

New Personal Bankruptcy Law – without minimum payment

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Introduction

One of the Bankruptcy Code's aims is to allow trustworthy debtors the right to be discharged from debts that remain unpaid after insolvency proceedings. However, in practice, low-income debtors cannot always avail of residual debt relief. Although they may be able to reduce their debt burden by agreeing a payment plan with the creditors' consent, if that is not achieved, discharge in the course of an income levy procedure is often futile.

As such, the government introduced an amendment to the personal bankruptcy process in its 2017/2018 Modern Insolvency Law Culture of Failure working programme. The Council of Ministers adopted the new Personal Bankruptcy Law on March 28 2017. It is expected to enter into force on July 1 2017 and will apply to all bankruptcy proceedings opened thereafter.

Existing law

According to existing legislation, a debtor will be discharged from outstanding debt in the course of the income levy procedure, provided that the creditors have received at least 10% of their claims once the statement of assignment expires (ie, after seven years). The court will also terminate the income levy procedure if the creditors have received 50% of their claims after at least three years. In that event, the debtor must also be discharged from residual debt.

Debtors who are unable to repay the minimum 10% during the seven-year income levy procedure will be discharged based only on equity. However, the equity principle does not apply to all circumstances in which a debtor may be eligible for discharge.

Individuals who have failed economically often have only a small chance of rapidly resuming professional activities. Due to significant debt, self-employed persons whose businesses have failed are strongly affected by the obstacles of existing personal bankruptcy laws. Only 33% of entrepreneurs who have failed professionally can pay the necessary 10% minimum on their own, while a further 23% can do so only by relying on funds provided by third parties.

Planned legislative amendment

The core element of the planned amendment is a change to Sections 199(2) and 213 of the Insolvency Code.

The new draft legislation seeks to reduce the seven-year income levy procedure to three years, in order to allow debtors to resume productive professional activities rapidly. Conversely, the draft

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allows discharge at the end of the assignment statement, regardless of whether a certain minimum has been paid. This will, among other things, facilitate the procedure, because an equity-based decision at the end of the income levy procedure will no longer be necessary.

However, the provisions governing the payment plan will remain broadly unchanged. The subsidiarity of the income levy procedure will still apply.

Aims

The planned amendment's primary aim is to allow individuals who have failed economically to resume productive professional activities rapidly. Facilitated debt relief is available not only for former entrepreneurs, but also private individuals. The aim is to avoid the economic and social exclusion of debtors, which will serve the interest of the entire economic landscape.

Impact

As a result of the proposed amendments to the personal bankruptcy regulations, the courts' workload will largely remain the same in the long run. They will have to handle an increasing number of debt settlement cases and income levy procedures after insolvency proceedings. However, the fact that no equity-based decision will be necessary at the end of an extended income levy procedure will facilitate the procedure and simplifications will be provided by changing the payment plan and non-filed claims. As a result of shortening the income levy procedure, there will be fewer judicial decisions – for example, those regarding the trustee's accounting. Further, the large number of discharges will reduce the number of execution proceedings.

Criticism

Creditors' protection associations in particular have criticised the proposed amendment. They have argued that three years is not enough time for a reasonable debt settlement process and that discharged individuals would be able to earn income only as of the third or fourth year, among other things.

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