Key Insolvency Laws in Lithuania - An Overview

By

Ieva Baranauskaite

Lawyer of Swedbank leasing Ltd

The Republic of Lithuania Law on Enterprise Restructuring

The purpose of the Republic of Lithuania Law on Enterprise Restructuring (hereinafter referred to as ‘Law on Restructuring’) shall be to provide conditions 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. ‘Enterprise in financial difficulties’ means an enterprise unable to discharge its obligations and reduce losses which, without assistance rendered by creditors, would force it to terminate its activities and go bankrupt. ‘Restructuring of an enterprise’ (in lith. ‘restrukčūrizavimas’) by Law on Restructuring means the totality of procedures established by Law on Restructuring which aim to maintain and develop the activities of an enterprise, settle its debts and avert bankruptcy through securing assistance of the creditors of the enterprise and application of economic, technical, organisational and other measures. Creditors of an enterprise (hereinafter referred to as ‘creditors’) shall mean natural and legal persons entitled to request from the enterprise the discharge of its obligations and liabilities, as well as natural and legal persons for whom the time limits for the discharge of liabilities have not yet expired: 1) in the event of non-payment of compulsory payments – state institutions which have an obligation to collect them; 2) in the event of non-payment of salary and compensation for damage arising from employment relations – employees of the enterprise (successors thereof); 3) in the event of transfer of the obligation to compensate for damage due to accidents at work or contraction of an occupational disease to the State in the cases specified in the Provisional Law of the Republic of Lithuania on Damage Compensation in Accident at Work or Occupational Disease Cases – an institution authorised by the Government of the Republic of Lithuania; 4) in the event of non-repayment of loans granted from the funds borrowed on behalf of the State and loans granted with the State guarantee – the Ministry of Finance of the Republic of Lithuania or an institution administering the loan; 5) natural and legal persons upon the sale of agricultural products; 6) in the event of non-repayment of assistance granted from the EU funds – state institutions administering the EU funds; 7) other creditors.

Restructuring may be initiated where: 1) an enterprise is in financial difficulties or there is a real possibility that it will be in financial difficulties within the next three months; 2) an enterprise has not discontinued its activities; 3) an enterprise is not in bankruptcy or has not gone bankrupt; 4) an enterprise was established at least three years before the date of filing of a petition to initiate enterprise restructuring proceedings; 5) at least five years have passed from the coming into effect of the court decision to close the enterprise restructuring proceedings, or the court ruling to terminate the proceedings on the grounds specified in Law on Restructuring.

Law on Restructuring also gives guidelines of an enterprise restructuring plan, indicates a petition to the court on initiation of enterprise restructuring proceedings, initiation of enterprise restructuring proceedings in court, liabilities of an enterprise under restructuring and discharge of liabilities in respect of an enterprise under restructuring, management of an enterprise under restructuring and the assets thereof. In Law on restructuring one may find the information about simplified procedure for initiation of enterprise restructuring proceedings, what must be specifies in a restructuring plan also its consideration and approval, the duration of restructuring.

Law on Restructuring introduces the restructuring administrator (in lith. ‘restrukčūrizavimo administratorius’). On 31 December 2012 76 natural and 39 legal persons had the right to provide services of enterprise restructuring administration During the period from 1 January 2012 to 31 December 2012 9 natural and 3 legal persons qualified to provide services of enterprise restructuring administration.

Law on Restructuring ends by giving information about the termination of the enterprise restructuring proceedings, closure of the enterprise restructuring.

According to data, since the validation of Law on Restructuring (from 1 July 2001, as last amended on 22 December 2011) to 31 December 2012 restructuring proceedings have been initiated in 274 enterprises, out of that number restructuring proceedings were completed in 7 enterprises, but during the first half of 2011...
court adopted a ruling to initiate bankruptcy proceedings to one of them. During this period restructuring processes were pending in 128 enterprises, in 139 enterprises restructuring processes were terminated (whereof in 102 bankruptcy proceedings were instituted). It is interesting information that from 1 July 2001 to 31 December 2012 most of restructuring processes were instituted to enterprises of construction (108 ent. or 39,4 percent), manufacturing (55 ent. or 20,1 percent), wholesale and retail trade (32 ent. or 11,7 percent), agriculture, forestry and fishing (26 percent. or 9,5 percent), transportation and storage (15 ent. or 5,5 percent).

**The Republic of Lithuania Enterprise Bankruptcy Law**

During the period from 1 January 1993 to 31 December 2012, bankruptcy was instituted in 12983 enterprises and 15 banks, whereof bankruptcy processes were completed in 9043 enterprises (69,7 percent) and 14 banks (93,3 percent). At the end of 2012, bankruptcy process was still in progress in 3940 enterprises, 2915 of them are under liquidation and in 1025 enterprises a decision concerning the execution of bankruptcy procedures has not been adopted yet.

