

Filing for insolvency after company ceases trading (1/19/18)

There may be circumstances in which the State Revenue Service (SRS) decides to terminate a company's business and dismiss its board, but the company is not immediately wound up or stricken off the commercial register. This article explores whether the company's creditors are allowed to file an insolvency petition in such circumstances.

Statutory powers of the SRS

The SRS may decide to terminate a company's business in the following cases:

1. The company fails to submit its annual report within one month after receiving an administrative penalty, and six or more months have passed since the company committed the offence;
2. The company fails to submit statutory tax returns for a six-month period within one month after receiving an administrative penalty; or
3. The company fails to put the breach right within three months after its business was suspended by decision of the SRS (Section 314.1(2) of the Commercial Code).

The SRS's decision to terminate the company's business will come into force one month after being notified to the company, unless it is appealed or challenged (Section 314.1(3) of the Commercial Code).

Business suspension procedures

After the SRS's decision takes effect an entry will be made on the commercial register maintained by the Enterprise Registry to confirm suspension of the company's business, to be followed by the company's liquidation unless the law provides otherwise (Section 317(1) of the Commercial Code). The Enterprise Registry will decide to deregister the company without liquidation if –

1. none of the persons interested in the company's liquidation files a petition with the courts or with the Enterprise Registry for appointing a liquidator within one month after the entry was made on the commercial register;
2. the company's insolvency proceedings have not been announced (Section 317(2) of the Commercial Code).

This provision of law implies that the company's insolvency proceedings might be announced after its business was suspended and before it is wound up or deregistered. Also, the provisions of law do not restrict the creditors' right to file an insolvency petition with the courts after the company's business has been suspended, because suspension does not cancel the company's obligations towards its creditors and the SRS might still decide to restore its business (Section 333.1 of the Commercial Code).

Thus, a creditor can file an insolvency petition with the courts if the debtor meets one of the characteristics of corporate insolvency listed by section 57 of the Insolvency Act even if its business has been suspended. However, the Enterprise Registry is only bound by an entry confirming the announcement of insolvency proceedings, which will stop the company's deregistration, and so the company might be deregistered regardless of the insolvency petition being filed by the creditor, unless the requirements of section 317(2) of the Commercial Code are met.