



A guide to pre-insolvency and insolvency proceedings across Europe

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Contents

03	Introduction
05	Austria
07	Belgium
09	Bulgaria
12	Cyprus
15	Czech Republic
17	Finland
19	France
23	Germany
26	Greece
29	Hungary
32	Ireland
36	Italy
39	Lithuania
41	Malta
44	Poland
47	Portugal
50	Romania
53	Spain
56	Sweden
58	Switzerland
60	The Netherlands
62	Ukraine
65	United Kingdom
70	Introduction to Deloitte Legal



Introduction

The events in the last few years have had significant and lasting impacts on business in general and restructuring in particular, with the latter referring to the various options available for firms experiencing difficulties. European economies, hit by both the upheavals caused by the health crisis and geopolitical tensions, have also been affected by the various support policies adopted by governments.

During this period, the construction of insolvency regimes across Member States has evolved towards an increasingly integrated Europe. The most significant development since the last edition of our European Insolvency Guide in 2017 has been the adoption of Directive (EU) 2019 / 1023 on preventive restructuring frameworks, discharge of debt and disqualifications. This directive is the first European text to substantially modify internal standards in this area. European law already took an interest in the rules governing distressed companies in the past by coordinating the application of national laws to reduce the risk of friction between them. At the time, European Union law was concerned with coordinating rules on conflicts of laws but did not harmonise the treatment of difficulties encountered by companies, which was still determined exclusively by national laws. Indeed, Regulation (EU) 2015 / 848 only addressed rules on conflicts of law, enabling the identification of the Member State in which proceedings should be opened, the law that should be applied and how the coexistence of parallel proceedings (secondary insolvency proceedings) should be organised.

Thus, the 2019 directive represents a new stage in the harmonisation of national laws. It seeks to contribute to the smooth operation of the internal market and to the removal of obstacles to the exercise of fundamental freedoms (particularly the free movement of capital and the freedom of establishment) caused by discrepancies between national insolvency laws and procedures. The transposition of this directive has led, or will lead, to more or less profound modifications of the rules applicable in each Member State or even constitute, in some cases, a genuine paradigm shift in the philosophy of national insolvency law.

This harmonisation, which started in 2019, is continuing with a new draft directive (Directive 2022 / 0408, an initial version of which was published by the European Commission on 7 December 2022). The aim is to harmonise the laws of the Member States on a number of complementary aspects in order to facilitate cross-border investments and continue to improve the operations of the single market by further reducing the discrepancies between the different national insolvency laws.



In this context, we believe that looking beyond national markets when it comes to restructuring has become necessary more than ever. Hence, we are delighted to share with you an updated version of our European Insolvency Guide, with 23 contributions written by our teams across Europe.

The professionals in the Deloitte network are following, with the utmost attention, these crucial developments which will shape not only the insolvency law of tomorrow but also, and more broadly, the new reflexes to be adopted in the context of any economic activity in Europe.

Our recognised practitioners can bring together effective multi-jurisdictional teams to assist you with complex cross-border issues and, more generally, to help you with your projects in all situations you may face — as a debtor, creditor, partner, shareholder or manager of a company experiencing difficulties.

If you have any questions about this Guide or the services offered by Deloitte Legal, please contact our teams.

Deloitte Legal France Restructuring Team

Austria

Context

In Austria, insolvency matters are mainly governed by the Insolvency Act. Except where the Insolvency Act provides for special procedural rules, the procedural rules of the Jurisdiction Act, the Code of Civil Procedure and their introductory laws will apply in a subsidiary manner.

Since the major reform of the Insolvency Act in 2010, Austrian insolvency law has been rather debtor- friendly. The Insolvency Act now primarily pursues the goal of restructuring and, where a company is capable of restructuring, protects it from hasty liquidation. One of the main goals of the insolvency regime is, therefore, to help the debtor implement a restructuring or reorganisation solution.

The concept of restructuring was also further strengthened by the Restructuring and Insolvency Directive Implementation Act and the introduction of the Restructuring Act. By this law, the EU Restructuring Directive (2019/1023) was incorporated into Austrian law. The Restructuring Act offers access to flexible, preventive restructuring proceedings to corporate debtors whose business is in financial difficulties (i.e. a likelihood of insolvency). It provides for a non-public restructuring procedure with court involvement and self-administration.

In many cases, restructuring is more advantageous not only for the debtor because of the continuation of the company but also for the creditors. Furthermore, the reorganisation of a company under the Insolvency Act is permissible only if the creditors receive a higher quota than they would in case of liquidation.

Overview of the main pre-insolvency and insolvency proceedings: three different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Since the implementation of the EU Restructuring Directive (2019/1023), Austrian law provides for three categories of restructuring proceedings.

Based on the fundamental idea that corporate restructuring is preferable to bankruptcy, both in terms of satisfying creditors and from an economic perspective, the Austrian legislature enacted the Corporate Reorganisation Act in 1997. The purpose of the Act was to make businesses at risk of insolvency aware of the need for action at an early enough stage to avoid the commencement of insolvency proceedings as far as possible. If the business is not insolvent, but its economic situation is nevertheless so critical that there is a need for reorganisation, measures should be taken to be able to continue to participate in economic life. However, this project failed to gain acceptance in practice.

The new restructuring proceedings pursuant to the Restructuring Act offer corporate debtors in financial difficulties (i.e. a likelihood of insolvency) access to flexible, preventive restructuring proceedings. The Act provides for a non-public restructuring procedure with court involvement and self-administration. The essential difference with respect to an out-of-court settlement is that the consent of all creditors affected by the restructuring measures is no longer mandatory. However, as this restructuring scheme is very new, and Austrian law offers tried-and-tested proceedings for reorganisation, how it will be taken up in practice remains to be seen.

At the moment, the most popular form of restructuring in Austria is the so-called 'reorganisation plan' pursuant to the Insolvency Act. All debtors can apply for a reorganisation plan. If a debtor submits a proposal for a reorganisation plan together with an application for insolvency, the proceedings are conducted as reorganisation proceedings and not as bankruptcy proceedings. The minimum legal requirements for a reorganisation plan include the following:

- A minimum quota of 20% on the insolvency claims
- Payment of the quota within a time frame of 2 years

The reorganisation plan must be accepted by a majority of the insolvency creditors and confirmed by the court. Once the reorganisation plan has been confirmed by the court, it becomes legally effective, and the debtor is released from its remaining debts. There is partial debt relief, combined with a moratorium. The advantage for creditors is that they usually receive a better deal when a reorganisation plan is concluded than if the company were liquidated. In the event of any default on the reorganisation plan, the moratorium is lifted.

Insolvency - Bankruptcy proceedings

Insolvency proceedings under the Insolvency Act are understood to be a one-stop procedure. These proceedings can be carried out as bankruptcy proceedings or reorganisation proceedings (with or without self-administration). Consumer insolvency proceedings are called *debt settlement proceedings*. Insolvency

proceedings can only be initiated on the basis of an application (whether by the debtor or the creditor), and start with a commencement order by the insolvency court.

While reorganisation proceedings aim to facilitate the turnaround of companies, bankruptcy proceedings basically aim to facilitate the breakup and liquidation of companies. Therefore, one of the insolvency administrator's main duties in bankruptcy proceedings is to realise the insolvency estate and distribute the proceeds among creditors.

However, even during bankruptcy proceedings, it is often possible for the debtor to file a reorganisation plan proposal and thus push for a turnaround of the company.

In recent years, the possibility of debt relief has been simplified several times for natural persons, especially consumers, through a mechanism known as 'debt settlement proceedings'.

Jank Weiler Operenyi Rechtsanwälte GmbH provides a broad range of restructuring / insolvency advice and regularly advises on the following matters:

- Renegotiation of loan agreements, restructuring agreements (financial restructuring)
- Change of shareholding and creditor structures (corporate restructuring)
- Insolvency proceedings (the clients are typically the creditors of the bankrupt, sometimes also the bankrupt)
- Insolvency-related litigation
- Non-performing loan transactions

Credentials

- Representing hotel companies in the insolvency proceedings against Thomas Cook Austria AG
- Representing a private bank and other bondholders in the insolvency proceedings against Eyemaxx Real Estate AG
- Providing legal assistance to a banking consortium with respect to the financial restructuring of an Austrian company specialising in the production and sale of textiles
- Providing legal support to a consortium in the acquisition and financial restructuring of an insolvent company operating a model park of pre-fabricated houses

Key contacts in Austria



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Belgium

Context

Since 2018, the legal framework for insolvency is incorporated as Book XX – Insolvency of undertakings in the Belgian Code of Economic Law ('BCE'). Book XX contains a number of main sections, such as (i) preliminary measures, (ii) judicial reorganisation and (iii) bankruptcy.

Currently, the European Directive (EU) 2019 / 1023 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) has been transposed into Belgian national law and will take effect as of 1 September 2023. The changes have not been added to the current publication but will be taken into account in the next version.

Overview of the main pre-insolvency and insolvency proceedings: seven procedures available

Pre-insolvency proceedings

The Insolvency Law provides for six procedures (mainly at the debtors' choice) that distressed undertakings may use to safeguard their activity. During these procedures the debtor in distress remains in control (except in scenario 2 and partially in scenario 6):

Preliminary measures

Out-of-court mediator (*Ondernemingsbemiddelaar*)

Initiation of the proceedings: only the debtor undertaking

Purpose: to facilitate the reorganisation of the business in order to allow economic activity to continue, employment to be maintained and liabilities to be settled. Confidential procedure.

An independent third party, appointed by the court, will help the company to find a solution for all parties

Court's trustee (*Gerechtsmandataris*): trustee appointed by the court

Initiation of the proceedings: debtor undertaking, public prosecutor, every interested third party

Purpose: safeguard the continuity of the undertaking in case of events leading to unmanageability of the undertaking or when manifest failures of the debtor or any of its bodies endanger the continuity of the undertaking or its economic activities

Out-of-court settlement (*Minnelijk akkoord*): confidential out-of-court voluntary agreement

Initiation of the proceedings: only the debtor company

Purpose: to facilitate the reorganisation of the business in order to allow economic activity to continue, employment to be maintained and liabilities to be settled. The debtor seeks to sign a settlement agreement with at least 2 creditors. The settlement agreement, when approved by the court, provides the creditors who are willing to enter into the settlement with additional protection in case of subsequent bankruptcy

Judicial reorganisation

Judicial reorganisation through settlement (*Gerechtelijke reorganisatie- Minnelijk akkoord*): court-supervised voluntary agreement

Initiation of the proceedings: only the debtor company

Purpose: to facilitate the reorganisation of the business in order to allow economic activity to continue, employment to be maintained and liabilities to be settled. The debtor seeks to sign a settlement agreement with at least 2 creditors, under the supervision of the court

Judicial reorganisation through a collective agreement (*Gerechtelijke reorganisatie-Collectief akkoord*): Court-supervised collective agreement

Initiation of the proceedings: only the debtor company

Purpose: to facilitate the reorganisation of the business in order to allow economic activity to continue, employment to be maintained and liabilities to be settled. The debtor drafts a reorganisation plan (which can contain haircuts), which must be voted by the creditors and approved by the court

Judicial reorganisation through transfer of the undertaking (*Gerechtelijke reorganisatie - Overdracht van de onderneming*): Court-supervised sale of the undertaking

Initiation of the proceedings: the debtor company and, in specific circumstances, the public prosecutor, a creditor or any other interested third party

Purpose: to facilitate the reorganisation of the business in order to allow economic activity to continue, employment to be maintained and liabilities to be settled by selling all or part of the company, thus transferring the activity to a third party

The sale process is organized by a court-appointed trustee, meaning the debtor does not control the process

Insolvency proceedings - Bankruptcy

Bankruptcy is the state of an undertaking when the following two conditions are met:

- The undertaking must have permanently ceased paying its debts (*staking van betaling*).
- The creditworthiness of the undertaking is undermined (*wankel krediet*).

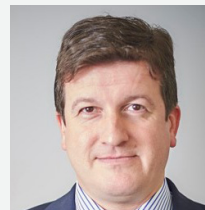
Initiation of the proceedings: the debtor, the creditors, the public prosecutor, any temporary receiver appointed by the court or the bankruptcy administrator of the main bankruptcy proceedings in another EU country

Purpose: to liquidate the company by a court-appointed bankruptcy administrator, typically by selling all assets and repaying creditors as far as possible and in order of priority

Credentials

- Legal representation of a company manufacturing heavy machinery in successful proceedings for judicial reorganisation through a collective agreement
- Legal advice to a railroad company regarding its various pre-insolvency and insolvency options
- Legal representation of an international hotel chain in the recovery of outstanding invoices in the bankruptcy of Thomas Cook
- Legal representation of a real estate developer in various legal proceedings regarding the bankruptcy of a contract partner and the insolvency administrator contact

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Bulgaria

Context

In recent years, the insolvency framework in Bulgaria has been the subject of discussions and legislative initiatives. Some changes involving the introduction of a mechanism that would lead to restructuring enterprises at risk of insolvency have been adopted into legislation. This has been done to prevent the initiation of insolvency proceedings.

There is wide debate in the country regarding the necessity of filling the gaps in legislation with regard to the declaration of insolvency of natural persons. A draft bill has been announced to this end, which should regulate insolvency proceedings with respect to natural persons but has yet to be reviewed and adopted by Parliament.

In addition, a draft amendment of the Commercial Act has been introduced to transpose the EU Directive on restructuring and insolvency 2019 / 1023 of 20 June 2019 (the Restructuring and Insolvency Directive) and to increase the effectiveness of restructuring and insolvency proceedings in Bulgaria. However, this draft amendment has also not been adopted by Parliament.

Depending on the way in which financial difficulties may affect you and your businesses (distressed companies themselves, purchasers considering the acquisition of distressed companies, creditors, shareholders, directors and others), our experienced Deloitte legal professionals can assist you by analysing the circumstances (diagnosis of the situation) and suggesting and implementing the appropriate strategy (reorganisation/recovery plan, debt-to-equity swap, share capital increase, share deal, sale of assets deal, pre-insolvency or insolvency proceedings).

Legal framework

Bulgarian insolvency law is generally governed by the Commercial Act. Apart from the general regulation of the Commercial Act, there are various pieces of legislation regarding specific issues, such as the following:

- The Insolvency of Banks Act – for the insolvency of banks
- The Insurance Code – for the insolvency of insurance companies
- The Social Security Code – for the insolvency of supplementary social insurance companies and funds (including pension funds)

- The Guaranteed Claims of Employees upon Insolvency of the Employer Act

Draft laws:

- Draft Bill on the Insolvency of Natural Persons Act (not yet adopted by Parliament)
- Draft Law for the Amendment and Supplementation of the Commercial Act for the Transposition of the Restructuring and Insolvency Directive (not adopted at this stage)

Overview of pre-insolvency and insolvency proceedings: two main proceedings

Stabilisation (pre-insolvency) procedure

A new procedure has been introduced to stabilise companies prior to their entry into insolvency proceedings. The aim of the proposed procedure is to allow the affected enterprise to avoid insolvency by reaching an agreement with its creditors on the settlement of the enterprise's payables, allowing the enterprise to continue doing business.

The stabilisation procedure is a court proceeding initiated upon a written application filed by the respective enterprise with the competent Bulgarian court. The company may withdraw its application for the initiation of the stabilisation procedure but not after a decision of the court has been issued endorsing the company's stabilisation plan.

The stabilisation procedure may be initiated for any enterprise that is not insolvent but is in imminent danger of insolvency. Such a procedure cannot be initiated for a certain category of enterprises, which are expressly specified in the Commercial Act.

All creditors of the respective enterprises, including creditors in favour of which the company has established securities for third-party payables, are involved in the stabilisation procedure.

When the court finds that the conditions for the initiation of the stabilisation procedure for the enterprise are indeed met, it issues a decision appointing a trustee and setting the remuneration thereof. The trustee is an auxiliary body within the stabilisation procedure and has the following powers:

- To review the creditors' objections and positions on the list of creditors created by the enterprise and to propose a list of creditors eligible to vote on the stabilisation plan for endorsement by the court

- To draw up a written report on the condition of the company's property and business
- To supervise the enterprise's business in compliance with any restrictions imposed by the court and to monitor compliance therewith
- To notify the court immediately of any grounds for restricting the enterprise's business

Insolvency proceedings

The law regulates one insolvency procedure, which may have different outcomes, such as the recovery of the debtor's enterprise or de-registration of the debtor (with the satisfaction of the creditors, if and to the extent possible).

Initiation of the procedure: a claim lodged with the court by the debtor, the debtor's liquidator (in which the grounds for initiating the insolvency proceedings were identified in the course of a voluntary liquidation procedure), a creditor under a commercial transaction or the Bulgarian National Revenue Agency

Purpose: to ensure the satisfaction of the creditors and provide opportunities for the recovery of the debtor's enterprise

Main condition for commencing the proceedings: The debtor must be *insolvent* or *over-indebted*.

Liability for the directors to initiate insolvency proceedings: The directors of an insolvent or over-indebted company must apply for the initiation of insolvency proceedings within 30 days of the occurrence of insolvency or over-indebtedness, failing which they can be held liable for damages caused by the delay and may incur criminal liability.

Development and outcomes of insolvency proceedings: Insolvency proceedings are initiated by means of a court resolution declaring the debtor insolvent or over-indebted. The subsequent development of the proceedings depends on the bankruptcy estate and the activity of the creditors, or the debtor.

The main scenarios for the development and finalisation of the proceedings are as follows:

- **Recovery plan:** A recovery plan may be proposed by the debtor, the syndic, creditors holding one-third of the unsecured or secured receivables, shareholders holding at least one-third of the share capital or 20% of the employees. The plan may envisage deferral of the debts, forgiveness of all or part of the debts, reorganisation of the enterprise or other actions, including the sale of the enterprise or part thereof. In case of adoption of the plan

(approval by the creditors and confirmation by the court), the insolvency proceedings are closed, and the debtor may continue its business under the rules agreed upon. However, if the debtor does not fulfil its obligations under the recovery plan, the insolvency proceedings may be reopened upon request by creditors holding no less than 15% of the receivables.

- In case of failure to adopt a recovery plan or failure of the debtor to perform its obligations under an adopted recovery plan, or if the court deems that the continuation of the debtor's business is likely to damage the bankruptcy estate, the court declares the debtor to be bankrupt, and the insolvency proceedings conclude with the depletion of the bankruptcy estate, satisfaction of creditors (if and to the extent possible) and de-registration of the debtor from the Commercial Register.
- In the event that the bankruptcy estate is insufficient to cover the initial expenses, the court declares the debtor insolvent and ceases the proceedings. After 1 year, provided that no creditor has requested the reopening of the proceedings, the court orders the de-registration of the debtor from the Commercial Register.
- **Execution of an out-of-court settlement:** At any time during the proceedings, the debtor and all creditors may negotiate an out-of-court agreement, which puts an end to the proceedings. In case of breach of the agreement by the debtor, creditors holding 15% or more of the receivables may reopen the proceedings without having to prove over-indebtedness or insolvency. At this stage, a recovery plan may not be proposed and agreed upon.

