Information on insolvency and restructuring proceedings in Poland, Germany and France
For this analysis, we selected Poland as the key CEE market and two major Western European economies – Germany and France. We look into legal proceedings available in all three countries for companies that get into financial difficulties. Two options are available:

- **Restructuring**: the main purpose of restructuring proceedings in Poland and in France is to avoid the debtor’s insolvency. There are no formal restructuring proceedings in Germany except for the bond restructuring.

- **Insolvency**: the main purpose of the insolvency proceedings in all three jurisdictions is liquidation of the company’s business and satisfaction of the creditors’ claims.

Creditor rights in Poland fall in between those in Germany and those in France

Three countries have three approaches towards restructuring and insolvency – creditors have strongest rights in Germany where restructuring is based on mutual negotiations between the debtor and its creditors with highly regulated insolvency proceeding including elements of restructuring, followed by Poland with relatively wider models of restructuring allowing on the one, hand the debtor entering into discussion with its creditors on regulated ground and on the other hand, saving certain rights for the creditors to have influence on the course of the proceeding, and weakest in France where the rights of the debtor are relatively widest offering them different restructuring solutions and protection. French law is very protective of employees’ rights (role of social shock absorber).

At the moment, European restructuring models vary across different jurisdictions and currently there is no unified approach towards this topic. However, a new EU Directive 2019/1023 on preventive restructuring frameworks on discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt has a goal of creating more alignment in restructuring processes across the European Union.
In Poland, restructuring may consist of reaching an arrangement of the debtor with the creditors that will allow for an optimal restructuring of the debts and for the business to remain operational. Restructuring proceedings may be started if the debtor is either insolvent or at risk of insolvency. In principle, proceedings may be initiated by the debtor or in specific scenario by a creditor (see option d) below). The goal of the restructuring proceeding is an arrangement with the creditors that upon approval by the court must be fully complied with the debtor.

Reaching an arrangement with creditors is possible in four types of proceedings:

a) arrangement approval proceedings  
(postępowanie o zatwierdzenie układu) – initiated by the debtor, least formal of all restructuring proceedings, total claims disputed by the debtor do not exceed 15% of total claims, the debtor itself: 1) prepares the arrangement propositions, 2) chooses the entity/person that will act as the arrangement supervisor, and 3) collects the votes of the creditors, the arrangement is adopted by majority of creditors entitled to vote and representing at least 2/3 of total receivables, the arrangement then needs to be approved by the court, debtor is allowed to manage its company but until the agreement is approved by the court, he is not protected against actions by its creditors, this type of the proceeding is usually used when the debtor is certain that it will manage to convince its creditors to enter into an arrangement;

b) accelerated arrangement proceedings  
(przyspieszone postępowanie ukladowe) - initiated by the debtor, total claims disputed by the debtor do not exceed 15% of total claims, court decides about opening of the accelerated arrangement proceeding within a week from submitting of the relevant application by the debtor (instructional term), the procedure should last app. 2-3 months, the arrangement may relate to all or to part of the claims of the debtor, the arrangement is adopted by the majority of voting creditors representing at least 2/3 of total voting receivables, court appoints the court supervisor who supervises actions of the debtor and prepares the restructuring plan, the arrangement then needs to be approved by the court, debtor is allowed to manage its company within ordinary course of business, after the opening of proceedings, the debtor has protection against certain actions of creditors, this type of proceeding is chosen by the debtors who need court protection from ongoing enforcement;

c) regular arrangements proceedings  
(postępowanie układowe) - initiated by the debtor, usually used by the debtors which do not qualify for proceedings described under a) and b) above i.e. where total disputed claims by the debtor exceed 15% of total claims (unlike a) and b)), the debtor shall substantiate his ability to pay current costs of the arrangement proceedings and obligations incurred thereafter, court decides about opening of the arrangement proceeding, the arrangement must relate to all claims of the debtor, the arrangement is adopted by the majority of voting creditors representing at least 2/3 of total receivables, court supervision is stricter than in case of accelerated arrangement proceeding and arrangement approval proceedings, after the opening of proceedings, the debtor has protection against certain actions of creditors, debtor is allowed to manage its company within ordinary course of business;
d) Remedial proceedings (postępowanie sanacyjne) – may be initiated by any creditor or by the debtor, this proceeding is the most formal one, the debtor must substantiate his ability to pay the costs of remedial proceedings and obligations incurred after the date of the opening of the proceedings, on an ongoing basis, after the opening of proceedings pending enforcement is suspended, the debtor may take remedial actions such as: 1) reduction of number of employees, 2) receding from mutual contracts not performed in full, management of the debtor’s company is held by the administrators appointed by the court, the administrator prepares the restructuring plan, the arrangement is adopted by the majority of voting creditors representing at least 2/3 of total receivables, final approval of the arrangement by the court.

Restructuring may also consist of informal remedial actions understood as legal and factual actions intended to improve the economic situation of the debtor and reinstate its ability to carry out its obligations, at the same time protecting it against enforcement.

