



Insol Europe Survey

Insolvency Regulation in the Republic of Lithuania

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1. Introduction

This document, which is prepared in accordance with the valid legal acts of the Republic of Lithuania, shall provide a high level commentary to individuals as well to the entities seeking information about insolvency office holder (IOH) position in Lithuania.

2. Types of insolvency office holder

Insolvency procedures in Lithuania are divided into:

- *corporate procedures*, which shall apply to all legal persons registered in the manner prescribed by the legal acts of the Republic of Lithuania (hereinafter: the 'enterprise' or 'legal person'), except for budgetary institutions, political parties, trade unions and religious communities and associations.

The Republic of Lithuania Law on Enterprise Bankruptcy is the main legal act, which regulates corporate bankruptcy procedures. However, the specific features of bankruptcy process may be established in special laws regulating activities of legal persons, for example, the Lithuanian Republic Law on Restructuring of Enterprises, shall provide conditions only for legal persons in financial difficulties which have not discontinued their economic and commercial activities to maintain and develop these activities, to settle their debts and to avert bankruptcy. It shall not apply to budgetary institutions, political parties, trade unions, religious communities and associations, credit institutions, payment institutions, electronic money institutions, insurance and reinsurance companies, management companies, investment companies with variable capital, closed-ended investment companies and intermediaries of public trading in securities.

- *personal procedures*, for insolvent natural person, farmer or another natural person pursuing individual activity, acting in good faith, as defined by the Law of the Republic of Lithuania on Personal Income Tax (hereinafter: 'a natural person'), whose centre of the main property interests is in the Republic of Lithuania. The bankruptcy of natural persons is a relatively new procedure, and it is regulated by the Republic of Lithuania Law on Personal Bankruptcy, which came into force on the 1st of March, 2013.

Taking into account aforesaid two types of bankruptcy proceedings, the bankruptcy administrators in the Republic of Lithuania are divided into two types:

- a) bankruptcy administrator (this applies both to corporate procedures and personal procedures, only some functions differs);
- b) enterprise restructuring administrator.

A bankruptcy administrator

Bankruptcy administrator replaces the manager of the company at the time when the company is in bankruptcy, as it performs functions of a single-person management body (the manager) and executes the legal due-diligence of the company, actions and inactions of related parties.

The main functions of the bankruptcy administrator during a corporate bankruptcy procedures are: to submit amendments to the documents and changes in the information to the register of legal persons; manage, use the assets of the enterprise and dispose thereof and also of the enterprise funds kept with the banks; to ensure the protection of the assets of the enterprise; to open a separate bank account for the accumulation of funds in the course of the bankruptcy process and for effecting settlements with creditors; to direct the economic-commercial activities of the enterprise; to examine the contracts of the enterprise in bankruptcy entered into within an at least 36 months period before the institution of bankruptcy proceedings and to bring actions for the invalidation of the contracts which are contrary to the objectives of the enterprise activities and/or which could have led to the disability of the enterprise to settle with creditors; to compile

the list of all creditors of the enterprise and their claims on the basis of claims filed by the creditors, which have been revised according to the financial accounting documents of the enterprise, and to submit the list to the court for approval, also contest unproven claims of creditors at the creditors' meeting and in the court; to convene the creditors' meetings; to fulfil other decisions of the court and/or creditors' meeting and committee until the bankruptcy case shall be dismissed or the company shall be liquidated and shall be removed from the register.

When the court finds that the individual is insolvent and bankruptcy proceedings have been instituted in court, a bankruptcy administrator protects interests of an individual and creditors and disposes the assets of a natural person from the effect day of the court decision to open personal bankruptcy proceedings. A bankruptcy administrator shall, as of the effect day of a court decision approving the plan, dispose of the assets of a natural person included in the plan and funds in a deposit account in accordance with the plan. As soon as the last payment is made according to the plan, a bankruptcy administrator must draw up a certificate of plan implementation, which shall be signed by a natural person, bankruptcy administrator and chairperson of the meeting of creditors. The bankruptcy administrator shall deliver the certificate to a court and a copy thereof to the natural person and chairperson of the meeting of creditors. Upon the receipt of the certificate referred above, a court shall take a decision to close or discontinue personal bankruptcy proceedings.

An enterprise restructuring administrator

An enterprise restructuring administrator, different as a bankruptcy administrator does not change the manager of the company during the restructuring procedure. Starting from the date of coming into effect of the court ruling to initiate restructuring proceedings, the administrator must take all steps to restore company's solvency quickly and effectively.

An enterprise restructuring administrator function is to monitor the activity of company's management bodies and to identify its shortcomings and to set a deadline for their elimination, as well the administrator has an access to the company-owned premises, to check accounts, databases, documents and correspondence until the restructuring proceeding shall be terminated or completed.