Credentials

- Advising a Belgian-owned manufacturing business in Bulgaria on a complex restructuring project in which the company's debt was settled with the bank, the leasing company and a number of suppliers, facilitated by the sale of the company's core assets to a new investor. We also assisted the distressed business with the collection of receivables. Our services were provided in close cooperation with the Deloitte Financial Advisory team in Bulgaria, which led the complex analytical and negotiating phases of the restructuring project
- Providing advice and assistance in the procedure for the closure of a local subsidiary of a mother company undergoing bankruptcy proceedings in Italy
- Providing litigation services to and defending a Hungarian bank in the insolvency proceedings of Bulgarian debtors
- Advising a foreign creditor of a Bulgarian debtor in relation to its claims towards the debtor

Key contacts in Bulgaria

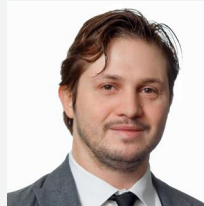


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Cyprus

Context

Insolvency matters regarding Cypriot companies are mainly regulated by the relevant provisions of the Cypriot Companies Law Cap 113 (the “Law”) and the relevant secondary legislation applicable to such insolvency matters. Certain provisions of the Bankruptcy Law (Cap 5), which apply to individuals, are also applicable to insolvency procedures regarding Cypriot companies (e.g. treatment of secured creditors). In addition to the Law, other specific laws may be applicable for particular types of companies and/or industries (e.g. financial institutions in the banking sector, funds and insurance companies).

A new insolvency framework was introduced in 2015 as a means of simplifying and modernising the existing framework and making the procedures more effective and less time consuming. The introduction of a licensing regime for persons eligible to act as liquidators or insolvency practitioners, the creation of a specialised state authority for insolvency matters, the introduction of examinership provisions for companies (similar to those applicable in Ireland) and the broadening of the powers of liquidators are just some of the modernisation measures that were introduced in 2015.

In 2022, the Companies Law and other laws comprising the overall insolvency framework were amended to bring them in line with the provisions of Directive (EU) 2019 / 1023 on preventive restructuring frameworks, discharge of debt and disqualifications, and measures to increase efficiency (Preventive Restructuring Frameworks Directive).

Overview of the main pre-insolvency and insolvency proceedings: five different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Placing a company into examinership

An application for the appointment of an examiner may be filed

by the company itself, its creditors, a shareholder holding at least 10% of the shares or a guarantor of the company.

An examiner may be appointed by the court in the following cases:

- The company is insolvent or likely to become insolvent.
- No resolution has been passed and published in the Cyprus Official Gazette in relation to the winding-up of the company.
- No order has been made for the winding-up of the company by the court.

The examinership process provides companies with a temporary period of protection from creditors.

The restructuring plan is subject to the approval of the creditors and the court. If the plan is not approved, the court may order the winding-up of the company.

A company for which an examiner has been appointed is under the protection of the court for a period of 4 months from the filing of the application, which may be extended for an additional 60 days. No proceedings can be pursued against the company during this period. The powers vested in the examiner are quite broad as a means of facilitating the survival of the company.

Restructuring

Any restructuring, compromise or arrangement between a company and its creditors or between a company and its members must be approved by a majority in value of the creditors or members present and voting at the meeting of creditors or members, respectively. The approval of the court is required to sanction the proposed compromise or arrangement. In this sanctioning, the court has broad discretionary powers to make any ancillary orders and facilitate the compromise or arrangement.

Placing a company into receivership

A creditor holding a charge over assets may, if allowed under the terms of the charge agreement, appoint a receiver to realise the assets subject to the charge and discharge its debt out of the proceeds. Receivership does not bring the existence of the company to an end. Upon the appointment of a receiver, the directors' powers of management over the assets covered by the charge are placed with the receiver.

Insolvency - Bankruptcy proceedings

Winding-up of a company under Cyprus law

According to the Companies Law CAP 113 (the "Law"), a Cypriot company may be liquidated in any of the cases set out below:

- In the event that the company is solvent, the company can be liquidated by means of a member's voluntary liquidation.
- In the event that the company is insolvent, the company can be liquidated by means of a creditor's voluntary winding-up.
- The company is placed into liquidation pursuant to a court order.¹

Voluntary winding-up

In the event that the company is solvent, the company can be liquidated by means of a member's voluntary liquidation. It will be necessary for the directors of the company to make a statutory declaration of solvency. Thereafter, a general meeting of the shareholders will need to be convened in order to pass a special resolution that the company be wound up voluntarily. At this meeting, the liquidator will be appointed. Once the liquidator is appointed, the powers of the directors cease.

The liquidator has the responsibility of liquidating the assets of the company and distributing any surplus to the shareholders.

If the company is insolvent, a similar procedure is followed (save for the requirement for a declaration of solvency), which also involves the passing of a resolution by the creditors of the company approving the liquidation of the company by means of a creditors' voluntary winding-up.

Winding-up by the court

An application for the winding-up of a company may be submitted to the court by petition by, *inter alia*, the company itself, any of its creditors or an examiner.

Following the issuance of a winding-up order, no action or proceeding may continue or commence against the company, except by leave of the court. The winding-up shall be deemed to have commenced at the time the petition for the winding-up was originally filed and not when the court order was issued.

Further to the above, any charge or transfer of shares will, in case a company becomes insolvent within 6 months from the date of such a charge or transfer, be deemed a fraudulent preference of its creditors and be invalid.

¹ Cyprus Companies Law, Cap. 113, Sections 203 and 261 (1).

Credentials

- Acting as liquidators and legal advisors of a large Cypriot investment company with a portfolio of marketable securities and other investments of USD 47 million, liquidating and distributing the assets to its contributories in an extremely tight time frame
- Acting as liquidators and legal advisors of a Cypriot investment company with a portfolio of marketable securities and other investments of USD 28 million, liquidating and distributing the assets to its contributories in extremely tight time frames
- Advising a Cypriot holding company of the largest farming company in Russia before entering into a member's voluntary liquidation. The firm had a leading role in advising the liquidator of the Cypriot holding company on a proposed second public offering of its subsidiary company and in providing continuous support in all legal matters arising in the process of liquidation, including but not limited to arrangements with creditors and the distribution of assets of the Cypriot holding company to its contributories.
- Acting as liquidators and legal advisors of a Cypriot subsidiary of a large US group of companies holding a portfolio of USD 25 million, liquidating and distributing the assets to its shareholders. The case required the active involvement of and cooperation with US and Hungarian legal and financial advisors for the successful liquidation of the Cypriot company's subsidiary in Hungary, the subsequent liquidation of the Cypriot company and the final distribution of assets to its US holding entities.

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Czech Republic

Context

Current insolvency practice in the Czech Republic is mostly influenced by the ongoing transposition Directive (EU) No. 2019 / 1023 on preventive restructuring. As any form of the insolvency proceeding is completely public (as almost all parts of the insolvency file are promptly published in the online insolvency register), a preventive restructuring may help the distressed subjects avoid impending insolvency while also avoiding any negative publicity.

Legal framework

- Act No. 182 / 2006 Coll. on Insolvency and its Resolution
- Act on Preventive Restructuring (currently in a legislative process, implementation of Directive (EU) No. 2019 / 1023)

Overview of the main pre-insolvency proceedings and insolvency proceedings: four different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Preventivní restructuralizace (preventive restructuring)

Nearly 2 years after the set transposition date, the Czech government finalised the draft of the Act on Preventive Restructuring, which is currently being discussed in the Parliament of the Czech Republic.

According to the proposed version of the Act, preventive restructuring will stand separately from current insolvency proceedings (as described below). Such a separation, however,

highlights the nature of the preventive restructuring procedure which shall help entrepreneurs avert imminent bankruptcy and save their businesses by finding a majority agreement with creditors on a non-public basis. The restructuring plan may be forced on some creditors if, simply put, 75% of them accept the restructuring plan. The court's approval of the restructuring plan has to be granted only in exceptional cases, e.g. if credit financing is provided or more than 25% of the employees are to be dismissed.

In accordance with the nature of preventive restructuring, only a debtor may commence the restructuring process. Following informal discussions with the creditors, the debtor prepares the restructuring plan in cooperation with its advisors. If accepted by the creditors (and by the court, if applicable), the debtor cannot be declared insolvent if it complies with the restructuring plan.

Moratorium (protection against creditors)

In general, a moratorium can protect a debtor against creditors' claims and a possible court declaration of insolvency in case of impending insolvency or any other form of relevant financial distress. With such a regulation, a debtor may overcome financial distress in the meantime (e.g. by obtaining funds or by finding a restructuring agreement with its creditors).

As in other pre-insolvency proceedings, only a debtor may file for a protection period. It can be requested by the debtor within 7 days of the date of the insolvency petition submission by the debtor (or within 15 days, if submitted by a creditor).

The protection can be granted by an insolvency court for a maximum period of 3 months (which can be extended to a period of 4 months under certain circumstances).

Insolvency proceedings

Konkurs (bankruptcy order)

Bankruptcy order is a type of insolvency proceeding which inevitably leads to the dissolution of a debtor's business after such an insolvency proceeding is brought to an end. The purpose of a bankruptcy order is to proportionally settle creditors' claims through the liquidation of the insolvency estate. Unsettled claims or their parts generally do not become extinguished.

A bankruptcy order may be initiated by the debtor itself or by any of its creditors.

Reorganizace (reorganisation)

If a debtor is declared insolvent and its creditors can be satisfied at a higher rate if its business is not dissolved (sold from a bankruptcy estate, respectively), a bankruptcy order does not

have to be declared, and a debtor may continue in its business activities while complying with the reorganisation plan agreed upon, which consists of measures leading to the solution of the debtor's financial distress.

If a debtor initiates an insolvency proceeding and simultaneously delivers an insolvency court a reorganisation plan to which, simply put, at least 50% of its creditors agreed, the insolvency court decides about the reorganisation immediately. In other cases, the reorganisation plan is presented (by the debtor or possibly a creditor) to the insolvency court within 120 days (or 240 days in some cases). Subsequently, it must be agreed upon by the majority of creditors, or, in some cases, the acceptance may be substituted by a consent of the insolvency court.

Besides saving a debtor's business, an undisputable advantage of a reorganisation is that disposing rights are maintained at the debtor and are not (in the majority of cases) granted to an insolvency trustee.

Oddlužení (debt discharge)

Debt discharge is allowed only for natural persons. While a creditor may file an insolvency petition and hence commence an insolvency proceeding, only the debtor may initiate a debt discharge.

As the title implies, a debt discharge helps a debtor escape a debt trap which may be created by endlessly increasing interest rates.

A successful debt discharge may be declared by an insolvency court after the monetisation of the debtor's insolvency estate and a fulfilment of a repayment schedule, which can take up to 5 years (shortening to 3 years only is currently discussed in the Czech Parliament).

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Credentials

- A leading producer of technical fabrics: provided legal advisory related to the company's reorganisation
- A major engineering company: provided complex legal advisory related to investment in the distressed business enterprise and preceding credit financing of the insolvent debtor
- A major insolvency proceeding: conducted complex analysis for an insolvency trustee regarding the insolvency test and the possible ineffectiveness of the debtor's legal acts

Finland

Context

Finnish insolvency legislation primarily comprises two insolvency proceedings for businesses experiencing financial difficulties or insolvency. These two proceedings are as follows:

- Restructuring, governed by the Restructuring of Enterprises Act (47/1993)
- Bankruptcy, governed by the Bankruptcy Act (120/2004)

Overview of the pre-insolvency and insolvency proceedings: 4 different proceedings available

Pre-insolvency/hybrid/restructuring proceeding

It is possible to try to reach an agreement on a contractual arrangement between a distressed debtor and its creditor(s) on a voluntary basis. Such an arrangement, which aims to solve the debtor's financial difficulties, can be considered before entering into judicial insolvency proceedings.

Voluntary contractual arrangement (amicable out-of-court settlement):

Initiation of the arrangement: the distressed debtor and/or its creditor(s)

Purpose: the debtor negotiates an agreement with its main creditor(s) on debt restructuring and other possible means to avoid the debtor's insolvency. Informal and confidential procedure.

Insolvency proceedings

Early restructuring / early reorganisation (*Varhainen saneerausmenettely*)

- Initiation of the procedure: available upon application by the debtor if the debtor is at risk of insolvency.

- If the company is already insolvent, only basic restructuring is possible.
- There are fewer obstacles to the commencement of early restructuring compared with basic restructuring.

Basic restructuring / basic reorganisation (*Perusmuotoinen saneerausmenettely*):

Initiation of the procedure: the debtor and/or its creditor(s) can file an application for restructuring with a district court. However, some entities (e.g. credit institutions, insurance companies and pension institutions) cannot be subject to restructuring proceedings.

Main criteria for the initiation: Restructuring proceedings may be commenced in the following cases:

- The debtor, together with two or several of its creditors, whose receivables exceed one-fifth of all the debtor's debts, files an application for restructuring jointly, or the creditors, whose receivables exceed one-fifth of all the debtor's debts, support the debtor's application for restructuring.
- The debtor is insolvent. However, reorganisation proceedings are not possible if these are unlikely to make the company solvent again.

Furthermore, the Act contains several obstacles to the commencement of restructuring proceedings.

- Purposes: to rehabilitate and ensure the continuation of a distressed debtor's viable business and to achieve debt restructuring with the assistance of a court-appointed administrator. The administrator shall undertake to inspect the debtor's overall financial status, monitor the debtor's business, adopt measures for protecting the interest of the creditors' collective and prepare a restructuring programme. The proceedings halt the debt collection by individual creditors.
- Possible outcome: this procedure, if successful, shall give rise to a restructuring programme (*Saneerausohjelma*) with measures regarding the debtor's business activities, assets and liabilities. The programme includes the debt restructuring imposed on creditors, as confirmed by a court decision.

Bankruptcy (*Konkurssi*):

- Initiation of the procedure: the debtor or the creditor can file a petition for bankruptcy with a district court, which then declares the insolvent debtor bankrupt if the prerequisites for bankruptcy are fulfilled.
- Main criteria: the debtor has to be otherwise than temporarily insolvent.
- Purpose: primarily intended to liquidate the debtor's business activities by realising the assets of the debtor in order to cover the claims made by the creditors' collective. To achieve this purpose, the assets of the debtor shall become subject to the authority of the creditors at the commencement of bankruptcy. An estate administrator shall be appointed by the court, who shall be in charge of the management and realisation of the assets and the overall administration of the bankruptcy estate.
- Outcome: the funds gathered through the realisation of the debtor's assets shall be distributed to the creditors in accordance with the certified disbursement list. Once the bankruptcy estate has been scrutinised and the debtor's assets realised, the estate administrator shall draw up a final settlement of accounts. The bankruptcy proceedings are finalized once the final settlement of accounts is approved by the creditors' collective. Alternatively, the bankruptcy proceedings can lapse if the debtor's funds cannot cover the costs of the bankruptcy proceedings.

Credentials

Our team advises the following:

- Finnish companies and Finnish subsidiaries of foreign groups
- Industrial and commercial companies (middle market)

Our team advised the following:

- A foreign company with regard to matters relating to Finnish bankruptcy proceedings and available options in a situation in which their Finnish partner in a foreign joint venture was declared bankrupt in Finland
- A domestic client with regard to matters relating to Finnish bankruptcy proceedings and recovery of bankruptcy estate, in a situation where their client was declared bankrupt and the estate presented claims against the client

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France

Context

Restructuring in France has been facing a period of great upheaval in recent years. From a cyclical standpoint, the public policy of strong support for companies implemented by the French government (the *whatever it takes* policy) in response to recent successive sanitary crises has historically affected the number of business failures. In 2020, that number was at its lowest level in the past 30 years (–38% lower than 2019 figures). This particular context, resulting from successive lockdowns, has affected the way France deals with companies' difficulties. In particular, it has highlighted the benefits of the pre-insolvency procedures available under French law since 2005.

From a structural standpoint, French insolvency law was reformed by the order of 15 September 2021, transposing Directive (EU) 2019/1023. In promoting better consideration of creditors' interests, the Directive effected a paradigm shift in French insolvency law, which was traditionally considered debtor friendly. The main new concepts resulting from the Directive will only apply to a handful of procedures (all *sauvegarde accélérée*, safeguard/receivership proceedings only if certain high thresholds are met or when the debtor voluntarily opts for the constitution of the affected parties' classes) to allow practitioners to be accustomed to them and to potentially be extended more broadly in a second step by a new reform.

The year 2023 and the succeeding ones will be challenging, as the end of the policy of unconditional support for companies will result in an increasing number of business failures (up to the 2019 pre-COVID-19 level or even beyond because of current high borrowing costs) to be handled using the new tools resulting from the recent reform.

Overview of the main pre-insolvency and insolvency proceedings: six different proceedings available¹

Confidential/voluntary/amicable restructuring proceedings – no automatic stay

Ad hoc mandate (*mandat ad hoc*)

Initiation of the proceedings: only the debtor².

Main condition: a solvent debtor³ faces or is likely to face financial, commercial or corporate difficulties.

Purpose: a special mediator (*mandataire ad hoc*) appointed by the President of the Commercial Court assists, under the latter's supervision, the debtor in finding a solution to its difficulties (e.g. in negotiating an agreement with its main creditors).

Debtor in possession: the special mediator does not interfere with management.

Informal procedure often used as a first step prior to conciliation.

Conciliation (*conciliation*)

Initiation of the proceedings: only the debtor.

Main condition: the debtor is facing a proven or foreseeable legal, economic or financial difficulty. It can be insolvent (albeit for no more than 45 days⁴).

Purpose: a conciliator (*conciliateur*) appointed by the President of the Commercial Court assists, under the latter's supervision, the debtor in negotiating an agreement with its main creditors and/or co-contractors (unanimity is required). The agreement can be either (i) acknowledged (*constaté*) by the President of the

¹ French law also provides for professional recovery proceedings (*rétablissement professionnel*), but this only concerns entrepreneurs without any employees, whose assets are worth less than €3,000 and who have not been subject to compulsory liquidation in the past 5 years.

² For all proceedings, the *debtor* refers to the company itself through its representative or to a natural person as an entrepreneur, where applicable.

³ As opposed to an insolvent debtor. A debtor is solvent when there is no suspension of payments (*cessation des paiements*), meaning that it can pay its current liabilities with its available assets.

⁴ The directors of an insolvent company must apply for the initiation of a conciliation, a receivership or a judicial liquidation within 45 days of the occurrence of insolvency, failing which may incur civil liability.

Commercial Court or (ii) approved (*homologué*) by the Commercial Court (approval entails protective legal effects but limits confidentiality).

Debtor in possession: the conciliator does not interfere with management.

Duration: 4 months, extendable up to 5 months

The conciliator can be instructed to organise the sale of all or part of the debtor's business or assets, which will be implemented in a subsequent receivership (*pre-pack* asset sale plan).

Public/voluntary/court driven restructuring proceedings – automatic stay

Accelerated safeguard (*sauvegarde accélérée*):

Proceeding selected by the French legislature to apply the provisions resulting from the 2019/1023 Directive (EU)

Initiation of the proceedings: only the debtor.

Main conditions:

- The debtor is undergoing conciliation.
- The debtor can be insolvent (albeit for no more than 45 days prior to the initiation of the ongoing conciliation).
- A pre-packaged safeguard plan is ready and supported by the majority of the affected parties.
- The debtor's accounts have been certified by a statutory auditor or drawn up by a certified accountant.

Purpose: to overcome opposition from dissenting affected parties to a plan negotiated between the debtor and its main creditors/co-contractors (cramdown and cross-class cramdown).

Duration: 2 months, extendable up to 4 months.

Possible outcomes

- Success: a safeguard plan (*plan de sauvegarde*) is approved by/imposed on the classes of affected parties and confirmed by a court decision.
- Failure
 - The court rejects the plan approved by the classes of affected parties.
 - The court acknowledges that the classes of affected parties could not approve the plan.

Safeguard (*sauvegarde*)

Initiation of the proceedings: only the debtor.

Main condition: the debtor is solvent and faces difficulties that it cannot overcome on its own.

Purpose: to negotiate a safeguard plan aimed at facilitating the reorganisation of the business (i.e. allowing economic activities to continue, employment to be maintained and liabilities to be settled).

The creditors are individually consulted on the plan, except if the debtor (i) opts for the constitution of the affected parties' classes or (ii) has more than 250 employees and €20 million in turnover or more than €40 million in turnover.