The highest number of bankruptcies in 2012 was on September – 201 enterprises. Every year the number of enterprises in bankruptcy decreases on July and August. In accordance with 1993-2012 data, bankruptcy process was instituted mostly in private companies (78,1 percent) and in individual companies (13,8 percent).

Enterprise bankruptcy process shall regulate the Republic of Lithuania Enterprise Bankruptcy Law (hereinafter referred to as ‘Enterprise Bankruptcy Law’). In accordance with ‘Enterprise Bankruptcy Law, ‘bankruptcy’ (in lith. ‘bankrotas’) means the state of an insolvent enterprise where bankruptcy proceedings have been initiated against the enterprise in court or the creditors are performing extra-judicial bankruptcy procedures in the enterprise. ‘Insolvency of an enterprise’ (in lith. ‘monės nemokumas’) is defined as the state of an enterprise when it fails to discharge its obligations (pay debts, carry out works paid for in advance, etc.) and the overdue liabilities of the enterprise (debts, unperformed works, etc.) are in excess of half of the value of the assets entered in the enterprise’s balance.

A bankruptcy process of an enterprise in Lithuania can be either: judicial or extra-judicial. Judicial, when creditor (creditors), owner (owners), the head of the company have the right to file with a court for the initiation of bankruptcy proceedings. The liquidator of the enterprise under liquidation must file with a court a petition to initiate bankruptcy proceedings, if in the process of enterprise liquidation becomes clear that the enterprise will not be able to meet its obligations. A court, having initiated bankruptcy proceedings against an enterprise, appoints a bankruptcy administrator. Extrajudicial - the issues within the competence of the court shall be considered and decided by the creditors’ meeting. Creditors can be offered to implement extrajudicial bankruptcy procedures by the head or an owner (owners) of the enterprise. However, an extrajudicial bankruptcy process cannot take place if action has been brought in court in which claims have been entered against the enterprise, or execution is levied on the enterprise under writs of execution issued by the courts or other institutions.

Creditors shall mean natural and legal persons entitled to request from the enterprise the discharge of its obligations and liabilities, including: 1) in the event of non-payment of taxes, state social insurance and compulsory health insurance contributions – state institutions which have an obligation to collect them; 2) in the event of non-payment of remuneration and compensation for damage arising from employment relations – employees of the enterprise (successors thereof); 3) in the event of transfer to the State of the obligation to compensate for damage due to accidents at work or contraction of an occupational disease in the cases specified in the Provisional Law on Damage Compensation in Accident at Work or Occupational Disease Cases – an institution authorised by the Government; 4) in the event of non-repayment of loans granted from the funds borrowed on behalf of the State and loans granted with the State guarantee – the Ministry of Finance; 5) natural and legal persons upon the sale of agricultural products; 6) in the event of non-repayment of assistance granted from the EU funds – state institutions administering the EU funds; 7) other creditors.

To file a petition with the court for the initiation of enterprise bankruptcy proceedings it is allowed if at least one of the following conditions is present: 1) the enterprise fails to pay the remuneration and other employment-related amounts in due time; 2) the enterprise fails, in due time, to pay for the goods received
and works (services) carried out, defaults on the repayment of credits and fails to discharge other property obligations assumed under transactions; 3) the enterprise fails to pay, in due time, taxes and other compulsory contributions prescribed by law and/or the awarded amounts; 4) the enterprise has publicly announced or notified the creditor (creditors) in any other manner of its inability or lack of intent to discharge its obligations (publication of such information on the website (www.bankrotodep.lt) of the Department of Enterprise Bankruptcy Management under the Ministry of Economy is also considered as public announcement); 5) the enterprise has no assets or income from which debts could be recovered and therefore the bailiff has returned the writs of execution to the creditor. The liquidator of the enterprise under liquidation must file with a court a petition to initiate bankruptcy proceedings, if in the process of enterprise liquidation becomes clear that the enterprise will not be able to meet its obligations.

In the situation indicated in the first three points above, the creditor must notify the debtor of its intention to file a petition for bankruptcy in writing. Such a notification must identify undischarged liabilities of debtor and contain a warning that in case of failure to discharge the above liabilities within the specified time limit (which must be at least 30 days), the creditor will file a petition for bankruptcy. A petition filed with the court may be waived before the court passes a ruling to institute bankruptcy proceedings Petitions shall be filed in writing with the county court of the locality in which the registered office of the enterprise is situated in the manner set forth by the Code of Civil Procedure.

