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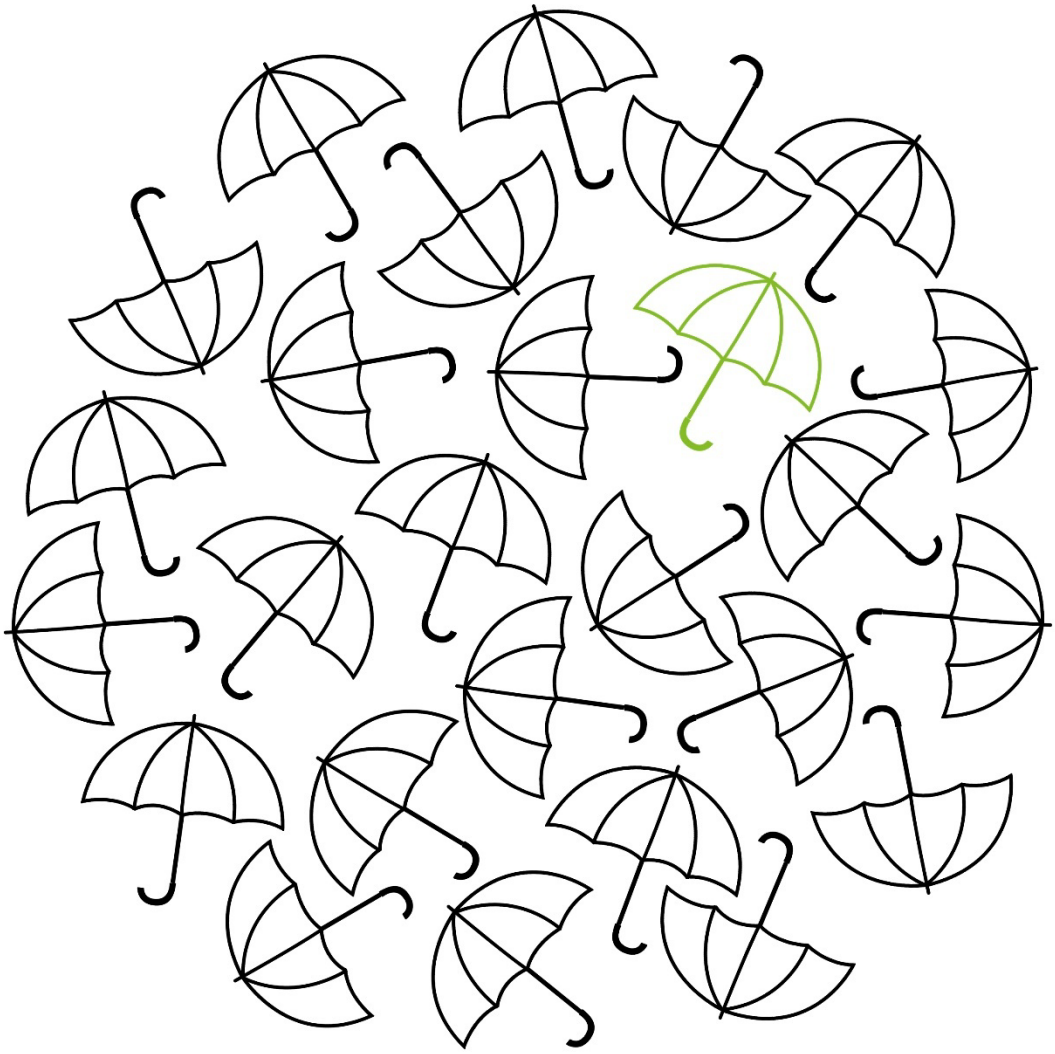

A guide to pre-insolvency and insolvency proceedings across Europe

January 2017

Contents

Introduction

Dear Reader,

According to European Commission, "*companies and individuals in EU are increasingly establishing business activities or economic interests in EU countries other than where their core activities are located*".