Debtor in possession

Duration: 6 months, extendable up to 12 months.

Outcomes

- Success: a safeguard plan is adopted and confirmed by a court decision.
- Failure: in case of insolvency, the safeguard proceedings are converted into receivership or liquidation proceedings by a court decision.

Insolvency proceedings

Receivership (*redressement judiciaire*):
public – automatic stay

Initiation of the proceedings: debtor, creditors, or the public prosecutor.

Main condition: the debtor is insolvent (albeit for no more than 45 days).

Purpose: a court-appointed receiver supervises the debtor and assists in negotiating a reorganisation plan.

Debtor in possession: except in case of mismanagement.

Duration: 6 months, extendable up to 18 months.

Consultation of the creditors: same as in safeguard proceedings.

Outcomes

- Success: (i) a reorganisation plan (*plan de redressement*) or (ii) a transfer of assets plan (*plan de cession*), pursuant to which all or part of the assets/employees of the debtor are taken over by a third-party purchaser, is adopted/confirmed by the court.
- Failure: the receivership proceedings are converted into liquidation proceedings.

Liquidation (*liquidation judiciaire*): public – automatic stay

Initiation of the proceedings: debtor, creditors or the public prosecutor.

Main condition: the debtor is insolvent (albeit for no more than 45 days), and its reorganisation is clearly impossible.

Activity: immediate termination unless a purchaser is identified (exceptional continuation of activity can be authorised by the court).

Debtor in possession: no, a court-appointed liquidator represents the debtor and safeguards the interests of its creditors.

Purpose/outcome: winding-up of the business and sale of all assets via one global sale (transfer of assets plan) or several sales of isolated assets to repay creditors.

Credentials

Our team advised and represented the following:

- A German company, the industrial partner of a French group undergoing conciliation, mainly in (i) negotiating the terms of the cash contribution granted to the distressed group within the framework of conciliation agreements, (ii) performing the conciliation agreements as creditor and (iii) taking over the shares of a subsidiary of the group
- Three financial institutions as credit insurers of a French construction company undergoing conciliation, mainly in (i) addressing the various waiver requests made by the debtor, (ii) defending their interests during negotiations, particularly in relation to the drafting of security interest documentation, and (iii) performing the conciliation agreements
- An Italian company, the industrial partner of a French engineering company undergoing liquidation, mainly in (i) understanding the judicial liquidation procedure without continuation of activities in France and (ii) assessing the consequences of the debtor's liquidation on their contractual relations
- An Italian company with strong synergies with a French company undergoing conciliation in drafting and filing takeover bids (pre-pack sale)

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Germany

Context

The primary pieces of legislation governing insolvency proceedings in Germany are the German Insolvency Code (*Insolvenzordnung* or **InsO**) and Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). At its inception on 1 January 1999, the InsO was thought of as a major move towards a modern insolvency regime, taking much inspiration from US Chapter 11 proceedings. However, in practical terms, German insolvency proceedings were often viewed as unattractive because they were dominated by insolvency courts and court-appointed office holders. This perception has since changed significantly following a series of reforms of the German insolvency regime, which have brought about a more balanced and modern approach to insolvency: the introduction of the Act for the Further Facilitation of the Restructuring of Companies (ESUG) on 1 March 2012 gave creditors increased influence over the appointment of an office holder and the course of the proceedings in general. The reform bill also revamped the insolvency plan procedure already available under the original legislation by introducing cross-class cramdowns and debt-to-equity swaps. At the same time, distressed corporates were given the option to restructure in debtor-in-possession proceedings under insolvency legislation, allowing company management to retain control over business operations. The most recent reform bill, referred to as the Act on the Further Development of Restructuring and Insolvency Law, brought about further changes, but importantly, the bill introduced the Act on the Stabilisation and Restructuring Framework for Companies (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen*, **StaRUG**), a law implementing Directive (EU) 2019/1023 on Preventive Restructuring Frameworks (Restructuring Directive) and designed to rescue financially distressed but otherwise viable businesses.

Overview of the main pre-insolvency and insolvency proceedings: five different proceedings available

Pre-insolvency scheme (StaRUG)

At its core, StaRUG is a pre-insolvency process aimed at rescuing companies to avoid unnecessary insolvency proceedings and/or liquidations. Its entry test is that the distressed corporate debtor is not already insolvent, i.e. failing the statutory cash flow test (§ 17 InsO) and/or failing the statutory balance sheet test (§ 19 InsO), but that without further action, it will be unable to pay its debts as they fall due within the next 24 months (imminent illiquidity pursuant to § 18 InsO).

The centrepiece of StaRUG is the restructuring plan, which, subject to a majority decision, allows a corporate debtor to modify the claims of its creditors. The corporate debtor has the discretion to select the creditors it wishes to include in the process and from whom it requests contributions. The restructuring plan may also modify security agreements and/or any intra-group third-party collateral agreements and may even propose a modification of the existing shareholding or membership rights in the corporate debtor, as well as new financing.

The stakeholders whose rights and/or claims are to be modified by the restructuring plan are invited to vote collectively on it. For voting purposes, the classes of those affected by the plan with comparable legal rights are constituted. To be approved, a restructuring plan needs to attain the requisite majority, which is a 75% majority in value in each class (irrespective of their actual attendance at the meeting and/or voting). On request by the debtor, the restructuring court may confirm a restructuring plan. Court confirmation means that the majority decision becomes binding for all stakeholders, including the dissenting (minority) stakeholders (cramdown). If the necessary majority was not attained in all classes, the restructuring court may still confirm the plan and cram down entire dissenting classes (cross-class cramdown), provided that certain statutory conditions are met.

Regular insolvency proceedings (*Regelinsolvenzverfahren*)

German insolvency proceedings may be initiated via the presentation of an insolvency petition by the following:

- The debtor (in the case of a corporate debtor: its management)
- A creditor, subject to its legal interest (*locus standi*) in the insolvency proceedings and further subject to adducing *prima facie* evidence of the existence and enforceability of

this creditor's claim, as well as evidence that the statutory grounds for commencing an insolvency procedure are met.

The statutory test for insolvency is whether the debtor is unable to pay its debts as they fall due (cash flow test, § 17 InsO) and/or whether it fails the statutory balance sheet test (§ 19 InsO). The statutory balance sheet test looks at a corporate debtor's assets; a debtor is deemed balance sheet insolvent if the liquidation value of its assets is less than the sum of its liabilities, unless the corporate debtor benefits from a positive going concern prognosis (*positive fortführungsprognose*). This means that, upon the balance of probability, it can reasonably be assumed that the corporate debtor will be able to pay its debts as they fall due during the next 12 months.

If a corporate debtor is technically insolvent, then its directors are under a firm statutory obligation (§ 15a InsO) to present an insolvency petition within a maximum of

- 3 weeks from failing the cash flow test and/or
- 8 weeks from failing the statutory balance sheet test (The deadline was temporarily extended from 6 to 8 weeks note, however, that the extension only applies until 31 December 2023 and will default back to 6 weeks after that date).

If the debtor's directors violate their statutory obligations and do not present petitions, they are personally liable towards the insolvency administrator for all payments made by the corporate debtor to third parties (with limited exceptions). Furthermore, failing to comply with the statutory obligation is deemed a criminal offence, meaning that directors may be subject to criminal prosecution.

Upon presentation of the petition, the insolvency court will typically order preliminary insolvency proceedings (*vorläufiges Insolvenzverfahren*) and appoint a preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*) to safeguard the interests of the creditors. Upon commencement of the insolvency proceedings proper (*Insolvenzverfahren*), the court-appointed insolvency administrator (*Insolvenzverwalter*) may continue to run the business or sell the debtor's assets (or the business as a going concern). Once the debtor's assets or its business is sold, the insolvency administrator will pay out an insolvency dividend to the creditors, and the insolvency court will terminate the insolvency procedure.

Self-administration proceedings (*Eigenverwaltungsverfahren*)

Instead of going into regular insolvency proceedings, a corporate debtor may also apply for a debtor-in-possession procedure referred to as *self-administration proceedings*, allowing the

corporate debtor's management to conduct the insolvency proceedings under the supervision of a court-appointed supervisor (*Sachwalter*). To obtain an order for self-administration proceedings, the debtor must submit comprehensive evidence, including the following:

- A 6-month liquidity plan/forecast
- A concept of how the debtor proposes to remedy the grounds for insolvency
- Details of the status of the discussions and negotiations with the creditors and any relevant third parties in relation to the actions contemplated by the debtor
- Details of the actions taken by the debtor and how it will ensure the discharges of its duties imposed upon the debtor by the insolvency statute;
- A cost calculation comparing the costs of the self-administration procedure and those likely to be incurred in a standard insolvency process

Other than these, the process follows the same rules described above for regular insolvency proceedings.

Protective shield proceedings (*Schutzschirmverfahren*)

Protective shield proceedings pursuant to § 270d InsO are but a variation of preliminary insolvency proceedings in self-administration (*vorläufiges Eigenverwaltungsverfahren*). The right to present the petition lies exclusively with the debtor and must include a written statement issued by a person with specific insolvency expertise that it is not yet cash flow and/or balance sheet insolvent but likely to become cash-flow insolvent at some point within the next 24 months. The objective of a protective shield proceeding is to protect the corporate debtor from foreclosure actions and to afford it the opportunity to agree to an insolvency plan.

Insolvency plan (*Insolvenzplan*)

Another tool available in German insolvency proceedings is the insolvency plan (§ 217 InsO). Its objective is to avoid the liquidation of the corporate debtor and allow it to continue its business as a going concern. Compared to regular insolvency proceedings, an insolvency plan typically yields a higher insolvency dividend, meaning a better recovery for creditors. Creditors may also receive payment sooner, depending on the terms of the insolvency plan. Furthermore, an insolvency plan may propose the transfer of shares in the corporate debtor (for instance, to an investor). Any of the corporate debtor's residual debt will be forgiven by the operation of the insolvency plan and a full discharge obtained.

To become effective, the insolvency plan must be approved by the requisite majority of creditors and/or shareholders voting in classes. In each class, (i) a majority in number and (ii) representing more than 50% in value of the relevant creditor claims or membership rights must vote in favour of the insolvency plan. If one or more creditor groups do not approve of the plan, the insolvency court may apply a cross-class cramdown and sanction the insolvency plan. After the insolvency plan is confirmed, and once all costs of the insolvency proceedings are settled and insolvency dividends are paid to creditors, the insolvency court terminates the insolvency proceedings.

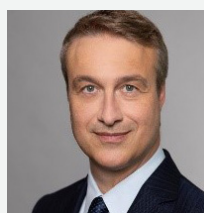
Our services

- Advice and implementation of pre-insolvency rescue processes
- Advice and implementation of controlled (i.e. carefully designed) restructuring and/or reorganisation processes under insolvency legislation
- Financial restructuring, including renegotiation of loan agreements and associated inter-creditor agreements and security documents
- Interim management in the context of debtor-in-possession insolvency proceedings, such as protective shield proceedings and/or self-administration proceedings

Credentials

- Providing comprehensive restructuring and insolvency law advice to the parent company of a well-known fashion retailer listed on the Hong Kong Stock Exchange in connection with the protective shield proceedings of six German subsidiaries, implementing a complex inter-company restructuring concept (total restructured debt: €1 billion)
- Advising the Luxembourg parent company of a specialist lighting manufacturer, leading German group companies through insolvency proceedings, implementation of a tailor-made plan for the comprehensive restructuring and rescue of the German group companies' business operations
- Advising an international banking syndicate in connection with the financial reorganisation and restructuring of a federal motorway expansion model (A-model) with a complex financing structure, international shareholders and the participation of the Federal Republic of Germany as a concession provider (restructured debt: €426 million)
- Advising and representing a German bank in connection with the restructuring efforts of a recycling group of companies and with the negotiation and implementation of a joint sale of creditor claims to a Chinese investor (total restructured debt: €900 million)

Key contacts in Germany

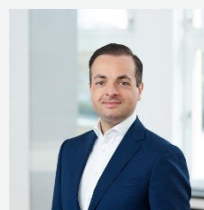


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Greece

Context

The Greek insolvency scheme was recently replaced by a new insolvency framework enacted by Greek Law 4738/2020 titled 'Debt Settlement and Second-Chance Arrangement and Other Provisions' (Official Government Gazette A' 207/27.10.2020), incorporating the provisions of Directive (EU) 2019/1023.

The main initiatives introduced by the new law can be summarised as follows:

- Simplification of existing insolvency and pre-insolvency proceedings.
- Establishment of bankruptcy eligibility with respect to natural persons or legal entities carrying on financial activities, regardless of whether such activities constitute a business.
- Digitisation of pre-insolvency and insolvency proceedings through the establishment of the Electronic Solvency Register and relevant online platforms hosted by the Special Secretariat for Private Debt Administration (SSPDA) of the Greek Ministry of Finance.
- Maintenance and support of viable businesses through an out-of-court debt settlement mechanism and rehabilitation process.
- Establishment of a special protection mechanism with regard to the primary residence of *vulnerable* debtors (i.e. debtors with very narrow income and property levels).

In principle, the new law comprises two sections:

- Preventive and pre-bankruptcy proceedings, including an early warning mechanism, an out-of-court debt settlement mechanism and rehabilitation proceedings.
- Bankruptcy proceedings, which involve (a) the liquidation of assets as a whole or as individual operating units, or (b) the liquidation of individual assets.

A detailed analysis of the main proceedings under the new law is given below.

Overview of the main pre-insolvency and insolvency proceedings: four different proceedings available

Pre-insolvency/restructuring proceedings

Early warning mechanism: not court supervised

- The risk of debtor insolvency is assessed and prevented through the provision of free specialised consulting services.
- This mechanism is hosted on the online platform of the SSPDA.

Out-of-court debt settlement mechanism: not court supervised

Purpose: to settle debts vis-à-vis financial institutions, the Greek state and Greek social security institutions through a special online platform hosted by the SSPDA.

Initiation of the proceedings: by the debtor (subject to certain statutory exclusions with regard to debtor eligibility) or by the creditors via notification of the debtor.

Creditors' majority for the conclusion of a debt settlement agreement: financial institutions representing 60% of the total relevant claims (including 40% of secured creditors), the Greek state and Greek social security institutions (if there are relevant debts towards them).

Main criteria

- The debtor may be a natural person or a legal entity pursuing a financial aim.
- Statutory restrictions apply with respect to the minimum content of the debt settlement agreement.
- The agreement must be concluded within 2 months of the application's filing and is binding upon the contracting creditors.

Consequences

- Suspension of enforcement proceedings upon submission of the application or in case a debt settlement agreement is reached (with the exception of seizure measures scheduled within the 3 months following the application date)

- Upon payment of all due instalments agreed under the settlement agreement, any amount of the initial claim in excess of the paid amount is extinguished.

Rehabilitation proceedings: court supervised

Purpose: to maintain and restructure viable businesses through a pre-pack agreement between the debtor and its creditors on the basis of the principle of *non-deterioration of the creditors' position*.

Initiation of the proceedings: either by the debtor or by one or more creditors through an application filed with the bankruptcy court.

Creditors' majority for the conclusion of the pre-pack agreement: creditors representing 50% of the total claims of each category; otherwise, 60% of the total claims and more than 50% of the secured claims.

Main criteria

- The debtor may be any person pursuing business activities.
- The debtor is under a present or threatened inability to fulfil its overdue financial obligations.
- A business plan and an expert's report are required.
- No particular statutory restrictions apply with respect to the content of the pre-pack (e.g. haircuts and business or asset transfer).
- Suspension of enforcement proceedings against the debtor for up to 12 months as of the court filing.

Consequence

The court-ratified pre-pack is binding on all creditors, irrespective of their votes in favour of or against the agreement.

Insolvency – bankruptcy proceedings

Bankruptcy: court supervised

Purpose: creditor oriented, i.e. the collective satisfaction of creditors on the basis of the *pari passu* principle through the liquidation of the debtor's assets.

Initiation of the proceedings

- By the debtor within 30 days as of *cessation of its payments*
- By one or more creditors
- By the prosecutor of the Court of First Instance under

certain circumstances through an application filed with the bankruptcy court

Creditors' majority for the court filing: Creditors representing 30% of the total claims, including 20% of the secured creditors, when the application includes a claim for the liquidation of the debtor's assets as a whole or in operating units.

Main criteria

- The debtor may be a natural person or a legal entity pursuing a financial aim.
- The debtor must be in a state of cessation of payments. A debtor is presumed to have ceased payments when it is unable to pay at least 40% of its total overdue financial debts (exceeding the amount of €30,000) vis-à-vis financial institutions, the Greek state and Greek social security institutions for a period of at least 6 months.
- A bankruptcy administrator, who is an insolvency professional, is appointed by the court.
- Risk of liability of the debtor's board of directors in case of non-prompt court filing.
- Suspension of enforcement proceedings against the debtor until the issuance of the court decision upon a relevant application.
- Favourable provisions apply in case of liquidation of the debtor's assets as a whole, e.g. approval of the bids submitted by potential investors by the Creditors' Assembly (not by the court as previously provided), tenders conducted via the e-auction platform and so on.
- Simplified procedure for small-scale bankruptcies.

Consequences

- *Ipsa facto* suspension of enforcement proceedings against the debtor upon declaration of bankruptcy
- Satisfaction of creditors based on the creditors' ranking table
- Automatic termination of bankruptcy within 5 years of its declaration, subject to a 2-year extension by decision of the Creditors' Assembly
- Conditional release of indebted natural persons from their debts, including representatives of legal entities

Credentials

- Advising one of the largest metallurgical industries for the production of iron–nickel at a global level, with an annual turnover of over €350 million, in the context of a statutory restructuring project, including issues concerning mining regulations, real estate, public procurement and commercial law
- Advising on one of the major corporate restructuring projects in the Greek shipyard industry on insolvency law issues, including environmental matters, state aid and licensing
- Advising a company active in the production of agricultural and fertiliser products in connection with the acquisition of a factory through a court-ratified pre-pack agreement
- Advising on a successfully handled restructuring project in the pharma sector in connection with the acquisition of a business through a court-ratified pre-pack agreement

Key contacts in Greece



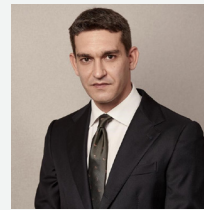
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Hungary

Context

Currently, three proceedings are available in Hungary: the restructuring proceeding (pre-insolvency), the bankruptcy proceeding and the liquidation proceeding.

The restructuring proceeding was introduced to Hungarian legislation in July 2022 with Act No. LXIV of 2021 as the implementation of Directive (EU) 2019/1023. The restructuring proceeding is the only formal proceeding that is available before the insolvency of a company.

These proceedings should qualify as rather formal procedures. As an example, the liquidation proceeding can be initiated if the formal requirements are fulfilled, regardless of whether the debtor should be really considered as insolvent. Because of this, the involvement of a legal expert is highly recommended (in some cases, obligatory) within these proceedings, both on the debtor and creditor sides.

Legal framework

- Act No. XLIX of 1991 on Bankruptcy Proceedings and Insolvency Proceedings
- Act No. LXIV of 2021 on Restructuring and on the Amendment of Certain Acts for the Purpose of Approximation

Overview of the main pre-insolvency and insolvency proceedings: three different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Restructuring proceeding (in Hungarian, *szervezetátalakítási eljárás*)

The purpose of restructuring is for the debtor to adopt and implement a restructuring plan with certain specific creditors or all creditors, capable of preventing the possible future insolvency of the debtor and ensuring the viability of the business.

Restructuring and the date of opening thereof shall be decided by the debtor's decision-making body.