3. Size of the profession

According to the data, provided on the January of 2016, in the Republic of Lithuania there are 540 individuals and 338 legal persons who have a right to provide services of corporate and personal bankruptcy procedures. Accordingly, there are 108 individuals and 64 - legal persons, who have a right to provide corporate restructuring services.

Currently in active practice there are only 50 percent administrators. It should be noted that there are not any restrictions on the number of administrators, but the latter need to have a qualification and to conform competency requirements.

4. Practicing norms

The material described above discloses the fact, that nearly two times more often the administrators of bankruptcy become natural persons engaged in individual practice. But taking into account the information regarding the pending procedures provided by the Authority of Audit, Accounting, Property Valuation and Insolvency by the Ministry of Finance, it is noted that the proportion (ie. the administrator is a natural or legal person) of the administrators performing corporate and personal bankruptcy, as well as restructuring procedures is distributed more or less evenly.

5. Qualification, training and entry into the profession

A natural person seeking to acquire the right to provide bankruptcy administrator's services must: be of good repute; hold a social science degree or equivalent degree in law or economics (a bachelor's qualification degree in law or economics and a master's qualification degree in law or economics) or a lawyer's professional qualification degree (one-cycle university education in law); have a work record of at least two years as an assistant administrator over the last three years or a work record of at least five years as a head of an enterprise over the last seven years or be recognised as an advocate in accordance with the procedure established by legal acts; pass a qualification exam; have a command of the Lithuanian language.

Above mentioned requirements are not applicable for a person who is already an attorney at law or a bailiff.

A qualification examination shall mean a test of knowledge of a natural person seeking to acquire the right to provide enterprise bankruptcy administration services or the right to work as assistant administrator and shall be prepared by the Commission for Attestation of Bankruptcy and Restructuring Administrators (hereinafter referred to as the "Commission"). The qualification examination shall be prepared based on the attestation programmes for administrators and assistant administrators approved by the Commission. A natural person who has failed the qualification examination or has failed to arrive for the examination may retake it not earlier than after three months. A natural person who has failed to arrive for the examination for valid reasons (due to an illness or other facts and circumstances unforeseeable by the natural person, substantiated by documents), upon submitting an explanation for failure to participate in the examination and an application for permission to take the examination, may take it before the lapse of the set period of three months. The number of retakes of the qualification examination shall not be limited.

The exam is held by the attestation of bankruptcy administrators' and their assistants' and attestation of enterprise restructuring administrators'.

6. Professional bodies

Legal acts of the Republic of Lithuania regulates that a person who seeks to acquire the right to provide administration services is required to be a professional in a certain sphere, i.e. to be an advocate or a bailiff, or to hold a social science degree or equivalent degree in law or economics and to be a head of an enterprise and/or comply to other formal requirements.

The administrators of bankruptcy and restructuring, when paid a fee of the member, might join one of the associations and participate in its activities. Associations are able to organize further education courses, a large variety of different seminars and conferences, as well as to protect the rights and interests of the administrators in the institutions, offices and organizations of the state or foreign bodies, however, in accordance with the legal acts of the Republic of Lithuania.

Even though the associations have no power to implement legislation, they might contribute and participate in its processes by providing proposals for the legal acts. Also the associations might influence their members by formulating the best practises or execute educational activities and collaborate with other organizations.

7. Continuing professional education

It should be noted, that even after an individual gets a right to provide bankruptcy or restructuring procedures, he is bound to continually improve his professional qualification. Continuous improvement of professional qualification regarded as participation in training (courses, seminars)

by the special certification programs for administrators at least 24 hours per year, and the beginning of the year is a day when an administrator records in a list of administrators.

8. Body corporate or individual

The administrator of bankruptcy or restructuring, in accordance with the valid legal acts of the Republic of Lithuania, has to be either the natural person or legal entity (or its branch), having the right to provide bankruptcy or restructuring administration services, whilst the assistant administrator in all cases is the natural person, having the qualification to work as the assistant administrator and the employment agreement with the administrator

9. Sanction for acting as an IOH without proper authorization

The administrator or the assistant administrator must have the certificate valid for an indefinite period of time, issued by the Authority of Audit, Accounting, Property Valuation and Insolvency by the Ministry of Finance, thereafter a person passes the qualifying examination, and namely this certificate confirms the qualification of the person as bankruptcy administrator. The administrators, able to provide bankruptcy administration services, are entered in the special list, which is publicly available in the internet.

Natural and legal persons entered on the list shall acquire the right to provide bankruptcy administration services as of the date of entering on the list and they lost their right to provide bankruptcy administration services as of the date of the remove of this list. Therefore, there is no legal possibilities to the persons, who do not have such right, to provide bankruptcy administration services.

10. Bonding and insurance

A bankruptcy administrator and enterprise restructuring administrator should insure their professional civil liability.

