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## **LEGAL PROTECTION PROCEEDINGS – YOUR OPPORTUNITY TO STOP AN INCREASE IN PENALTIES AND INTEREST FOR A LIMITED PERIOD.**

**Legal protection stops penalties and late payment fees from increasing. The main goal of legal protection proceedings is to prevent insolvency from taking place and to renew a company's solvency.**

In the current economic situation financial difficulties have become a daily occurrence for many businesses. More and more often the question of how to protect oneself legally in a situation of temporary financial difficulty, and how to recover arises.

For a long time, the only solution in the case of financial difficulties was the insolvency process, which nearly always ended up with a bankruptcy procedure and with the winding up of the business. However, since the 1<sup>st</sup> of January 2008 a new instrument, distinct from the insolvency process, has been introduced – legal protection proceedings, the potential of which has yet to be widely utilized.

### **In which situations should these proceedings be applied?**

Legal protection proceedings should be used in cases of short term financial difficulty. Currently, with the decrease of money supply in circulation, the slow down of the economy, and the “freezing” of business operations due to growing debt, , most businesses have problems with cash flow. This issue requires a complex solution that encompasses the optimization of the assets in circulation, an increase in the effectiveness of business operations, and a high quality credit policy suited to the existing risk.

The main goal of legal protection proceedings is to use methods prescribed by law, to prevent the onset of insolvency and renew a company's solvency. During the implementation of the protection, control over business operations is maintained by the shareholders and the existing administrative bodies of the company, with a few restrictions.

It should be noted that legal protection can be sought by capital companies, general partnerships and limited partnerships which have been operating for at least three years with asset value exceeding creditor liabilities due for payment within the next year. The legislation allows the use of legal protection proceedings once every five years.

### **Development of the Programme Plan**

To obtain legal protection, the business must convince the court and unsecured creditors of the benefits of the protection plan for the particular company's recovery. Current practice and experience indicates that the Programme Plan, in which the business shows the steps and methods to be taken towards regaining its solvency, is of major importance in the implementation of the proceedings. On the one hand the plan must be created in accordance with accounting standards and legal requirements, and on the other – it must be clear and understandable for judges, administrators and creditors.

In accordance with the legal wording currently in force, the legal protection proceedings implementation period is fixed at a maximum of one year. Amendments to the legislation are being introduced in the Saeima for the term's extension up to two years. The Programme Plan must comply with this period. The Plan cannot be general in nature as it must accurately show all existing liabilities and planned financial flows throughout the legal protection proceedings period, including each planned payment and the implementation timetable in relation to each creditor.

### **Legal protection proceedings commence with submission of the Plan to the court**

The Programme Plan that has been developed, together with the documents showing the business's financial situation and the legal protection proceedings application, must be submitted for approval by the court. On receipt of the application, the court determines whether to initiate the case of legal protection.

### **The nature of legal protection**

Legal protection commences directly at the moment the matter is commenced in court. From then requests by secured creditors for the sale of pledged goods can not be enforced, neither can unsecured creditors submit insolvency applications. It also puts a hold on the implementation of court decisions for the recovery of sums of money against the business.

In turn, with the decision by the court to allow protection and the adoption of the Plan, penalties and increases in late payment fees (including those calculated by the tax administration), and calculation of the interest at the rate in excess of the Bank of Latvia's refinancing rate, are stopped.

### **Obligations and restrictions during the proceedings period**

If the legal protection Programme Plan has been approved, the business must commence the implementation of the programme outlined in the Plan. In addition to the previously mentioned advantages, the legislation also contains a number of restrictions, which the business must observe during this period. Thus for example, it is forbidden to conclude transactions which could worsen the financial situation, or harm the interests of creditors. Earnings must be channelled towards putting the legal protection Programme Plan into effect. The Administrator appointed by the court must become familiar with the work of the business and supervise the Programme Plan's implementation. A possible risk of not following the approved plan is notification of this being made to the court by the Administrator and the termination of the legal protection proceedings. This in turn, would lead to the commencement of the insolvency process. Any changes to the Plan must be coordinated with creditors and Administrators and endorsed by the court.

### **Additional expenses must be reckoned with**

The legislation states that legal protection proceedings expenses must be covered by the business's resources and these expenses must be shown in the Programme Plan. For the period from the appointment of the Administrator until the matter is considered by the court, the business must pay the Administrator a one off payment of LVL 900, calculated as five monthly minimum salaries. If the court has made a decision to instigate the proceedings and adopt the Programme Plan, each month the same remuneration must be paid.