In Bankruptcy law one may find information about the preparation for hearing of bankruptcy proceedings in court, initiating bankruptcy proceedings in court.

A court, having initiated bankruptcy proceedings against an enterprise, appoints a bankruptcy administrator (in lith. ‘bankroto administritorius’) and assistant administrator (in lith. ‘administratoriaus padėjėjas’).

On 31 December 2012 491 natural and 171 legal persons had the right to provide services of enterprise bankruptcy administration, 10 persons had the right to work as assistant of bankruptcy administrator.

During the period from 1 January 2012 to 31 December 2012 39 natural and 20 legal persons qualified to provide services of enterprise bankruptcy administration, the right to work as assistant of bankruptcy administrator was given to 10 persons. In 2012 the certificate of bankruptcy administrator was revoked to 3 natural persons and they were removed from the List of persons, providing services of bankruptcy administration. In 2012 1 legal bankruptcy administrator was removed from the list of persons, providing services of bankruptcy administration.

Data about bankruptcy proceedings against enterprise, persons who have the right to provide enterprise bankruptcy administration services, assets of enterprises that are in bankruptcy or are bankrupt being sold by auction, and other information is published in the website of the Department of Enterprise Bankruptcy Management under the Ministry of Economy The court may adopt a ruling to apply the simplified bankruptcy procedures - judicial enterprise bankruptcy procedures carried out where the enterprise has no assets or where its assets are insufficient to cover the legal and administrative expenses. These procedures may not last longer than one year from the day of entry into force of the ruling to apply the simplified bankruptcy procedures. During such procedures bankruptcy procedure of liquidation must be applied.

Bankruptcy proceedings are formally concluded by a court decision or, in extra-judicial bankruptcy proceedings, by a decision of the meeting of the creditors. After such decision is issued and respective documents are submitted to the Register of Legal Entities, the enterprise is removed from the said Register.

Interesting that in 2012 bankruptcy processes were instituted mostly to enterprises of wholesale and retail trade (380 enterprises or 27,1 percent), construction (264 ent. or 18,9 percent), manufacturing (171 ent. or 12,2 percent), administrative and support service activity (138 ent. or 9,9 percent), transportation and storage (115 ent. or 8,2 percent), accommodation and food service activity (92 ent. or 6,6 percent).

During the period of 1993-2012 82 percent of enterprises in bankruptcy and bankrupt enterprises were very small enterprises without employees or up to 9 employees at the beginning of 7 bankruptcy process. Enterprises, which had from 10 to 50 employees, made up 12,7 percent while enterprises, which had more than 50 employees – 3,1 percent.
The Republic of Lithuania Law on Natural Person Bankruptcy

The Republic of Lithuania Law on Natural Person Bankruptcy (hereinafter referred to as ‘Law on Natural Person Bankruptcy’) came into force on 1 May 2013.

The Law on Natural Person Bankruptcy enables individuals, whose main proprietary interests are in the Republic of Lithuania, to initiate personal bankruptcy proceedings. A person shall be deemed insolvent when the amount of personal debts for which the payment is due exceeds 25 minimum monthly wages as approved by the Government of the Republic of Lithuania (currently 25,000 LTL, 7,241 EUR). The personal bankruptcy proceedings can be initiated by the relevant individual exclusively and such proceeding shall be judicial. The Law on Natural Person Bankruptcy also provides that an individual will be entitled to commence bankruptcy proceedings for the second time only in 10 years after the previous bankruptcy proceedings were fully finished. The recovery of a person’s solvency shall proceed in accordance to the Plan of the Solvency Recovery (hereinafter “Plan”) and the schedule for fulfilling of the creditors’ claims and reimbursement of other expenses. While executing the Plan, a person will be granted a monthly fixed amount depending on the number of encumbrances.

The term of the Plan execution shall not last for more than five years. The bankruptcy proceedings of natural persons are executed in the court. The court must appoint a bankruptcy administrator. Individual bankruptcy proceedings may be brought in a simplified procedure, the Plan under the provisions of Law on Natural Person Bankruptcy shall be established by petition to initiate an individual bankruptcy case to the court.

By the Law on Natural Person Bankruptcy the first creditors’ meeting approving the Plan, determine the amount to be paid to the administrator for individual bankruptcy procedures bankruptcy process, including the period of the order of the court to bring an individual bankruptcy case comes into force. The amount of time from the court order to initiate an individual bankruptcy case before the effective date of the order to confirm the plan effective date cannot be greater than 3,000 LTL (869 EUR).