

Rödl & Partner

NEWSLETTER LITHUANIA

SUCCESSFUL TOGETHER

Issue:
March 2020

Information for investors and entrepreneurs in
Lithuania (The latest legal amendments)

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Law on Insolvency of Legal Entities

Prior new changes, Insolvency proceedings were interpreted in accordance with two different laws - the Law on Insolvency of the Republic of Lithuania and the Law on Company Restructuring. Starting from 1 January 2020 the new Law on Insolvency of Legal Entities (Law on Insolvency) entered into force. The latter will introduce a new concept of insolvency, reform litigation procedures, change the order of satisfaction of creditors' claims, simplify the liquidation procedure of companies with low or no financial assets and introduce innovations in the restructuring process.

The new Law on Insolvency should significantly change corporate insolvency proceedings. Moreover, according to the drafters of the legislation, the Law on Insolvency should create legal preconditions for early establishment of financial difficulties and should assist in ensuring the business continuity; in the event of insolvency the Law should ensure the quickest liquidation of companies.

The Law on Insolvency aims to increase the efficiency of bankruptcy and restructuring processes and to facilitate business retention.

THE CONCEPT OF INSOLVENCY

The Law on Insolvency modifies the concept of insolvency of a company and introduces two alternative criteria for legal person can be considered insolvent. Accordingly, these are the following:

- The company fails to fulfil its financial obligations on time;
- Liabilities of the company exceed the value of the legal entity's assets.

After the changes, even insignificant default can be a sufficient legal ground for initiating insolvency proceedings, regardless of the financial position of the company. The latter might increase the number of insolvency proceedings.

PRE - LITIGATION PROCEDURE

When initiating insolvency proceedings, the creditor will be required to send a notice to the legal person, with a minimum of 15 days and a

maximum of 30 days request to fulfil an obligation, to conclude an aid agreement or to take out of court insolvency proceedings. And should the creditor's request be not honoured within the time limit, the creditor is entitled to apply for restructuring or insolvency.

The new law provides for the possibility to legal persons and creditors to agree on the provision of assistance to overcome financial difficulties. For the purpose of concluding a relief agreement, the law provides for an individual to apply to the courts for interim measures.

LEGAL ASPECTS OF CORPORATE INSOLVENCY

The new law will provide for the possibility to sell a legal entity that is no longer able to fulfil its obligations as a property complex or to divest a substantial part of the legal entity.

The latter will prevent assets depreciation and allow the entire business to be divested as a complex of assets - enabling the committed buyer to maintain a viable business as well as benefiting the seller, creditors and employees of the legal entity.



LIQUIDATION

As the new recast of the Law on Insolvency provides, should the assets of the legal entity be insufficient to cover the costs of administration of the insolvency proceedings; and neither the creditor nor the insolvency administrator agrees to take the risk and to cover the costs, the court is entitled to refusal to open insolvency proceedings.

In such case the court may forward the request to Lithuanian Centre of Register; whereas the Centre of Register will liquidate the legal entity at its initiative.

The liquidation of the legal entity through the Centre of Register will assist in effective liquidation and de-registration of inactive companies having no assets. Nevertheless, the latter may result in managing bodies of the legal entities avoiding liability for any unlawfulness.



TERMINATION OF EMPLOYMENT IN CASE OF INSOLVENCY

Starting from 1 January 2020 amendments to Articles 62, 63, 149 and 200 of the Labour Code and other laws relating to the legal aspects of corporate insolvency enter into force. Changes aim to increase the efficiency of insolvency proceedings and enable the survival of a viable business. The main purpose of the latter is essentially to clarify, accelerate and facilitate the termination of employment contracts in the event of the bankruptcy of the employer. For example, the obligation to consult with Work Council or Trade Union in the event of bankruptcy, as provided for in Article 207 of the Labour Code. Moreover, anticipated innovations in the provision of redundancy warnings to employees are abolished, the aspects of the validity of collective agreements or individual clauses in the event of bankruptcy are established etc.

CLAIMS OF CREDITORS

The order of satisfaction of the claims of the creditors of the legal person is changing. Prior to the changes the law provided, that the claims of employees related to the employment, claims for damages due to injury to body, life, or health, an occupational disease or death resulting from an accident at work, claims of agricultural operators for agricultural products sold are satisfied first.

After the changes the claims above will be satisfied after the following claims:

- Claims of creditors providing new and interim financing not secured by mortgages and mortgages which have arisen due to the failure of the legal person to repay the loans within the terms specified in the loan agreements;
- Employee claims related to the employment;
- Claims of state social insurance contributions, compulsory health insurance contributions and contributions to the guarantee and the long-term employment benefit funds;
- Claims for outstanding obligations arising out of business-to-business operations during the insolvency proceedings.

