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On the Development of Bankruptcy Law in Estonia

Historical Background

The Republic of Estonia did not have a bankruptcy act of its own before 1940. As the economy was based on market economy principles, bankruptcies were possible and bankruptcy proceedings took place. Bankruptcy proceedings were carried out on the basis of the Tsarist Russian laws still valid in Estonia in that period, such as the Commercial Procedure Act, Civil Procedure Act and the Russian Civil Act. A curious phenomenon was the Insolvency (Bankruptcy) Act drawn up by Aleksander Buldas and published in 1934, which despite its title was not a law, but a systematised presentation of the bankruptcy proceedings provisions of the above Russian acts.¹ Preparation of an Estonian bankruptcy act was started, but it was not passed before Estonia's independence was lost in 1940.

In the controlled economy conditions of the Soviet period, a bankruptcy act was not needed, as bankruptcy proceedings were not possible. In 1991 when Estonia regained independence and market economy became the basis for reorganisation of economy and proprietary relations, the need arose again for a bankruptcy act. The preparation of a bankruptcy act was quite a difficult task, as there was no court practice or experience concerning the country's own bankruptcy cases since 1940. Neither had anyone in Estonia been engaged in bankruptcy law since that time. A draft act was, however, successfully prepared and Estonia's first Bankruptcy Act was passed by the Riigikogu² on 10 June 1992 and entered into force on 1 September 1992 (RT,³ 1992, 31, 403).⁴ A new target was set at once to improve the Bankruptcy Act after a few years of practice and experience.⁵

This target was met — on 18 December 1996 the Riigikogu approved major amendments to the Bankruptcy Act, which entered into force on 1 February 1997 (RT,

1997, 5/6, 32).⁶ We can thus conditionally speak about two bankruptcy acts in Estonia⁷ — the 1992 Bankruptcy Act and the 1996 Bankruptcy Act (consolidated text: RT, 1997, 18, 302).⁸ Officially and essentially there is one Act — the amendments and additions do not alter the basic provisions laid down in 1992 — the 1996 Act is an improved and elaborated version of the 1992 Act.

It can be said that the 1992 Bankruptcy Act has performed well and the 1996 amendments should make the application of the Act even more effective. It was stated in the conclusion of the expert analysis of the 1992 Act carried out in 1994 by the American Bar Association in the framework of the Central and East European Law Initiative (CEELI): "In conclusion, it should be once again emphasised that this draft is an excellent starting point. Indeed, even without further amendment, this Estonian Bankruptcy Code could be successful".⁹

Source Principles of Bankruptcy Act

In 1991-1992, when the Bankruptcy Act was prepared, a large amount of material on the bankruptcy law of other countries was studied, because, as mentioned above, Estonia had no materials or experience of its own. The acts of Sweden, Finland, Germany, the USA and France providing for bankruptcy proceedings were especially analysed.

At the beginning of the 1990s, large-scale privatisation began in Estonia, many new enterprises emerged based on private capital, banking and credit institutions were in the early stages of development, the land reform was launched, land was not in commerce yet, and it was not possible to establish mortgages as loan security. The situation with creditors was uncertain and unstable. As no

correct and functioning system of securities had formed yet, the payment of debts depended on the debtor's ability to pay. The activity of debtors was also unstable in the early phase of reforms, there were many new entrepreneurs who had no experience in management or financing in market economy conditions. All this created the need to focus on the protection of the creditors' interests in the bankruptcy of the debtor. In choosing a model for the act, the examples of the USA and France were discarded, as the time was not ripe in Estonia to protect the interests of the debtor to the extent that this is done in these countries.¹⁰ The main example was the Swedish Insolvency Act,¹¹ which was one of the newest acts in Europe at the time and provided for the protection of creditors' rather than debtors' interests.

