FOREIGN INVESTORS COUNCIL IN LATVIA

Position Paper No 3

1 June 2012

Position Paper on Proposals for the Improvement of the Insolvency Process

1. Summary

The FICIL has found that the improvement of the Insolvency Act *per se* does not ensure legal and transparent progress of insolvency processes. The quality of the insolvency process system is determined not only by the provisions of law, but also the practice of application of those provisions, while the practice thereof is in the hands of courts, insolvency process administrators (hereinafter referred to as the insolvency administrators) and the Insolvency Administration. The role of insolvency administrators is especially important because the law grants extensive authority to administrators and the administrators' conduct considerably affects the interests of both debtors and the process-related creditors.

The FICIL has prepared proposals for the improvement of the legality of the conduct of insolvency administrators and increase the reliability to the institute of insolvency administration in Latvia. The FICIL has also prepared proposals for the additional necessary amendments to the Insolvency Act for the overall improvement of the insolvency process regulation.

2. Recommendations

The insolvency sector in Latvia still presents problems that threaten security of investments. To improve the insolvency system in Latvia legal provisions should be improved and the institutional system should be changed.

It is proposed to introduce the following changes in the institutional system:

- To define insolvency administrators as persons that are a part of the judicial system;
- To determine that in their positions insolvency administrators are equal to government officials.

At the same time it is proposed to consider the following improvements of the Insolvency Act:

- To state that one of the aims of the Insolvency Act is the protection of the aggregate of creditors;
- To specify in more detail the secured creditor status;
- To determine change of administrators when revising the legal status from the bankruptcy protection proceedings to insolvency proceedings of a legal person;
- To determine that the opinion of the insolvency administrator regarding the bankruptcy protection plan should be reasoned;
- To specify the civil liability of the debtor's representatives for failure of timely submission of the application for the insolvency proceedings of a legal person;

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- To specify in more detail the right of a secured creditor to the assets gained from the sale of seized property;
- To lift the time limit for filing of a creditor claim within the framework of the insolvency process;
- To extend the term for elimination of flaws in creditor claims;
- To grant to the administrator the authority to contest claims based on court rulings;
- To specify in more detail the creditor status in cases where a dispute of rights is reviewed by the court;
- To improve the procedure pursuant to which a creditor receives information on recognition of a claim;
- To specify in more detail the procedure pursuant to which other creditors may contest recognition of a creditor claim;
- To provide for participation of persons invited by a creditor in the creditor meeting;
- To specify in more detail the procedure of voting for proposing a new administrator candidate at the creditor meeting;
- To determine that no remuneration is paid to the insolvency administrator within insolvency proceedings of a legal person if the administrator is dismissed for ineffective action.

3. Rationale

The improvement of the insolvency provisions continued in Latvia for several years and resulted in adopting a new Insolvency Act in 2010 (effective from 1 November 2010). Presently a working group established by the Ministry of Justice is working on the improvement of the Insolvency Act and the Ministry of Justice has prepared amendments to the Insolvency Act to be tabled in the Saeima (the Parliament) (promulgated at the meeting of State Secretaries of 8 March 2012).

Insolvency regulation and the overall insolvency process is an important element of business environment that provides the basis for the security of investments in Latvia. Therefore the Foreign Investors' Council in Latvia (FICIL) participated in the discussion of the draft of the presently applicable Insolvency Act in 2010 and also presented its opinion regarding the present amendments to the Insolvency Act prepared by the Ministry of Justice.

The FICIL highly values the work accomplished by the institutions of the Latvian Government for the improvement of the insolvency process and the adoption of the new Insolvency Act was an important step taken towards the betterment of the business environment in Latvia. Nevertheless, the companies with foreign capital that are the FICIL members still face problems related to the insolvency process in their daily course of business.

Having assessed the present provisions of the Insolvency Act and other regulatory enactments, the FICIL arrived at the conclusion that the insolvency system calls for the following changes:

1. CHANGE OF THE STATUS OF THE INSOLVENCY ADMINISTRATOR

1.1. Including insolvency administrators in the judicial system

- The FICIL suggests specifying by the law that insolvency administrators are part of the judicial system.

  Presently insolvency administrators are natural persons who hold a

certificate of the entitlement to practice in the status of the insolvency administrator, issued on behalf of the Government.

After being appointed for the particular insolvency process the administrator is authorised by the law to receive the debtor's property and to operate with it, as well as to pass decisions that affect the interests of third parties (creditors).