The debtor may decide to involve all or only some of its creditors in the procedure. If all creditors are included, the procedure is public, and the facts of the procedure are published in the Official Gazette. If only certain creditors are involved in the restructuring procedure, the procedure will not be public. Successful restructuring requires the adoption of a restructuring plan by creditors and the competent court. A restructuring expert can assist the debtor or creditors in the preparation and implementation of the restructuring plan at their request.

The court may appoint a restructuring expert.

The debtor can request a moratorium on enforcement during the procedure. A moratorium gives the debtor protection against (selected or all) creditors and a possible court decision on the insolvency of the debtor.

The main difference between a bankruptcy proceeding and a restructuring proceeding is that if the bankruptcy proceeding is unsuccessful (e.g. the creditors' claims are not fulfilled or a settlement was not reached), the court must initiate a liquidation procedure, while if the restructuring proceeding is unsuccessful, the court is not obligated to initiate a liquidation proceeding.

Insolvency proceedings

Bankruptcy proceeding (in Hungarian, *csődeljárás*)

The purpose of a bankruptcy proceeding is to grant a moratorium to the debtor company so that it can perform reorganisation and reconstruction, stabilise its solvency and ensure its further operation.

Main criteria

- The debtor can initiate the procedure if the company is insolvent or threatened with insolvency.
- The legal representation of the debtor company is mandatory in the procedure.
- The court shall appoint an asset manager.
- The debtor shall be given a 180-day moratorium period regarding its payable debts (except for some privileged debts) for the purpose of reorganising its operations and restructuring its debts. This moratorium may be extended up to a maximum period of 240 days or, in exceptional cases, up to 365 days.
- The creditors of the debtor shall register their claims in the bankruptcy proceeding.

The creditor is involved who

- has a final and binding claim based on a court's or authority's decision,
- has a claim that is undisputed or acknowledged by the debtor,
- has a claim that is disputed or becomes due under the bankruptcy proceeding and that has been registered by the asset manager, or
- has a claim deriving from shipping, supply, service, loan or other contracts that become due in the future, with respect to which the creditor has already performed, and the asset manager has registered.

Possible outcomes

- The insolvency of the debtor company is solved, and a settlement agreement is concluded between the debtor and the creditors, according to which the debtor company can further operate and perform its outstanding debts.
- Should the creditors and the debtor company fail to reach an agreement, or the adopted settlement agreement fails to meet the criteria set out in the prevailing laws, the court terminates the procedure, officially declares the insolvency of the debtor and arranges for its liquidation.

Liquidation proceeding (in Hungarian, *felszámolási eljárás*)

The **purpose** of the liquidation proceeding is to settle all the creditors' claims in the liquidation proceeding and delete the debtor from the company register upon the closure of the procedure. Either the debtor company, the creditor, or the court that carried out the bankruptcy proceeding and, in certain cases, the court of company registration shall be entitled to initiate such a proceeding.

Main criteria

- In case the creditor initiates the proceeding, it shall point out the legal claim with respect to the debt, the due date of the debt and the reason why it considers the debtor insolvent.
- In case the claim is undisputed or acknowledged by the debtor, prior to the initiation of the proceeding, a written notice shall be sent to the debtor in which the creditor calls the debtor to settle the debt.
- Only final and binding claims based on a court or authority decision can serve as a basis for this procedure or overdue claims acknowledged or undisputed by the debtor.

- The creditors of the debtor shall register their claims in the liquidation proceeding. The registration of claims is subject to the payment of a registration fee.
- A liquidator shall be appointed by the court.
- Two years following the initiation of the procedure, the preparation of the liquidation closing balance sheet by the liquidator is mandatory.
- When satisfying the claims, the liquidator shall follow a strict satisfaction order set out in the prevailing laws.

The assets of the debtor company being sold through public auction or tendering and the creditors' claims are satisfied in a strict sequence. The operation of the debtor company is terminated without a legal successor at the end of the liquidation procedure.

Credentials

- Advising a Hungarian-based manufacturing company in connection with an unlawfully initiated liquidation against the company
- Advising a foreign bank in connection with the recovery of its claims related to its Hungarian debtors
- Advising a Romanian company regarding its Hungarian partner's insolvency and representing the Romanian company during the liquidation proceeding

Key contacts in Hungary



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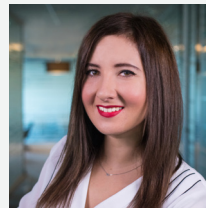
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Ireland

The Irish chapter of this Guide has been written by qualified insolvency practitioners. The authors are not solicitors and are solely responsible for this segment.

Context

The EU (Preventive Restructuring) Regulations (the 2022 Regulations) came into effect in July 2022. There are a number of key provisions set out in the regulations, one of the main areas is that it puts a much greater emphasis on directors' duty to creditors in the period approaching insolvency and includes the duty to creditors in the list of fiduciary duties owed to the company and allows for any director, in breach of this duty, to face personal liability.

Overview of corporate insolvency proceedings: five main proceedings

Small company administrative rescue process (SCARP)

SCARP is a formal insolvency process which enables a restructuring of a company by way of a compromise agreement between a company and its creditors where a proportion of debts are often written off and the company agrees to pay back a lower proportion of the remaining debt. It facilitates the company continuing to trade.

The SCARP process is only available to small and micro companies that meet two of the following criteria:

- Turnover less than €12m
- Balance Sheet total less than €6m
- Less than 50 employees

The directors of the company pass a resolution to appoint a process advisor (who must be a qualified insolvency practitioner) and will provide the *process advisor* with a statement of affairs. The process advisor is then required to issue a report on whether the company, in their opinion, has a reasonable prospect of survival. Unlike examinership, there is no immediate

protection from creditor enforcement, however, protection can be sought via a court application after the process advisor has been appointed.

The process advisor, having reviewed the company's financial circumstances and consulted with stakeholders, including directors, creditors and shareholders, will prepare a draft rescue plan. The plan must satisfy the best interests of creditors' test (i.e. the plan must provide each creditor with a better outcome than liquidation).

The plan must be presented to creditors within 42 days of appointment, with creditors being provided a 7-day notice period within which to vote upon the plan. For the rescue plan to be approved by creditors, there must be a 60% majority in number and a simple majority of value in respect of at least one class of creditors. Approval of the plan results in the plan being binding on all creditors.

The creditors are provided a further 21 days as a cooling-off period where any objections can be made. If there is no objection to the plan, and it is approved by creditors, there is no requirement to obtain court approval, and the plan comes into being 7 days after statutory notices are filed.

Examinership

Examinership is a court-supervised process that allows a company to restructure its debts and continue trading. Whilst it is usually the company itself that petitions the court for the appointment of an examiner, a creditor may also present a petition to the court.

In an examinership, the maximum period in which a company may be under the protection of the court is 100 days. An examiner (a court-appointed insolvency practitioner) must have formulated a scheme, convened creditors' meetings and reported back to the court by day 100. The approval of the scheme is typically heard by the high court shortly thereafter.

The scheme must be approved by more than 50% (in value and number) of any one impaired class in order for it to be put before the court for approval. If the plan is approved by the creditors and the court, the company can continue to trade.

Statutory scheme of arrangement

A scheme of arrangement is a statutory procedure whereby a company may negotiate the rearrangement (including a compromise) of its obligations and liabilities to its creditors or members.

There is no requirement to prove insolvency to avail of the procedure, so distressed entities can take action at early stage.

Dissenting shareholders or creditors can be crammed down if the scheme is approved by the requisite majorities (i.e. a special majority present and voting in person or by proxy).

The proposed scheme of arrangement or compromise will be presented for approval to the creditors or members of the company at a meeting or a series of meetings. The directors of the company may convene the scheme meetings of creditors or members. Where the directors fail to do so, an application may be made to the high court for an order convening the scheme meetings.

For a compromise or arrangement to become binding on the company and its members or creditors, the following conditions must be satisfied:

- A special majority at the scheme meetings. Where more than one scheme meeting is held, at each of the scheme meetings, a vote in favour of the compromise or arrangement must consist of a majority in number representing at least 75% in value of the creditors or members.
- Notice of the final court hearing to confirm that the compromise or arrangement has been advertised.
- The court sanctions the compromise or arrangement.

The high court ultimately approves the scheme of arrangement or compromise, but the process is supervised and controlled by the directors of the company.

There are no statutory deadlines to comply with for a scheme of arrangement or compromise; the length of the procedure will vary depending on the terms.

Before approving the scheme of arrangement or compromise, the court must consider the scheme as against the question of fairness as between the classes of creditors and members. The court has discretion to approve or reject a scheme even where the necessary consents have been obtained.

Liquidation

Liquidation is the process in which the assets of the company are realised and distributed amongst the creditors of the company in order of the ranking of the debts and ultimately the company is dissolved and removed from the Registrar of Companies. The winding-up of an insolvent company can be implemented by either a compulsory liquidation by the court or a creditors' voluntary liquidation (CVL).

The main criterion required to liquidate an insolvent company is that the company is unable to pay its debts. This usually entails an assessment whether (1) the company is unable to pay its debts as they fall due (the cash flow test) or (2) the value of the

company's assets is less than its liabilities (the balance sheet test).

A compulsory liquidation commences when a petition is presented to the high court for an order seeking the winding-up of the company and the appointment of a liquidator. For a creditor to present a petition to wind up the company, the creditor must have a present liquidated debt due and owed to this creditor, and the creditor must have served a statutory demand for payment of the debt. However, if there is a genuine dispute regarding the debt, the court will not entertain the petition.

The company may initiate a CVL in a general meeting, resolving that it cannot, by reason of its liabilities, continue its business and that it will be liquidated by way of a CVL.

Although not automatic under compulsory liquidation, the company or any creditor may, at any time after the presentation of the petition and before an order has been made, apply to the court for an order that no proceedings be commenced or continued against the company. There is no similar protection available in relation to a CVL. If any party wishes to issue proceedings against a company in liquidation, it must obtain leave of the court in order to do so.

The time frame for the completion of a winding-up depends on the size of the company. A relatively straightforward liquidation can be completed within a year; however, it is common for larger, more complex liquidation procedures to take significantly longer.

Receivership

Receivership is a method of enforcing security; it is a process in which a receiver is appointed by a secured creditor to take control of a company's assets which are secured to the creditor and to sell them to repay the company's debts to the specified lender.

A receiver can be appointed by the court or by a secured creditor, such as a bank, on foot of the security they hold if the company has defaulted on its loan payments/breached loan covenants. Where a loan is secured on a company's entire business, a receiver manager can be appointed as manager of the business during the receivership.

If a receiver is appointed by the high court, its powers will be outlined in the court order. Usually, the receiver is given the authority to take control of and sell relevant company assets. If a receiver is appointed under a security document, its powers are generally set out in the debenture.

Receivers can also seek high court orders to return company property, freeze directors' assets and take other measures to assist the receivership.

Overview of personal insolvency proceedings: four main proceedings

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Debt relief notice (DRN)

A DRN is a form of debt relief that allows individuals with low income and few assets to write off unsecured debts up to a certain amount. To be eligible for a DRN, an individual must have debts of no more than €35,000, a disposable income of no more than €60 per month and assets with a value of €1,500 or less.

A DRN must be applied for through an approved intermediary and will last for a period of 3 years.

Debt settlement arrangement (DSA)

A DSA is a formal arrangement between an individual and their unsecured creditors to repay their debts either by way of a lump sum or regular payments over a set period of time, which is usually 5 years. There is no limit to the extent of unsecured debts that can be included in a DSA.

The individual must work with an approved personal insolvency practitioner to create a proposal for a DSA, which must be approved by at least 65% in value of the individual's creditors.

Once the DSA has successfully concluded, the debts included within the DSA will be written off.

Personal insolvency arrangement (PIA)

A PIA provides for the agreed settlement of unsecured debt and secured debt up to a limit of €3M. The period of a PIA is generally 6 years.

A PIA requires the support of creditors representing at least 65% of the total debt in order to be approved. Over 50% of the secured creditors and 50% of the unsecured creditors must vote in favour of the PIA.

If the PIA successfully concludes, all unsecured debts contained within the PIA will be written off. Secured debts will only be reduced in accordance with the terms of the PIA.

Bankruptcy

Bankruptcy is the legal process of realising the assets of an individual debtor in order to make a distribution to its creditors. It is a formal insolvency option of last resort to deal with debts over €20,000. Bankruptcy can be instigated either by way of a creditor's petition or a debtor's application.

An undischarged bankrupt has certain restrictions placed upon them, including the inability to be a director of a company or to take part in the promotion, formation or management of a company.

The duration of the bankruptcy is 1 year. This can be extended in cases of non-cooperation or concealment of assets.

Key contacts in Ireland



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Italy

Context

The new legal framework, following European guidelines, aims to facilitate early crisis detection and management.

In this perspective, the new legislation has been designed

- to enable crisis resolution by means of out-of-court insolvency proceedings, through which the debtor and creditors seek an out-of-court agreement for the restructuring of the economic-financial imbalance, such as the negotiated settlement of a business crisis; and
- to protect the company's business continuity, which gradually becomes the main goal of crisis management, in order to preserve corporate values.

In fact, the new discipline is intended to prevent insolvency through proper management and early detection, as well as through timely reaction to crisis signals. The new legal framework has been based on the concept that, if the crisis is faced at an early stage, the chances of overcoming it or, at the very least, finding a solution different from judicial liquidation, which may have a bad impact on the satisfaction of creditors and on corporate values, are significantly increased.

Legal framework

- Legislative Decree no. 14 of January 12, 2019, as amended by Legislative Decree no. 83 of 18 June 2022, converted into Law no. 122 of 4 August 2022, replaced Royal Decree no. 267 of March 16, 1942, and entered into force on 15 July 2022 (Code of Corporate Crisis)
- Special laws.

Overview of the main pre-insolvency and insolvency proceedings: fifteen different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Composizione negoziata della crisi (Procedure for the negotiated settlement of a business crisis): Not court supervised

Opening of the procedure: Proposal of the company experiencing financial or economic imbalance (and in which company restructuring is likely to be achieved)

Purpose: Restructuring of the company with the assistance of an appointed third-party expert, which shall facilitate the negotiations with creditors

If negotiations are successful, they may result in the execution of the following:

- a contract with some creditors
- a standstill agreement
- an agreement that has the effect of the attested plan for restructuring

If negotiations are unsuccessful, the debtor may choose between one of the other pre-insolvency proceedings.

For this purpose, the Code of Corporate Crisis has introduced a new simplified arrangement procedure with creditors:

Concordato semplificato (Simplified composition): Court supervised

Within 60 days from the report of the expert regarding the negotiations that occurred, the creditor may submit a proposal for a composition with creditors exclusively geared towards the liquidation of assets (with any form of continuity for the company being excluded).

The proposal shall be assessed by the court, and then the listed creditors will be notified before the proposal is approved by the court.

Accordo in esecuzione di un piano attestato di risanamento (Asseveration plan for restructuring): Not court supervised

An entrepreneur can propose the restructuring of debts or the re-financing of activity based on a plan attested by a third-party expert.

Piano di ristrutturazione soggetto ad omologazione (Plan for restructuring subject to approval): Court supervised

Opening of the procedure: Proposal of the entrepreneur who is facing a period of crisis or insolvency

This type of plan, attested by an independent third-party expert, is similar to both the agreement for the restructuring of debts (*Accordo di ristrutturazione*) (it may provide for the satisfaction of creditors without respecting the legitimated cause of pre-emption) and the arrangement with creditors (*Concordato preventivo*) (the plan must be approved unanimously by the creditor classes and then approved by the court).

Accordi di ristrutturazione dei debiti (Agreements for the restructuring of debts): Court supervised

Opening of the procedure: Proposal of the entrepreneur facing a period of crisis or insolvency

The Code of Corporate Crisis offers three different types of insolvency tools:

- Ordinary agreement for the restructuring of debts: Reduction of outstanding debts pursuant to agreements for the satisfaction, partial or deferred, of consenting creditors (including fiscal arrangement), provided that all non-adherent creditors are integrally satisfied (in this case, consenting creditors must represent at least 60% of the total credits)
- Facilitated agreement for the restructuring of debts: It is a simplified version of the previous agreement, in which the percentage of consenting creditors required is halved (30%), if the debtor neither concludes a standstill agreement nor requests protective measures (the need to fully satisfy non-adherent creditors remains unchanged).
- Extended agreement for the restructuring of debts: In this case, the debtor has the option to divide the creditors into homogeneous classes based on legal position and economic interest. If it obtains the adherence of at least 75% of the creditors included in a single class, it can

coercively impose the economic treatment provided for that class on non-adherent creditors included in the same class.

Convenzione di moratoria (Standstill agreement)

The entrepreneur can conclude a standstill agreement with some creditors to provisionally regulate the impact of the ongoing crisis. The agreement shall also be effective towards non-adherent creditors.

Purpose: This agreement may provide for the extension of the due date for claims, waiver acts or suspension of executive and protective actions, and any other measures not involving waiver of the claim.

Transazione fiscale (Agreement with the Tax Authority): Court supervised

Opening of the procedure: Upon application of the debtor in the context of negotiations prior to the execution of agreements for the restructuring of debts or in the context of an arrangement with creditors

Purpose: the debtor submits a settlement for claims with the Tax Authority, which shall then provide its consent.

Concordato preventivo (Arrangement with creditors): Court supervised

Opening of the procedure: Upon application of the debtor submitting the proposed scheme of arrangement and a report from an independent expert. The court shall assess the satisfaction of the requirements and declare the opening of the procedure.

The Code of Corporate Crisis reformulated the provisions and discipline regarding the arrangement with creditors. The Code provides for two types of arrangements with creditors:

- *Concordato liquidatorio* (Arrangement with creditors aimed at the liquidation of assets): The proposal shall describe the terms and timing of the liquidation of assets for the satisfaction of the creditors. The proposal provides for an external resource that increases by at least 10% of the available assets at the time of the submission of the application, and ensures the satisfaction of unsecured creditors to an extent of at least 20% of their claims. External resources may be distributed without respecting the legitimate priority order of claims and may therefore be used to satisfy unsecured creditors even if the full payment of secured creditors is not guaranteed.

- *Concordato preventivo con continuità aziendale* (Arrangement with creditors aimed at ensuring business continuity): Business continuity shall be direct or indirect. The creditors shall receive economic benefits and shall be satisfied by the proceeds of the business continuity.

Voting and approval procedure: The arrangement with creditors is approved by creditors representing the majority of the claims admitted to the vote. The creditors must be satisfied to a greater amount than would be realisable in the case of judicial liquidation. In the case of an arrangement with creditors aimed at ensuring business continuity (*Concordato preventivo con continuità aziendale*), the proposal must be approved by all classes of creditors.

Purpose: Preserving business continuity and overcoming a period of difficulty based on a plan intended to satisfy the creditors at least partially

Ricorso per l'accesso ad uno strumento di regolazione della crisi con riserva di deposito di documentazione (Request for one of the insolvency or pre-insolvency proceedings, reserving the right to submit the plan or agreement later)

The Code of Corporate Crisis, following the previous discipline regarding the old arrangement with creditors filed without a scheme of arrangement (*Concordato preventivo con riserva*), introduced a new type of procedure.

Opening of the procedure: The debtor may file a petition for access to one of the insolvency or pre-insolvency proceedings to the competent court, reserving the right to decide on the appropriate proceedings later. The competent court shall fix a deadline between 30 and 60 days (may be extended by up to a further 60 days upon the debtor's request) within which the debtor shall file the attested plan or the request for an arrangement with creditors, or any other insolvency or pre-insolvency proceedings.

Le procedure di composizione delle crisi da sovraindebitamento (Procedures for the settlement of the over-indebtedness crisis)

An over-indebtedness crisis is defined as a state of crisis or insolvency affecting a specific debtor (a consumer, a professional, a minor entrepreneur, an agricultural entrepreneur, an innovative start-up or any other debtor not subject to judicial liquidation or other liquidation proceedings provided by the law).

