

Cash pool: statutory aspects (2) (3/31/19)

This article completes [what we wrote last week](#).

Risks facing a cash pool on a member's insolvency

Insolvency proceedings are governed by the Insolvency Act, which authorises the insolvency administrator to take steps aimed at satisfying the insolvent company's creditors, including to challenge any contracts concluded in the last three years that have caused losses to the insolvent company. Thus a cash pool agreement may give the insolvency administrator grounds for recovering damages from other members of the cash pool if taking part in it caused losses to the insolvent company.

This is why abusing a cash pool to embezzle a company's funds is not permissible. Every transaction in the cash pool must be recorded and documented to prove their business purpose.

Cross-border cash pools

Entities established in the EU may freely move funds between member states, and the common market prohibits member states from placing any restrictions on this freedom. The existence of such a favourable arrangement means that companies established in two or more member states cannot face any obstacles to setting up or running a cash pool. However, forming a cross-border cash pool beyond the EU could be surrounded by uncertainties, as international trade and financial transactions, including cash pools, may be restricted by non-EU sanctions and economic policies, such as foreign exchange restrictions preventing currency conversion. For these reasons, before setting up a cash pool, its potential members should study any foreign exchange restrictions in their countries of registration.

In practice, certain cases involve the question of international recognition of court orders, which is important when it comes to taking legal action against the credit institution managing a cash pool in disputes over cash pools governed by another country's national law. This factor does not come into play in cash pools operating within the EU. Particularly problematic are situations where credit institutions become legally unreachable because the countries where they are registered do not recognise foreign court orders imposing adverse sanctions on those credit institutions. To mitigate this risk, the cash pool members should study the international agreements that govern the international recognition of court orders and are applicable in the countries where the credit institutions maintaining the cash pool accounts are registered.

Key takeaways

1. Latvian law permits the formation of cash pools, but the companies' internal documents, such as articles of association, may prescribe procedures to be followed when entering into a cash pool agreement;
2. No government permit is required for setting up or managing a cash pool, but its manager will need a banking licence if the cash pool is to be public and a broker licence if the cash pool is to invest the funds contributed by its members in financial instruments;
3. If a cash pool member becomes insolvent, the insolvency administrator may take legal action to declare the cash pool agreement void and recover damages if taking part in the cash pool has caused losses to the insolvent company;

4. It is also possible to set up a cross-border cash pool. While companies will face no intra-Community restrictions, a cash pool involving any non-EU members may face a variety of restrictions, including difficulty enforcing court orders against those members.