

Axiology in Latvia's Insolvency policy.

By Valdis Savickis¹

Abstract.

The closing period for the validity of the policy planning documents in the sphere of insolvency proceedings in the Republic of Latvia is approaching (the Insolvency Policy Development Guidelines 2016-2020, as well as their implementation plan). Given the extensive work done by the state on reforming and reorganizing the insolvency and regulatory framework, the author focuses on the axiological aspect of the insolvency policy. Parallel to the modernization of the insolvency process, because of which the role of the state in the control and supervision of the insolvency sector has significantly increased and considering the correlation between the speed and efficiency of insolvency process, there will be conducted value-oriented study on the insolvency sector. The aim of the paper is to carry out research and analysis of insolvency policy through the prism of axiology. The study uses analytical, descriptive, and deduction/induction methods, evaluating the various policy planning documents that make up insolvency policy, paying attention to the specifics of the insolvency process of legal entities.

Keywords: Insolvency policy, axiology, value, business environment.

1. Introduction

This year is significant for Latvia in the sphere of insolvency proceedings, considering closing period for the validity of the policy planning documents in the sphere of insolvency proceedings in the Republic of Latvia (hereinafter - Latvia). It was the first time in the history of the renewed independence of the state, when the policy planning document was approved and implemented by the government of the Republic of Latvia. With the Cabinet of Ministers (hereinafter - Cabinet) 21st September 2016 approval of the State Insolvency Policy Development Guidelines 2016-2020 (hereinafter - Guidelines) and Implementation plan (Cabinet Order No.527, 2016) took place. The Guidelines there have been developed in the correspondence strategic objective set out in Latvian National Development Plan for 2014-2020 (hereinafter – Development Plan) (NDP 2014-2020, 2012) – reaching the outstanding business environment, since the results of the insolvency policy in the most direct way represent one of the forms of business cessation. And the Paragraph 135 of the Development Plan – clearly indicates it: An outstanding business environment includes a coherent regulatory framework, the operation of a stable state support and monitoring system, public services oriented towards the needs of businesses, clear and competitive environment for the start-up and development of business activity so that anyone willing to do so could establish a business, work and live in Latvia. To achieve outstanding business environment, Paragraphs 141 to 146 of the Development Plan set out measurable outcomes for the goal, including the place of Latvia in the Doing Business Index, which characterizes the

¹Rīga Stradiņš University, Faculty of Law, Dzirciema Street 16, Riga, LV-1007, Latvia

competitiveness of national business environments in the world and which one of the indicators characterizing the business environment is business cessation — insolvency. Inspired by the scientist Robert Schirokauer Hartmann article “Axiology as a science” (Hartman, 1962) and the statements made in this article, author is carrying out research and analysis of the insolvency policy, paying attention to the specifics of the insolvency process of legal entities, through the prism of axiology and the Value theory (Hartman Value theory). Nevertheless, highest level policy planning document of the Republic of Latvia - Sustainable Development Strategy of Latvia until 2030 (hereinafter – Latvia 2030) (SDSL 2030, 2010), is defining major strategic principles: Human capital is the most important resource of Latvia [...]. The insolvency process proceedings, its results and reflection on the business environment is an important factor in human capital, that is defined as the basic value and productivity of Latvia's most important resource and according to the statement made by Latvia 2030 is as an essential factor.

2. Materials and methods

2.1. Structure of Article.

The article is structured and formatted on the analysis of political planning documents, laws and regulations, documents of international organizations and conclusions drawn by academics/specialists in the field of axiology and civil law. Robert S. Hartmann thesis of Axiology as a science and his theory of concept of values is taken as the basis to conduct value-oriented study. The following political planning documents are used in the study: Latvia 2030, Development Plan, Guidelines. The following legislative acts are used in the study: Insolvency Law. National level document analysis, as well analysis of documents of the international institutions, such as United Nations, World bank, European Commission etc. were incorporated in the article.

2.2. Methods used in the article.

General scientific methods: Descriptive – by identifying the key terms and definitions of the study. Analytical – by studying political planning documents, laws and regulations, opinions of specialists in the field of civil law and civil proceeding law - to identify problems in the context of the matters examined in the study from different perspectives. Dogmatic – by conducting a comprehensive analysis of the legal framework that defines development areas of Latvia, set by the policy planning documents, insolvency proceedings and their impact on the above mentioned. Induction and deduction – to emphasize the approbations of the will of legislator, expressed in the different level of political planning documents, in laws and regulations. As well to figure out the compliances and incompliances with the recommendations and course of actions, expressed by the international organizations, legislative and executive powers. The methods of interpretation of legal norms have been also applied in the article. Grammatical – by examining the meaning and substance of the notions included in legal norms, assessing legal norms from the grammatical aspect. Systematic – by examining values, set in the policy planning documents, laws and Cabinet orders. Teleological – by examining the intention of the legislator when adopting laws and regulations in relation to beforementioned principles in correlation with objectives, set by the different level of political planning documents.

