

The cause of insolvency will undergo more scrutinisation in the future

14 May 2020. During today's session, the government approved the draft of the Minister of Justice under which an Insolvency Division will be established under the Competition Authority. The objective of the division created is to inspect the cause of unlawfully generated insolvency and increase the rate of payments made to creditors, as well as ensure a more honest business environment.

The Minister of Justice Raivo Aeg believes the new division is necessary, as the current monitoring system of Estonian bankruptcy proceedings is ineffective. "Bankruptcy proceedings are currently long, costly and inefficient for creditors. The average length of a bankruptcy proceeding in Estonia is three years, it absorbs 9% of assets, and the average rate of the satisfied claims of creditors only amounts to 40%. In reference countries Finland and Germany, these indicators are one year, 3% and 80-90%," Aeg explained.

"The state's contribution to the conduct of the bankruptcy proceedings of organisations without assets and investigation of the cause of insolvency is important for the business environment and contributes to the improvement of business culture, determination of the cause of insolvency, and identification of unlawful behaviour," he added.

On the other hand, the operation of the division is also important for the state as it is one of the largest creditors there are. According to the 2016-2018 data of Creditinfo Eesti AS, on average, the debts of Estonian companies amounted to a total of 33.26 million euros annually, 40% of which was constituted by tax liabilities to the state. In addition, the division would also shape a common practice in the area of insolvency and would carry out administrative supervision of trustees in bankruptcy instead of the Ministry of Justice.

The aim of the other proposals of the draft is to also contribute to improving the efficiency of bankruptcy proceedings. For instance, the procedure for defending and accepting claims shall be reshaped, thus helping to significantly reduce the time spent on the acceptance of claims. The defence of claims shall hereinafter take place in written form, all objections shall be justified and the acceptance of claims shall be decided by the court engaged in the resolution of the bankruptcy matter once the list of creditors has been approved. Therefore, disputes over claims shall no longer be adjudicated by way of independent and separately handled actions, instead the court shall make decisions under the same bankruptcy matter.

The increased specialisation of courts on insolvency matters is foreseen as well, as a result of which judges will adjudicate matters quicker and more harmoniously. Furthermore, measures are established in order to make the remuneration system of trustees more transparent and predictable. For instance, a trustee shall hereinafter prepare an initial action plan and keep a record of the time worked. Thus, parties have a clearer overview of the possible costs and the fair formation of the trustee's fee.

Another important amendment also includes extension of the obligation to submit a bankruptcy petition, as the existing legislation allows for a situation where no one has the obligation to submit a bankruptcy petition, if there are no members of the management board. The amendment also extends this obligation to persons who are obligated to ensure the existence of a board - such as members of the supervisory board and partners in the case of a private limited company. If a management board exists, members of the supervisory board and partners are not obligated to submit the bankruptcy petition.

The draft has been completed under the 1st stage of the revision of the insolvency law. In the 2nd stage, the working group of the revision shall address amendments to the reorganisation proceedings, debt restructuring proceedings and proceedings for release from obligations.

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