Guidelines

OUT OF COURT DEBT RESTRUCTURING IN LATVIA

Out of court debt restructuring principles

The Ministry of Justice in association with the Insolvency Administration, the Latvian Commercial Bank Association, Latvian Certified Insolvency Process Administrator Association, the Latvian Labor Confederation, the Foreign Investor's Council in Latvia, the Latvian Chamber of Commerce and Industry, and the Latvian Borrower's Association

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THANKS TO THE FOLLOWING

The Ministry of Justice would like to thank all participants who have been involved in this project.

The guidelines "Out of court debt restructuring in Latvia" is a document which is the result of many meetings, as well as with close cooperation with various interested social partner groups.

This project has included representatives from the Insolvency Administration, the Latvian Commercial Bank Association, Latvian Certified Insolvency Process Administrator Association, the Latvian Labor Confederation, the Foreign Investor's Council in Latvia, the Latvian Chamber of Commerce and Industry, and the Latvian Borrower's Association. We would like to thank the World Bank for support in creating these guidelines. The guidelines are a result of many people working together who deal with these types of issues on a daily basis.

The guidelines have been approved by the Insolvency issues consultative committee.

1. INTRODUCTION

Before insolvency proceedings are initiated in court, the party conducting business who has come under financial difficulties (hereinafter – debtor) and the creditor have option to enter into an agreement regarding mutually agreed upon debt restructuring, or out of court debt restructuring, as a result of which both parties attempt to come to an agreement to change the terms of the debt repayment in a way that allows the debtor to continue doing business.
Out of court debt restructuring as a legal principle has been around ever since companies have had financial difficulties. The insolvency procedure as defined in the law was implemented to solve financial problems which cannot be solved through negotiation between the parties. The financial crisis has made it critical to emphasize the importance of out of court debt restructuring. If there are a large number of companies in insolvency proceedings, then the courts, even in well prepared countries which have an effective insolvency process can run out of resources.

It is generally agreed that out of court restructuring:

- allows companies that have come under financial difficulty the option to continue operating and to successfully overcome the difficult times,
- gives the opportunity for financial institutions and other creditors to reduce losses,
- gives the opportunity to avoid negative social and economic effects which may be caused by bankruptcy of a large company,
- reduces the strain on the courts,
- is beneficial to other interested parties (clients, employees, suppliers, and investors), because companies involved in out of court debt restructuring may continue to conduct business,
- is more effective than the court process (the dispute is settled earlier and the debt is recovered more often),
- helps businesspersons gain confidence in the insolvency and debt restructuring process if it is equitable and transparent.

2. GOALS AND SPHERE OF OPERATION

The goal of this document is to provide Latvian companies, creditors, and the appropriate state institutions with information regarding the principles and guidelines regarding out of court debt restructuring. The principles and guidelines are based on examples of the best international practices.

This document has three parts. The first part provides an overview of the main ideas of out of court debt restructuring. The second part identifies the suggested principles relating to out of court restructuring in Latvia. The third section contains guidelines which will help institute the identified principles in Latvia.

3. OUT OF COURT DEBT RESTRUCTURING: MAIN POINTS

Results of out of court debt restructuring

The result of out of court debt restructuring is usually a debt restructuring plan which is negotiated between the debtor and creditor, which gives the debtor the ability to continue conducting business without interruptions.

If this result is not reached, then the likely alternative is to prepare an out of court judicial protection process application.

Types of out of court debt restructuring

Out of court debt restructuring can be categorized into two types:

- mutual negotiations between the debtor and creditor in order to come to an agreement on re-negotiating the repayment schedule, and/or forgiving the debt,[1]
- multiple party negotiations between the debtor and the main creditors in order to agree on the repayment schedule or debt forgiveness.

Differences between out of court debt restructuring and the insolvency proceedings as described in the law

Key differences between out of court debt restructuring and the insolvency proceedings described in the law are as follows:

- out of court debt restructuring cannot affect the creditor's rights or impose obligations on creditors with which they do not agree,
- the basis of out of court debt restructuring is an agreement which does not threaten or negatively affect the debtor's or creditor's rights,
- out of court debt restructuring is not applied to all debtors since if a debtor cannot solve his financial problems after the debt restructuring, then it should be immediately declared insolvent,
- out of court debt restructuring procedures and steps taken which are negotiated between the debtor and creditor are flexible.

