ALLEN & OVERY

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Restructuring Across Borders

Lithuania: corporate restructuring and insolvency procedures

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Introduction

The six principal restructuring and insolvency regimes for companies under Lithuanian law are:

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- composition with creditors (*taikos sutartis*)
- liquidation proceedings (*likvidavimo procedūra*)
- informal restructuring (*neformalus restruktūrizavimas*)

Judicial bankruptcy proceedings (*bankroto byla*)

The first purpose of judicial bankruptcy proceedings is to determine whether a company is insolvent. A company will be adjudged to be insolvent by the court if at least one of the following conditions is satisfied: (i) the company fails to pay the remuneration and other employment-related amounts in due time; (ii) the company fails, in due time, to pay for the goods received and works (services) carried out, defaults on the repayment of credits and fails to discharge other property obligations assumed under transactions; (iii) the company fails to pay, in due time, taxes and other compulsory contributions prescribed by law and/or the awarded amounts; or (iv) the company has no assets or income from which debts could be recovered and therefore the bailiff has returned the writs of execution to the creditor.

The company's insolvency must be proved to the satisfaction of the court on documentary evidence provided by the petitioner for bankruptcy. If the court is satisfied as a result that the company is insolvent, it will issue a bankruptcy order (ie institute judicial bankruptcy proceedings).

Once a bankruptcy order has been issued, the management of the company will pass to a court-appointed administrator. The administrator has wide-ranging powers to control the company and its assets. The making of a bankruptcy order will also automatically place restrictions on dealings with the company's assets whether by its management or by any third party. These measures are intended to protect the company's assets from further depletion as far as possible while a solution to the company's bankruptcy is decided upon. This may be a composition with its creditors or, most commonly, its liquidation. Each of these procedures is described below.

Out-of-court bankruptcy procedure (*bankroto procesas ne teismo tvarka*)

This type of bankruptcy procedure may be implemented without the involvement of the court provided that no court proceedings in relation to proprietary claims (including claims connected with employment relations) have been instituted against the insolvent enterprise and no recovery is pending from the insolvent enterprise pursuant to writs of execution issued by the courts or other judicial institutions. The management of a company has the right to initiate this out-of-court procedure although ultimately this course of action can be vetoed by the company's creditors.

The out-of-court bankruptcy procedure is similar to the judicial proceedings but affords full control to the company's creditors by allowing them to determine at their meetings a number of issues which are within the jurisdiction of the court in judicial bankruptcy proceedings. For example, the creditors' meeting is entitled to decide upon the duration of the bankruptcy, the appointment and dismissal of an administrator and determine the terms and conditions for satisfying their claims.

The grounds for the commencement of the out-of-court bankruptcy procedure are as follows: if the enterprise is unable and will not be able to settle with a creditor or creditors, the head of the enterprise, the owner or owners intending to seek the creditors' consent to carry out bankruptcy procedures out of court must notify every creditor in writing of the motion to implement out-of-court bankruptcy procedures, at the same time indicating the date and place of the creditors' meeting. The creditors' meeting shall be convened within 20 days from the day a notice of the motion was sent to the creditors. The decision to carry out out-of-court bankruptcy procedures may be adopted by the creditors' meeting if the decision is voted in favour of by the creditors whose claims in terms of value account for at least three-quarters of the amount of the enterprise's liabilities on the day of adoption of the resolution, including those which have not yet matured.

Out-of-court bankruptcy procedures have become popular recently especially in cases when companies have a small number of creditors of significant value. It is felt that the out-of-court bankruptcy procedure is a quicker and more flexible alternative to court-based bankruptcy proceedings.

Restructuring proceedings (*restruktūrizavimo byla*)

The Enterprise Restructuring Law No. IX-218 (20 March 2001) governs the restructuring of enterprises (including companies) which face temporary solvency problems. Its purpose is to provide conditions for enterprises in financial difficulties, which have not ceased their economic and commercial activities, to maintain and develop those activities, to settle their debts and to avert bankruptcy. It is not available for

budgetary institutions, political parties, trade unions, religious communities and associations, credit institutions, payment institutions, electronic money institutions, insurance and reinsurance companies, management companies, investment companies with variable capital, closed-ended investment companies and intermediaries of companies trading in public securities.

The restructuring proceedings may be initiated by the company's management. However, the restructuring plan must be supported by two-thirds of the company's creditors (by value of claim). The restructuring plan must also be approved by the court although this is generally a formality with the judiciary rarely looking into the economic substance of the proposals.

The restructuring of a company may only be attempted prior to the institution of bankruptcy proceedings. Once bankruptcy proceedings have been commenced, the enterprise may only be liquidated or restored to solvency through a composition with its creditors. However, until such time as bankruptcy proceedings are commenced, any petition for a restructuring of the company will be afforded priority. In other words, if a petition for the restructuring of an enterprise is made at the same time as or after the petition for bankruptcy proceedings, the court will only decide upon whether bankruptcy proceedings should be commenced if the restructuring petition is dismissed.