3. Discussion

3.1. Collaboration of Insolvency law and the Guidelines.

According to the Insolvency law the purpose of the Law is stated as follows: to promote the honouring of the obligations of a debtor in financial difficulties and, where possible, the renewal of solvency [...] (Insolvency Law, 2010). Through this definition two clear statements, made by legislator, are recognized:

1. Honouring the obligation of debtor;
2. Renewal of solvency.

Nether the less, actions made by the persons involved into the process of reaching these two objectives, must be of lawful solutions and according to principles, enshrined in the law.

Taking into account, that authors article corresponds to the insolvency process of legal entities, focus on the above-mentioned subject will take place.

Analysing further, these two statements, made by the legislator - the legal instruments, called Insolvency proceedings of a legal person and Legal protection proceedings must take place in system of insolvency sphere. According to the Insolvency law - Insolvency proceedings of a legal person are an aggregate of measures of a legal nature, within the scope of which the claims of creditors are settled from the property of a debtor, in order to promote the honouring of the debtor's obligations (Insolvency Law, 2010). The Legal protection proceedings are characterized as an aggregate of measures of a legal nature, whose purpose is to renew the ability of a debtor to settle their debt obligations, if a debtor has come into financial difficulties or expects to do so (Insolvency Law, 2010). In essence, the legislator proposed two legal solutions to a situation where a debtor is in financial difficulties, corresponding one purpose (honouring of the obligations of a debtor), but with two diametrically opposed endpoints. Thirst endpoint fulfil the purpose of honouring the obligations of debtor, there completing of the insolvency proceedings debtor ceases to exist – is liquidated (debtor has been excluded from the relevant public register). The second – endpoint fulfil the purpose of renewal of solvency of a debtor, parallel to honouring the obligations of debtor, there completing of the insolvency proceedings debtor continue to operate as a full-fledged subject of commercial legal relations.

To the other hand, according to the Guidelines, for the insolvency policy of Latvia there are defined three level objectives:

- The overarching objective - is to promote economic activity of business and economic activity of the population, to promote the creation of an attractive business environment and attraction of investments;
- Objective - to promote the fulfilment of the obligations of a debtor in financial difficulties and, where possible, the restoration of solvency;
- The sub-objective of the insolvency proceedings of a legal person - is to ensure maximum fulfilment of obligations, as well as rapid return of economically valuable assets to the economy, there possible selling the company, in cases where legal protection proceedings are not possible (Cabinet Order No.527, 2016).

Both – policy (Guidelines) objectives and purpose objectives of the Insolvency law are rooted in basic principles, enshrined in the law. Author propose addresses two major

principles: speed and efficiency of insolvency process. Author concluded that basic principles of insolvency proceedings: effectiveness of proceedings and principle of quick turnover there formatted in strict collaboration of the internationally provided guidelines and proposals, underlining the close interaction with the economic processes, minimizing costs of all parties, involved in the process [...] (Savickis, Dinsberga, 2018).

Despite a well-developed Insolvency law, that was based on international document of The United Nations Commission on International Trade Law (hereinafter - UNCITRAL) - Legislative Guide on Insolvency Law (LGIL, 2005), in the audit report dated March 3, 2015 "Is the insolvency policy implemented in the country effective?" () State Audit Office of the Republic of Latvia has established that Latvia has not established a system of performance indicators that would be able to show the effectiveness of the existing regulatory framework in the current economic situation. That statement was made after the inventing brand-new Insolvency law in June 26th, 2010, developed under the supervision of a team of experts appointed by the World Bank and the International Monetary Fund. The World Bank in its revised edition of publication The Principles for Effective Insolvency and Creditor/Debtor Regimes is offering value-oriented insolvency proceedings, proposing, that: Values must be established on both a going-concern and liquidation basis to confirm the best route to recovering the investment [...] (IBRD, 2016). At the same time, according to the information provided by the Ministry of Justice, international experts do not have a methodology for evaluating and calculating performance indicators in any country of the world for evaluating the insolvency policy implemented in the country (Cabinet Order No.527, 2016).

