

Legal Framework for Transfer of Undertakings of a Credit Institution in Latvia



In summer 2015 the Latvian Law on Recovery and Resolution of Credit Institutions and Investment Firms (the “Law”) came into effect, putting Latvia into compliance with the requirements of the European Union regarding establishment of a Bank Union in order to preserve financial stability and increase supervision of the

banking sector.

The Law determines the instruments which may be used in case of resolution and governs in detail the procedures for their application, including the sale of the undertakings of a credit institution. The regulation is based on directive 2014/59/EU. In Latvia this instrument has been used since February 2010, when the regulation for transfer of the undertakings of a credit institution (a “Transfer”) was adopted. This regulation was necessitated by the global economic downturn experienced in 2008, which was severely felt in Latvia’s financial sector and which ultimately resulted in the State’s 2009 assistance in stabilizing a leading Latvian bank. The Regulation has been used both with respect to the voluntary transfer of the undertakings of a credit institution and a transfer of the undertakings of a credit institution subject to insolvency proceedings.

A Transfer may be carried out by an operating credit institution, a credit institution under insolvency or liquidation proceedings, or by a credit institution where the Financial and Capital Market Commission (FSA) has appointed its authorized person due to, inter alia, instability or potential insolvency.

In light of the specifics of credit institutions and their role in the public economy, the law provides for regulation that is different from the general regulation for transfer of undertakings.

The permission of the FSA is required for a Transfer. In evaluating a potential Transfer, the FSA assesses the impact of the Transfer on the development and stability of the financial and capital market

as well as on the collective interests of depositors. The FSA has not yet refused a Transfer application.

Appeal of the administrative deed on the permission for a Transfer issued by the FSA does not suspend the deed's enforcement. If the Transfer is carried out according to the decision of the authorized person appointed by the FSA, the Transfer may not be declared invalid; thus it is ensured that the Transfer is both as fast as possible and final, and the stability and reliability of the banking sector in the financial market will be increased for the acquirer of the undertaking, while related interests will be protected.

The consent of the creditors or other persons involved in the Transfer is not required, which is an exception from the general regulation for transfer of undertakings and which significantly facilitates the Transfer, since it would be very complicated and even impossible to obtain the consent of all persons interested in the Transfer. In case of the Transfer, disclosure of information to the acquirer of the undertaking of the credit institution shall not be considered to be a breach of the confidentiality obligations of the credit institution.



An essential difference in Transfers is that the joint and several liability of the transferor and the acquirer of the undertaking does not apply. That exception ensures that separating a part of the undertaking of the credit institution and selling it for as high price as possible can be done both simply and quickly. Application of this instrument

is especially important when there are measures taken for recovery of the operations of a credit institution. The possibilities provided by the law have already been successfully used in Latvia by division of a credit institution experiencing financial difficulties into its conditionally good-asset and bad-asset parts, and by sale of the good-asset part of its undertaking.

The exceptions from the general regulation for transfer of an undertaking applicable to the Transfer have led to some complaints about the potentially unjustified infringement of the legal interests of the creditors and shareholders of the credit institution – some reaching as far as the Constitutional Court, which concluded that the regulation was proportional and compliant with the Latvian constitution and was reasonably aimed at ensuring the stability of the financial sector and the interests of the entire society.

The banking sector in Latvia has historically had a significant role, and the issue of the Transfer is essential for ensuring stability and successful operation of the financial market. An assessment of the already-completed transfers of undertakings of credit institutions reveals that the regulation of Transfer, which is different from the general regulation for transfer of undertakings, is an efficient legal mechanism for ensuring successful and quick Transfers both during times of financial crisis and times of market stability.

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