



The Insolvency Law of Central and Eastern Europe

Twelve Country Screenings of the New Member and Candidate
Countries of the European Union and Russia: A Comparative Analysis

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VI. Latvia

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5. Summary and Perspectives

1. Introduction

a) Historical background

In 1996 the Latvian Parliament (Saeima) adopted the Latvian law On the Insolvency of Undertakings and Companies.²⁷⁶ With the coming into force of this Law, the Law On the Insolvency and Bankruptcy of Undertakings and Companies²⁷⁷ adopted in 1991 was repealed.

Since then the LIUC has been amended 13 times with the most substantial amendments as follows: In 1998 the power of the Creditors' Committee was extended, and the appointment of several administrators was made impossible. Since then the reorganisation plan and relevant decisions of the Creditors' meeting are registered in the Enterprise Register. With the privatisation process in Latvia almost concluded, in May 2001 the Privatisation Agency was excluded from the List of those entitled to act as administrator. In 2002 the eligibility criteria for administrators were defined more precisely and the Insolvency Agency, that supervises the activities of the administrator was introduced. Through amendments of May 2003 representatives of the Agency were granted the right to attend the Creditors' meeting and became member of the Committee of Creditors from the moment the Agency has a claim against a debtor. Since March 2005 administrators are chosen in accordance with the random principle.

The last amendments dated 19 May 2005 have extended the applicability of the law to all merchants registered with the Commercial Register. The new Art. 34.2 on appeals against decisions of the Insolvency Agency was introduced. Furthermore, the court has delegated its power to take decisions on complaints against administrator's decisions and activities to the Agency. An appeal can be lodged in the court in charge

²⁷⁶ Law On the Insolvency of Undertakings and Companies, herein after referred as LIUC; 12.09.1996, Latvijas Vēstnesis (LV), 165 (650), LV, 207 (3575).

²⁷⁷ Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1992, no. 2/3; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 1994, no. 3; 1995, no. 20.

of the respective insolvency proceedings. Finally, the old system of administrators' certification was replaced starting with 1 January 2006.

b) Insolvency Practice

In accordance with the World Bank research "Doing Business" dated 2004 Latvia ranks among the 10 countries in the World, which substantially have improved the effectiveness of their insolvency procedures.²⁷⁸ From 1991 until August 2005 there have been 5,953 insolvency proceedings registered with the Register of Enterprises of the Republic of Latvia. 5,229 of them have been finalized. During this period the court has rejected 550 petitions on initiation of the insolvency proceedings; 339 proceedings have been ended up with bankruptcy; in 33 cases the debtor paid the debt; in ten proceedings rehabilitation has been applied.²⁷⁹

During first half of the Year 2003 the court has rendered judgments in 335 insolvency matters with about half of these judgments rendered in Riga Regional Court. More than a half of insolvency matters has been initiated upon the petition of a debtor (mostly capital companies). From the 335 examined insolvency matters the court has favoured 330 petitions on insolvency. During the same period (first half of 2003) reorganisation have been carried out in two cases, arrangement has been achieved in two cases; no protests regarding court adjudication have been submitted. In 2004 the court initiated 1,355 insolvency proceedings and during first 7 month of the Year 2005 the 733.²⁸⁰

²⁷⁸ Maksātnespējas administrācijas informācija presei. Maksātnespējas administrācijas direktors izsaka pateicību par līdzšinējo sadarbību, available at <http://www.mna.gov.lv>; last visited 17.08.2005.

²⁷⁹ The result of the insolvency proceeding", Lursoft statistics, available at http://www.lursoft.lv/stat/ur_stat_098.html, last visited 18.08.2005.

²⁸⁰ LV Informācija, see <http://www.vestnesis.lv/index.php?mode=DOC&id=97701>; last visited 17.08.2005.

c) Reform Objectives

Although there is no unanimity as regards the categorisation of the Latvian approach on insolvency law, i.e. whether Latvia has chosen a pro-creditor or pro-debtor approach, it can be very roughly concluded that Latvia stands in the middle, with some "intent" towards pro-debtor part of the world.²⁸¹ In accordance with a legislative initiative on behalf of the Ministry of Justice a new draft Insolvency law was submitted to the Parliament in 2006. Nevertheless, up to now it is uncertain, when and with what statutory provisions the law could enter into force. It is foreseen that debtors' protection shall be strengthened and in order to help the company to recover from short-term financial problems a new process of legal protection against creditors' claims is to be introduced. During imminent illiquidity this procedure would give the debtor up to one year to solve his problems. Another objective is the regulation of cross-border aspects since the LIUC is strictly oriented on jurisdiction of Latvian courts over companies registered in Latvia. It does not include any provisions on recognition of foreign insolvency proceedings or cross-border cooperation.

2. Commencement of Insolvency Proceedings

a) Principles of Procedure and Legal Protection

In 2002, the Latvian Constitutional Court has stated that the purpose of the Law on insolvency of Undertakings and Companies is to insure protection of the existing and potential creditors, but not to examine the claim on rights and obligations.²⁸² According to Art. 5 I LIUC the insol-

²⁸¹ M. Rozīte, p. 83.

²⁸² Satversmes tiesas 2002. gada 17. janvāra spriedums lietā no. 2001-08-01, available at [http://www.satv.tiesa.gov.lv/LV/Spriedumi/08-01\(01\).htm](http://www.satv.tiesa.gov.lv/LV/Spriedumi/08-01(01).htm), para.4.

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Insolvency procedure shall be adjudicated by a court in accordance with the legal address of the debtor, with the same court also examining other issues related to the insolvency. Pursuant to references in Art. 5 II LIUC the provisions of the Civil Procedure Law²⁸³ are applicable as subsidiary regulation, unless the law provides otherwise. Such, legal matters as rejection of judges, representation in court proceedings, procedural terms, rules for evidence and assumption of the procedural rights of a party are mainly governed by chapters 46, 47 of the general Civil Procedure Law.