The procedures for the settlement of an over-indebtedness crisis are carried out with the assistance of the competent crisis settlement panel (*Organismo di Composizione della Crisi, OCC*).

The debtor may choose among the following:

- Debt restructuring procedure: The consumer shall formulate a plan for the restructuring of debts with the assistance of the crisis settlement panel (OCC).
- Minor composition (*Concordato minore*): The debtor may formulate a free content proposal to the creditors with the crisis settlement panel (OCC). The proposal shall specify the terms and timing for the resolution of the crisis, as well as the satisfaction of the creditors.
- Controlled liquidation: The debtor, one or more creditor(s) or the Public Prosecutor may file an appeal to the competent court that, after a preliminary assessment, declares the opening of the liquidation proceedings and appoints an independent registered liquidator. The purpose is to liquidate the assets for the satisfaction of the creditors.

Amministrazione straordinaria per le grandi imprese in stato di insolvenza (Extraordinary administration for large undertakings): Court and Ministry of Trade and Industry supervised

Extraordinary administration for large commercial undertakings and protection of employment by means of carrying on, restarting or converting business activities

Insolvency proceedings

Liquidazione giudiziale (Judicial liquidation): Court supervised

The Code of Corporate Crisis renamed the previous bankruptcy proceedings to judicial liquidation.

Opening of the procedure: Upon the filing of a petition for the opening of the judicial liquidation by one or more creditor(s), the debtor or the public prosecutor, the competent court declares the opening of the procedure with a decision.

Purpose: Liquidation of assets for the satisfaction of the creditors. The procedure can be closed with either of the following: (a) an arrangement with the creditors during the judicial liquidation proposed by the debtor or one or more creditor(s) for the satisfaction of all, to be approved by all the creditors and by the court; (b) final distribution of the assets ascertained with a decree; (c) insufficiency of the assets ascertained with a decree; (d) integral payment of liabilities ascertained with a decree; and (e) revocation of the judicial liquidation.

Liquidazione coatta amministrativa (Enforced judicial liquidation): Court supervised

Opening of the procedure: Reserved to certain categories of debtors (credit institutions and SIM, SICAV and SGR; cooperative companies not carrying out commercial activities; trust companies and auditing companies; private insurances; certain consortia; and financial intermediaries enrolled in the 107 list).

Purpose: Removal of the company from the market and, in case of insolvency, assessment, collection and liquidation of the debtor's assets for the satisfaction of the creditors

Credentials

- Assistance provided to two Italian companies operating respectively in the fashion and mechanical industries by drafting and executing a scheme of composition with creditors aimed at the liquidation of all the assets of such companies
- Assistance provided to a leading Italian company operating in the food sector in the procedure for the negotiated settlement of a business crisis, with a request for protective measures and authorisation to obtain new pre-deductible finance
- Assistance provided to a German company to purchase an Italian company and its subsidiaries after having finalised a debt restructuring agreement related to such subsidiaries
- Assistance provided to several companies facing economic/financial crises to evaluate the most suitable pre-insolvency/insolvency procedures for dealing with the situation and subsequent assistance in related procedures

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Lithuania

Context

The Republic of Lithuania Law on Insolvency of Legal Persons (Insolvency Law) was adopted on 13 June 2019 and became effective as of 1 January 2020, replacing the Law on Bankruptcy of Enterprises and the Law on Restructuring of Enterprises, which were in force at the time. With this insolvency law reform, the legislator abolished the two key insolvency laws governing insolvency proceedings and introduced a single insolvency proceeding comprising bankruptcy and restructuring.

The Insolvency Law is based on Regulation 2015/848 of 20 May 2015 on insolvency proceedings. It implements Directive 2019/1023 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 2017/1132 (Directive on restructuring and insolvency). The aim of the new legislation was to increase the efficiency of bankruptcy and restructuring processes and to facilitate business retention.

Overview of the main pre-insolvency and insolvency proceedings: four procedures available

Pre-insolvency proceedings

There are no statutory provisions regulating pre-insolvency proceedings.

Insolvency proceedings

The insolvency of a legal person is the state of a legal person when it is unable to meet their financial obligations in a timely manner or when the value of their liabilities exceeds the value of their assets.

The procedure **may** be initiated by (1) the head of a legal entity when a legal person is likely to become insolvent (within the next 3 months) or (2) the creditor to whom an obligation is overdue (in the restructuring case, by the creditors if their overdue claims on

the legal entity exceed 10 minimum monthly salaries approved by the government¹).

The procedure **must** be initiated by (1) the head of the legal person if the legal person is insolvent or (2) the liquidator of a legal person if, during liquidation, it turns out that the legal person is insolvent.

Restructuring proceedings

Main criteria for the initiation: Restructuring proceedings may be commenced if the legal entity (1) is in financial difficulties, (2) is viable and (3) is not being liquidated because of bankruptcy.

Purpose: to overcome the financial difficulties of a legal person, preserve its viability and avoid bankruptcy by obtaining assistance from creditors to overcome financial difficulties through economic, technical, organisational and other measures.

One of the key features of the restructuring process is the debtor in possession. Therefore, unlike in bankruptcy proceedings, the management bodies of a legal person do not lose their authorisations in this process and continue to manage the company. In addition, the insolvency trustee is appointed, and whole proceedings are supervised by a court.

The restructuring plan is a key document in the restructuring process, which is an agreement between the company, the creditors and other interested parties. It requires more than half of the votes of the shareholders of the company present at the meeting, as well as more than half of the votes of the creditors of the company (in each group of such creditors, separately), and has to be approved by the court. The restructuring plan must set out the measures (financial, operational and strategic measures) which will enable the company to restore its solvency and carry on its business activities.

Restructuring is a temporary solution to solvency problems, therefore, the duration of the restructuring plan cannot exceed 4 years (can be prolonged once by the court for 1 year).

Bankruptcy proceedings

Bankruptcy proceedings are initiated only if the legal person (1) is insolvent and (2) is not the subject of restructuring proceedings.

Purpose: to meet creditors' claims from the assets of the bankrupt company as quickly as possible and to liquidate the insolvent company

An insolvency trustee is appointed by the court with the purpose of liquidating the company, and the management bodies of a company cease their authorisations.

¹ i.e. €840 as from 1 January 2023

The Insolvency Law introduces the possibility of a smooth transition from bankruptcy proceedings to restructuring proceedings, provided that the restructuring plan is approved by the creditors and the shareholders of the company and later also confirmed by the court. The creditors' claims confirmed in the bankruptcy proceedings will be treated as the creditors' claims in the restructuring proceedings.

Upon liquidation, the company shall be de-registered from the Commercial Register.

Simplified bankruptcy proceedings

The court may decide for simplified bankruptcy proceedings only if (1) the legal person is not engaged in any business activity, or (2) the assets of the legal person are insufficient to cover the costs of the administration of the bankruptcy proceedings.

Purpose: to liquidate an insolvent company lawfully and swiftly while limiting the rights of creditors for the same reason (expeditiousness, concentration and economy of proceedings).

In simplified bankruptcy proceedings, the court appoints the insolvency trustee, and it decides on the matters falling within the competence of the meeting of creditors (i.e. the creditors' meetings shall not be convened).

Out-of-court bankruptcy proceedings

Out-of-court bankruptcy proceedings are specific proceedings in which the main decisions are made by the creditors' meeting. During such proceedings, the creditors' meeting decides on the issues arising in the proceedings, including those which are to be decided by the court during the judicial bankruptcy proceedings (subject to some exceptions provided for by the law), as well as on the appointment of the insolvency trustee for a company.

Out-of-court bankruptcy proceedings may be opened if all following conditions are met: (1) there are no open court cases or pre-court dispute procedures with the claims against the company, including the claims relating to employment relations; (2) the assets of the company are not subject to enforced recovery under enforcement documents issued by courts or other authorities; and (3) no tax investigation or tax inspection is being carried out. If not all of these conditions are met, out-of-court bankruptcy proceedings can only be initiated if the tax authorities, the respective claimant(s) and/or the enforced debt collector(s) agree to it.

The decision for out-of-court bankruptcy proceedings shall be deemed to have been adopted if they have been approved by the creditors, the value of the claims of which amounts to at least three-fourths (75%) of the total amount of all the debts of the company, including those that are still not overdue.

Credentials

- Legal assistance to a company in commencing its own bankruptcy case (implementing pre-insolvency procedures, filing a bankruptcy application to the court, etc.)
- Legal assistance to a group of clients (being the shareholders and creditors of a company) to commence a bankruptcy case for that company (filing a bankruptcy application to the court, disputing further the decisions of the courts, etc.)
- Legal assistance to the Caterpillar group of companies in various insolvency (bankruptcy and restructuring) cases against their debtors (day-to-day assistance on insolvency matters, filing creditorial claims to insolvency trustees, and assistance and representation in the fronts of the courts of law)

Key contacts in Lithuania

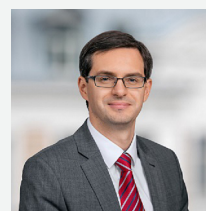


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Malta

Context

The transposition of Directive 2019/1023 (the Directive) into Maltese law represented a major regulatory overhaul. Alignment with the requirements of the Directive was achieved through the implementation of the following three distinct legislative instruments:

- The Pre-Insolvency Act, which provides for a preventive restructuring procedure ("PRP") framework available to businesses that, despite having reasonable prospects of viability, become exposed to the likelihood of insolvency
- Amendments to the Commercial Code, which reform Malta's existing bankruptcy laws into a framework for the discharge of debt and rehabilitation that has been broadly streamlined and modernised and which can meet the 3-year timeline for effective discharge required by the Directive
- The Insolvency Practitioners Act, which sets out an authorisation framework for insolvency practitioners ("IPs"), and establishes the Insolvency and Receivership Service within the Malta Business Registry as the competent authority responsible for regulating the activities of IPs and the Maltese insolvency ecosystem as a whole

The aforementioned instruments are intended to be construed as a holistic insolvency framework and represent Malta's first foray into the regulation of IPs.

Key issues that arise include the following:

- The new rules surrounding early warning and the promotion of a business culture that encourages the timely and effective use of the new framework
- The introduction of a restructuring framework that is based on the debtor-in-possession principle and which relies on a conciliatory approach, as opposed to traditional courses of action that are more adversarial in nature
- The first local implementation of a best-interest-of-creditors test, which will allow restructuring plans, as well as debt agreements in the context of bankruptcy, to be crammed down against dissenting creditors if minimum approval requirements are met

- A material shift in the Maltese notion of dischargeable debts, with a move being made away from the notion of access to bankruptcy on the basis of the bankrupt's legal treatment as a trader towards the notion of access on the basis of having incurred debts that are commercial in nature

Overview of the main pre-insolvency and insolvency proceedings: five different proceedings available

Preventive restructuring proceedings

Access and eligibility

- Access to the PRP is available, in principle, to natural persons, companies and other legal organisations insofar as they carry on a trade, business, craft or profession
- To be placed under the protection of a PRP order, a debtor must demonstrate that it is exposed to the likelihood of insolvency, having regard to its business circumstances and actual, contingent and prospective assets and liabilities while still having reasonable prospects of viability.
- Applications for PRP are available only on the initiative of the debtor.

Types of PRPs

The Pre-Insolvency Act provides for three distinct types of PRPs:

- Standard PRP, in which the debtor may benefit from a stay of individual enforcement actions for up to 12 months and is intended for debtors that enter a PRP without pre-existing work or contingent approvals
- Pre-formulated PRP, which is a shorter 4-month process which leverages the existence of proposed terms for a restructuring plan
- Pre-approved PRP, which is essentially the judicial confirmation (and facilitation of any cramdown against dissenting creditor classes) of a restructuring plan that is negotiated and approved outside of court

Approval and cramdown

- A proposed restructuring plan will be voted upon by the affected parties, each of whom will be organised into respective voting classes that will be formulated with reference to the interests of the affected parties themselves, with the objective of ensuring that each class

reflects a sufficient commonality of interests.

- Malta applies a relative priority rule to cross-class cramdowns, meaning that a plan can be crammed down against a dissenting class, provided that the latter is treated at least as favourably as any other class of the same rank and more favourably than any junior class.
- The business valuation is subject to challenge by any dissenting creditor before the restructuring plan is approved by the court for implementation.

debt agreement to determine the manner in which the bankruptcy estate will be used for the settlement of claims. In the absence of a debt agreement, the direction of the settlement of claims will be given by a bankruptcy order issued by the court.

- Any debts that remain unpaid following the completion of proceedings will be discharged if they are commercial in nature or novated back to the bankrupt if they are personal in nature.

Corporate insolvency

- Where a company is wound up voluntarily but is unable to prepare a declaration of solvency confirming that the company will be able to pay its debts in full within such a period not exceeding 12 months from the date of dissolution, the creditors' voluntary winding-up process applies.
- Alternatively, a company may be dissolved and wound up by order of the court if it is sufficiently proven, by reference to a balance sheet test and a cash flow test, that the company is unable to pay its debts. An application for the dissolution and winding-up by order of the court may be brought following a decision of the general meeting or board of directors; by any debenture holder, creditor or creditors; or by any contributory or contributories.
- The deemed date of dissolution will be, in the event of a voluntary creditors' winding-up, the date of the board of directors' resolution to dissolve the company or, in the event of a court-ordered winding-up, the date of the winding-up order issued by the court.
- On the appointment of a liquidator, the powers of the directors and the secretary of the company cease, and the liquidator becomes fully responsible for directing the winding down of the company's activities, which, when complete, culminates in the company's being struck off the official register of companies.

Credentials

- Provision of assistance to the Directorate-General for Structural Reform Support (DG Reform) of the European Commission for the benefit of the Malta Business Registry and other institutional stakeholders in revising Malta's pre-insolvency and insolvency framework in order to achieve the effective transposition of Directive (EU) 2019/1023 by virtue of the preparation of the Pre-Insolvency Act, the Insolvency Practitioners Act and amendments to the Maltese Commercial Code
- Provision of training sessions to the Maltese judiciary, court registry, prospective insolvency practitioners and other relevant persons in connection with the reform of the Maltese insolvency framework vis-à-vis Directive (EU) 2019/1023
- Provision of assistance to one of the systemically important Maltese banks in the review and valuation of a selection of its non-performing loan portfolios
- Assistance to various clients facing financial difficulties in developing a restructuring plan and negotiating with their creditors

Bankruptcy proceedings

- Malta's bankruptcy process allows for qualifying persons to benefit from the discharge of debts that arise from, or which are incurred in connection with, trading activities, including debts incurred by persons other than the original debtor by way of guarantee of surety.
- A bankruptcy trustee is appointed to take the bankrupt's assets and hold them within a bankruptcy estate for the benefit of the body of creditors until a debt agreement can be approved.
- In the course of bankruptcy, the bankruptcy trustee, the bankrupt and creditors will negotiate a consensual

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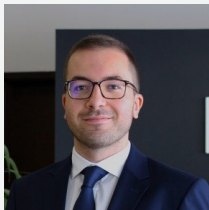


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Poland

Context

Polish bankruptcy legislation essentially includes two types of proceedings for businesses with solvency difficulties: bankruptcy and restructuring. These two types of procedures are governed by different statutes, i.e. the Bankruptcy Law (Journal of Laws of 2022, item 1520) and the Restructuring Law (Journal of Laws of 2022, item 2309). Among recent developments, it is worth mentioning that on 1 December 2021, the new online public National Debtors Register (in Polish, *Krajowy Rejestr Zadłużonych*) came into service, which constitutes an aggregate source of information with respect to pending bankruptcy and restructuring proceedings in Poland. Furthermore, intensive legislative works are currently underway in Poland aimed at the transposition of the (EU) 2019/1023 Directive on restructuring and insolvency (Directive (EU) 2019/1023 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).

Overview of the main pre-insolvency and insolvency proceedings: five different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

General remarks

- There has been a completely new legal framework for pre-insolvency (restructuring) proceedings since 1 January 2016.
- Currently, four restructuring proceedings are available.
- All restructuring proceedings may be initiated if the debtor is insolvent within the meaning of the Bankruptcy Law or is at risk of insolvency (its economic situation indicates that it may soon become insolvent).

- Restructuring proceedings are intended to provide an opportunity for the debtor to avoid a declaration of bankruptcy.
- The essential component of all restructuring proceedings is an arrangement with creditors.
- The arrangement is binding on the debtor and its creditors if it is approved by the court.

Outline of specific proceedings

Arrangement approval proceedings

Initiation: Only the debtor may initiate the proceedings by entering into a contract with a licenced restructuring counsellor to oversee the course of the proceedings.

Purpose: The debtor is entitled to negotiate the terms of the arrangement without the involvement of the court, the proceedings are supervised only by the licenced restructuring counsellor, and the court receives an application for the approval of the arrangement after it is concluded with the creditors.

Management: The debtor is allowed to manage all of its assets subject to limitations with respect to activities falling outside the scope of ordinary business that require the consent of the restructuring counsellor.

Accelerated arrangement proceedings

Initiation: Only the debtor may initiate the proceedings by filing an application to the court.

Purpose: These proceedings are combined with court supervision and are designed for use when the debtor is unable to negotiate the terms of the arrangement successfully without the involvement of the court.

Management: The debtor is allowed to manage its assets but may not independently perform activities which fall outside the scope of ordinary business activities. Such activities require the consent of the court supervisor.

Arrangement proceedings

Initiation: Only the debtor may initiate proceedings by filing an application to the court.

Purpose: These proceedings are combined with court supervision and are designed for use when the debtor cannot resort to the above-mentioned proceedings. The proceedings require greater involvement of the court supervisor.

Management: The debtor is allowed to manage its assets but

may not independently perform activities which fall outside the scope of ordinary business activities. Such activities require the consent of the court supervisor.

Remedial proceedings

Initiation: The proceedings are initiated by the personal creditor of the debtor (being an insolvent legal entity) or by the debtor itself by filing an application to the court.

Purpose: These proceedings are designed for use when the aforementioned restructuring proceedings are ineffectual.

Management: The court appoints the receiver, and the debtor can only manage its assets in special circumstances, with the court's permission.

Insolvency proceedings

Bankruptcy proceedings

Initiation: The bankruptcy petition may be filed by the debtor (compulsory filing within 30 days from the day when the debtor became insolvent) or by any of the debtor's personal creditors.

Main criteria: Bankruptcy may be declared with respect to a debtor that becomes insolvent. The debtor is deemed insolvent if it has lost the ability to fulfil its matured pecuniary liabilities (presumably in case of delay exceeding 3 months). Legal entities are also deemed insolvent in case of a long-term negative equity position (specified in detail in the provisions of the Bankruptcy Law).

Purpose: to satisfy the claims of the creditors to the maximum extent possible and, if feasible, to allow the debtor's existing business to continue operating.

