Latvia

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Insolvency Proceedings

Give the names and a brief description of the main purpose and effect of the types of corporate insolvency proceedings that can be opened in your jurisdiction as:

16.1.100

- **main proceedings (Annex A); and**
- **secondary proceedings (Annex B)**.

Does this include the main types of insolvency proceedings in your jurisdiction?

MAIN PROCEEDINGS

16.1.125 In Latvia, the collective insolvency proceedings for companies, referred to in Annex A to the Regulation as main proceedings are:

- corporate insolvency proceedings (*juridiskās personas maksātnespējas process*); and
- legal protection proceedings (*tiesiskās aizsardzības process*).

16.1.150 The new Insolvency Law (the "Act"), which came into force on 1 November 2010, abolished both rehabilitation (*sanācija*) and settlement (*mierizlīgums*) proceedings and introduced a new insolvency procedure, corporate insolvency proceedings (*juridiskās personas maksātnespējas process*).

16.1.175 The Act introduced the following general legal principles which govern both corporate insolvency and legal protection proceedings:

- *retention of creditor rights* —creditor rights acquired before the proceedings are retained during the proceedings and restrictions on creditor rights established during the proceedings cannot go beyond what is necessary to accomplish the objective of the proceedings;
- *equality of creditors* —creditors will have an equal opportunity to take part in the proceedings and to receive payment of their claims under obligations that were established with the debtor before the commencement of the proceedings;
- *prohibition of damaging actions* —a creditor and/or a debtor may not conduct individual actions which would damage the interests of the body of creditors as a whole;
- *performance of obligations* —during the proceedings such measures are to be applied that allow for performance of the debtor's obligations to the maximum extent;
- *efficiency of proceedings* —the proceedings are to be conducted so as to allow for the accomplishment of the proceedings' objective with the least resources;
- *efficient disposals of property* —as the aim of corporate insolvency proceedings is to facilitate the return of the company's assets to the market in accordance with commercial law, the sale of the debtor's property will be conducted so as to ensure that it is returned to the market as soon as possible;
- *transparency* —all relevant information must be available to all entities involved in the proceedings in order to ensure that the proceedings are credible and that the

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interests of all parties are observed (there is an exception to this principle for information that might be damaging to the lawful interests of the debtor or the creditors); and

- *good faith* —the entities involved in the proceedings must exercise their rights and fulfil their duties in good faith and the debtor and/or creditors cannot use the proceedings for unfair gain.

16.1.200 The previous Insolvency Law of 2007 (as amended) is still applicable to insolvency proceedings which were commenced between 1 January 2008, and 31 October 2010.

Corporate insolvency proceedings (Juridiskās personas maksātnespējas process)

16.1.250 These proceedings are commenced by the presentation of an application to the court by the company, its liquidator (if during a voluntary liquidation elements of insolvency occur), its creditors, an authorised person of majority of creditors (in case if legal protection proceedings are being violated), or a person mentioned in art.37(1)(a) of the Regulation (the "insolvency practitioner in the main proceedings"). Secured creditors cannot submit an application for corporate insolvency proceedings (except to the extent that any part of their claim is unsecured) and unsecured creditors (including secured creditors in respect of any unsecured element of their claim) cannot submit an application if legal protection proceedings are initiated or being implemented unless the debtor company is in breach of its obligations in relation to its plan of measures in any of the ways described in 16.3.125.

16.1.275 If any of the elements of insolvency described in para.16.3.125 below are established by the court, then the court must open corporate insolvency proceedings and declare that the company is insolvent.

16.1.300 The effect of the opening of corporate insolvency proceedings is that:

- the company loses the right to dispose of its property, as well as any property of a third party held by it or in its possession—instead, such rights pass to an administrator;
- the administration of the company's business also passes to the administrator;
- the accrual of late payment charges and interest in respect of claims is stopped; and
- secured creditors shall not request sale of pledged (mortgaged) property of debtor for two months.

16.1.325 The opening of corporate insolvency proceedings also has the effect of staying civil proceedings against the company and of terminating the execution of any judgments for the collection of debts.

16.1.350 A creditor's application to open corporate insolvency proceedings will be reviewed by the court in an oral hearing. If it is the company itself that applies, the application will be reviewed by the court in written proceedings. Subject to the caveats in para.16.6.125 below, the judgment of the court opening corporate insolvency proceedings is final.

16.1.375 The principal purpose of Latvian corporate insolvency proceedings is to satisfy, as fully as possible, the claims of creditors by obtaining the maximum revenue from the sale of the insolvent company's property. This is usually done in open auctions organised by the administrator. However, in the case of certain types of property, the legislation specifies particular forms of sale. The administrator may also sell the debtor's property to an individual purchaser without having offered it for sale at an open auction.

16.1.400 Corporate insolvency proceedings are a terminal procedure which will ultimately result in the company being liquidated, dissolved and struck off the Commercial Register of the Register of Enterprise of Latvia (the "Enterprise Register") unless legal protection proceedings are commenced.

Legal protection proceedings (*Tiesiskās aizsardzības* process)

16.1.425 The purpose of legal protection proceedings is to allow a debtor breathing space to restructure its debts. Legal protection proceedings are available to all corporate debtors regardless of whether they are insolvent or encountering financial difficulties, however, it is companies in financial difficulties which are likely to make use of legal protection proceedings. Legal protection proceedings are commenced by way of an application to the court by the debtor and the opening of legal protection proceedings results in a moratorium on creditor action.

16.1.450 Once legal protection proceedings are commenced, the company must draft a "plan of measures" (the plan of measures is essentially the debtor's proposals as to how to resolve its economic difficulties). The plan may include any of the following:

- a postponement of the performance of payment obligations;
- the use of set-off;
- the cancellation or reduction of the principal debt, contractual penalties or interest;
- the granting of security or rights in rem over movable assets or real property;
- the sale of movable assets or real property;
- a reorganisation of the company; and
- an increase in the company's share capital.

16.1.475 The plan must be agreed by the company's secured creditors and unsecured creditors in the following proportions:

- in respect of secured creditors, more than two-thirds of all the company's secured creditors by principal value must approve the plan; and
- in respect of unsecured creditors, more than half of all the company's unsecured creditors by principal value must approve the plan.

If the legal protection proceedings action plan (plan of measures) is not approved by the creditors, the debtor may still request the court to approve it, provided that the following conditions are met:

- the plan has been prepared in compliance with legal requirements and has been submitted to all creditors for approval;
- at least one creditor group has approved the plan, except for groups that, based on an assessment of the debtor as a going concern or in the event of insolvency, would receive no payment or retain no stake;
- the plan ensures that the dissenting creditor group is placed in a position at least as favorable as the consenting creditor group;
- no creditor group may receive or retain more than the full amount of its claim or participation share.

If the debtor has not taken into account the objections made by the creditors to the plan of measures of legal protection proceedings, an independent sworn auditor who is not the supervisory person of legal protection proceedings shall evaluate these objections and provide his or her opinion on them.

16.1.500 If corporate insolvency proceedings are commenced as secondary proceedings under the Regulation and, pursuant to art.47 of the Regulation, are closed by legal protection proceedings, then the plan of measures must also be approved in writing by the insolvency practitioner in the secondary proceedings.