In insolvency matters the judgment of the court is final and may not be appealed through appellate procedures (Art. 349, 350 of the Latvian Civil Procedure law). However, the Chairperson of the Senate Civil Matters Department or the Prosecutor General may submit a protest regarding a court adjudication that has come into effect to the Senate, if not more than 10 years have elapsed since the adjudication came into effect (Art. 483 Civil Procedure Law). Only the liability of an administrator maybe questioned by legal remedies as a matter of a new case. The procedures for submitting and content of appellant complaint as well as termination of appellate court proceedings are governed by part C division eight of the Civil Procedure Law.

b) Scope of Applicability

The LIUC covers all merchants registered in the Enterprise Register, i.e.. individual merchants (natural persons) and all commercial companies, including partnerships (Art. 1 of the Latvian Commercial Law).²⁸⁴ Consumer insolvency is unknown to the Latvian legal system. Chapter XIV of the LIUC governs insolvency of State and Local Government Undertakings; other provisions shall apply to State and local government undertakings and companies involved in insolvency proceedings, insofar as they are not contrary to the provisions of this Chapter (Art. 120, para 2. LIUC). Excluded are State authorities, which are not subject to regula-

²⁸³ Civilprocesa likums, 14.10.1998 LV, 326/330; 1387/1391.

²⁸⁴ Komerclikums, 13.04.2000 LV, 199/200; 1260/1261, available at http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN0183_84.pdf.

tions of insolvency proceedings. Although, pursuant to Art. 2 III LIUC insolvency proceedings of insurance companies and insurance broker companies are covered by the LIUC, they are subject to exceptions and additional regulation.²⁸⁵ Furthermore, in regard to insurance companies, the LIUC is applicable as far as it does not conflict with provisions on insurance activities. According to Art. 2 II LIUC the Law does not apply to insolvency proceedings of credit institutions, which are governed under chapter 47 of the Civil Procedure Law and in the 1995 Law on Credit Institutions, which regulates bankruptcy procedures for banks and other credit institutions.²⁸⁶

Special provisions apply to the insolvency of municipalities. These provisions²⁸⁷ state that municipalities in financial difficulties have to undergo a stabilisation procedure in order to ensure the fulfilment of their duties. The Stabilization procedure applies if one or more of the following prerequisites are fulfilled: the debtor is unable or, due to circumstances as can be proved, will be unable to adequately settle its debt obligations; the debtors obligations exceed his assets; the total amount of debt due for repayment exceed 20% of the total amount of the annual budget.

c) Grounds for Opening Insolvency Proceedings

Illiquidity, imminent illiquidity and over-indebtedness are the grounds for opening insolvency proceedings in Latvian law. Pursuant to Art. 3 I LIUC the court will reject a petition unless it determines at least one of the following elements:

- (1) The debtor is unable or will be unable to adequately settle its debt obligations (illiquidity and imminent illiquidity). In conjunction with

²⁸⁵ 1998 Law on Insurance Companies and their Supervision as well as the Law On Final Settlement of Accounts and Financial Instrument Settlement Systems, governing insolvency proceedings of insurance broker companies:

²⁸⁶ Kredītiestāžu likums, 05.10.1995, LV, 163/446), available at <http://www.ttc.lv/New/lv/tulkojumi/E0102.doc>.

²⁸⁷ Law on Stabilization of Self-Government Finances and Supervision of Self-Government Financial Activities, Law, Parliament, 21.05.1998.

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this proceeding the court can recognize the insolvency of third persons that have debt obligations towards the debtor; the fact that no payment has been received for goods or services for a long time; destruction of uninsured property; or losses that have been inflicted as a result of unlawful activities of third persons. The circumstances referred to shall be proved by written evidence. A court shall decide the sufficiency and credibility of the evidence.

- (2) The debtor has ceased to settle debt obligations, payment of which has come due. In this case it is necessary to prove that the debtor has started to settle the debt, but later ceased to do so. If the debtor has never paid then the court will state inexistence of the second element.
- (3) The debt obligations of the debtor exceed its assets (over-indebtedness, only applicable to legal entities, Art. 3 I LIUC). To prove this the court can ask the debtor to provide the balance sheet. In a situation when the debtor ignores proceedings and Latvian tax administration does not have any balance sheets of the debtor since it has not submitted any reports the court can refuse to initiate insolvency proceedings.

The court checks not only the existence of the element provided in a petition, but existence of all other elements as well.²⁸⁸ In practice Latvian courts do not always sufficiently analyse the financial situation of a debtor. In 2003 courts refused to initiate proceedings in 5 cases due to a lack of insolvency elements. However, in some cases administrators have not submitted sufficient information and it was impossible for the court to check the real situation of a debtor.²⁸⁹ If no insolvency features exist, the company can be voluntarily liquidated according to general rules, by taking a decision in that respect and notifying the Register of Enterprises. Nevertheless, if during the liquidation process insolvency is determined, the liquidators of the undertaking (the liquidation commission) have the obligation to file insolvency petition to the court. The

²⁸⁸ A. Gobzems, Maksātnespējas lietas ierosināšana tiesā, published in: Jurista Vārds, 16.11.2004 44 (349).

²⁸⁹ High Court of Latvia/Latvijas Republikas Augstākās tiesas. Plēnuma un tiesu prakses vispārīnāšanas daļa. Tiesu prakse lietās par uzņēmumu (uzņēmējsabiedrību) maksātnespēju un bankrotu.

Effects of the commencement of the liquidation are the same in case of voluntary and involuntary liquidation.

d) Persons Entitled and Persons Obligated to File the Petition

Insolvency petitions may be submitted to the court by debtors or liquidators of debtors (liquidation commissions), creditors or groups of creditors, administrators in insolvency matters as well as by competent State institutions. The most active competent State institution is the Latvian State Revenue Service.²⁹⁰ It is necessary to set out in the petition at least one element of insolvency as provided by law, as well as evidence to be submitted in confirmation thereof, and documents as set out in the LIUC (Art. 343 of the Civil Procedure law).²⁹¹ In practice if insolvency proceedings have been initiated upon a petition of the creditor/s the court proves whether debtor has ceased to settle debt obligations or the debt obligations of the debtor exceed its assets.²⁹² Latvian law does not allow changing the subject of the petition after the petition has been submitted because the submission of a petition might have negative consequences on further business activities of a debtor. It is also impossible to revoke the petition. A voluntary submission of a petition by the debtor should be well grounded, otherwise he can be found criminally liable. A creditor (a group of creditors) may submit an insolvency petition to a court if:

- (1) within two weeks after the submission of a claim, the claim of the creditor has not been either satisfied or objected to. After the expiry of this period the creditor has to notify the debtor, in writing, of his or her intention to submit an insolvency petition, at least one week prior to the submission thereof, and, moreover, the debtor has also not been able to settle the debt within this time period;

²⁹⁰ In 2003 it submitted 774 petitions; until June 2005 the Courts have initiated 256 proceedings based on petitions of the State Revenue Service.