The experience of the FICIL member companies shows unfortunately that the conduct of administrators still tends to be unpredictable, legally incorrect and sometimes giving doubt with respect to the administrator's impartiality. Also, the official statistics of the Insolvency Administration reveals problems related to the quality of insolvency administrators' work. In 2011 the Insolvency Administration received 406 complaints regarding the administrators' conduct and in 116 cases it established breach of regulatory enactments. Moreover, the number of complaints tends to grow regardless of the decrease in the total number of insolvency processes (347 complaints in 2010, 201 complaints in 2009, 100 complaints on 2008). In 28 cases in 2011 the Insolvency Administration referred to the court to dismiss administrators from insolvency processes due to some gross violations, including conflict of interests, or due to reasonable doubts regarding the administrator's impartiality.[1]

In the opinion of FICIL one of the most serious shortcomings of the provisions regulating the operation of insolvency administrators is the fact that the insolvency administrator is actually granted extensive powers for the management of the insolvency process, while the administrator's place in the institutional system does not provide for a sufficient control mechanism of that these powers are used honestly and professionally. The administrators however are de facto part of the judicial system already now, because:

1) insolvency administrators are appointed for the particular process by a court ruling;
2) by managing the insolvency process the insolvency administrator actually enforces the court judgment of declaring the debtor's insolvency process;
3) within the insolvency process the administrator has been granted considerable decision-making powers and authority to operate with another's property and the source of such powers is not private will (as it is, e.g. in the event when members of a limited liability company elect ts board) but a ruling of a public authority (court).

The insolvency administrator's independence and neutrality, which is an integral value of the judiciary and is protected by law, is an important precondition for a lawful course of the insolvency process. Legally not being part of the judicial system, administrators do not feel the responsibility imposed by representation of the judiciary and hence act as private individuals. Their inclusion in the judicial system would mean regulation of the actions of administrators according to the inherent

[1] http://www.mna.gov.lv/lv/aktualitates/info_medijiem/204/

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principles of the judicial system: the procedure of application of disciplinary liability, candidate selection criteria, restrictions of joining positions, common standards of professional ethics characteristic to the judicial system, etc.

1.2. Equalling of insolvency administrators to government officials

- Determining that insolvency administrators are part of the judicial system the FICIL also suggests that with regard to their operations administrators should be equalled to government officials.

  Equalling administrators to government officials will on the one hand improve the administrator's neutrality and effectiveness of supervision and on the other hand it will let administrators perform their duties more efficiently.

  The rules of joining positions specified for government officials (that should be adjusted to the specific features of the operation of insolvency administrators) protect the officials from the risk of the conflict of interest and provide for more professional performance of duties. Presently the law does not specify general restrictions of joining positions for insolvency administrators (except those that apply to each particular process). As a result, insolvency administrators tend to join performance of the duties of the insolvency administrator with activities in other areas (mostly law-related). On the one hand, this causes higher risk of the conflict of interests within the insolvency process, as it is more likely that the administrator has certain relations with the persons involved in the process. On the other hand, the fact that for a number of insolvency administrators management of insolvency processes is only one of their professional activities (and sometimes not the main one) results in that the administrator's qualification and hence the quality of the insolvency process suffers. Furthermore, the fact that in practice administration of insolvency processes is only additional professional activity leads to much lower professional motivation of insolvency administrators compared to the situation where this would be their only professional activity.

  Considering that insolvency administrators are appointed to their positions by courts and that administrators exercise powers granted to them by law, abuse of such powers means discrediting of the state power. Equalling to government officials would mean that professional offences committed by administrators would qualify pursuant to sections under Chapter XXIV of the Criminal Code "Criminal Offences Committed at Service of Public Authorities" and such offences would be investigated by the Corruption Prevention and Combating Bureau.

  Equalling to government officials would provide more protection for the administrator's independence and immunity while performing their professional duties (e.g. presently administrators are not protected by the provisions contained under Chapter XXII of the Criminal Code "Criminal Offences against Administrative Order").

