

Overview of Latvian legal protection proceedings (2) 2/18/22

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

Terminating LPP

If the debtor has carried out the LPP plan, he will file an application in court together with the supervisor's opinion on completion of the plan and termination of the proceedings. Once the plan is completed and LPP terminated, the restrictions placed on the debtor and its creditors are lifted and the debtor carries on business as before LPP. If, however, the debtor breaches the [Insolvency Act](#) or any of the restrictions on conduct, gives false information or fails to carry out the plan for more than 30 days without amending it, LPP will be terminated on the basis of the debtor's or creditors' application, and the debtor's insolvency proceedings will be automatically announced.

How an out-of-court workout is different

The out-of-court workout is a type of LPP that in fact only has a different initial stage, so the out-of-court workout would fit a debtor that has a good chance of reaching an agreement with the majority creditors if there is no risk of the creditors taking individual debt recovery actions against the debtor that would jeopardise the drafting, approval and implementation of the LPP plan. Thus, an out-of-court workout plan is drawn up and approved by the creditors and sees the selection of a supervisor candidate for an indefinite period before going to court. If negotiations have won the majority creditors' approval for the out-of-court workout plan and the debtor has received the potential supervisor's opinion on it, the debtor will only then ask the court to start an LPP case, with attached evidence that the plan has also been sent to the minority creditors who never approved it.

If the court announces implementation of an out-of-court workout, that is the moment the debtor obtains protection from the creditors, with all the consequences of initiating and implementing an LPP case prescribed by [sections 37 and 45 of the Insolvency Act](#) (protection from creditors, restrictions on debtor conduct, and obligations during LPP implementation). The rest of the proceedings will take place according to the LPP rules described earlier.

Below are three essential differences between LPP and an out-of-court workout:

1. An out-of-court workout plan is drawn up and approved by the majority creditors before application is made to the court, while an LPP plan is normally drawn up and approved by the creditors after application has been made to the court.
2. A debtor launching LPP benefits from immediate protection against the creditors' activities, while the out-of-court workout does not provide protection from creditors until the court has authorised the out-of-court workout plan and announced its implementation.
3. During the stage of drawing up and approving the out-of-court workout plan, the debtor retains confidentiality about his financial difficulties. Taking the LPP option involves an immediate entry on the public insolvency register visible to any other interested party, while in the case of an out-of-court workout such an entry will not be made until after the plan has been approved and filed in court for authorisation. For this reason, entrepreneurs sometimes prefer an out-of-court workout.

The debtor's key obligations and rights

Before a company runs into financial difficulties, it should regularly monitor its operations to notice any internal and external factors capable of affecting its financial health, and prompt action must be taken if any problems are spotted. If those problems cannot be solved by simply agreeing with the creditors to extend the time limit for paying the debt, during which the debtor might restore his financial health, then it is time to draw up a restructuring plan, which can later serve as a basis for the LPP or out-of-court workout plan. The plan has to be drawn up to high standards if it is to have a reasonable chance of preventing the debtor's insolvency and ensuring the company's viability. Otherwise, drawing up the plan is likely to be a waste of time and money that merely delays the inevitable bankruptcy and may harm the interests of the creditors at large. And procrastinating certainly does not help the debtor avoid responsibility. Once it has been decided to use LPP or out-of-court workout, it is important to observe all the restrictions on conduct because should the LPP or out-of-court workout fail, the debtor's transactions and management decisions will be later examined as part of insolvency proceedings by the administrator, who may use various legal remedies to hold the debtor liable for any dealings or acting late (procrastination and reduction to insolvency). Of course, when it comes to implementing the LPP or out-of-court workout, it is important to carry out the authorised plan, which means regularly monitoring cash flows and income to avoid making the same mistakes that were made before the problems arose. The debtor is liable to notify the supervisor of any disruption so that the right decisions can be made jointly. It is clear that a company whose solvency can be restored is far more advantageous for the creditors, so it is in the interests of any party concerned that problems are notified and addressed early.

The role of creditors

The creditors' role has equal importance and is sometimes even more important than the debtor's role because it is up to the creditors to move the process towards achieving the goal of LPP or out-of-court workout or to seek its termination if there is a good reason for that. The Insolvency Act imposes various prohibitions on creditors to prevent any unreasonable and harmful behaviour, so in fact the creditors' most important task is to refrain from unreasonable and individual steps that make the debtor's position even worse. At the same time, a creditor's task is to monitor the debtor's activities by all possible means, including through the supervisor, and to take an active part in the process from the very outset in order to not miss out on anything, including any infringements of their rights by the debtor, and to select a supervisor according to the company's size and type. In view of this, the creditors' role is particularly important.

The supervisor's role

The supervisor acts in the creditors' interests as an external mechanism for controlling the debtor, with the statutory right to monitor and analyse the debtor's actions. The supervisor's main function in formal debt restructuring procedures is, first of all, to provide an opinion on the LPP or out-of-court workout plan, focusing on whether the plan has a reasonable chance of preventing the debtor's insolvency and ensuring the company's viability, because early identification of problems minimises losses suffered by the creditors in whose interests the supervisor is acting. If the opinion is favourable and the court authorises implementation of the LPP or out-of-court workout plan, the crucial task is to monitor the debtor's activities closely and regularly for compliance with the Insolvency Act and the LPP or out-of-court workout plan, as well as keeping the creditors informed of key issues. It is important to note that the supervisor is not

authorised to take part in drawing up the LPP or out-of-court workout plan or its amendments, yet he is not prohibited from monitoring the debtor while the plan is being drawn up – that would even be strongly recommended in the creditors' interests and as part of the supervisory function. Thus, creditors should select as supervisor someone that objectively has competence and resources to ensure good supervision, considering the debtor's size, business activities, cross-border elements etc.

If you have any questions please be in touch with [our experts](#).