Parties to out of court debt restructuring

Debt restructuring usually involves a set number of the largest and most important creditors. Among these creditors is almost always the debtor's bank. Other main creditors may also be involved in the restructuring, including, for example, the lessors of commercial property and the largest suppliers. All creditors who participated in the debt restructuring are hereafter referred to as the "relevant creditors".

[1] Debt forgiveness can be for the principle, late fees, interest rates, or for all parts of the debt.

4. OUT OF COURT COMPANY DEBT RESTRUCTURING PRINCIPLES[2]

Principle 1. Debt restructuring is a compromise, not a right

Out of court debt restructuring must be initiated only if the debtor's[3] financial problems can be solved and their business can continue in the long term. A debtor should turn to the creditors in order to discuss available options.

Principle 2. Good faith

Negotiations between the debtor and the relevant creditors must take place in good faith in order to create a constructive solution.

Principle 3. Unified approach

The interests of all parties should be observed if a unified approach is taken to solving the issues. Creditors may facilitate coordination of the issues by forming a coordination work group. In more complex situations, the parties should consider the option of inviting professionals who can consult with and advise the parties and the relevant creditors.

Principle 4. Negotiation with the debtor

The creditors must appoint one person (usually it is the creditor which has the largest claim against the debtor, with experience in negotiating debt restructuring, or it may be a neutral third party), who will conduct negotiations with the debtor, and will ensure that the relevant creditors receive the information provided by the debtor. It must be taken into account that if necessary, in the event that there is a dispute between the interested parties, they may turn to an arbitration procedure.

Principle 5. Moratorium period

All relevant creditors must be prepared to cooperate with the debtor as well as with each other in order to provide the debtor with enough time (identifying a deadline) in which to prepare options for solving financial problems (hereinafter – moratorium period). Granting this moratorium period is not the right of the debtor, but is a concession granted by the creditors. The beginning date is called the first date of the moratorium period. It is necessary to identify the length of the moratorium period, providing enough time to prepare the plan as mentioned in Principle 11, or to constitute how much time would be necessary to prepare such a plan.

Principle 6. Priority of new resources

If, during the moratorium period, or in accordance with the suggestions put forth as a part of the restructuring process, additional assets are given to the creditor, then the grantor of this loan shall have the option to request security for the loan.

Principle 7. Creditors do not take action during the moratorium period

All relevant creditors do not take any actions to submit court claims against the debtor or to reduce their claims against the debtor during the moratorium period.

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[2]In order to avoid confusion, it must be pointed out that these principles only apply to debtors that are legal entities.

[3]A debtor against which insolvency proceedings have not yet been initiated.

Principle 8. Debtor's pledge to the creditors during the moratorium period
During the moratorium period, the debtor promises not to take any actions which may negatively affect the proposed debt repayment to the relevant creditors (to all, or either of them individually) in relation to the state at the beginning of the moratorium period.

Principle 9. The debtor's complete transparency during the moratorium period
During the moratorium period, the debtor shall provide the relevant creditors and advisers with access to all information regarding assets, liabilities, and business transactions and forecasts.

Principle 10. Information confidentiality
Information regarding the debtor's assets, liabilities, and business transactions and forecasts, as well as proposals for solving the problems must be available to the relevant creditors and must be confidential, unless it is publicly available information.

Principle 11. Debt restructuring plan
It is the obligation of the debtor and his advisers to prepare proposals for debt restructuring which are based on a business plan that contains information regarding the necessary steps that need to be taken to solve the debtor's financial problems.[4] The business plan must be based on sound and feasible forecasts, which indicate the debtor's ability to increase cash flow to the point that is necessary to execute the debt restructuring plan (and not delaying the insolvency process).

