

## 24 Sale of assets

**In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?**

In case of reorganisation, the sale of specific assets out of the ordinary course of business or the entire business of the debtor is subject to the

approval of the administrator. By selling assets in reorganisation, the encumbrance on assets will maintain.

In case of liquidation, the liquidator shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market, in which case the highest bidder will acquire the assets free and clear. The liquidator shall effect the sale by way of tender or auction. The liquidator may forego the application of these procedures only upon the prior consent of the select committee formed by creditors, or if the asset in question deteriorates rapidly, or if the estimated proceeds are insufficient to cover the costs of sale, or if the difference between the prospective proceeds and estimated costs is less than 100,000 forints. In this case the liquidator may apply other public forms of sale for the purpose of achieving a more favourable result.

If the assets to be sold include land or a farmstead, their sale shall be governed by the relevant provisions of the Act on Transactions in Agricultural and Forestry Land and the decree implementing it.

## 25 Negotiating sale of assets

**Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?**

No stalking horse rules and credit bidding apply under Hungarian law regarding insolvency proceedings.

## 26 Rejection and disclaimer of contracts

**Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?**

The Hungarian insolvency law does not recognise the concept of rejection and the concept of disclaimer of contracts.

In reorganisation, the debtor or the administrator may challenge the contract before ordinary court only in accordance with the Hungarian Civil Code and the provisions of the Code of Civil Procedure. Claims arising after the commencement of the insolvency may also be registered.

In case of liquidation, all debts of the economic operator shall be deemed payable (due) at the time of the opening of liquidation proceedings. In that connection, the liquidator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor, or to rescind from the contract if neither of the parties rendered any services.

Any claim that is due to the other party owing to the above may be enforced by notifying the liquidator within 40 days from the date when the rescission or termination was communicated.

There are no specific regulations with regard the debtor's breach of contract after the insolvency case is opened. The debtor's breach of contract is governed by the general breach of contract provisions of the Hungarian Civil Code.

## 27 Intellectual property assets

**May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?**

No specific rules exist under Hungarian law regarding the IP rights in case of bankruptcy or liquidation.

According to the general rule, during bankruptcy a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle, during the term of the stay of payment, its debts incurred before the term of the temporary stay of payment. However, if the given contract stipulates that the commencement of bankruptcy proceeding or liquidation proceeding establishes a right to terminate the contract, the licensor or the owner has the right to do so.

The liquidator has the right to terminate any contract of the debtor.

## 28 Personal data

**Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?**

The Bankruptcy Act does not stipulate special provisions regarding the use of any personal information or customer data collected by a company in liquidation or reorganisation.

In accordance with the provisions of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, personal data may be processed only for specified and explicit purposes, where they are necessary for the implementation of certain rights or obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness. The personal data processed must be essential for the purpose for which they were recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve their purpose. Personal data may be processed only when the data subject has given consent, or when processing is necessary as decreed by law or by a local authority based on authorisation conferred by law.

The EU General Data Protection Regulation is also applicable in case of the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data that form part of a filing system or are intended to form part of a filing system.

## 29 Arbitration processes

**How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?**

Bankruptcy and liquidation proceedings are non-contentious proceedings conducted exclusively by the general court of competence and jurisdiction by reference to the debtor's registered office of record on the day when the request for opening the proceedings has been submitted and by the Budapest Metropolitan Court. Thus, arbitration courts cannot commence insolvency proceedings.

## Creditor remedies

### 30 Creditors' enforcement

**Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?**

Claims can be enforced only within the frame and according to the rules of the bankruptcy or liquidation proceedings.

If the debtor provides collateral security under a financial collateral arrangement to secure a claim before the time of the opening of liquidation proceedings, the collateral taker shall be able to realise the collateral directly, irrespective of whether liquidation is opened or not, and shall refund any excess collateral to and settle accounts with the liquidator. If the collateral taker fails to exercise his or her right to direct satisfaction within three months following publication of the opening of liquidation, he or she may seek satisfaction as lien holder. If the collateral taker is under the debtor's majority control, he or she shall release the collateral to the liquidator – acting as the representative of the debtor – upon publication of the notice of liquidation. Collateral security may be arranged on money and securities and on payment account balances.

### 31 Unsecured credit

**What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?**

The Bankruptcy Act does not stipulate special remedies regarding the unsecured creditors. Application of interim measures may be requested in accordance with the provisions of the Code of Civil Procedure.

