

RESTRUCTURING AS A PART OF COMPANY CRISIS MANAGEMENT

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Abstract

Company crisis management. Company bankruptcy. Causes of company bankruptcy. Solution of bankruptcy. Bankruptcy and restructuring. Informal restructuring and restructuring under supervision of the court. When to execute restructuring. Restructuring in the Slovak republic compared to restructuring in the Czech republic. Comparison of advantages and disadvantages of restructuring proceedings conditions in the Slovak and conditions in the Czech Republic. Differences restructuring proceedings in the Slovak Republic and the Czech Republic.

Keywords: Company crisis management, restructure

Introduction

Currently the competition is steadily increasing, the competitiveness of enterprises in the market is being reduced, the conditions for business become more difficult and companies are getting into troubles that can have various causes. Businesses should be aware of still more and more increasing pressure from competitors and adapt their business to the surrounding conditions. Still more and more companies get into complex financial problems and many of them eventually go bankrupt. Every day there is an increasing number of companies in financial troubles, they get into bankruptcy, in the better cases they undergo restructuring; however, it does not have to be guarantee of the company's survival in the market, a lot of restructurings end in the late conversion to bankruptcy. As there have been an increasing number of companies becoming bankrupt, the solution of which is bankruptcy or restructuring, we consider this issue being very current. According to Ďurica and Husár (2008), traditionally it has been alleged that bankruptcy law is an essential part of any rule of law in the countries with a market economy.

This article deals with bankruptcy, its root cause, possible solutions in the Slovak and Czech conditions. We used a method of comparison where we examined the restructuring of the Slovak legal conditions in comparison with the Czech conditions; in particular we focused on restructuring process and the differences in its application and duration in Slovakia and the Czech Republic. Inconsiderable part of our contribution consists of the determination of the time when and why a company should undertake the restructuring process. The entire article deals with the advantages and disadvantages of the differences in the legal processes in Slovakia and the Czech Republic. In the article we discuss different features in the procedures of restructuring as well.

Bankruptcy of a company in the Slovak and Czech conditions

Every business should look for new sources of its growth, seek to increase competitiveness what often requires intensive research and development. Businesses often do not have much space to invest and many of them are subsequently under pressure from

competitors, unable to remain competitive on the desired level, the conditions of existence in the market are getting worse, their market share is decreasing, revenues are decreasing etc. All these problems that can have various causes are reflected in the formation of financial difficulties, a culmination of which may be the decline of the company which may represent the insolvency of the debtor or prolongation. It is then difficult for the company to create and maximize profit in the long term and it has liquidity problems gradually.

Problems in the company which may cause the company bankruptcy may vary. These can include: difficulties in manufacturing connected with high costs, outdated technological procedures and equipment, manufacture of unsatisfactory quality etc. Furthermore, there may be a problem with the sale (high competition, low demand for products, lack of marketing), in sales and distribution (excessively high transport costs), in financial area (high debt, lack of liquidity, low profitability, increasing interest rates, high wage costs, insufficient management level) and other. Often there come problems because of lack of management. Even according to the known U.S. company Dun and Bradstreet Inc., as many as 98% of business failures are caused by incompetent business management. In particular, this concerns the lack of experience in the field of business area, management experience, in manufacturing, sales, finance and management negligence (Kolb, DeMongs, 1998). Many problems that ultimately cause the bankruptcy are also caused by the so-called overtrading or overstating. Overtrading is a large quantity of unreasonably and improperly closed transactions that lead to losses. Entrepreneurs carry their business more than it is appropriate, forgetting a very important need in their company - the need for working capital. If the business does not provide a sufficient financial resources, whether their own or others, sooner or later it will become insolvent, what can lead to the existential problems of the company.