At the same time the global financial crisis of 2007 - 2008 leading to the great recession of 2008 – 2012 is still being felt and has pushed many businesses into a state of instability. Although the insolvency rates in EU are falling (unlike other regions in the world), the annual number of failures still remains above the levels before the crisis in several Member States and some business leaders are struggling with difficult choices about the future. There have also been significant reforms since the last edition of the guide at national and EU level with a recast EU Insolvency Regulation 2015/848 May 2015.

Deloitte Legal's insolvency experts bring years of experience, helping clients in financial distress or recovery mode by providing options such as restructuring outside of insolvency proceedings, structured sales and assistance with cross-border insolvency and pre-insolvency proceedings.

In Europe Deloitte Legal's Insolvency Group[1]has helped facilitate pan-European and other regional legal advice related to insolvency matters including:

- businesses having claims against bankrupted European companies;
- businesses purchasing a distressed company with European subsidiaries; or
- groups of companies with cross border activities within Europe facing financial difficulties themselves.

Since then a number of experienced legal professionals from other countries around the world have joined Deloitte Legal's Insolvency Group. Additionally, wework with other Deloitte or Deloitte Legal colleagues who have specialized skills in finance, operational restructuring, tax or labor law to provide businesses with guidance based on multiple points of view. We also have experience of working successfully with third parties such as banks, other law firms, insolvency practitioners, courts, credit insurers, and public authorities.

This guide provides an overview of and insight into the main provisions of bankruptcy laws in various European countries. It has been prepared by Deloitte Legal Insolvency Group practitioners with the support and contribution of Deloitte Legal practices in 19 countries[2] to help companies in financial crisis understand the different regimes and regulations that may apply.

As with all guides of this type, the content is general in nature and does not take into account individual facts and circumstances nor of any changes that may have occurred around or after publication date. None of the contributors are responsible in any way for reliance placed by any person on the content of this publication and it is strongly recommended that you obtain professional advice before taking any action or decision that will affect your business or your finances.

Yours sincerely,

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[1] 'Deloitte Legal' means the legal practices of Deloitte Touche Tohmatsu Limited (DTTL) member firms or their affiliates that provide legal services. For legal regulatory and other reasons not all DTTL member firms provide legal services. As used in this guide the terms 'Deloitte Legal's Insolvency Group', 'we' 'us' 'our'refer to the individual practices within the relevant Deloitte Legal practices in the DTTL member firms providing insolvency and related services to clients. Neither Deloitte Legal nor the Deloitte Legal Insolvency Group include representatives from United Kingdom, where the contributors to this guide are Mishcon de Reya LLP, Gilson Gray and Tughans which are separate and independent law firms.

[2]See end of the guide for a list of the contributing countries and legal practices.

[3] Taj is the Deloitte Legal practice in France.

EU Regulation on insolvency

I. Outline of the key EU Regulations

Insolvency law in the EU is regulated primarily through Regulation No 1346/2000 as updated by Regulation 2015/848 which comes into effect from 26 June 2017.

If a company is established in several EU Member States, the opening of insolvency proceedings involves solving 3 classic questions:

- Which court has jurisdiction?
- What is the applicable law?
- What will be the recognition of the proceedings initiated in the various Member States involved?

The 2000 regulation which came into force on 31 May 2002 was the first attempt at rules designed to facilitate cross border insolvency proceedings. It established common rules on:

- the court competent to open insolvency proceedings whenever the debtor has activities, assets or creditors in more than one Member State;
- the applicable country's laws which should govern insolvency proceedings within the EU;
- the recognition of the court's decisions when a debtor (a company, a trader or an individual) becomes insolvent

The system is based on the location of the Center Of Main Interests (**COMI**) of the debtor company:

- The court of the Member State where the COMI is located has jurisdiction to open the **main** insolvency proceedings
- The place of its registered office is presumed to be the COMI in the absence of proof of the contrary
- According to case law, COMI is the company principal place of direction and administration
- COMI can be located in another Member State
- The competent court must applies its national insolvency law
- The effects of these insolvency proceedings are recognized EU-wide, without further formality
- Local creditors can claim for the opening of **secondary** proceedings in the Member State where the debtor company has establishments
- The **main** proceedings have an universal effect and **secondary** proceedings are restricted to the debtor's assets located in the Member States where they are opened
- This Regulation also contains rules on the coordination of main and secondary insolvency proceedings

Currently, EU Regulation on insolvency applies to all Member States of the EU with the exception of Denmark: 27 Member States are affected by this Regulation.