By 1996, the conclusion was reached that the debtor's interests should be more protected than provided by the 1992 Act. This conclusion did not imply changes in the basic model of the Act or conversion to the US and French model. The general development in other countries is toward a greater protection of the debtor, as provided for instance by the latest example in Europe, the German Insolvency Act (*Insolvenzgesetz*) which entered into force on 1 January 1999 and has been an important example in improving the Estonian Bankruptcy Act.

This article focuses on the balance between the protection of the debtor's and creditor's rights and interests in the Estonian Bankruptcy Act (hereinafter: "BA"), as well as the debtor's liability according to the 1992 bankruptcy Act and the 1996 additions to it. The issues where the Estonian regulation differs from that of other countries will also be discussed.

Commencement of Bankruptcy Proceeding

The commencement of bankruptcy proceeding can be petitioned by the debtor or the creditor. Any natural or legal person can be a debtor and a creditor. The state and local government cannot be debtors.

The Act does not provide the bases for a debtor's bankruptcy petition, therefore a debtor may always file a petition for its own bankruptcy, but must explain the cause of insolvency (BA § 8). As a rule, the court does declare bankruptcy on the basis of a debtor's petition, but might not do it if it finds the petition to be unjustified. In cases prescribed by law the debtor is obliged to file a bankruptcy petition, for example upon the death of a debtor, the successor is obliged to file a bankruptcy petition if the successor is the state or local government and the estate is insufficient to pay all the debts of the bequeathed. (BA § 10(2)). According to § 373 of the Commercial Code (RT, 1998, 59, 941),¹² liquidators have to submit a bankruptcy petition if it becomes evident in the course of liquidation of a public limited company that the assets of the company being liq-

uidated are insufficient to satisfy all claims of creditors. The debtor's obligation to file a bankruptcy petition arises from the equal treatment of creditors principle in conditions where the debtor does not have enough assets to fully satisfy all claims of creditors.

As concerns the filing of a debtor's bankruptcy petition, the Bankruptcy Act prescribes for the representation of a debtor which is a legal person requirements which are different to the general rules established for representation of legal persons. When compared to the 1992 Act, the requirements are stricter in the 1996 Act. A bankruptcy petition may be filed by all members of the management board of a legal person collectively, although as a general rule, they have the right to individually represent the legal person. The consideration here concerns better protection of the debtor, to prevent petitions which are unjustified and conflicting with the interests of the debtor.

A debtor is also protected by the fact that a creditor may file a bankruptcy petition only in circumstances prescribed in detail by law (BA § 9). No other person besides the debtor and creditor may file a bankruptcy petition, and the bankruptcy of a debtor cannot be declared on the court's own initiative.

According to the 1992 Act, a bankruptcy proceeding commenced automatically if the bankruptcy petition complied with requirements and was accepted by court. Such procedure was established in 1992 in order to save time, as the bankruptcy proceeding as a whole is rather time-consuming. Account was also taken of the fact that according to law, a bankruptcy petition was to be reviewed quickly — a debtor's petition immediately, or with good reason, within 20 days, and a creditor's petition within 20 days, or with good reason, within two months.

Such procedure for commencement of bankruptcy proceedings did not, however, prove effective in practice, and in many cases, became unjust with respect to the debtor. Bankruptcy proceedings initiated by the debtor did not present much problems, but were rare in Estonian court practice - in most cases, creditors file the bankruptcy petition. As the 1992 Bankruptcy Act did not specify the minimum sum of a claim, and the "clarity" of the claim was to be determined by the court only upon making the bankruptcy order, petitions based on arguable claims were often filed and the sums of claims were small. Due to the great work load (in reform conditions, the work load of courts has gradually increased over the years), courts were not able to comply with the general deadline of 20 days and the exception, 2 months, became the rule, which was also not always complied with. It became possible that the court made a decision only several months after commencement of the proceeding. If the court dismissed a bankruptcy petition either because the claim was not clear or, despite the clarity and justification of the claim, the debtor was not insolvent and terminated the bankruptcy proceeding, the

debtor's interests were still substantially damaged. The fact that a bankruptcy proceeding is taking place with regard to the debtor, even though bankruptcy is not declared, always has a negative effect on the debtor's economic situation and reputation. To better protect the debtor, the rules regarding the commencement of bankruptcy proceedings were substantially amended in 1996. The bankruptcy proceeding no longer automatically starts with acceptance by court of the petition, but the court decides on the commencement of a proceeding within 10 days after a petition is filed.