Principle 12. Settlement proposals correspond with the party's rights
When creating proposals for solving the debtor's financial difficulties, the parties must take into account the rights of the creditor and the amount of outstanding obligations at the beginning date of the moratorium period.

5. PRINCIPLES AND COMMENTARY

Principle 1. Debt restructuring is a compromise, not a right
Out of court debt restructuring must be initiated only if the debtor's[5] financial problems can be solved and their business can continue in the long term. A debtor should turn to the creditors in order to discuss available options.

A debtor should turn to the creditors and begin addressing the problems in a timely manner,[6] and not when it cannot pay the monthly expenses, but rather, when the rate of growth of the company slows.[7]

[4]The plan may, for example, call for selling assets, a repayment schedule for creditors, debt forgiveness, gaining additional financing, and guarantee and loan capitalization.
[5]A debtor against which insolvency proceedings have not yet been initiated.
[6] According to information provided by the Latvian Commercial Bank Association, in practice, debt restructuring in Latvia takes place with about an 18 month delay.
[7]Example: business turnover in 2007: 850 thousand EUR, planned for 2008: 1 million EUR, planned for 2009: 1.2 million EUR. Actual turnover in 2008: 900 thousand EUR, 2009: 1.05 million EUR. There is apparent growth, but not as planned, and hence it may be necessary to begin restructuring liabilities, expenses, etc.

Out of court debt restructuring is a good way in which to solve problems for a company that cannot fulfill its contractual obligations for one reason or another. It is a way to avoid the insolvency process. One of the main principles of when to apply out of court debt restructuring is when there are conditions that allow the debtor to offer a solution to the financial problems and keep the business operational in the long term. Only in these cases should out of court restructuring be applied. If these conditions do not exist, then the company should become insolvent. One of the basic principles of out of court debt restructuring is the principle of volitional action. This principle prescribes the freedom of establishing legal relationships in its operation and implementation, as well as in the choice of persons with which to enter into legal relationships. The following principle in turn comes from the previous principle – the freedom to transact, which foresees that each person has the right to enter into legal relationships with any party they choose, and at the terms of their choosing. Parties may enter into any transaction, and it is critical that all parties take part in the negotiations in order to come to a proper solution. Restructuring the debtor's obligations toward the main creditors, including the debtor's bank, cannot be seen as a right. Similarly, creditors cannot perceive that they have the right to demand the debtor enter into negotiations. The parties' rights arise from the contract. Rights include the creditor's right to submit a claim to the courts against the debtor for not completing their obligations, and pursue the claim against the debtor's property which serves as collateral. Also, among the rights of the parties is the right of the debtor to begin insolvency proceedings in the courts.

In relation to the principle mentioned above, it must be noted that the debtor must observe the principles of justice, which presumes the protection of a party's rights and lawful interests,[8] i.e., the debtor must take into account the creditor's interests and must initiate negotiations with them according to the out of court debt restructuring process only if, when implementing the debt restructuring plan, the creditor's gain will be larger than in would have been in the event that the debtor became insolvent. In this situation, the risk to the creditor's interests is reduced and there is a larger chance that the creditors will support the debtor.

It should be pointed out that negotiations for out of court debt restructuring can be initiated by the creditors (assuming that the largest creditors are banks, which have more experience in dealing with these issues than the debtor, the creditor's initiative to begin out of court debt restructuring is not only possible, but recommended).

In order to ensure that the rights of the parties are protected, the parties should begin negotiations in good faith in order to give the debtor the ability to continue to run the business, and at the same time make larger payments to the creditors.

In addition, it is important to emphasize that beginning negotiations for out of court debt restructuring is the choice of the parties – the debtor and largest creditor, and the debtor's invitation to begin such negotiations is not a bar to the observance of another basic legal right: that the contract entered into between the parties is binding. In accordance with the Civil Law section 1587, a legal contract is binding on the parties, and neither a bad business decision nor unforeseen difficulties that later arose give the parties the right to withdraw from

[8] 12 January 2005 Supreme Court ruling in case No. SKC – 22.

the contract, even if the withdrawing party compensates the other for the losses. Taking this fact into account, if the debtor requests to begin out of court debt restructuring, the creditor still has the right to demand the contract be fulfilled.

