KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

Contracts can be challenged during the liquidation process

The Bankruptcy Act gives the liquidator and the creditor an opportunity to challenge before the court the so-called fraudulent transactions concluded by the indebted company prior to the liquidation within a period of time specified by the law.

Contracts or other legal statements are classified by law as fraudulent transactions, which result in the decrease in the debtor's assets and the debtor's intention was to elude the creditor or creditors and the other party was or should have been aware of this intention.

Including, particularly, gratuitous contracts concluded in insolvency condition or onerous contracts, too, in which the parties stipulated a consideration that is not in line with the market price provided that the other statutory conditions are fulfilled.

The law also establishes the presumption of the gratuitous service, which means that if the debtor enters into a fraudulent contract with an economic operator under its majority influence, furthermore, if the economic operator enters into a fraudulent contract with its member or executive officer, or his/her relative, **bad faith and gratuitous service must be presumed and the debtor must prove that it has acted in good faith and the contract was onerous.**

A decision of 2017 of the Curia has dealt with the question whether an onerous contract applying the market price can also be regarded as fraudulent contract. Many court decisions have already confirmed that there is no decrease in assets if the asset changes only in its composition, if the debtor transfers the ownership title to the asset at a fair market value for payment of the purchase price, and the buyer pays the purchase price.

According to the facts of the case contained in the referenced court decision, the debtor entered into an onerous real estate sale and purchase agreement with his/her family member. Due to the presumption of gratuitous service, the defendants had to prove that the agreement had been in fact onerous and the stipulated purchase price had been paid. In the aforementioned case, the defendants did not manage to prove that the purchase price agreed in the agreement had been actually received by the debtor.

The Curia stated in the aforementioned decision that in addition to the statutory presumption of the gratuitous service, obtaining a pecuniary advantage by the other party contracting with the debtor cannot be only established if the type of the contract was gratuitous but also if the actual agreement of the parties covered by an onerous contract is a gratuitous contract, and therefore the consideration agreed

in the simulated contract has not been paid (corresponding to the content of the covered gratuitous contract.)

During the liquidation process, thus all contracts seemingly relevant in every respect at first sight must also be examined from the point of view whether there has been no concealment of assets in a given case prior to the institution of liquidation. For this purpose, it must particularly be examined whether the consideration agreed in the contract has been actually paid to the bank account or the cashier of the debtor.