

All you need to know about becoming a bankruptcy administrator in Lithuania

Companies as well as individuals in the face of difficulties to fulfill their obligations begin to talk about the insolvency and bankruptcy. The Lithuanian Republic Law of Enterprise Bankruptcy (hereinafter referred to as the 'LEB') applies to all enterprises registered in Lithuania, except for budgetary institutions, political parties, trade unions and religious communities and associations. The Republic of Lithuania Law on Natural Person Bankruptcy (hereinafter referred to as the 'LNPB'), applies to all natural person whose main interests are in the Republic of Lithuania. Specific features (e. g., persons, who have the right to file a petition with the court for the initiation of enterprise bankruptcy proceedings, the sequence of satisfying creditors' claims) of bankruptcy process may be established in special laws regulating the activities of legal persons. Such laws are the Republic of Lithuania Law on banks, the Law on Financial Institutions and other.

At the finance sunset an important role play a bankruptcy administrator, because he is the one who is responsible for the entire process of the bankruptcy proceedings. The bankruptcy administrator can be either natural or legal person who is entitled to bankruptcy administration services.

By the LEB¹, a natural person seeking to acquire the right to provide bankruptcy administration services for enterprises or individuals in Lithuania must:

- be of good repute (1);
- hold a social science degree or equivalent degree in law or economics (a bachelor's qualification degree in law or economics and a master's qualification degree in law or economics) or a lawyer's professional qualification degree (one-cycle university education in law) (2);
- have a work record of at least two years as an assistant administrator over the last three years or a work record of at least five years as a head of an enterprise over the last seven years or be recognised as an advocate in accordance with the procedure established by legal acts (3);
- pass a qualification exam (4);
- have a command of the Lithuanian language (5).

A natural person seeking to acquire the right to work as assistant administrator must comply with the requirements set in (1), (2), (4) and (5) of mentioned above.

The head of a legal person seeking to provide enterprise bankruptcy administration services must be entitled to provide bankruptcy administration services. Seeking to acquire the right to provide bankruptcy administration services, a legal person must ensure that at least two employees of the legal person, including the owner (where the legal person is an individual enterprise) or a general member (where the legal person is a partnership), hold a bankruptcy administrator certificate.

Taking into the consideration a good repute of a natural person (1) it is clarified whether bankruptcy administrator has been convicted of a crime against the economy and business practice, the financial system or the civil service and public interest or other serious or grave crime and the conviction has not expired yet; if he has been dismissed from work, from the office or has lost the right to engage in the relevant activity for non-compliance with the requirement of good repute set forth in laws or for breach of ethics, and less than three years have passed from the dismissal from work, from the office or loss of the right to engage in the relevant activity or the right to provide bankruptcy administration services; abuses psychotropic, narcotic, toxic substances or alcohol.

A qualification examination² (4) shall mean a test of knowledge of a natural person seeking to acquire the right to provide enterprise bankruptcy administration services or the right to work as assistant administrator and shall be prepared by the Commission for Attestation of Bankruptcy and Restructuring Administrators (hereinafter referred to as the 'Commission'). The qualification examination shall be prepared based on the attestation programmes for administrators and assistant administrators approved by the Commission. A natural person who has failed the qualification examination or has failed to arrive for the examination may retake it not earlier than after three months. A natural person who has failed to arrive for the examination for valid reasons (due to an illness or other facts and circumstances unforeseeable by the natural person, substantiated by

¹ The Lithuanian Republic Law of Enterprise Bankruptcy. Article 11². Requirements for Persons Seeking to Acquire the Right to Provide Enterprise Bankruptcy Administration Services and Persons Seeking to Acquire the Right to Work as Assistant Administrators.

² LEB. Article 11³. Qualification Examination.

documents), upon submitting an explanation for failure to participate in the examination and an application for permission to take the examination, may take it before the lapse of the set period of three months. The number of retakes of the qualification examination shall not be limited.

Once a natural person meet all requirements for the right to provide bankruptcy administration services as the bankruptcy administrator or as the assistant administrator he receives the certificate. The bankruptcy administrator and assistant bankruptcy administrator certificates shall be issued to a citizen of the Republic of Lithuania, another European Union Member State or a state of the European Economic Area (hereinafter referred to as the "Member State") or any other natural person who exercises the rights of free movement within the Member States conferred upon him by European Union legal acts and who meets the requirements specified in the Law of enterprises bankruptcy³.

The institution authorised by the Government compile a list of persons providing enterprise, individuals bankruptcy administration services (hereinafter referred to as the "List"). Natural and legal persons entered on the List shall acquire the right to provide enterprise bankruptcy administration services as of the date of entering on the List.