Principle 2. Good faith
Negotiations between the debtor and the relevant creditors must take place in good faith in order to create a constructive solution.

It is crucial that negotiations between the debtor and relevant creditors take place in good faith and that they are fair and transparent. In accordance with section one of the Civil Law, rights shall be used and obligations performed in good faith, taking into account the other party's valid interests. The goal of the principle of good faith is to facilitate loyalty, trust, and honesty between the debtor and creditor in the out of court debt restructuring process. Furthermore, the principle of good faith must be observed not only in the relationship between the debtor and creditor, but also between creditors. It is crucial to note that out of court debt restructuring is possible only if the debtor and creditor work together to achieve the same goal – for the good of all parties in the long term. If any of the parties looses the belief that the other partners are acting in good faith, then the debt restructuring will probably not be successful, and creditors will utilize the protections granted to them by the law and likely initiate legal action for breach of legal obligations.

Principle 3. Unified approach
The interests of all parties should be observed if a unified approach is taken to solving the issues. Creditors may facilitate coordination of the issues by forming a coordination work group. In more complex situations, the parties should consider the option of inviting professionals who can consult with and advise the parties and the relevant creditors.

The number of relevant creditors is typically small enough that they can meet and agree on a unified approach to dealing with the debtor. Debtors have the ability to take part in negotiations with each of the relevant creditors, as soon as they have agreed upon the moratorium period (see Principle 5), and the creditors will usually try to ensure that they are being treated equally to the other similar creditors. In order to create a unified approach and ensure more effective communication of their viewpoint, the creditors which conduct the largest amount of business, in the event of an out of court debt restructuring, may form a coordination group to conduct negotiations, assess proposals, and agree with the debtor on a final solution. Formation of a coordination group depends on a number of factors, including the size of the debtor, the number of creditors involved, and the creditor's interests, etc. Agreement on the creation of a coordination group is the choice of the creditors, and they may freely choose the method of which to select the members (for example, to make decisions unilaterally, or to require a majority of votes), and conduct their work, etc. Formation of the coordination group creates the ability to exchange information and to coordinate the conduct of the creditors. According to these facts, it must again be noted that successful out of court debt restructuring is possible only if the creditors work together to achieve their collective interests.

If there is a large number of creditors, or if the rights of the creditors vary greatly, then it may be useful to create more than one coordination group.

Principle 4. Negotiation with the debtor
The creditors must appoint one person (usually it is the creditor which has the largest claim against the debtor, with experience in negotiating debt restructuring, or it may be a neutral third party), who will conduct negotiations with the debtor, and will ensure that the relevant creditors receive the information provided by the debtor. It must be taken into account that if necessary, in the event that there is a dispute between the interested parties, they may turn to an arbitration procedure.

In order to increase the effectiveness of the out of court debt restructuring and to encourage a positive result, it is useful to authorize one representative of the creditors who can manage the negotiation process, coordinate all information with the creditors, and help resolve any disputes among the creditors regarding issues that affect their interests. This will encourage the effective conveyance of the creditors' position and the protection of their interests. Taking into account that only the largest creditors will be involved in the out of court debt restructuring process (usually financial institutions), this person may be, for example, an employee of a bank or an employee of any of the other creditors. Often this responsibility will be born by the largest creditor, which may be the debtor's bank. If creditors believe it is necessary, they can also authorize an independent person – a specialist in the field. Unlike the involvement of a creditor's employee, a neutral person may require compensation. The creditors must come to agreement regarding the source and procedure of the funding.
Various creditor groups may elect coordinators who can represent them in negotiations with the debtor.

The coordinators usually do not define the direction the creditors will take, but they do everything to facilitate the negotiation process and ensure that all coordination group members receive the necessary information.

Coordinators may be authorized to direct the professionals assisting in the process, for example, accountants, lawyers, and assessors, and to advise the relevant creditors. The mentioned professionals must be chosen with mutual agreement, but the choice must be agreed upon the relevant creditors because it is important that they all receive objective advice. The basis for this is that each relevant creditor must individually evaluate the debtor's offer and make their own decisions.

