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Latvia: Rescue procedures in insolvency

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Latvia

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 10 December, 2021

Native name:

Maksātnespējas likums

English name:

Insolvency law

Article

Whole law

Description

The purpose of the insolvency law is to support a debtor in financial difficulties to fulfil the obligations and, where possible, to renew solvency. The law describes the insolvency process and the phases of the legal protection procedures. Three procedures are envisaged by the insolvency law if an enterprise or an individual is in financial difficulty:

1. legal protection procedures (LPP) and extrajudicial legal protection procedures - aimed at renewing the ability of a debtor to settle their debt obligations if a debtor has come into financial difficulties or expects to do so;
2. insolvency procedures of a legal person - the claims of creditors are settled from the property of a debtor in order to support the debtor to fulfil the obligations;
3. insolvency procedures of a natural person.

The law suggests several compliance methods to use during LPP; for example, postponement of payment settlement, the transfer of the ownership of property rights (alienation), increase of share capital, replacing claims with shares, and reorganisation.

LPP start when a debtor submits an application to a court and the court decides to initiate a case of the legal protection procedures. This decision has the following effects:

- compulsory execution of other court decisions is suspended;
- secured creditors are prohibited to claim sale of pledged property;
- creditors are prohibited to submit an application to a court to initiate the debtor's insolvency proceedings;
- liquidation of the debtor is prohibited;
- accumulation of contractual penalty, late payments and delayed tax claims are suspended;
- accumulation of interest exceeding interest set by law is stayed.

The debtor then has to draw up the legal protection procedures plan. This plan should include:

- all the payment and other obligations of the debtor;
- schedule for payment settlement;
- planned income and expenses;
- LPP methods;
- list of property needed during the LPP;
- the time period for the implementation LPP;
- other measures defined in section 40 of the law.

A forecast of the cash flow has to be attached to the plan. Approval of the LPP plan by creditors requires at least half of the unsecured creditors (from total of claims) and two thirds of secured creditors (from total of claims). The plan has to be drawn up, coordinated with all the creditors, and submitted for approval to the court not later than two months from the day when the court has initiated the LPP.

The plan is in effect from the day when it has been approved by court. It is binding also to creditors who have not given their consent. The supervisor's duty is to monitor the implementation of the plan. The plan may be amended if the majority of creditors agree and the court approves the amendments.

The law defines that the time period for implementation of legal protection proceedings is two years, which may be extended by additional two years if the majority of the creditors agree. Legal protection procedures are applicable to debtors - legal persons, partnerships, individual merchants, persons registered in a foreign country who perform permanent economic activity in Latvia, and to the producers of agricultural products. They are not applicable to insurance companies, insurance brokerage companies, investment brokerage companies, investment management companies, credit unions, credit institutions, private pension funds and other legal persons as defined by law.

A natural person who has the right to reside and be employed in Latvia for the duration of the LPP can be the person supervising the LPP, except in cases described in the Section 12.3 of the Insolvency law. These exceptions include, but are not limited to:

- people who has been convicted of an intentional criminal offence;
- people who are involved in insolvency processes;
- people who are suspended on the basis of the disciplinary decision from the post of general or specialised civil servant and similar (removed from the post of administrator, excluded from attorneys at law or their assistants etc.);
- people who have previously been suspended from LPP by court;
- people who, in accordance with the legal system of the home country, are deprived of the right to take up a post similar to that of a person responsible for legal protection;
- people who are involved in the specific LPP.

The person supervising the LPP is chosen by the majority of creditors, and appointed by the court. If the candidate for the position of supervisor is indicated in the plan, the court immediately decide on his/her appointment as a supervisor. Section 166 of the insolvency law defines that the amount of the remuneration of the supervising person and the procedure for payment is determined by agreement between the person and the creditors.

Since the insolvency law was introduced (2010) the insolvency register is maintained. The purpose of the insolvency register is to ensure public access to information about LPP, and legal and natural person insolvency proceedings. The current version of the law prescribes that the insolvency register records information about the administrator, the person supervising the LPP, and the progress of LPP or insolvency proceedings. The published information contains name or title of the subject of process, registration number, type of the process, and journal of events during the process. From May 2017 the information is also available on the e-Justice portal. On 1 July 2018, the electronic insolvency registration system was introduced. The goal of the system is to facilitate the performance of the tasks of the Insolvency Control Service, the preparation and publication of information specified in the law, the circulation of information between people and institutions involved in insolvency proceedings and the fulfilment of duties and rights of administrators and LPP supervisors. The information in the system is classified as restricted access information, but part of it is published in the website of the Insolvency Control Service.

The insolvency law prescribes also an extrajudicial legal protection procedure (ELPP). ELPP is intended for the debtors with good perspective for reaching an agreement with a majority of creditors, and where there is no risk that individual creditors with individual treatment against the company could seriously jeopardise the implementation of the LPP plan. If a majority of creditors approves the LPP plan, the court decision allows it to become binding on minority creditors as well as to obtain protection under the LPP. As soon as the LPP plan is approved by the court, the general provisions of the insolvency law on LPP apply to its execution.

Law on the Suppression of Consequences of the Spread of COVID-19 Infection defines changes regarding LPP during pandemic. During an emergency situation (declared by the State) and six months after it, maximum period of LPP may be allowed up to four years (compared to a maximum of two years with the possibility of extension for another two years before the emergency). If the period has already been extended and the negative consequences of the COVID-19 prevent the debtor from implementing the plan, the period may be extended for another year if a majority of creditors agrees.

The same law defined that any creditor (including employees or the tax administration) may not file for insolvency against a debtor (legal entity) from 12 March 2020 until 1 September 2020, and later same restriction were introduced for the period from 23 December 2020 until 1 September 2021.

Comments

On 1 June 2017 the insolvency law was changed abolishing the pre-existing regime, which provided that only an administrator - a person with the appropriate qualifications - was entitled to supervise the LPP. New amendments regulate the appointment, removal and requirements of the person who supervises the LPP. The goal of the amendments is to achieve that supervisor serves as the creditor trustee, monitoring the execution of the plan and informing the creditors.

According to the state enterprise register, 1,529 legal protection procedures have been initiated since 2008. 128 of them in 2019, 109 in 2020, and 57 from January until August 2021.

Cost covered by

Not applicable

Involved actors other than national government

Other




Involvement others

Court, creditors, administrator, Insolvency Control Service

Thresholds

No, applicable in all circumstances

Sources

-  [Insolvency law](#)
-  [Insolvency register](#)
-  [Law on the Suppression of Consequences of the Spread of COVID-19 Infection](#)

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