Inside Story: More Latvian Reforms

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After two years of fierce debate a major package of amendments is going to enter into force on 1 January 2015 in Latvia. The most controversial are those relating to personal bankruptcy. First, after the sale of the debtor's dwelling that served as collateral the remainder of the debtor's obligations towards the secured creditor will be discharged automatically, without applying a discharge procedure. Second, the amendments have shortened the terms of the discharge procedure, with the vast majority of insolvency proceedings now expected to last for approximately one and a half years.

A lot of amendments address corporate insolvency and restructuring, as well. For example, for the first time ever a specific time period has been set for the debtor to file an insolvency proceedings application with the court if the debtor has not honoured obligations due - more than 2 months. In addition, the debtor will not be able to argue that it plans to submit a restructuring application in order to avoid insolvency.

Members of the debtor's management board will now be expressly liable for losses caused to the debtor, if the debtor's books are not handed over to an IP or if they are in a condition that does not allow a transparent view of the debtor's transactions and property over the last three years prior to the debtor's insolvency. The law also gives guidance to courts as regards the amount of the aforementioned losses, i.e., such losses will be measured in the amount of:

1. the unsettled claims of creditors in the course of the debtor's insolvency proceedings and
2. reduction of property from the moment the debtor was required to file an insolvency proceedings application.

In case of the debtor's restructuring ending into liquidation (insolvency), a new administrator for insolvency will be appointed according to a roster. This will aid combating abuse of restructuring proceedings and using them as a mere prelude for insolvency with a chosen IP.

The administrator will now be entitled to provide a reasoned opinion to the court that any of the creditor's claims is prima facie unfounded. In addition, the administrator will be obliged to turn to the police in case of reasonable doubt about the obligations included in a restructuring plan or suspicion of document forgery.

In addition, claims towards third persons secured by rights in rem in respect of debtor’s assets will be regarded secured claims in the debtor’s insolvency proceedings.

The amendments also aim to remedy one of the pitfalls of insolvency proceedings in Latvia, vesting in IPs the rights to challenge creditor's claims based on court rulings in so-called simplified civil proceedings: undisputed compulsory execution of obligations and compulsory execution of obligations in accordance with warning procedures. Until recently these simplified civil proceedings allowed persons cooperating with the debtor relatively easy obtaining legally almost invincible false creditors’ claims.

One of the novelties concerns the status of IPs, making them state officials.

Time will tell true practical implications of the amendments and whether we are yet to experience even more changes in the near future. What can be said for sure is that restructuring and insolvency remains a hot topic in Latvia.

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