Section 11 of the Bankruptcy Act provides the circumstances due to which the court does not commence a bankruptcy proceeding — the bankruptcy petition is based on a claim which is not clear, the claim is entirely secured by a pledge, the sum of claim is not large enough (the Act specifies the minimum claim sums, which vary depending on whether the debtor is a commercial undertaking, other legal person, or a natural person). A claim is not deemed to be clear if it has been contested in court and there is no decision in force yet, or if the debtor objects to the claim on a reasoned basis and the court finds that the claim must be proved in a proceeding of action.

If none of the above bases exist which could bar the commencement of bankruptcy proceeding, the court will commence a bankruptcy proceeding and appoint an interim trustee whose main duty is to determine the economic situation of the debtor. In deciding on the declaration of bankruptcy, the financial situation — whether the debtor is permanently unable to pay the debt or not — is also important besides the assessment of claim.

Continuation of Activities of Debtor

According to the 1992 Act, the first general meeting of creditors, which is held not earlier than 15 days and not later than one month after the debtor is declared bankrupt, decides on continuation of the activities of the debtor if the debtor is a legal person. If the general meeting of creditors decided to terminate the legal person, such decision could not practically be contested — the court was not competent to assess such a decision, only the procedure for making such a decision could be contested if any violations were found. The establishment of such procedure was mainly with regard to the interests of creditors — only they may decide which is more beneficial for them, to continue or terminate activities. If the creditors decided to continue the creditor's activities, such continuation was limited in time. The 1992 Act prescribed a bankruptcy proceeding to be terminated after the court had approved the distribution proposal. The time for submission and approval of the distribution proposal proceeded from law: claims to the trustee had to be submitted within two weeks after publication of the bankruptcy notice, not later than two months

after that the claims were to be defended at the general meeting of shareholders; where needed, several meetings were held for defending claims. Within ten days after the last of such meetings, the trustee had to submit a distribution proposal to the court for approval, objections regarding which were to be submitted within one month. After expiration of the deadline for submitting objections, the court approved the distribution proposal or granted to the trustee an additional ten days for adding to the distribution proposal and then approved it. As said, the bankruptcy proceeding was terminated with approval of the distribution proposal and according to BA § 57(4), the debtor if it was a legal person had to be terminated by that time. If the assets were not sold yet, the sale could continue after termination of the bankruptcy proceeding and the proceeds of sale were distributed according to the approved distribution proposal. In 1992, the basic idea was that the course of the lengthy bankruptcy proceeding should be regulated as strictly as possible. It is justified as regards the submission and defending of claims, while it is not practical to relate the time of defending claims and approving the distribution proposal to termination of the bankruptcy proceeding — this eliminates the possibility to continue the activities of a debtor, if it is a legal person, even if it would be reasonable and beneficial for the creditors.

Several important amendments were made here in 1996. Firstly, the procedure for deciding on the termination of a debtor if it is a legal person was amended and the protection of the debtor was significantly improved. The termination of the debtor is not only the problem of creditors, it is first of all an important social problem concerning the debtor's employees. According to the amendments made in 1996, more attention is paid to rehabilitation of the debtor. According to BA § 57, the trustee submits a rehabilitation plan to the first meeting of creditors for approval, or if he finds rehabilitation unfeasible, he submits a proposal to terminate the legal person. The general meeting may either approve the rehabilitation plan presented by the trustee or propose that the trustee present a new rehabilitation plan or replace the proposal to terminate the legal person with a rehabilitation plan.