Although, the regulations on preferred ranking claims secured by lien shall also apply to claims that are satisfied by seized movable property or for which the right of enforcement has been registered before the time of the opening of liquidation proceedings.

In bankruptcy and liquidation proceedings, the rank of the claims of the unsecured creditors will be lower than the rank of the secured ones (see question 38). However, the place in ranking of those claims under execution shall be determined consistent with the date of seizure of the movable property or the date of registration of the right of enforcement.

There are no specific statutory provisions dealing with pre-judgment attachments in Bankruptcy Act.

## Creditor involvement and proving claims

### 32 Creditor participation

**During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?**

In case of bankruptcy, the debtor shall notify its creditors directly within five working days following publication of the ruling ordering the opening of bankruptcy proceedings, and furthermore, shall publish a notice in a daily newspaper of nationwide circulation and also on its website (if available) advising the creditors to register their claims within the time limit specified and to make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, and to attach the documents in proof of their claim.

In case of liquidation, upon the ruling ordering liquidation of a debtor becoming final, the court shall without delay appoint the liquidator and shall order to have the abstract of the ruling ordering liquidation and the ruling on the appointment of the liquidator published in the company gazette. The notice published shall contain, among others, a notice sent to the creditors to report their known claims to the liquidator within 40 days of publication of the ruling ordering liquidation.

Moreover, the directors of the company under liquidation are obliged to inform the beneficiaries of the claims specified in the Bankruptcy Act regarding the opening of liquidation proceedings within 15 days from the time of opening. If the director does not comply with the regulations, the court shall impose a fine.

In bankruptcy and liquidation proceedings, the meeting between the creditors and the debtor is called composition conference.

The liquidator shall send a financial statement and give account of his or her activities to the creditors' select committee (creditors' representative) quarterly, and report on the financial status (revenues, expenses) of the debtor and on the costs of liquidation.

### 33 Creditor representation

**What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?**

Creditors may form a creditors' select committee for the protection of their interests and to provide representation, furthermore, to monitor the activities of the administrator and the liquidator. The select committee shall exercise the rights and entitlements conferred by the Bankruptcy Act. The select committee has, among others, the following rights:

- upon a request received during bankruptcy proceedings and liquidation proceedings, the director of the debtor company, the administrator or the liquidator shall, within eight working days, inform the select committee;
- the liquidator shall inform the select committee at least 15 days in advance, or eight working days in advance in justified cases, about any contracts that exceed the scope of day-to-day operations, the termination of valid contracts, and discarding the debtor's stocks, provided, however, that the committee shall have the right to comment such actions within eight working days of receipt of notice;

- the liquidator shall send a financial statement and give account of his or her activities to the select committee quarterly, and report on the financial status (revenues, expenses) of the debtor and on the costs of liquidation; and
- upon request, the liquidator shall present the timetable to the select committee, with entitlement to contest it in court, etc.

Only one select committee can be appointed in respect of any one company in debt. Other creditors may subsequently join in the operation of the creditors' select committee. In bankruptcy proceedings, a select committee shall be deemed legitimate if comprising at least one-third of the creditors with voting rights, and if these creditors control at least one-half of the votes. In liquidation proceedings, a select committee shall be deemed legitimate if comprising at least one-third of the notified creditors and these creditors hold at least one-third of all claims of creditors entitled to participate in the composition agreement. If the number of creditors operating the select committee is later reduced, and consequently the rate of participation no longer reaches the percentage required, the select committee shall cease to exist on the 30th day following the time of the occurrence of the said circumstance, except if other creditors have joined up within the said time limit, thereby reaching the required rate of participation. For the purpose of establishing a creditors' select committee or for selecting a creditors' representative, the liquidator shall convene all registered creditors within 75 days following the date of publication of the opening of liquidation.

The select committee's powers, representation of the creditors operating the select committee, the provision of funding and the rules for the advancing and accounting of costs and expenses shall be laid down by agreement concluded by the creditors. In the process of setting up and operating the select committee, voting rights shall be distributed among the participating creditors. Decisions shall be adopted by open ballot subject to simple majority. A creditors' select committee that was established in bankruptcy may continue to function in the liquidation proceedings, if it is able to meet the conditions specified.

Creditors may also appoint a creditors' representative instead of the creditors' select committee, who will have the same rights and entitlements as the select committee.

