

NJORD Estonia: Filing bankruptcy petitions will temporarily be suspended

The Estonian Ministry of Justice is preparing a draft legislation that would suspend the obligation to file the bankruptcy petition during the emergency situation in Estonia.

The draft legislation would suspend the obligation for a company to file the bankruptcy petition during the emergency situation in Estonia and for two months after the emergency situation has been terminated.

The courts will refuse to accept the bankruptcy petitions of creditors during that time period. The exception is if the bankruptcy petition is filed by an employee who is not subject to the employment benefits established during the emergency period.

Currently, the management board of a legal person must file the bankruptcy petition within 20 days of insolvency becoming evident. The draft legislation suspends that obligation for the emergency period and for two months after the emergency period has been suspended. Natural persons do not have to file the bankruptcy petition for themselves. However, the draft legislation also stops creditors from filing bankruptcy petitions against natural persons.

The purpose of the draft legislation is to ensure that businesses that are becoming insolvent due to the ongoing crisis, have an opportunity to adapt to the situation and take the necessary measures to make it through to the other side. Similar acts have already been taken in other countries, such as Germany.

The explanatory note for the draft legislation comments that a company becoming insolvent can generally be predicted and happens over a longer time period. However, due to the COVID-19 outbreak, companies are becoming insolvent suddenly without any previous warning. The sudden drop in supply and demand is not solely due to the market situation but direct state taken actions such as the closing of shopping centres and sports facilities.

Common measures to avoid insolvency are out of reach for many companies. In certain business sectors it is essentially impossible to find new markets and customers. At the same time, the Commercial Code requires the management of private limited companies to file the bankruptcy petition within 20 days of insolvency becoming evident. The management board is liable for the filing of the petition.

The draft legislation does not limit debtors themselves filing the bankruptcy petition. The purpose of the legislation is to postpone potential bankruptcy proceedings only if it is reasonably expected that the company can continue its operations in the future.



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