Composition with creditors (*taikos sutartis*)

A composition with creditors is a statutory procedure. It is intended to restore an insolvent company to solvency through an agreement with its creditors that will allow the company to continue its economic activities while benefiting from a deferment, reduction or waiver of the claims against it. However, this rescue procedure is rarely used and liquidations are far more prevalent. After the commencement of bankruptcy proceedings, the proposal for a composition can be submitted by the company's creditors, its administrator or its owners at any time prior to the commencement of liquidation proceedings. Prior to bankruptcy proceedings such proposal is a proposal of informal restructuring.

A proposal for a composition with creditors will specify:

- any allowances to be made in respect of the financial claims of creditors;
- the company's liabilities;
- the means and time limits for satisfaction of the claims of creditors; and
- the liability which the company will incur if it fails to implement the proposed composition.

To be valid a composition with creditors must be signed by the creditors (or their authorised representatives), who must have at least two-thirds of value of all claims recorded in the court-approved list of creditors of the company under bankruptcy proceedings, and by the administrator. It is also necessary that prior consent for the composition was given by the company's owners. The composition will become effective if it is approved at court (or, in the case of the out-of-court bankruptcy procedure, by the creditors' meeting and notary public) at which point any bankruptcy proceedings against the company will be automatically terminated.

Liquidation proceedings (*likvidavimo procedūra*)

Liquidation proceedings are merely a means of winding up a bankrupt company and are not an independent bankruptcy procedure in their own right. The purpose of the liquidation proceedings is to satisfy, as far as possible, every creditor's claim out of the proceeds of sale of the insolvent company's assets, as a result of bankruptcy proceedings. There is no rescue element to these proceedings. These proceedings can be implemented in either judicial or out-of-court proceedings.

Having investigated the bankruptcy case and declared the enterprise bankrupt, the court or the meeting of creditors shall issue an order to put the enterprise into liquidation as a result of bankruptcy. The enterprise is declared bankrupt and enters into liquidation if the enterprise and the creditors do not enter into composition within three months from the effective date of the order to approve the creditors' claims and the court has not granted any extension of the deadline. The court may grant the extension of the deadline only if so requested by the creditors' meeting.

Once a liquidation order has been made, the bankruptcy administrator is mandated to call in and sell the company's assets. The proceeds of the sold assets will then be used to satisfy the claims of the company's creditors to the fullest extent possible. The company's assets may be sold prior to the liquidation order being made (ie where the investigations as to whether the enterprise should be placed into liquidation proceedings are continuing but a liquidation order has not yet been made by the court or the company's creditors). However, the money received from the sale cannot be distributed to creditors prior to the liquidation order being made. Once the sale procedure has been completed and the receivables distributed to the creditors, the company in question will be dissolved and struck-off the Register of Legal Entities. Consequently, liquidation is a drastic and terminal end of the bankruptcy procedure which does not provide for the rescue of the enterprise to any extent and which must be completed once commenced. Nevertheless, it remains by far the most common outcome of insolvency proceedings in Lithuania and the vast majority of companies which become subject to insolvency proceedings will ultimately be liquidated.

Informal restructuring (*neformalus restruktūrizavimas*)

A company's creditors have the right to agree an informal restructuring beyond the scope of the statutory procedures and the ambit of the court. The terms of such a restructuring will depend solely upon the outcome of negotiations between the relevant parties. Such a restructuring can be quick and cost-efficient. However, it does require the unanimous approval of all interested parties (including the company's creditors) since it does not provide any moratorium or protection against the subsequent implementation of other statutory procedures as detailed above. Consequently, informal restructurings are very rare.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency "rescue" proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings but secondary proceedings are no longer restricted to a separate list of winding up proceedings - secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, judicial bankruptcy proceedings (*bankroto byla*), the out-of-court bankruptcy procedure (*bankroto procesas ne teismo tvarka*) and restructuring proceedings (*restruktūrizavimo byla*) were available as main proceedings under the Original Regulation. It is not clear why a composition with creditors (*taikos sutartis*) or liquidation proceedings (*likvidavimo procedūra*) were not included as main proceedings under the Original Regulation.

Judicial bankruptcy proceedings (*bankroto byla*) and the out-of-court bankruptcy procedure (*bankroto procesas ne teismo tvarka*) were also available as secondary proceedings under the Original Regulation.

Under the Recast Regulation, all of the procedures previously listed as either main proceedings or secondary proceedings are listed in Annex A; however, composition with creditors (*taikos sutartis*) or liquidation proceedings (*likvidavimo procedūra*) remain outside of the scope of the Recast Regulation.

Further information

For further information on Lithuanian restructuring and insolvency procedures, we would refer you to the Sweet & Maxwell book "European Cross Border Insolvency" edited by Allen & Overy. To purchase a copy of this book, please visit www.sweetandmaxwell.co.uk

This fact sheet has been prepared with the assistance of Valiunas Ellex.

Allen & Overy has launched an online service for clients focusing on debt restructurings and insolvency issues.

Developed by Allen & Overy's market-leading Restructuring group, "Restructuring Across Borders" is an easy to use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe and the US.

To request access for your organisation, please contact your usual Allen & Overy contact, or email rab@allenovery.com

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