According to the law on bankruptcy and restructuring, the debtor is bankrupt if it is insolvent or prolonged. Insolvent is the one who is unable to fulfill at least two financial obligations to more than one creditor within 30 days overdue. Extended is the one who is obliged to keep accounting according to a special regulation, has more than one creditor and the value of its liabilities exceeds its assets. As reported by Pospíšil (2012), there are three essential ways how to address the bankruptcy of a debtor, namely:

- bankruptcy, which is a liquidation process where creditors recover debts from a debtor who is insolvent. The debtor does not continue in their business - it is a process of monetizing the debtor's assets and the satisfaction of the claims of its creditors. A trustee determines whether a businessman is bankrupt and when he got into it.
- an informal restructuring that takes place after the agreement with the creditors, informal ways of resolving insolvency of the debtor apply here
- Formal restructuring that takes place under judicial control and proceeds according to clearly defined procedures specified by the law on bankruptcy and restructuring.
- Debt relief (for individuals)

The first difference between the Slovak and Czech modification, what may be considered as an advantage too, is in the definition of bankruptcy where the Czech law adds a definition of imminent bankruptcy, which the Slovak law lacks - the imminent bankruptcy occurs when regarding all the circumstances we can reasonably assume that the debtor will not be able to properly and timely perform a substantial part of its financial obligations. It is useful to use liquidity indicators here that tell us about the entrepreneur's ability to meet their obligations properly and on time, i.e. its ability to pay. According to Kotoučová (2010), the concept of imminent bankruptcy was introduced in order to prevent the negative consequences associated with the later finding of bankruptcy. The advantage in the Slovak case law is an extension of the definition prolongation from 1.1.2013 which states that in defining the prolongation it should be based on accounting or report of the expert who is prior

to accounting. In both jurisdictions the prolongation may be just corporate entity or individual as an entrepreneur. Schelleová (2007) explains this as well saying that the general extension for individuals who are not and have never been entrepreneurs should not have a practical significance, because the prolongation definition shows that this can only be for people who have an obligation to keep accounting. Czech law also defines prolongation as insolvency and it appoints situations where the debtor is unable to meet its obligations, among which it specifies that the debtor is insolvent (bankrupt) if it fails to comply its obligations for more than three months overdue. This period is compared to the 30-day period in the Slovak law declared more sophisticated since 30 days overdue is little to assess whether the debtor has been insolvent for a longer period. The method of resolving insolvency or imminent decline in the Czech Republic means:

- Bankruptcy
- Reorganization
- Debt relief
- Special methods of resolving insolvency which the law provides for certain subjects or certain cases types

Slovak and Czech laws have some features in common too. First of all it was the dissatisfaction of both parties with the old arrangement of law and in both countries the major amendments to the Act were acceded. Another common feature is the actual length of the bankruptcy process. In both countries, these processes are quite difficult, we cannot talk about the very simplicity, and that is also the reason for their long duration. Last but not least it is the orientation of the Law on the interests of creditors and debtors. In both cases, based on past experience, where the position of the creditors in the bankruptcy process was highly weak, the law is oriented to the creditors and approaches to protecting the interests of creditors and strengthens their position.

Restructuring versus Insolvency act

In Slovakia, the bankruptcy law is governed by the Act on bankruptcy and restructuring no. 7/2005 Z.z. as amended. In the Czech Republic a bankruptcy solution is managed by Act no. 182/2006 Coll. on bankruptcy and ways of its solution (the Insolvency Act). The structure of the Act on Bankruptcy and Restructuring compared to the Czech law on bankruptcy and ways of its solutions (Insolvency Law) is diametrically different. Slovak law is divided into 8 sections including bankruptcy, restructuring and debt elimination. Each part addresses the bankruptcy by the chosen method of submission of the proposal to the completion of the process.

