

LEGAL PROTECTION PROCEEDINGS (LPP)

under law in force as at 11.12.2019

Debtor files LPP application with the court

Judge decides on initiation of LPP case not later than on the following day

LPP case is initiated, an entry is made in the IR

Refusal to initiate LPP

Legal consequences of initiating LPP:

Refusal to initiate LPP

- 1) suspension of enforcement of judgments against the debtor;
- 2) secured creditors cannot seek sale of pledged property (but if this significantly harms creditor's interests, then - if a secured creditor applies - court can permit sale of the pledged property);
- 3) creditors cannot file for insolvency against the debtor;
- 4) liquidation of the debtor is prohibited;
- 5) stay on accumulation of contractual penalty, late interest and delayed tax claims.
- 6) stay on accumulation of interest exceeding interest set by law.

Debtor drafts LPP plan & obtains creditors' approval within 2 months (can extend for 1 month) & agrees with creditors on an LPP supervisor candidate.

Approval of LPP plan required from:

- more than 50% of unsecured creditors (principal claims);
- at least 2/3 of secured creditors (principal claims).

Ineligible to vote on the approval of the plan: persons in the same group of companies, shareholders (natural persons) with decisive influence and persons who acquired claims against the debtor from the aforementioned persons within the previous 2 years.

After approval the debtor files LPP plan with the court

If agreement reached on LPP supervisor, the court appoints him/her

If no agreement reached on supervisor, the court appoints supervisor from candidates proposed by creditors in the LPP plan

Court requests supervisor's opinion within 15 days

Court reviews LPP plan and decides on approval

Court approves LPP.

Maximum length of LPP: 2 years (with option to extend a further 2 years).

After approval by the court, the plan is binding on all creditors including those who did not approve it. LPP plan can be changed only with creditors' consent and court approval.

Secured creditors may not use their rights in relation to property indicated in the LPP plan until LPP ends.

The court rejects LPP if creditors do not approve the LPP plan or the LPP plan does not comply with legal requirements (if 2nd unsuccessful attempt during one year - the court commences insolvency proceedings).

Debtor applies to terminate LPP

- if debtor has successfully completed the LPP plan
- if debtor cannot fulfil the plan

The court terminates LPP on its own initiative

- if the debtor has not performed acts set by law or provided false information
- if debtor fails to fulfil the LPP plan for at least 30 days and has not filed amendments to the LPP plan with the court
- if debtor violates limitations on activity set by law
- if creditors fail to provide a new candidate within 15 days from resignation or removal of the supervisor

Preconditions for starting an LPP:

- 1) no liquidation initiated against the debtor;
- 2) in the previous 5 years, the debtor has not implemented and completed LPP;
- 3) in the previous 4 months, no termination of debtor's LPP due to lack of creditors' support or noncompliance of the LPP plan with legal requirements.

Insolvency Register (IR) has public credibility.

The LPP plan should indicate:

- 1) liabilities, incl. to related enterprises;
 - 2) schedule for settlement of claims;
 - 3) prognoses of planned income and expenses;
 - 4) LPP methods;
 - 5) list of pledged property required during the LPP;
 - 6) compensation for secured creditors;
 - 7) LPP term;
 - 8) transaction types that need not be coordinated with supervisor;
 - 9) debtor's existing and planned types of economic activity;
 - 10) procedure for informing creditors about LPP;
 - 11) grounds proving that creditors who did not approve the plan would benefit more than in the case of insolvency.
- Prognoses of cash flow must be attached to the plan.
The plan can advantage providers of funding (fresh money).

LPP methods:

- 1) postponement of payment obligations;
- 2) disposal or encumbrance of property;
- 3) increase of share capital, incl., debt-to-equity swap;
- 4) reorganisation;
- 5) other methods complying with LPP aim (e.g. reduction of claim).

Reduction of claims is only possible pro rata within each group of creditors (secured/unsecured) for each type of claim (principal claim, contractual penalty or interest). Reduction of claims by tax administration and employees only allowed with their consent.

Set-off is possible if special treatment of tax claims existed against the creditor arose at least 3 months before initiation of LPP case.

Debtor's obligations during LPP:

- 1) to fulfil the LPP plan, inform the supervisor of execution of LPP plan, ensure that debtor's business activities & documents open to inspection;
- 2) to use all profit for execution of LPP;
- 3) to cover costs of LPP;
- 4) to immediately notify the supervisor stating if and why the debtor will not be able to perform the LPP plan;
- 5) to notify the supervisor of changes to public registries;
- 6) to notify the supervisor of significant events in the debtor's operations.

During implementation of LPP, the debtor must not:

- 1) enter into transactions or perform activities that can worsen the financial situation or harm creditors' interests;
- 2) issue loans;
- 3) issue sureties, donate, pay bonuses;
- 4) sell or pledge real estate (except if in line with the LPP plan);
- 5) distribute and pay dividends;
- 6) make payments not indicated in the LPP plan (except if less than 2% of the total of creditors' claims and the supervisor approves).