

**ACT AMENDING THE FINANCIAL OPERATIONS,
INSOLVENCY PROCEEDINGS AND COMPULSORY
DISSOLUTION ACT**

Ministry of Justice of the Republic of Slovenia

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MINISTRY OF JUSTICE OF SLOVENIA LEGISLATION

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ACT AMENDING THE FINANCIAL OPERATIONS, INSOLVENCY PROCEEDINGS AND COMPULSORY DISSOLUTION ACT

Article 1

In Article 14 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Uradni list RS [Official Gazette of the Republic of Slovenia] No. 126/07 and 40/9) a new fourth paragraph shall be added to read as follows:

"(4) It shall apply and evidence to the contrary shall not be allowed that a legal entity becomes continuously insolvent if it is delayed for more than three months:

1. in paying wages to its employees up to the level of the minimum wage or
2. in paying taxes and contributions which the payer must calculate and pay together with the wages to its employees, unless the payment of these taxes and contributions has been deferred in accordance with the law regulating tax procedure."

Article 2

In Article 114, new second and third paragraphs shall be inserted to read as follows:

"(2) In the regulation prescribing the tariff for assessing the remuneration of administrators and the lump-sum compensation for assuming operations of a dismissed administrator, and more detailed rules concerning the reimbursement of costs to which an administrator is

entitled, and the lump-sum for covering other costs of bankruptcy proceedings that terminate with no distribution to creditors, as referred to in point 3 of Article 233 of this Act, the minister responsible for justice shall also determine maximum amounts that may not be exceeded for remuneration, lump-sum compensation, reimbursement of costs or the lump-sum covering other costs in each individual case.

(3) The Supreme Court shall collect data on finally assessed amounts referred to in the preceding paragraph and shall submit them, together with the report containing findings resulting from case-law, to the ministry responsible for justice and the National Assembly by 30 June for the preceding year.

Article 3

The second paragraph of Article 236 shall be amended to read:

"(2) The debtor shall attach to the request to suspend decision-making on the creditor's bankruptcy petition:

1. a statement by the management confirming that:

- the debtor is not delayed in paying wages to its employees up to the level of the minimum wage and in paying taxes and contributions to be calculated and paid by the payer together with the wages to employees, unless the payment of taxes and contributions has been deferred in accordance with the law regulating tax procedure and
- the debtor will be capable within the two-month period of suspension of decision-making on the creditor's bankruptcy petition of providing timely payment of wages to employees up to the level of minimum wage, and taxes and contributions to be calculated and paid by the payer together with the wages to employees, unless the payment of these taxes and contributions has been deferred in accordance with the law regulating tax procedure;

2. a report by an authorised auditor on the review of the statement referred to in the preceding point, in which the auditor gives his opinion without reservations;

3. a report on financial restructuring measures, containing an unqualified opinion of the management as referred to in point 4 of the third paragraph of Article 35 of this Act, and

4. in the case referred to in the first paragraph of Article 36 of this Act, also evidence of a call for a general meeting, pursuant to the third paragraph of Article 36 of this Act."

Article 4

The first paragraph of Article 237 shall be amended to read as follows:

"(1) The court shall suspend by resolution decision-making on the creditor's bankruptcy petition (hereinafter: resolution on the suspension of decision-making on the creditor's bankruptcy petition) for two months if: 1. the request to suspend decision-making on the creditor's bankruptcy petition has been lodged within the time limit referred to in the first paragraph of Article 236 of this Act, and

2. documents referred to in the second paragraph of Article 236 of this Act are attached that indicate the following:

- that the debtor is not delayed in paying his liabilities referred to in the first paragraph of Article 236 of this Act and will be capable of providing timely payment also in the two-month period of suspension of decision-making on the creditor's bankruptcy petition,
- that an authorised auditor has given an opinion without reservations in the report referred to in point 2 of the first paragraph of Article 236 of this Act,

- that the management of the debtor has received a report on financial restructuring measures, containing an unqualified opinion of the management as referred to in point 3 of the second paragraph and in point 4 of the third paragraph of Article 35 of this Act, and
- in a case under the first paragraph of Article 36 of this Act: that the management of the debtor has made public the convening of a general meeting pursuant to the third paragraph of Article 36 of this Act.