In the Czech law, the bankruptcy solution begins with submitting insolvency proposal, no matter which way the bankruptcy will be addressed. Subsequently the so-called insolvency management or insolvency process starts which begins on the date when the insolvency proposal will come to materially competent court. This new adaptation of the Czech Law teamed way of resolving insolvency while the old update addressed bankruptcy or settlement procedures separately - similarly the Slovak law is governed like that and the process of bankruptcy, restructuring and debt relief is addressed separately. The proposal may be submitted by the debtor or creditor. The debtor is obliged to submit the proposal immediately after he learned of his bankruptcy in the form of insolvency, in case of liquidation and if it is prolonged. As regards to the condition of insolvency, we see this as a disadvantage of this matter because many business owners often fall into insolvency which may not be long-term and gradually get out of it. Therefore, the Slovak law restricts the obligation of the debtor and orders the debtor to submit a proposal only if it is prolonged. A new aspect in the Czech act after major amendments is the possibility of an insolvency proposal in the case of imminent bankruptcy, what the case law in Slovakia is unfortunately

missing. We consider this a very sensible step by the Czech lawmakers because the ability to submit a proposal and to restructuring earlier than the debtor bankrupts is of great benefit to the debtor and increases the likelihood of successful restructuring. The sooner the restructuring process proceeds the greater the chances for its successful management. In this case, the person qualifying to submit a proposal is only the debtor to avoid pressure from creditors to debtors to submit the proposal and finally, only the debtor has relevant information about their economic situation which the creditor does not have access to and is not able to assess in real debtor's financial situation. During this process, the debtor is significantly restricted to dispose freely with their property, should it be a big intervention in the structure of assets.

The creditor has the right to submit an insolvency proposal if he refers he has a matured claim against the debtor. If the debtor does not agree with that proposal, he has the right to submit a proposal for a moratorium. The moratorium gives the debtor the opportunity to score with the creditor before the court decides on bankruptcy and to avert bankruptcy by their own forces. During the period of moratorium court must not issue a decision on bankruptcy. It is a kind of protection for the debtor and the opportunity to avert bankruptcy, if he is able to cope with the creditor. The moratorium lasts for such period as it is specified in the proposal but not more than three months. The possibility of a moratorium is considered to be a huge advantage in the Czech law compared to the Slovak one because if the creditor in Slovakia proposes for bankruptcy or restructuring and bankruptcy trustee determines that the debtor is in bankruptcy, the debtor has no chance to deal with creditor, the bankruptcy proceeding begins which can no longer be avoided. If the court finds out that the debtor is insolvent, it shall issue a decision on bankruptcy and creditors can submit their claims within the time fixed by the court - at least 30 days, no more than two months. In our opinion, it is not a very good solution that the bankruptcy is decided by court. Yet it is largely financial - economic issue, not legal and it is the extra work for the court and prolongation of insolvency process. In Slovakia bankruptcy is determined by a trustee (unless a proposal for bankruptcy or restructuring was not submitted by the debtor because if so, it automatically takes the view that the debtor is insolvent). A debtor may appeal against the decision of the bankruptcy. If a bankruptcy is certified, a court has no reason to change this decision. Insolvent Court, together with the decision of a bankruptcy, joins a decision on how to deal with bankruptcy – announces a bankruptcy, if the debtor is excreted in reorganization or debt elimination, permits reorganization, if the debtor shall submit a reorganization plan which had been agreed by creditors (or method will be decided later if it is not previously mentioned cases). The court may decide on the method of resolving insolvency on the basis of the creditors' meeting, where creditors vote on the method of resolving. In the field of bankruptcy law, we will in the article continue to deal with particular restructuring, common features between the Slovak and Czech restructuring but also differences between them.

