

Lithuania: New rules for fixing administration expenses: one step closer to a more effective and transparent insolvency procedure

Recent amendments to the Lithuanian Enterprise Bankruptcy Law (EBL) and new Rules on Calculation of Remuneration and Administration Expenses¹ (Rules) in effect since 1 May 2016 are expected to bring further improvements to Lithuanian insolvency procedures.

Administration expenses

The Rules form the new basis for determining reimbursability of administration expenses in insolvency proceedings. The Rules only “recommend” the maximum amount that can be reimbursed. Nevertheless, they have a mandatory character, since an administrator exceeding the recommended amount without the creditors’ approval faces the risk of having to cover personally any excess amount, unless he can show that costs had to be incurred for urgent measures to protect the creditors’ interests.

The reimbursable amount for expenses mainly depends on the category in which the insolvent company falls according to the classifications under the Rules. For this, three categories are foreseen depending on the debtor’s size: small, medium and large².

Criteria to determine the size of the debtor are the assets, the creditors’ claims and the number of the debtor’s creditors.

In addition, other factors influence the recommended amount for compensation. For example, cross-border insolvencies and insolvencies of insurance companies or credit institutions increase the compensation amount, as does the continuation of the business during the proceedings. On the

other hand, simplified proceedings lead to a reduction.

Remuneration of administrators

Under the Rules, the remuneration of administrators depends, to a certain extent, on the results.

The administrator’s remuneration is calculated by the following formula:

$$\begin{aligned} \text{remuneration} &= \text{minimal recommended} \\ &\text{administrator's fee} \\ &+ \text{bonus for proceeds of asset} \\ &\text{realisation} \\ &+ \text{bonus for civil cases} \\ &\text{initiated against the company} \\ &\text{taking into consideration the} \\ &\text{complexity of the cases} \\ &+ \text{bonus for the asset} \\ &\text{realisation at a higher price.} \end{aligned}$$

The criteria to determine the minimal remuneration paid to the administrator are the same as calculating the minimal administration expenses mentioned above (i.e. the core criteria are the size of the debtor, the value of the debtor’s estate and the number of creditors). This minimum fee is fixed and approved by the creditors during the first meeting while the bonuses are approved later depending on the results of administration.

Impact of the Rules

By introducing the Rules, Lithuanian lawmakers continued their efforts to establish an objective and transparent framework for the Lithuanian insolvency proceedings. One recent important step into this direction was the change of the way insolvency administrators were appointed. Since 1 January 2015 administrators are usually chosen by a ‘lottery’, i.e. by a random, computer-generated selection, thus replacing the old system in which the party filing for insolvency had to propose a candidate whom the Court usually had to appoint.

The Rules now provide for a transparent and rather predictable mechanism to calculate the amount of expenses

(including remuneration) that an administrator may incur for purposes of the proceedings. The Rules replace the previous legal framework and practice, where it was left entirely to the administrator and the creditors in the proceedings to agree on the remuneration of the administrator and the other permitted expenses. Often, administrators performed their mandate based on a simple fixed monthly fee agreement that provided no incentive for an effective and efficient administration.

Under the new Rules, creditors may now expect administrators to be more motivated to generate proceeds for the benefit of the creditors, or at least, to quickly terminate proceedings against ‘assetless debtors’. In this context, we might also expect more diligence in analysing pre-insolvency transactions and bringing related avoidance/claw-back claims.

Footnotes:

- 1 Decision of the Government of the Republic of Lithuania of 27 April 2016, No. 415, regarding the Rules of Recommended Administration Expenses and Remuneration of the Bankruptcy Administrator.
- 2 The size of the company is extensively regulated by the Selection Rules for Bankruptcy Administrators as approved by the Government Order No 647 of 9 July 2014. This topic was analysed by Frank Heemann and Karolina Gasparke in the Eurofenix article on “Lottery and liability: recent developments in Lithuanian bankruptcy law” in the Spring issue No 59, 2015.



FRANK HEEMANN
Partner, bnt-attorneys-at-law
Vilnius, Lithuania



KAROLINA GASPARKE
Associate, bnt-attorneys-at-law
Vilnius, Lithuania



**CREDITORS MAY
NOW EXPECT
ADMINISTRATORS
TO BE MORE
MOTIVATED TO
GENERATE
PROCEEDS FOR
THE BENEFIT OF
THE CREDITORS**