16.1.525 Following the creditors' approval of the plan of measures, the plan must be submitted to the court for approval. Prior to the submission of the plan to the creditors and to the court for the approval of the plan, the person supervising the legal protection process (the "Supervisor") shall provide an opinion regarding this plan. The plan of measures is reviewed by the court in written proceedings. Once the court has approved the plan, it enters into force

and binds all creditors, whether or not they voted in favour of the plan. The court appoints a Supervisor at the initiation of legal protection proceedings until the review by the court of the plan of measures. The Supervisor is also appointed if the plan of measures is approved by the court despite the majority of creditors rejected it (para.16.1.475). Supervisor may also be appointed by the court to oversee the company's operations during the implementation of the plan at the request of the debtor or majority of creditors. The plan must be completed within two years from the date it became effective. This term may be set longer, but it cannot exceed four years, with justification provided in the plan. The completion time limit could still be extended up to additional two years subject to approval by majority of creditors.

16.1.550 The Act also provides for out-of-court legal protection proceedings. Generally these out-of-court proceedings are subject to the same rules as court-based legal protection proceedings. However, in out-of-court legal protection proceedings the company must simultaneously submit an application to the court demonstrating that is has complied with the following requirements:

- the company has drafted a plan of measures;
- creditors in the proportions described in para.16.1.475 have agreed to the plan of measures;
- if the majority of creditors request appointment of the Supervisor, an agreement is concluded by the majority of the creditors, the company and the proposed Supervisor.
- the company has received an opinion from the proposed Supervisor on the likelihood of the plan of measures being effective; and
- the company has sent the plan of measures to those creditors who are not party to the plan.

16.1.575 In out-of-court legal protection proceedings the work of putting together the plan of measures is done outside of the court process. Once this (and the other steps above have been taken) the court will approve the process and the plan will be implemented under the supervision of an Supervisor. The plan of measures of out-of-court legal protection proceedings shall not affect interest of tax authority.

SECONDARY PROCEEDINGS

16.1.600 Only corporate insolvency proceedings (*juridiskās personas maksātnespējas process*) are available to a corporate debtor as secondary proceedings.

PROCEEDINGS TO WHICH THE REGULATION DOES NOT APPLY

Voluntary liquidation (*Likvidacija*)

16.1.625 The company may also terminate its activities in cases where it is solvent. A decision regarding the commencement of a liquidation procedure must be adopted by the shareholders' meeting. Such a decision is taken if not less than two-thirds of the votes represented at the meeting are in support of the decision, unless the articles of association specify that a larger majority is needed.

16.1.650 Company liquidation is carried out by the executive body through the company liquidator. However, the meeting of shareholders may elect another liquidator. Upon the election of the liquidator, the powers of the executive body cease, but its responsibility is preserved until the enterprise is liquidated.

16.1.675 Liquidators must collect debts, including amounts which are due to the company in relation to unpaid capital shares, sell the property of the company, satisfy the claims of creditors and distribute the remaining property among the shareholders. If it is found during the course of the liquidation that the property of the company is not sufficient to satisfy all the legitimate claims of creditors, the liquidator has a duty to submit an application for corporate insolvency proceedings.

16.1.700 The operations of a solvent company may be terminated by the court if the company has violated the requirements of legislation in its activities.

TYPES OF COMPANY

Are these proceedings available for all companies or are there special regimes for small companies, financial institutions, insurance companies or any other types of companies?

16.2.125 Corporate insolvency proceedings and legal protection proceedings are available to all companies registered in the Enterprise Register. This includes all companies owned by the state or by a municipality. State and municipal authorities governed by public law are excluded from the ambit of the proceedings set out in the Act.

16.2.150 Corporate insolvency proceedings are available to companies which are under the supervision of the Bank of Latvia (*Latvijas Banka*). The provisions of the Act apply to insolvency proceedings of such companies, taking into account the exceptions and additions specified in the law which regulates this area of business.

16.2.175 By contrast, the insolvency of credit institutions is not subject to the Act, but are subject to the specific insolvency procedures set out in the Credit Institution Law 1995.

16.2.200 Legal protection proceedings are not available for companies which fall under the supervision of the Bank of Latvia (insurance companies, insurance brokerage companies, the organiser of the regulated market, investment brokerage companies, depositary companies, alternative investment fund managers, investment management company, savings and loan associations, credit institutions, or private pension funds).

COMMENCEMENT OF PROCEEDINGS

Who can initiate the insolvency proceedings referred to above and how (briefly) are such proceedings initiated? What are the conditions for initiating each type of insolvency proceeding?

Corporate insolvency proceedings

16.3.125 An application for corporate insolvency proceedings can only be made if the company is insolvent. A company will be insolvent if a court establishes at least one of the following elements of insolvency:

(a) a court judgment for the recovery of a debt cannot be enforced;

(b) the debtor, a private or public limited liability company, has not settled one or more of its due debts and those obligations (without penalties and interest) individually or jointly exceed EUR 4268 and a creditor has given notice of its claim to the debtor and the debtor has not paid the debt or made any justified objections to the creditor's claim within three weeks of receiving the notice;

(c) the debtor, a company other than those companies mentioned above, has not settled one or more of its due debts and those obligations (without penalties and interest) individually or jointly exceed EUR 2134 and a creditor has given notice of its claim to the debtor and the debtor has not paid the debt or made any justified objections to the creditor's claim within three weeks of receiving the notice;

(d) the debtor has not paid, within two months of the due date, certain sums due to employees (the full amount of employees' salary, compensation in relation to an accident at work or occupational or mandatory social insurance payments);

(e) the debtor has not settled overdue debts for more than two months;

(f) pursuant to the financial statement issued at the beginning of voluntary liquidation proceedings, it is established that the debtor has insufficient assets to satisfy all the undisputed claims of creditors;

(g) the debtor has submitted an application for legal protection proceedings twice within one year and both times has failed to persuade the court to open legal protection proceedings;

(h) the debtor has not performed activities specified by the Act or has, during legal protection proceedings, furnished false information during the implementation of a plan of measures;

(i) where the debtor is subject to legal protection proceedings, it is shown that the debtor cannot settle the liabilities prescribed by the plan of measures;

(j) where the debtor is subject to legal protection proceedings, the debtor has defaulted on the terms of the plan of measures and this default has been continuing for at least 30 days and the debtor has not submitted amendments to the plan of measures to the court; or

(k) the debtor is subject to legal protection proceedings and the debtor has carried out any of the following activities which are prohibited by the Act:

(i) concluded any transaction or performed any action which may worsen the financial position of the company or harm the interests of the body of creditors;

(ii) granted loans or credits, except in cases where the granting of loans or credits is the basic commercial activity of the company and the ability to continue this activity is included in the plan of measures;

(iii) provided warranties or granted, donated or awarded bonuses or other benefits to members of its management and supervisory board;

(iv) alienated immovable property or encumbered immovable property with rights in rem, except in cases where this is envisaged in the plan of measures;

(v) distributed and paid profit in dividends;

(vi) fulfilled any payment commitments which are not included in the plan of measures.