²⁹¹ Civilprocesa likums, 14.10.1998 LV, 326/330; 1387/1391, available at <http://www.bm.gov.lv/files/text/E0018-23%20-%20The%20Civil%20Law1.doc>.

²⁹² High Court of Latvia/Latvijas Republikas Augstākās tiesas. Plēnuma un tiesu prakses vispārīnāšanas daļa. Tiesu prakse lietās par uzņēmumu (uzņēmējsabiedrību) maksātnespēju un bankrotu, p. 4.

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- (2) within three months it has not been possible to execute, fully or partly, a court judgment regarding recovery of a debt due to the fact that the assets of the debtor are insufficient for the settling of debts; or
- (3) the debtor has notified the creditors or given public notice regarding its actual insolvency.

The administrator of an insolvency matter may submit to the court an insolvency petition against a third person who has debt obligations to the debtor represented by such administrator (Art. 40 LIUC). Competent State institutions may submit an insolvency petition to the court, if:

- (1) they can provide evidence regarding the inability of the debtor to settle its debt obligations;
- (2) or where it has been impossible to execute a court judgement regarding recovery of debt due to insufficiency of the debtor's property or debtor's evasion of the recovery of the debt, fully or partly, within three weeks after its pronouncement;
- (3) or where evidence is available providing that the debtors obligations exceed its assets. It is the duty of liquidators (liquidation commission) conducting voluntary liquidation of an undertaking or a company to submit an insolvency petition to the court, if it is not possible, in the liquidation proceedings, to fully satisfy all the claims of the creditors.

It is the duty of a debtor to submit an insolvency petition to the court, if at least one of the following conditions exist:

- (1) the debtor is unable to settle debt obligations within three weeks from the day of expiration of the payment term and no written agreement has been reached with the creditors regarding the settlement of such debt; or
- (2) the debt obligations of the debtor exceed its assets. Moreover managers are obliged to initiate the process (Art. 42 I, II LIUC) as soon as one of the mentioned criteria is given. Art. 112 LIUC states the criminal liability if the petition has not been filed and Latvian Civil law provides further civil liability.²⁹³

²⁹³ E.g., according to Art. 1635 of Civil Law every wrongful act per se, as a result of which harm has been caused (also moral injury), shall give the person who suffered the harm there from the right to claim satisfaction from the infringer,

3. Institutional Framework

a) Insolvency Court

Matters regarding insolvency of undertakings and companies as well as insolvency and liquidation of credit institutions are within the jurisdiction of a Regional court (Art. 25 of the Latvian Civil Procedure Law) which is court of second instance in Latvia. The competences of the court in the insolvency proceedings have been partially delegated to the Insolvency Agency. First, the court accepts an insolvency petition and verifies the identity of the submitter when a petition is received. If it is not possible to verify such identity or the submitter does not have the appropriate authorization, the petition shall not be accepted. Insolvency petitions shall be registered in a separate register, in which the submitter and the recipient shall sign (Art. 344 Civil Procedure law). The judge shall take a decision, regarding initiation of an insolvency proceeding or refusal to accept an insolvency petition, not later than the day following receipt of the petition in court, but if the petition is left not proceeded with, then not later than the day following the rectifying of deficiencies indicated in the judge's decision or following the expiry of the time period for rectifying deficiencies.

The court adjudicates an insolvency matter within 15 days from the day the matter is initiated and confirms the appointed administrator in rendering judgment regarding insolvency of the debtor. It determines those representatives of the debtor for whom it is mandatory to participate in the insolvency proceedings and pursuant to the substantiated request of the administrator sets an abridged period for the submission of the claims of creditors. In insolvency matters the judgment of the court is final and may not be appealed through appellate procedures. Following the pronouncement of a judgment in an insolvency matter, the court pursuant to the petition of the administrator, takes a decision regarding the release of attached property and the transfer thereof to the administrator. After the court declares the debtor insolvent on the basis

insofar as he or she may be held at fault for such act. Furthermore, Art. 1642 and 1645 of Civil Law contain legal consequences for acting with wrongful intent.

of the relevant application, it shall decide as to confirmation or setting aside of a settlement, concluding of bankruptcy procedures, termination of insolvency proceedings, the resignation or discharge of the administrator and appointment of another administrator, approval of a statement of auction of immovable property and expungement of the insolvency endorsement in the Land Register.

b) Insolvency Agency

In accordance with the law, the Insolvency Agency performs the following functions:

- Training and certification of administrators as well as recommendation of administrators to a court.²⁹⁴ The administrator shall be appointed by the court based on a proposal by the Agency immediately after the initiation of an insolvency matter. The Agency chooses the person in accordance with the random principle.
- Supervision of the activities of administrators in insolvency proceedings.²⁹⁵ This includes the discharge of administration's expenses, administrator's decisions and actions in insolvency proceedings and decisions on sanctions if the administrator has breached his legal duties.
- Satisfaction of employees claims from the funds of the employee claim guarantee fund in conformity with the Law On Protection of Employees in the Case of Insolvency of the Employer.²⁹⁶

²⁹⁴ Cabinet of Ministers' Regulation no. 329, Order, in accordance with which the Agency chooses and recommends candidate for an administrator's position in insolvency proceedings, available at <http://www.ttc.lv/?id=71>.

²⁹⁵ Cabinet of Ministers' Regulation no. 565 "By-law on Submission's Order and Terms of an Report on Administrator's Activities during Insolvency Proceedings", available at <http://www.ttc.lv/?id=71>.