The creditors' select committee may request the court to appoint an expert for the cross-verification of the appraised value of the assets offered for sale, and shall advance the costs involved. The court shall decide upon the request within eight days. The fee of the expert shall be claimed under liquidation costs if the appraised value he or she had supplied is accepted. If the expert is of the opinion that the appraised value need not be modified, the expert's fee shall be borne by the creditors participating in the select committee in the percentage shown in their agreement for requesting an expert.

### 34 Enforcement of estate's rights

**If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?**

The estate's rights are part of the assets of the company under liquidation. In principle, the creditors are not allowed to pursue the estate's remedies in the absence of assets to pursue a claim. It is the liquidator's right and obligation to enforce the claims. As regards the proceeds from assets realised in liquidation, the regulations on satisfying debts shall be applied. For further information see question 38.

### 35 Claims

**How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?**

In case of reorganisation, creditors shall make the payment charged for the registration of claims to the payment account of the administrator appointed by the court, and shall attach the documents in proof of their claim. No claim will be registered in the event of their failure to do so in

due time. Claims where any payment obligation of the debtor depends on a future event need not be notified yet. The registration of claims is subject to a registration fee payable by the creditor amounting to 1 per cent of the claim – 100,000 forints maximum – to the administrator's current account. The administrator shall then categorise and register the claims. The debtor and creditors shall be informed without delay concerning the classification of claims and the amount registered, and they shall be given an opportunity to present their views within five working days. Such comments shall be decided by the administrator and the creditor and the debtor shall be notified immediately, upon which they shall have five working days to submit any objection to the court concerning the administrator's action pertaining to the classification process, including the case where the administrator registered a claim of an amount other than the one notified by the creditor. The court shall adopt a decision relating to such objection in priority proceedings. The ruling may not be appealed separately.

In case of liquidation, the liquidator shall register the claims against the debtor that are notified after 40 days, but within 180 days of the publication of the opening of liquidation proceedings. These claims shall be satisfied if there are sufficient funds remaining following the settlement of the debts notified duly. The general rules on the order of satisfaction shall apply to the creditors notifying their claims past the prescribed time limit.

### 36 Set-off and netting

**To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?**

For the duration of the stay of payment, set-off may not be applied against the debtor; however, a set-off claim may be heard in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings.

In a liquidation proceeding, only such claims can be set off that have been registered by the liquidator as acknowledged and have not been assigned subsequent to the time of the opening of liquidation proceedings, or, if the claim has occurred at a later date, subsequent to its occurrence. If performance is affected after the time of the opening of liquidation proceedings, the creditor may not exercise the right of set-off with regard to debts assumed under section 6:203 of the Civil Code (assumption of debt), or undertaken under section 6:206 of the Civil Code (undertaking a debt) inside a period of two years prior to the date when the court received the petition for opening liquidation proceedings, or subsequently, nor with regard to performance assumed under section 6:205 of the Civil Code (assumption of performance). The directors and executive employees of the debtor economic operator, their close relatives and their domestic partners, furthermore, any member (shareholder) of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority control (or the member in the case of single-member companies, the owner in the case of sole proprietorships, or the foreign-registered company in the case of Hungarian branches) may not set off their claims against the debtor.

In addition, in the case of an agreement for close-out netting concluded prior to the time of the opening of liquidation proceedings, the creditor shall notify this net claim to the liquidator, and the liquidator shall enforce this net claim. Contracts underlying close-out netting arrangements or framework contracts may be avoided or cancelled only if done concurrently.

For further information in accordance with out of court proceedings, please see question 30.

### 37 Modifying creditors' rights

**May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?**

Under Hungarian law, the court may change the rank (priority) of a creditor's claim – which is determined by law, see question 38 – if the creditor appealed the administrator's decision of ranking its claim and the court rules in favour of the creditor.

### 38 Priority claims

**Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?**

In the liquidation process the following priority groups of claims exist:

- liquidation costs;
- claims secured;
- claims as alimony and life-annuity payments, compensation benefits, income supplement to minors, which are payable by the economic operator, furthermore monetary aid granted to members of agricultural cooperatives in lieu of household land or produce for which the beneficiary is entitled for his or her lifetime;
- claims of private individuals not originating from economic activities, claims of small and micro companies;
- debts owed to social security funds, taxes;
- other claims;
- default interests and late charges, as well as surcharges and penalty and similar debts; and
- claims, other than wages and other similar benefits.

