

# Post-Crisis Development

2. lecture



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# Post-Crisis Development

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- Development after the crisis can be understood as a process of change in the development of a particular business entity, the cause was a disturbance of the equilibrium, where the company's key activities were paralyzed and had to undergo a fundamental transformation and it was necessary to use both known management methods and available legal forms of change in an entrepreneurial subject.

At this stage, it is appropriate to perform:

- Recapitulation of the current situation;
- Assessment of whether the cause of the crisis has been eliminated; Critical evaluation of the performed steps;
- Formulation of further steps and determination of responsibilities;
- Assessment of the course of the crisis in those parts of the company that were not affected by the crisis;
- Evaluation of the method of communication;
- Assessment of the long-term consequences of the crisis.

# Post-Crisis Development

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If there are serious problems in the operation or financing of the company, the entrepreneur should quickly decide on a vigorous recovery process, which consists in making changes and has a number of levels:

- **Personnel**, which concerns key managers, where the subject of management will be to gain confidence in the viability of the company and it depends on the nature of the crisis.
- **Financial**, which solves this range of problems:
  - the starting point is a detailed mapping of the company's economic situation by an independent audit, this detailed accounting analysis should tell about the company's situation at the beginning, at the beginning of crisis management and at the same time show the depth of the problem (state of liabilities);
  - further ensure control over financial flows;
  - clarify which people can continue to rely on;
  - to convince creditors that it is better to let an indebted company live than to send it bankrupt and prepare arguments;
  - find assets that can be sold, identify a viable part of the company that will be the main part for solving a crisis situation, preparation of a crisis strategic scenario, preferably several variants, these variants should be more advantageous for creditors than the benefits of the company's demise.

# Objectives and Tools in Post-Crisis Development

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The steps following the crisis have, in fact, two different objectives, namely:

- **Revitalize the company** in order to prevent the demise of the company, where the criterion becomes the preservation of employment, restart, recovery (rehabilitation). Here we assume a change in the functioning of the organization with a market orientation, optimization of the production process, agreement on processes and activities. The conclusion is a return to standard management.
- **Liquidate the company** in order to terminate its activities and the criterion is to monetize the company's assets, pay liabilities and obtain funds, the course of liquidation is determined by law.

# Business Transformation

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- **Transformation** means the demise of a transformed unit without liquidation.
- The successor entity takes over all the assets of the transformed entity.
- The transformation of the company must follow the applicable legislation in the case of reorganization of the company is the Civil Code.
- The process itself begins with the decision of the general meeting of the founders or owners of the company to carry out the transformation and choose the form to be carried out on the basis of the transformation project.
- Forms of business transformation include:
  - remediation (restructuring, turnaround);
  - mergers, acquisitions, company divisions, transfer of assets to a partner;
  - consolidation (in-house, with the help of expert crisis specialists).

# Restructuring (Rehabilitation) of the Company

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- The term rehabilitation means a set of measures taken by the company's management, the purpose of which is a fundamental recovery and restoration of financial performance and prosperity of the company. This term in English translates as "turnaround".
  - Rehabilitation, by its nature and methods of work, stands midway between consolidation and liquidation. Healing is a drastic intervention not only within the organization, but also in property relations. As a rule, this is a situation where the company is at a loss for a long time and is unable to meet the obligations of its creditors. This is one of the main symptoms.
  - Among others we can mention a decrease in the volume of orders, non-payment of wages to employees, reduction of the number of employees, etc.
  - A key factor in the rehabilitation of the company is the available financial resources, which must be obtained from internal sources.
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# Restructuring (Rehabilitation) of the Company

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## Objectives of the rehabilitation program

- keep only the most viable parts of the company;
- obtain funding as soon as possible;
- minimize costs;
- to convince business partners, the bank and creditors that the crisis is over;
- to start permanent stable growth of the company, sufficient production of profit, adherence to repayment schedules to creditors, etc.

