

Tax & Legal Weekly Alert

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Law no. 151/2015 on insolvency procedures applicable to individuals may enter into force on 31 October 2016

The Chamber of Deputies has approved the draft law under which Law no.151/2015 on insolvency procedures applicable to individuals will enter into force on 31 October 2016, following the President's promulgation of the draft law. The deadline has been pushed forward from the previously announced date of 31 December 2016, although there is currently no legal and administrative framework for implementing such law.

A dismissal decision may be revoked until it is communicated to the employee, the High Court of Cassation and Justice ruled

Decision no. 18/2016 of the High Court of Cassation and Justice (the Panel for ruling on legal matters) ruled that an employer may revoke a decision to terminate an individual employment agreement only by the date the employee is notified of this decision.



The entry into force of Law no. 151/2015 on insolvency procedures applicable to individuals is brought forward to 31 October 2016

Although the draft law approved by the Chamber of Deputies has pushed forward the date of entry into force to October 31, 2016 from the previously announced date, 31 December 2016, there is currently no legal and administrative framework, imperative for implementing such law.

Status of implementation measures

Currently, no implementation measure is finalized, as follows:

- **Lack of rules for the implementation of the Law**, as required by art.92 (2). The National Authority for Consumer Protection has completed drafting the Government Decision approving the methodological norms for applying the Law, which was subject of a public consultation in March this year. Currently, the implementing rules are not in force, pending Government approval.
- **The central and regional insolvency commissions for monitoring and coordinating insolvency procedures are not yet established.** Regarding the establishment of the insolvency commissions, according to Government Decision no. 11/2016, published in the Official Gazette no. 50 of 22 January 2016, the central insolvency commission will be set up within 30 days as of the Government Decision's publication in the Official Gazette. However, to date no commissions have been set up.
- **The List of procedure administrators and liquidators for personal insolvency procedures has not been published.** In this regard, I.N.P.A. started in June 2015 as an initiative to develop, in collaboration with specialists and other professional bodies involved in the procedure, a program of professional training in the field of insolvency procedures applicable to individuals and for the organization of training courses in the same domain, as well as in other areas relevant to the administration of insolvency proceedings.

Owing to the lack of methodological norms for establishing rules and procedures applicable to personal insolvency proceedings, as well as the delay in the proposed implementation steps, the procedure is unenforceable and is expected to face many problems in practice once it becomes effective.

A dismissal decision may be revoked until it is communicated to the employee, the High Court of Cassation and Justice ruled

The referral to the High Court of Cassation and Justice concerned the following matters of law, namely: (i) the compatibility of the provisions of Articles 1324-1326 of the Civil Code relating to unilateral acts with the specific employment relationships; (ii) in case of an affirmative answer to the question at (i), determining the moment until the dismissal decision can be revoked, (iii) determining the conditions for the validity of the decision to revoke the dismissal decision.

The Decision no. 18/2016 of the High Court of Cassation and Justice was based on the following arguments:

- The rules of civil law regarding the effects of unilateral legal acts are applicable to the dismissal decision (qualified as a unilateral act of labor law) since the Labor Code did not provide a derogation from the general law of such acts, and therefore the provisions of the Civil Code will be applied in addition;
- The principle of irrevocability governing the effects of civil legal acts shall apply in addition to the provisions of the Labor Code, thus becoming incident also regarding to the decision of dismissal with effect from the date of its communication to the employee, Article 278 of the Labor Code making reference to the civil law provisions in the matter of unilateral legal acts;
- The employer will only be able to revoke the dismissal decision until its communication to the employee concerned;
- In labor law there is no special rule permitting the revocability of the dismissal decision from the date of issuance.

Consequences of Decision no. 18/2016 of the High Court of Cassation and Justice

Decision no. 18/2016 ended the existing controversy in the court practice concerning the employer's possibility to revoke the decision to dismiss, establishing the compatibility of the Civil Code provisions in matter of unilateral legal acts with the specific employment relationships.

Therefore, if employers, following the issue of the dismissal decision, intend to maintain the employment relationship with the employee concerned, we recommend the following, depending on the moment the decision to maintain the employment relationship is adopted:

- To revoke the dismissal decision through a decision issued in written, if the decision to continue the employment relationship occurred before the communication of the dismissal decision. Since the decision to revoke the dismissal decision is also a unilateral act, it is necessary to be, at its turn, communicated to the employee in question;
- To conclude a new individual employment agreement with the employee in question, if the decision to continue the employment relationship occurred after the communication of the dismissal decision. It is important to note that in this situation, it is compulsory to fulfil all formalities necessary for concluding a new individual employment agreement.

The decision of the High Court of Cassation and Justice is final and binding on all national courts from its publication in the Official Gazette, respectively September 30th 2016.

For further questions regarding the aspects mentioned in this alert,
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