If the negotiations come to a standstill, and the parties wish to agree on a compromise, then the parties may consider the option of using an arbitration procedure which will involve the relevant persons.

Principle 5. Moratorium period
All relevant creditors must be prepared to cooperate with the debtor as well as with each other in order to provide the debtor with enough time (identifying a deadline) in which to prepare options for solving financial problems (hereinafter – moratorium period). Granting this moratorium period is not the right of the debtor, but is a concession granted by the

creditors. The beginning date is called the first date of the moratorium period. It is necessary to identify the length of the moratorium period, providing enough time to prepare the plan as mentioned in Principle 11, or to constitute how much time would be necessary to prepare such a plan.

Taking into account that out of court debt restructuring is a private agreement between the parties, it can be either official or unofficial (for example, a debtor's letter offering creditor's to begin talks on out of court debt restructuring and stating their offer, which may be mutually beneficial). It should be noted that it is important to enter into a written contract in cases where there are many creditors involved in the restructuring, and the moratorium period calls for different treatment among the creditors. Usually if negotiations take place between the debtor and one or two banks, then an official contract is not concluded. As stated previously, the basis for out of court debt restructuring is the good faith effort of the creditor to help the debtor, based on long term gain.

The length of the moratorium period is determined by agreement between the debtor and creditor. Typically the moratorium period is initially not longer than a few weeks, but in any case it can vary, and depends on the complexity of the information that needs to be gathered and the proposals of the debtor. It is important to note that in addition to a moratorium period, additional time may be allowed, for example, if one of the key events in the restructuring is an agreement on delaying payments for a certain period of time, then the moratorium period may be anywhere from one week to six months or longer.

If negotiations with the debtor are conducted by more than one relevant creditor, then the creditor must choose the beginning date of the moratorium period on which the debtor informed them of the company's financial condition. This is critical, because the creditors agree that from this date their claims will not change.

Principle 6. Priority of new resources
Taking into account the fact that the out of court restructuring process is optional, and these principles may be applied only with the agreement of all parties and the signing of all necessary documents, this step is recommended.

If during the moratorium period, or in accordance with the suggestions put forth as a part of the restructuring process additional assets are given to the creditor, then the grantor of this loan shall have the option to request security for the loan.

One of the most important rules of out of court debt restructuring, as well as for any other insolvency initiation procedures is the problem of dealing with new additional financial resources.

During the moratorium period or during the debt restructuring period, the debtor may require additional financial resources. The debtor must explain how these resources will be acquired (for example, they may be gained by selling remaining assets, from creditors, or if the stockholders attract new capital).

In the event that additional financing is given by the creditors for the purpose of protecting their interests, and to encourage them to support the debtor, the additional financing shall take priority. Repayment of the additional funds given by the creditors shall be the first priority (see Principle 11). This should be included in the debt restructuring plan as a priority payment. One of the most effective ways in granting priority status to the additional funding given for running the business is to utilize collateral. In this event the debtor's and creditor's actions are not limited, and they may choose any type of collateral depending on the collateral offered by the debtor. The most effective way to ensure this priority is to grant new security to those parties which provide the additional funds.

The parties must take care to ensure that this security (loan security (mortgage)) shall be considered effective in the event of debtor's insolvency proceeding (legal protection proceeding).

The debtor must take into account that if he has no assets that can be used as collateral for additional funds, there is a risk that creditors will not give additional financial resources. In this event the debtor's shareholders must attract additional capital, or must provide private guarantees or similar security.

As mentioned previously, additional financing may be provided by the debtor or the creditors. The debtor may obtain additional financing by selling assets or by increasing equity capital. It should be noted that financing obtained by the debtor's shareholders does not take priority status.

Priority status does not apply to obligations incurred by the debtor toward the creditor prior to the initiation of the out of court debt restructuring.

Principle 7. Creditors do not take action during the moratorium period
All relevant creditors do not take any actions to submit court claims against the debtor or to reduce their claims against the debtor during the moratorium period.