→ Changes related to the employment

INCREASE OF THE MINIMAL SALARY

On 1 January 2020 the Resolution No. 669 of the Government of the Republic of Lithuania entered into force. In accordance with the Resolution, the minimal monthly salary of unskilled employees will be equal to at least 607 Euros (the hourly wage will be equal to at least 3,72 Euros).

We kindly remind you, that only the unskilled employee may be remunerated with the minimal salary. Other personnel should be remunerated with the higher salary depending on their qualification, education and other criteria.



CHANGES OF THE LABOUR CODE

Article 133 of the Labour Code of the Republic of Lithuania enters into force. Changes allow father to take a paternity leave of 30 calendar days until the child reaches the age of one.

Article 123 of the Labour Code of the Republic of Lithuania was amended by adding additional official holiday. Accordingly, the 2 November - Day of remembrance.

On 1 July 2020 Paragraphs 5 and 6 of Article 127 of the Labour Code came into force. After the changes the employees will lose the right to annual vacations older than three years.

DAILY ALLOWANCE

Following the Regulation of the Republic of Lithuania, the procedure for calculating daily allowances has been changed.

Prior the change, should the monthly salary of the employee be equal or exceed EUR 721,50, daily allowances on business trips abroad was tax free (the amount indicated was calculated as follows: the minimal salary was multiplied by the coefficient of 1,3, i.e. EUR 555 x 1,3).

After the 1st of January 2020, the coefficient was enlarged to 1,65. Thus only the daily allowances paid for the employees remunerated with at least EUR 1001,55 salary will be tax free.

After the changes companies posting unskilled employees should expect extra costs. Moreover, we recommend the companies to verify if the payments and calculations of the daily allowances comply with applicable regulations.

→ Law on Administrative Proceedings

After amendments to the Law on Administrative Proceedings, the court order may be issued in administrative proceedings. The changes will come on the 1 July 2020 into force.

As quite often the entities of public administration were submitting claims to the administrative courts on payment of fines and expenses, the general litigation procedure was a significant burden on the courts and public administration entities. Therefore, an administrative court order in cases of failure to recover amounts due (fines and expenses) outside of administrative court proceedings may be issued. The latter will assist in simplifying and streamlining the administrative proceedings.

The amendments as adopted are in general similar to civil court proceedings. Nevertheless, due to differences in nature of civil and administrative proceedings, there are several deviances (in particular, time limits for applying for an administrative court order; no exceptions for declining the request due to domicile of the debtor being abroad; exception for interim measures during the administrative proceedings; application (request) for a court order is not be subject to stamp duty etc.).

The amendments do not provide an exhaustive list of the legal grounds for an apply for an administrative court order.

→ Compensation of damages to patients' health

On 1 January 2020 the Law on Compensation of damages caused to patients' health came into force. The Law ensures that patients would receive a compensation in case of harm to health.

The patient or other person who is entitled to compensation (in case of death of the patient) will have the right to apply to the Commission for Health of the Patients within 3 years from the date the patient became aware or should have known that his rights had been violated. The Commission will take a decision on the compensation of the claimed damage no later than 2 months after receipt of the request by the Commission.

The Commission will determine the amount of damages to be covered in accordance with the criteria (e.g. direct and indirect damages, the nature and severity of the injuries etc.) as specified in the Regulation on Compensation of Damages. The amount of the indemnity may be reduced by the allowance of the State Social Insurance (including invalidity allowance, survivor's and / or orphan's pension) as received by the patient.

Should the Commission establish that the health of the patient was adversely affected by the provision of healthcare services and the latter

is not an imminent injury, the damages will be compensated without determination of fault (the liability without fault has been introduced). Accordingly, should the Commission determine that the patient contributed intentionally or through gross negligence, the damage will not be compensated.



CONTACT FOR FURTHER INFORMATION



Michael Manke
Associate Partner
Attorney-at-Law
(Vilnius, Dusseldorf)
T +370 5212 3590
michael.manke@roedl.com



Eglė Pinaitė
Senior Associate
T +370 5212 3590
egle.pinaite@roedl.com

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Rödl & Partner
Tilto g. 1, LT-01101 Vilnius, Lithuania
T +370 5212 3590
www.roedl.de
www.roedl.com

Responsible for the content:
Eglė Pinaitė
egle.pinaite@roedl.com

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