E-Justice Portal

EC Regulation of 29 May 2000 Communication

Main proceedings Secondary proceedings

Hybrid and pre-insolvency proceedings

Insolvency Practitioners Center of Main interest (COMI)

Recast EU Regulation of 20 May 2015

Cross border Insolvency proceedings

Harmonization 27 Member States

Extension of scope Second chance

Group companies Electronic Insolvency registers

Coordinator COMI shift Forum shopping

Group coordination proceedings

Process for lodging claims

II. Updated 2015 Regulation

The recast Insolvency Regulation of 20 May 2015 entered into force on 26 June 2015 and will apply to insolvency proceedings from **26 June 2017**.

In a context where company's activities have more and more cross-border effects, EU Regulation of 20 May 2015 meets the following requirements:

- Improving its functioning and repair its inadequacies
- Catching up the gap with the new economic reality
- Taking into account the evolution of practices and the laws more responsive to prevention of difficulties and mechanisms to promote the turnaround
- Taking into account the EU enlargement to Central Europe
- Avoiding forum shopping which consists for a debtor to take advantage of insolvency proceedings in the most favorable jurisdiction that will best serve its interests to the detriment of creditors

A. Key changes include

- Extension of scope to cover hybrid and pre-insolvency proceedings
- Codification of determination of COMI for the opening of main insolvency proceedings
- Secondary proceedings where a company has an establishment in another Member State
- Group companies
- Registers of insolvency proceedings: greater transparency
- Improving rights of foreign creditors: process for lodging claims

1. Extension of scope to cover hybrid and pre-insolvency proceedings

- Proceedings involving only part of creditors
- Situations where a debtor is not insolvent but only under the supervision of the judicial authority while retaining the control of its affairs
- Pre-insolvency proceedings
- Giving a "second chance" to a debtor (individual entrepreneurs)
- Provisional proceedings (before final court decision confirming insolvency)
- Situations where a debtor encounters financial difficulties which do not create a real threat of insolvency (e.g., a debtor who has lost a significant contract)
- Ambitious and pragmatic goal: adjustment to the reality of new insolvency regulations
- But limited only to public proceedings, confidential and informal proceedings are excluded

2. Codification of determination of COMI for the opening of main insolvency proceedings

- The international jurisdiction of the Member States courts to open insolvency proceedings is better specified and framed
- COMI remains the place where the debtor company conducts the administration of its interests on a regular basis (stable place) and the place of the registered office is presumed to be the COMI
- New condition: this presumption only applies if the registered office has not been moved to another Member State during the three months prior to the opening of proceedings
- Court must check its own jurisdiction. In case of doubt, it must require the debtor additional evidence. If COMI is not located in its territory, it must refuse to open main insolvency proceedings
- COMI must be ascertainable by third parties with special attention to creditors and their perception of the place where the debtor manages his interests: way to ensure the safety of third parties who deal with the debtor.
- Third parties (mainly foreign creditors) are entitled to challenge the COMI
- Innovation: COMI of individuals is now defined
- Regulation reduces the hazards and legal uncertainty: it seeks to prevent fraudulent or abusive forum shopping / COMI shift

3. Secondary proceedings where a company has an establishment in another Member State

- No longer be limited to liquidation proceedings to allow the recovery of profitable establishments
- New definition of 'establishment': any place of operations where the debtor carries out a non-transitory economic activity with human means and assets for at least three months
- Significant change: the court may dismiss the request for opening secondary insolvency proceedings provided that in the main proceedings the insolvency practitioner undertakes to treat local creditors as they would be treated under secondary proceedings (same rights in the allocation of funds)
- This undertaking must be approved by the known local creditors
- Local creditors may challenge the proposed project of distribution
- We may assist to a competition between insolvency practitioners of different Member States
- Insolvency practitioners will need to have support (legal, financial, tax and employment law advices and assistance) in foreign jurisdictions when dealing with pan-European Insolvency procedures