16.3.150 An application can be presented by the company, its creditors, the liquidator in a voluntary liquidation and the insolvency practitioner in any main proceedings. Secured creditors cannot submit an application for corporate insolvency proceedings (except to the extent that any part of their claim is unsecured) and unsecured creditors (including secured creditors in respect of any unsecured element of their claim) cannot submit an application if legal protection proceedings are initiated or being implemented unless the debtor company is in breach of its obligations in relation to its plan of measures in any of the ways described in 16.3.125.

The secured creditors may still submit the application if a competent authority has decided to terminate the company,

16.3.175 A precondition for the submission of the application to open corporate insolvency proceedings is the payment of an insolvency deposit in the amount of two minimum salaries[2] (as at January 2021 the amount of the insolvency deposit is 1,000.00). The purpose of the insolvency deposit is to cover the costs of insolvency proceedings where a debtor does not have property and creditors have decided against using other sources of financing.

Management:

16.3.200 a company is obliged to submit an application to open corporate insolvency proceedings if any of the conditions in para.16.3.125 (e), (f) or (i) are satisfied.

Creditors:

16.3.225 a company's creditors, either individually or as a group, can submit an application to open corporate insolvency proceedings if any of the conditions listed in para.16.3.125 (a) to

[2] General public salaries as specified by the Latvian Government.

(d) are satisfied. Secured creditors cannot submit an application for corporate insolvency proceedings (except to the extent that any part of their claim is unsecured) and unsecured creditors (including secured creditors in respect of any unsecured element of their claim) cannot submit an application if legal protection proceedings are initiated or being implemented unless the debtor company is in breach of its obligations in relation to its plan of measures in any of the ways described in 16.3.125.

Liquidator:

16.3.250 a liquidator conducting a voluntary liquidation is under a duty to submit an application to commence corporate insolvency proceedings if it is not possible, in the liquidation proceedings, to satisfy fully all the claims of the company's creditors. Before submitting such an application, the liquidator must notify the company's shareholders. However, if it is not possible to notify the shareholders, such an application must in any case be submitted without delay and without their knowledge.

Insolvency practitioner in the main proceedings:

16.3.275 if main proceedings have been opened in another EU Member State, an application to commence corporate insolvency proceedings may be submitted in order to commence secondary proceedings.

16.3.300 Once an application to commence corporate insolvency proceedings has been submitted, the court will assess whether the requisite conditions for declaring the debtor insolvent have been satisfied. If the conditions under the Act have been fulfilled, corporate insolvency proceedings will be commenced. It is important to note that an application to commence corporate insolvency proceedings cannot be modified or withdrawn once it has been submitted. The court decision on whether or not to commence corporate insolvency proceedings shall be given in 5 days after submission of the application. The application of a creditor or majority of creditors is reviewed in a court hearing within 15 days of initiation of a case. If the application submitted by a debtor then it is reviewed within seven days in a written procedure. Corporate insolvency proceedings are opened from the date the court hands down its judgment.

Legal protection proceedings

16.3.350 Legal protection proceedings can only be commenced by the debtor by an application to the court. Once legal protection proceedings have been commenced the debtor must draft a plan of measures which must be approved by the company's creditors in the proportions described in para.16.1.475.

16.3.375 If the debtor wishes to apply for out-of-court proceedings, it should first make the arrangements described in para.16.1.525 above before submitting the application to the court.

16.3.400 Legal protection proceedings (of either type) cannot be commenced if:

- a voluntary liquidation has been commenced in respect of the company;
- the debtor has been subject to legal protection proceedings at any time during the last five years and the plan of measures has been implemented in those proceedings; or
- the debtor has initiated legal protection proceedings within last four months and the legal protection proceedings have been terminated because the creditors did not approve the plan of measures or the plan did not comply with statutory requirements.

16.3.425 The fact that legal protection proceedings have been commenced must be recorded in the Insolvency Register (see para.16.26.100 for details on the Insolvency Register).

NOTICE OF PROCEEDINGS

In relation to the insolvency proceedings referred to above, what notice do third parties (such as creditors) receive of an application to open insolvency proceedings?

Corporate insolvency proceedings

16.4.125 Third parties receive no notification of an application to commence corporate insolvency proceedings. However, third parties will be able to establish if corporate insolvency proceedings have been commenced by searching the Insolvency Register and other public registers.

Legal protection proceedings

16.4.150 Third parties receive no notification of an application by the debtor to open legal protection proceedings. The opening of legal protection proceedings must be recorded in the Insolvency Register. However, once the court has opened the proceedings and the debtor has drafted its plan of measures, the debtor must send the plan of measures to all creditors. This is the first direct notice that creditors receive of the proceedings.

RIGHT TO MAKE REPRESENTATIONS

What rights do third parties (such as creditors) have to make representations in relation to whether the insolvency proceedings, referred to above, should be commenced?

Corporate insolvency proceedings

16.5.125 Only the applicant, debtor and proposed administrator attend any court hearing to decide whether or not the corporate insolvency proceedings should be opened (an application by the debtor to open corporate insolvency proceedings will be reviewed in a written procedure rather than by a court hearing). Therefore it is only these parties who may make representations.

Legal protection proceedings

16.5.150 In general, the application for legal protection proceedings is reviewed by the court in a written procedure. However, if there is a court hearing, only the debtor and the proposed Supervisor are entitled to attend the court hearing to decide whether or not legal protection proceedings should be commenced. Accordingly, only these parties have the right to make representations as to whether or not legal protection proceedings should be commenced.

RIGHT OF APPEAL

Which parties have a right of appeal against a decision opening insolvency proceedings referred to above?

Corporate insolvency proceedings

16.6.125 As a general rule, the court judgment commencing corporate insolvency proceedings cannot be appealed. However, a debtor or creditor may request that the court review the case if new circumstances relevant to the case have arisen following the entering into force of the judgment. In addition, if substantial violations of evidential and/or procedural rules have taken place the debtor or a creditor may ask specified officials to raise objections to the judgment. These objections will be reviewed by the Senate of the Supreme Court.

Legal protection proceedings

16.6.150 There is no right of appeal in relation to a judgment opening legal protection proceedings. However, a debtor may request that the court review the case if new

circumstances relevant to the case have arisen following the opening of the proceedings. In addition, if substantial violations of evidential and/or procedural rules have taken place, the debtor or a creditor may ask specified officials to raise objections in relation to the judgment opening the proceedings. These objections will be reviewed by the Senate of the Supreme Court.

MANAGEMENT OF DEBTOR

What is the effect of the opening of proceedings on the management and day to day control of the business of the company?

Corporate insolvency proceedings

16.7.125 Once corporate insolvency proceedings have been commenced, the management and day to day control of the company pass to the administrator. The administrator is appointed by the court using the automated selection provided by the Court Information System, from the list of candidates for the position of administrators maintained in the Electronic Insolvency Accounting System of the Insolvency Control Authority (the "Authority"). The Authority supervises the activities of the administrators during corporate insolvency proceedings. The board of directors of the insolvent company are no longer entitled to deal in the property of the company and all their rights in that regard are suspended. This continues throughout the course of the proceedings.