If the general meeting decides to terminate the debtor, the court has to approve such a decision. If, regardless of the rehabilitation plan presented by the trustee, the general meeting of creditors decides to terminate the legal person, the court has the right to not approve the decision on termination of the legal person if the court finds that rehabilitation is possible. Thus, additional competence is granted for the court to protect the debtor.

If rehabilitation is undertaken but fails regardless of the rehabilitation plan, the general meeting may decide that the debtor be terminated. The court has to approve this decision and has the right to not approve the decision if the court finds that rehabilitation is possible.

The time for which the activity of the debtor is continued is not specified. The bankruptcy proceeding is no longer terminated with approval of the distribution proposal and may continue after that. The termination of bankruptcy proceedings is thus no longer determined by the time schedule for the submission and defence of claims, but depends on the progress of debtor rehabilitation and sale of assets. It is possible that claims are met through successful rehabilitation, the bankruptcy proceeding is terminated and the debtor continues activities (BA § 57²(4)). In most cases however, the assets of the debtor are sold either after or during rehabilitation, and its activities and then the bankruptcy proceeding are terminated. Only in exceptional cases, on the approval of the bankruptcy committee, may the sale of assets continue after termination of the bankruptcy proceeding. The attention that is paid to the rehabilitation of a debtor presumably serves the interests of creditors as well, since the quick termination of the debtor and quick sale of its assets might not always have the best result in satisfying the creditors' claims.

Liability of Debtor

Together with passing the Bankruptcy Act in 1992, § 148² was added to the Penal Code, specifying intentional insolvency as a bankruptcy offence. Subsection 60(2) of the Bankruptcy Act prescribed the trustee's obligation to notify the prosecutor of any information that the trustee has concerning a bankruptcy offence, a criminal offence or other offences relating to the business of the debtor. This regulation was, however, insufficient, as neither the trustee nor the court were obliged to clarify the reasons for the debtor's insolvency or the persons responsible for it. The prohibition on business was also specified with too much restriction — only a debtor who was a natural person could not, after the declaration of his bankruptcy until the end of the bankruptcy proceeding, be a trader without the permission of the court (BA § 35).

The Bankruptcy Act was significantly improved in 1996 concerning the debtor's liability — the objective was to clarify the reasons for the debtor's insolvency and the persons responsible for it, and the application of liability to them. The reason for insolvency may be criminal offence, a grave error in management, or another reason. In the first two cases, the question arises of the liability of specific persons, the latter case does not provide for the holding liable of anyone.

The reasons for bankruptcy are clarified in all stages of the bankruptcy proceeding. If the respective circumstances have become evident before bankruptcy is announced, the court indicates in the bankruptcy order that the reason for insolvency was grave error in management, or notify the prosecutor or police of the offence to decide on the commencement of a criminal action. If the court has set out in its judgement or order, or it becomes evident in a

bankruptcy proceeding that the cause of insolvency of the debtor is a grave error in management of the debtor, the trustee is required to file a claim for compensation for damage against the person who is at fault for the grave error in management. A list of grave errors in management is provided in BA § 60(3). These are, first of all, use of the property of the legal person in one's own interests and thus damaging the legal person, as well as acts such as taking or granting a large loan if it is obvious that it is impossible to pay or receive repayment of the loan, procurement of capital on extremely unfavourable terms, an incorrect indication of the value of property on the balance sheet of the debtor, etc.

In the final report of the trustee presented to the court, with the approval of which the bankruptcy proceeding is terminated, the court has to indicate the reason for insolvency — whether an act with criminal elements, a grave error in management, or other fact. If the reason is an act with criminal elements or grave error in management, and the act with criminal elements has not been notified or a claim for compensation for damage is not filed against the person who is at fault for the grave error in management, the court itself will notify of the offence and the trustee is obliged to file a claim for compensation for damage. This should guarantee that the reason for insolvency is always clarified and registered by court and liability applied where applicable.