4. Group companies

- Groups of distressed companies were ignored by EC Regulation of 29 May 2000
- Currently, each insolvent debtor company is subject to separate insolvency proceedings in the place of its COMI
- New framework for group insolvency proceedings
- Goal: improving the efficiency of insolvency proceedings concerning different members of a group companies to encourage cooperation across the Group and rescue of the group as a whole
- First innovation: cooperation and communication (i) between insolvency practitioners, (ii) between courts, (iii) between insolvency practitioners and courts. Such cooperation must be appropriate to facilitate the effective administration of the proceedings
- Second innovation: group coordination proceedings
  - Any insolvency practitioner can request the opening of a group coordination proceedings
  - Insolvency practitioners may decide (2/3 majority) which court is the most appropriate to open the group coordination proceedings
  - The court opens the group coordination proceedings, appoints the coordinator (independent third party) and decides on the outline of the coordination
  - Insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan, but it's not binding
  - Main tasks of the coordinator:
    - He outlines recommendations for the coordinated conduct of the insolvency proceedings
    - He proposes a group coordination plan: comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies
    - He mediates any dispute between insolvency practitioners
  - This new tool is undoubtedly a progress in the treatment of groups insolvency proceedings
  - The protection of creditors remains a major goal
  - A more ambitious goal of efficiency of the group coordination proceedings should have led the European Parliament to give a binding effect to this measure
  - The quality of the relationships between insolvency practitioners and the authority of the coordinator will be the two key points of the coordination program success
  - Group coordination proceedings will be a collective work

5. Registers of insolvency proceedings: greater transparency

National insolvency registers: Member States task

- Member States shall establish and maintain in their territory a free and publicly accessible electronic insolvency register
- A list of mandatory information must be published in the insolvency registers
- These provisions shall apply from 26 June 2018

Interconnection of insolvency registers: European Commission task

- The European e-Justice Portal will be used as central public electronic access point to information provided by the national insolvency registers
- Interconnection of insolvency registers shall apply from 26 June 2019
- On 7 July 2014, the Commission announced a pilot scheme to connect insolvency registers in the Czech Republic, Germany, Estonia, Netherlands, Austria, Romania and Slovenia through the e-justice portal

6. Improving the rights of foreign creditors: process for lodging claims

- Any foreign creditor may lodge its claim using the standard claims form called 'Lodgment of claims'
- The use of this form is not compulsory
- Claims may be lodged in any official language of the institutions of the Union. It may require the creditor to provide with a translation in the official language of the State of the opening of proceedings
- Claims shall be lodged within the period stipulated by the law of the Member State of the opening of proceedings
- But there is a specific protection for foreign creditors: that period shall not be less than 30 days following the publication of the opening of proceedings in the insolvency registerof the Member State of the opening of the proceedings

B. Conclusion regarding the recast Regulation

- This truly innovative Regulation is directly applicable in the 27 Member States as of **26 June 2017** with no need of transcription law
- But it will be inapplicable without national regulatory and legislative provisions: this is a big challenge for the 27 national legislators

III. Main challenge for the future: Harmonization process promoted by the European Commission recommendation of 12 March 2014

