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Estonia: All insolvency laws under revision

Since 2016 the Estonian Ministry of Justice, in collaboration with a special task force group and reputed external experts, has been working on the revision of all insolvency laws in Estonia: the Bankruptcy Act (in force since 1992), the Reorganisation Act for entrepreneurs (in force since late 2009) and the Debt Restructuring Act for natural persons (in force since 2011).

One could perhaps wonder why this comprehensive revision is needed in such a young country as Estonia. The main goal of this revision is to make the respective insolvency proceedings more transparent, faster, and much more cost effective, which ideally would result in better recovery rates for creditors and Estonia's higher international reputation among foreign investors.

Obviously the current status based on World Bank's recent Ease of Doing Business Report is too far from being satisfactory for Estonia and requires some substantial far-reaching actions at the legislative level.

So far, the Ministry of Justice of Estonia has identified fifteen topics to deal with, from which three are the most important in order to meet the goals, in the legislator's opinion.

The most relevant topics are:

- 1) Insolvency ombudsman institution;
- 2) Terminology of temporary and permanent insolvency status; and
- 3) Specialisation of courts and judges in insolvency proceedings.

Potential creation of the Insolvency Ombudsman Institution as official state supervision body would be a completely new element in the history of Estonian insolvency laws. In this regard, the Estonian government has followed the example of the Finnish

insolvency system. The main tasks of the insolvency ombudsman would be the supervision of the debtors (either natural persons or legal entities) and of the insolvency practitioners, to the extend applicable (mainly administrative supervision) and not covered by insolvency practitioners' own umbrella organisation *Kohtutäiturite ja Pankrotihaldurite Koda* (*Chamber of Bailiffs and Bankruptcy Administrators*). The insolvency ombudsman would have special powers to explore what are the reasons of the insolvency, and to survey the particular insolvency proceedings when bankruptcy was reached unlawfully. The insolvency ombudsman would also create and leverage best practice among the participants of these proceedings. The Estonian legislator believes that with the help of the insolvency ombudsman only a minimum amount of asset-less insolvencies would be initiated in Estonia and that the recovery rates for creditors would grow significantly in the future.

Terminology related to insolvency and late submission of insolvency applications by the debtors to the court are interconnected elements in Estonian laws. Too much litigation has been going on over the term "insolvent". Thus, the Estonian legislator claims that terminology should be much more precise, transparent, based on some criteria obviously publicly understandable and better determined, based on publicly known financial terminology, for instance. If the debtor states that the business is not permanently insolvent and proceedings should not be open, he or she has to submit relevant written evidences to the court, so that it could be considered otherwise. Based on the legislator's intentions under revision, the burden of proof will be on the debtor in the future.

It is obvious that insolvency proceedings last too long in Estonia and one of the reasons has been the lack of competent

judges and court lawyers in this hybrid legal field. This lead to different court practice and more litigation among participants, who fight for their rights to get better recovery rates. The Ministry of Justice has a plan to create or consolidate the insolvency practice in special courts, so that the best insolvency law practice would be similar everywhere in Estonia and judges, assistant judges, lawyers, clerks, and so on, should be highly educated in different economic, financial, managerial and legal fields, thus, more competent in the future.

In addition, there are other interesting topics under consideration in this revision. For instance:

- 1) Ranking of loans, claims created by related persons of the debtor versus loans, claims submitted by the ordinary creditors;
- 2) Fee system and action plan of insolvency practitioners in all insolvency proceedings;
- 3) Defense of claims via written procedure (without face-to-face meetings in the future);
- 4) Claims, which are automatically considered as defended in the proceedings
- 5) Rights and obligations of the debtor; legal status of some statements given by the debtor to be used in other proceedings, such as criminal proceedings;
- 6) Rights in rem;
- 7) Deadline to submit claims and relevant content of the claim-submitting application to help the creditors;
- 8) Special regulation concerning the bankruptcy estates of deceased persons versus inheritance law.

According to the action plan publicly available at this point of time, it appears that the Estonian Ministry of Justice is planning to enact the respective laws with all amendments as of year 2021 at the latest. Indeed, with the new government, plans may change. Stay tuned! ■



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