The prohibition on business specified in BA § 35 was significantly amended in 1996 toward extension of the prohibition. Firstly, the scope of the prohibition itself has been extended - now it prohibits a debtor to be not only a trader, but a member of a management board, liquidator or procurator of a legal person, or a trustee in bankruptcy. The court may now apply the prohibition on business not only to a natural person, but to a member of management board or supervisory board, liquidator, major shareholder, procurator, person responsible for accounting, partner of a general partnership or general partner of a limited partnership. The prohibition on business may be applied from declaration of bankruptcy to the termination of the bankruptcy proceeding, as well as for three years after the bankruptcy proceeding. The prohibition on business applied during the bankruptcy proceeding is different with respect to legal and natural persons. The prohibition to a natural person is valid pursuant to law and the court may give its permission not to apply the prohibition; in the case of a legal person, the court has to determine in each separate case whether to apply the prohibition and with regard to which one of the above responsible persons the prohibition is applied.

The prohibition on business applied after termination of the bankruptcy proceeding is the same for legal and natural persons. The application of the prohibition for three years after termination of the bankruptcy proceeding is more limited when compared to application of the prohibi-

tion during the proceeding. The prohibition can be applied after the bankruptcy proceeding only if the debtor caused solvency by criminal offence, or has destroyed, hidden or squandered its property, made grave errors in management or performed other acts as a result of which the debtor has become insolvent. The application of prohibition on business is decided by court, but only on the demand of the trustee, the basis for which is the decision of the bankruptcy committee.

Claims and their Satisfaction

Upon the declaration of bankruptcy, the due date for payment of all debts of the debtor is deemed to have arrived; the calculation of interests and fines for delay is terminated. Thus, all creditors are in an equal position. Claims have to be submitted to the trustee within two months after declaration of bankruptcy. Claims are defended at the general meeting of creditors. A claim is deemed to be defended if neither the trustee nor any of the creditors objects to it. If a claim proves to be not defended, the creditor may file the claim in court within three months, whereas the defendant is the person who objected to the acceptance of the claim.

The main issue in the bankruptcy proceeding is the satisfaction of claims. One of the basic principles of bankruptcy proceeding is the principle of equal treatment of creditors, or to be more exact, the principle of proportional treatment, according to which, if the full satisfaction of all creditors' claims is not possible, all creditors should have the same percentile part of their claims satisfied. This principle, so accurately describing the essence of bankruptcy, has not been entirely followed in any country, because, due to various reasons and considerations, certain claims are granted preference. It may be said that the general tendency is toward reduction of preferred claims or their covering from sources other than the bankruptcy estate. A good example of such development is Finland, but it is probably not possible to entirely discard preferred claims. Estonia too has followed the principle that preferred claims should be considered exceptional and they should be as few as possible.

According to BA § 86(1) 1)-4), preferred claims are: **(1)** claims secured by a pledge; **(2)** salary, compensation for termination of an employment contract, holiday pay, compensation for mandatory health insurance, compensation for damage caused by an injury or any other damage to a person's health and compensation for damage arising from the loss of a provider; **(3)** tax arrears; **(4)** claims secured by a commercial pledge.

A claim secured by a pledge is a preferred claim with respect to the money received from the sale of the object of pledge to the extent of the claim secured by the pledge. The acceptance of a claim secured by a pledge as a preferred claim is justified. The fact that pledges secured by a com-