16.7.150 According to the Act, only a natural person may become an administrator if he or she:

- has reached the age of 25 years;
- has received either: (i) a state-recognised education certificate on acquisition of a second level professional higher education in law and obtained the qualification of a lawyer; or (ii) a state-recognised education certificate on acquisition of higher academic education in law and obtained an academic degree;
- has work experience of at least three years as a lawyer;
- knows the official language at the highest level;
- has successfully passed an examination for administrators; and
- has impeccable reputation

16.7.175 An administrator may not be a person:

- who has been removed from the office of an administrator in accordance with a decision of the Authority, unless five years have passed since the day of removal or termination of the certificate;
- has been convicted of committing an intentional criminal offence or against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person (this condition will not apply from 1 June 2025);
- for whom insolvency proceedings of a natural person have been declared and less than five years have passed since the day of termination thereof;
- who has been a member of the administrative body of a legal person and has caused insolvency proceedings of this legal person due to the neglect thereof or deliberately;
- on whom, on the basis of a decision in an administrative offence case, an administrative penalty - deprivation of the right to hold any office in a commercial company - has been imposed;
- who, on the basis of a decision in a disciplinary matter, has been removed from the office of an administrator, excluded from the number of sworn advocates or assistants thereto, released from the office of a prosecutor or removed from the office of a sworn bailiff, an assistant thereto, a sworn notary, an assistant thereto, or a judge, or whose certificate of a sworn auditor has been cancelled, unless five years have passed since

the day when the decision has entered into effect in the disciplinary matter or a decision has been taken to cancel the certificate of a sworn auditor;

- on whom the sanction of discontinuation of activity referred to in the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing has been imposed, unless five years have passed since the day of the imposition thereof;
- on whom the sanction of suspension of activity referred to in the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing has been imposed.

16.7.200 The administrator will be responsible for disbursing the assets of the company in accordance with the Act.

16.7.225 The administrator is deemed as public official with all restrictions and obligations applicable.

Legal protection proceedings

16.7.250 While legal protection proceedings are a debtor-in-possession proceeding, the commencement of legal protection proceedings results in the appointment of Supervisor to provide an opinion of a plan of measures, who may also be further appointed to oversee the implementation of the plan of measures (para.16.1.525). The Supervisor performs a supervisory role.

16.7.275 Once legal protection proceedings have been commenced the debtor is prevented from carrying out any of the following acts:

- entering into any transaction or performing any action which may worsen the financial position of the debtor or harm the interests of the creditors as a whole;
- issue loans, except where the loan or credit agreement is in accordance with the usual commercial activity of the debtor and is entered into in accordance with the plan of measures;
- providing guarantees or warranties;
- donating money to charity or otherwise;
- awarding bonuses or other benefits to the management of the company or the company's supervisory board;
- alienating an immovable property or granting security in respect of the company's immovable property (or otherwise encumbering such property) except in cases where the grant of security is provided for in the plan of measures;
- declaring or paying a dividend to shareholders; and
- fulfilling the company's ongoing payment obligations, except as provided for in the plan of measures.

16.7.300 However, the debtor, in coordination with the Supervisor, if such is appointed, (and without requiring an amendment to the plan of measures) may settle payments which are not included in the plan of measures and do not exceed two per cent of the total amount of creditors' claims (as at the date of approval of the plan of measures).

16.7.325 Once legal protection proceedings are commenced the debtor has the following obligations:

- to carry out the plan of measures and, at least once a month, to report to the Supervisor or the creditors, if the Supervisor is not appointed, on the progress made in implementing the plan of measures;
- on the request of the Supervisor, or a creditor, if the Supervisor is not appointed, immediately, in writing, to provide with all the information on the implementation of the plan of measures;

- on the request of the Supervisor, to provide an opportunity for the Supervisor to inspect the debtor's economic activity and documentation in the debtor's presence;
- upon a creditor's request, provide all information regarding the implementation of the plan of measures;
- to immediately report to the Supervisor if it will be unable to fulfil any aspects of the plan of measures;
- to inform the Supervisor or creditors, if the Supervisor is not adopted, about any change in its legal address;
- to channel all profit from its business activities into the implementation of the plan of measures;
- to notify the court bailiff who maintains cases concerning the recovery of awarded but unpaid amounts and the enforcement of obligations through court proceedings, as well as the employee representatives about the initiation of legal protection proceedings;
- after the approval of the plan or its amendments by the court, if the Supervisor is not appointed, to submit it to the Insolvency Register;
- to report to the Supervisor, if such is appointed, any material event concerning the debtor's activities; and
- to pay for the costs of the legal protection proceedings.

ASSETS AND THE INSOLVENT ESTATE

What assets form part of the insolvent estate?

16.8.125 The following assets form part of the insolvent estate:

- the immovable and movable property of the company (including money) at the time of submission of the application to commence corporate insolvency proceedings, regardless of their location and extending to assets outside of Latvia (however, if the proceedings are secondary proceedings, they will only extend to assets located in Latvia);
- money acquired from the sale of the assets of the company;
- recovered property (see para.16.8.150 below);
- interests acquired by the debtor during the insolvency proceedings; and
- other property legally acquired during the insolvency proceedings.

16.8.150 "Recovered property" is financial funds or other property which enters the debtor's estate during the insolvency proceedings as a result of its rights to claim against third parties, or is recovered as a result of payments or transactions which are subsequently declared void, or of reclaiming possessory pledges and covered debts.[3] In addition, the administrator will recover unpaid amounts on the company's shares or, in the case of a partnership, requisite contributions from the partners.

16.8.175 The insolvent estate does not include property in the company's possession which actually belongs to third parties. Trusts are not recognised in Latvia, therefore trust assets may be included in the assets of the company and difficulties may occur in claiming back such assets. The administrator must ensure that third party property is maintained until it is transferred back to the owner although he or she may collect expenses associated with such maintenance. However, if within the insolvency proceedings, third party property is transferred to new owners, the third party must be reimbursed for the loss by the person who caused the transfer.

[3] Covered debts are those debts which the debtor has paid during the six months before the opening of the insolvency proceedings.

The administrator must draft a plan for the sale of the debtor's property within two months of the commencement of corporate insolvency proceedings. The draft plan should be sent to all creditors of the debtor without delay.

16.8.200 The assets remain with the insolvent company until the property is sold according to the Act.

16.8.225 The above does not apply to legal protection proceedings; the assets covered by the plan of measures are those included in the plan.

EFFECTS OF PROCEEDINGS ON CREDITOR ACTION

What is the effect of the initiation of proceedings on the following:

16.9.100

- **existing contracts; and**
- **creditor action generally?**

Corporate insolvency proceedings

16.9.125 The opening of corporate insolvency proceedings does not itself terminate any outstanding contracts of the company. Usually the contracts contain a provision that the opening of insolvency in respect of the company is a ground for terminating the agreement and such a clause is effective, thus generally giving the counterparty the choice as to whether they wish to terminate the agreement. The administrator, as the manager of the company, may decide on the further performance of any obligations arising from the agreements or may require the other party to terminate the agreement due to the insolvency of the company. The Act provides that, in several cases, the administrator is entitled to request that the court declare the transactions of the company with third parties as invalid (see para.16.1.100 below).

16.9.150 If an agreement concluded by a debtor is not performed or only partially performed at the date of the declaration of insolvency, the administrator is entitled to require that the agreement is performed by the other contracting parties or can unilaterally withdraw from the agreement. An administrator has the right to perform an agreement as long as it does not decrease a debtor's assets.