# Restructuring (Rehabilitation) of the Company

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It is necessary to perform an in-depth comprehensive analysis of the economic situation of the company, which evaluates the situation in which the company is currently located, as to whether the company is able to undergo remediation. This analysis usually consists of the following steps:

- collection of general information about the company (origin, legal form, ownership and organizational structure, amount of registered capital, subject of business, etc.),
- economic analysis of the current situation of the company consists in defining all the most important competitors on the market, main suppliers and customers, in evaluating the current marketing strategy, business and technical strategy, etc.,
- production analysis of the company consists in evaluating the current productivity and organization of work, in comparing the technology used so far with others on the market, evaluating the quality of products or services, product innovation, the activities of the logistics department, etc.
- the analysis of human resources management in the company consists in performing a personnel audit, in evaluating the established corporate culture, etc.,
- financial analysis a summary of all conclusions obtained from the individual analyzes.



# Restructuring (Rehabilitation) of the Company

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- If the results obtained from a comprehensive analysis evaluate that the company is able to go through a remediation strategy and it can be revived, then the owners or authorized management of the company must choose whether to carry out remediation themselves or with the help of an external company.
- Rehabilitation of the company, which is carried out separately within the company is the so-called **autonomous rehabilitation**.
- If it is carried out with the help of external cooperation with a specialized company, then we are talking about **heterogeneous rehabilitation**.

# Restructuring (Rehabilitation) of the Company

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The **rehabilitation strategy** is usually approved by the company's top management. The content of the remediation strategy includes plans, which can be divided into three groups in terms of time:

- Short-term rehabilitation plan - this is a very quick intervention in the current operation of the company, its duration is usually several weeks. The intervention is radically carried out in the financial area of the company.
- The medium-term rehabilitation plan is implemented in the company, where, in addition to financial intervention, it is also necessary to restructure other areas, such as the organizational structure of the company.
- The long-term rehabilitation plan is part of the company's strategic plan, which is created at the beginning of business activities.

# Restructuring (Rehabilitation) of the Company

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Setting goals for the company as a whole and in all its departments. Creation of a recovery plan, which contains the steps of remediation measures in individual areas. Such steps include:

- Evaluation of results from a comprehensive analysis of the company's situation.
- Setting goals for the company as a whole and in all its departments.
- Creation of a recovery plan, which contains the steps of remediation measures in individual areas. Such steps include: production area, personnel area, financial area, supply activity, business activity.
- Quantification of costs associated with the recovery program.
- The implementation of the recovery program consists not only in the application of the specified recovery activities, but also in the determination of the persons who will be responsible for the implementation and compliance with the deadlines of the changes made. It is also important to create a coordinator function, which will monitor any changes and look for deviations from the set intentions.

# Mergers

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- One of the other options for resolving the crisis out of court is the so-called merger.
- The merger takes place by merging two or more companies.
- The merger may take place between at least two companies having the same legal form.
- A merger according to the Civil Code is a method of dissolution of a company in which the merging companies A and B cease to exist and a new legal entity C is created.
- By merging, the business assets of companies A and B are transferred to the newly established company, as of the date of registration in the Commercial Register.
- All capital, including rights and obligations arising from employment relationships, is transferred to the newly established company. The difference from a merger is that the merging company did not exist before the new company was formed and the partners of the merging company are the founders of the newly formed company.

# Mergers

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- The owners of the merging companies A and B will terminate their investments in these companies as a result of the merger and will be entitled to shares in the newly formed company C.
- The ratio in which the shares (shares) will be exchanged is determined according to the method of valuation of the merging companies.
- The assets of the newly established company C will be created by merging the assets of companies A and B.

# Acquisition

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- One of the other options for resolving the crisis out of court is the so-called acquisition.
- The acquisition is made by merging two or more companies.
- The legal effects of the acquisition occur only by registration in the Commercial Register. The proposal to register the acquisition is submitted by all defunct and successor persons.
- The acquisition can be made in the company only if no bankruptcy petition has been filed against the company, and the company itself has not filed this petition.
- The acquisition results in the dissolution of the company or more companies, which is preceded by its dissolution without liquidation. The capital of the merging companies, including rights and obligations arising from employment relationships, is transferred to the successor company. The partners of the company being wound up become partners of the successor company, unless otherwise provided by law.