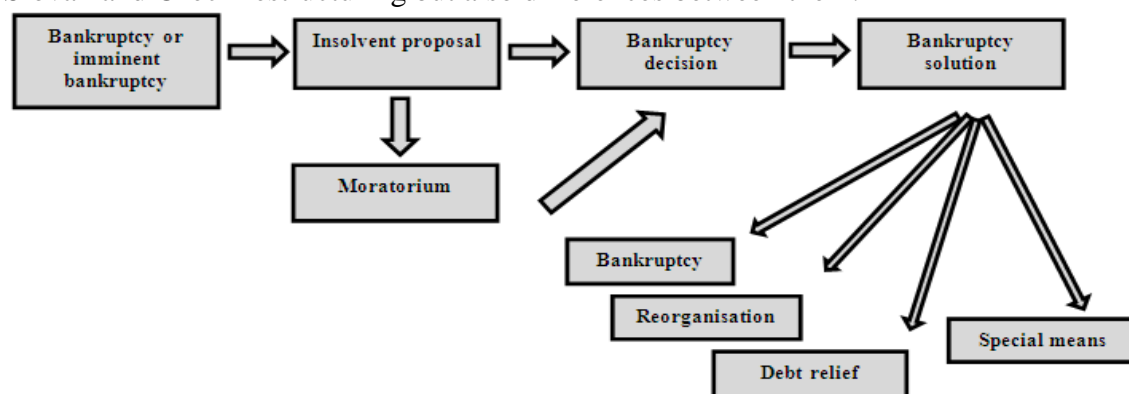


Fig. 1. Process of insolvency management in the Czech republic

Restructuring of company

Each company should constantly check their current situation through the financial and non-financial indicators that characterize them either in a positive or negative light. For a company it is important to remember and then define the time when it is appropriate to restructure, for the restructuring not to be useless. To set the appropriate period for restructuring, it is important to distinguish between informal and formal restructuring because from the financial - economic point of view, the formal restructuring should follow the informal one, representing various internal business processes which improve a company financial situation. The basic aim is to reverse the bad financial condition of a company and consequently avert bankruptcy but many businesses do informal restructuring as prevention against the threat of future problems. If a company fails to successfully restructure informally, a formal court-supervised restructuring follows. Basic features of a formal restructuring are defined in the Act on Bankruptcy and Restructuring.

The appropriate time for formal restructuring is if a company failed to eliminate its stagnation in the market by the restoration measures, it no longer makes profit and its financial problems are getting more serious. It is a first impulse to make the company realize it is necessary to do the restructuring measures not to be led to bankruptcy and for the restructuring not to be useless in the end. The basic situations in a company that tell us about the need to apply informal restructuring measures we consider:

- Change of the trends in the business sector
- Decrease of the market share
- Decreasing profitability
- Secondary insolvency
- Increasing the debt
- other

If a company fails to improve the unfavorable situation that is constantly getting worse, it's time for a formal restructuring which represents a radical solution in case of a company bankruptcy. Among the basic situations in a company with the need to apply a formal restructuring measures we include:

- Long-term inability to adapt to changing trends in the business sector
- Reduction of market share to a minimum
- Reduction of income to a minimum, the threat of reporting losses
- Initial insolvency
- Extremely high debt
- Prolongation
- Pressure from creditors on the company

In this case a company has serious financial problems that are transformed into the high insolvency, creditors are putting high pressure on business, many of them want to recover their claims in enforcement proceedings and the company is unable to reverse the unfavorable situation on time. In this case, time plays a very important role and the later the company realizes its unfavorable situation, the harder it will carry out the restructuring. Some businesses often do not see or do not want to see the adverse developments in their business, underestimate the situation and see a formal restructuring as the last solution without previously carrying out any restoration measures or informally restructuring. In such cases, many times the formal restructuring is unnecessary and the company finds itself bankrupt which is a liquidation process, the debtor's business ends and there is a monetization of the debtor's assets and satisfaction of its creditors.

For the success of the restructuring, the right attitude and cooperation of all actors concerned are necessary. A statement of the European Commission in the EU's approach to

the restructuring is very concise: "Restructuring can become an essential part of economic progress only when structural changes correctly predict where the companies can take corrective action quickly and effectively manage the necessary changes and where public authorities help create the right conditions" (the European Commission, 20 June 2011).

Comparison of restructuring in Slovakia and the Czech Republic

In general, entrepreneurs should avoid bankruptcy. Many times, however, they get into such financial problems they become insolvent. If the entrepreneur finds out he is bankrupt or in the worst case, he is already bankrupt, he has the opportunity to restructure. The common feature of restructuring in the Slovak and Czech conditions is a common thought and common goal of restructuring: to avert bankruptcy and subsequently ensure company recovery, not least to provide the opportunity to the entrepreneur to continue their business. Compared to bankruptcy, restructuring is a non-liquidation process, the entrepreneur continues its business and gradually relieves the debt. For all restructuring processes the executions are stopped by law enforcement which can be regarded as protective elements of the debtor. As reported by Ďurica (2010), the common feature of all restructuring processes is to provide protection of debtors from creditors. Many creditors see the provision of such protection negatively, they would rather prefer bankruptcy, but often do not realize that this protection is their protection as well because the satisfaction of their claims in restructuring should be always higher than in bankruptcy.