²⁹⁶ Art. 32.2 LUIC; Law on Employees' Protection in Case of Insolvency of a Employer, in force since 1 January 2003, available at www.ttc.lv/index.php?&id=10&tid=60&l=LV&seid=down&itid=14329.

c) Administrator

As administrator only a physical person may be appointed by the court who has: (1) higher legal education or higher education in the field of economics, management or finance, or for not less than three years practical work experience in undertaking or company supervisory institutions and executive authorities; (2) successfully completed the requirements for obtaining certification in the administrator specialisation; and (3) to whom the Insolvency Agency has issued a certificate. There are certain restrictions as to the person of the administrator. This excludes persons, who are an interested party with respect to the debtor, against whom the debtor has claims or who have claims against the debtor or who have been sentenced, are defendant, accused or suspect in a criminal matter²⁹⁷.

The administrator assumes the property, documentation and seal of the debtor until termination of the insolvency proceedings or the entering into of a settlement and administers the property of the debtor during the insolvency proceedings. He provides the information to the Enterprise Register. The administrator ascertains the causes of actual insolvency and provides their opinion regarding them to the Creditors' meeting and the court. The administrator may take a decision to continue the activity of the debtor in full or partial extent, if the administrator or the invited specialists determine, on the basis of an analysis of the debtor's situation, that continuation of such activity is economically well-founded and may increase the debtor's assets in the interests of the creditors. After the declaration of the debtors insolvency, the administrator holds all the rights and powers of the administrative bodies provided for by law, or by the debtor's articles of association or contracts. Until the adjudication of an insolvency matter in a court, the administrator has the right to become acquainted with the financial situation and all documents of the debtor, request and receive from the debtor necessary information while the insolvency proceedings are taking place and invite specialists.

²⁹⁷ In regard of crimes against property, economic crimes, crimes while holding office in a State institution, crimes against the administration of justice or crimes regarding administrative procedures.

The administrator fulfils the decisions of the creditors meeting and submits a report to them. He shall be fully liable for losses caused to the creditors through his or her fault (Art. 25 I LIUC). According to Art. 15 LIUC for losses inflicted upon creditors or other interested persons the administrator must have civil liability insurance or provide for a security deposit. Creditors may bring an action against an administrator in accordance with general civil law procedures. During proceedings the administrator can be removed by the court, on the basis of the decision of a Creditors' meeting regarding the expressing of a lack of confidence in the administrator or the basis of an application from the Insolvency Agency. The grounds for removal are non-observance of the requirements of the law, non-compliance with requirements for administrator's position, use of powers in bad faith or annulment of the administrator's certificate. Art. 27-30 LIUC contain a series of rules regarding to termination of the duties of an administrator, removal or resignation of an administrator and the out coming change of administrator.

According to Art. 24 LIUC for performing his functions administrator receives remuneration determined by the Creditors` Assembly and based on recovered sums although fixed sums are possible.²⁹⁸ According to this regulation after the compliance of the creditors meeting and the insolvency agency the administrator get a sum of 200 LVL to the account of the company, which is insolvent, to start the process. Regarding to this the insolvent agency becomes an unsecured creditor of the company belonging to the 200 LVL.

d) Creditors' Meeting and Creditors' Committee

Creditors or their lawful or contractual representatives have the right to participate in a creditors meeting regardless of the amount of claims. Only unsecured creditors shall have voting rights at a creditors meeting, but in cases where a vote takes place regarding a reorganisation plan, secured creditors shall also have voting rights to the full extent of their

²⁹⁸ Cabinet of Ministers' Regulation no. 77, Order and Amount on Reimbursement of Administrator and Administration's Costs in Insolvency Proceedings, published at Latvijas Vestnesis on 23.03.2006 48(3416).

claims. If a reorganisation plan is adopted, those secured creditors whose right to realise on their pledge is restricted shall also have voting rights in the Creditors' meeting during the reorganisation period. Secured creditors shall have voting rights at a creditors meeting to the amount of the unsecured portion of their debt. Secured creditors may renounce their security or part thereof and submit a claim, and shall accordingly obtain voting rights in the amount of the whole debt or the unsecured part thereof. Each Creditors' meeting is chaired by the administrator unless the Creditors' meeting decides otherwise. A meeting is entitled to take decisions regardless of the amount of debts represented therein, if notice of the convening of the meeting within the time period provided for by the Law has been given to all of the known creditors and if the debtor's representatives are invited thereto. Absence of the administrator or the debtor's representatives shall not be an impediment to the taking place of the Creditors' meeting.

All decisions are taken by a simple majority of votes of the present creditors entitled to vote, according to the amount of claims. The number of votes of each creditor shall be determined proportionately to the amount of his or her claim for the time period up to the recognition of insolvency amount in accordance with the claim submitted by the creditor, or the amount reflected in the documents of the debtor if the claim of the creditor has not been submitted. The number of votes at a Creditors' meeting is specified by determining the smallest known creditors claim (amount claimed) as one vote; the number of votes of other creditors is specified by dividing the claim (amount claimed) of each creditor by the smallest known claim (amount claimed). In accordance with the LUIC the Creditors' Meeting:

- elects the Committee of Creditors;
- chooses a resolution for the state of insolvency and determine the basic provisions thereof;
- examines and adopts or rejects the submitted resolutions for the state of insolvency (a draft settlement, a reorganisation plan, a decision regarding bankruptcy) and the procedures for discharging debts in the priority order determined by this Law;
- confirms the contracts and requests reports from the administrator as to his or her work.

It is mandatory for the Creditors' meeting to elect a Committee of Creditors, if more than fifty creditors have submitted their claims in the insolvency proceedings. The Committee of Creditors shall be elected from among the members of the Creditors' meeting entitled to vote, in the composition of not less than five and not more than nine members for the whole period of the insolvency proceedings. The Committee shall represent all groups of creditors involved in the relevant insolvency proceedings. It is entitled to take decisions, if more than half of its elected members are present. The Committee of Creditors shall take decisions by a simple majority vote of the committee members present. In the event of a tied vote, the deciding vote shall be that of the chairperson. If a Creditors' Meeting approves a reorganisation plan, the Committee of Creditors shall be re-elected and shall include representatives of the secured and unsecured creditors proportionately to the represented amount of claims. In cases when a debtor's reorganisation is discontinued, only the representatives of unsecured creditors shall continue their activity in the Committee of Creditors, electing, if necessary, additional members from among the unsecured creditors.

