

Czech Republic – Insolvency Law Changes from 1 July 2017

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A significant amendment to the *Czech Insolvency Act* will take effect on 1 July 2017. It has been stated that the main aim of the amendment is to introduce measures against so called “insolvency mafia” and regulate consultancy services providers in connection with solving personal debts. The amendment brings changes to rules for personal bankruptcies, which are to be solved through a discharge from debts.



There are also provisions which shall not be overlooked by corporations, both on the debtor – as well as the creditor – side, such as prohibition of forum shopping (insolvency tourism), restriction of voting rights of the creditors from the debtor’s group, provisions against “bullying” insolvency petitions, stricter rules for documenting the existence of a claim when filing creditor’s insolvency petitions, etc.

Below, I will briefly discuss the prohibition of forum shopping and restriction of voting rights of creditors from the debtor’s group.

The forum shopping means a situation when a debtor changes its seat shortly before initiation of the insolvency proceedings and therefore, transfers the case to the jurisdiction of a different court, possibly with the intention to use its better connections at such court or to confuse its creditors who might “overlook” the initiation of the proceedings elsewhere and to make it more difficult for creditors to exercise their rights, as they would have to travel further. The amendment brings a new rule for determining the local jurisdiction. Jurisdiction for insolvency proceedings will no longer be determined according to the court of debtor’s seat, but determined according to the court where the debtor’s seat was six months ago.

Restriction of voting rights of creditors from the debtor's group is a re-established legal provision of the Czech Insolvency Act. Under the old Act on Bankruptcy and Composition, which was valid between 1991 and 2008, creditors that were close to the debtor were prohibited to vote at the creditors' meeting. The Insolvency Act, which replaced the old law in 2008, extended the prohibition of the voting also to creditors from the debtor's group. Then there was a substantial reversal in 2014, when the group creditors were allowed to vote, except for voting in matters concerning them. The prevailing opinion at that time was that prohibition of voting rights should take place only in specific circumstances.

This amendment again brings a complete prohibition of voting rights for the group creditors. According to the current governmental explanatory report, which accompanies the recent amendment, it is presumed that the group creditors have a conflict of interests. It is argued that creditor from the same group as the debtor might stand up for the interest of the debtor rather than itself as the creditor. It has to be stated that the right of group creditors to be satisfied in the insolvency proceedings shall not be offended by this amendment. There might be different opinions on the issue of a related party right to vote, but the uncertainty and speed of the changes of the applicable rules seem to present bigger problem. The 2014 rule, i.e., opening of the voting to the group creditors, could not be sufficiently tested during those 2.5 years and it has been reversed again.

Other provisions that might be of interest will be discussed later in a separate article.

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