Restructuring in Slovakia

The solution of bankruptcy may be restructuring or bankruptcy. The law does not know any other solution of the company bankruptcy. In the Slovak conditions, the restructuring process is defined by law No.7/2005 Coll on Bankruptcy and restructuring. In Slovakia, by 2005, the institute of arrangement was used, taken from Austrian and German law but it was not certified. Although this law has been in force since 2005, economic entities in Slovakia started getting to know the restructuring in 2009 when they realized the effects of the economic crisis which has been the cause of serious financial problems of entrepreneurs. There are several stages of restructuring proceedings in Slovakia:

- 1) Delegate a trustee administrator to develop a restructuring review– if the debtor finds out he is threatened by bankruptcy or is in bankruptcy in the form of insolvency or indebtedness, he can solve this situation either submitting a proposal for bankruptcy or for the authorization of restructuring. If he decides for the latter option, he instructs the trustee of bankruptcy court to prepare a restructuring report. If the debtor shall instruct the trustee before his bankruptcy with this task, at a time of imminent bankruptcy, the probability of positive report is higher as well as is the probability of the success of the restructuring and the fulfillment of its core objective - company recovery. The trustee determines the financial and business situation of the debtor, on the basis of which he assesses whether the restructuring makes sense and if the economic conditions for the proposal for restructuring are fulfilled. In this part of the report, it is especially important to evaluate the liquidity indicators that tell us about the debtor's solvency and debt ratios which inform us about the capital structure. This first stage is essential in the restructuring process because it depends on the judgment whether the trustee recommends the restructuring or not, the court is then governed by this recommendation and decides on authorizing or rejecting the restructuring. Trustee may recommend restructuring only if the following conditions are met: the debtor carries on business, the debtor is threatened by or already is in bankruptcy, the preservation of a substantial part of the debtor's business operations can be reasonably

assumed. In the case of authorization of restructuring a greater extent of creditors' satisfaction as by the bankruptcy declaration can be reasonably assumed. This difference of satisfaction can be considerable - creditors who have their assets secured by a lien, can get about 70 % while in bankruptcy it is only approximately 40 %.

2) Proposal for the authorization of restructuring– As stated correctly by Ādurica (2010), a restructuring procedure is a specific type of civil procedure which can only be initiated on proposal. A debtor or creditor who appointed a trustee to develop a report has the right to submit the proposal. In practice, courts more often face the proposal by the debtor himself.

3) Start of a restructuring procedure– If the court finds out that the proposal for the authorization of restructuring meets the statutory requirements, no later than 15 days following proposal receipt, it is decided to initiate restructuring proceedings, otherwise the proposal is rejected in the same order. With this decision the impacts of initiation of this proceeding are connected, including for example ban of the execution start on the debtor's property and all initiated executions are stopped. This effect is considered to be very advantageous to the debtor because he has a chance to make business without any limitations and problems and even more satisfy claims of its creditors. Other effects include: limiting the debtor's business on standard legal acts, where other legal acts may be exercised only with the agreement of the trustee, protection against a creditor, which protects the debtor from the individual enforcement of their claims apart from a restructuring proceeding and so to destroy the entire proceeding. These effects include also impediment of *litispendens* where this barrier prevents the start of other restructuring procedure for the same debtor.

4) Authorization of restructuring– If the statutory conditions for the authorization of restructuring are fulfilled, the court decides by order on the authorization of restructuring no later than 30 days from the restructuring proceedings. Otherwise it stops restructuring proceedings in the same order. The judge must examine the accuracy of content in the report. We cannot agree with this because as rightly pointed by Ādurica (2010), the report is processed by expert in order to assess the financial situation of the debtor to recommend the restructuring or not. It would be more appropriate if the court reviewed the content, trustee competence and timeliness of the report processing only formally.

