

## EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2003

### LATVIA

The assessment is based on the Law on the Insolvency of Undertakings and Companies (as amended, 2003) of the Republic of Latvia.

The law has some positive features, such as:

- The general scheme and coverage of the legislation.
- The criteria for 'insolvency'.
- Providing both debtors and creditors with sound bases upon which to initiate proceedings.
- Adequate pre-bankruptcy transaction avoidance provisions.
- Inclusion of 'non-contractual' claims (e.g. claims for civil wrong).

Areas in which reform would be desirable include:

- Excluding any requirement for a recent balance sheet of the debtor on an application by the debtor to commence proceedings.
- There is a possibility of abuse using the ground that a person may be considered insolvent because a debtor of that person has become/been declared bankrupt.
- Provision for adequate information and independent assessment of a restoration plan.
- Providing for greater supervision by the court of 'restoration' proceedings.
- Providing for appeals in bankruptcy cases.
- Correcting the somewhat harsh provisions relating to penal sanctions for 'unfounded' initiating applications.
- Absence of provisions relating to cases of cross-border insolvency.
- Provision for set off.

The assessed score indicates low compliance (see compliance rating chart below) with the core essentials of international standards on insolvency.

KEY	
Y	Substantial compliance
Y/?	Compliance with reservations
N/?	Doubtful compliance
N	Non compliance
N/A	Not applicable

COMPLIANCE RATING
very high compliance
high compliance
medium compliance
low compliance
very low compliance

PART A - COMMENCEMENT	YES / NO	ARTICLE	COMMENTARY
<p><b>1. APPLICATION OF THE INSOLVENCY LAW</b></p> <p>Does the law apply to the following enterprises engaged in commercial activity:</p> <p>1.1 natural person enterprises;</p> <p>1.2 legal person enterprises;</p> <p>1.3 state owned/controlled enterprises?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>2</p> <p>2</p> <p>2</p>	<p>Art. 2 refers to 'all undertakings and companies registered in the Enterprise register'. Unclear what an 'undertaking' is, although it appears from Chapter XIV that it embraces state owned/controlled enterprises.</p> <p>Banks (credit institutions) are excluded.</p> <p>Insurance companies are also subject to special provisions in relevant law.</p>
<p><b>2. COMMENCEMENT ELIGIBILITY</b></p> <p>Does the insolvency law permit an insolvency proceeding to be initiated by a:</p> <p>2.1 debtor enterprise;</p> <p>2.2 creditor of a debtor enterprise?</p>	<p>Y</p> <p>Y</p>	<p>36</p> <p>38, 39</p>	
<p><b>3. COMMENCEMENT CRITERIA</b></p> <p>3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?</p> <p>3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?</p> <p>3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?</p> <p>3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>3</p> <p>3, 39</p> <p>3</p> <p>3</p>	<p>Art. 3.2 provides for a variety of circumstances that will be recognised as a circumstance due to which a debtor will not be able to adequately settle its debt obligations (including, for example, the insolvency of a third party that has debt obligations to a debtor). While this may assist a debtor to establish that criterion, it is open to abuse by a creditor.</p>

<p>3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?</p> <p>3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?</p> <p>3.7 Does the law permit a single creditor to commence proceedings?</p> <p>3.8 If the law prescribes any further criteria (other than jurisdictional and financial condition bases) for commencement of proceedings, is that criteria clear and sufficiently practicable to permit proceedings to be commenced?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p> <p>N/A</p>	<p>43</p> <p>39</p> <p>36</p>	<p>Art.43.2.3 requires a debtor to provide an 'extraordinary balance sheet...prepared not earlier than one month (before the filing. This seems an unnecessary and demanding requirement.</p>
<p><b>4. COURT / TRIBUNAL JURISDICTION</b></p> <p>4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?</p> <p>4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?</p> <p>4.3 Is the court a special bankruptcy or commercial court (or division)?</p>	<p>Y</p> <p>Y</p> <p>N</p>	<p>4, 32</p>	<p>Regulated in Civil Proceedings Law.</p> <p>In cases of liquidation it does but a case of 'restoration' ('rescue') appears to be somewhat uncontrolled and unsupervised (see later comments under rescue).</p> <p>In practice there is limited number of judges (10-15) who are assigned to only insolvency cases.</p>
<p><b>5. REMEDIES</b></p> <p>5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?</p> <p>5.2 Does the law provide for the conversion from one type of remedy to the other?</p>	<p>Y</p> <p>Y/?</p>	<p>Chapter X Chapter XI</p> <p>90, 99</p>	<p>Rescue is termed 'restoration'. There is also a Chapter that provides for a 'settlement' process.</p> <p>If a restoration process breaks down or fails, the creditors may initiate 'bankruptcy proceedings'.</p>