- Currently, there is a wide disparity with different or divergent approaches within the EU Member States both as regards availability of appropriate rescue tools and, should rescue not be possible, effectiveness of the individual insolvency regimes and thus outcomes for stakeholders
- This disparity may affect the assessment of credit risk
- EUROPE's capital markets remain relatively underdeveloped and fragmented, notably compared to US:
  - While EU economy is similar to US economy in term of size
  - EU's equity markets: less than half of the US
  - EU's debts markets: less than a third of the US
- We believe that a harmonization of insolvency law would be helpful to encourage an environment in the EU where investors, funds, banks and other stakeholders will be motivated to support relevant distressed companies and help them to survive and thrive
- More broadly, Europe needs stronger capital market which would constitute new source of financing for companies and promoting national convergence of insolvency proceedings will partly remove barriers to cross-border investments in Europe
- According to the banking union communication issued on 24 November 2015:
  - There is a need for greater convergence in insolvency law and restructuring proceedings across Member States
  - The inefficiency and divergence of insolvency laws make it harder to assess and manage credit risk
  - Enhancing legal certainty and encouraging the timely restructuring of borrowers in financial distress is particularly relevant for the success of strategies to address the problem of non-performing loans in some Member States
- But such harmonization should be partial and limited with a gradual introduction of common principles shared by all Member States
- As a first step, focus should be given to agreeing processes for companies and groups of companies that have both cross-border elements and that also meet minimum thresholds of turnover and number of employees
- This process should not be only technical
- It should also takes into consideration the spirit of various national insolvency laws (i.e. cultural differences and different practices, business types, local regulations and requirements)
- On 22 November 2016, the European Commission issued a proposal for a directive on preventive restructuring frameworks,second chance for entrepreneursand measures to increase the efficiency of restructuring, insolvency and discharge procedures
- The proposed approach is expected to cut down the number of jobs lost due to bankruptcy, bring more legal certainty for cross-border investors, turn bad debt into performing credit to facilitate lending and allow entrepreneurs to restart business activities, to keep innovation going and create an additional three million jobs across EU
- This proposal sets common principles and, when necessary, more targeted rules
- It does not harmonise core aspects of formal insolvency procedures
- With this minimum approach, the proposal gives Member States the flexibility to achieve the objectives by applying the rules in a way that is suitable in their national contexts

Executive summary

PRE-INSOLVENCY AND INSOLVENCY PROCEEDINGS IN 19 EUROPEAN COUNTRIES

EU Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings does not provide for one single harmonized European insolvency law.

This verdict was confirmed in March 2016 by the European Commission as follows:

"Notwithstanding its useful impact in clarifying these issues in cross-border insolvency proceedings, it (EU Regulation) does not touch upon the substantive insolvency laws of Member States as such. In addition, in a number of cases, the rules contained in this Regulation may involve the application of the laws of more than one Member State when several companies and/or their establishments are involved in the insolvency. In such situation the differences among the substantive insolvency laws of the Member States may make the coordination of different proceedings and applicable laws more difficult."

Consequently, at that stage, insolvency law matters in European Union must be dealt country by country.

We have classified the primary insolvency regimes in 19 European countries (16 EU Member States and 3 non EU Member States) by distinguishing pre-insolvency proceedings and insolvency proceedings.

According to European Commission, ***"Pre-insolvency proceedings can be characterized as quasi-collective proceedings under the supervision of a court or an administrative authority which give a debtor in financial difficulties the opportunity to restructure at pre-insolvency stage and to avoid the commencement of insolvency proceedings in the traditional sense".***

Number of pre-insolvency and Insolvency proceedings (regimes) in each jurisdiction

Country	Pre-insolvency / Hybrid Restructuring proceedings	Insolvency proceedings
Belgium	6	1
Bulgaria	-	1
Czech Republic	1	3
Finland	1	2
France	5	3
Germany	-	3
Hungary	-	2
Italy	6	2
Luxemburg	3	2
Netherlands	1	3
Norway	2	1
Poland	4	1
Portugal	1	2
Romania	2	2
Spain	2	2
Sweden	1	2
Switzerland	2	3
Ukraine	1	4
UK[4]	2	6

[4] The contributors to this guide (Mishcon de Reya LLP, Gilson Gray and Tughans) are separate and independent law firms from Deloitte pursuant to the criteria of the US SEC

Belgium – EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 7 different proceedings available

Legal framework

Law concerning the continuation of enterprises (2009)

Bankruptcy law (1997)

Pre-insolvency / Hybrid / Restructuring proceedings

1. Ondernemingsbemiddelaar (out of court mediator):

- Opening of the procedure: only the debtor company
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities. Confidential procedure. An independent third party, appointed by the court, will help the company to find a solution for all parties

2. Gerechtsmandataris (court's trustee): trustee appointed by the court

- Opening of the procedure: every third, interested party
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities. A third party, appointed by the court will temporarily have managing powers