5) Beginning of restructuring– starts with the authorization of restructuring

6) Assets registrations– in this stage, creditors register their assets that are secured or unsecured by a debtor. If the trustee finds out that the registered asset is doubtful, he shall deny the registered asset in doubt.

7) Creditors meeting convocation– is convened by a trustee, its meaning lies in the opinions of the individual creditors while a creditors' committee is selected, which will continue to work with the debtor.

8) Working out the restructuring plan– Based on the current economic situation of the debtor, the formation of a restructuring plan follows. If a debtor submitted a proposal for restructuring, the plan is prepared and submitted by him, if a plan is proposed by creditor, a plan is drawn up for approval by a trustee. In our view, a better alternative of the plan processing is by the debtor because he knows his best financial and economic situation and his business opportunities. When developing the plan, predictive financial analysis (*ex ante*) in the financial terms of is very important which predicts a financial crunch of the company for the company not to be in financial difficulties in the future. The plan must be drawn up so as to ensure the highest satisfaction of creditors. The requirement of reality and sustainability have to be fulfilled which means that the degree of satisfaction of claims shall be determined

reasonably. The restructuring plan consists of a descriptive and binding part. As Pospíšil (2012) correctly explains, the descriptive part of the plan includes mainly detailed explanations of binding part, and binding part of the plan includes precise definition of individual rights and obligations that are scheduled to occur, change or disappear. Descriptive part of the plan is mainly economic in nature and includes a description of the procedures which achieve the objective of restructuring. Binding part is of a legal nature, shall include all claims of creditors, if their rights should change, appear or disappear.

9) Proposal and approval of the plan – Proposal must be submitted for approval to the creditors' committee which will decide on approval of the plan within 90 days of the authorization of the restructuring plan and subsequently the plan is being approved by the court. Trustee shall convene the approval meeting where before the voting itself, the plan submitter responds to all questions. Subsequently, the voting on the adoption of the plan follows. To adopt the plan, it is necessary for each group of secured claims voted in favor of adoption of the plan, and that each group voted for adoption by the majority of voters. It is important to note that the group, in which no creditor voted, is automatically considered to be a group which agrees with the plan. We know a group of secured claims and unsecured claims, a group of property rights of shareholders, the group claims of the plan intact claims. If a creditors' committee rejects the plan or if the plan fails to comply, the trustee asks the court to declare bankruptcy and restructuring conversion for bankruptcy occurs. If the trustee fails to do so, the court will make it ex offo. Reasons for conversion are in our legal conditions very strict and failure of a single duty may lead to restructuring fall into bankruptcy, therefore a restructuring plan should be drawn up to be really fulfilled.

10) Confirmation of the plan by court – if there are any reasons for rejecting the plan, the court, on a proposal of plan submitter confirms and approves the plan within 15 days of receipt of the submission. In that order, the court shall also decide on the termination of the restructuring under court supervision and may subsequently lead to economic recovery of debtor. The court may reject a plan for a variety of reasons, for example creditors do not approve the plan for cheating, if it finds out that the plan is in contrary to the interests of creditors and there would be no satisfaction of claims as much as in bankrupt or higher degree, or because of the above-mentioned conversion to audit.

11) End of restructuring – As mentioned in the 9th step, the court issues a ruling on completion of the restructuring, all suspended proceedings are stopped and the function of the creditors' committee and trustee functions extinct.

The end of restructuring means its completion only by formal part and the implementation of the plan follows. In the binding part of the plan supervisory management may be provided which is tasked to serve as a control over the debtor and the implementing the plan and the business of the debtor. This function is performed by a trustee who has been defined in the binding part of the plan. The scope of his work results from this part of the plan. After full delivery of the plan the supervisory trustee shall publish in the Journal of Business a finish of supervisory management activities. These moment lapses function of monitoring trustee and supervisory management.

