

COVID-19 PANDEMIC BRIEF SUMMARY OF EXTRAORDINARY MEASURES IN COURT, ENFORCEMENT AND BANKRUPTCY PROCEEDINGS AND MEASURES FOR PROTECTION OF UNDERTAKINGS

On 25 March 2020 Act No. 62/2020 Coll., on certain extraordinary measures in relation to spread of the dangerous contagious human disease COVID-19 and in the judiciary and on amendment and supplement of certain acts, as amended, was adopted (the "**Act**") in reaction to the current situation resulting from the COVID-19 pandemic. Effective since 27 March 2020, the Act was amended with effect from 25 April 2020 (some provisions go into effect from 12 May 2020).

The main purpose of the Act is to put into action certain extraordinary measures in connection with the transmission of COVID-19. Below is a brief summary of individual measures.

A. SUSPENSION OF CLOCK ON SUBSTANTIVE PERIODS

The Act suspends the running of limitations and preclusive periods stipulated by private-law legislation (e.g. Civil Code and Commercial Code). These include periods for filing lawsuits with the court expiry of which would result in a lapse or termination of a right.

In terms of the Act, limitations and preclusive periods are suspended between 27 March 2020 and 30 April 2020.

Also under the Act, in cases where a limitation or preclusive period has expired in the period starting with the declaration of the extraordinary situation in the Slovak Republic until the effectiveness of the Act; i.e. from 12 March 2020 until 27 March 2020, the Act states that there will be a "renewal" of the period such that no act or preclusive period will expire sooner than 30 days after the date of effectiveness of the Act, i.e. not sooner than on 26 April 2020.

B. SUSPENSION OF CLOCK ON PROCEDURAL TIME-PERIODS

The Act also suspends the running of time-periods stipulated by procedural legislation (e.g. Code of Civil Litigation Procedure) or by the court for the performance of procedural acts by parties to proceedings or participants to the proceedings (e.g. the filing of a statement in court proceedings). Under the Act, time-periods for performing procedural act are suspended from 27 March 2020 until 30 April 2020.

The Act also stipulated an exception to this rule if the matter cannot be postponed without endangering life, health, security, freedom, or if it would cause substantial damage to a party or participant to the proceedings. In such case, this suspension does not apply, and the court will set a new time-period or will determine that the original period will apply.

In criminal proceedings, this suspension only applies to the time-period for filing an appeal by the defendant, their counsel, a damaged party or concerned parties.

Please note that this suspension of procedural time-periods doesn't apply to such periods in

administrative proceedings, which may have been regulated by special legislation¹.

C. SUSPENSION OF COURT HEARINGS

The Act further suspends court hearings, but only to the necessary extent in order to minimize the need for parties to the proceedings and their legal representatives to travel in order to be present in courtrooms and to avoid a concentration of several people in the courtroom. "Necessary extent" includes primarily the main custody hearings, hearings in proceedings regarding court custody of minors and in proceedings where, without a court hearing, there would be a threat of irretrievable damage or other irreversible consequences.

Under the Act, courts can exclude the public from a court hearing due to protection of public health. In such case, the court must make a sound recording of the entire hearing, which must be disclosed immediately after the hearing to anyone upon request.

These suspensions will apply for the entire duration of the extraordinary situation and state of emergency in the Slovak Republic.

D. POSTPONEMENT OF ENFORCEMENT

The Act further allows for parties under enforcement to apply for a postponement of the enforcement. Based on an application submitted by the obliged party – a natural person – the executor must immediately issue a notification on postponement of enforcement and to deliver it to the participants to the proceedings, the payer of the obliged party's salary, as well as any banks, debtors of the obliged party and other persons affected by the enforcement. The application must include a declaration of the obliged party that their income has temporarily decreased as a result of the pandemic, and enforcement could have unfavourable consequences for them. The application must also include a declaration about the obliged party's assets.

The postponement of enforcement will last for six months following issuance of the notification on postponement, or until 1 December 2020. During the postponement, the executor can continue to take measures to identify and secure any assets subject to the enforcement.

E. PROHIBITION OF LEASE TERMINATION

The Act also prohibits lessors from unilaterally terminating a lease on real estate (including apartments and non-residential premises), if the lessee is in default with the payment of rent, including payments for services usually associated with the lease, which are due any time from 1 April 2020 to 30 June 2020, provided that the lessee's delay arose due to circumstances related to the pandemic. This prohibition applies accordingly to all contractual relations whose subject is the lease of real estate. Unilaterally terminating leases for the above reasons will remain prohibited until 31 December 2020.

The fact that the delay was due to circumstances related to the pandemic must be sufficiently proven by the lessee.