2. AMENDMENTS TO THE INSOLVENCY ACT

2.1. Considering the interests of the aggregate of creditors as one of the aims of the Insolvency Act

- The FICIL proposes wording Section 1 of the Insolvency Act (hereinafter referred to as the IA) as follows: *Section 1. The Aim of the Act "The aim of this Act is to facilitate performance of obligations of a debtor who experiences financial difficulties and, where possible, recuperation of solvency thereof through protection of interests of the aggregate of creditors and application of the principles and legal solutions prescribed by this Act.*

  Protection of the interests of the aggregate of creditors is a fundamental principle of insolvency law aimed at considering the interests of all of the debtor's creditors during the insolvency process, taking into account the status and priority of the particular creditors. Indication of this principle in the aim of the IA would facilitate reasonable application of legal provisions in line with the principle of interests of the aggregate of creditors.

2.2. The secured creditor status

- The FICIL proposes specifying of Section 7 of the IA by explicitly stating that the status of the secured creditor would also apply to the statutory creditors of the debtor's property in cases the debtor has pledged its property for the benefit of securing obligations of third parties.

  The provisions of the Property Law under the Civil Code render an option for a person to pledge their property not only to secure performance of their obligations, but also give it as collateral for the obligations of third parties. Such option permits more flexible application of different funding models for companies and natural persons alike and such practice is becoming more and more frequent in Latvia.

  In the event of failure of the obligations by the third party the pledgor may satisfy his claim by selling the pledged property as provided for by the Civil Procedure Act (hereinafter referred to as the CPA). But the provisions of Section 7 of the IA do not unambiguously indicate that the pledgor has the status of the secured creditor and hence the title to the cash assets gained from the sale of the pledged property. Moreover, the case law differs in respect of this issue, sometimes not recognising the rights of the secured creditor and thus diminishing the value of the collateral as a means of securing of obligations.

  Specifying Section 7 of the IA will allow avoidance of diversified case law and will facilitate foreseeable and secure application of the right of pledge for the protection of investments.

2.3. Change of the administrator upon moving from the bankruptcy protection proceedings to the insolvency process

- The FICIL suggests deletion of the words "except in the case indicated in Section 59 Paragraph Three of this Act" from Section 25 Clause 2 of the IA and deletion of Section 59 Paragraph Three of the IA.

  Section 59 Paragraph Three of the IA prescribes that if the debtor's

bankruptcy protection proceedings are closed and with the same the insolvency proceedings of a legal person are opened the duties of the administrator in the latter proceedings are continued to be performed by the same administrator who performed the duties within the bankruptcy protection proceedings.

Such regulation, although aimed at the procedural economy, causes considerable risks of the conflict of interests. Pursuant to Chapter XVII of the IA, in the insolvency proceedings of a legal person the administrator has the duty to assess the debtor's transactions and any operations with the debtor's property before the insolvency process is declared. Where the debtor has passed from the bankruptcy protection proceedings to insolvency process, such assessment includes also the period of the bankruptcy protection proceedings within which the administrator had the obligation to supervise the debtor (Section 50 of the IA). Section 29 of the IA generally determines the administrator's liability for loss that creditors and other persons may incur due to insufficient performance of obligations within the bankruptcy protection proceedings. It follows that when assessing the debtor the administrator is also assessing his or her own conduct during the period of the debtor's bankruptcy protection proceedings and, considering the risk of his or her liability, he or she could be uninterested in disclosing such violations that the administrator should have noticed already during the bankruptcy protection proceedings.

In practice the provisions of Section 59 Paragraph Three of the IA are abused in the way that the bankruptcy protection proceedings are formally initiated with a purpose of passing to the insolvency process with the preferred administrator thereof. This trend has been also recognised by the Insolvency Administration whereby it has made verification of the insolvency processes where the debtor has first undergone the bankruptcy protection proceedings followed by comparatively fast transfer to the insolvency proceedings of a legal person one of the Insolvency Administration's supervision priorities in 2012.[2]

2.4. The administrator's opinion on the bankruptcy protection plan

- The FICIL suggests wording of Section 43 Paragraph One of the IA as follows: *(1) Before the approval of the bankruptcy protection plan by the court the administrator shall prepare a reasoned opinion regarding such plan and the potency thereof to ensure recuperation of the debtor's solvency.*

  Pursuant to Section 43 Paragraph Two of the IA, in the opinion regarding the bankruptcy protection plan the administrator provides the assessment of the compliance of the plan with the requirements of Section 38, 40 and 42. In practice the administrator indicates in the opinion whether the plan contains all information specified under the law and whether the plan has been approved with creditors according to the procedure established by the law. Pursuant to Section 341[6] Paragraph Three of the CPA, the same is verified by the court when resolving upon the approval of the bankruptcy protection plan. Frequently enough the administrator's opinion is merely a formality and the

[2] http://www.mna.gov.lv/lv/aktualitates/

administrator's duties of preparation of the opinion duplicate the competence of the court.