In order to avoid the conflict of interest, the law define the conditions, which must be followed. A creditor of the enterprise against which bankruptcy proceedings have been initiated (a person in employment relations with the creditor or, where the creditor is a legal person, a member of its management bodies), a person who, under laws or other legal acts, has no right to be the head of the enterprise, the owner of the enterprise or its parent enterprise or subsidiary, a member of its management bodies, the head, his deputies (directors), the chief accountant (accountant), the head of a structural division in charge of keeping of the enterprise's accounts, a shareholder holding or having held by the right of ownership within the last 36 months prior to the initiation of bankruptcy proceedings more than 10 per cent of the shares of the enterprise in bankruptcy and bankrupt enterprise or its parent enterprise or subsidiary may not be appointed administrator. These restrictions shall also apply to the persons referred to in this paragraph who were employed in the enterprise in bankruptcy and bankrupt enterprise and were dismissed within the last 36 months prior to the initiation of bankruptcy proceedings. The administrator may not have legal interest in the outcome of the proceedings. The restrictions specified there placed on the administrator shall also apply in respect of the head of a legal person entitled to provide bankruptcy administration services, his deputies (directors), the chief accountant (accountant), the head of a structural division in charge of keeping of the enterprise's accounts, members of the management body of the legal person and participants of the legal person⁴.

Most important rule is that the administrator may not have legal interest in the outcome of the bankruptcy proceedings.

Speaking about the possible employers it is important to note, that in Lithuania there could be an extrajudicial bankruptcy proceeding and a judicial bankruptcy proceeding.

Creditors can be offered to implement extrajudicial bankruptcy procedures by the head or an owner (owners) of the enterprise. In this situation the bankruptcy administrator shall be appointed by the meeting of creditors in accordance with the provisions of the LEB. However, an extrajudicial bankruptcy process can not 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 institutions⁵.

In judicial enterprise and in all cases of individual's bankruptcy, only court can appoint the bankruptcy administrator⁶. When filing with the court a petition for the initiation of enterprise bankruptcy proceedings, creditors, owner (owners), the head of the company have the right to nominate the candidacy of a bankruptcy administrator. The court may, on a reasoned basis, reject the nominated candidate for the position of the administrator and request that another candidate for the

³ LEB. Article 11⁵. Issuance of Bankruptcy Administrator and Assistant Bankruptcy Administrator Certificates and Cancellation of Validity thereof.

⁴ LEB. Article 11⁶. Compilation of a List of Persons Providing Enterprise Bankruptcy Administration Services.

⁵ <http://www.bankrotodep.lt/Index.php> - enterprise bankruptcy in Lithuania (2013 01 16, english version).

⁶ LNPB. 11 Article. The appointment of Bankruptcy administrator.

position of the administrator be nominated. In natural person bankruptcy cases the court appoints a bankruptcy administrator by itself if the individual do not offer anyone.

The legal obligation to comply with the bankruptcy administrator's operational control is given to the court and the creditors' meeting. Also the activities of the administrator shall be supervised and information about the enterprise bankruptcy process shall be submitted for publishing to the supplement *Informaciniai pranešimai* to the official gazette *Valstybės žinios* by the institution authorised by the Government. The activities are supervised and controlled by the Enterprise Bankruptcy Management Department under the Ministry of Economy: Corporate Restructuring and Bankruptcy Department, Enterprise Business Intelligence Unit, the Guarantee Fund Administration Unit.

The administrator (a natural person) must: comply with the legal acts and requirements set in the Code of Conduct for Bankruptcy and Restructuring Administrators; continuously improve his professional qualifications. The administrator (a legal person) must ensure the continuous improvement of professional qualifications of its employees or owner where the legal person is an individual enterprise, or its general partners where the legal person is a partnership, who are entitled to provide bankruptcy administration services.

