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The establishment of an Insolvency Division in Estonia



The main issues in Estonian bankruptcy proceedings are associated with the late initiation of bankruptcy proceedings and its financing. If bankruptcy proceedings are initiated later than prescribed by law, the debtor may not have the funds to conduct the bankruptcy proceedings.

If there is a lack of assets to conduct the bankruptcy proceedings and there are no creditors who are willing to finance it, the company will be deleted from the Commercial Register without conducting bankruptcy proceedings. In such cases, the reasons for the company's bankruptcy will not be investigated and the persons involved in causing the bankruptcy will not be held liable. This damages the credibility and transparency of the Estonian economic environment.

To solve this problem, a special governmental institution – the Insolvency Division (*maksejõuetuse teenistus*) – was established as of 1 January 2022. Its task is to investigate bankruptcy proceedings and find out the causes of bankruptcy and possible misconduct by the debtor's management. Moreover, the Insolvency Division must supervise the debtor and the persons related to it in connection with transactions concluded just before the declaration of bankruptcy.

For the supervision of bankruptcy proceedings, the main tools at the disposal of the Insolvency Division are the special audit and a public investigation. The Insolvency Division can conduct a special audit at its own discretion or on receipt of a reasoned request from a trustee in bankruptcy. In a nutshell, the purpose of a special audit is to analyse a specific fact, for example, to establish the economic situation of the debtor,



whether the bankruptcy petition was submitted on time and whether possibilities for recovery exist.

Public investigation is a special form of conducting bankruptcy proceedings, where no general meeting of creditors is called and no bankruptcy committee is formed. In order to initiate a public investigation, the Insolvency Division must file a reasoned application with the court, if abatement of proceedings on a bankruptcy petition would otherwise occur, and it may be at least reasonably suspected that there is public interest in the debtor's bankruptcy, for example, where the debtor has committed an act with criminal elements in connection with becoming bankrupt or the bankruptcy is caused by a grave error in management. Simply put, the objective of conducting bankruptcy proceedings by public investigation is to prevent particularly malicious bankruptcy schemes such as the debtor hiding

its assets by making deals with persons connected to it.

Thus, the main goal of the Insolvency Division is to improve the economic environment by investigating bankruptcy proceedings with the aim of directing debtors to file for bankruptcy in a timely manner. In turn, this should help to ensure that there are sufficient funds to carry out bankruptcy proceedings and that the debtor is not removed from the Commercial Register without bankruptcy proceedings being conducted. The effectiveness of the Insolvency Division will only become apparent over the years, but it is clear that the Insolvency Division will not be able to supervise all of the bankruptcy proceedings and will serve more as a random check. ■



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