Possible outcomes: Bankruptcy proceedings usually lead to the liquidation of the debtor's assets, but it is also permissible to do the following:

- Approve a pre-pack application submitted in the proceedings for the declaration of bankruptcy and sell the debtor's enterprise, an organised part of the enterprise or assets forming a substantial part of the enterprise under the terms indicated in the pre-pack application
- Conclude an arrangement between the creditors and the debtor aimed at restructuring liabilities through an agreement with the creditors and maintaining the operation of the debtor's business

Credentials

- E-commerce company – comprehensive legal and financial advice to a leading e-commerce company during the arrangement approval proceedings (one of the largest restructurings in Poland)
- Investment fund – legal advisory services provided to the buy side (investment fund) in the acquisition of an organised part of the enterprise from the bankruptcy trustee (one of the largest transactions of this kind in Poland)
- Mining sector company – analysis of the legal and financial standing of the client and its changes based on financial documentation delivered, legal assessment of risks, fulfilment of conditions to be declared bankrupt and the risk of dismissal of a bankruptcy application
- Construction industry company – analysis of the legal and financial standing of the client in terms of (i) compliance with management's legal obligation to file for bankruptcy if the conditions for a declaration of bankruptcy are met, (ii) legal conditions of arrangements allowing for the continuation of its business and (iii) impact of a declaration of bankruptcy on selected key contracts, collaterals established and agreements concluded with other companies from the client's capital group

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Portugal

Context

Portugal implemented its first preventive restructuring framework in 2012, known as the *Processo Especial de Revitalização* (PER), and in 2018, a new out-of-court business recovery scheme was created, the *Regime Extrajudicial de Recuperação de Empresas* (RERE). A third scheme is also in place, called the *Processo Especial para Acordo de Pagamento* (PEAP), which is a pre-insolvency procedure similar to the PER but applicable to debt recovery for individuals.

As part of the response to the impact of the COVID-19 pandemic, the Portuguese government decided to create a new extraordinary and transitional legal framework aimed exclusively at companies that face difficult economic circumstances or insolvency, whether imminent or current, because of the COVID-19 pandemic and that are still viable: the *Processo Extraordinário de Viabilização de Empresas* (PEVE), which was only in force until 30 June 2023.

Considering that preventive restructuring frameworks for corporate recovery already existed in Portugal at the time Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 was published, there was no need to create a preventive restructuring procedure *ex novo*.

As such, the Portuguese legislature decided to proceed with the transposition of the Directive (with Law 9/2022 of 11 January) solely by introducing amendments to the PER. This option was justified not only because the PER corresponds to the type of instruments provided for in the Directive but also because it had proved to be a highly successful procedure, with a high level of adherence during the 10 years it was in force (from 2012 until the end of 2019, more than 40% of the cases in which companies resorted to this process resulted in an agreement to continue their activities). At the same time, this legislative opportunity was also taken to pass a set of amendments to simplify and accelerate the course of insolvency and recovery proceedings, as well as to clarify and correct procedural and substantive imprecisions in the law because of legal doctrine and case law, including from the Constitutional Court, thus making the judicial system more efficient and resilient.

Overview of the main pre-insolvency and insolvency proceedings: three different proceedings available

Restructuring proceedings

In Portugal, the PER and the RERE are the key pre-insolvency measures for companies. If a company is only in a difficult economic situation or facing imminent insolvency but is still capable of recovery, it can resort to the PER or the RERE to try to recover by adopting a recovery/restructuring plan.

The PER is judicial and urgent in nature. This procedure allows the debtor a fresh start, when this is deemed possible, for its sustainable recovery through negotiations with all interested creditors and the conclusion of a recovery plan.

It begins with a written declaration signed by the debtor and by at least one of its creditors (corresponding to a minimum of 10% of non-subordinated liabilities) stating their intent to enter into negotiations with a view to the debtor's revitalisation by means of the approval of a recovery plan.

The PER prevents any enforcement action against the debtor for the collection of debts (with the exception of those aimed at recovering amounts owed to employees), including any insolvency proceedings (if not yet declared).

The PER does not remove the debtor's management powers but prevents it from carrying out acts of special importance without first obtaining authorisation from the provisional judicial administrator (appointed by the court).

The maximum period for PER negotiations is 3 months (the rule is 2 months, which can be extended for another month). The recovery plan is binding on all creditors, even if they did not participate in the negotiations, provided that the plan is approved by the required majorities and confirmed by the judge. Its content must respect two fundamental principles: *equality of creditors* and *no creditor worse off*.

As a rule, a company is not allowed to launch a new PER if the decision to approve the recovery plan in force was made less than 2 years prior.

The RERE is a voluntary, out-of-court procedure for which the parties are free to apply or sign up. The debtor can call on all or only some of its creditors, and the procedure begins with a written agreement (called a *negotiation protocol*) signed by the debtor and at least 15% of the non-subordinated creditors, which states that the signatories are interested in negotiating a restructuring agreement, and is filed with the Commercial Register.

The RERE is confidential, except in the case of an agreement between the parties or exceptions of a legal nature; the Tax Authority, social security authorities and employees must be informed of the filing of the negotiation protocol and of its content whenever they are owed money by the debtor.

The filing of the protocol gives rise to a specific set of obligations for all parties involved, including the suspension of judicial proceedings.

The negotiation period lasts for a maximum of 3 months from the filing date of the negotiation protocol and closes with the filing of the restructuring agreement, which takes effect from that date forward (unless otherwise provided in the agreement itself) and is only binding on the signatories.

A number of emoluments and tax benefits arise from the approval and implementation of a PER or a RERE.

Insolvency proceedings

Insolvency refers to judicial enforcement proceedings that are universal in scope (i.e. in which all creditors are called upon and must claim their credits). Its purpose is to satisfy creditors in accordance with an insolvency plan that is based, as a rule, on the recovery of the company included in the insolvent estate or, where this is not possible, on the liquidation of its assets and the distribution of proceeds among the creditors.

Insolvency proceedings may be brought either by a creditor or the debtor itself. Company directors/management have a legal obligation to file an application for insolvency within 30 days of becoming aware of the state of insolvency; a breach of this legal obligation could result in a finding of culpable insolvency.

The judgment declaring insolvency triggers several important effects on the debtor and other persons, claims and ongoing business, including procedural effects. The main effect on the debtor is depriving it of its powers of administration and disposal of assets, which are given to the insolvency administrator appointed by the court.

All creditors must file their credit claims. The insolvency administrator files a report regarding the recognised claims, the financial situation of the debtor, its possible recovery and the proposed solution: an *insolvency plan* or *liquidation* (which must also be defined in a liquidation plan). The said report will then be voted upon by the creditors.

After the liquidation of the assets, payment is made in the following order: (i) creditors of the insolvent estate, (ii) privileged creditors, (iii) secured creditors, (iv) common creditors and (v) subordinated creditors.

Credentials

- Legal assistance to a Portuguese carrier airline (in the context of the global crisis caused by the COVID-19 pandemic) on the different possible legal scenarios for restructuring the company and the risks to its operations.

Deal value: €2 billion

- Legal assistance to a shareholder of two companies included in the Portuguese public bank list of major debtors. The legal services included the analysis of the risks and consequences arising from the possible characterisation of the shareholder as a de facto director of two companies, which were undergoing very complex insolvency proceedings in Portuguese courts, and the identification of possible actions/procedures to be filed/requested by the bank and/or the insolvency administrator against the shareholder as a result of his characterisation as a de facto director, the consequences and impacts of the possible actions/procedures and the preparation of his legal defence.

Deal value: €350 million

- Legal support to clients (the leader of the rental car market in Portugal and one of the best-known and most prestigious German car brands) on credits and vehicle recovery, with prior analysis and definition of negotiation and recovery strategies, often involving lengthy negotiation processes. We are providing legal advice in litigation and insolvency/restructuring strategies, filings and monitoring of the related proceedings (including injunctions, enforcement actions, insolvency proceedings and preventive restructuring frameworks). Some cases are particularly complex, with a number of legal issues and challenges to be disputed.

Deal value: €22 million

- Legal assistance to a company involved in real estate investment projects. Full legal assistance in insolvency procedures in which the client acts as a creditor and in several lawsuits in the scope of real estate and asset management, from real estate rights to claim recovery matters. All the judicial procedures in which this client is involved are extremely complex, with large amounts at stake.

Deal value: €9 million.

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Romania

Context

In July 2022, Law no. 85/2014 regarding insolvency prevention procedures and insolvency proceedings (Insolvency Law) was substantially amended by Law 216 of 14 July 2022. This latter law transposed into the Romanian insolvency framework Directive no. 2019/1023 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.

The amendments to the Insolvency Law focus mainly on the pre-insolvency framework. The lack of entrepreneurial education among small and medium-sized enterprises (SMEs) is one of the main reasons why there are so few successful restructuring cases at the national level. The purpose of the new framework is to make available, particularly to SMEs, some helpful tools to identify potential risks in their activities and take measures before reaching a state of insolvency.

One of the main additions to the Insolvency Law is the introduction of an early warning procedure under which professionals are alerted by the fiscal body regarding the non-execution of certain obligations. Information is made available to them free of charge regarding the recovery solutions provided by the law. This procedure has not yet been implemented in practice.

The notion of a company *in difficulty* was also newly introduced. Unlike a *distressed* company, a company in difficulty is not yet in a state of insolvency but is facing a situation that temporarily impairs its activities and poses a real and serious threat to the future ability of the debtor to pay its debts when due if appropriate measures are not taken.

Another change is the elimination of the *ad hoc mandate*, which is now completely replaced by a new procedure called the restructuring agreement procedure (in Romanian, *acord de restructurare*) and is mostly conducted out of court. The preventive agreement procedure (in Romanian, *concordat preventiv*) underwent significant amendments as well, aimed at greater efficiency.

The restructuring agreement is more likely suited to debtors that can still fulfil their obligations as they become due and are not facing imminent foreclosure. The preventive agreement is

designed for debtors in a more difficult financial situation but are still solvent.

As the new framework on pre-insolvency is relatively new and has yet to be fully implemented, it remains to be seen whether it will meet its purpose.

Overview of the main pre-insolvency and insolvency proceedings: four procedures available

Pre-insolvency proceedings

The Insolvency Law provides two optional procedures (at the debtors' choice) that distressed undertakings can use to safeguard their activities by renegotiating their debts out of court:

The restructuring agreement – amicable settlement proceedings supervised by a restructuring administrator (chosen by the debtor among insolvency practitioners), which take place mostly out of court

Initiators: undertakings in difficulty, not in insolvency.

Purpose: safeguarding the distressed undertakings by keeping them in activity, maintaining jobs and covering their debts.

The restructuring agreement is prepared by the restructuring administrator or debtor with the restructuring administrator's assistance and is voted upon by the affected creditors.

Following the affected creditors' vote, the restructuring agreement is confirmed by the syndical judge.

There is no legal minimum or maximum period for the restructuring agreement.

Preventive agreement: amicable settlement proceedings, similar to reorganisation during insolvency proceedings

Initiators: undertakings facing financial difficulties (not in insolvency) under certain conditions, as well as creditors with a certain and liquid claim, provided that the debtor's prior consent is obtained

Purpose: safeguarding distressed undertakings by keeping them in activity, maintaining jobs and covering their debts

The court is involved from the beginning, with the syndic judge approving the opening of the proceedings and appointing the concordat administrator. The restructuring plan is prepared by the restructuring administrator or debtor with the restructuring administrator's assistance and is voted upon by the affected creditors. After the vote, it is approved by the syndic judge.

The initiation of preventive agreement proceedings automatically suspends or stays foreclosed, irrespective of the nature of the claim, for a period of 4 months (or, as the case may be, less than 4 months, until the syndic judge approves the restructuring plan). The 4-month duration may be extended up to a maximum of 12 months from the opening of the proceedings.

The term for completing the restructuring plan is 48 months, with the possibility of an extension of 12 months.

Insolvency proceedings – judicial proceedings directed by a court of law

Insolvency is a state of the debtor's patrimony characterised by a deficiency of available monetary funds for the payment of its due debts. The proceedings i) may be initiated by a creditor having a certain and liquid receivable in an amount of more than RON 50,000 (approx. €10,000) that is outstanding for more than 60 days, or ii) have to be initiated by a debtor in a state of insolvency for more than 30 days with debts of at least RON 50,000. Failure of the debtor's representative to fulfil this obligation for more than 6 months constitutes a criminal offence.

Purpose: settlement of the insolvent debtor's liabilities (whether through the debtor's reorganisation or the liquidation of its assets).

Insolvency proceedings

A judicial administrator is appointed by the court and either manages the activity of the debtor (if the debtor has been stripped of its management power by the court) or simply supervises the debtor's activity (if the debtor preserves its management power)

Following the observation period (first phase of the insolvency proceedings), a debtor might enter reorganisation or bankruptcy.

Reorganisation scenario: The reorganisation plan must be approved by (i) half plus one of the categories of creditors under certain additional conditions and by (ii) creditors representing at least 30% of the total value of claims, as well as confirmed by the court.

The reorganisation period can be established for a maximum of 3 years, during which the activity is managed by the debtor under the supervision of the judicial administrator. Under certain conditions, the reorganisation period may be extended by 1 year.

Bankruptcy proceedings

Bankruptcy proceedings may be initiated by the court if (i) the reorganisation plan is not successful, (ii) the reorganisation plan was not filed with the court or was not approved by creditors/ confirmed by the court and (iii) in specific situations (e.g. absence of the headquarters or absence of a legal representative) at the request of the debtor/creditor or as assessed by the court.

A judicial liquidator is appointed by the court to liquidate the debtor's assets.

Upon liquidation, the debtor is de-registered from the Trade Registry.

Credentials

- Legal assistance to a debt recovery company in a data cleansing project in relation to its corporate debtors undergoing insolvency proceedings, for the purpose of improving the recovery process.
- Legal assistance to an investment fund in transaction structuring and assistance with insolvency and bankruptcy implications, as well as court representation in related insolvency challenges.
- Legal analysis with respect to the client's recovery strategies (e.g., to repossess assets, to assign receivables against the debtors, etc.) for 25 corporate debtors located in Romania, Croatia and Bulgaria undergoing insolvency/bankruptcy procedures. The project involved a multi-disciplinary approach consisting of both legal and financial advice provided by teams in different jurisdictions.
- Legal assistance to a major machinery manufacturer in various insolvency cases against its debtors (day-to-day assistance on insolvency matters, assistance and representation before the courts of law).

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Spain

Context

Law 16/2022, of 5 September, amends the Consolidated Spanish Insolvency Law and transposes into Spanish law Directive (EU) 2019/1023, 20 of June, 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.

The main aims of the aforementioned Directive include ensuring that preventive solutions are made available to viable businesses running into financial difficulties. To achieve this, it introduces a new concept *likelihood of insolvency* and defines the timeframe of the concept of *imminent insolvency* which aims to provide debtors with the earliest possible warning, thus enabling them to initiate any of the mechanisms to ensure the viability of businesses provided under Spanish law.

In addition, whether or not the company foresees the possibility of avoiding the insolvency situation, it would be required to adopt the pre-insolvency mechanisms provided: the first one would be the communication of the opening of negotiations with creditors, which can only be opened by the debtor; and the second refers to the drafting of a restructuring plan (R.P.), which replaces the preceding refinancing agreements.

It also introduces a new figure –the restructuring expert– who would advise the debtor and its creditors in the negotiations and during the drafting and negotiation of the R.P.

This law also foresees speeding up the insolvency proceeding, introducing flexible mechanisms and characteristics that facilitate the restructuring of viable companies and which take into consideration, more comprehensively, the situation of insolvency proceedings in our country. Thus, this regulation aims to liquidate insolvent non-viable companies in a more orderly and faster way.

Overview of the main pre-insolvency and insolvency proceedings: two different proceedings are available

Pre-insolvency proceedings

Comunicación de la apertura de negociaciones (Communication of the opening of negotiations with creditors)

By filing this communication, the debtor will have a term of three months to reach a R.P. with its creditors. If this period expires without being able to reach an agreement, the debtor should file for its insolvency proceedings before the Court within the following month. This will only be mandatory if the company is still insolvent.

Exceptionally, the aforementioned term may be extended by up to an additional three months provided that it is supported by a report from the restructuring expert.

This communication allows the debtor to (i) stay foreclosures (apart from those related to public claims); and (ii) maintain agreements establishing outstanding reciprocal obligations.

Planes de reestructuración (Restructuring plans)

Object: they can include the modification of the composition, terms and conditions, or the structure of the debtor's assets and liabilities, or its equity, as well as any operational adjustments, such as the sale and purchase of business units or a combination of these elements.

Those creditors whose claims are affected by the R.P. are grouped into classes of claims and may vote its approval.

Although the law establishes certain criteria for the formation of classes of claims (secured claims will be separated into an individual class and public law claims will make up a separate class within their respective insolvency waterfall of payments), the guiding principle for establishing the remaining classes should be based on the existence of a joint and common interest on the part of the creditors within the same class. Said common interest may be identified as the waterfall of payments of the insolvency proceeding.

New feature: the possibility of establishing cross-class cram-down mechanisms between different classes of dissenting creditors, as well as for equity, in certain cases.

Homologación judicial de planes de reestructuración (Judicial endorsement of the restructuring plan)

An R.P. may be endorsed before the Court, although the requirements for that approval may differ depending on whether it is a consensual or a non-consensual R.P.

Experto en la reestructuración (Restructuring expert)

A figure created to advise the debtor and its creditors in the negotiations and during the drafting of the R.P.

Appointment is mandatory under certain circumstances, among others, when requested by the debtor, or by the creditors representing over half of the liabilities that may be affected by the R.P., and in the event that the R.P. needs to be judicially endorsed.

Insolvency proceedings

Pre-pack concursal (Pre-packaged insolvency proceedings)

Formal introduction of the so-called *pre-packaged mechanism*, based on designating an expert (similar to the *Silent administrator* under UK and Dutch legislation) to collect offers for the sale of one or more business units prior to the judicial declaration of insolvency.

Within the proposal, the offeror must take on the obligation to continue or restart the business activity of the business unit for a minimum period of 2 years. Failure to comply with this obligation will entitle any affected party to claim damages from the acquirer.

Submission of a binding bid together with the request filing for the declaration of insolvency: the law contemplates this urgent procedure, at a not-so-early stage, to avoid the loss of value with respect to the business units because of the initiation of the insolvency proceedings. This offering may cover one or more business units.

Both proceedings enable the *cherry picking* of assets and liabilities of the investors and the new regulation provides legal certainty concerning the labour claims transmitted to the acquirer.

Convenio de acreedores (Composition agreement)

This agreement may be filed as part of the request for an insolvency declaration or at any time thereafter, as long as less

than fifteen days have elapsed since the submission of the insolvency administrator's report.

It has to contain an arrangement with creditors, and may also contain structural modifications, an offer for the purchase of a business unit, or any other alternative measures, in accordance with the legally defined limit.

When the composition agreement provides for debt for equity swaps, the capital increase can be made directly by the administrators or the board of directors.

Regarding public law claims or employment claims, the law states that the composition agreement cannot consist of: (i) a change to the applicable law, (ii) a change to the debtor, or (iii) a change in any aspect of the guarantees, or (iv) the conversion of the debt into shares or participations with different classes to those originally defined.

Procedimiento especial para microempresas (Special procedure for micro SMEs)

This procedure is intended for those individual or legal-entity debtors with less than ten (10) employees and (i) annual turnover of less than EUR 700,000 or (ii) liabilities of less than EUR 350,000.

This procedure foresees carrying out most of the procedures virtually, including appearances, statements, and hearings.

This procedure will be dealt in the same way as a continuation or special liquidation procedure, at the request of both the debtor and the interested creditors.

Credentials

- Provision of professional advisory services in relation to the acquisition of a business unit owned by a media company (press) that filed for its insolvency proceedings and the draft of a takeover bid in accordance with the client's interests.
- Provision of professional advisory services for several companies in relation to the negotiations for the adoption of a restructuring plan (one of the first of its kind under the new insolvency regulations) for a group of companies.
- Provision of professional advisory services to a public hedge fund in relation to the review of its standard financing contracts in order to adapt them to the new Spanish insolvency regulations, and preparation of an action plan to help the Company to define and establish a series of action guidelines for the Company.
- Provision of legal advisory services to the auditors which are mandated to certify the majorities needed for the adoption of a restructuring plan for an important Spanish textile company and its European group.

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Sweden

Context

Swedish insolvency legislation is governed by the Bankruptcy Act (SFS 1987:672) and the Company Restructuring Act (SFS 2022:964).