Unsecured creditors can submit their claim against the debtor in the first Creditors' Meeting. They can submit claims even if the administrator has not accepted them. Notwithstanding this fact such creditors still preserve their right to vote during the meeting. Thus, theoretically, it is possible that persons who do not have rights to vote take decisions. It is possible to appeal later against such decision. Although the law does specify the consequences if the court declares such decision void, in practice many of such decisions have been implemented.

4. Insolvency Proceedings

a) Preliminary Reorganization Proceedings

There is not such legal institute as preliminary reorganization in Latvia. In particular division XVI of the Commercial Law, which is titled "Reorganisation Procedures" doesn't refer to the reorganisation of a company regarding to an insolvency procedure. In fact this relates to other economical transactions like M&A or Shareholding, but not to the reorganisation of an insolvent company. However, the new draft Insolvency Law foresees that under conditions of imminent illiquidity the debtor may apply for reorganization. Such preliminary reorganization would be carried out under supervision of the court. During the reorganization period the debtor would be protected from creditors having the possibility to manage the respective undertaking independently.

b) Effect of the Opening of Insolvency Proceedings on Pending Court Proceedings and Contracts

Upon a matter being initiated, the court shall take a decision regarding the attachment of the debtor's monetary resources, which are placed in the debtor's accounts in credit institutions, publicly circulated securities or fixed assets. Pursuant to the petition, the court shall take a decision also to impose attachment upon other property of the debtors if such is necessary and if such attachment does not significantly hinder the continuation of commercial activities. If an insolvency petition is submitted concerning such undertaking as the owner of the undertaking is liable to the extent of the owner's own property for the obligations thereof, the court shall take a decision to impose attachment upon the owner's property. A writ of execution regarding the attachment of the debtor's property shall be issued to the submitter of the application or on the basis of a petition of the administrator - to the administrator.

Latvian Insolvency law does not specify the effect of the opening of insolvency proceedings on pending court proceedings and contracts clearly. On the one hand it provides that if the debtor has been declared

insolvent by a court judgment, he shall be deemed insolvent from the day when the insolvency petition was submitted, unless the court has specified an earlier day for the insolvency coming into effect (Art. 51 LIUC). On the other hand, in accordance with Art. 50 para. 2 of the LIUC in conjunction with Art. 214, para. 4 of the Civil Procedure law the judgment by which the debtor is declared insolvent constitutes the basis for staying court proceedings in civil cases initiated against the debtor, and for termination of execution proceedings in respect of judgments in cases regarding collection of amounts adjudged as against but not collected from the debtor. Therefore the day as from which all pending court proceedings and contracts are affected is the day of declaration of insolvency and such, before the debtor is declared insolvent his standing and status as a contracting party as well as contracts per se are not affected by initiation proceedings. From the moment of insolvency declaration the creditor has to submit his claim to the administrator.

Employment contracts can be terminated after the declaring of a debtor as insolvent. In this case the dismissed employees shall acquire the status of creditors to the extent of: (1) unpaid salary and related payments that have not been yet received; (2) reimbursement of damages in respect of an occupational accident or disease for the whole unpaid period and (3) respective payments to be made during three years to a special budget in respect of State social insurance²⁹⁹.

c) Rescission and Invalidity of Pre-petition Transactions

Grounds for declaring transactions, gift and maintenance agreements just as pledge contracts as invalid are listed in Art. 69 - 71 LIUC. Accordingly the valid period before insolvency for Actio Pauliana is one

²⁹⁹ Provided that the accident has occurred or the disease has been contracted prior to 1 January 1997; furthermore, in the case of an occupational disease of a former employee who is not considered an insured person (in accordance with the Law On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases), provided it was caused by working under conditions which are harmful to health prior to 1 January 1997, is may be determined after 1 January 1997.

month - five years depending on motive. Pursuant to Art. 69 LIUC a court may, upon the request of the administrator, declare transactions of the debtor with third persons as invalid if:

- they were effected after the day when the insolvency petition was submitted and the debtor has thereby knowingly caused losses to creditors - regardless of whether or not the person with whom or on behalf of whom the transaction was entered into knew or did not know of the causing of losses to creditors;
- they have been entered into within five years prior to the day when the insolvency came into effect, the debtor has thereby knowingly caused losses to creditors and the person with whom or on behalf of whom the transaction was entered into knew of the causing of such losses;
- or have been entered into within five years prior to the day when the insolvency came into effect, and it has been determined by a court judgment in a criminal matter that the debtor was brought to insolvency through a criminal offence and the person with whom or on behalf of whom the transaction was entered into was aware of such offence.

If the debtor has entered into transactions, through which losses have been caused to creditors, with interested persons or to the benefit of such persons, it shall be considered that such persons have known of the causing of losses, unless they prove otherwise. If such transactions have been entered into after or within a month prior to the day when the insolvency came into effect, it shall be considered that the debtor has knowingly harmed the interests of the creditors, unless he proves otherwise.

The court may declare as invalid also gift agreements and maintenance agreements. A gift agreement of the property of the debtor may be declared invalid in accordance with the provisions of the Civil Law. Other transactions may be declared as invalid, if they are entered into within three years prior to the day, or after the day when the insolvency came into effect, in which the inequality of mutual obligations of the parties indicates that in fact a gift has been made. The administrator may request that a maintenance agreement, in accordance with which the debtor has transferred some property of the debtor to another person in exchange for an obligation to provide maintenance, be declared invalid

if such agreement was entered into after the day when the debt obligations arose. Donations that have been made in favour of public organizations registered in Latvia, whose activity is directed towards promotion of culture, science, education, sport, health care or social assistance, may not be declared invalid. A donation to such organization may be declared invalid and requested to be returned if there is evidence that such gift has been fictitious or is not utilized for the intended purposes.

Pledge contracts may be declared invalid: (1) if the pledge rights (except a loan securing mortgage) were established before the obligation secured thereby arose, or the pledge rights were established within the last six months prior to the day when the insolvency came into effect; (2) it was entered into within a year prior to the day when the insolvency came into effect, and the pledge was an interested person or (3) the pledge was disposed of in order to satisfy the claim of a secured creditor within six months prior to the day when the insolvency came into effect, and (4) the alienation did not take place at an open auction in a case where the pledge was to be sold at such auction in accordance with law or the contract. If a pledge contract is declared invalid, the relevant secured creditor shall acquire the status of an unsecured creditor.