This principle stems from the basic premise of these guidelines, which is the cornerstone of the out of court debt restructuring process, that the process is a mutually agreed upon private contractual relationship. Therefore, the principle can only be implemented if both parties agree on it. As stated previously, typically an agreement on the moratorium period is an unofficial agreement by the creditors in which they agree not to make due their loan in order to give the debtor an opportunity to create a restructuring plan. The basis for an out of court restructuring plan is the willingness of the creditor to help the debtor, to gain a benefit in the long term. Taking this into account, if the creditors believe it is beneficial for the debtor to continue doing business, when agreeing on the term of the moratorium period they must create the conditions necessary for the normal functioning of the debtor's business. If the creditors approve the moratorium period, then the debtor will have the assurance that he will have the time to prepare a debt restructuring plan, and the relevant creditors will not take action to recover the debt during that time period. When entering into this type of agreement, the relevant creditors usually agree to:

- not request loan repayment during the moratorium period,
- not initiate insolvency proceedings or debt enforcement actions during the moratorium period against the debtor,
- not attempt to improve their position in relation to other creditors by gaining or demanding new security or requesting privileges during the moratorium period,
- allow the debtor to use existing credit and services.

The debtor must take into account that when entering into an agreement on the moratorium period with the relevant creditors, he must also make certain promises in accordance with Principles 8 and 9.

Principle 8. Debtor's pledge to the creditors during the moratorium period
During the moratorium period, the debtor promises not to take any actions which may negatively affect the proposed debt repayment to the relevant creditors (to all, or either of them individually) in relation to the state at the beginning of the moratorium period.

This principle, along with the previous principle, stems from the basic premise of the guidelines, which states that the restructuring is a mutually agreed upon private contractual relationship. If an agreement between the parties is the basis for a moratorium period, then actions taken by the debtor that may cause losses to the creditor may be the basis for terminating the agreement and calling due the loan in the methods as prescribed by law. It is crucial that during the moratorium period the debtor does not take any action that will place one or more creditors in a worse position than they were prior to the moratorium period. Also, the debtor may not grant priority to one creditor in relation to the others.

Principle 9. The debtor's complete transparency during the moratorium period
During the moratorium period, the debtor shall provide the relevant creditors and advisers with access to all information regarding assets, liabilities, and business transactions and forecasts.

This principle, along with the previous one, stems from the basic premise of the guidelines which states that the restructuring is a mutually agreed upon private contractual relationship. If the basis of the moratorium period is agreement between the debtor and creditor, then if the debtor is not transparent in dealings with the debtor, it may be basis for the creditors to terminate the agreement and calling due the loan in the methods prescribed by law.
Regardless of whether during the debt restructuring period bilateral discussions are held between the debtor and the bank, with multilateral negotiations with all of the creditors, or with the main creditor or with a professional who represents the creditors, they typically will set strict transparency requirements for the debtor. The debtor must be prepared to provide unlimited and free access to all information which the creditor needs to correctly evaluate the debtor's offer. Finally, all information regarding the company's assets and liabilities as well as future forecasts must be presented in this way. In order to present this information, the debtor may have to prepare more precise forecasts than usual. This requirement must be

accepted in order for the creditors to agree to enter into an agreement regarding the moratorium period.

If for any reason the debtor is unable or unwilling to provide the creditors with this information, then the debtor must take into account that the creditors will do what is necessary to protect their interests. In accordance with the Commercial law and the law "On accounting", status of a commercial secret can be assigned to a broad spectrum of things and information. However, it must be assessed whether information that is deemed to be a commercial secret may be important to creditors in assessing the financial status of the company. When necessary for developing a debt restructuring plan, this information must be disclosed. Only information which actually relates to the debtor's financial status should be shared. In any event, the law regulates the illegal disclosure or use of commercial secrets.
The principle of good faith also applies to the debtor's transparency.

Principle 10. Information confidentiality
Information regarding the debtor's assets, liabilities, and business transactions and forecasts, as well as proposals for solving the problems must be available to the relevant creditors and must be confidential, unless it is publicly available information.

