

Transposition of the Directive in Latvia



Amendments to the Insolvency Law, Civil Procedure Law and the Law On Protection of Employees in case of Insolvency of Employer aimed at transposing the Directive on Restructuring and Insolvency were adopted in March this year and are applicable to proceedings initiated starting from 15 September.

Types of proceedings

No new types of proceedings were created and the proceedings that have been modified to comply with the Directive are:

- 1) With respect to both legal entities and natural persons – legal protection proceedings (*tiesiskās aizsardzības process*), including its variation called out-of-court legal protection proceedings (*ārpustiesas tiesiskās aizsardzības process*);
- 2) With respect to natural persons – insolvency proceedings of a natural person (*fiziskās personas maksātspējas process*).

Statutory moratorium

The term of the various effects of the statutory moratorium has remained the same, as previously - two months from the initiation of a legal protection proceedings case. However, now it may be extended for up to four extra months (previously – one month), if the majority of the creditors required for approval of the restructuring plan agree to such an extension. The effects of the statutory moratorium, including the prohibition of *ipso facto* clauses, can be lifted by the court generally or against a specific creditor or a group of creditors - upon a motion by a creditor or in other cases.

Prohibition of *ipso facto* clauses

Pursuant to the laconic wording chosen by the Latvian legislator to transpose Article 7 (5) of the Directive, a creditor, another kind of supplier or service provider is prohibited from avoiding from the performance of executory contracts or from terminating, accelerating or otherwise modifying them in a manner unfavourable to the debtor by using a clause in the contract that provides for such measures related to or resulting from the initiation of legal protection proceedings. At the same time, the amendments do not expressly provide for the prohibition of acceleration due to non-payment, codified in Article 7 (4) of the Directive. One can also notice that the law does not provide the definition of an executory contract and does not mention “essential executory contracts”.

Classes of creditors and cross-class cram-down

The legislator refused to create new classes of creditors, and, therefore, voting takes place among the group of secured creditors unsecured creditors, as previously. However, pursuant to the amendments, if one of the groups has rejected the restructuring plan, the court can still approve the plan, if the following conditions are met:

- 1) the restructuring plan has been supported by at least one group of creditors, except for one that would not receive any payment or would not retain any shareholding in the event of the evaluation of the debtor as a going concern or the debtor’s insolvency proceedings;

- 2) the restructuring plan ensures that the dissenting group of creditors will be in at least as favourable position as the agreeing group of creditors;
- 3) no group of creditors can receive or retain more than its claim or the full amount of shareholding.

It should also be noted that, according to Article 41 (1) of the Insolvency Law, reduction of a secured creditor’s claim is not allowed without his consent, except for the part of the claim that exceeds the amount secured by the mortgage or the maximum amount secured by the commercial pledge liability, as well as those ancillary claims that are expressed as interest, in the amount which exceeds the statutory interest.

Another novelty is that the appointment of an insolvency office holder (a supervisory person of legal protection proceedings) is only mandatory if cross-class cram-down is applied, whereas in other cases it should specifically be requested.

Changes in the insolvency proceedings of a natural person

A set of norms have been added to include the insolvency of various non-corporate subjects (such as the individual enterprise or family enterprise) within the ambit of the insolvency proceedings of a natural person. ■



EDVĪNS DRABA
Sorainen, Riga



The legislator refused to create new classes of creditors, and, therefore, voting takes place among the group of secured creditors unsecured creditors, as previously

