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**Latvia: The Newest and Best Insolvency Law in Europe?**

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*Introduction*

At the INSOL Europe event in Riga in May 2018, the Latvian Justice Minister boasted of the newly overhauled Latvian Insolvency Law, which supposedly now forms “the best regulation in Europe”. That prompts the question whether the new Latvian regulation is indeed an exemplary feast or whether the statement was an exercise in promoting an appreciation of the Government’s (and the Minister’s own) work.

It is true that, over the past few years, the Latvian government has been trying hard to bring about a clean-up of the realm of insolvency and to deliver a decisive blow to wide-spread abuse and unlawfulness associated with insolvency proceedings in Latvia. This concern reflects in part the alarm bells sounded by the European Commission, the World Bank and other international institutions about the state of the insolvency environment in Latvia. Their view has been that rapid action is desperately needed to improve the business climate in Latvia. Even the Foreign Investors’ Council, a Latvian organisation, declared prominently in 2016 that some Latvian insolvency administrations have too close a connection to the world of organised crime.

More recently, however, though the lawlessness and spectacular embezzlement cases have made headlines in Latvia, there has also been some noticeably increased activity and some success by law enforcement authorities. Over the past year alone, Latvia has seen a number of arrests of insolvency administrators with some being placed in lengthy custody, while investigations into the alleged wrongdoing take place. In some very notorious cases, such enquiries are still ongoing. Even the Head of the National Bank was briefly arrested and placed under investigations in part for his alleged dealings with some insolvency administrators. Sadly, though, actions by law enforcement have elicited responses from some of those they have targeted. In May 2018, just prior to the conference, the cold-blooded and brutal assassination of an insolvency administrator took place in Riga, just meters away from Latvian police headquarters. Police believe the shooting to be directly linked to his professional activities.

*Governmental Action*

Against that background, the sense of urgency within the Latvian government circles to deal with insolvency matters appears obvious. In fact, the Latvian Insolvency Law (*Maksātnespējas likums*) has seen two major changes purporting to increase the efficiency of insolvency proceedings and to enhance supervision of the insolvency administrators.

Efficiency of Insolvency Proceedings

Insolvency proceedings are now supposed to be speeded up by a new dispute resolution procedure in relation to disputed creditor claims. Normally, under Latvian law, the insolvency administrator makes a call on whether the submitted creditor claims are merited or not. The administrator is usually required to investigate all the relevant circumstances before making the decision. He is not, however, allowed to reject the claim, if there is an enforceable court ruling to that effect. On the other hand, in the absence of a court ruling, any claim submitted has to be rejected if the debtor raises objections. If, however, other creditors raise objections, the administrator is not bound by their opinion.

If the claim has not been accepted by the administrator and included in the list of creditors’ proofs, the creditor concerned previously had to file a complaint with the insolvency court. The court would then check whether the administrator acted in accordance with the procedural rules. However, it would not rule on whether the claim itself had merit or not. If the insolvency court established a substantive dispute, it would terminate its own proceedings and would allow the complainant to file a lawsuit with the ordinary courts. This could take some time and, occasionally, the insolvency proceedings could be completed (absurdly) before the ordinary courts had pronounced a final ruling in respect of the existence of that creditor’s claim.

The new rules seek to abolish the multi-level order of complaining where an administrator has not accepted a creditor’s claim. Upon receiving the administrator’s decision, the creditor is now entitled to file a lawsuit against the debtor right away and the dispute will be resolved by the insolvency court and not the ordinary courts. The rationale is that all judicial decisions required in an administration should be made by one and the same judge and in a speedy manner.

Trustworthiness of the Practitioner

The efficiency of the proceedings is the lesser of the two problems the new law seeks to tackle. Trustworthiness of practitioners is the other. In the annotation to the new amendments, the legislator argues that the reputation of the profession of the insolvency administrator over the past few years has reached a critically low mark. As a result, the licence to practise as an insolvency administrator with a two-year period of validity has now been introduced with all the administrators are subjected to a periodic re-certification. Furthermore, only those administrators deemed to possess a good reputation may be admitted to the examination for qualification and certification. Altogether, some 50 of the roughly 300 administrators lost their licences within the past year alone.

The Insolvency Control Authority, a governmental body, has now been given new powers not only to act upon complaints, but to investigate alleged irregularities in how the administration of a debtor is carried out and whether the treatment of the other concerned parties has been lawful. The authority may also carry out surprise controls at the offices of the administrators on their own initiative (i.e. not just when a complaint is received). The authority’s purpose is to ensure that the work of the administrators has been organised in accordance with statutory requirements and that the privileges of the administrator are not being abused. The authority may also issue binding directions to the administrators.

In the first few months alone, since the introduction of the new powers, there have been dozens of serious breaches discovered through investigations, for example inflated costs in proceedings and failure to transfer all amounts due to creditors.

Also addressing the issue of impartiality, in order to eliminate the risk of a non-impartial administrator being appointed, the new law seeks to strengthen the principle of randomness applied to nominate an administrator to an opened insolvency proceeding. The judge in charge of the proceedings may reject the random nomination only if, due to exceptional circumstances, the appointment would be impermissible. Likewise, the administrator may refuse to accept his own nomination or resign from the proceedings only if similar exceptional circumstances are present.

*Continuing Difficulties*

In a report published in 2016, Deloitte, the auditing company, estimated that the Latvian economy had lost EUR 665 million due to improperly administered insolvency proceedings between 2008 and 2014. This is a rather impressive amount for a small economy containing only 2 million people. Sadly, “Europe’s new best insolvency regulation” is of little help to those who incur damages as the consequence of improper (and occasionally unlawful) behaviour on the part of an insolvency administrator.

This is because the civil liability regime applicable to administrators is highly ineffective. Over the past two decades, there have been just over a dozen cases, where the administrator was sued by an aggrieved party, and in less than a handful of these were damages actually awarded. Part of the problem also lies with the ineffective liability insurance requirements. Without regard to the size of the debtor or the value of claims, the law only stipulates that an administrator must insure against civil liability to a threshold of EUR 42,600.

Such small things as a better functioning liability enforcement mechanisms and adequate insurance requirements would probably contribute more to the tackling of insolvency abuse than sophisticated, if burdensome and expensive, governmental supervision mechanisms.