

Reorganisation and winding-up in insurance and banking

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EU legislation

- For insurance – Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings
- For banking – Directive 2001/24/EC on the reorganisation and winding-up of credit institutions

Structure of the presentation

1. Common principles for insurance and banking sector
2. Specific provisions for insurance
3. Specific provisions for banking

As a result of Directives 2001/17/EC and 2001/24/EC

- Reorganisation and winding-up measures are mutually recognised
- National competent authorities and proceedings are mutually recognised

Scope of the Directives

- Reorganisation measures – measures aiming at preserving or restoring financial situation of the undertaking which affect pre-existing rights of third parties
- Winding-up proceedings – collective proceedings which involves realising the assets of the undertaking

(Precise definitions: Art. 2 of Dir. 2001/17/EC and Art.2 of Dir. 2001/24/EC)

Principles of the Directives

- Unity
- Universality
- Non-discrimination
- Publicity

Principle of unity

- One single proceedings
- One single competent authority (Insurer 's or Bank's Home Member State)
 - Home Member State is the Member State where the head office of the insurance undertaking covering the risk is situated or the Member State where the bank is authorised

- One law governing the proceedings (Insurer 's or Bank's Home Member State) – -
lex consursus
- however, some derogations:
 - when the assets are situated outside the Home Member State with respect to third 's parties rights in rem,
 - reservation of title
 - employment contracts, immovable properties, lawsuits pending, set-off, transactions in regulated markets

Principle of universality

- The proceedings shall automatically have EU effects.
- All the assets/liabilities of the undertaking shall be subject to the proceedings opened by the Home Member State.

Principles of non-discrimination and publicity

- Non-discrimination

- All creditors of the same kind of the insurance and credit undertaking shall be treated in the same way irrespectively of their nationality or residence.

- Publicity

- Reorganization measures and winding-up proceedings must be published and given appropriate publicity to inform all creditors of the insurance and credit undertaking

Branches of third countries insurance undertakings and credit institutions in the EU

- The home MS is then considered the State where the branch is situated
- If the third country insurance undertaking / credit institution has branches in more than one Member State, each branch is treated independently (as branches are not supervised by a single authority but by the authority which authorised each branch in each Member State)
- However, the competent authorities of the relevant MS must co-ordinate their actions

Specific provisions for insurance (Dir. 2001/17/EC)

- Protection of insurance creditors:
 - Insurance claims shall have a preferential treatment over other claims of the insurer in case of winding-up (Art.10)

The Member States can opt for one of the 2 methods:

- special privilege – granting insurance claims ABSOLUTE precedence over any other claim with respect to assets representing the TECHNICAL PROVISIONS, or
 - general privilege – granting insurance claims a special rank over the WHOLE ASSETS of the insurance undertaking (they can only be preceded by claims on salaries, social security, taxes and rights in rem)
- The broad definition of insurance claim – Art. 2 (k)

Specific provisions for banking (Dir.2001/24/EC)

- Supplementary derogations to the application of the Home Member State law:
 - Netting agreements (Art. 25 of Dir.2001/24/EC)
 - Repurchase agreements (Art.26)

More information at :

http://europa.eu.int/comm/internal_market/insurance
http://europa.eu.int/comm/internal_market/bank

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