Article 5

A new Article 237a shall be added after Article 237 to read as follows:

Article 237a

(debtor's business in the period of suspension of decision-making on the creditor's bankruptcy petition)

- (1) Rules laid down in this Article shall apply if the court suspends decision-making on the creditor's bankruptcy petition under the first paragraph of Article 237 of this Act.
- (2) In the resolution on the suspension of decision-making on the creditor's bankruptcy petition the court shall appoint an administrator.
- (3) The administrator shall supervise the operation of the debtor to the scope required for examining the reasons for the withdrawal of suspension of decision-making on the creditor's bankruptcy petition referred to in the fifth paragraph of this Article.
- (4) The debtor shall submit to the administrator all information required for supervision under the third paragraph of this Article and enable him to inspect his books of account and documentation.
- (5) On the proposal of the administrator or the creditor who lodged a bankruptcy petition the court shall revoke the suspension of decision-making on the creditor's bankruptcy petition (hereinafter: revocation of suspension) and initiate a bankruptcy proceeding, if the debtor:
 1. violates the prohibitions referred to in the first or third paragraphs of Article 34 of this Act,
 2. fails to provide timely payment of wages to employees to the level of minimum wage or the payment of taxes and contributions to be calculated and paid by the payer together with the payment of wages to employees, unless the payment of these taxes and contributions has been suspended in accordance with the law governing tax procedure, or
 3. prevents the administrator from conducting the supervision referred to in the fourth paragraph of this Article.
- (6) The administrator shall lodge a proposal to revoke the suspension, on the first working day following the day on which he determines the reason referred to in the preceding paragraph.
- (7) The court shall serve the proposal to revoke the suspension on the day following the day of its receipt.

(8) The debtor may object to the existence of the reason referred to in the fifth paragraph of this Article within three (3) working days following the day of receipt of the proposal to revoke the suspension. He shall propose evidence to the objection and attach documentary evidence on which the objection is based.

(9) If within the time period referred to in the eighth paragraph of this Article the debtor fails to lodge an objection to the existence of a reason for revocation or fails to attach documentary evidence on which the objection is based, it shall apply and evidence to the contrary shall not be allowed that the reason exists, and the court shall revoke the suspension on the first working day following the expiry of this time period and initiate a bankruptcy proceeding.

(10) If within the time period referred to in the eighth paragraph of this Article the debtor lodges an objection in which he proposes evidence of the non-existence of the reason and attaches documentary evidence on which the objection is based, the court shall schedule the following working day a hearing on the objection for a day that must not be later than eight days following the day of receipt of the objection.

(11) Paragraphs (3) to (5) of Article 239 of this Act shall apply *mutatis mutandis* for the hearing referred to in the previous paragraph,.

(12) The court shall issue a resolution by which it shall decide on the objection within three working days following the end of the hearing referred to in the tenth paragraph of this Article.

(13) If the court initiates a compulsory settlement or bankruptcy proceeding against the debtor, the administrator appointed under the second paragraph of this Article shall proceed with his work as administrator in the compulsory settlement or bankruptcy proceeding.

(14) For the administrator's remuneration for exercising the supervision referred to in the second paragraph of this Article, the rules on compensation referred to in point 4 of the second paragraph of Article 103 of this Act shall apply *mutatis mutandis*.

(15) If the court in a case referred to in the fourth paragraph of Article 238 of this Act rejects the creditor's bankruptcy petition:

1. the court shall dismiss the administrator appointed under the second paragraph of this Article,

2. the administrator's remuneration and the reimbursement of costs to which he is entitled, shall be paid to the debit of the advance payment deposited by the creditor in respect of the bankruptcy proceeding , and

3. the court shall by resolution on rejection of the creditor's petition order the debtor to pay the creditor an amount equal to the amount of the advance payment spent in accordance with point 1 of this paragraph."

Transitional and final provisions Article 6

(1) The provisions of Article 1 of this Act shall begin to apply:

1. for procedures introduced after its entry into force, and

2. for proceedings introduced prior to its entry into force if the court has not yet decided on the commencement of the proceedings by the time of its entry into force.

(2) The provisions of Article 3 to 5 of this Act shall apply to proceedings in which a request for the suspension of decision-making on the creditor's bankruptcy petition has been lodged after its entry into force.

Article 7

This Act shall enter into force on the day following its publication in *Uradni list Republike Slovenije*.