The general rule is that the insurer (insurance company) fully compensates the damage caused by the policyholder (administrator) to the aggrieved third party exceeding EUR 290. However, in cases when the damage is under EUR 290, it shall be compensated by the administrator himself/ herself, unless he/ she has an additional insurance on a voluntary basis.

A bankruptcy administrator (providing services in bankruptcy proceedings involving a legal entity) is covered by compulsory professional civil liability insurance by concluding an administrator's insurance contract for professional civil liability. The minimum coverage in case of an administrator's compulsory professional civil liability insurance amounts to 57 900 Euros per one insured event and 144 800 Euros for all insured events per year. Upon payment of an insurance premium as a result of an insured event and upon reduction in the minimum coverage, the administrator must insure his/ her civil liability within one month in order to restore the compulsory minimum coverage.

The minimum coverage in case of a bankruptcy administrator's (providing services in bankruptcy proceedings involving a natural entity) compulsory professional civil liability insurance amounts to 28 900 Euros per one insured event and 57 900 Euros for all insured events per year. Upon payment of an insurance premium as a result of an insured event and upon reduction in the minimum coverage, the administrator must insure his/ her civil liability within one month in order to restore the compulsory minimum coverage.

The minimum coverage in case of a restructuring administrator's compulsory professional civil liability insurance amounts to 28 900 Euros per one insured event and 86 800 Euros for all insured events per year.

11. Appointment of IOHs

A natural entity willing to provide services as a bankruptcy administrator, must be of an impeccable reputation, know the official language, including the aforementioned requirements to have a university degree in law or economics as well as to have at least two-year experience in holding the position as an assistant administrator or five-year experience in acting as the head of a company over the past seven years, or he/ she must be an attorney at law or a bailiff and he/ she must pass a special qualification examination.

In case of a company's bankruptcy, a bankruptcy administrator is appointed by a court of law, however, the selection process is implemented by using a computer program for selection of a bankruptcy administrator in this way selecting an administrator randomly, taking into account the size of the company, type of activities, and other criteria of the company, also taking into account work experience, workload, penalties imposed on the administrator, etc. The latter must be of an impeccable reputation, employ at least one employee, entitled to provide services as a bankruptcy administrator, the person acting as the head must also have the aforementioned entitlement.

In case of a natural entity's bankruptcy, a bankruptcy administrator is also appointed by a court of law and the natural entity himself/ herself and/ or a creditor is entitled to suggest candidates for filling this position. If no candidates for filling the position of the bankruptcy administrator are suggested by the natural entity, a court of law appoints a bankruptcy administrator the candidacy of which is suggested by an institution authorized by the Government of the Republic of Lithuania - Audit, Accounting, Asset Assessment and Insolvency Management Service under the Ministry of Finance. In cases when bankruptcy proceedings in respect of a natural entity are initiated under a summary procedure, the natural entity must also suggest a candidate for the position of a bankruptcy administrator along with his/ her claim filed to the court regarding initiation of bankruptcy proceedings.

A candidate to take the position of an administrator of a company undergoing restructuring is suggested to a court of law by the head of the company or the chairperson of the committee of creditors, provided that such a candidacy is approved by a decision passed by a management body of the company and resolution of the meeting of creditors.

12. Remuneration

Remuneration for the administrator in case of restructuring is suggested and approved by the meeting of creditors of the company undergoing restructuring establishing the amount to be paid to the company's administrator for administration of the company within the course of the restructuring process. The costs needed for the activities of the company's administrator must be paid by the company undergoing restructuring. An estimate of administration costs specifying remuneration for the company's administrator must be approved by the first meeting of creditors upon receipt of a written consent issued by the head of the company's administration or a decision passed by the management body of the company.

In case of a natural entity's bankruptcy, remuneration for the bankruptcy administrator is established in the contract of agency concluded by the natural entity and the bankruptcy administrator, taking into account whether the natural entity is engaged in individual activities or in the activities as a farmer as well as the type and the quantity of the natural entity's assets (including assets in pawn) to be sold, the amount and complexity of the bankruptcy proceedings.

Remuneration for the bankruptcy administrator implementing bankruptcy proceedings of a company is also established by the first meeting of creditors. Remuneration for the administrator is established for the entire period of the company administration and it often depends on the administrator's performance rather than the duration of the bankruptcy proceedings. The amount of the administrator's remuneration and the payment procedure thereof (the amount of remuneration can be paid all at once upon completion of the bankruptcy proceedings or in the form of instalments within the course of implementation of the bankruptcy proceedings) are established

in the contract of agency, and the amount of remuneration is a subject for agreement of the creditors and the administrator, therefore it should be established in a way motivating the administrator to properly implement the bankruptcy proceedings but not violating the creditors' interests at the same time. The amount of the administrator's remuneration established by the meeting of creditors should meet the criteria of rationality, justice, and good faith as well as to ensure the balance of the interests of both the administrator and the creditors of the company in bankruptcy.