During the process of debt restructuring, the relevant creditors will receive critical information regarding the debtor's assets, liabilities, business transactions, and forecasts. Part of this information may be important commercially. The debtor should provide the creditors all necessary information, excluding commercial secrets. Status of commercial secrets shall be assigned to the appropriate documents and information of the company, as prescribed by the Commercial law. Also, the law "On accounting" clearly states what a commercial secret is, and that it does not need to be disclosed. At the same time, it must be assessed whether information that has commercial secret status may be important to creditors in estimating the debtor's financial status, and it must be disclosed in such cases.

If the relevant creditors are only the debtor's banks, then the debtor should be able to have assurances that the provided information will be viewed as completely confidential. If among the relevant creditors are not only banks, but other creditors, then they must take into account that when receiving the information, they must ensure its complete confidentiality.

Assignment of debt in situations relating to debt restructuring in which many creditors are involved is a complex issue, and if assignment of the debt is foreseeable, it may sometimes require the application of special rules.

Principle 11. Debt restructuring plan
It is the obligation of the debtor and his advisers to prepare proposals for debt restructuring which are based on a business plan that contains information regarding the necessary steps that need to be taken to solve the debtor's financial problems.[9] *The business plan must be based on sound and feasible forecasts, which indicate the debtor's ability to increase cash*

[9] The plan may, for example, call for selling assets, a repayment schedule for creditors, debt forgiveness, gaining additional financing, and guarantee and loan capitalization.

flow to the point that is necessary to execute the debt restructuring plan (and not simply delay the insolvency process).

Note that it is impossible to create a standard model for out of court debt restructuring, because, as mentioned previously, the restructuring is based on the free will of the parties. Taking this into account, the plan may contain the creditor's and debtor's choice of Civil and Commercial law concepts for entering into a contract, as well as amending or canceling it. For example, according to section 1867 of the Civil law of Latvia, any contractual obligations may be withdrawn and transferred into new obligations with the express request of the participants, which is called novation.

The purpose of the moratorium period is to provide the debtor with the opportunity to prepare a debt restructuring plan. The plan must prove that the company will be profitable, as well as specify the amount that the debtor will be able to repay each of the relevant creditors. The relevant creditors can assist the debtor in drafting the plan.

There is no minimum content required by law for a debt restructuring plan. However, it should be noted that creditors will likely not support a plan which:

- does not contain a forecast of gains/losses of the business monthly and/or quarterly and/or annually (for example, for the next five years),
- does not contain a forecast of cash flow, including payments to creditors (for example, for the next three years),
- does not contain sources from which the turnover capital will be received, as well as how to finance possible improvements in efficiency and in the financial systems,
- does not identify how the proposed changes (loan repayment extension, changes, or loan forgiveness) will affect the relevant creditors' rights,
- does not mention the most important changes in the debtor's business within the time period,
- does not identify the assumptions on which the previously mentioned forecasts are based.

If the debtor is unable to convince the relevant creditors that the debtor will be able to resolve his financial problems in the near future, then the creditors will most likely not concede to a moratorium or forgiveness of the debt.

Principle 12. Settlement proposals correspond with the party's rights
When creating proposals for solving the debtor's financial difficulties, the parties must take into account the rights of the creditor and the amount of outstanding obligations at the beginning date of the moratorium period.

During the time between the beginning date of the moratorium period and the agreement on the debt restructuring plan, the relevant creditors must agree that their relationship to one another shall not change. It is important that the debt restructuring plan prioritizes the creditors in the event of the bankruptcy of the debtor. For example, it is usually an unacceptable situation if the creditors who have agreed to postpone receipt of payments, or shareholders regain their losses, but creditors (both secured and unsecured), who have collateral, do not receive full payments. Also, the debtor cannot assume that creditors who have collateral will agree if their status declines in relation to creditors without collateral.
Often creditors will support the smaller creditor's (product supplier) claim to priority so as not to disturb the debtor's business, which in turn will ensure that the remaining creditors' collateral is not reduced, which may happen in the event of insolvency proceeding of the debtor.