Since 2016 (when the restructuring law was introduced) till end of 2019 there were 1501 restructuring proceedings opened in Poland of which 419 (28%) were finished by a final arrangement and 486 (32%) were unsuccessful and thus discontinued by the court and 595(40%) are still ongoing. The average time of finishing of the restructuring proceeding in Poland is approximately 12 months after its opening. In terms of effectiveness, the most efficient are proceedings for the approval of an arrangement (postępowanie o zatwierdzenie układu) – 93% of opened proceedings (27 out of 29 proceedings) ended with the actual arrangement, which is usually due to the fact that the parties manage to agree on the manner or repayment of debts prior to opening of the restructuring proceeding. The proceeding used mostly by the debtors is an accelerated arrangement proceeding (przyspieszone postępowanie układowe), in years 2016 – 2019 there were 937 opened proceedings out of which 297 (31%) were finished with the arrangement, 288 (31%) were discontinued by the court and 352 (38%) are still ongoing. Yet, in practice this type of proceeding lasts in average 9,8 months instead of 2-3 months (as per legal regulations). The regular arrangement proceedings (postępowanie układowe) were opened in the relevant period 159 times of which 40 (25%) were successful (arrangement was adopted), 63 (40%) were discontinued and 56 (35%) are still ongoing. The least efficient are the remedial proceedings (postępowanie sanacyjne) – only 14% thereof are successful (54 out of 376) in reaching an arrangement with the creditors, 135 (36%) were discontinued by the court and 187 (50%) are still ongoing. This may result from the fact that this type of proceeding is usually used by the debtors having the most difficult financial situation¹.

¹Restructuring in Poland, Annual report 2019, SpotData, ZFR S.A.
One of the main objectives of the French pre-insolvency and insolvency law is to promote reorganization at a preventive stage and prompt creditors to take a more active role in pre-insolvency and insolvency proceedings, essentially through creating a safer environment for them to extend new credit facilities during both pre-insolvency and insolvency phases. The major innovation was the creation in 2005 of safeguard proceedings (procédure de sauvegarde), which is intended to enable debtors that are in financial distress, but not yet insolvent, to reorganize and restructure under the court's protection (essentially with a stop of enforcement actions subject to very few exceptions) and negotiate a consensual restructuring plan with creditors. The restructuring proceeding is initiated by the debtor and may be started when the debtor either is likely to face financial difficulties or may prove that such difficulties already exist. The major French pre-insolvency and insolvency proceedings are:

1. Amicable and confidential proceedings
   a) ad hoc proceedings (mandat ad hoc) – available in case the debtor is solvent and likely to face financial difficulties, special mediator (“mandataire ad hoc”) assists (under the supervision of the President of the Commercial Court) the debtor to negotiate an agreement with its main creditors (unanimity is required) but agreement cannot be imposed on dissenting creditors, proceeding does not interfere with the regular company management;
   b) conciliation (conciliation) - available in case the debtor in distress that is facing legal, economic or financial difficulties, whether proven or only anticipated. The debtor may already be in suspension of payments (i.e. insolvent) but for no longer than 45 days. A conciliator assists (under the supervision of the President of the Commercial Court) the debtor to negotiate an agreement (unanimity is required) with its main creditors, proceeding does not interfere with the regular company management, allows the “pre-pack” asset sale plan;

2. Public court driven proceedings
   a) accelerated safeguard proceedings (sauvegarde accélérée) – prior attempt for conciliation proceeding is required, proceeding must be supported by 2/3 creditors majority in value, available for entrepreneurs fulfilling 1 of 3 of the following thresholds if the debtor does not issue consolidated accounts : 1) up to 20 employees, 2) up to EUR 3 million annual turnover, or 3) up to EUR 1.5 million balance sheet, a court receiver supervises the debtor and assists the negotiations of the safeguard plan, length: 3 months, may be finished by the adoption of the safeguard plan confirmed by a court;
   b) accelerated financial safeguard proceedings (sauvegarde financière accélérée) – may be adopted with the same criteria as the safeguard proceeding with one additional condition – the adoption of the safeguard plan is made only by financial creditors, only financial creditors are involved, length: 1-2 months, may be finished by the adoption of the safeguard plan confirmed by a court;
   c) safeguard proceedings (sauvegarde) – The goal is to facilitate the reorganization of the business in order to allow continuation of the economic activity, preservation of employment and settlement of liabilities. The debtor must be solvent but meets difficulties which it is not able to overcome on its own, a court appointed receiver supervises the debtor and assists the negotiations of the safeguard plan, length: up to 18 months, may be finished by the adoption of the safeguard plan confirmed by a court;
d) receivership (*redressement judiciaire*) – The debtor must be insolvent but a reorganization seems possible. Proceedings initiated by the debtor, creditor or public prosecutor, must be filed within 45 days from the suspension of payments, the court appoints the receiver who supervises the debtor. Proceedings may be held maximum by 18 months. The possible outcomes are the following:

- Success: reorganization plan (“Plan de Redressement”) which is quite similar to a safeguard plan but can be challenged by outsider third party (purchaser) bidding for a transfer of assets plan (“Plan de cession”) whereby viable business as a whole or per standalone branch of activity and part or all the assets and employees are taken over by a purchaser

- Failure: the receivership is converted into liquidation (under e) below),

e) liquidation (*liquidation judiciaire*) - The debtor must be insolvent and a reorganization is obviously impossible. Proceedings initiated by the debtor, creditor or public prosecutor, must be filed within 45 days from the suspension of payments. The court appoints the liquidator. Two possible outcomes: transfer of assets plan (“Plan de cession”) or several sales of isolated assets (sale by mutual consents or by a public sale).