The amount of the administrator's remuneration depends on whether the company in bankruptcy continues its activities, also taking into account the type and the quantity of the company's assets on sale, the complexity as well as the number of cases and civil actions brought against the company, the size of the company itself.

However, starting with 1 May 2016 the administrator's remuneration will be established by the meeting of creditors or a court of law and it will be estimated taking into account the Regulations for Establishment of an Administrator's Remuneration for Bankruptcy Administration approved by the Government determining the recommended remuneration rates for an administrator, however, they may be exceeded in case of objective necessity.

13. Personal liability of IOHs

The administrator must, in accordance with the procedure established by laws, compensate for the damage resulting from failure to carry out or improper carrying out of his and/or his assistant's (assistants') duties, also a person who is dismissed from the list of administrators shall compensate damages which arise from his activities.

An administrator may be subject to a penalty, warning or a public warning (which is announced on the website) in accordance with the procedure established by the Government or an institution authorised by it for failure to execute or properly execute the requirements laid down in legal acts regulating enterprise bankruptcy, procedural court documents (decisions, orders, rulings and resolutions), resolutions of the meeting of creditors and committee of creditors or other violations discovered in the course of inspection of the administrator's activities. Damages, exceeding 290 euros are reimbursed by the insurer of the administrator.

The criminal liability could be applied to a bankruptcy administrator if during in his acting he is in breach of the legislation, for example, abused his official position, wasted property and etc.

A restructuring administrator shall be held liable for the damage caused to an enterprise and/or creditors pursuant to the laws of the Republic of Lithuania. The professional civil liability of an administrator shall be covered by compulsory insurance in accordance with the procedure established by the Government of the Republic of Lithuania.

14. Release of IOHs from liability

The general rule is that according to Lithuanian law acts, a bankruptcy administrator as well as an enterprise restructuring administrator must compensate all losses arising from the failure to carry out his duties or improper performance, and there are not any exemptions provided in the legislation.

15. Independence

It should be noted that in no case a bankruptcy administrator can depend neither on the debtors, nor the creditors, nor other parties, moreover, he/ she must be impartial or not interested in the outcomes of the case.

In case of company bankruptcy, legislations of the Republic of Lithuania provide that a creditor of the company subject to bankruptcy proceedings, owner of the company or the parent company or a subsidiary of this company, a member of the authorities thereof, the head or his/ her deputies

(directors), accountant thereof, a shareholder that holds or used to hold more than 10 percent of the company's shares by the title of ownership over the past 36 months prior to initiation of the bankruptcy proceedings, as well as the spouse of the judge handling the bankruptcy proceedings, a person related to the judge handling the bankruptcy proceedings by way of marriage or partnership relations, as well as all the aforementioned persons who used to work for the company are not entitled to take the position as a bankruptcy administrator of the company. Among other things, an administrator must not have a legal interest in the outcomes of the proceedings, he/ she must not buy the assets of the company, represent the buyer in buying it, be the buyer of the assets or the representative of the buyer, he/ she must not be the administrator's spouse or a person related to the administrator by way of marriage or partnership relations - all the aforementioned restrictions are also applicable in cases when the bankruptcy administrator is a legal entity.

In case of restructuring of a company, a creditor of the company subject to restructuring proceedings or a member of the creditor's management body, a person who is not entitled to hold the position as the head of the administration based on legislations, owner of the company or the parent company or a subsidiary of this company, a member of the council or the board, the head of the administration thereof, his/ her deputies (directors), the chief financier (accountant) thereof, a shareholder holding more than 10 percent of the shares of the company undergoing restructuring or the parent company or a subsidiary of this company by the title of ownership as well as all the aforementioned persons who used to work for the company undergoing restructuring and were dismissed from their positions over the past 12 prior to initiation of the restructuring proceedings are not entitled to be assigned as the administrator of the company.

In case of a natural entity's bankruptcy, the legislations also imperatively provide that a bankruptcy administrator must not be interested in the outcomes of the bankruptcy proceedings, and the creditor of the natural entity, a person related to the creditor by way of employment, next-of-kin, relatives of the natural entity, people related to the natural entity by way of marriage, the spouse or cohabitant of the natural entity, a person related to the natural entity by way of employment or a person whose employment relations were terminated over the past 36 months prior to initiation of the bankruptcy proceedings in respect of the natural entity must not be assigned as the administrator, noting that the aforementioned provisions shall also be applicable when the bankruptcy administrator is a legal entity (in this case the principle of independence shall be applicable to the head, his/ her deputies, the chief accountant, management bodies, and employees providing administration services of the bankruptcy administrator, as a legal entity).

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