

INSOL Europe/LexisNexis COVID-19 Tracker of insolvency reforms—Lithuania

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Lithuania prompted by the coronavirus (COVID-19) pandemic. Written by Frank Heemann of bnt attorneys in CEE Lithuania, member of INSOL Europe.

Summary of changes

Changes in the application of Lithuanian insolvency law

Changes to some provisions of the Law on Insolvency of Legal Entities of the Republic of Lithuania ('Insolvency Law') entered into force on 25 April 2020. They relax filing obligations for managers, restrict rights for creditors to file for insolvency, protect ongoing restructuring proceedings as well as certain transactions. However, the changes apply only to companies that got into financial difficulties or became insolvent due to the coronavirus measures after 16 March 2020, the date on which the Lithuanian government imposed a quarantine regime on the country.

Relaxation of the insolvency filing obligation

According to the Insolvency Law, the managing director of a company must immediately initiate insolvency proceedings if its company is insolvent. The Lithuanian Parliament has suspended this obligation. This suspension applies during the quarantine period and for three further months from the date of its revocation. However, it is important to note that the statutory pre-filing obligations continue to apply, ie the managing director must propose to each creditor to conclude an agreement of financial aid.

Restrictions for creditors to file for insolvency

The right of creditors to have insolvency proceedings opened is restricted. Protection of ongoing restructuring proceedings—failure of a company undergoing restructuring to implement the restructuring plan in the prescribed period as well as failure to pay due taxes do not trigger the usual termination of restructuring proceedings during the quarantine period and for three months after its revocation.

Nullifying of transactions

Transactions using state financial support measures offered due to coronavirus (COVID-19) cannot be invalidated or challenged if the company subsequently goes bankrupt. This does not affect the ability to invalidate or challenge other transactions.

When?

The [Law on the Impact of the Consequences of the New Coronavirus \(COVID-19\) on the Application of the Law on Insolvency of Legal Entities of the Republic of Lithuania \(21 April 2020, No. XIII-2861\)](#) entered into force on 25 April 2020 for the duration of the quarantine regime period. An extension regarding the relaxation of obligations to file for insolvency and for the protection for ongoing restructuring proceedings is possible by government's decree until 31 December 2020.

Practical impact

The changes to the Law on Insolvency are to be welcomed as a step in the right direction to help preserve businesses facing temporary liquidity problems due to coronavirus. A positive effect of the law is that it gives managers some certainty that their decision to continue business and to try to rescue the company during the quarantine does not trigger civil liability for breach of the obligation to file for insolvency.

However, the law will have to be tested in practice. One area where it seems to have aimed too short is that it does not seem to protect transactions in general from avoidance or other claw-back claims which might be initiated by an insolvency administrator if the company goes bankrupt in the future. In contrast to recent changes to the insolvency laws in other countries such as Germany, the changes to the Lithuanian insolvency law do not protect transactions from claw-back claims, except for coronavirus specific financial support under governmental programmes.

Another reason for major concern as to the effectiveness of the enacted measures relates to the burden of proof for their applicability. As opposed to recent amendments to the German insolvency regime, there is no legal presumption that a company facing distress after a certain date, eg the day of announcement of the quarantine in Lithuania (16 March 2020), is in difficulties because of the coronavirus pandemic. This means for example that a manager wanting to rely on suspension of the obligation to file for insolvency will have to prove that the financial distress is indeed caused by the pandemic.

Ongoing restructuring proceedings are only partly protected. Restructuring proceedings which are in the stage of plan preparation are not protected. Affected debtor companies are already struggling to meet the statutory deadlines for submission of the restructuring plan to the creditors and later to the court for approval. The coronavirus related changes do not help in this situation, as they only apply to proceedings in which the plan is already in the implementation stage.

Last but not least, the restriction of creditors' rights to file for insolvency against a debtor ends once the Lithuanian government revokes the quarantine regime. There is no post-quarantine protection period. This might lead to filings of creditors at a stage where companies are still struggling to reignite their businesses.

INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: [Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.