On the one hand, preferential transfers are not allowed (Art. 47 LIUC). Upon insolvency proceedings being initiated, a creditor is prohibited from performing individual actions by which losses are inflicted upon the interests of the creditors as a whole. Property rights as accrue to creditors or third persons shall, on the basis of a submission by the administrator, debtor, another creditor or a group of creditors, be deemed invalid by the court. On the other hand, if the debtor pays money to creditors after the debtor has been declared insolvent the administrator may request the debtor to repay the money (Art. 72 LIUC), if he proves: (1) that the payment was made before the time period for fulfilment of the obligations expired, (2) the payment regarding the debt has resulted in actual insolvency of the debtor, (3) the debt was paid to interested persons in relation to the debtor. Nevertheless the debtor or the recipient of the debt may try prove that at the time of the payment regarding the debt the debtor was not actually insolvent or the payment regarding the debt did not cause the actual insolvency of the debtor.

d) Arrangement/Settlement

Settlement is allowed in all stages of insolvency proceedings until the commencement of the auction of the property of the debtor. It is mandatory that the possibility of settlement be examined at the first Creditors' meeting, if the debtor or the creditors propose the entering into of such. In subsequent Creditors' meetings the issue of settlement shall be examined, if it is included in the agenda of the Creditors' meeting. It is the duty of the administrator to include the issue of settlement in the agenda of the Creditors' meeting, if the draft settlement proposed by the debtor or the creditors has been provided to the administrator not later than three weeks prior to the Creditors' meeting. The possibility of resolution by way of settlement shall be accepted if more than half of the creditors present, according to the amount of claims, vote for it. If the Creditors' meeting rejects the possibility of a settlement, it shall decide on the application of reorganisation or the initiation of bankruptcy proceedings.

The settlement may take the form of: a reduction in the amount of claims, renunciation of contractual penalties or interest, including late charges or their reduction or postponement of the term for fulfilment of obligations. In the case of a settlement the rights, and interests protected by law, of secured creditors may not be violated without their direct and unmistakable written consent. The law does provide for a written form of settlement agreement only. Provisions to be included in a draft settlement shall be determined by the Creditors' meeting. It is mandatory to set out provisions in the settlement in what amount the claims of each group of creditors are to be satisfied. A draft settlement examined by the creditors' meeting shall be prepared by the administrator based on the provisions of the settlement determined by the creditors meeting. A settlement shall be deemed as entered into if voted for by more than three quarters of the creditors according to the amount of debts. This also applies, if the draft provides for the settling of less than half of the total amount of claims; or two thirds of the creditors according to the amount of debts, if the draft provides for the settling of half or more than half of the total amount of claims. The concluded settlement shall be signed by the debtor and one representative elected by the Creditors' meeting and approved by the court.

After approval by the court the provisions of the settlement are mandatory and must also be observed by such creditors as have voted

against the settlement or have not participated in the voting. If the provisions of the settlement are accepted and complied with in accordance with the procedures provided for by this Law, the creditors may not raise claims regarding such amounts as the payment of which is not provided for upon the settlement being entered into. The administrator, a creditor, a group of creditors or the Creditors' meeting may request a court to revoke the settlement, in the following cases: if in the settlement being entered into, the provisions of this Law have been violated; the entering into of the settlement has been attained through fraud or duress; or as a result of error or the debtor fails to fulfil the obligations provided for in the settlement provisions.

e) Reorganisation

In accordance with the Latvian law, reorganisation is "the resolution of a state of insolvency manifested as the carrying out of planned measures with the purpose of preventing a possible bankruptcy of an institution, restoring its solvency and satisfying the claims of creditors" (Art. 1, para 18 LIUC). In accordance with the statistics for the Years 2001 - (August) 2005 rehabilitation of a company is the rare exception from the general rule. Although the LIUC gives priority to the possibility of continuing the company's operation, this priority can be easily overruled and therefore de facto the law does not encourage an application of the rehabilitation. In accordance with Art. 9 LIUC the decision to apply reorganisation is taken by the creditors' committee, but the power to manage the process is granted to the administrator. He has the power: to manage, sell and insure a debtor's property; obtain or borrow monetary funds in the name of the debtor and pledge the property of the debtor; establish branches or representative offices of the debtor; and to transfer the property of the debtor to branches or representative offices of the debtor (Art. 88 LIUC).

A Creditors' meeting may examine the possibility of reorganisation only, if a possible settlement is not proposed at the first Creditors' meeting, the possibility of settlement is rejected, a settlement has not been entered into or if settlement has been revoked (Art. 89 LIUC). Subsequently it votes on the application of reorganisation which is accepted if more than half of the creditors present according to the amount of claims vote for it (Art. 90 LIUC). The decision on reorganisation can be

revoked by the court only upon request of the administrator, a creditor or a group of creditors, if the taking of such decision has been achieved through fraud or duress, or as a result of an error. The Creditors' Committee examines the reorganisation plan. The confirmation of the plan requires approval of 2 of 3 groups` by majority vote according to the value of claims provided at least one of them would be treated worse in bankruptcy Art.95 IV CIUC. According to Art. 93 LIUC the period for preparation of a restoration plan shall not be longer than two months from the day when the creditors meeting took a decision regarding the application of restoration.

The administrator submits the decision of the Creditors' meeting together with the reorganisation plan for registration to the Enterprise Register. Then he sends the decision regarding the registration of the aforementioned documentation issued by the Enterprise Register to the court.³⁰⁰ A reorganisation may be discontinued upon a decision of the Creditors' meeting if the reorganisation measures are not taking place in accordance with the reorganisation plan, the debtor's solvency has not improved or it is determined that the reorganisation plan cannot be executed. The Creditors' meeting shall determine the time period for reorganisation measures. After the expiration of this period the Creditors' meeting may extend the period. According to Art. 94 III LIUC the total period for reorganisation may not be longer than ten years. Although legislation allows the possibility of corporate rehabilitation in reality it depends greatly on the administrator of the company whether it will be successful. From the point of view of pro-creditor/ pro-debtor approach, Latvian law could be considered in between, as the legislation provides for debtor's rehabilitation, but on the other hand it does not provide respective incentives.³⁰¹

³⁰⁰ A reorganisation plan and amendments and extensions of the term thereof, which are not registered with the Enterprise Register, are not valid.