According to the 2019 balance sheet "Insolvencies and Company Safeguards in France" (*Défaillances et Sauvegardes d'Entreprises en France*) published by the Altares Group, the historical expert and reference point for information on companies, the number of companies that were subject to liquidation, receivership or safeguard in 2018 and 2019 in France is as follows:

<table>
<thead>
<tr>
<th>Proceedings</th>
<th>Number of companies (2018)</th>
<th>Number of companies (2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquidation</td>
<td>37,214</td>
<td>35,156</td>
</tr>
<tr>
<td>Receivership</td>
<td>16,359</td>
<td>15,875</td>
</tr>
<tr>
<td>Safeguard</td>
<td>1,054</td>
<td>971</td>
</tr>
<tr>
<td>Number of employees concerned</td>
<td>171,000</td>
<td>173,800</td>
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</tbody>
</table>
In Germany there are no regulations constituting legal frames for preventive restructuring procedure (apart from bond restructuring), such as a scheme of arrangement.

Nevertheless, German debtors and creditors may enter into contractual restructuring proceeding which is permitted as long as there is no obligation to file an insolvency petition. Contractual restructuring may be done *inter alia* in following forms: a) negotiations of payment deferrals, b) trustee relationship relating to holding and sale of the shares in the debtor, c) restructuring of debts.

The main goal of the insolvency proceeding is to sell the debtor’s assets and to distribute the proceeds (after deduction of costs) to all creditors equally. The sale can take place by selling the business as a whole to an investor, who will continue to run the business. Insolvency proceeding may be held as:

a) standard insolvency proceeding divided into preliminary insolvency proceeding (*Vorläufiges Insolvenzverfahren*) and insolvency proceeding (*Insolvenzverfahren*) – proceeding initiated by the debtor or any of its creditors, the purpose of the preliminary phase of the proceeding is appointing by the court of the preliminary insolvency administrator protecting the debtor’s estate against changes detrimental to the creditors and continuing the debtor’s enterprise until the insolvency court decides on opening of the insolvency proceeding. Insolvency proceeding is opened in case of illiquidity and over indebtedness within three weeks after occurrence of insolvency reason. In the course of this proceeding the administrator takes over the control from the management aiming at the satisfaction of the creditors by way of liquidation of assets or by reorganization of the debtor’s enterprise;

b) special insolvency proceedings such as 1) insolvency plan (*Insolvenzplan*), 2) self-administration (*Eigenverwaltung*), and 3) protection proceeding (*Schutzschirmverfahren*) – which are variations of the regular insolvency proceeding allowing to achieve various goals such as maintaining the insolvent entity due to open contracts or licenses (insolvency plan), maintaining the management of the debtor by the current management (self-administration) or maintain reorganization under the creditor protection (protection proceeding).

In 2019 German insolvency courts reported 18.749 applications for business insolvencies, which was a 2.9% decline compared with 2018. 13.609 insolvency proceedings have been opened, whereas the opening of 5,140 insolvency proceedings has been rejected by the courts due to a lack of sufficient insolvency estate. The special proceeding of self-administration is estimated to represent a share of only 1.4% in 2019. As this special proceeding was applied primarily in insolvency proceedings of medium- and large sized businesses the share for businesses insolvencies with more than 50 employees was estimated to amount to approximately 25%. The number of business insolvency applications in 2019 fell to the lowest level since the enactment of the Insolvency Statute in 1999. An increase was last recorded in the crisis year 2009 (+11.6% compared with 2008). The insolvency courts furthermore reported that the prospective debts owed to creditors amounted to just under 26.8 billion euros in 2019. In 2018 they had totalled roughly 21.0 billion euros. This increase in prospective debts despite the smaller number of business insolvencies is due to the fact that in 2019 business insolvency requests were filed by a larger number of economically important businesses than in 2018.
European plans for preventive restructuring

On 26 June 2019 a new EU Directive on preventive restructuring frameworks on discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the Directive) was published under number 2019/1023. Member States must implement the Directive by 17 July 2021, with possible extensions of up to one year. The Directive looks to ensure that there are minimum restructuring measures available across Europe to enable debtors in financial distress to solve their problems at an early stage and avoid formal insolvency proceedings. The Directive is advertised as promoting mechanisms which will prevent the build-up of non-performing loans and ensure that debtors have access to restructuring tools, leading to a reduction in the risk of those loans becoming problematic.