Restructuring in the Czech Republic

In the Czech Republic restructuring is governed by the Law no. 182/2006 Coll. About the bankruptcy and ways to solve it (the Insolvency Act), as amended. In 2008 there was a major amendment to the Act and for the first time introduced the concept of reorganization. Since it could not be bind to the previous case law and legislative provision, the concept of

reorganization came of the U.S. Bankruptcy Law of 1978, which was modified according to European legislation - the German and Austrian adjustments. In the Act there is a new institution which should help the economic operators to assist in the continuation of the company and continue their business. The Czech Act has common as well as different features from Slovak adjustments. Czech law precisely defines what reorganization is. In the Slovak case law, the definition of restructuring is missing.

Another major difference is when the restructuring or reorganization is permitted. In Slovak conditions restructuring review mentioned above is very important, whereby a trustee either recommends a restructuring or not, the court will be usually inclined to the opinion, and then allows or denies a restructuring. In Czech conditions it is different, by the definitions of reorganization law clearly defines the conditions under which reorganization is permissible - if the debtor's total turnover for the last financial year amounted to at least 100 million Czech crowns or if the debtor has at least 100 employees. If, however, the debtor presents to a court reorganization plan adopted by at least half of the creditors, previous condition does not apply. Here we see a strong pro-creditor orientation and empowerment but also a great limitation for the debtor. In our view, it is questionable whether the determination of these conditions was correct because they significantly weaken the position of the debtor by the fact that the debtor with smaller turnover or a small number of employees cannot reorganize until the reorganization plan is approved by creditors. It is a debtor's huge limitation. The following situation may occur: Company A has a turnover of over one million Czech crowns; Company B has a smaller turnover. At the same time, company A has huge debts, high amount of outstanding commitments while Company B is insolvent but its financial problems are of easier character as in the case of company A. Creditors were presented a restructuring plan but they decided not to agree with it and reorganization plan was not approved. By law, company A has the right to reorganize irrespective of the nature and seriousness of its financial problems because it has a turnover of over one million Czech crowns while company B does not get this chance, if there were not the legal conditions, perhaps it would get out of their financial problems thanks to reorganization and could continue to exist in the market which would ultimately have a positive impact on the overall economic environment. Thus, this company has been declared bankrupt and the debtor can no longer continue its business, there is a sellout of assets, the relative satisfaction of the creditors and the company ceases to exist. Another problem in this restriction is that the turnover criterion is defined generally for all sectors. But sales largely depend on the industry in which the debtor operates. As well, there may occur a situation we mentioned above because it can happen that some business in the steel industry has a high turnover and more serious financial problems such as a business e.g. in the food sector where the turnover is much lower. The law certainly did not look at the economic aspect of the matter. Therefore, we believe that the determination of these conditions should take into account all economic aspects and on the basis of their assessment to determine the optimal conditions for admissibility reorganization. Reorganization process in the Czech conditions is as follows:

- 1) *Submitting a proposal for authorization of reorganizing* – to submit the proposal is the right of debtor as well as creditor, similarly as in Slovakia. At the same time the proposal is submitted if all the above mentioned conditions are fulfilled and we can reasonably assume that the reorganization will be allowed.
- 2) *Decision about the proposal for authorization of reorganizing* - the court shall follow the same way as when deciding on a solution of bankruptcy as we mentioned above, so makes a decision of authorizing or refusing together with the decision of the bankruptcy or the individual decision or on the basis of decision of the creditors who issued the order on the creditors' meeting where the matter was discussed. A court will refuse the reorganization if it is revealed that the submitter has a dishonest intention or if the

proposal is not approved by the creditors, if the approved is on the creditor meeting, otherwise the reorganization is accepted. Authorizing decision has essentials, including challenge to the debtor to present a restructuring plan within 120 days, which represents another difference between the Slovak and Czech act adjustment, in Slovakia this period is only 90 days which is a disadvantages for the debtor in comparison to the Czech legal act. At the same time he may reasonably request for an extension of 60 days. Similarly as in Slovakia different groups of creditors are created here who vote about rejection or confirmation of a reorganization plan.