Regardless of the administrator's assignment to supervise the debtor and facilitate protection of the creditor interests, the attitude of administrators towards the debtor's chances of restoring solvency frequently has been uncritical, which is proved by the statistics of the Insolvency Register. Since 2008 there have been 56 bankruptcy protection proceedings declared by a court judgment in Latvia and, although a positive administrator's opinion is one of the preconditions for the declaring of the proceedings, so far only one of the above cases finished with the performance of the bankruptcy protection plan.[3]

To facilitate application of the bankruptcy protection proceedings for debtors who do have chances to restore their insolvency, as well as the co-liability of administrators for the successful performance of the bankruptcy protection proceedings, the law should specify the administrator's obligation to assess the debtor's chances of recuperation.

2.5. Civil liability of the debtor's representatives for failure of timely submission of the insolvency application

- The FICIL proposes specifying civil liability of the debtor's Board for failure of timely submission of the insolvency application.

  Pursuant to Section 60 Paragraph Three of the IA, the debtor is obliged to submit the application for insolvency proceedings of a legal person provided there arises any one of the legal person's insolvency symptoms specified under Section 57 Clauses 5, 6 or 9 of the same Act. Failure to submit the insolvency application is subjected to administrative liability pursuant to Section 166[35] of the Administrative Offences Code.

  In practice the administrative liability is seldom applied and does not function as a sufficiently effective incentive for the companies and their legal representatives to file timely insolvency applications. As a result the aggregate of creditors suffers considerable loss because belated initiation of the insolvency process means a slimmer chance for the creditors to recover their claims. Without existence of actual and unavoidable sanctions for the failure of filing the insolvency application the debtor's representatives tend to purposefully delay filing of the insolvency application so that recovery of property within the insolvency process would become problematic according to Sections 96-99 of the IA (contesting of transactions, claiming back paid amounts and recovery of loss).

  To facilitate timely action of the debtor's legal representatives regarding filing of the insolvency application of a legal person, the IA should provide for civil liability of the debtor's legal representatives for loss incurred due to delayed filing of the insolvency application or failure to file such at all. The world practice shows that civil law sanctions are much more effective that

[3] https://www.ur.gov.lv/urpubl?act=MNR_STAT&stat_id=549

administrative or criminal ones.

2.6. Distribution of assets acquired from recovery of pledged claims

- The FICIL suggests that the administrator's operations with pledged receivables should be specified under the IA along with the distribution of the cash assets gained from recovery of such debts. The administrator should reach an agreement with the secured creditor regarding the operations with the pledged receivables while all income from the realisation of such debts, regardless of the type of realisation (by sale or recovery), should be utilised for covering the secured claim after deduction of the realisation costs.

  Pursuant to Section 65 Clause 6 of the IA, the administrator recovers receivables and performs legal actions for the recovery of other property of the debtor. Pursuant to Section 3 of the Commercial Pledge Act receivables may be the object of commercial pledge. Section 116 of the IA regulates sale of pledged property, which also applies to pledged receivables provided they are assigned during the insolvency process. In such case income is utilised for covering of the secured creditor's claims. The law however does not say anything in respect of recovery of pledged debts. Considering the substance of the pledge, assets gained from recovery of a pledged debt should be also utilised for covering the secured claim otherwise the sense of pledging receivables is lost, and satisfying of a secured claim within the insolvency process becomes dependent on the type of realisation of the pledged property, i.e. whether the debtor performs its obligations towards the debtor or the claim is assigned, rather than on the existence of the collateral.

2.7. The term of filing creditor claims

- The FICIL suggests annulment of the 6-month limit of the term from filing of creditor claims in the insolvency proceedings of a legal person and the insolvency proceedings of a natural person.

  Pursuant to Section 73 Paragraph One of the IA, creditor claims against the debtor should be filed with the administrator within one month from the day on which the entry of declaring of the debtor's insolvency process is made in the Insolvency Register. Section 73 Paragraph Two of the IA admits filing of creditor claims also after this term, though on the condition that such filing is within a term that does not exceed six months from the day on which the entry of declaring of the debtor's insolvency process is made in the Insolvency Register, but not later that the date on which the plan for satisfying creditor claims is prepared according to the procedure specified by this Act. After that term the creditor loses its creditor status and the right of claim against the debtor.