Swedish insolvency legislation essentially includes two types of proceedings for businesses with financial difficulties: bankruptcy and company restructuring. These procedures are governed by the Bankruptcy Act (SFS 1987:672) and the Company Restructuring Act (SFS 2022:964), respectively.

A major reform of the Company Restructuring Act took place in August 2022, resulting in a completely new act entering into force and replacing the act from 1996 with the same name. The new Company Restructuring Act implemented the EU Directive 2017/1132 on restructuring and insolvency (Restructuring Directive) and introduced a new order for the Swedish company restructuring procedure. The aim of the reform is to offer a faster and simpler restructuring procedure for debtors in need of debt reduction in order to secure the viability of their businesses.

The new Company Restructuring Act adopted the concept of restructuring plans as set out in the Restructuring Directive. Plan negotiation replaced the previous arrangement with creditors (in Swedish, *ackordsförfarande*) and differed in that the purpose of plan negotiation is to determine the entire restructuring plan and not just arrange a financial settlement between the debtor and the creditors. Thus, the restructuring plan includes other necessary measures to address a company's financial problems, which, alongside the financial settlement, become binding.

The reform also entails changed conditions for being granted company restructuring. In one aspect, the threshold was lowered, as not only companies that are illiquid or that risk illiquidity are covered by the new Act; companies that in any other sense have financial difficulties entailing a risk of insolvency can also be granted company restructuring. However, it should be noted that there must also be reasonable grounds to assume that the restructuring can safeguard the company's financial viability in order for company restructuring to commence. The so-called viability test in the 1996 Act was criticised for permitting companies with little chance of successful restructuring to commence company restructuring. The viability test in the new Company Restructuring Act has thus been enhanced to ensure that a greater share of the companies that are approved for

company restructuring can safeguard their survival and avoid bankruptcy.

Overview of the main pre-insolvency and insolvency proceedings: three different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Underhandsackord (amicable settlement proceeding): unregulated voluntary financial agreement

Opening of the procedure: There is no form prescribed by law regarding the initiation of the procedure; the procedure is characterised by contractual freedom and no participation of authorities. It is usually initiated by the debtor proposing a suspension of payment.

Purpose: An amicable settlement proceeding aims to achieve a voluntary financial settlement between the debtor and the creditors in order to avoid the debtor's insolvency.

Företagsrekonstruktion (company restructuring)

Company restructuring proceedings are regulated in the Company Restructuring Act (SFS 2022:964).

Opening of the procedure: Both debtors and creditors can apply for company restructuring in certain district courts with jurisdiction to try such applications.

Purpose: Company restructuring proceedings are intended as alternatives to bankruptcy. As the debtors covered by the legislation are not yet but are at risk of becoming insolvent, a failed restructuring does not result in bankruptcy, which is another separate insolvency proceeding (see below). The purpose of the proceeding is to restructure companies that are considered to be viable in the long term despite having financial difficulties. The debtor applies for restructuring of the company's business activities in order to meet financial agreements with its creditors without having to file for bankruptcy. The aim is to allow the debtor to continue with its business activities.

The reorganisation procedure is carried out with the assistance of an independent administrator appointed by the court (in Swedish, *rekonstruktör*).

Rekonstruktionsplan (restructuring plan): regulated agreement with financial and other binding measures

Opening of the procedure: A debtor that is under a company restructuring procedure (see above) can request that the court decide on the negotiation of a restructuring plan (plan negotiation). If the debtor's request for plan negotiation does not lead to a restructuring plan being determined, the independent administrator appointed by the court (in Swedish, *rekonstruktör*) may also request a plan negotiation.

Purpose: A restructuring plan aims to prevent the debtor's insolvency and ensure the viability of the business. The plan includes not only a financial settlement between the debtor and the creditors and other stakeholders but also other binding measures, such as organisational changes and new funding.

Insolvency proceedings

Konkurs (bankruptcy)

Bankruptcy proceedings are regulated in the Bankruptcy Act (SFS 1987:672).

Opening of the procedure: An insolvent debtor is to be declared bankrupt on the initiative of either the debtor or one of its creditors after filing for bankruptcy with the district court.

Purpose: Bankruptcy proceedings are mainly intended to terminate the debtor's business activities, realise its assets and distribute the surplus among the creditors. Thus, the purpose is to satisfy a collective of creditors' claims on an individual debtor under coordinated forms. If the debtor is a legal entity, bankruptcy results in the company being dissolved.

Credentials

Our team advised and represented in the following:

- We have been appointed liquidators in several Swedish companies, including a subsidiary to a global motion picture production and distribution company, a global manufacturer of recording media and energy products, a leading provider within the healthcare and life sciences segments and a subsidiary of a listed cargo company.
- We provided advice to several shareholders regarding distressed subsidiaries and insolvency, often including additional capitalisation advisory.
- We provided advice related to a shareholder of a distressed company prior to a sale, including amicable settlement proceedings and employment law.
- We provided assistance related to debtor insolvency to various creditors.

Key contacts in Sweden



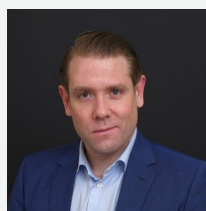
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Switzerland

Context

As of 1 January 2023, the last part of a long-planned revision of the Swiss Code of Obligations (SCO) entered into force. As part of this revision, the obligations of companies in the event of financial difficulties were adjusted, aiming to bring greater attention to liquidity. In addition, changes were made with regard to the debt restructuring moratorium (*Nachlassstundung*), and the instrument of postponement of bankruptcy proceedings was abolished.

In Switzerland, insolvency and bankruptcy law is governed by the SCO (Arts. 725, 725a, 725b and 725c) and by the Swiss Federal Act on Debt Enforcement and Bankruptcy.

Overview of the main pre-insolvency and insolvency proceedings: two different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

In case of financial difficulties, the debtor has the following obligations:

Imminent insolvency

Initiation of the proceedings: by the debtor (i.e. the board of directors)

Purpose: If the company is threatened with insolvency, the board of directors must take measures to ensure the company's solvency and, where necessary, take restructuring measures or apply for a debt restructuring moratorium (see below). The board of directors acts with due urgency.

Capital loss

Initiation of the proceedings: by the debtor (i.e. the board of directors)

Purpose: If the most recent annual accounts indicate a capital

loss (i.e. the company's assets less its liabilities no longer cover at least half of the sum of the share capital, non-repayable capital reserve, statutory capital reserve and statutory profit reserve), the board of directors must take restructuring measures to eliminate the loss of capital. The board of directors acts with due urgency.

Potential restructuring measures include capital increases or reductions, the dissolution of general reserves, restructuring mergers, restructuring loans, contributions to shareholders' equity, the sale of assets and subordination agreements with the company's creditors.

Over-indebtedness

Initiation of the proceedings: upon request to the court by the debtor (i.e. the board of directors) or the debtor's auditors

Purpose: If there is a justified concern that the company is over-indebted (i.e. the company's liabilities are no longer covered by its assets), the debtor (specifically the board of directors) is required immediately to prepare interim accounts, both at going concern and sale values. The interim accounts must be audited by the company's auditor or another certified auditor. If the company is over-indebted according to the two interim accounts, the board of directors must notify the court, which will initiate bankruptcy proceedings, unless a debt restructuring moratorium is requested (see below). Notification of the court is not required if the company's creditors subordinate their claims to the extent of the over-indebtedness (plus interest) or provided there is a reasonable prospect that the over-indebtedness can be remedied within a reasonable period of time, which is a maximum of 90 days, and that the claims of the creditors are not additionally jeopardised. The board of directors and/or the auditor acts with due urgency.

Insolvency – bankruptcy proceedings

Debt restructuring proceedings

Initiation of the proceedings: request of the debtor or a creditor to the court or ex officio initiation by the court (instead of initiating bankruptcy proceedings)

Purpose: If a company is in financial distress and can no longer meet its current obligations, it may file an application with the competent court for the granting of a debt restructuring moratorium to provide the debtor with a limited period of time to find ways to restructure the company without the threat of enforcement proceedings. A provisional debt restructuring moratorium is granted for 4 months (extendable up to 8 months). If it becomes apparent that there is a prospect of

reorganisation or confirmation of a restructuring agreement, the court will definitely grant an extension for another 4 to 6 months (in certain cases, extendable up to 12 to 24 months).

The court appoints an administrator, who controls the debtor's activities. Debt restructuring proceedings are published in the Official Gazette (certain exceptions are possible during the provisional period). The debt restructuring moratorium ends in the following ways:

- Conclusion of an ordinary debt restructuring agreement (moratorium or dividend agreement), enabling the debtor to continue doing business by proportionally satisfying its existing creditors' claims
- Conclusion of a debt restructuring agreement with the assignment of assets in which the creditors can be given the power to dispose of the debtor's assets, or the assets can be assigned in whole or in part to a third party. This agreement ultimately leads to the winding-up of the debtor (i.e. debt restructuring liquidation proceedings).

If the creditors or the court refuses the debt restructuring agreement or if the court revokes the moratorium, the creditors may request the immediate initiation of bankruptcy proceedings. The court pronounces the bankruptcy of the debtor automatically and immediately.

Bankruptcy proceedings

Initiation of the proceedings: initiated by an insolvent debtor or a creditor who has successfully requested the initiation of bankruptcy proceedings or upon a request addressed to the court by the debtor's auditors in case of over-indebtedness and failure to act on the part of the debtor

Purpose: The main objective of bankruptcy proceedings is the dissolution and liquidation of the debtor to enable a proportional distribution of the debtor's assets, if any, to its creditors.

Credentials

- Drafting of motions for bankruptcy and advice in further proceedings
- Assistance to various creditors during the insolvency of their debtors (legal advice)
- Legal assistance and advice in various debt restructuring proceedings
- Legal, tax and financial due diligence

Key contacts in Switzerland



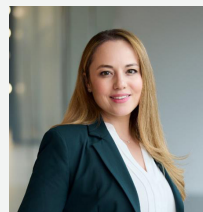
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The Netherlands

Context

Recent years have shown notable developments in the Dutch landscape of (particularly) pre-insolvency procedures. There were the Court of Justice of the European Union (CJEU) rulings in the Smallsteps (2017) and Heiploeg (2022) cases, as well as a new statutory pre-insolvency procedure that was enacted in 2021.

The Dutch legislator is currently working on a statutory basis for the pre-pack procedure. The procedure is already applied on the basis of case law, but because of the lack of a statutory basis, it is still controversial and often contested in Dutch courts.

In its Smallsteps and Heiploeg rulings, the CJEU addressed when the rules regarding a transfer of undertaking (TUPE) apply in pre-pack situations. Under certain circumstances, it is possible that a pre-pack falls under the exception of a mandatory transfer of an undertaking, meaning that not all employees are taken over by the operation of law through a pre-pack. Each pre-pack procedure will have to be assessed on the basis of the circumstances of the case to determine the main purpose of the pre-pack and whether the TUPE rules apply. In Smallsteps, the CJEU ruled that the TUPE rules applied because the pre-pack was not aimed at liquidation but at the continuation of the undertaking. On the contrary, the CJEU ruled in Heiploeg that the pre-pack procedure was aimed at the liquidation of the assets of Heiploeg, which was already declared bankrupt. Consequently, the TUPE rules did not apply in the latter case.

As of 1 January 2021, a new pre-insolvency procedure aimed at the approval of private compositions (the so-called WHOA procedure) has been enacted. The WHOA procedure enables debtors to propose a plan to restructure the company's debts outside of formal insolvency proceedings and grants other stakeholders the right to request the appointment of a restructuring expert to prepare such a plan. It is important to note here that the court may homologate such a plan, meaning that all parties involved are bound by the agreement, even if they have voted against it. Such a cramdown was applied by the Dutch court for the first time in 2023 in the case of shipbuilder IHC.

Legal framework

Dutch bankruptcy law is governed by the Dutch Bankruptcy Act (in Dutch, *Faillissementswet*).

Overview of the main pre-insolvency and insolvency proceedings: five different proceedings available

Pre-insolvency/hybrid/restructuring proceedings

Voluntary debt restructuring (non-regulated)

Opening of the procedure: no formal procedure, typically initiated by the debtor

Purpose: to avoid bankruptcy through negotiation of a *composition* with creditors and to seek a delay in payment or (partial) debt forgiveness. This informal, unregulated procedure can be initiated voluntarily by the debtor. Creditors are free to decide whether to cooperate with the plan. Creditors that have not agreed to the composition plan are not bound by its execution. In the case of a pre-pack (which is controversial in the Netherlands), the court appoints an intended bankruptcy trustee to supervise the preparation of a restructuring plan for a nearly bankrupt debtor.

Court approval of a private composition (in Dutch, *homologatie van een onderhands akkoord*)

Opening of the procedure: debtor, shareholder, creditor or member of a statutorily obliged employee representative body

Purpose: based on the EU Insolvency Directive ((EU) 2019/1023), to enable debtors to propose a restructuring of the company's debts outside of formal insolvency proceedings. This can only be applied if the debtor cannot continue paying its (long-term) debts without restructuring. Only the debtor may propose a composition itself. The court may be requested to appoint a restructuring expert, who will prepare a composition proposal upon request of the debtor or another stakeholder authorised to initiate the procedure. In voting on a proposed composition, creditors are divided into classes. Intra-class and cross-class cramdown can be requested from the court if at least one class votes in favour of the proposal (with a two-thirds vote in amount). If the court homologates a composition, all creditors and shareholders are bound by it, even those who voted against it.

The court may only do so if the agreement is necessary and sufficient to prevent bankruptcy.

Note: Employee rights must remain unaffected by the composition. Subject to conditions, a debtor may propose to amend or terminate a current (non-employment) agreement. The court may also order a standstill period, during which creditors cannot enforce security rights, and the court will postpone any bankruptcy requests from the company to ensure the effectiveness of the procedure.

Insolvency proceedings

Bankruptcy (in Dutch, *faillissement*)

Opening of the procedure: debtor (companies and natural persons), creditors, the public prosecutor (for reasons of public interest) or any administrator appointed by the court

Purpose: to distribute the proceeds of the execution of the debtor's assets to all its creditors while protecting the debtor's rights, terminating existing attachments and preventing future creditor attachments and executions. When declaring bankruptcy, the court will appoint a trustee, who is (solely) tasked with the management and liquidation of the bankrupt debtor's assets.

Suspension of payments (in Dutch, *surséance van betaling*)

Opening of the procedure: only the debtor (companies and natural persons with a business only)

Purpose: to bridge the debtor's temporary payment problems by granting temporary (up to 18 months) relief from payment obligations, giving the debtor an opportunity to reorganise, find new financing options and continue its business. The debtor can open this procedure if the debtor foresees that it will be unable to pay its debts as they fall due. When granting a suspension of payment, the court will appoint an administrator, who is co-responsible for day-to-day management and whose cooperation, approval or assistance is required for certain acts by the debtor. During the moratorium, the debtor can offer a composition plan to its creditors, which has to be voted upon by the creditors. Under certain circumstances, the composition plan can be forced onto the creditors by the court. For a number of reasons (e.g. the loss of control and protection of employee rights), the suspension of payments is not a very useful means of reorganisation.

Debt restructuring for natural persons (in Dutch, *schuldsanering natuurlijke personen*)

Opening of the procedure: the debtor (only natural persons) and the municipal debt counsellor of the debtor's domicile

Purpose: to enable natural persons who are in financial difficulties to start with a *clean sheet* after observing the conditions imposed on them by the court during the debt restructuring period, which lasts 3–5 years depending on the specific circumstances involved

Credentials

- Advised clients on different insolvency scenarios
- Advised the managing directors of companies in financial distress on the directors' liabilities
- Advised clients on recovery options

Key contact in The Netherlands



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Ukraine

Context

In 2019, Ukraine implemented the Code on Bankruptcy Procedures, aligning with EU legislation. The Code outlines the processes and requirements for restoring the solvency of a legal entity or declaring it bankrupt, in order to satisfy creditors' claims and recover the solvency of an individual.

On February 24, 2022 Russia started unprovoked full-scale military aggression against Ukraine by bombing Ukrainian cities and infrastructure with missiles, which made it impossible to conduct normal business. As a result of Russia's war crimes, 15.7 million people in Ukraine are now in urgent need of humanitarian assistance, 7.1 million have become internally displaced and hundreds of businesses have terminated their activities.

Despite these challenges, the number of bankruptcy cases in 2022 decreased by one-third compared with 2021 figures. This could be due to a more flexible approach from creditors who understand the situation or difficulties with accessing justice and collecting evidence, particularly in the regions most affected by the conflict.

At a time when many companies were forced to dismiss employees, thirty-two individuals were hired in Tax & Legal under the conditions of the military law regime. Deloitte Legal Ukraine not only avoided layoffs but also managed to hire new lawyers and promote several current employees.

This demonstrates our commitment to ensuring a safe and supportive environment for our employees while maintaining service delivery to our clients.

Overview of the main insolvency proceeding

Pre-insolvency/hybrid/restructuring proceedings

Opening of bankruptcy proceedings. A creditor or debtor must submit for the opening of bankruptcy proceedings and provide specific information, including the name of the court, the names of the debtor and creditors, and the circumstances that are the bases for referring the case to the court.

Starting on the opening of the proceedings,

- the submission of claims by pre-bankruptcy and secured creditors against the debtor and their satisfaction may be carried out only in the manner prescribed hereby and within the scope of the proceedings;
- the seizure of the debtor's property or other restrictions of a debtor concerning the disposition of property belonging to it/them may be applied only by the commercial court within the scope of the bankruptcy proceedings;
- the corporate rights of the founders (participants and shareholders) of the debtor shall be exercised, taking into account the restrictions established hereby;
- the decision on the reorganisation or liquidation of the legal entity – the debtor, shall be made in the manner determined hereby.

Disposition of the debtor's property

Disposition of property is a system used to oversee and manage a debtor's assets. The goal is to preserve and use the assets efficiently, analyse the debtor's finances and decide whether to rehabilitate or liquidate. After this process, the next step will be either rehabilitation, liquidation or ending the case. Prior to the termination of the procedure for the disposition of the debtor's property, the creditors' meeting shall make one of the following decisions:

- Approval of the rehabilitation plan and submission to the commercial court of a petition for the introduction of the rehabilitation procedure and ratification of the rehabilitation plan;
- Filing a petition with the commercial court to recognise the debtor as bankrupt and to open the liquidation procedure.

Rehabilitation of the debtor

The rehabilitation process aims to improve a debtor's financial condition and avoid bankruptcy. It involves restructuring debts and assets and changing the company's structure to satisfy creditors' claims. A rehabilitation manager, chosen from among the arbitration managers, is appointed by the court to oversee the process. Based on the results of considering the rehabilitation manager's report, the creditors' meeting shall make a decision to refer to the commercial court with a petition to

- close the proceedings in connection with the implementation of the rehabilitation plan and recovery of the debtor's solvency;
- terminate the rehabilitation procedure, recognise a debtor as bankrupt and open the liquidation procedure; and
- approve amendments to the rehabilitation plan and extend the rehabilitation procedure.

Insolvency - bankruptcy proceedings

When a debtor is declared bankrupt by the commercial court, the following actions take place:

- The debtor stops its economic activity, except for actions to protect or maintain its property.
- All monetary obligations become due immediately.
- The debtor cannot take on new obligations, except those related to the liquidation process.
- Fines and interest on debts are no longer accrued.
- The debtor's financial information is no longer confidential.
- The debtor's property can be sold as per the rules.
- Seizures on the debtor's property are lifted and no new seizures are allowed.
- The debtor's management loses the power to manage and dispose of the debtor's property, and the owner's powers are terminated.