16.9.175 After a company is declared insolvent, the administrator is entitled to terminate its employment contracts. As a result, dismissed employees acquire the status of priority creditors to the extent of any unpaid salary and related payments and any reimbursement of damages in respect of any occupational accident or disease.

16.9.200 Following the opening of corporate insolvency proceedings, all court proceedings against the company are stayed, and no judgments against the company can be enforced. It is a responsibility of the administrator to ensure that court executors are informed of the opening of the corporate insolvency proceedings.

16.9.225 The rights of secured creditors to enforce their security are also restricted for two months from the moment that corporate insolvency proceedings are commenced.

16.9.250 During corporate insolvency proceedings, the ability of unsecured creditors to enforce their debts through the courts is stayed. Secured creditors are entitled to enforce their security, subject to the restriction referred to above and are obliged to co-operate with the administrator in relation to any sale of the secured property.

16.9.275 The administrator shall arrange an auction for a sale of debtor's property. When the pledged property of a debtor is sold at auction, the sale contract in respect of such property must be concluded in writing and be signed by all parties. The purchase price must be paid and if the purchaser fails to comply with this obligation, the sale of the property will be declared void by the administrator.

Legal protection proceedings

16.9.300 Upon the opening of legal protection proceedings a moratorium on certain creditor action arises. The effect of the moratorium is that:

- no judgments against the debtor can be enforced, except judgments satisfying claims of employees and certain claims arising out of unlawful receipt of aid for commercial activity;
- secured creditors are prevented from exercising their power of sale in respect of the mortgaged or pledged property of the debtor;
- creditors are prevented from submitting an application for corporate insolvency proceedings;
- the debtor may not be placed into voluntary liquidation;
- any contractual penalties, interest (which exceeds the level of interest stipulated by law) and penalties in relation to tax claims will not accrue; and
- creditors and other suppliers or service providers are prohibited to avoid the performance of enforceable contracts or to terminate, accelerate or otherwise modify them to the detriment of the debtor by use of a contractual clause that provides for measures related to the initiation of legal protection proceedings.

The moratorium is in effect for two months from the initiation of the legal protection proceedings, except prohibition to submit insolvency application, which stays in place while the legal protection proceedings are ongoing. The moratorium may be extended by a court decision for a period of up to six months from the court decision to initiate legal protection proceedings, if the majority of creditors agree to this. An ongoing moratorium continues after an application for extension has been submitted to the court, until the court adopts a decision on the application. The moratorium may be terminated by decision of the court.

16.9.325 Where a company utilises out-of-court legal protection proceedings the above moratorium will not apply until the court approves the application set out in para.16.1.550.

16.9.350 The opening of legal protection proceedings does not itself terminate any outstanding contracts of the company. However, a contract may contain a provision that an application to commence legal protection proceedings in respect of the company is a ground for terminating the agreement and such a clause is effective, thus giving the counterparty the choice as to whether they wish to terminate the agreement.

RANKING OF CLAIMS—PRIORITY

Are the claims of any classes of creditor given priority status in the insolvency proceedings?

16.10.125 Various classes of creditors are afforded priority status in the event of a corporate debtor going into insolvency proceedings. First, the administrative costs of the corporate insolvency proceedings must be covered. Second, a claim of the Authority is covered if claims of employees are paid by the Employee Claims Guarantee Fund. Other priority claims (only the principal claim without interest) are covered in the following order:

- claims of employees (with respect to salary, for the three months within a period of one year prior to the opening of corporate insolvency proceedings; with respect to annual paid leave, for one year prior to the opening of corporate insolvency proceedings; with respect to other types of paid leave, for a period of three months within a period of one year prior to the opening of corporate insolvency proceedings; the minimum amount of severance pay prescribed by law; with respect to compensation for damages relating to an occupational accident or occupational disease, for the whole unpaid period together with payments relating to such compensation as are to be made for four years in advance; and with respect to

compulsory social insurance payments and income tax associated with these claims); and

- claims of the tax authorities that were submitted within the time period for the submission of creditors' claims stipulated by the court.

16.10.150 Once these debts have been satisfied in full, any remaining funds are distributed to:

- unsecured creditors' claims (only the principal claim without interest) and any unsecured part of a secured creditor's claims (only the principal claim without interest) that were submitted within the time period for the submission of creditors' claims stipulated by the Act (see para.16.13.100 for details of these time periods); and
- unsecured creditors' by-claims (claims which do not form part of the principal claim, for example contractual penalties, interest etc)

16.10.175 In each case, a subsequent class of creditors will be paid only once the claims of all prior-ranking creditors have been satisfied in full. In the case of secondary proceedings, the insolvency practitioner in the main proceedings shall receive any surplus funds which remain after the payment of costs and when the claims of the creditors have been met.

In case if there is not enough money to cover all claims of the unsecured creditors under para. 16.10.150 then the claim shall be satisfied proportionally.

Claims of holders of capital shares in proportion to their investment and claims of persons to whom the association or foundation passes in compliance with the regulatory requirements or by-laws of the respective association or foundation shall be satisfied at last instance.

16.10.200 The administrator must draft a plan for the satisfaction of creditors' claims within 15 days after the plan for the sale of the debtor's property has been implemented. The draft plan should be sent to all creditors of the debtor without delay.

16.10.225 There is no legislative provision affording priority to any new money which might be provided to the company once it has been found to be insolvent. The administrator does have the power to raise new funding but due to the lack of priority afforded to new money, it is in practice very difficult to attract new investment or financing.

16.10.250 The claims of secured creditors are to be satisfied out of the charged property and, as such, these creditors are not entitled prima facie to lodge claims in the insolvency proceedings in relation to their secured claim. Only if such secured claims cannot be satisfied in full out of the proceeds of sale of the secured property will any shortfall rank as an unsecured claim which can be lodged in the insolvency proceedings.

16.10.275 The above does not apply to legal protection proceedings. The plan of measures will contain information on the ranking of claims and this differs from case to case.

RANKING OF CLAIMS—SUBORDINATION

Are the claims of any classes of creditor subordinated in the insolvency proceedings?

16.11.125 The funds which remain after the payment of the costs of proceedings and the claims of the creditors are distributed to the holders of capital shares of the company in proportion to the amount of each investment. However, if the shareholder has granted a loan to the company, Latvian law does not prevent such a claim being included in the list of other creditors and does not provide for the subordination of such claims. After the opening of corporate insolvency proceedings, interest in regard to such claims is discontinued.

16.11.150 In the case of secondary proceedings, the insolvency practitioner in the main proceedings will receive any surplus funds which remain after the payment of costs and the claims of the creditors. In the secondary proceedings, the holders of capital shares of the company are not entitled to receive any funds.

16.11.175 The above does not apply to legal protection proceedings. The plan of measures will contain information on whether any claims will be subordinated and this differs from case to case.

FILING CLAIMS—FOREIGN CREDITORS

Are there any special rules for the filing of claims by creditors domiciled or incorporated outside your jurisdiction?

16.12.100 There are no special rules for the treatment of creditors domiciled or incorporated outside of Latvia and such creditors would be entitled to claim in the Latvian insolvency proceedings (both corporate insolvency proceedings and legal protection proceedings).

FILING CLAIMS—PROCEDURE

In very broad terms, what is the procedure for the lodging, verification and admission of creditor claims?