3.2. Insolvency policy through the prism of values.

According to the professor Hartman proposition, author synthesized three thesis's concerning role of value in axiology, as a science, in order to make an analysis of the insolvency policy, through that thesis's and principles, corroborated in them:

- concept of value vs. the axiom of a system;
- science is characterized by the coupling together, the hooking up, as it were, of a chaos of phenomena with a system;
- analysis of value through the system must follow necessary laws of logic and not accidental philosophies of individual thinkers (Hartman, 1962).

Although, defining the values thorough the axiom of system (in particular – insolvency proceedings system) conflicting interests must be considered. On one side there is the *creditor's interest* - to recover his financial resources as quickly and completely as possible, while on the other side there is the *debtor's interest* - to complete the insolvency process as soon as possible without incurring more losses. Following the guidelines of the Legislative Guide on Insolvency Law, the interests of all parties involved in insolvency proceedings cannot be equally protected and provided, so it is up to the state to define insolvency policy and set priorities – and in the endpoint to define values, which are significant. Legal norms of the Insolvency law and basic principles – Principle of creditor equality, are defining, that all creditors shall be given equal opportunities to participate in proceedings and receive satisfaction of their claims in accordance with the obligations

which they have established with the debtor prior to the commencement of proceedings (Insolvency Law, 2010). Using methodology of an analysis of value through the system and following necessary laws of logic, there possible definable value is - equality of creditor's in insolvency proceedings, coming to the procedures for settling the creditors' claims in insolvency proceedings of a legal person, the legislature has established a strict procedure of settling the creditors' claims (Insolvency Law, 2010). The procedure highlights three privileged entities whose claims are covered first - claim of the Insolvency Administration, debtors' employees' claims and tax claims of the tax administration (as the creditor). Foresaid clearly means, that between the equal creditors are more valuable ones (according to the state priorities) and coupling them together through the system and highest-level policy planning document Latvia 2030 such basic value – as the human capital is reached.

3.3. Transnational aspect of the insolvency proceedings.

Republic of Latvia, as the member state of the European Union (hereinafter - EU) must meet not only the international standards of insolvency proceedings (UNCITRAL and World bank prescriptions and guidelines), but also the standards and directives of the EU. These prescriptions are forming on the two global factors – such as economical activity and the risks, arising of it. Some authors – legal professionals, such as Richard Tett and Alan W Kornberg in the twelfth edition of the Restructuring & Insolvency 2019 underlined significant factors, stating that Economic activity has been and remains relatively strong – driven by trade growth, easy monetary policies [...], however, risks – in the form of high household debt, increasing uncertainties because of geopolitical events, rising protectionist rhetoric, and a move away from a multilateral trading order [...] (Freshfields, Bruckhaus, Deringer, 2018). Latest initiatives of EU on transforming the EU's insolvency regimes are rooted in directive of the European Parliament and of the Council, adopted in 20 June 2019 (Directive) is aiming to increase the efficiency of procedures concerning restructuring and insolvency. The above mentioned Directive clearly indicates value-oriented approach in the application of restructuring or insolvency proceedings - The going-concern value is, as a rule, higher than the liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients, continues to generate revenues, and limits the impact on workers [...] (Directive (EU) 2019/1023, 2019). Using analysis of value through the system methodology, such a European level document statements clearly corresponds to the national (member state) level legal acts basic principles and purposes, enshrined in the Guidelines and in the Insolvency law, harmonizing outcome values expected from the insolvency proceedings.

3.4. Impact of the pandemic COVID-19 to the Insolvency policy.

According to the Coronavirus disease 2019 (COVID-19) Situation Report – 51 of the World Health Care organization (hereinafter - WHO), WHO at 11 March 2020 have made the assessment that COVID-19 can be characterized as a pandemic (WHO SITREP-51, 2020). Based on this assessment of WHO, Government of the Republic of Latvia at 12 March 2020 issued an order No.103 “Regarding Declaration of the

Emergency Situation in Latvia” (hereinafter – Order No.103) (Cabinet Order No.103, 2020), introducing unprecedented prohibitions and restrictions throughout the country. As the emergency situation developed, spectrum of the prohibitions and restrictions was extended to significant segments of the economy – such as tourism, catering, all levels of educational establishments and significant restrictions on services provided by public authorities (Cabinet Order No.103, 2020).