mercial pledge are in the fourth place among preferred pledges, arises out of the "floating" essence of commercial pledges — the object of a commercial pledge is all the movable assets of the company at the time of collection.¹³ There is a danger that if a claim secured by a commercial pledge is satisfied as a preferred claim with a first ranking, other claims cannot be satisfied at all. Up to 1 January 2003, claims secured by commercial pledge are with a first ranking together with claims secured by other types of pledges. This is due to the practical reason that until the establishment of mortgages was limited due to the slow pace of land reform, commercial pledges were established in many cases, and until entering into force of the amendments in 1996, they were with a first ranking. The legal expectancy principle cannot be violated regarding those pledgees to whose benefit a commercial pledge was established before the amendments in 1996. The essence of the principle is that the situation of a person cannot be changed for the worse when compared to the situation which the person had grounds to presume, pursuant to law, at the time of establishment of the commercial pledge. By 1 January 2003 however, the deadline for submitting claims secured by a commercial pledge established before 18 December 1996 (the date of passing amendments to the Bankruptcy Act by the Riigikogu) will have passed in most cases. Persons who have not become land owners due to the pace of land reform and who have not had a chance to establish a mortgage, had to be reserved a possibility to receive a security in the form of commercial pledge on a basis equal with other types of pledges, including pledges on buildings on unregistered lands as movable property. Persons establishing a commercial pledge after 18 December 1996 may consider the fact that a commercial pledge is with a first ranking in the satisfaction of claims in a bankruptcy proceeding, only until 1 January 2003, and the principle of legal expectancy has therefore not been violated for them. Mortgage will presumably begin to dominate over commercial pledge in the next few years, whereas a mortgage covers, as essential parts and accessories of the land plot which is the immovable property, also to a considerable extent the property which is the object of commercial pledge.

The definition of the claims of employees as preferred claims with a second ranking is in accordance with the requirements of the 1992 ILO Convention¹⁴ and is also justified from the aspect of social considerations. Section 58 of the Bankruptcy Act lays down the obligation of the state to compensate employees for salary, holiday pay and compensation for mandatory health insurance which were not received before the declaration of bankruptcy, as well as compensation which was not received upon termination of their employment. An employee may be paid a total of up to two times the employee's average monthly salary but not more than three times the national average

monthly salary.

When compared to the 1992 Act, two times the average monthly salary has increased to three times the average monthly salary, and it is additionally provided that such payments are made from the Government guarantee fund. Those rules are also in compliance with the 1992 ILO Convention and the 1992 Recommendation.¹⁵ When the state has made payments to employers from the government guarantee fund, the state acquires, to a respective extent, the preferred claim and thus participates in the bankruptcy proceeding. In the part of such claim not covered by the state, the employee himself is a creditor with the preferred claim with a second ranking.

The definition of tax arrears as a preferred claim with a third ranking is problematic, as it is a political-economic rather than legal decision. The legislator so decided in 1992 and no amendments were made to the provision in 1996. In transfer economy conditions, where reforms are under way and the economy does not yet function normally, the wish to use all possibilities to contribute to the state budget is understandable, especially when this is done by tax collection. Therefore the definition of tax arrears as a preferred claim with a third ranking as a public interest requirement is now justified. In the long term, I believe that tax arrears should be regarded as an ordinary claim. In conditions of a bankruptcy proceeding, the state should not be preferred to other creditors. The state's claim is based on public interest and has a more general meaning, but the situation where the preferred satisfaction of the state's claims leaves the claims of other creditors unsatisfied or much less satisfied should be avoided. It is often the case in practice, as in most cases, a debtor if it is a legal person, has tax arrears among its claims, and after the full or partial satisfaction of this claim, there is no money left of the bankruptcy estate to satisfy the claims of those creditors whose claims are not preferred.

Trustee in Bankruptcy

When commencing a bankruptcy proceeding, the court appoints an interim trustee. In the bankruptcy order, the court appoints a trustee later approved by the general meeting of creditors — the trustee must have the confidence of both the court and the creditors. The Estonian Bankruptcy Act contains two important differences regarding the trustee when compared to the legislation of other countries: **(1)** the requirements established for a trustee and **(2)** the fact that the trustee is also a legal representative of the debtor.