16.13.125 Creditors' claims must be submitted to the administrator within one month from the date the entry is made in the Insolvency Register of the opening of corporate insolvency proceedings.

16.13.150 If a creditor has delayed the submission of its claim and missed the one-month deadline, it may still submit its claim in the six months from the date the entry is made in the Insolvency Register of the opening of corporate insolvency proceedings. However, a creditor cannot submit a claim later than the date when the plan for satisfaction of creditors' claims or the report on the absence of assets has been sent to the creditors (which may be earlier than the six-month period). Where the creditor has not filed its claim within the one month time limit, but has submitted the claim within six months' time limit, it would not get voting rights at a meeting of creditors. In case if the claim is not submitted within six months' time limit, the creditor loses its rights to submit a claim in the proceedings altogether.

16.13.175 The administrator will prepare lists of the claims of secured creditors and unsecured creditors and any third parties against whom the company itself has a claim, indicating in each case the amount of such claim. In the list of claims of unsecured creditors, the administrator indicates the number of votes to which each unsecured creditor is entitled as a result of the value of its claim.

16.13.200 The administrator groups the claims of creditors according to their priority, examining them to ensure that they comply with all legal requirements and requesting additional information where necessary. The administrator then decides whether each claim should be recognised or rejected. A creditor's claim established by a court judgment may be not accepted (or only accepted partially) by an administrator if there is evidence that, following the court judgment, the debtor has met the obligations set out in the judgment fully or partially.

16.13.225 After verifying the basis for the claims of secured creditors, the administrator excludes property pledged as security from the list of property against which the claims of creditors may be brought.

16.13.250 Each creditor has the right to appeal to the court the administrator's decision to reject its claim within one month from the date of the receipt of this decision.

16.13.275 Each creditor has the right to appeal to the court the administrator's decision regarding the approval of another creditor's claim. In respect of claims which were filed within one month time limit for submitting claims as set out in para.16.13.100, this appeal must be brought no later than three weeks after the expiry of the term for the submission of creditors' claims. In respect of claims filed within the extended time limit for submitting claims as set out in para.16.13.125, this appeal must be brought no later than one month after the decision by the administrator to accept the claim.

16.13.300 If main or secondary proceedings are opened in Latvia, creditors of the company which have their legal addresses in other EU Member States should submit their claims as creditors. An administrator in such proceedings in Latvia should submit creditor claims in other proceedings in other Member States.

16.13.325 The above does not apply to legal protection proceedings. Each plan of measures should cover all claims of creditors.

COSTS OF PROCEEDINGS

Who bears the costs of the insolvency proceedings? In your experience, and generally speaking, do the costs of proceedings tend to be high?

16.14.125 The costs of the application to commence corporate insolvency proceedings are borne by the applicant, with the amount of an insolvency deposit (currently 1,480.00 EUR (as at January 2025)) and the court fee being determined by law.

16.14.150 The court may fully or partly exempt an employee from payment of the insolvency proceedings deposit, if he or she submits an application for insolvency proceedings after that when, by applying enforcement measures, it was not possible to fulfil a court ruling regarding recovery of debt from the debtor, and the employee, taking into account his or her financial situation, is not able to pay in the insolvency proceedings deposit.

16.14.175 The general costs of corporate insolvency proceedings will be paid out of the estate in priority to the claims of the unsecured creditors.

16.14.200 The insolvency deposit should be used in order to cover the costs of the corporate insolvency proceedings where a debtor does not have property and creditors have decided against using other sources of financing.

16.14.225 If the estate of the company is not sufficient to finance the insolvency proceedings, it is allowed, subject to a separate agreement with the administrator, that a representative of a debtor, administrator, creditors or other persons may finance the costs of insolvency on their own initiative.

16.14.250 The costs of legal protection proceedings are paid by the debtor.

EFFECTS OF THE CLOSURE OF THE PROCEEDINGS

What is the effect of the closure of the insolvency proceedings? In particular:

16.15.100

- **Does this have the effect of discharging the debtor's liabilities?**
- **What tends to happen to the company at the end of the insolvency proceedings?**
- **On average, how long do the insolvency proceedings tend to take?**

Corporate insolvency proceedings

16.15.125 An administrator must submit an application to the court to terminate the insolvency proceedings if the plan for the satisfaction of creditors' claims is completed.

16.15.150 The corporate insolvency proceedings should also be terminated if the court has approved the opening of legal protection proceedings in respect of the insolvent company. The application to terminate the corporate insolvency proceedings and to open legal protection proceedings could be submitted to the court either by debtor's representative, administrator, creditors or, where the corporate insolvency proceedings are secondary proceedings, the insolvency practitioner in the main proceedings.

16.15.175 If the corporate insolvency proceedings are terminated and legal protection proceedings are not commenced (i.e. the debtor will be dissolved) the administrator must, within one day of the receipt of the court order terminating the insolvency proceedings, destroy the seal of the debtor and any blank official forms in the debtor's name. The administrator must also send the debtor's documentation for storage to the State Archive. Within five days after the receipt of the court decision, the administrator must submit an application of deletion to the Enterprise Register. The Enterprise Register will then decide on whether the debtor should be excluded from the respective registers.

16.15.200 The liquidation of the company, through the implementation of the plan for the satisfaction of creditors' claims, will have the effect of releasing creditor claims and, unless

legal protection proceedings are commenced, the debtor will be dissolved at the end of the process.

16.15.225 The corporate insolvency procedure may last from six months to several years.

Legal protection proceedings

16.15.250 The court must terminate ongoing legal protection proceedings on its own initiative if the plan of measures does not obtain the required support of creditors (see para.16.1.475 above) or if the plan of measures does not comply with the requirements of the Act.

16.15.275 The a representative of the majority of creditors may submit an application to the court for the termination of the legal protection proceedings if: (i) while implementing the plan of measures, the debtor has violated certain prohibitions specified in the Act; (ii) for 30 days the debtor has not carried out its obligations set out in the plan of measures and has not submitted any amendments of the plan to the court; or (iii) the debtor has carried out activity which is prohibited by the legal protection proceedings (see para.16.7.100 for details of these restrictions) or provided false information.

16.15.300 If the debtor is aware that it may not fulfil its obligations set out in the plan of measures then it must either submit an application to the court for: (i) an amendment to the plan of measures; or (ii) the opening of corporate insolvency proceedings.

16.15.325 Once the debtor has completed the plan of measures it must submit an application to the court for the closure of the legal protection proceedings. Once the court has closed the legal protection proceedings the restrictions on the debtor set out in para.16.7.100 no longer apply. This means that any suspended penalties and interest become owing for their full amount (unless compromised by the plan of measures) and suspended court proceedings and the execution of court judgments can be continued (unless the underlying claim was compromised by the plan of measures).

16.15.350 Legal protection proceedings must be completed within two years. This term may be set longer, but it cannot exceed four years, with justification provided in the plan of measures. However, it is possible for the proceedings to be extended by a further two years. In order for such an extension to be obtained the consent of creditors and the permission of the court is needed (creditors' consent is obtained if the secured and unsecured creditors vote in favour of the extension in the proportions set out in para.16.1.475).

AVOIDANCE OF TRANSACTIONS

What transactions can be challenged or set aside in the types of insolvency proceedings referred to above?