  On the one hand, the shortened creditor claim filing terms are aimed at increasing of the turnover speed and development of legal certainty for the insolvency process. On the other hand, considering this advantage from the point of view of restricting creditor interests, it has to be concluded that the advantage is not commensurate to the negative consequences that arise for

the *creditor* in the event of missing the 6-month term for filing of the claim, especially in the cases where the insolvency process lasts for more than 6 months due to objective reasons.

2.8. The term for elimination of flaws in creditor claims

- The FICIL proposes extension of the term within which creditors should eliminate flaws established by the administrator in the submitted claim. This term is determined by the administrator, but it cannot be shorter than 15 and longer than 30 days.

  Presently Section 74 Paragraph Tow of the IA specifies that the administrator immediately sends a request to the creditor to eliminate the established flaws, if any, within five days after the date of dispatch of the administrator's request.

  In practice the nature of such established flaws may be varied and the term indicated for the elimination thereof under the law might not be sufficient. Especially, if the administrator dispatches the request shortly before the weekend or holidays, as it is sometimes practiced. Difficulties of elimination of flaws within the term presently stipulated by the law arise, e.g., if document translations or requesting of documents from foreign countries are necessary. It is therefore necessary to state that the term for elimination of flaws is determined by the administrator with consideration of the actual circumstances of the particular situation and the minimum and maximum margins of the flaw elimination term stipulated under the law.

2.9. Contesting of claims based on court rulings

- The FICIL proposes inclusion in Section 75 Paragraph Two of the IA of a provision subject to which the administrator is entitled to contest a court decision on coercive enforcement of obligations under the warning procedure, should the administrator consider the claim to be unsubstantiated. Furthermore the FICIL suggests determining a special term for appealing of the court decisions under Section 406^1 of the CPA, counted from the date of declaring the debtor insolvent.

  Pursuant to Section 75 Paragraph Two of the IA, the administrator may refuse to recognise or only partly recognise a creditor claim established by a court ruling only in cases there is evidence of that the debtor performed their obligation either wholly or in part after the court ruling took effect. In practice there a cases where by applying this provision third parties related to the debtor acquire the right of claim against the debtor on legally dubious grounds through legal proceedings, and during the insolvency process such third parties respectively gain control over passing of creditor decisions and become applicants for the proportionately largest part of recovered assets. The simplest way of implementing the aforesaid is by applying the coercive enforcement of obligations under the warning procedure stipulated by Section 50^1 of the CPA, as the main precondition for the court decision on coercive enforcement of obligations within this comparatively fast procedure is the nonexistence of the debtor's objections. If the debtor is interested in rendering such decision with an aim of indirect controlling of

the pending insolvency process, objections are not raised and the court has no grounds not to pass the decision regarding coercive enforcement of obligations against the debtor.

Presently though, upon receiving an essentially unjustified claim within insolvency process on which a decision on coercive enforcement of obligations under the warning procedure has been passed, the administrator has no grounds for not recognising it, and as a result interests of other creditors are infringed and the insolvency process becomes subject to strategic actions aimed at satisfaction of the interests of particular persons.

To prevent this situation, amendments should be introduced both to Section 75 Paragraph Two of the IA and to Section 406^1 of the CPA, by stipulating that the administrator may contest the transaction on the basis of which the decision on enforcement of obligations under the warning procedure has been passed within 3 months after the date of declaring the debtor insolvent.

2.10. Retaining of the creditor status is the administrator's decision on non-recognition of a claim is contested

- The FICIL suggests specifying Section 75 of the IA and determining the instance where the administrator does not recognise the creditor's claim, the creditor appeals the administrator's decision to the court and the court, having established that it is the rights dispute, sets a term for the creditor to bring an action according to the general procedure. If the creditor brings the actions within the term set by the court, the creditor's status should be retained for the creditor within the insolvency process, but without the right of voting.

  If literally interpreting the present wording of Section 75 Paragraph Four of the IA, the creditor whose claim is contested by the debtor or the administrator, loses its creditor status at the point of the court passing the decision on the administrator's decision by which the claim was not recognised. Retaining of the creditor status in the event of an unrecognised claim (if the creditor brings an action in the court regarding recognition of their claim) is based on that such creditor is in any case interested in the progress of the insolvency process because the process outcome (recovered assets, etc.) might considerably affect the likeliness of satisfaction of the claims of this creditor if the court, having reviewed the dispute, recognises the substantiation of the creditor's claim. Therefore the creditor status, the possibility to follow the process and to be heard within the process should be retained for the particular creditor for as long as the creditor continues to protect their interests by means of the legal remedies stipulated by the law.

