

# LEGAL ENTITY INSOLVENCY PROCEDURE (ISP)

under law in force as at 01.11.2010

## Persons entitled to file insolvency application and insolvency (IS) indicators:

- 1) non-secured creditor or secured creditor (regarding the part of the non-secured claim) in cases where:
  - a) the debtor has not settled debt liabilities exceeding LVL 1,500 (approx EUR 2,135) or LVL 3,000 (approx EUR 4,270) (if the debtor is a SIA or an AS), and the creditor has sent a warning to the debtor's legal address of intention to file an insolvency application, and the debtor has not repaid the debt or raised reasonable objections within 3 weeks;
  - b) applying compulsory execution measures, it is impossible to execute a court judgement on debt collection from the debtor; or
- 2) debtor's employee if the debtor has failed to pay salary or related fees in full within 2 months;
- 3) debtor himself if:
  - a) debtor cannot settle liabilities provided in the action plan of the legal protection process (LPP);
  - b) debtor cannot settle outstanding debt liabilities;
  - c) the debtor lacks assets to satisfy all substantiated creditors' claims during the liquidation of the debtor;
- 4) in case of EU cross-border insolvency, the liquidator in the main insolvency procedure;
- 5) administrator during a LPP must apply to terminate the LPP if:
  - a) debtor has not performed acts specified by law or has provided false information; or
  - b) debtor fails to perform the action plan of the LPP and has not submitted LPP plan amendments to the court within 30 days; or
  - c) debtor violates limitations imposed on activity. (Upon terminating the LPP on the basis of any of these grounds, the court initiates an ISP case).

**NB!** Application subject may not be changed; the debtor may not withdraw the application.

A judge decides on IS case initiation not later than on the **day following** filing of the application.

**Insolvency Register (IR)** has public credibility.

**After initiating the case**, the judge sends a copy of the decision to initiate the case to the Insolvency Administration and to the debtor (if the case is initiated on the basis of a creditor's application).

The court decides the insolvency procedure case **within 15 days** from the initiation day (**or within 7 days if the case is initiated by debtor's or administrator's application**). The court declares the debtor insolvent if it finds indicator of insolvency procedure as shown in the insolvency application plus decides on appointing an administrator nominated by the Insolvency Administration.

**Creditors' claims** must be filed within 1 month from the day when an entry is made in the IR on announcing the ISP. A creditor who misses this deadline may file a claim within no longer than 6 months from the day when an entry is made in IR on declaring the ISP, but no later than the day when a plan for satisfaction of creditor's claims is prepared. However, he will not be entitled to vote at the creditors' meeting. The creditor himself or other creditors may appeal the administrator's decision on recognising or declining a claim.

### Creditors' meeting:

- 1) determines the administrator's remuneration;
- 2) initiates dismissal of the administrator;
- 3) approves the costs of insolvency procedure;
- 4) extends the term for sale of the debtor's assets.

Creditors' meeting is entitled to decide irrespective of the represented amount of creditors' claims if information on convening the creditor's meeting is recorded in the IR. **Decisions are adopted by a simple majority of votes of unsecured creditors present** except in specific cases indicated by law. If 2/3 of creditors with voting rights present vote to dismiss the administrator due to inefficient ISP, the court can dismiss the administrator.

**All debtor's property is sold within 6 months** from the day of announcing the ISP, in compliance with the plan to sell the debtor's property as prepared by the administrator. The debtor's undertaking may be sold as a whole. Assets (including the debtor's undertaking as a whole) may be sold by public auction or otherwise.

After sale of the debtor's property, the administrator prepares a list of ISP costs and satisfies creditors' claims in compliance with the plan for settling creditors' claims and in the following priority set by law:

- 1) costs of insolvency proceedings;
- 2) employees' claims up to a set amount;
- 3) claims by the tax authority (in the amount of principal debt);
- 4) other unsecured creditors and secured creditors (regarding their part of the non-secured claim);
- 5) other unsecured creditors and secured creditors (regarding their part of the non-secured claim) – in the amount of principal debt if claims were filed after one month but not longer than 6 months from the day when an entry is made in IR on declaring the ISP but no later than the day when a plan for satisfaction of creditor's claims is prepared;
- 6) ancillary claims of unsecured creditors;
- 7) remaining funds are transferred to shareholders pro rata their investment.

## Consequences of declaring the debtor insolvent:

- 1) the administrator is entitled to handle the debtor's property;
- 2) the administrator performs the functions of the debtor's management institutions;
- 3) interest on loans (credit), legal interest, contractual penalties, late payment interest crystallise;
- 4) all undue claims have become due;
- 5) execution proceedings to collect sums due under judgments against the debtor but not collected are terminated;
- 6) a secured creditor may not claim sale of pledged debtor's property for 2 months from announcing the ISP.

### Administrator:

- 1) evaluates transactions and disputes them if necessary;
- 2) requests fulfilment of agreements entered into prior to insolvency, or unilaterally withdraws from them (the other contracting party entitled to file a creditor's claim).

**If the debtor has no property**, the administrator prepares a notice of non-existence of the debtor's property and informs creditors. If no suggestion is received for funding and continuing the ISP, the administrator applies to the court to terminate the ISP.

If the majority of secured & non-secured creditors support a LPP plan and a court decides to implement LPP, then the ISP ends and **LPP starts** plus operations of the debtor's management bodies are restored.