16.16.125 A court may, upon the request of an administrator in corporate insolvency proceedings, set aside transactions entered into:

- after the opening of corporate insolvency proceedings or four months before the opening of corporate insolvency proceedings which caused loss to creditors (this is regardless of whether the counterparty to the transaction knew that such loss would result); or
- during the three years prior to the opening of corporate insolvency proceedings which caused loss to creditors provided that both the company and the counter-party to the transaction (or the beneficiary of the transaction in question) knew that such loss would result.

16.16.150 If the debtor has entered into transactions with related persons, it is presumed that the related counterparty knew that loss would result. This presumption is rebuttable.

16.16.175 Gifts of property may also be declared invalid provided that they do not constitute donations to associations, foundations and similar organisations performing charitable functions and provided that the organisation uses the gift within the framework of its usual activity. Furthermore, transactions entered into during the three years prior to the opening of corporate insolvency proceedings may be set aside if the consideration received by the

company is less than the consideration given by the company indicating that, in fact, a gift has been made.

16.16.200 A pledge or mortgage may be set aside where it was effected after the date when the opening of corporate insolvency proceedings was recorded in the Insolvency Register.

16.16.225 Where a pledge or mortgage is declared invalid, the relevant secured creditor acquires the status of an unsecured creditor.

16.16.250 A secured creditor may require that a transaction entered into by the administrator be declared invalid if such transaction is related to property pledged or mortgaged to secure the creditor's claim and the interests of that secured creditor have been prejudiced as a result.

16.16.275 Amounts that the company paid in settlement of debts during the six months prior to the opening of corporate insolvency proceedings, as well as after the day when the insolvency came into effect (except payments made by the administrator within the insolvency proceedings) are repayable if:

- the payment was made prior to the due date for payment, in circumstances where other payments were due and were not paid and it is possible to renew the agreement under which the payment occurred; or
- the debt was repaid to a related person and other due and payable debts were not paid before the payment was made to the connected person (this provision also applies to debts collected by court bailiffs).

16.16.300 Amounts that the company paid during the three months prior to the opening of corporate insolvency proceedings in order to avoid an application by a creditor to open corporate insolvency proceedings are also repayable.

16.16.325 Where the amounts specified in paras 16.16.275 and 16.16.300 are repaid, the obligations which were in effect prior to such settlement of debts are automatically renewed.

16.16.350 These rules do not apply to legal protection proceedings. There is no ability to claw-back prior transactions in legal protection proceedings.

INSOLVENCY SET-OFF

Give a brief overview of what claims owing to the insolvent company can be set off against claims owing by the insolvent company once insolvency proceedings have been opened

16.17.125 Once corporate insolvency proceedings have been opened, set-off is permitted only if both the claims of the debtor and the creditor arose within the six months prior to corporate insolvency proceedings being commenced.

16.17.150 The Financial Collateral Act (effective as of 2005) provides that set off shall not be affected by a liquidation or corporate insolvency proceedings. However it should be noted that these provisions of the Financial Collateral Act may only be enforced in cases where one of the parties involved is a financial institution (such as EBRD and others), credit institution, insurance company, brokerage company, etc.

16.17.175 The availability of set-off in legal protection proceedings is governed by the plan of measures.

DIRECTORS' LIABILITIES

Are there any grounds on which the officers of the company could face criminal or civil liability following the insolvency of the company and, if so, give a brief overview of the main areas of concern for directors of companies in financial difficulties?

16.18.125 There are no restrictions on how a company may conduct its business affairs until it becomes unable to pay its debts. At that point, there is a duty to present an application for the opening of corporate insolvency proceedings as outlined in para.16.3.100.

16.18.150 Where a person submits an application to open corporate insolvency proceedings which includes knowingly false information or conceals relevant information and the debtor may be found or has been found insolvent as a result of such an application ("knowingly submitting a false insolvency application") that person will be held criminally liable in accordance with the Criminal Law of Latvia.

16.18.175 Where a person submits an application to commence legal protection proceedings in order to avoid his obligations, that person will be held criminally liable in accordance with the Criminal Law of Latvia.

16.18.200 If a debtor has knowingly submitted a false application to open corporate insolvency proceedings, any court proceedings that were suspended and any process for enforcing a judgment must be continued. Interest and late payment charges are also recalculated for the resulting period of interruption. The company must compensate its creditors for any loss caused if it has knowingly submitted a false application and a person can be held criminally liable for knowingly submitting a false application with the purpose of stopping recovery or calculation of late charges or interest, or otherwise avoiding performance of its obligations.

16.18.225 The company representatives chosen to participate in the insolvency proceedings may also be held criminally liable for any delay of insolvency proceedings resulting from:

- provision of knowingly false, information required by law and requested by a court or an administrator;
- the unlawful transactions during the insolvency proceedings;
- the concealment of property or transactions; and
- the concealment, destruction or falsification of documents.

16.18.250 An administrator appointed by the court may bring an action on behalf of the insolvent company against former members of the company's management board, if the administrator can establish that the previous activities or omissions of the board member have resulted in the company incurring losses. The administrator need only show that losses have been caused by the relevant act or omission; there is no need for the administrator to show that the board member of the company was at fault in deciding whether to act or not. Once a loss connected to the relevant act or omission is established the board member is presumed to be liable for the losses caused. The board member may be released from liability if it can be proved that he or she acted in an honest and careful manner. If several board members have served on the management board of the company then they all are jointly liable.

16.18.275 Where board members have not supplied the administrator with the company's financial statements and accounts (or it is not possible to get a clear understanding of the debtor's financial position during the previous three years from such documents) board members will be liable for the company's losses. Such a claim during corporate insolvency proceedings can be commenced against board members by the administrator. If such claim is not submitted by the administrator, the claim could be brought by a creditor during one year time limit after the completion of the insolvency proceedings. Board members will be liable to make up the creditor shortfall (i.e. the amount of each creditor's claim that was not covered by the insolvency proceedings). The court has an element of discretion in respect of each board member's liability, taking into account the relevant board member's influence over the company's financial situation.

Court System and Judiciary

INSOLVENCY COURTS

Do you have any special insolvency courts in your jurisdiction or are insolvency matters dealt with by the general commercial courts?

16.19.100 Insolvency cases are dealt with by the general courts in accordance with the registered address of the insolvent company which was registered three months before submission of the application. Main proceedings are dealt with by the court in the place where the debtor

has its centre of main interests. Secondary proceedings are dealt with by the court in the place where the debtor has an establishment.

INSOLVENCY JUDGES

How are insolvency judges appointed in your jurisdiction? Are they elected and, if so, by whom? Who takes the appointments—do you have a concept of a "career judge" or are your judges selected/elected from lawyers/businessmen? What commercial experience do your insolvency judges have?

16.20.125 According to established practice, there is specialisation of judges in insolvency cases and, when cases are assigned by the chairman of the court to judges, insolvency cases are usually assigned to those who specialise in such cases.

16.20.150 Judges are not selected from lawyers or businessmen in Latvia; it is a separate career path. For a person to become a first level judge, the following requirements must be fulfilled:

- he or she must be a Latvian citizen;
- he or she must have knowledge of the Latvian language;
- he or she must be at least 30 years old;
- he or she must have higher education in law;
- he or she must have been practising in law for five years; and
- he or she must have passed an open tender and entered into a list of selected candidates.