With its resolution on the recognition of the debtor as bankrupt and the opening of the liquidation procedure, the commercial court shall appoint the liquidator of the bankrupt from among the arbitration managers.

After the completion of all settlements with creditors, the liquidator shall submit a report and liquidation balance sheet to the commercial court. The report should include details about the debtor's property, how it was sold and which creditors were repaid. The court will then hold a hearing to approve the report. If there is no property left after all debts are paid, the court will

officially liquidate the debtor. If the liquidator does not find any property to sell, it must still submit a report to the court. If the liquidator does not sell all of the debtor's property, the court appoints a new liquidator. If the debtor's property is enough to pay off all its debts, the court will release it from debt and allow it to continue business.

Credentials

- Preparing the legal part of the independent expert report with an analysis of instruments for the settlement of the non-performing loans (NPLs) of the groups of companies. The aim of the report was to determine the minimum price (the highest net present value at the time of making such a decision) of the NPLs upon their sale via Dutch auction.
- Preparing the legal part of the report in a series of independent business reviews (IBRs) for debt restructuring (namely, with respect to 8 borrowers). In particular, our work included analysis of the current status of the borrowers (from the corporate law perspective), the loan portfolio, information from the state registrars regarding the assets of the borrowers and relevant encumbrances.
- Legal analysis of the current NPL market, which included analysis of the market and court practice on the risks of challenging deals in the NPL market. For example, we focused on the legal positions of creditors and debtors, the legal environment for foreign investors planning to purchase NPL portfolios and new rules for collection agencies and creditors when settling overdue debts.

Key contacts in Ukraine



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United Kingdom

The UK chapter of this Guide has been written by qualified insolvency practitioners. The authors are not solicitors and are solely responsible for this segment.

Context

European insolvency regulations continue to apply where the main proceedings had been opened (either in the UK or in an EU Member State, except Denmark) before the transition period ended on 31 December 2020.

The centre of main interests (COMI) has been retained in the UK, extending UK courts' jurisdiction to open certain types of insolvency proceedings. The retained EU Insolvency Regulation only applies to compulsory liquidation, administration, voluntary arrangements and bankruptcy. It does not apply to voluntary liquidation.

Overview of corporate insolvency proceedings: seven main proceedings

Administration (England and Wales, Scotland and Northern Ireland)

Administration is a formal insolvency procedure overseen by an administrator (a licenced insolvency practitioner) who acts as an agent of the company. It is available to companies that are insolvent or likely to become unable to pay their debts as they fall due.

There are three statutory purposes of an administration:

- Rescue the company as a going concern
- Achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)
- Realise property in order to make a distribution to one or more secured or preferential creditors

A company in administration is protected by a moratorium, preventing creditors from commencing or continuing action against it without the permission of the administrator or the court.

The administration appointment can be made by way of an application to the court (by a qualifying floating charge holder (QFCH), the company/its directors, a liquidator of the company, a company voluntary agreement (CVA) supervisor of the company or the creditors) or an out-of-court appointment (by a QFCH or the company/its directors). An out-of-court procedure can only be used in certain limited circumstances, such as in cases in which there are no other ongoing insolvency proceedings.

Pre-pack administration sale: This is a mechanism in which the sale of the business and assets of an insolvent company is negotiated prior to the company being placed into administration, and completion of the sale happens shortly after the appointment takes effect. The pre-administration negotiations are supervised by the prospective administrator. The objective is to maximise the value of the business for the benefit of creditors by facilitating the continuity of trade and the preservation of the business' goodwill and reputation. There are additional protections for sales to connected parties.

An administration order will usually be made if the court is satisfied that

- the company is insolvent or is likely to become unable to pay its debts, and
- the administration order is reasonably likely to achieve the purpose of the administration.

Administration in the UK has a default statutory duration of 12 months. However, this can be extended if consent is obtained from the creditors or the court. An administrator is required to carry out an investigation into the conduct of each company director in the period leading up to administration and submit their report to the Directors Disqualification Unit.

Company voluntary arrangement (CVA) (England and Wales, Scotland and Northern Ireland)

A CVA is a formal compromise agreement between a company and its creditors that enables a company to continue to trade under its existing management team and, for the most part, restructure its debts. The company/its directors prepare a proposal which is reviewed by the CVA nominee. Once the nominee is satisfied that the proposal has a reasonable chance of success, they arrange to issue the proposal to all known creditors of the company.

A CVA must be approved by members. Over 75% of creditors voting (by value) must vote in favour of the proposal. In addition, 50% or more of the value of unconnected creditors must vote in favour of the proposal for it to be deemed approved. Once the proposal has been deemed approved, the CVA is binding on all creditors, even if they voted against it.

Once the proposal has been approved, the company will commence making payments to the CVA supervisor in accordance with the terms of the proposal, but usually, this is by way of a series of monthly payments over a defined period (typically 3–5 years but can be for any agreed time frame). The payments are distributed to the company's creditors by the CVA supervisor in accordance with the terms of the proposals.

Where a company entering into a CVA has accumulated trading losses for tax purposes, the continued availability of such losses in future periods is likely to be a crucial aspect of the successful implementation of the arrangement. Assuming that the company continues to trade throughout the CVA process, its unrelieved trading losses may be carried forward to offset against future profits arising from the same trade. Capital gains on asset disposals may also be set off against losses.

The directors of the company remain in control, and the intention of a CVA is to avoid a formal insolvency procedure. However, the terms of a CVA usually assert that, should the company fail to keep up the monthly payments or breach the terms of the proposal, the CVA will be terminated, and the company will enter into a formal insolvency procedure, such as liquidation.

Scheme of arrangement (SoA) (England and Wales)

An SoA is a court-sanctioned compromise or arrangement between a company and its members or creditors, or any class of them. An SoA must be approved by the following:

- A majority in number of each class of creditor/ shareholder voting in person/by proxy
- 75% in value of the creditors and shareholders of each class voting in person/by proxy at each meeting

If approved, the SoA will be binding on all parties, even if those voting within each class voted against it.

The difference between an SoA and a restructuring plan is that with an SoA, there is no requirement for the company to be in financial distress.

Restructuring plan (England and Wales)

Introduced by the Corporate Insolvency and Governance Act 2020 ("CIGA") in 2020, restructuring plans were intended to help combat the economic effects of the COVID-19 pandemic.

Restructuring plans are arrangements made between a company and its creditors and/or shareholders. The restructuring plan must be voted upon by creditors and shareholders in *classes*, and approval requires 75% in value of that class to vote in favour. The plan must then be ratified by the court in order to be binding on the company. The procedure applies to any company which can wound up as per Insolvency Act 1986, which includes foreign entities.

While there are similarities to an SoA (as above), restructuring plans have some pertinent developments:

- The company must be in or is likely to encounter financial difficulties affecting its ability to continue as a going concern.
- The plan must eliminate, reduce, prevent or mitigate the effect of these financial difficulties.

Cross-class cramdown

A plan may still be approved by the court and is therefore binding even if one or more classes dissent. There are two key conditions to be met in order for the court to approve a cross-class cramdown plan:

- The court must be satisfied that any dissenting class(es) would be no worse off than they would be in the event of the relevant alternative.
- At least one class voted in favour (75% in value required), which would receive a payment, or has a genuine economic interest in the company in the event of the *relevant alternative*.

Therefore, this mechanism can be useful if certain creditors are blocking a relevant alternative being put in place, which may lead to the company being rescued as a going concern.

Statutory moratorium process

The Corporate Insolvency and Governance Act 2020 introduced a standalone moratorium process which enables a company that is insolvent or likely to become insolvent to obtain protection from creditors taking enforcement actions.

Similar to the moratorium obtained in an administration process, the statutory moratorium process will stop actions, such as the following:

- No petition for winding-up can be presented (unless made by the directors).
- No administration application can be made, or no administration order can be granted (unless it is made by the directors).
- No receiver can be appointed.
- Landlords cannot exercise the right of forfeiture of a lease.
- No creditor can take action to enforce any security under a hire purchase agreement.
- No creditor can take action to repossess assets under a retention of title clause.

The application for a moratorium is made to the court by the directors of the company via a *monitor*, who must be an insolvency practitioner. The key role of the monitor is to make a statement that the company is likely to be rescued as a going concern.

The moratorium lasts for 20 business days; it can be extended for an additional 20 business days without creditor consent and be extended beyond 40 business days and up to 1 year with the consent of the creditors or the court.

Receivership

Receivership is a method of enforcing security; it is a process in which a receiver is appointed by a secured creditor to take control of a company's assets which are secured to the creditor and to sell them in order to repay the company's debts to the specified lender.

A receiver can be appointed by a secured creditor, such as a bank, on foot of the security they hold if the company has defaulted on its loan payments/breached loan covenants.

A receiver's powers are set out in the security documents as opposed to a statute.

Liquidation (England and Wales, Scotland and Northern Ireland)

Liquidation is a legal process in which a company is wound up and eventually dissolved. There are two types of liquidation:

Voluntary liquidation: The members (shareholders/investors/owners) volunteer to end the existence of the company because the company is coming to the end of its purpose or is insolvent.

For both members' voluntary liquidation (MVL) and creditors voluntary liquidation (CVL), resolutions must be passed to recommend to the shareholder(s) that the company be placed into such a procedure, and the reasons for this, referring to the company's assets and liabilities or the reason for which it cannot continue.

If a company is solvent, MVL is often the most relevant procedure to use. If a company is insolvent, two liquidation processes are used:

- CVL
- Compulsory winding-up

Compulsory liquidation: The court makes an order that the company cannot continue, having had an application made to it (by way of a winding-up petition) by a member, a director, the court or (in most cases) a creditor.

The MVL and CVL processes involve appointing a liquidator (who must be a licenced insolvency practitioner) to realise the company's assets in order to make a payment to the company's stakeholders, after which the company is dissolved. The liquidator will be proposed by the members, and creditors will vote to approve the appointment of the liquidator or propose an alternative nomination. This is conducted by way of a decision procedure (England and Wales, Scotland) or a creditors' meeting (Northern Ireland).

The liquidator has a number of powers, as set out in statutes, and duties to carry out their role. A CVL liquidator is required to carry out an investigation into the conduct of each company director in the period leading up to liquidation and submit their report to the Directors Disqualification Unit.

Overview of personal insolvency proceedings: eight main proceedings

Individual voluntary arrangement (IVA) (England and Wales, Northern Ireland)

An IVA is a flexible compromise agreement that allows an individual to offer up assets or income to creditors. It is a formal, legally binding agreement between an individual and their creditors. An IVA can be set up by way of monthly instalments over a fixed period (usually 5 years) or a short-term arrangement if the individual can put forward a lump sum.

An IVA is usually arranged by an insolvency practitioner. The latter will present the proposal to the individual's creditors for approval. For an IVA to be approved, at least 75% of those creditors voting must vote in favour of it.

In addition, 50% or more of unconnected creditors must vote in favour of the proposal. The individual's creditors are legally bound by the IVA, even if they voted against it or abstained from voting, and they must not take any further action against the individual to recover their debts. The proposal will usually provide for a certain level of the individual's debts to be written off.

Trust deed (Scotland)

A trust deed is a legally binding debt solution available to individuals in Scotland. It enables an individual to repay their debts over a fixed period of time, usually 4 years, while being protected from legal actions by their creditors.

The process of a trust deed begins when an individual contacts an insolvency practitioner, who will assess their financial situation and determine if a trust deed is a suitable solution. If so, the insolvency practitioner will create a proposal for the trust deed, which outlines the individual's income, expenses, assets and liabilities. It is then sent to the creditors for approval. If the creditors representing at least two-thirds of the individual's debts agree to the proposal, the trust deed will become legally binding.

A trust deed differs from a debt arrangement scheme (DAS) in that a trust deed is a formal legal arrangement between a person and their creditors, whereas a DAS is a statutory debt management programme administered by the Scottish government. In addition, a trust deed is typically used to deal with unsecured debts, whereas a DAS can be used to deal with both unsecured and secured debts, such as mortgages.

Debt arrangement scheme (DAS) (Scotland)

A DAS is a debt management programme in Scotland that allows individuals to repay their debts over an extended period of time while protecting them from legal actions by their creditors.

The process of a DAS begins when an individual applies to a DAS-approved money adviser to set up a DAS plan. The money adviser will assess the individual's finances, including their income, expenses and debts, and will create a proposal for a manageable monthly repayment amount. The proposal will be sent to the individual's creditors for approval. If the majority of the creditors agree, the DAS plan will be approved by the DAS administrator. Once the plan is approved, the individual will make regular monthly payments to a payment distributor who will distribute the payments to the creditors.

In Northern Ireland, the process is referred to as a debt management plan (DMP), which is an informal programme that can help individuals deal with unsecured debts. Under the DMP, an individual makes a single payment each month to a payment distributor, who makes payment to their creditors.

Breathing space moratorium (BSM) (England and Wales)

A BSM is intended to provide an individual in financial difficulties with some respite from their creditors. The intention is that the BSM will provide a moratorium for the debtor from all qualifying debts for a minimum of 60 days.

The debtor must be able to meet the relevant criteria in order to qualify, mainly that they are an individual who owes a qualifying debt, is domiciled in England and Wales and is not subject to another insolvency procedure.

During the BSM, a creditor is unable to pursue the debtor for liability by any means or to contact the debtor.

An application is made to the Secretary of State, and, if approved, an entry is made on the Individual Insolvency Register. Creditors will be notified by the Secretary of State that the BSM is in place. The BSM continues for 60 days, beginning with the date when the Secretary of State enters it on the Register, unless it ends as a result of the debtor being cancelled.

Debt relief order (DRO) (England and Wales, Northern Ireland)

A DRO is a form of debt relief that allows individuals with low income and very few assets to write off unsecured debts up to a specified level.

An online application can be made via an approved intermediary (such as Citizens Advice bureaux or the National Debtline).

To qualify, the debtor must meet several conditions, including having surplus income not exceeding £75, qualifying debts less than £30,000 and assets not exceeding £2,000.

Under a DRO, an individual's debts are written off after a 12-month period.

Bankruptcy (England and Wales, Northern Ireland)

Bankruptcy is a formal legal process in England and Wales which usually lasts for a period of 12 months (unless the discharge is suspended). It is a way of dealing with debts that one cannot pay. An individual can file their own debtor's application with the court. Alternatively, a creditor can petition for the debtor's bankruptcy should the creditor be owed an amount of £5,000 or more. Before the creditor can petition the court for a debtor to be bankrupt, it is usually required to issue the debtor a statutory demand for payment, which they have 21 days to pay. A debtor can apply to have the statutory demand set aside in certain circumstances.

Once the court issues a bankruptcy order and depending on the value of the debtor's assets, the debtor's estate will be placed under the control of either the official receiver or a trustee in bankruptcy (TiB). The TiB must be a licenced insolvency practitioner and is responsible for realising the assets within the debtor's estate in order to make a distribution to creditors.

The individual will have to comply with certain requirements, such as providing financial and other information to the TiB, attending interviews and not incurring further credit without the TiB's approval.

Although the bankrupt is usually discharged automatically after 12 months, the TiB can request that the discharge be suspended if, for example, the bankrupt has not complied with the requests of the TiB.

Bankruptcy does not deal with all debts. For example, court fines, maintenance payments and student loans are not included in bankruptcy; these are called *non-provable debts*.

Sequestration (Scotland)

Sequestration (also known as bankruptcy) is the legal process by which an individual is formally declared insolvent. The sequestration laws in Scotland are very similar to the bankruptcy laws in England, Wales and Northern Ireland.

Sequestration can be entered into voluntarily by an individual by way of a debtor's application or forced by way of a creditor's petition. A creditor must be owed a minimum of £3,000 to sequester an individual.

The process usually lasts for a period of 12 months, after which the individual will be discharged, and any debts that fall into the process will be written off. If an individual has sufficient surplus income, the individual may be required to make monthly contributions for a period of 4 years.

Minimal asset process (MAP) (Scotland)

This is a form of bankruptcy that is available to individuals with low income, few assets and relatively low levels of debt. Under the MAP, an individual's assets are realised to settle their liabilities, but the process is much quicker and less expensive than traditional sequestration. To be eligible for the MAP, an individual must meet certain criteria, including having low income and asset levels.

The bankruptcy details of the MAP will be added to a public register, called the Register of Insolvencies, for a period of 5 years. A MAP will normally last for 6 months, after which an individual's debts are usually written off. However, the term can be extended.

Key contacts in United Kingdom

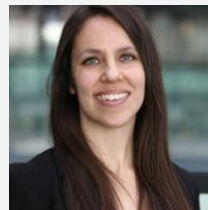


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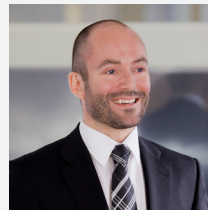


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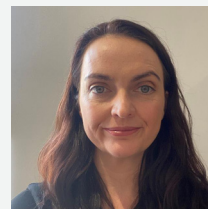


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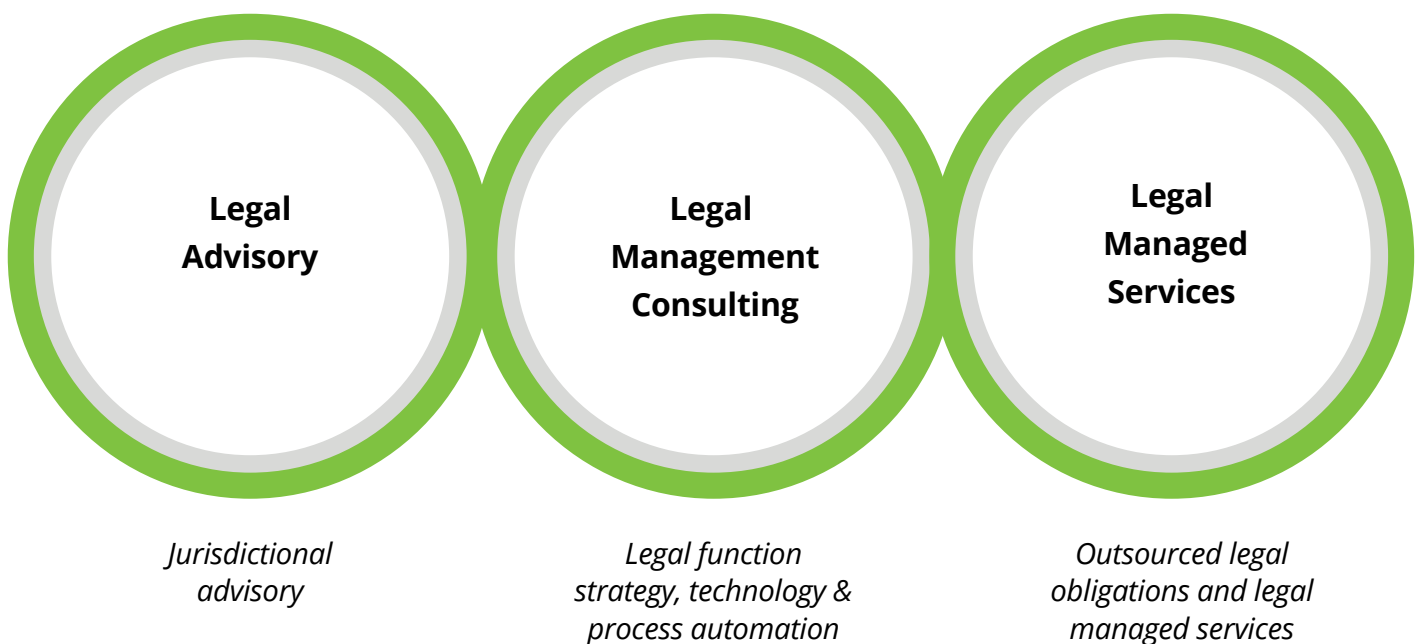


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