There was a curious situation in 1992 — after the Bankruptcy Act was passed, there were no persons with the experience and knowledge of a trustee in bankruptcy. Therefore a requirement was established that a person who holds a trustee's certificate issued by the trustee examination and evaluation board formed by the Government of

the Republic, may act as a trustee. The interest in a trustee's qualification was great, more than 500 trustee's certificates were issued in 1992-1996. A number of those persons have fully dedicated themselves to the job of a trustee — they are the so-called professional trustees who are engaged in most major bankruptcy proceedings. The Chamber of Estonian Bankruptcy Governors¹⁶ was founded at the end of 1992, membership in which is voluntary and the main objective of which is to protect the interests and develop the professional skills of trustees. Several elaborations were made in the requirements established for trustees in 1996. According to BA § 29(1), an advocate may now be a trustee without having a trustee's certificate. The reasoning behind is that the status of an advocate presumes the skills of a trustee. In Estonia, when compared to other countries, advocates are seldom trustees, mainly owing to the existence of professional trustees. The requirement for evaluation and a trustee's certificate applies to other persons who are not advocates, as does the additional evaluation requirement — trustees are evaluated after every three years by a state evaluation board, an unevaluated person may not be appointed trustee by court. So, to become a trustee, first an examination has to be passed and a trustee's certificate acquired, and after that evaluation has to be passed after every three years, in the course of which both theoretical knowledge and practical experience are evaluated. If justified complaints have been received by the Chamber of Estonian Bankruptcy Governors or the evaluation board about a trustee's activity by debtors or creditors, that trustee may not be evaluated. The procedure for examination and evaluation of trustees is established by the Government of the Republic.¹⁷

I find that the procedure for preparation and evaluation of trustees in Estonia has justified itself and the specialising of professional trustees has contributed to the more professional conduct of bankruptcy proceedings. This should also help to protect the interests of both debtors and creditors.

Notes:

¹ Maksuvõimetusajade (konkursi-) seadus. (Insolvency (Competition) Act.) Edited by Aleksander Buldas. Author's publication, 1934.

² Riigikogu = the parliament of Estonia.

³ RT = Riigi Teataja = the State Gazette.

⁴ Eesti Vabariigi pankrotiseadus. (Republic of Estonia Bankruptcy Act.) - RT, 1992, 31, 403.

⁵ Juridica, 1994, No. 1, p. 1.

⁶ Eesti Vabariigi pankrotiseaduse muutmise seadus. (Republic of Estonia Bankruptcy Act Amendment Act) — RT, 1997, 5/6, 32.

⁷ This terminology is used in this article to distinguish between the original 1992 Bankruptcy Act and the 1996 amended version.

⁸ Pankrotiseadus (terviktekst). (Bankruptcy Act (consolidated text).) — RT, 1997, 18, 302.

⁹ Analysis of the Draft Bankruptcy Act of the Republic of Estonia. — The American Bar Association Central and East European Law Initiative (CEELI), 1994.

¹⁰ We shall leave aside the question about the basic connection between the interests of the debtor and the creditor — to which extent the protection of the debtor's interests is justified to keep creditors sufficiently protected. The choice made in Estonia in 1992 was chiefly based on pragmatic considerations.

¹¹ Konkurslag. (Insolvency Act.) — SFS, 1987: 672.

¹² Äriseadustik. (Commercial Code.) — RT, 1998, 59, 941.

¹³ Kommertspandi seadus. (Commercial Pledges Act.) — RT I, 1996, 45, 848.

¹⁴ Convention concerning the protection of workers' claims in the event of the insolvency of their employer: Convention 173 of the International Labour Organisation, 1992.

¹⁵ Recommendation concerning the protection of workers' claims in the event of the insolvency of their employer: Recommendation 180 of the International Labour Organisation, 1992.

¹⁶ Eesti Pankrotihaldurite Koja põhikiri (Articles of Association of the Chamber of Estonian Bankruptcy Governors.) — *Juridica*, 1994, No. 1, pp. 28-29.

¹⁷ Pankrotihalduri eksami tegemise ja pankrotihalduri atesteerimise kord (Procedure for examination and evaluation of trustees in bankruptcy.) — RT, 1997, 73, 1210.