<p><b>6. INTERIM RELIEF</b></p> <p>6.1 Does the law provide for interim relief to protect the assets of the debtor?</p>	N		
<p><b>7. HEARING AND DETERMINATION OF PROCEEDINGS</b></p> <p>7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -</p> <ul style="list-style-type: none"> <li>i) an early (timely) consideration of the case;</li> <li>ii) a fair and proper process of notice and hearing of a disputed case;</li> <li>iii) the right to appeal from a decision in a case?</li> </ul> <p>7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?</p> <p>7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?</p>	<p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>Y/?</p>	<p>49</p> <p>49</p> <p>49</p> <p></p> <p>108</p>	<p>There are no provisions regulating (i) and (ii). It may be that they are regulated by the Civil Procedure Code (see Art.5). Regarding appeals however, Art. 49 clearly states that a declaration of insolvency by a court is 'final'.</p> <p>Suggests that if the debtor does not have the sources of finance for the administration, there may be no administration.</p>
<p><b>8. IMMEDIATE EFFECTS OF OPENING PROCEEDING</b></p> <p>8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:</p> <ul style="list-style-type: none"> <li>i) all enforcement action or proceedings against the debtor's assets are stayed;</li> <li>ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed;</li> <li>iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended?</li> </ul> <p>8.2 In the absence of such a provision, does the law provide that the court/tribunal may make orders to the same effect upon or shortly after the opening of the case?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N/A</p>	<p>47, 50</p> <p>47, 50</p> <p>50</p> <p></p>	

<p>8.3 Do the prohibitions above extend to:</p> <p>i) a secured creditor;</p> <p>ii) a third party who owns property that is used, occupied or in the possession of the debtor;</p> <p>iii) a supplier under retention of title terms?</p> <p>8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?</p> <p>8.5 Does the law provide for effective notification of the commencement of proceedings to:</p> <p>i) the public generally;</p> <p>ii) all known creditors individually;</p> <p>iii) all relevant regulatory authorities?</p> <p>8.6 Does the law provide for the appointment of an independent functionary to either</p> <p>i) take full control of the debtor's business and assets; or</p> <p>ii) supervise the debtor's business and assets?</p>	<p>Y/?</p> <p>Y/?</p> <p>Y/?</p> <p>Y/?</p> <p>Y</p> <p>Y/?</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>47, 21</p> <p>47, 21</p> <p>47, 21</p> <p></p> <p>54</p> <p>52</p> <p>56, 53</p> <p>16</p> <p>20, 50</p>	<p>This appears to be the effect of these Articles, although no specific mention is made of secured creditor etc.</p> <p>Secured creditors may be subject to an extensive stay in the case of a restoration.</p> <p>Only query concerns direct notice to creditors. Art. 52.3 requires an administrator to convene a meeting of creditors, for which individual notice would be required and Art. 56 specifies that the creditors be notified of the time, date and place of such meeting. Also note Art. 48 which requires an administrator to ascertain creditors from the data of the debtor.</p>
<p><b>9. ADMINISTRATION OF AN INSOLVENCY CASE</b></p> <p>9.1 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?</p> <p>9.2 Does the law provide for the appointment of a functionary through the court or the creditors?</p> <p>9.3 Does the law provide for the possible removal and replacement of a functionary?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>13</p> <p>16</p> <p>28</p>	

PART B – ASSETS OF THE ESTATE	YES / NO	ARTICLE	COMMENTARY
<p><b>10. ASSETS OF THE DEBTOR</b></p> <p>10.1 Does the law adequately define the assets forming the debtor estate?</p> <p>10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?</p> <p>10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?</p> <p>10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?</p>	<p>Y</p> <p>Y</p> <p>Y/?</p> <p>N</p>	<p>64</p> <p>67, 68</p>	<p>Could be clearer.</p>
<p><b>11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY</b></p> <p>11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?</p> <p>11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?</p>	<p>Y</p> <p>N</p>	<p>34</p>	

12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS			
12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):			
i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;	Y	72	
ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;	Y	70	
iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?	Y	69	
12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?	Y	As Above	
12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?	Y	69, 72	
12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?	Y/?	As Above	Not sufficiently specific.
12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?	Y	69	

