Country Reports
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Updates from Latvia, Spain, France and Romania

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Latvia:
Major reforms

After two years of fierce debate a major package of amendments is going to enter into force on 1 March 2015 in Latvia. The most controversial are those relating to personal bankruptcy.

Firstly, after the sale of the debtor's dwelling that served as collateral, the remainder of the debtor's obligations towards the secured creditor will be discharged automatically, without applying a discharge procedure. Secondly, the amendments have shortened the terms of the discharge procedure, with the vast majority of personal bankruptcy proceedings now expected to last for approximately one and a half years.

A lot of amendments address corporate insolvency and restructuring, as well. For example, for the first time ever a specific time period has been set for the debtor to file for insolvency if the debtor has not honoured obligations due – more than two months. In addition, the debtor will not be able to argue that it plans to submit a restructuring application in order to avoid filing for insolvency.

Members of the debtor's management board will now be expressly liable for losses caused to the debtor, if the debtor's books are not handed over to an IP or if they are in a condition that does not give a clear image of the debtor's transactions and assets over the last three years prior to the debtor's insolvency. The law also gives guidance to courts as regards the amount of the aforementioned losses, i.e., such losses will be measured in the amount of:

1) the unsettled claims of creditors in the course of the debtor's insolvency proceedings and
2) reduction in assets as of the moment when the debtor should have filed for insolvency.

In case of the debtor's restructuring ending into liquidation (insolvency), a new administrator for insolvency will be appointed according to a roster. This will aid combating abuse of restructuring proceedings and using them as a mere prelude for insolvency with a chosen IP.

The administrator will now be entitled to provide a reasoned opinion to the court that any of the creditor's claims is *prima facie* unfounded. In addition, the administrator will be obliged to turn to the police in case of reasonable doubt about the obligations included in a restructuring plan or suspicion of document forgery. Further, claims towards third persons secured by rights *in rem* in respect of debtor's assets will be regarded as secured claims in the debtor's insolvency proceedings.

The amendments also aim to remedy one of the pitfalls of insolvency proceedings in Latvia, vesting in IPs the rights to challenge creditor's claims substantiated by court rulings in so-called simplified civil proceedings: undisputed compulsory execution of obligations and compulsory execution of obligations in accordance with warning procedures. Until recently, these simplified civil proceedings allowed persons cooperating with the debtor to relatively easily obtain legally almost invincible fraudulent creditors' claims.

Time will tell true practical implications of the amendments and whether we are yet to experience even more changes in the near future. What can be said for sure is that restructuring and insolvency remains a hot topic in Latvia.

> **FOR THE FIRST TIME EVER A SPECIFIC TIME PERIOD HAS BEEN SET FOR THE DEBTOR TO FILE FOR INSOLVENCY IF THE DEBTOR HAS NOT HONOURED OBLIGATIONS DUE**

Latvia: A fundamental reform of the status of the insolvency administrator

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The year 2015 will bring a fundamental reform of the insolvency administrator's status in Latvia, as subsequently administrators will be considered as public officials.

The sudden radical change has been broadly discussed between professionals and in the mass media, nevertheless, initiators of the new amendment to the Insolvency Law and representatives of the Latvian Parliament have not been able to name at least one public (state) function that is assigned to insolvency administrators.

Supporters of the reform assert that it has been enacted for the purpose of ensuring more effective control over the activities carried out by administrators within insolvency proceedings. However, it has not been clarified how the new status of the administrators would help to achieve this abstract aim. Thus, for the time being, the new public official's status of insolvency administrators has provoked more questions and problems rather than providing explanatory answers to former issues.

First of all, the concept of a public official is closely linked to restrictions regarding the combining of several positions. Since half of all insolvency administrators in Latvia consists of sworn attorneys, probably they will have to face an inevitable choice – it is not known yet whether it will be possible to practice in both professions at the same time. Besides, until now there are no transitional provisions adopted.

Furthermore, the new provisions make us think about the status and duties of administrators from other EU Member States in case they act in the Republic of Latvia according to EU Council regulation (EC) No 1346/2000 of 29 May 2000 Article 18. Thus the status of public official would also be applied to a foreign liquidator, although it would contradict national regulations of other states.

The fact that Latvia has chosen such a radical step that restricts the freedom to choose an occupation as an insolvency administrator for sworn attorneys and is not in compliance with the regulations of other EU Member States brings a rhetorical question: shall this new Latvian approach be considered as ingenious or rather a thoughtless error soon to be fixed?

> SHALL THIS NEW LATVIAN APPROACH BE CONSIDERED AS INGENIOUS OR RATHER A THOUGHTLESS ERROR SOON TO BE FIXED?