In bankruptcy proceedings, the administrator shall categorise the claims as per the following:

- claims with regard to stay of payment; and
- secured and unsecured claims notified within the time limit.

### 39 Employment-related liabilities

**What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)**

According to the Hungarian Labour Code, the employer shall be permitted to terminate an employment relationship by notice if undergoing liquidation or bankruptcy proceedings; thus, without stipulating differently in the contract, no claims will arise from termination. In case of different contractual obligations, the employee may submit a claim. The employer is entitled to collective redundancy according to the provisions of the Labour Code.

The employer shall be liable to pay up to six months' absentee pay due to the executive employee from the remuneration payable upon termination of his employment, if the notice of termination is delivered after the opening of bankruptcy or liquidation proceedings. Any additional sum shall be payable upon the conclusion or termination of bankruptcy proceedings, or upon the conclusion of liquidation proceedings.

### 40 Pension claims

**What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?**

Employers in Hungary have no obligations to offer pension plans, thus no claims arise against employers in case of insolvency proceedings. The administrator, however, is obliged to transfer the relevant data to the competent Hungarian authority, regarding employment relationships. Termination-related costs are considered liquidation costs, which have the highest priority among claims.

### 41 Environmental problems and liabilities

**Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?**

The 106/1995 (IX.8) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings stipulates the provisions regarding

environmental protection, the requirements and the manner of resolving environmental damage and contamination; furthermore, the types of expenses arising therefrom. According to the general rule, the liquidator shall provide for damage and contamination of the environment proven to originate from before the time of the opening of liquidation proceedings. This means that the costs of the necessary measures to be taken – even in the lack of the debtor's assets – to eliminate dangerous waste shall be borne by the central budget of the state.

Any creditor or – in the debtor's name – the liquidator may bring action during the liquidation proceedings for the court to establish that the former executives of the economic operator failed to properly represent the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons. In the application of this provision, creditors' interests shall be considered to have been ignored if the executive failed to fulfil the obligations set out by law relating to the prevention of environmental damage or the seizure of environmental offenses, or concerning remediation, in consequence of which providing full satisfaction for the creditors' claims may be frustrated. If damage is caused by several persons together, their liability shall be joint and several.

See also question 18.

### 42 Liabilities that survive insolvency or reorganisation proceedings

**Do any liabilities of a debtor survive an insolvency or a reorganisation?**

In case of reorganisation, the qualified composition agreement shall decide about the survival of any liability, while in case of liquidation, after the proceeding is concluded, the economic operator ceases to exist, thus no liability survives.

### 43 Distributions

**How and when are distributions made to creditors in liquidations and reorganisations?**

In case of reorganisation, distribution is made in accordance with the composition plan. In case of liquidation, distribution is made in accordance with the distribution plan prepared by the liquidator and approved by the court or the decision of the court. The time of the distribution depends on the claim. Generally, the claims shall be distributed within 30 days upon the approval of the closing balance sheet or the closing simplified balance sheet. In certain cases, the claim can be satisfied upon maturity (eg, working capital loans).

See question 38, where the rank of the claims is detailed.

### Security

#### 44 Secured lending and credit (immovables)

**What principal types of security are taken on immovable (real) property?**

The main types of security on immovables are the real property mortgage and the independent lien.

The mortgage agreement is valid only if concluded in writing and in the form required for registration in the Land Register and goes into effect when it is registered. Priority is determined according to the date of registration; if more than one request is submitted on the same day, the priority is determined according to the date on which the mortgage agreement was concluded.

According to a recent amendment of the new Civil Code, 'seceded lien' has been abolished and independent lien has been introduced. A mortgage may be filed on a real estate property on a financial institution's behalf also by way of pledging the mortgaged property to secure a specific sum other than the secured claim (independent lien). The agreement on establishing the independent lien shall contain a description of the pledged property and indicate the specific sum up to which satisfaction may be sought from the pledged property. That sum shall be entered in the real estate register as well.

The conditions for exercising the right to satisfaction from the pledged property shall be fixed in a guarantee agreement between the

lien holder and the lienor. The guarantee agreement shall be made out in writing and shall specify the reason for which the independent lien is filed, the terms and conditions for, and the extent of, exercising the right to satisfaction, or if the right to satisfaction opens upon cancellation, the conditions for exercising the right of cancellation, including the notice period. The right to satisfaction may be exercised as laid down in the guarantee agreement.