2.11. Notifying on recognition of a creditor claim

- The FCL proposes supplementing Section 75 Paragraph Five of the IA with the following sentence: *The administrator's decision on recognition of a creditor claim shall be electronically sent to the respective creditor within three days after passing of such decision.*

  The provisions of Section 75 of the A presently presume that the creditor

should assume that their claim has been recognised if no reply is received form the administrator regarding the results of reviewing their claim. However, there are cases in practice where the administrator, though having recognised the creditor's claim, might erroneously assess the recognisable debt amounts, the division thereof as the principal and additional claims, and the administrator might also be mistaken in assessing other circumstances.

Such misunderstandings can be easily prevented provided the creditor timely receives the administrator's decision of recognition of the claim. However, if the creditor learns about it only after receiving the creditors' register, it is necessary to spend additional time on the correction of the mistake and it is necessary to correct and repeatedly dispatch the register of creditor claims according to Section 78 Paragraph Three of the IA.

Since communication with creditors is electronically handled, sending of a positive decision does not require considerable additional resources and furthermore, it allows controlling of the administrator's conduct in respect of compliance of the term stated in Section 75 Paragraph Six of the IA.

2.12. Term for contesting another creditor's claim

- The FICIL suggests supplementing Section 80 Paragraph Two of the IA with the following sentence: *Where the administrator has passed a decision regarding recognition of another creditor's claim on the basis of a court decision by which the initial decision of the administrator has been revoked, the creditor may appeal the respective administrator's decision not later than within one month after the date of the decision.*

  Section 80 Paragraph Two of the IA specifies terms within which a creditor may contest the administrator's decision regarding recognition of another creditor's claim. These provisions do not specify for the case where the administrator initially does not recognise the creditor's claim, but recognises it after the court revokes the administrator's decision upon a complaint of the respective creditor. Even in such case other creditors must have the option of contesting the administrator's decision, as it is possible that the claim has been recognised without considering important circumstances or considerations that other creditors were not able to express.

2.13. Participation of invited persons in the meeting of creditors

- The FCL calls to specify Section 86 of the A or issue explanatory guidelines in relation to persons who may participate in the meeting of creditors.

  There are cases in practice, where by means of narrow interpretation of Section 86 of the IA, administrators prohibit persons invited by a creditor for the purpose of more effective protection of the creditor's interests, e.g. an interpreter (if the creditor is a foreigner) or a legal assistant (if the creditor lack specific knowledge regarding the item to be reviewed), to participate in the meeting of creditors. Such practice does not facilitate achieving of the aim of protecting of creditors, which is the underlying aim of the Insolvency Act, and it is necessary to change it.

It should be indicated either in Section 86 of the A or in the guidelines explaining this Section that not only the creditor (personally or through intermediation of a representative), but also persons invited by the creditor, who provide technical or legal assistance to the creditor during the meeting, may participate in the meeting of creditors.

2.14. Voting for the appointment of a new administrator

- The FICIL proposes specifying Section 90 Paragraph Two of the IA by determining that a secured creditor has the voting right also in passing a decision on the appointment of a new administrator candidate.

  The present wording of Section 90 of the IA is contradictory and may be differently interpreted. If the aim of the legislator were to involve the secured creditor in deciding upon the issue of changing of the administrator, it would be logical to assume that the secured creditor may also vote for the new candidate because the choice of the administrator may directly affect the interests of the secured creditor.

2.15. Non-payment of remuneration to the administrator in the event of dismissal

- The FICIL proposes deletion of Section 169 Paragraph Five of the IA and wording of Paragraph Six as follows: *(6) No remuneration shall be determined for the administrator if he or she is dismissed from the position due to the reasons specified in Section 22 Paragraph Two Clauses 1, 2, 3, 4 or 7, as well as due to reasons specified in Section 90.*

  According to Section 90 Paragraph One of the IA, the meeting of creditors may pass a decision on proposing dismissal of the administrator if the administrator fails to ensure effective course of the insolvency process. Considering that ineffective management of the insolvency process might be related both to unlawful conduct and to causing loss for creditors, the consequences stipulated by Section 169 of the IA should also apply in this case, namely, no remuneration should be paid to the administrator.