16.20.175 There are stricter requirements for higher level judges.

16.20.200 It is sometimes the practice that attorneys become judges but usually it is assistants to judges, after fulfilling the above requirements, which acquire the position of a first level judge.

NATURE OF LEGAL SYSTEM

Is your legal system precedent based? If not, what is it?

16.21.100 Latvia has a continental legal system which is not based on precedents as a primary source of law. The basic law is statutory. However, previous decisions of the Latvian courts, particularly decisions of the Supreme Court, are often followed by the courts. Furthermore, decisions of the European Court of Justice and the European Court of Human Rights are binding on the Latvian courts.

ROLE OF THE JUDICIARY

Do the judiciary follow closely the black letter law or do they, to a degree, shape the law themselves?

16.22.100 The judiciary follow the black letter law. However, the judiciary do interpret the law by employing other sources, such as general legal principles and previous court judgments.

CROSS-BORDER ISSUES

Traditionally, what has been the level of co-operation with other jurisdictions in an insolvency context? Now that the Regulation has come into force, would your insolvency courts recognise an insolvency officeholder appointed in another jurisdiction? Would your courts recognise a moratorium on creditor action arising from a foreign proceeding if that moratorium purported to have extra-territorial scope?

16.23.100 There is little legal precedent or legal practice on matters of co-operation with other foreign jurisdictions. It must be noted that there is no available information on complex

insolvency matters involving foreign jurisdictions which would provide evidence on the level of co-operation. However, there are reasons for considering that the judiciary would recognise an insolvency office holder appointed in a foreign jurisdiction or a moratorium on creditor action provided the requirements are fulfilled.

REGISTERED OFFICE

As a matter of your domestic law, is it possible for a company registered in your jurisdiction to move its registered office to another EU jurisdiction?

16.24.125 Pursuant to Latvian law, when registering a company with the Enterprise Register, the registered address of the company must be within the territory of Latvia. All registration documents must be submitted to the relevant territorial section of the Enterprise Registry (according to the registered address of a company). The Enterprise Registry can only register companies which have a registered address within the territory of Latvia.

16.24.150 Latvian law does not specifically stipulate whether a Latvian registered company may move its registered office to another EU jurisdiction. However, as it is not possible for a Latvian registered company to de-register from the Enterprise Register (except by dissolution or liquidation) it must be concluded that a Latvian registered company cannot move its registered office to another EU jurisdiction.

16.24.175 However, under EU law specific types of European companies may move their registered office from one EU Member State to another.[4] Furthermore, cross-border legal mergers with companies with their registered office in other EEA Member States are possible in accordance with the domestic legislation implementing the Directive 2017/1132 of the European Parliament and of the Council relating to certain aspects of company law.[5] This Directive, when implemented by EEA Member States, makes it possible to transfer a public or private company to another EEA Member State by way of a universal succession style merger.

Would your court/companies registry recognise a purported move of a foreign company's registered office to your jurisdiction?

16.25.125 The moving of the registered office of a foreign company to the jurisdiction of the Republic of Latvia is not permitted because:

- Latvian commercial law does not provide a mechanism for this; and
- the Enterprise Register would not register a company which had originally been incorporated in a foreign jurisdiction.

16.25.150 Instead of moving its registered office to Latvia, a foreign company (wishing to have a presence in Latvia) may register a branch or a representation office in Latvia. Only a branch will be allowed to perform business activities in Latvia, as a representation office, pursuant to Latvian law, is not a legal person.

16.25.175 The movement of a foreign company's registered office as a result of a cross-border merger or in respect of certain types of European companies (see para.16.24.175 for further details) is legally permitted and would thus be recognised.

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[4] See the section on the "registered office presumption" in the Overview chapter for further details.

[5] This Directive was implemented in Latvia through amendments to the Law of Enterprises of the Republic of Latvia which came into force on 1 August 2021. The commercial law was also amended to incorporate a legal framework to enable cross-border mergers between companies within the EEA, these amendments came into force on 24 April 2008 and 28 May 2008.

Are there any mandatory requirements under your domestic insolvency legislation to publish or register the details of any insolvency proceedings commenced in your jurisdiction?

16.26.125 During the process of corporate insolvency proceedings and legal protection proceedings, the following records must be registered in the Latvian Insolvency Register:

- the debtor's name, registration number and legal address;
- the date the corporate insolvency proceedings or legal protection proceedings were commenced and the name of the court they were commenced in;
- the date the plan of measures of the legal protection proceedings was approved by the court and the name of the court the plan was approved in;
- the name, surname, identity code, certificate number, phone number and e-mail address of the administrator appointed in the proceedings;
- the name, surname, address of the location of the practice and phone number of the liquidator of any main insolvency proceedings;
- the time period for submitting creditors' claims;
- the address, date, time and venue of creditors' meeting;
- whether the insolvency proceedings are main, secondary or territorial proceedings under the Regulation;
- in relation to legal protection proceedings, the measures included in the plan of measures;
- in relation to legal protection proceedings, the date when the court approved any amendments to the plan of measures;
- in relation to corporate insolvency proceedings, the date when the plan for the sale of the debtor's property was submitted;
- the date of implementation of a plan of measures implemented pursuant to legal protection proceedings;
- the date the corporate insolvency proceedings or legal protection proceedings were closed and the reasons why the proceedings were closed;
- if property of the debtor is to be auctioned, the date, time and address of the auction together with the type of property to be auctioned (i.e. whether it is movable or immovable property);
- in relation to legal persons, the date of any court decision terminating the insolvency proceedings and the name of the court reaching such a decision; and
- the date the relevant entry was made in the Insolvency Register.

The Insolvency Register is available online at *https://maksatnespeja.ur.gov.lv* [Accessed 6 June 2022]. It is updated regularly and any person may search the register either by name, registration number, type of proceedings, time frame or court district. The register also contains notifications concerning creditors' meetings.

16.26.150 The administrator also has to submit a notice about the insolvency of the respective company, together with a copy of the court decision, to the Authority, as well as other public registers.

Are there any mandatory requirements in your jurisdiction, under arts 21(2) or 22(2) of the Regulation, to publish or register the details of insolvency proceedings opened

in another EU Member State in any particular manner including in any land register, trade register or other public register kept in your jurisdiction?

16.27.100 In the case of main proceedings in other Member States, the insolvency practitioner in the main proceedings, when carrying out actions for the recovery of property of a debtor, is required to inform the appropriate public registers of the opening of the main proceedings.

If there are no mandatory publication or registration requirements, would it still be possible to register foreign insolvency proceedings in your jurisdiction (for example, to give notice of such proceedings to creditors in your jurisdiction)?

16.28.100 Even though there are no mandatory requirements to register foreign insolvency proceedings with the Enterprise Register, the insolvency practitioner of a foreign insolvent company may use alternative measures to inform the concerned persons of the insolvency of the company, i.e. the administrator may directly inform the creditors and debtors, or may request the making of an entry in the Land Register in respect of the property owned by the insolvent company.

Is it possible for an interested party to search, in your jurisdiction, for the existence of insolvency proceedings in respect of a particular company and how reliable are such searches?

16.29.125 It is an obligation of the administrator to register the insolvency of the company with the Insolvency Register. The information is made available in the Insolvency Register, from which information can be requested by any interested person.