An independent lien may be transferred to another financial institution in whole or in part, or in instalments. The party to whom the independent lien is transferred shall replace in the guarantee agreement the transferor, as commensurate according to the extent of the transfer. If the independent lien is transferred in part or in instalments, the acquiring party may request that the division of the independent lien is indicated in the real estate register.

#### 45 Secured lending and credit (movables)

##### What principal types of security are taken on movable (personal) property?

The main types of security on movables are mortgage on movables, pledge on movables, floating charge and security deposit in the form of money, securities or payment account balances (possessory lien).

#### Clawback and related-party transactions

#### 46 Transactions that may be annulled

##### What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

The following transactions can be annulled or set aside. Contracts concluded by the debtor within five years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to conceal the debtor's assets or to defraud any one creditor or the creditors, and the other party had or should have had knowledge of such intent. Contracts concluded by the debtor within three years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to transfer the debtor's assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtor's assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party. Contracts concluded by the debtor within 120 days preceding the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if intended to give preference and privileges to any one creditor, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that does not have any. Contracts concluded by the debtor within three years before the date when the court received the petition for opening liquidation proceedings or thereafter, or his or her other commitments, if made for the purpose of transfer of ownership by way of guarantee, or the assignment of a right or claim by way of a guarantee or exercising a collateralised option to buy, where the beneficiary exercised such acquired right by failing to fulfil his or her obligation of accounting toward the debtor, or did so improperly, or failed to pay the amount remaining after the secured claim is satisfied; if the right-holder did not have the acquisition of ownership, or the assignment of a right or claim by way of a guarantee registered in the collateral register, or his or her buy option in the real estate register, the conditions for lodging a contest shall be presumed to exist.

The above transactions can be contested before the court by the creditor, and on behalf of the debtor, the liquidator within 120 days from the time of gaining knowledge or within a one-year limitation period from the date of publication of the notice of liquidation.

If the contest is successful, the provisions of the Civil Code pertaining to invalid contracts shall apply. The liquidator and the creditor may request on the grounds of invalidity to have the original state restored, and to have any right registered in a public register on the asset after the alienation of the asset stricken from the records.

#### Update and trends

Because of a recent amendment, the Bankruptcy Act contains additional rules on cross-border insolvency proceedings, in accordance with European Parliament and Council Regulation EU/2015/848.

The new EU Regulation basically sets out International Private Law rules relating to bankruptcy proceedings and liquidation proceedings. The EU Regulation applies to all cross-border insolvency proceedings, irrespective of whether the debtor is a natural or legal person, a trader or a private person; furthermore, it also stipulates that the law applicable to the insolvency proceedings is, in principle, the law of the country where the proceedings are opened.

A new element of the EU Regulation is the coordinated insolvency procedure of international Groups of Corporations, which aims to establish a unified strategy for the parties concerned to restore the solvency of Groups of Corporations and its members.

According to a new law of the Bankruptcy Act, in proceedings initiated at the request of the creditor, the court shall terminate the liquidation proceedings without the consent of the creditor if the debtor justifies that the entire claim (capital, interest, the creditor's costs incurred) has been paid.

#### 47 Equitable subordination

##### Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Generally, there is no such restriction. However, if the debtor enters into an agreement with a company that is under its majority control, with a shareholder or directors of such company, or with their relatives, which agreement is intended to conceal the debtor's assets or to defraud the creditors, or to transfer the debtor's assets without any compensation, and such agreement is contested before the court, bad faith or gratuitous promise shall be presumed. Furthermore, bad faith or gratuitous promise shall also be presumed when such contract is concluded between economic operators that are not directly or indirectly connected by way of affiliation, but are controlled by the same person or the same company.

#### Groups of companies

#### 48 Groups of companies

##### In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

If any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy. Majority control means a relationship where a natural or legal person (holder of a participating interest) controls over 50 per cent of the voting rights in a legal person, or in which it has a dominant influence.

Insolvency proceedings initiated against the foreign parent company abroad shall only apply to the Hungarian branch office under an international agreement or state of reciprocity or in accordance with European Parliament and Council Regulation EU/2015/848 on insolvency proceedings. If the branch office is not involved in the insolvency proceedings initiated against the foreign parent company abroad under the laws of that country because of the lack of an international agreement or state of reciprocity or if the provisions of European Parliament and Council Regulation EU/2015/848 apply, the general court responsible for the place where the branch office is registered shall order dissolution of the branch office ex officio on the basis of notification by the court of registry.