Other reasons for unilateral termination of the lease by the lessor are not affected by this. It is important to note that the lessor does not forfeit its right to payment of rent due or other claims arising from liability for delay (such as default interest, contractual penalties, etc.)

F. PROLONGATION OF PERIOD FOR FILING BANKRUPTCY PETITIONS

The period during which a debtor is obliged to file a petition for bankruptcy has also been prolonged from 30 days to 60 days. This extension only applies to petitions for bankruptcy in cases where the bankruptcy of the debtor occurred between 12 March 2020 and 30 April 2020.

G. ADOPTION OF DECISIONS OUTSIDE OF COMPANIES' BODIES MEETING

The Act allows legal entities to have their collective bodies adopt decisions via distance voting (*per*

¹ Please refer to our separate leaflet "News on tax matters", which is also available on our website.

rollam), i.e. outside their meeting even in case if the possibility of *per rollam* voting doesn't follow from founding documents or Articles of Association.

In practice this will mostly concern joint-stock companies since, for example, limited liability companies have been allowed to do this legally even before the pandemic. The Act refers to appropriate application of the Commercial Code's provisions on electronic and postal voting at the general meeting of public joint-stock companies. In this regard it is important to note that this is a formally more difficult form of adopting decisions remotely when compared with, for example, the procedure for limited liability companies. For example, a notarial verification of signatures is required (for voting by post) or signing by using a qualified electronic signature (for electronic voting).

This regulation will apply during the entire extraordinary situation and state of emergency in the Slovak Republic.

H. TEMPORARY BAN ON PERFORMANCE OF PLEDGE RIGHTS AND ON AUCTIONS

The Act prohibits the performance of pledge rights until 31 May 2020. The reason for this is the need to eliminate the need to have larger numbers of people in one place, since the most common way to perform pledge rights is at an auction. All acts related to the performance of pledge rights which were carried out between 27 March 2020 and 31 May 2020 are ineffective.

Connected with the temporary ban on performing pledge rights is a temporary ban of public auctions until 31 May 2020. Auctions carried out between 27 March 2020 and 31 May 2020 are ineffective. Moreover, the Act obliges the executor to refrain from enforcement by sale of real-estate until 31 May 2020.

I. TEMPORARY PROTECTION FOR UNDERTAKINGS

Temporary protection for undertakings currently represents the most extensive part of the Act. Its aim is to create a time-restricted framework with instruments that support a solution to the negative consequences of the pandemic on undertakings.

I.1 Application

Any undertaking whose registered seat is in the Slovak Republic and whose business license was granted before 12 March 2020² can apply for this protection. The application, which will be available on the website of the Ministry of Justice, is filed electronically.

The court that has jurisdiction in respect of granting the temporary protection is determined according to the registered seat/place of business of the undertaking at the time the application is filed.³ If the application is filed at a court that does not have competence to grant temporary protection, it will not be considered.

Applicants that are legal entities must file the application electronically to the respective court's electronic mailbox, and the application must be authorized by the applicant's (or its representative's) qualified electronic signature. If the Applicant is a natural person, they can file the application also personally or via the post, in which case official authorization of the signature is not required. However, natural persons must attach a copy of their ID card or similar document of a foreign country to the application.

Applicants must declare in the application that they fulfil the following requirements for being granted temporary protection:

² The Act lists those subjects which cannot apply for temporary protection, such as banks, insurance companies, stock exchanges, etc.

³ The following courts have competency for granting temporary protection:

- a) the District Court in Trnava for the districts of the Regional Court in Trnava and Regional Court in Bratislava,
- b) the District Court in Žilina for the districts of the Regional Court in Žilina and Regional Court in Trenčín,
- c) the District Court in Banská Bystrica for the districts of the Regional Court in Banská Bystrica and Regional Court in Nitra,
- d) the District Court in Prešov for the districts of the Regional Court in Prešov and Regional Court in Košice.

- a) they are entitled to file an application, and the temporary protection is needed due to an increased amount of overdue receivables or significant decrease in revenue in comparison with the same period in 2019, and this has substantially jeopardized business operations; if the applicant didn't perform business activities in the same period in 2019, the month of February 2020 will be used as the comparable period;
- b) they were not bankrupt as at 12 March 2020;
- c) as at the day of filing the application there are no reasons for their winding up, and they are not affected by the effects of a declaration of bankruptcy or restructuring permit;
- d) as at 12 March 2020, there are no enforcement proceedings against them concerning satisfaction of claim from their business activities;
- e) as at 12 March 2020, there was no performance of pledge rights in relation to their business or assets, rights or other property value related thereto;
- f) they did not distribute profits from other own sources in the calendar year 2020 or removed the results of such actions;
- g) they did not undertake any measures that jeopardize their financial stability, apart from the measures directed to mitigate the consequences of the pandemic, in the calendar year 2020 or remove the results of such measures;
- h) they duly keep their account books and have not violated the obligation to file financial statements with the respective registers.