# Acquisition

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- Companies that have the same legal form can merge, otherwise they must first be converted to the same legal form and then merged.
  - This can only be done on the basis of a merger project, which contains a description of the merging companies, the shares of the shareholders in the successor company, or the ratio in which the shares of the merging company will be exchanged for shares of the successor company, valuation of assets and liabilities of participating companies based on reports two experts.
  - Dissolving company A: The owners of this company terminate their investments and the shares are exchanged for the shares of the successor company. This transaction changes the book value of assets per share, resp. share.
  - Successor company B: This company has an increase in assets because all assets and liabilities are transferred to its business assets upon merger.
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# Distribution (Division) of the Company

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- Company owners can decide, based on the crisis that has arisen in the company, to divide their company into two or more companies. According to the Civil Code, the division of a company means the dissolution of company A and the creation of two new legal entities B and C.
  - Upon the division, the business assets (assets and liabilities) of the existing company are transferred to the companies created by the division, as of the date of registration in the Commercial Register.
  - The assets of the newly established companies B and C are created by dividing the assets of the defunct company A according to the project of division. Each of the divided companies is liable for the liabilities up to the amount of the net business assets transferred to it by the division. The shareholders of the company being dissolved are entitled to shares in the newly created companies, which they acquire in exchange for shares in the company being dissolved.
  - At the moment of registration of the division in the Commercial Register, Company A is dissolved without liquidation.
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# Transfer of the Assets to a Shareholder

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- In the event of the company's bankruptcy, a so-called transfer of assets to a partner may take place instead of a merger or acquisition.
- The partners or the competent body of the company may decide that the company is dissolved without liquidation and that the capital, including rights and obligations arising from employment relationships, is taken over by one of the partners who has its registered office or residence in the Czech Republic.
- The legal effects of the transfer occur again until the date of entry in the Commercial Register.
- The partner to whom the company is rewritten must be registered in the Commercial Register and it does not matter whether he is a natural or legal person.

# Consolidation

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Consolidation is one of the other ways to get a company out of a crisis situation. The company can be consolidated on its own or with the help of expert specialists.

- If the company decides to carry out **consolidation at its own expense**, then it means that the company will either change the current management or change the current style of management work (new management methods are used, a new control system is introduced, etc.). This form of consolidation can be performed by the company's managers themselves without consulting and advisory companies, and therefore it is possible to hide from the public that the company is in a crisis situation.
- Consolidation with the help of **expert crisis specialists** will be carried out according to a predetermined procedure. The company will take steps that streamline the company's economic activities. This option is more often used when a new strategic partner enters the company.



# Consolidation

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The consolidation procedure is not regulated by law, for this reason the emphasis is on its content.

- **Development analysis** - as with rehabilitation and consolidation, an important step is the financial analysis of the company, which is focused on the evaluation of individual ratios.
- **Revealing the causes** - the results of the analysis should identify any causes that caused the crisis situation.
- **Creating a consolidation process** - ie. compiling individual steps and defining their content so that they lead to the achievement of set goals. Furthermore, it is necessary to choose a crisis manager who will manage the set steps. It should be a person who is not interested in the company and is morally strong.

# Consolidation

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- **The proposed solutions** must be compatible, ie the individual steps must be interconnected and it is necessary to adhere to the set time schedule for the implementation of individual tasks.
- **Implementation of the consolidation plan** - it is advisable to choose a variant with an expert team consisting of external staff. They have no internal ties within the company and have no problem making interventions that the company's management would not consider appropriate.
- The consolidation program needs to be regularly updated based on new findings. It is necessary to have sufficient financial resources to carry out consolidation, because the costs are not exactly small. For this reason, it cannot be carried out in companies where there is a lack of funds and the company is in an insolvent situation.