Recognising the impact of the prohibitions and restrictions adopted by the above-mentioned Order No.103, on the public economy and on the solvency of private-sector enterprises, legislator on the 20 March 2020 adopted a legal framework (COVID-19 Law, 2020) which also affected the area of insolvency. Legal regulation predicted and stated as follows: Creditors are prohibited, until 1 September 2020, from submitting an application for insolvency proceedings of a legal person [...] in almost all features of Insolvency Proceedings of a legal person, determined in Section 57, Paragraph one of the Insolvency law.

As well as national, also transnational level - EU legal acts and political planning documents are affecting suppression of threat of COVID-19 to the state and its consequences due to the spread of pandemic. According to the EU Commission 29 May 2020 proposal No.2020/0106 (COD) (EUCOM 2020/0106, 2020) the creation of a Solvency Support Instrument there invented to amend the Regulation (EU) 2015/1017. On the political planning level, the final paper of EU Council conclusion No. EUCO 10/20 as of 21 July 2020 presented solutions for the interests and positions of all EU member states. This EU Council conclusion is based upon the two main instruments: Multiannual Financial Framework and a specific Recovery effort under Next Generation EU, and deal with two addresses: Recovery effort for pandemic COVID-19 consequences and Reinforcements to the long-term EU budget for 2021-2027. EU Council conclusion No. EUCO 10/20 could indirectly affect Insolvency policy of Latvia but analysing the document, published in the EU Council Document register (EUCO 10/2020, 2020) – the section “Solvency” was excluded from the agenda.

Despite the EU level pandemic recovery fund, that is still in a project and proposal level document (August 2020), there is invited a wide spectrum of national level recovery programme to the private sector: guarantees, revolving loans, portfolio guarantees for micro, small and medium-sized enterprises, extending aid for issuing export credit guarantees etc – to prevent from the wave of insolvency proceedings. These measures were activated parallel to the scope of prohibitions and restrictions and were rooted in the highest level – parliament normative acts, two major regulations are in force at the time of writing this article (entered into force 10 June 2020):

- Law on the Management of the Spread of COVID-19 Infection,
- Law on the Suppression of Consequences of the Spread of COVID-19 Infection.

Law on the Management of the Spread of COVID-19 Infection prescribed procedures and exact timelines in order to restore the general legal order after the end of the specified term of the emergency situation (Management of the Spread of COVID-19, 2020) with the ambitious aim - to ensure the improvement of the economic situation of the society and to promote the stability of the national economy (Management of the Spread of COVID-19, 2020).

Law on the Suppression of Consequences of the Spread of COVID-19 Infection prescribes operational rules and procedures in order to restore the general legal order after the end of the time limit for emergency situation at the same time setting appropriate measures for ensuring such scope of rights and obligations of private individuals which would be commensurate with public health and safety interests and effective operation of the State and local government authorities (Suppression of Consequences of the Spread of COVID-19, 2020).

4. Results and conclusion

As a result of the research, the author has come to the conclusion, that overall insolvency policy can be analysed on the subject of axiology and through the prism of axiology, using the professors Hartman proposals on theory of values.

4.1. Almost all political planning documents of all levels (Parliament and Cabinet) addresses basic principles and forms the ground for the values of the insolvency policy. Two different legal instruments there distinguished - Insolvency proceedings of a legal person and Legal protection proceedings, defined by the Insolvency law, addresses one purpose – to honour the obligations of a debtor, as the basic value. But reaching the endpoint – two opposite values: rapidly return of economically valuable assets to the economy (liquidation of the debtor) and maintain economic activity of the debtor as on-going concern (renewal of solvency of a debtor).

4.2. Main political planning document of the Republic of Latvia - Latvia 2030, determines the human capital that the most important resource of Latvia, prioritizing it as the highest value. Insolvency policy, determined by the Guidelines, promotes the same value through the system of principles, forming the sectoral policy. The legal act – Insolvency law, through the legal norms precisely forms the legal frame through the prioritizing the addresses of the settled the creditors' claims, defining the values – society needs and interests of the individuals.

4.3. Such value as an outstanding business environment, which is rooted in the strategic objective of the Guidelines remains in all level of the political planning documents and legal acts, though the prism of the indicator, characterizing the business environment, in particular - business cessation.

4.4. Inventing scope of measures for suppression of consequences of the spread of COVID-19 infection, state clearly determined values, stated that on-going concern is of higher value, than interests of the creditors (settling the claims of creditors through the selling the property of debtor and honouring the obligations of debtor).