³⁰¹ M. Rozīte, p. 75.

f) Status of Secured Creditors

Security and title financing transactions like factoring, financial leasing and others have not yet been regulated by law. Yet, they have been used in business based on the principle of freedom of contract, which gives the parties the option to arrange their relations in many possible ways, as long as the subject of the transaction is legal. These gaps in legislation appear when enforcement of some of these transactions is necessary and it gives the lawyers wide discretion on interpretation.³⁰² In accordance with the Latvian Civil law there are the following types of security: possessory pledge (Art. 1340-1361 of the Civil Law of Latvia³⁰³, i.e. movable property transferred to the creditor's possession); mortgages of immovable property (Art. 1367-1380 of the Civil Law of Latvia, i.e. immovable property registered with the Land Register or Shipping Register); and commercial pledge, which must be registered with the Commercial Pledge Register kept by the Register of Enterprises (Law On Commercial Pledge).³⁰⁴ Secured property is covered by the definition of a property of the debtor (Art. 64 LIUC). After verifying the basis for the claims of secured creditors, the administrator excludes property pledged for the security of such claims from the list of property against which the claims of creditors may be brought (Art. 55, para 5 LIUC). In accordance with Art. 103 LIUC pledged property is excluded from property in the

³⁰² M. Rozīte, p. 69.

³⁰³ Civillikums 28.01.1937 LV, 49 (3207), available at <http://www.bm.gov.lv/files/text/E0018-23%20-%20The%20Civil%20Law1.doc>

³⁰⁴ The subject of a commercial pledge can be a movable physical or non-physical thing, belonging to the legal entity, a collection of the above mentioned things, comprising not only of the existing but also of future assets, unless specifically restricted to the existing ones and the company as a whole (Art. 3, Law On Commercial Pledge). Art. 4 of the Law on Commercial Pledge explicitly excludes from the scope of objects ships, securities and claims out of cheques and bills of exchange. Any claim can be secured with a commercial pledge, both existing and future. However, the parties must stipulate the maximum amount of the security interest (Art. 7.2, Law On Commercial Pledge). Komerclikums, 13.04.2000 LV, 199/200; 1260/1261, available at www.ur.gov.lv/drukati.php?t=8&id=713&v=eng

auction if the bankruptcy procedure has been initiated in accordance with Art. 100 of the LIUC.

There are certain restrictions on the exercise of secured creditors' rights: If the Creditors' meeting has decided to apply reorganisation the secured creditors may not realise the mentioned property until rejection of a reorganisation plan, in the case that the reorganisation plan is adopted and approved, until the end of the reorganisation or its discontinuation (Art. 90 LIUC). In the latter case the secured creditors may exercise their rights with respect to the pledged property only as if it is indicated in the reorganisation plan. To a certain extent the LIUC also governs the priority of unsecured over secured claims. According to Art. 107 III, IV LIUC after the covering of the administrative expenses, the remaining funds shall be distributed: Firstly, for the satisfaction of claims of priority creditors in the mentioned cases (for example wages of workers, state debts). After completely satisfying these claims, the remaining funds shall be distributed, secondly, for the satisfaction of claims of the remaining creditors like those creditors who have acquired the status of a creditor after the initiation of the insolvency proceeding. These restrictions of secured creditors' rights have been balanced with special protection of the interests of secured creditors during a reorganisation (Art. 96 LIUC). A secured creditor has the right to request and receive, after the approval of the reorganisation plan, compensation for the restriction of his or her rights. If the pledged property is destroyed, or its value decreases during the reorganisation proceedings, the claim of the secured creditor shall be covered, according to the value of the pledged property or to the extent of its reduction, from the administrative expenses of the insolvency proceedings. Moreover, in accordance with the Art. 9, para. 4 LIUC a secured creditor may request discontinuation of a reorganisation if he or she is not paid the compensation. As regards voting with regard to the reorganisation plan secured creditors have been granted right to vote.

The enforcement of pledge and mortgage rights is performed in accordance with general practice pursuant to Latvian civil law or specific legal regulations regarding each separate type of pledge. According to Art. 1321 a pledge is allowed to sell a pledge for an open market price only in a case where the debtor expressly grants such right to pledge, If not, the pledge may only be sold by way of auction in accordance with the decision of court. The creditor may sell pledged real

property only at an auction. The court approves the auction regulations. The ship mortgage can be exercised either without court proceedings, if the debtor has granted such a right, or through court proceedings and a subsequent sale at an auction (Art. 55, Maritime Code of the Republic of Latvia).³⁰⁵ Property secured by a commercial pledge may be sold outside auction if it least one month's prior notice has been given, if the debtor has granted such right and it has been filed with the commercial register (Art. 38, Law on Commercial Pledge). Otherwise such property should be sold at the auction in accordance with Art. 2073 of the Civil Law. If the property is not in the creditor's possession, it will be necessary to enforce the security using a no-contest compulsory enforcement procedure (Art. 36.2 Law on Commercial Pledge).

g) Realisation of Debtors Property

After the declaration of the debtor as insolvent the administrator has the right to dispose of the property of the debtor in accordance with the procedures prescribed by the law. An auction of the property of the debtor shall take place in accordance with the provisions of The Civil Law and the Civil Procedure Law. The actions to be performed by a bailiff as provided for in the Civil Procedure Law shall be performed by the administrator. At the first auction, the bidding shall take place by ascending step. An auction may take place if at least one buyer who bids more than the starting price of the auction. If the property is not sold at the auction, the bidding at subsequent auctions shall take place by descending step. In accordance with the Civil Procedure law immovable property shall be listed and evaluated only if requested by the person on the basis of whose application the sale is taking place. The notice shall set out the conditions of sale, as well as the fact that the sale is voluntary; the auction shall begin with a reading of the conditions of sale. After the highest bidder has paid the bid price for the immovable property, the administrator shall submit to the court an application for the approval of the auction document, and the extinguishment of the notation in the Land Register applicable. The minimum term for announcing

³⁰⁵ Available at <http://www.ttc.lv/New/lv/tulkojumi/E0553.doc>.

such an auction shall be one month. It is not clear whether the court shall approve the auction documents if immovable and movable property has been sold as one unit. In accordance with Latvian Civil law bidders, as well as the persons who are present at an auction due to their office, may not be purchasers either for themselves or pursuant to the instructions of other persons. Creditors of the owner of the property sold by compulsory auction may take part in the bidding, but the owner himself or herself shall not bid either in person or through an authorized representative.