# Liquidation

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- If it is no longer possible to rehabilitate the company, then either liquidation or bankruptcy or reorganization must take place.
- The liquidation of a company is a set of economic and legal activities and legal acts that must ensure the complete settlement of the property and legal relations of the company without a legal successor, in order to delete the company from the Commercial Register.
- The liquidation of a company is an out-of-court procedure stipulated by law, consisting in the process of selling the company's assets, transferring them to cash, settling the company's liabilities and receivables and distributing the liquidation balance between the partners and shareholders.
- The liquidation of a company can be performed on the basis of the law only by a person called a liquidator.

# Liquidation

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- Liquidation occurs when all crisis management is ineffective. It is one of the ways in which society disappears.
- In liquidation, we assume that all creditors will be satisfied gradually, while in bankruptcy only partially.
- Throughout the liquidation, the company uses a business company with the suffix "in liquidation".
- The process includes a complex of legal, economic and administrative steps to settle the property and other circumstances of the defunct entity without a legal successor.
- The aim of the liquidation is to satisfy all creditors and to distribute the liquidation balance among the partners.
- The company may enter into liquidation provided that it is not over-indebted and that it is able to pay internal and external liabilities after the liquidation.

# Liquidation

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- The liquidation of a company can be performed on the basis of the law only by a person called a **liquidator**.
- In addition to the liquidator himself, other participants (the so-called liquidation team) also participate in the liquidation of the company, including:
  - chief accountant;
  - tax advisor;
  - representative of the company's management or its owner; external consulting company;
  - additional personnel needed to ensure attenuated operation.
- This team is formed by the liquidator himself and usually has only an advisory role.
- At the request of a person with a legal interest, the court may dismiss the liquidator in the event of a breach of his obligations and replace him with another person. Only the person who appointed him to office may remove him.

# Liquidation

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The whole process basically has the following stages:

- **Decision on the entry of the company into liquidation**, ie the dissolution of the company by liquidation. Handing over the company to the liquidator using a handover protocol, which is usually handed over by the company's statutory body. This report should include the following documents: extraordinary financial statements, inventories and an exhaustive list of rights and obligations, receivables and payables. After taking over the business, the liquidator must, on the day of the commencement of liquidation, create an initial liquidation balance sheet and inventory of assets and make an inventory of the physical and accounting condition of the assets. In addition to the asset inventory, personnel, financial and business contract inventory should be made.
- **The second step that the liquidator is obliged to take is the notification obligation of the company** entering into liquidation to all known creditors at least twice in a row. It will invite creditors to file their claims by the set deadline. The period may not be less than three months. The most common form of publication is in the Business Gazette. The company's entry into liquidation must also be notified to the tax office, social security administration, health insurance companies with which employees have been reported.



# Liquidation

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Submission of a proposal for the distribution of liquidation balances, ie the compilation of a liquidation plan. Monetization of assets is a key step for the liquidator. His task is to transfer all assets to funds. Monetization of assets is crucial for fulfilling the estimate of the liquidation result and always consists of the following phases:

- definition of assets (inventory),
- official valuation of property (forensic expert),
- market valuation,
- own monetization (direct sale, auction, public tender).

Ongoing assessment of the liquidation in a report containing the current financial overview and assumption of the company's assets and debts at the end of the liquidation.

# Liquidation

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- Implementation of the plan by the liquidator, ie distribution of the liquidation balance and termination of the liquidation. Completion of liquidation is the last step in which the liquidation balance is distributed or creditors are satisfied by paying a liability from the funds obtained from the sale of assets.
- On the day of the end of the liquidation, the liquidator prepares the financial statements and writes the final report. Deletion of the company, cancellation of liquidations from the Commercial Register.
- The liquidation balance is the result of the liquidation of the company. The balance can be active - liquidation profit or passive - liquidation loss. In the case of an active result, it distributes the liquidation balance among the creditors and, in the event of a loss, secures payment to those companies where required by law.