I.2 Granting and refusal of temporary protection

If the application meets all the requirements, the court will immediately issue the undertaking a confirmation on granting the temporary protection. The court will also publish information in the Commercial Journal that temporary protection has been granted. Temporary protection is deemed to have been provided on the day following the day the information has been published in the Commercial Journal.

If the application doesn't meet the requirements, the court will immediately issue a confirmation on refusal of the application. The confirmation on refusal is delivered to the applicant via or, alternatively, it will be put in the court file and information will be sent to the applicant's email address that the refusal can be found in the court file (if the applicant doesn't have an electronic mailbox activated for delivery).

A **complaint** can be filed against a confirmation on refusal **within 15 days** following its delivery. A judge with competency over the application shall decide on the objection without undue delay. The objection is filed via a form which will be available on the website of the Ministry of Justice. If the objection is recognized, the court will issue a confirmation on granting temporary protection without undue delay. In the event the application is refused and subsequent objection is not recognized, **a new application for temporary protection can be filed.**

I.3 Effects of temporary protection

Being granted temporary protection has the following effects on the undertaking in question:

- Proceedings on the petition of a creditor for bankruptcy of the undertaking under the temporary protection that have been filed after 12 March 2020 are suspended (including petitions filed during the temporary protection).
- The undertaking (or persons acting on its behalf) under the temporary protection isn't obliged to file a petition for bankruptcy in respect of their assets during the temporary protection.
- Enforcement proceedings against the undertaking under the temporary protection which were commenced after 12 March 2020 are suspended during the temporary protection.

- Performance of pledge rights concerning the undertaking's business or assets, rights or other property values related thereto can't be commenced during the temporary protection.
- Receivables originated by the undertaking under the temporary protection after it was granted temporary protection cannot be set off against receivables which originated against it before it was granted temporary protection if the receivable belongs or belonged to a related party under the Act on Bankruptcy.
- Other contractual parties are not be entitled to terminate the contract, withdraw from it or refuse to fulfil the agreed performance due to a delay of the undertaking, if the delay occurred between 12 March 2020 and 12 May 2020. This does not apply if contractual party would directly jeopardize operation of its business by non-termination of the contract, non-withdrawal from the contract or non-refusal of fulfilment. Temporary protection does not rule out the right of the other contractual party to terminate the contract, withdraw from the contract or to refuse fulfilment due to delay of the contractual party under a temporary protection if such delay occurred after 12 May 2020.
- The time-periods for claiming a right against the undertaking under the temporary protection, including periods for claims from disputable legal acts, are suspended during the temporary protection.
- After filing the application for temporary protection, the undertaking (and its statutory body) is obliged to make a sincere effort to satisfy creditors in the maximum possible extent and to prioritize creditors' interests before their own. Until the temporary protection expires, distribution of profit or funds from other own sources and disposal of the undertaking's property is not allowed.
- During the protective period, the undertaking can fulfil liabilities directly related to maintaining business operations, which originated after temporary protection was granted, before other liabilities that matured earlier.
- Loans and similar non-cash benefits provided to the undertaking under temporary protection by a related party during the temporary protection and directly related to maintaining business operations will not be assessed under provisions of the Commercial Code relating to the crisis and provisions of the Act on Bankruptcy on their satisfaction in order as subordinated shall not apply. Their security in bankruptcy is not taken into account.

I.4 Expiration of temporary protection

Temporary protection ceases to exist (i) on 1 October 2020 (this deadline can be prolonged by government decree until 31 December 2020 at the latest), (ii) if an undertaking under temporary protection applies to have it terminated, or (iii) if a court rules on termination of the temporary protection (at the court's own incentive or based on a qualified challenge from a third party).

A request for termination of temporary protection is filed in the same way as when applying for it, via a special form. The expiration of the undertaking's temporary protection will be published by the court in the Commercial Journal.

Undertakings who request termination of the temporary protection or whose temporary protection has been terminated by the court cannot reapply for temporary protection.

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We are continuing to monitor the situation, and it cannot be excluded that the above conclusions will be subject to changes, depending on the legislative development. We will be happy to assist you to resolve new issues and to create favourable conditions for your business under the current situation.

If you have any questions, please contact your usual partner in PRK Partners or contact directly the partner of PRK Partners' Bratislava branch, Miriam Galandová (email: miriam.galandova@prkpartners.com, tel.: +421 911 492 222).