PART C – CREDITORS	YES / NO	ARTICLE	COMMENTARY
<p><b>13. CLAIMS OF CREDITORS</b></p> <p>13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?</p> <p>13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?</p> <p>13.3 Does the law provide for set-off?</p> <p>13.4 Does the law allow creditors to claim at any time before a dividend is paid?</p> <p>13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?</p>	<p>Y/?</p> <p>Y</p> <p>N</p> <p>Y/?</p> <p>Y</p>	<p>48, 55, 53</p> <p>1, 55</p> <p>106</p> <p>107</p> <p>57</p>	<p>Art. 55 requires that creditors submit claims within 3 months of 'notification in the newspaper'. Art. 53 provides for a notice to creditors of a first meeting which might embody a requirement to lodge claims. Also note Art. 48 which requires an administrator to prepare a 'list of creditors from data in the accounts of the debtor.'</p> <p>A 'creditor' as defined in Art.1 means "Everybody who has right to claim against debtor."</p> <p>It appears that such creditors are relegated to an inferior position of priority.</p>
<p><b>14. INVOLVEMENT OF CREDITORS</b></p> <p>14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?</p> <p>14.2 Does the law require meetings of the creditors and/or creditors' committee?</p> <p>14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?</p> <p>14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>6-12</p> <p>58</p> <p>19</p> <p>26, 61</p>	

<p><b>15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS</b></p> <p>15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?</p> <p>15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?</p> <p>15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>107</p> <p>107</p> <p>107</p>	
<b>PART D - REORGANISATION PROCEEDINGS</b>	<b>YES / NO</b>	<b>ARTICLE</b>	<b>COMMENTARY</b>
<p><b>16. REORGANISATION PROCEEDINGS</b></p> <p>16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?</p> <p>16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?</p> <p>16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:</p> <p>    i) the supply of essential services including gas, electricity and telecommunications to the debtor;</p> <p>    ii) other essential contracts to which the debtor is a party?</p> <p>16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?</p>	<p>Y</p> <p>N/A</p> <p>N</p> <p>N</p> <p>Y</p>	<p>73</p> <p></p> <p></p> <p>93</p>	<p></p> <p></p> <p></p> <p>This Article provides that a plan must be prepared within 2 months of when the creditors take a decision regarding restoration.</p>

<p>16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?</p> <p>16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?</p> <p>16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?</p> <p>16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?</p>	<p>Y</p> <p>N</p> <p>N</p> <p>N</p>	<p>92</p>	<p>Administrator, creditor/s, person engaged by administrator may prepare. Query the problem if competing plans are proposed.</p> <p>No express provision although may occur in practice.</p> <p>The administrator may engage 'experts' which may solve this problem, but otherwise no specific provision.</p>
<p><b>17. REORGANISATION FINANCING</b></p> <p>17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?</p> <p>17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?</p>	<p>Y</p> <p>N</p>	<p>88</p>	
<p><b>18. APPROVAL OF REORGANISATION PLAN</b></p> <p>18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?</p> <p>18.2 If so, is the approval required no more than 75% and more than 50%?</p> <p>18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?</p>	<p>Y</p> <p>Y</p> <p>N</p>	<p>95</p> <p>95</p>	

<p>18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?</p> <p>18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?</p> <p>18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?</p> <p>18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be over-ruled by the court?</p> <p>18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that either a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?</p>	<p>N</p> <p>Y</p> <p>N</p> <p>N</p> <p>Y/?</p>	<p>91</p> <p>90, 99</p>	<p>No express provision.</p> <p>See earlier comments regarding the power of the creditors to determine a resolution regarding the insolvency.</p>
<p><b>19. POST APPROVAL</b></p> <p>19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?</p> <p>19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?</p> <p>19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?</p>	<p>N</p> <p>N</p> <p>Y</p>	<p>99</p>	

PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p><b>20. LIQUIDATION</b></p> <p>20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?</p> <p>20.2 Does the law provide for an independent functionary to administer the liquidation?</p> <p>20.3 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?</p> <p>20.4 Does the law make provision for the timely conduct of a liquidation?</p> <p>20.5 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>Y</p>	<p>16</p> <p>16</p> <p>103, 104, 105</p>	
<p><b>21. DISCHARGE/ RELEASE OF DEBTS</b></p> <p>21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?</p> <p>21.2 If not, is it clear what liabilities survive discharge?</p>	<p>N</p> <p>N</p>		
<p><b>22. ENFORCEMENT &amp; SANCTIONS</b></p> <p>22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?</p>	<p>Y</p>	<p>Chapter XIII</p>	<p>Some of these provisions are penal and draconian (e.g. provisions relating to ‘unfounded’ insolvency petitions).</p>

<b>23. CROSS-BORDER INSOLVENCY</b>			
23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction?	N		
23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?	N		