- 3) *Creation of reorganizing plan* – the debtor has a preferential right to draw up a plan unless the creditor meeting yielded to a solution in which creditors expressed their disapproval. In Slovakia, if the debtor submitted a proposal for restructuring, the plan is presented and drawn up by the debtor, if the plan is submitted by a creditor; it is presented and drawn up by the trustee.
- 4) *Specification of the way of reorganizing* – the Slovak law lacks ways how to carry out restructuring, in the Czech Republic, these methods are defined in the Act, for example forgiveness of certain debt to the debtor by the creditor, the sale of assets, merge of debtor and other. All these methods that are to be made are set out in the plan.
- 5) *Discussion and acceptance of the plan on creditors' meeting* – similarly like in Slovakia, as was already mentioned, the plan is voted according to established groups of creditors. Then the court decides on the approval, which plan to approve, if it complies with the law and if the creditors adopted the plan. Otherwise, the court rejects the plan. If the plan is approved, then there is mere fulfillment of the plan.
- 6) *Plan fulfillment* – the fulfillment is controlled by a trustee and creditors' committee.
- 7) *The end of reorganization* – either by conversion to bankruptcy or successful plan fulfillment which is the end of reorganization. The reorganization conversion to the bankruptcy may occur in different cases, e.g. if the debtor himself submits a proposal for, if the person creating the plan fails to stop it, if the court did not approve the plan, if the debtor fails to comply reorganization plan properly and timely, etc.

Conclusion

Causes of financial problems result from insufficient liquidity, high debt, failure of financial management, overtrading which causes losses in the company etc. A company can solve financial problems formally or informally. Such company should primarily use informal procedures because they are associated with lower expenditures. However, the company often cannot handle this and falls into bankruptcy. The most appropriate and least painful solution for bankruptcy is a formal court-supervised restructuring.

Slovak and Czech adjustment of resolving insolvency have common and different features as well. Both countries have acceded to the major amendments to the Act, because the previous Law on Bankruptcy has not worked in any country. Therefore the amendment of the Act took place which introduced a new institution - the restructuring, reorganization in the Czech Republic, which is another way of how to deal with bankruptcy. Common feature is to avert bankruptcy and then proceed to the company recovery. The basic difference is the method of its solution - Slovak law is divided into several sections, including bankruptcy, restructuring and debt elimination. Each part addresses the bankruptcy by the chosen method from submission of the proposal to the completion of the process. In the Czech law, the solution begins with submitting insolvency proposal, no matter which way the bankruptcy will be addressed. Then insolvency management comes, as unified management, in which the court decides on bankruptcy and then it is solved by the chosen way we visualized in Figure number 1.

In conclusion we can say that from a financial point of view it is essential that in comparison with the bankruptcy, by restructuring a business continues, and the company does not expire and it gradually restructures and the debt is being relieved. For the success of the restructuring, the right attitude and cooperation of all stakeholders concerned are necessary. Restructuring can become an essential part of economic progress only when structural changes correctly predict where the companies can take corrective action quickly and effectively manage the necessary changes, and where public authorities help to create the right conditions. Both countries have their advantages and disadvantages of restructuring and bankruptcy procedures. In the Czech Republic we consider moratorium to be a great advantage, what we lack. In our opinion, every debtor should be able to cope with the creditor before the bankruptcy or restructuring occurs and thus avert bankruptcy. Another advantage is the precise definition of how to deal with the reorganization. In Slovakia, this definition is missing. In the Slovak conditions, we consider advantages to be e.g. way of decision on bankruptcy, where the court is governed mainly by restructuring advice which is made by the trustee of insolvency on the basis of his recommendations the court authorizes restructuring.

As mentioned earlier, the two systems and procedures of restructuring have a common goal, namely to avert company bankruptcy to continue in business and gradually the debt is being relieved. If the company is forced to carry out the restructuring, it is advised to do so as soon as possible because the sooner the process begins, the greater the likelihood of a successful restructuring. It should also supervise the fulfilment of the restructuring plan because failure to complete even a single duty may result in a conversion for bankruptcy of the company, thus ending a debtor's business and monetization of his assets and the gradual satisfaction of creditors follows.

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