

Legal Newsletter

Role of an Insolvency Administrator Scrutinized by the Supreme Court

The Supreme Court of Latvia ("**Court**") analyzed (Case: SKC-618/2018) the role of an insolvency administrator ("**Administrator**") in insolvency proceedings. The Court noted that under Insolvency Law ("**Law**") the prime obligation of an Administrator is to ensure effective and legitimate of the insolvency proceedings (Art. 26.2).

This provision of the Law is not merely declarative. It does impose the legal obligation on the Administrator to afford priority to legitimacy and effectiveness of insolvency proceedings, namely, to be loyal first and foremost towards law. Although the Administrator owes duty of loyalty also to creditors and the debtor (insolvent entity), nevertheless such loyalty cannot be placed above loyalty to the law.

In conjunction with other provisions of the Law (Art. 20, 21 and 22) that require the Administrator to manage insolvency process fairly and prevent possible conflicts of interest, it is obvious from systemic interpretation of the Law that the Administrator cannot be viewed as mere representative of creditors and the debtor.

In substance the Administrator is performing official public functions and is entrusted with public authority. This is evidenced also from the fact that the status of an Administrator is granted the Director of Insolvency Administration and the Administrator in conducting his functions is deemed to be a state official.

As a person entrusted with public authority functions, the Administrator cannot place his interests above the interests of legitimate and efficient insolvency proceedings.

Law grants the Administrator extended competence that includes also right to request and obtain from the debtor all documentation, to influence status of the debtor and its officers, and to file claims against them. Such competence and authority of the Administrator, however, shall be excised in good faith and strictly in compliance with the legal requirements.

This applies not only to the main court supervised insolvency proceedings, but also to the individual court claims that Administrator brings against third parties (e.g. officers, persons related to the debtor or contractual counterparties).

Failure of the Administrator to duly comply standards applicable to his public status and related duties under the Law, may give grounds for legal liability of the Administrator under the Law.

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