

What happens to the unforfeited assets of a deregistered business when suspended insolvency proceedings are terminated?

The developments after the opening of insolvency proceedings may lead to a situation in which there are insolvency assets owned by the insolvent business that have not been cashed in and therefore they have not been distributed among the creditors who have lodged their claims in the proceedings but the insolvency proceedings are terminated and the business is deregistered from the Companies Register at the Registry Agency.

Such cases occur when the assets are insufficient to cover the costs incurred in the insolvency proceedings as a result of the passive behaviour on part of the creditors who have lodged their claims in the proceedings. Where he or she ascertains that the available resources are insufficient to cover the costs, the insolvency administrator will notify the court and then the court will invite the creditors to make payments for the purposes of covering the costs incurred until that time and also the costs anticipated in the next few months.

Although there exists a preference for a creditor who has made a payment for covering costs in the form of preferential satisfaction for the amount paid from the proceeds of the sale of the insolvent business, creditors rarely use this opportunity, especially when creditors with larger recognized claims are passive in the course of the proceedings and do not make payments to cover the costs and to continue the proceedings.

A failure of the creditors to make a payment for the purpose of covering the costs incurred in the proceedings within the time limits prescribed by the court leads to a ruling on the suspension of the insolvency proceedings. If none of the creditors or the debtor requests continuation of the suspended proceedings within a year after the suspension ruling was entered into the Companies Register, the court will terminate the insolvency proceedings and deregister the business. It often happens in such cases in practice that some unforfeited assets of the deregistered business remain.

Since there is no procedure laid down for the assets remaining after the deregistration of the business and the case law on this matter is inconsistent, the Supreme Court of Cassation issued its Interpretative Judgment No 1 of 3 December 2018 in Interpretative Case No 1 of 2017 in which the court upheld that the remaining assets of a sole proprietor that had been declared insolvent and deregistered would remain his or her own property, whereas the remaining assets of a legal entity would become property of the state or the relevant

What happens to the unforfeited assets of a deregistered business when suspended insolvency proceedings are terminated?

municipality. The Supreme Court of Cassation drew an analogy to Article 11 of the Inheritance Act stating that if the heirs of all orders relinquish inheritance or the right to inherit is lost or there are no heirs, the inheritance assets become the property of the state or the relevant municipality.

Notwithstanding this interpretative judgment, the procedure needs to be regulated in legislation. In case there exist unforfeited assets, the court has no statutory obligation, when ruling on the termination of the insolvency proceedings, to rule on the terms and conditions for the distribution of the remaining assets of the debtor. Furthermore, there is lack of clarity as to how the state or municipalities are notified of the assets and how they take over. In some cases, the assets are located outside the court district of the court that heard the insolvency proceedings and, for that matter, outside the principal office of business of the deregistered legal entity.

There is no explicit procedure for outstanding public debts of the deregistered business to be written off or cancelled by the State. In some cases, taxes are charged on the movable or immovable property of a deregistered business. The time limits for the VAT deregistration of the business are unclear, especially when the deregistered owner is passive in the course of the insolvency proceedings or after their termination. It is unclear who would take the initiative for the VAT deregistration.

The legislation should be amended so that to lay down exhaustive provisions on the procedure to be applied with regard to the unforfeited assets of a deregistered legal entity and the related outstanding issues.