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## Hungary: Wage guarantee in case of insolvency

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Hungary

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 10 December, 2021

Native name:

1994. évi LXVI. törvény a Bérgarancia Alapról; 1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról

English name:

Act LXVI of 1994 on Wage guarantee fund; Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings

### Article

Act LXVI of 1994: Wage guarantee fund (the whole act), Act XLIX of 1991: Section 57(2)

### Description

Insolvency in Hungary is declared by the court, if:

- the debtor has failed to settle or contest (in writing) its previously uncontested or acknowledged contractual debt within 20 days of the due date, and has not made the payment despite the creditor's written demand after this period;
- the debtor has failed to settle its debt within the deadline specified in a final and binding court decision or order for payment;
- enforcement against the debtor was unsuccessful;
- the debtor has not fulfilled its payment obligation when an agreement was reached in the bankruptcy or liquidation proceedings;
- the court terminated the previous bankruptcy proceeding;
- the debtor's debts exceed its assets in the proceeding initiated by the debtor or by the liquidator, or the debtor was or will presumably be unable to settle its debts on the due date, and in the proceeding initiated by the liquidator, the debtor's owners fail – despite due notice – to provide a statement of commitment to guarantee the funds necessary to cover such debts when due.

The Hungarian legislation provides detailed provisions on two insolvency related proceedings: bankruptcy ('csődeljárás') and liquidation proceedings ('felszámolási eljárás').

**Bankruptcy proceedings** are those where the debtor is granted a suspension of payment (grace period) with a view to seeking an arrangement with creditors or attempts to enter into a composition arrangement with creditors.

In bankruptcy proceedings, worker-related claims (specifically wage/salary claims) are not affected by the moratorium nor enjoy any special priority. Should the insolvent debtor be able to cover wages and related costs (which is usually the case during the period of the moratorium of 90 days, which could be extended upon the debtor's request), workers receive their wages in due time.

If a company is insolvent, it is subject to liquidation. In this case, workers have the opportunity to turn to the labour court to get their wages or to the Wage guarantee fund (see below for more information). The liquidator must indicate, to the competent employment centre and the Wage guarantee fund, that the company cannot pay the wages. The administration period (when the process can begin) is 15 days after the submission of the application. This does not mean complete security because the Wage guarantee fund has a maximum limit regarding to the payable wages.

If the insolvent debtor is unable to cover the wages and related costs, the company begins the liquidation procedures. These aim to provide satisfaction to the creditors of an insolvent debtor upon the dissolution of the debtor without legal successor. The employer as a debtor has the opportunity to announce their claim to the liquidator within 40 days from the publication of the liquidation.

In **liquidation procedures**, liquidation costs can be satisfied upon maturity (if circumstances allow) and as such enjoy a privileged status. Liquidation costs include, among others, wages and other personnel costs payable by the debtor, including severance pay due upon the termination of employment and any other benefits fixed in the collective agreement or in the contract of employment. Liquidation costs also enjoy a similar privileged status when debts are already satisfied from the assets of the debtor subject to liquidation: liquidation costs are the first priority in the payment order.

Act 49/1991, Section 57(2) specifies when the claims must be satisfied in liquidation proceedings (according to the order of priority) and

specifies the manner in which the debtor's annuity-type and future guarantees and indemnification obligations will be fulfilled. Debts from the assets of the entity subject to liquidation shall be settled in the following order:

In the first place, are the costs of liquidation, including:

- wages and fringe benefits of the debtor, including, in particular, severance pay, benefits provided in a collective agreement or employment contract, and payment obligations incumbent on the employer in connection with the unlawful termination of employment, as well as the obligations included in a contract concluded with a student cooperative (wages and fringe benefits), and
- tax and contribution liabilities if wages and fringe benefits due before the commencement date of the liquidation were paid by the liquidator after the commencement date of the liquidation.

All further obligations must be fulfilled only subsequently – the law defines the groups (classes) of each claim, also in the order given.

The appointed liquidator can turn to the Wage guarantee fund for an interest-free financial assistance in order to cover workers' wages and related costs if the financial sources of the debtor do not allow their payment in due time. The actual unpaid wages have to be requested as an advancement by the liquidator, but the maximum amount advanced to a worker from the fund within the entire liquidation proceeding cannot be more than five times the statistical national monthly gross average wage in the second year prior to the year of application to the Fund. The Central Statistical Office ('Központi Statisztikai Hivatal', KSH) set this amount at HUF 1,839,000 (about €5,108) in 2021, as the equivalent of five times the monthly gross average salary. After one year had elapsed from the start of the liquidation procedure, the liquidator can claim an addition amount equal to twice the monthly gross average wage (HUF 735,600 or €2,042 in 2021), if all additional criteria are met (Act 67/1994 Section 7(1-2)).

The Wage guarantee fund is an allocated part of the National Employment Protection Fund, overseen by the Ministry for innovation and technology, which is financed by the social contributions of workers and employers levied on wages by the central state budget and other additional sources.

Administratively, the public employment services ('Nemzeti Foglalkoztatási Szolgálat', National Employment Service) deal with the applications, make the decisions and order the payments from the fund. There is a standard form to be filled in and submitted by the liquidator. The form may be filled in online. The authority makes its decision on the application within eight days. Transfers are set from the fund within 15 days after the authority's decision. Net wages are directly transferred to employees, while wage-related contributions are transferred separately to the tax offices. All payments from the fund are reimbursable by the debtor in the framework of the liquidation proceeding (as part of the liquidation costs).

## Comments

Employees can turn to court only during liquidation procedures and they generally do so if they cannot settle with the help of the Wage guarantee fund (because the value of unpaid wages exceeds the guaranteed amount). They must turn to court within three years from the start of liquidation procedure, or the case lapses.

The resolution of insolvency also has, as a third possible consequence (besides bankruptcy procedure or *csődeljárás* and an insolvency procedure or *felszámolási eljárás*), the process called 'voluntary liquidation' by the ERM – which is in fact liquidation. This is a procedure in which entities that resolve their termination without a successor satisfy their creditors, including wages and fringe benefits; that is, no debt can remain unsettled. This procedure is regulated by Act V of 2006 on Company disclosure, court company procedure and liquidation. In connection with the liquidation procedure, it should be mentioned that the rules of this procedure must be applied even if the business organisation is removed from the company register by the court because its operation is illegal. For instance, the new Civil Code increased from HUF 500,000 to HUF 3 million (€8,333) the amount that a limited liability company (KFT) must show as assets, and those that did not comply with this, were compulsorily terminated with the application of full liquidation procedure rules.

### Cost covered by

Companies

### Involved actors other than national government

Public employment service

Other

### Involvement others

Wage Guarantee Fund; insolvency practitioner (bérgarancia biztos) with tasks specified by Act 5/2006 on company disclosure, court proceedings and liquidation, Section 117/A.(4).

### Thresholds

No, applicable in all circumstances

## Sources

- ▣ 1994. évi LXVI. Törvény a Bérgarancia Alapról
- ▣ ERM database on restructuring support instruments
- ▣ Az elmaradt munkabér megfizetése iránt indított perek
- ▣ A fizetéseképtelenség megállapítása és a felszámolás elrendelése
- ▣ Tájékoztató Bérgarancia támogatásról (2018)
- ▣ Mi mennyi 2019-ben?
- ▣ 1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról

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