# Liquidation

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The following situations may arise when distributing the liquidation balance:

- After all liabilities were repaid, the equity remained larger than the shareholders' deposits. In this case, the liquidator repays the deposits, pays the funds from the profit and distributes the rest of the liquidation balance.
- Another possible variant is that after the repayment of all liabilities, the liquidation profit is equal to or less than the shareholders' deposits, ie. that the profit from the liquidation is either equal to the share capital or less than the share capital. The liquidation profit will be divided according to the deposit of the entry in the Commercial Register or will be relatively shortened for all partners.
- As soon as the liquidation balance is negative after its repayment and its size is larger than the shareholders' deposits, then in this case there is nothing to distribute.
- The last option, which may occur and which is not at all favorable for the company, is that after the repayment of liabilities, equity remains less than zero, ie negative. The liquidation balance is negative and its size is larger than the shareholders' deposits. Liquidation ends with over-indebtedness, ie the company went bankrupt !!!

If the company's creditors find that the company is in bankruptcy, then they have the right to file a so-called insolvency petition against the company.

# Bankruptcy

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- It is basically a so-called liquidation route, where the company's assets are monetized (in the case of a natural person, it can also be the monetization of the debtor's assets) and the proceeds are distributed among creditors according to the rules.
- According to which it is a way of resolving bankruptcy consisting in the fact that creditors' receivables are relatively satisfied from the proceeds of the monetization of the property, provided that the unsatisfied receivables or their parts do not expire, unless otherwise provided by law.
- In contrast to the previous Bankruptcy Act, the Insolvency Act expands the possibilities of resolving a debtor's bankruptcy, to:
  - slight bankruptcy;
  - reorganization.

# Bankruptcy

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- Slight bankruptcy. If the debtor is a natural person whose turnover does not exceed CZK 2 million and does not have more than 50 employees, the court may decide on the so-called minor bankruptcy, which is simply a shortened and simplified form of bankruptcy.
- The decision that it is a minor bankruptcy (that the bankruptcy will be considered minor) will be issued by the insolvency court on or without a petition, and will do so with the declaration of bankruptcy or at any time after the declaration of bankruptcy.
- However, if it subsequently becomes apparent that the bankruptcy should not have been considered minor, the insolvency court shall annul the decision on minor insolvency without delay (even without a petition).

# Bankruptcy

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- Bankruptcy is still one of the possible solutions to bankruptcy; Their creditors take advantage of the reorganization.
- Reorganization usually means the gradual satisfaction of creditors' claims while maintaining the operation of the debtor's company, ensured by measures to improve the management of this company according to the reorganization plan approved by the insolvency court with ongoing control of its performance by creditors.
- Reorganization can address the bankruptcy or imminent bankruptcy of a debtor who is an entrepreneur; the reorganization concerns his business.
- Reorganization is not permitted if the debtor is a legal entity in liquidation, a securities trader or a person authorized to trade on a commodity exchange pursuant to a special legal regulation.

# Bankruptcy

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- The reorganization according to the Insolvency Act is intended mainly, but not exclusively, for large debtors - entrepreneurs whose annual turnover is at least CZK 100 million or if they have more than 100 employees.
- The reorganization is also intended for other debtors-entrepreneurs who agree on the reorganization with their creditors = the so-called reorganization, which does not depend on the annual turnover or number of employees, but on whether there is really something to reorganize.
- Borrowers in the reorganization process must be able to continue in business under certain conditions.
- The basic principle of reorganization is to achieve higher satisfaction compared to bankruptcy while maintaining the debtor's business.
- The person authorized to file a petition for permission to reorganize is the debtor or the registered creditor.

# Conclusion

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- The result of all activities should be a future dynamic strategy of the company, which better responds to threats and uses its social capital. The company's dynamic strategy includes process innovation, reorganization of activities and, very often, product range innovation, which creates a competitive advantage for the company: the crisis situation had a positive effect on the stagnant company, which is the first direction of crisis management.
- However, if the negative elements of the external environment prevail and the company does not have enough internal capital to resume its activities, then all measures against risks, losses and even the creative spirit are not beneficial and there is a second direction of crisis management - company dissolution under applicable law.
- If there are serious problems in the operation or financing of the company, the entrepreneur should quickly decide on a vigorous recovery process, which consists in making changes and has a number of levels.