The professional civil liability of an administrator for the damage caused to natural or legal persons in the course of carrying out of bankruptcy procedures in respect of enterprises in bankruptcy and bankrupt enterprises shall be covered by compulsory insurance. The object of compulsory insurance of an administrator against professional civil liability shall be the civil liability of the administrator for the damage caused by unlawful actions of the administrator and/or his employees in the course of carrying out of bankruptcy procedures in respect of enterprises in bankruptcy and bankrupt enterprises during the period of validity of the insurance contract. An insured event shall mean unlawful actions (act or omission) committed by the administrator and/or his employees in the course of carrying out of bankruptcy procedures in respect of enterprises in bankruptcy and bankrupt enterprises during the period of validity of the insurance contract constituting grounds for incurring civil liability by the insured person and lodgement of a claim for compensation in compliance with the conditions laid down in the rules for compulsory insurance of the administrator against professional civil liability. An administrator shall be covered by compulsory insurance against professional civil liability by entering into a contract of compulsory insurance of the administrator against professional civil liability. The policyholder of compulsory insurance of an administrator against professional civil liability shall be the administrator. The minimum sum insured in respect of compulsory insurance of an administrator against professional civil liability shall be LTL 200 000 (57 924,00 EUR) for one insured event and LTL 500 000 (144 810,00 EUR) for all insured events during one year. Upon payment of an insurance benefit in the case of an insured event and reduction of the minimum sum insured provided for in this Article, the administrator must, within one month, take out insurance against civil liability in order to restore the compulsory minimum sum insured. The administrator may also take out additional insurance of an administrator against professional civil liability for the damage caused to natural or legal persons in the course of carrying out of bankruptcy procedures in respect of enterprises in bankruptcy and bankrupt enterprises⁷.

The administrator may be subject to a penalty in accordance with the procedure established by the Government or an institution authorised by it for failure to execute or properly execute the requirements laid down in legal acts regulating enterprise bankruptcy, procedural court documents (decisions, orders, rulings and resolutions), resolutions of the meeting of creditors and committee of creditors or other violations discovered in the course of inspection of the administrator's activities. The institution authorised by the Government specified in LEB shall impose the following penalties: a warning; a public warning which shall, not later than within five working days from the date of adoption of the decision, be announced on the website of the institution authorised by the Government. Upon establishing repeated violations with the penalty being still in force or failure to comply with the requirements of good repute, the institution authorised by the Government Law must apply to the Commission regarding the decision to propose to cancel the validity of a bankruptcy administrator

⁷ LEB. Article 11⁷. LNPB Article 13. Liability of Administrator and Assistant Administrator.

certificate and to remove him from the List. The penalty imposed on the administrator shall be valid for one year.

By LEB, the first meeting of creditors must fix the amount of remuneration to be paid to the administrator for the administration of the enterprise during the bankruptcy process, including the period from the entry into force of the court ruling to initiate enterprise bankruptcy proceedings until the date of conclusion of a contract of agency with him or the date of the first meeting of creditors.

Administrators on average, can earn from 2 000,00 LTL (579,00 EUR) to 6 000,00 LTL (1 738,00 EUR) a month. However, these figures are a very abstract because the amount of remuneration payable to the administrator (having regard to whether or not the enterprise in bankruptcy and/or the bankrupt enterprise continues (carries on) its activities, the type and amount of the assets of the enterprise being sold, also the complexity and number of proceedings initiated and civil claims brought against the enterprise) and the procedure for payment of remuneration (the remuneration may be paid in a lump sum upon completion of the bankruptcy process or by instalments in the course of the bankruptcy process) shall be established in the contract of agency⁸.

It is known that the salary for the administrator (and his team) is covered from the administrative expenses. What happens if the company does not have any assets? When the administrator establishes during the examination of the enterprise bankruptcy case that the enterprise has no assets or that its assets are insufficient to cover the legal and administrative expenses, the court may adopt a ruling to apply the simplified bankruptcy procedures in respect of the enterprise. Such procedures may not last longer than one year from the day of entry into force of the ruling to apply the simplified bankruptcy procedures. Bankruptcy procedure of liquidation must be applied during the simplified bankruptcy procedures. The issues relating to the sale of assets, assigned under this Law to the competence of the meeting of creditors, shall be resolved by the court⁹.

By the LNBP¹⁰, the first creditors' meeting approving the project 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 can not be greater than 3 000,00 LTL (869,00 EUR).

To the end the best practise about bankruptcy in Lithuania one may find in courts (Supreme Court) decisions. The Department of Enterprise Bankruptcy Management under the Ministry of Economy¹¹ include implementation of the Government policy in the activity, restructuring and the main legal act regulating enterprises bankruptcy proceedings in Lithuania is the Law on Enterprise Bankruptcy. Also bankruptcy areas of loss-making enterprises, activity analysis of enterprises undergoing the processes of restructuring and bankruptcy as well as bankrupt enterprises. There several associations of bankruptcy administrators: National Association of Bankruptcy administrators¹² and National Association of Business Administrators¹³.

⁸ LEB. Article 36. Administrative Expenses

⁹ LEB. Article 13⁽¹⁾. Simplified Bankruptcy Procedures

¹⁰ LNBP. Article 22. Administrative Expenses.

¹¹ <http://www.bankrotodep.lt/Index.php> (english version).

¹² <http://www.bankrotai.lt/> (lithuanian version only).

¹³ <http://www.nvaa.lt/en/> (english version).