References

- Audit report (2015) (Audit report No. 2.4.1-5/2014, March 3, 2015). State Audit Office of the Republic of Latvia. Available at: https://www.lrvk.gov.lv/lv/getrevisionfile//uploads/reviziju-zinojumi/2014/2.4.1-5_2014/2.4.1-5_2014/revzin_mn_3mar2015.pdf (accessed 09 June 2020).
- Cabinet Order No.103 (2020) 12 March 2020 // Latvijas Vēstnesis, No.51A, 12.03.2020. Available at: <https://likumi.lv/ta/en/en/id/313191> (accessed 30 August 2020).

- Cabinet Order No.527 (2016) 21 September 2016// Latvijas Vēstnesis, No.186 (5758), 26.09.2016. Available at: <https://likumi.lv/ta/id/284925-par-maksatnespejas-politikas-attistibas-pamatnostadnem-2016-2020-gadam-un-to-istenosanas-planu> (accessed 09 June 2020).
- COVID-19 Law (2020) Law “On Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of COVID-19” // Latvijas Vēstnesis, No.57B, 21.03.2020. Available at: <https://likumi.lv/ta/en/en/id/313373-on-measures-for-the-prevention-and-suppression-of-threat-to-the-state-and-its-consequences-due-to-the-spread-of-covid-19> (accessed 30 August 2020).
- Directive (EU) 2019/1023 (2019) of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), Article 49.
- EUCO 10/2020 (2020) Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions No. ST 10 2020 INIT, 21 July 2020. Available at: <https://data.consilium.europa.eu/doc/document/ST-10-2020-INIT/en/pdf> (accessed 30 August 2020).
- EUCOM 2020/0106 (2020) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2015/1017 as regards creation of a Solvency Support Instrument. Available at: https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/com_2020_404_1_en_act_part1_v9.pdf (accessed 30 August 2020).
- Freshfields Bruckhaus Deringer (2018) Restructuring & Insolvency 2019. Law Business Research, London, 6.
- Hartman, R. (1962). Axiology as a Science. *Philosophy of Science*, 29(4), 412-433. Retrieved June 11, 2020, from www.jstor.org/stable/186300.
- IBRD (2016) International Bank for Reconstruction and Development/The World Bank publication. The Principles for Effective Insolvency and Creditor/Debtor Regimes,10. Available at: <http://documents.worldbank.org/curated/en/518861467086038847/Principles-for-effective-insolvency-and-creditor-and-debtor-regimes> (accessed 09 June 2020).
- Insolvency Law (2010) // Latvijas Vēstnesis Nr.124 (4316), 06.08.2010, Section 1, 3, 4, 6, 118. Available at: <https://likumi.lv/ta/en/en/id/214590-insolvency-law> (accessed 09 June 2020).
- LGIL (2005) (Legislative Guide on Insolvency Law), UN publication. Available at: https://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf (accessed 11 June 2020).
- Management of the Spread of COVID-19 (2020) Law on the Management of the Spread of COVID-19 Infection // Latvijas Vēstnesis, 110A, 09.06.2020, Section 1. Available at: <https://likumi.lv/ta/en/en/id/315278-law-on-the-management-of-the-spread-of-covid-19-infection> (accessed 30 August 2020).
- NDP 2014-2020 (National Development Plan of Latvia for 2014–2020). Approved by a Decision of the Saeima on 20 December 2012. Available at: http://www.pkc.gov.lv/sites/default/files/images-legacy/NAP2020%20dokumenti/NDP2020_English_Final.pdf (accessed 09 June 2020).
- Savickis, V. Dinsberga, J. (2018) Fast and efficient insolvency process, as one of the preconditions of an outstanding business environment. Abstract. 7th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE, 129. Available: <http://society-health-welfare.rsu.lv/pdf/abstracts.pdf> (accessed 09 June 2020).
- SDSL 2030 (Sustainable Development Strategy of Latvia until 2030). Approved by a Statement of Saeima on 10 February 2010. Available at: http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf (accessed 09 June 2020).
- Suppression of Consequences of the Spread of COVID-19 (2020) Law on the Suppression of Consequences of the Spread of COVID-19 Infection // Publication: Latvijas Vēstnesis, 110A, 09.06.2020, Section 1. Available at: <https://likumi.lv/ta/en/en/id/315278-law-on-the-management-of-the-spread-of-covid-19-infection> (accessed 30 August 2020).
- WHO SITREP-51 (2020) Coronavirus disease 2019 (COVID-19) Situation Report – 51, 11 March 2020, World Health Organization, Point 1. Available at: https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10 (accessed 30 August 2020).