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**The Challenges of Further Digitalisation in**

**Estonian Insolvency Proceedings**

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*Introduction*

Estonian digital governance has been among the best in the world with almost 99% of state services available online.[[1]](#footnote-1) However, one could argue that insolvency proceedings have not been smooth or digital enough so far. Several years of insolvency law revision in Estonia has finally reached its momentum and significant amendments were enacted as of 1 February 2021.[[2]](#footnote-2) The aim of these changes to the Bankruptcy Act is to make insolvency proceedings faster, more cost-efficient and transparent. This should also increase satisfaction of claims to creditors and decrease the number of asset-less insolvencies. This piece introduces a selection of the changes enacted in the Bankruptcy Act with the aim of making insolvency proceedings even more digital, smooth and user-friendly.

*The Online Framework*

In Estonia, all bankruptcy petitions and documents can be submitted via the state electronic e-Filing system (called *v*).[[3]](#footnote-3) The site also allows for tracking the status of insolvency proceedings and receipt of documents. The bankruptcy petition of a debtor who is a natural person is normally filed with a court pursuant to the general jurisdiction applicable to the debtor. If the seat of a debtor who is a legal person is in Harju county, including Tallinn, the bankruptcy petition is filed with Harju County Court. In all other cases in Estonia, the bankruptcy petition of a debtor who is a legal person is filed with Tartu County Court. Thus, since February 2021, there are only two county courts in Estonia, which hear the bankruptcy of legal persons at first instance.

If a creditor insists the bankruptcy petition be heard in a court session, the creditor must indicate this in the bankruptcy petition. Otherwise, the creditor is deemed to agree to adjudication of the matter by way of written (digital) proceedings. Thus, written (digital) proceedings are more favoured. Notice served on the delivery of a bankruptcy petition also sets out the period during which the debtor has the right to file an objection with regard to the creditor's bankruptcy petition and notify the court whether the debtor wishes the bankruptcy petition to be heard in a court session. If the debtor fails to notify the court, the debtor is deemed to agree to adjudication of the matter by way of written (digital) proceedings.

Creditors are required to notify the bankruptcy trustee of all their claims against the debtor arising before the declaration of bankruptcy, regardless of the basis or the due dates for fulfilment of the claims. Notification must occur no later than two months from the date of publication of the bankruptcy notice in the official electronic publication (called *Ametlikud Teadaanded*).[[4]](#footnote-4) A creditor filing a bankruptcy petition also has the obligation to notify the bankruptcy trustee of its claims against the debtor. Overall, since February 2021, the legislator has required creditors to keep an eye on the *Ametlikud Teadaanded,* as many deadlines and requirements are related to publication of certain notices in that official source.

Also as a completely new method introduced by the changes, all claims in bankruptcy proceedings are defended by written (digital) proceedings managed and resolved by the court, not by the creditor’s general meeting and not by separate litigation over claims anymore, which used to be a very lengthy process in Estonia. Security rights are asserted together with the claims which they secure.

On the basis of the proofs of claim received and within one month after expiry of the period for submission, the bankruptcy trustee prepares a preliminary list of creditors which the trustee presents to the creditors for examination. The trustee publishes a notice outlining the possibility of examining the list of creditors and filing objections with relevant periods in the official electronic publication. A creditor may submit written substantiated objections to claims. If no objections have been filed by a bankruptcy trustee or any creditor, the trustee shall submit via the *e-Toimik* system the final list of creditors to the court. All the submitted objections, positions, requests and petitions are to be enclosed with the list of creditors.

Upon approving the list of creditors, a court will disregard the objections which have been filed after expiry of the term or which have not been substantiated. Moreover, the court will adjudicate on the merits of the submitted objections, positions, requests and petitions enclosed with the list, determine the rankings of claims and the distribution ratios and approve the list of creditors within 30 days after receipt thereof by a court ruling. The court will publish a notice concerning a ruling on approval or refusal to approve a list of creditors in the *Ametlikud Teadaanded* and send the ruling to the trustee, the debtor who filed an objection, the creditor who filed or received an objection and the creditor whose request for restoring the claim was not satisfied.

*Further Developments*

The submission and receipt of all related documents via the *e-Toimik* system and publication of relevant notices in the *Ametlikud Teadaanded* has been seen as an initial small step towards better digitalization of not only insolvency proceedings, but the whole judicial sector in Estonia. In addition, it is noteworthy to see that the Committee of Permanent Representatives at the Council of the European Union (COREPER) has approved the EU's IT agency eu-LISA, located in Tallinn, as the seat of the EU cross-border data exchange channel e-CODEX.[[5]](#footnote-5) Services provided by e-CODEX allow for secure communication and information exchange between the Member States in the field of justice. The e-CODEX system is currently being implemented for European investigation and payment orders, small claims procedures, the mutual recognition of financial penalties and for custodial sentences.

*Summary*

Thus far, the judicial sector has been lagging behind in terms of digitalizing procedures and cross-border cooperation. In an increasingly digital society, cross-border judicial cooperation will rely more and more on e-Justice solutions to facilitate the interaction between different national and European actors in legal procedures. In this light, e-CODEX will offer a European digital infrastructure for secure cross-border communication and information exchange in criminal and civil law. It is a matter of pride to see that Estonia has been chosen as a forerunner and optimal location for this cross-border data exchange as well. There will be interesting and challenging times ahead, indeed!

1. https://e-estonia.com/. [↑](#footnote-ref-1)
2. https://www.riigiteataja.ee/en/eli/521012021001/consolide. [↑](#footnote-ref-2)
3. <https://etoimik.rik.ee/>. [↑](#footnote-ref-3)
4. <https://www.ametlikudteadaanded.ee/eng/index>. [↑](#footnote-ref-4)
5. https://news.err.ee/1608286635/eu-s-e-codex-data-exchange-channel-to-be-based-in-tallinn. [↑](#footnote-ref-5)