**49 Combining parent and subsidiary proceedings**

**In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?**

There is no combined insolvency proceedings under Hungarian law. If any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy.

**International cases****50 Recognition of foreign judgments**

**Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?**

The general rules regarding foreign judgments apply (with the provisions of the Insolvency Regulation of the EU). Hungary is not a signatory to any treaties on international insolvency or on the recognition of foreign judgments.

**51 UNCITRAL Model Law**

**Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?**

The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted in Hungary.

**52 Foreign creditors**

**How are foreign creditors dealt with in liquidations and reorganisations?**

Foreign creditors are dealt the same in liquidations and reorganisations as any other creditor.

**53 Cross-border transfers of assets under administration**

**May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?**

The transfer of specific assets of the debtor under bankruptcy or liquidation cannot be transferred to another country, only in case of the administrator's (liquidator's) approval. For further information see question 24.

**54 COMI**

**What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?**

No test is officially used to determine the COMI of a debtor company or group of companies. The Bankruptcy Act follows the applicable EU Regulation with respect of determining the COMI.

**55 Cross-border cooperation**

**Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?**

The regulations of the EU regarding the recognition of foreign insolvency proceedings apply. In any other case, cooperation and recognition depend on bilateral treaties or on the principle of reciprocity. No court statistics are available regarding refusals.

**56 Cross-border insolvency protocols and joint court hearings**

**In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?**

Cooperation in cross-border cases is based on the applicable EU laws in insolvency proceedings.

The Budapest Metropolitan Court shall have competence and jurisdiction to open and conduct main insolvency proceedings instituted against an economic operator covered by European Parliament and Council Regulation EU/2015/848, established in a place other than Hungary.

There is no publicly available information on any joint hearings.

# NAGY & TRÓCSÁNYI

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<b>HUNGARY</b>	<b>Applicable insolvency law, reorganisations: liquidations</b>
	Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings.
	<b>Customary kinds of security devices on immovables</b>
	Real property mortgage and the independent lien.
	<b>Customary kinds of security devices on movables</b>
	Mortgage on movables, pledge on movables, floating charge and security deposit in the form of money, securities or payment account balances.
	<b>Stays of proceedings in reorganisations/liquidations</b>
	Moratorium in case of reorganisation.
	<b>Duties of the insolvency administrator</b>
	To provide information, authorise any kind of business activity in case of reorganisation and act as the executive officer of the business organisation under liquidation.
	<b>Set-off and post-filing credit</b>
	As a general rule under the duration of the stay of payment set-off may not be applied against the debtor. In case of reorganisation, the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator. In case of liquidation, the head of the debtor economic operator shall be restricted from entering into any contract considered to be in excess of the scope of normal operations.
	<b>Creditor claims and appeals</b>
	No claim will be registered in the event of the creditor's failure to do so in due time. The registration of claims is subject to a registration fee payable by the creditor. Creditors may appeal the decisions of the administrator regarding the approval or the ranking of their claims.
	<b>Priority claims</b>
	Certain claims such as secured claims or debts owed to social security funds enjoy priority status.
	<b>Major kinds of voidable transactions</b>
Contracts if intended to conceal the debtors' assets or to defraud any one creditor or the creditors, contracts if intended to transfer the debtors assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtors' assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party, contracts if intended to give preference and privileges to any one creditor or to provide financial collateral to a creditor that does not have any, in certain cases may be considered voidable.	
<b>Operating and financing during reorganisations</b>	
With the authorisation of the bankruptcy administrator.	
<b>International cooperation and communication</b>	
The EU Insolvency Regulation applies.	
<b>Liabilities of directors and officers</b>	
Creditors or the liquidator may bring action during the liquidation proceedings to establish that the former executives of the economic operator failed to properly represent the interests of creditors. Any creditor may bring action for the court to establish the liability of the debtor's former executive and hence to order this executive to satisfy the debtor's claim to the extent of its claims not yet satisfied.	
<b>Pending legislation</b>	
Adoption of legislation on restructuring and insolvency law is not expected in the near future.	



## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Art Law  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
Commercial Contracts  
Competition Compliance  
Complex Commercial Litigation  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Reorganisations  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Compliance  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gaming  
Gas Regulation  
Government Investigations  
Government Relations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Joint Ventures  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public M&A  
Public-Private Partnerships  
Public Procurement  
Rail Transport  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
Sovereign Immunity  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
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