If indivisible movable property that is in joint ownership is offered for sale at auction for the satisfaction of the creditors of one joint owner, then the others shall have only the right either to satisfy the creditors by purchasing their claims, or to obtain the movable property at auction on equal terms with the others. All the income shall be distributed in proportion to the shares of the joint owners, and the share that is due to the debtor shall be used to satisfy his or her creditors and to cover expenditures. Generally, sale at auction shall have, with respect to its consequences, the same effect as ordinary sale. From the moment of acceptance of the bid by the fall of the hammer the risk is transferred to the highest bidder, but from the same moment such bidder shall receive, even before the transfer of the property, all the fruits and benefits from such property.

h) International Insolvency Law

Latvia has acceded to the UN Convention on the recognition and Enforcement of Foreign Arbitral Awards (1958) and the ILO Protection of Workers' Claims Convention (1992). The Council Regulation (EC) no. 1346/2000 of 29 May 2000 on insolvency proceedings is part of Latvian national legislation.³⁰⁶ As regards cross-border aspect with other countries Latvian legislation does not touch upon it. No special provisions are applicable to foreign creditors in liquidations and reorganizations in

³⁰⁶ This Regulation applies to collective insolvency proceedings within the European Union, which entails the partial or total divestment of a debtor and the appointment of a liquidator.

Latvia. Rulings of foreign courts are recognized in Latvia in accordance with the Civil Procedure law. Recognition of adjudications of foreign arbitration courts shall take place in accordance with this Law and international agreements that are binding for the Republic of Latvia. An application for the recognition and execution of an adjudication of a foreign arbitration court shall be submitted for adjudication to a district (city) court based on the place of execution of the adjudication or also on the basis of the place of residence of the defendant or location (legal address). An application shall have appended: the original of the adjudication of a foreign arbitration court or a properly certified true copy of the adjudication; a document that certifies the written agreement of the parties regarding the transfer of the dispute for adjudication in the arbitration court; the application and a certified translation into the official language according to specified procedures of the documents; true copies of the application and the appended documents thereto for issuing to the parties; and a document that certifies the payment of State fees in the amount and according to the procedures specified by law.

i) Criminal Offences in Connection with Bankruptcy

Art. 213 of the Criminal law³⁰⁷ punishes a person who drives a company into insolvency due to neglect, if substantial harm is caused thereby to another person, with deprivation of liberty or the deprivation of the right to engage in entrepreneurial activity for up to three years. For a person who intentionally commits this crime (bankruptcy in bad faith), if substantial harm is caused thereby to the State, a local government, another undertaking (company) or another person, the applicable sentence is in the worst case deprivation of liberty of up to eight years and deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not more than five years.

Liability for submitting a false insolvency petition in Latvia is mutual, i.e. a person held liable can be not only debtor, but creditor as well. If a debtor has knowingly submitted a false insolvency petition the debtor

³⁰⁷ Kriminallikums 17.06.1998, LV, 199/200; 1260/1261, available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018405.pdf>

shall compensate the creditors for losses caused as a result of knowingly submitting the false insolvency petition. For knowingly submitting a false insolvency petition with the purpose of stopping recovery or calculation of late charges or interest, or otherwise avoiding performance of their obligations, the persons at fault shall be held criminally liable. The applicable sentence is in the worst case the deprivation of liberty for a term not exceeding two years and the deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years. The same applies to creditors who knowingly submit a false or unfounded insolvency petition.

In accordance with Art. 118 in conjunction with Art. 215 para. 3 of the Criminal Law the debtor's representatives may be held criminally liable for delay of insolvency proceedings, by: failing to provide or concealing the information provided for by law and requested by a court, an administrator or a creditors meeting; avoiding participation in the adjudication of the matter; unlawfully alienating property during the insolvency proceedings; concealing property and transactions; concealing, destroying or falsifying documents; and other actions which impede the course of insolvency proceedings. The applicable sentence is in the worst case deprivation of liberty for a term not exceeding five years, and deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years.

5. Summary and Perspectives

Notwithstanding the fact that the World Bank has positively evaluated insolvency procedure in Latvia, it still needs to be improved. Future amendments to the Law on Insolvency of Undertaking and Companies most probably will favour the debtor. The draft of the new Insolvency Law foresees to give the debtor the change to prevent insolvency by applying for preliminary reorganizations proceedings. Further it is plan-

ned to restrict the initiation of insolvency process by adopting a debt threshold, needed to be reached in order to submit a petition to the court. This measure aims at preventing the initiation of insolvency proceedings in case of legally well-grounded but economically not sustainable insolvencies. Radical changes are anticipated with regard to creditors like State institutions, mainly, the State Revenue Service. An insolvency procedure, which in favour of creditors has the aim to re-establish the solvency of a company contrary to its liquidation, should not provide for priority of claims of the state. This is crucial since the state as a creditor has limited powers to make an arrangements with the debtor thus limiting the possibility of a settlement.

Current law does not provide for insolvency of natural persons. The argument that such a solution would not be favour natural persons seems not well grounded. Taking into account general prescription periods, today a person who is factually insolvent may stay insolvent for more than 10 years. Due to debt it is possible to deprive a person of all his or her property. Consumer insolvency provides the chance that the debtor can work further and pay back the debt. The person should be punished only if he or she does not pay at all.³⁰⁸

Finally it remains to be seen, whether, and if so, in which form the new Insolvency Law will be adopted and how the insolvency law in Latvia will be developed under the influence of European legislation.

³⁰⁸ D. Tāfelberga, *Bezjēdzīgu bankrotu nebūs, Kurzemnieks*, Publicēšanas datums: Otrdiena, 2004. gada 9. marts. Rubrika: Tēma (6. lpp.), available at <http://www.mna.gov.lv>.