

Lithuania: The new corporate insolvency law

On 13 June 2019 the Parliament of Lithuania adopted the new Law on the Insolvency of Legal Entities (“Insolvency Law”)¹. The law will come into force on 1 January 2020² and will replace two current laws, the Enterprise Bankruptcy Law and the Law on Restructuring of Enterprises.

The need for insolvency policy reform has been discussed in Lithuania for more than ten years. Reasons for the new law are plenty, foremost the cumbersome and inefficient proceedings under the current legislation, the practical non-existence of restructuring proceedings and a miniscule satisfaction rate for unsecured creditors in the prevailing (“empty”) bankruptcy proceedings. Fortunately, the current legislator reacted to the country’s insolvency framework’s low rankings in the surveys of organisations such as the World Bank³ and passed the Insolvency Law with an aim to offer stakeholders a more attractive and efficient framework for corporate insolvencies with improved tools for businesses rescue. The scope of changes is broad, therefore this report can only touch on some of the core changes.

On a structural level, the Insolvency Law completely alters the organisation of the profession of insolvency practitioners (IPs). The law merges the two current separate types of bankruptcy and restructuring administrators into one. The new unified occupational title will be insolvency administrator (*nemokumo administratorius*). What is more, IPs will have their own self-governing body, the Chamber of Insolvency Administrators (*nemokumo administratorių rūmai*). Currently, administrators are still organised in various private associations without statutory self-governing rights and duties. The mandatory membership in the Chamber aims

at ensuring higher qualification and ethical standards as well as more efficient administrations of insolvency procedures. The establishment of this new self-governing body with rights and duties can be seen as increased trust of the lawmaker and society in the profession of IPs.

With regard to the material law, some important changes relate to the tools for realising the debtor’s assets. In this respect, the Insolvency Law provides more flexibility than its predecessors. This should help maximising the proceeds from the realisation of assets. For instance, the new law allows deviations from the general obligation to sell real-estate and other material assets only by public auction. In the future these assets may be sold on in the open market if the creditors approve this type of asset realisation and a higher sales price can be expected than in an auction. Another important novelty is the possibility to sell an insolvent legal entity as a complex of property or its substantial part, and without the pre-insolvency debt. This option might facilitate the sale of businesses as a going-concern which under the current legislation does not really happen at all.

The Insolvency Law is certainly to be welcomed as a long overdue and important step towards a more modern insolvency and restructuring framework in Lithuania. A number of tools and concepts have been newly introduced and it therefore comes as no surprise that they will have to be further shaped out by practice, like for examples the new definition of insolvency, the newly introduced voting on restructuring plans in creditor classes as well as the already mentioned sale of insolvent legal entities.

Unfortunately, it appears that the new law does not address one of the main flaws of the current legal framework for insolvencies, a flaw which is detrimental to any attempt of business rescue. Like under the current laws, the initiation of insolvency



proceedings under the Insolvency Law will most likely take much too long. Opening decisions and appointments of practitioners come into effect only after the appeal periods have expired or appeals been dismissed. Only then, in reality often many months after filing for insolvency, can the appointed IP commence the work. At this moment, the debtor usually has had to stop all business activities already.

The requirement to transpose into Lithuanian law the recently adopted Directive on Restructuring and Insolvency might be a good chance to remedy some shortcomings of the Insolvency Law and to further modernise the framework for insolvencies and restructurings in Lithuania. ■

Footnotes:

- ¹ Lietuvos Respublikos juridinių asmenų nemokumo įstatymas, Nr. XIII-2221. See also a previous report on the bill by Ieva Strunkienė, *Draft Law on the Insolvency of Legal Entities*, in eurofenix no. 73 (Autumn 2018).
- ² Some provisions will enter into force on 1 January 2021 and 1 January 2023.
- ³ According to the most recent insolvency index carried out by World Bank Lithuania is in the 85th place. See the results on site: www.doingbusiness.org/en/data/exploretopics/resolving-insolvency
- ⁴ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019.



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