3. Minnelijk akkoord (out of court settlement): confidential out of court voluntary agreement

- Opening of the procedure: only the debtor company
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities. The debtor tries to sign a settlement agreement with at least 2 creditors

4. Gerechtelijke reorganisatie- Minnelijk akkoord (Judicial reorganization through settlement): court supervised voluntary agreement

- Opening of the procedure: only the debtor company
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities. The debtor tries to sign a settlement agreement with at least 2 creditors, under the supervision of the court

5. Gerechtelijke reorganisatie-Collectief akkoord (Judicial reorganization through a collective agreement): court supervised collective agreement

- Opening of the procedure: only the debtor company
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities. The debtor drafts a reorganization plan, which has to be voted upon by the creditors and which has to be approved by the court

6. Gerechtelijke reorganisatie - Overdracht van de onderneming (Judicial reorganization through transfer of the enterprise): court supervised sale of the company

- Opening of the procedure: only the debtor company
- Purpose: facilitating the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities by selling the company in whole or in part

Insolvency proceedings

1. Faillissement (Bankruptcy procedure): liquidation procedure

- Opening of the procedure: the debtor, the creditors, the public prosecutor, any temporary receiver appointed by the court and the bankruptcy trustee of the main bankruptcy procedure in another EU country
- Purpose: collective seizure to sell all assets and pay all creditors

Our credentials

Our team advised and represented

- The liquidators of a UK Investment bank in several court proceedings and settlement negotiations
- A UK Bank in several corporate insolvency litigation against several companies in distress and enforcement of various types of securities
- A computer technology company in filing their claim and recovery of assets
- A chain of frozen products in its judicial reorganization through a collective agreement with more than 600 creditors and 400 employees
- The creditors (financial institutions) of a Belgian green energy company

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Bulgaria – EU Member State

Overview of the main insolvency proceedings: 1 proceeding available with different possible outcomes

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 Insolvency of Banks Act - insolvency of banks
- The Insurance Code - insolvency of insurance companies
- The Social Security Code - insolvency of supplementary social insurance companies and funds (including pension funds)
- The Guaranteed Claims of Employees at Insolvency of the Employer Act

Insolvency proceedings

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

- Initiation of the procedure: with lodging a claim with the court by the debtor, the liquidator of the debtor (in case the grounds for opening the insolvency procedure have been identified in the course of a voluntary liquidation procedure), a creditor under a commercial transaction, or the National Revenue Agency.
- Purpose: to ensure the satisfaction of the creditors and opportunities for the debtor's enterprise recovery.
- Main conditions for commencing the procedure: the debtor to be "insolvent" or "over indebted".

Development and outcomes of the insolvency procedure: the insolvency procedure is opened by means of a court resolution declaring the debtor insolvent or over indebted. After that, the development of the procedure depends on the bankruptcy estate and activity of the creditors, or the debtor.

The main scenarios for development and finalization of the procedure are:

- Recovery Plan: a recovery plan may be proposed by the debtor, the syndic, creditors with 1/3 of the unsecured or secured receivables, shareholders holding at least 1/3 of the share capital, 20% of the employees. The plan may envisage deferral of the debts; partial or whole forgiveness of debts; reorganization of the enterprise; other actions, including 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 procedure is 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 and upon request by creditors with not less than 15% of the receivables, the insolvency procedure may be re-opened.

- In cases of failure to adopt a recovery plan, or failure of the debtor to perform its obligations under the adopted recovery plan, or if the court estimates that continuation of the business activity of the debtor will apparently damage the bankruptcy estate – the court declares the debtor to be bankrupted, and the insolvency procedure concludes with 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 case the bankruptcy estate is insufficient to cover the initial expenses, the court declares the debtor insolvent and ceases the procedure. After one year, provided that no creditor claimed re-opening of the procedure, the court orders de-registration of the debtor from the Commercial Register.
- Execution of an out-of-court settlement: at any time during the procedure the debtor and all creditors may negotiate an out-of-court agreement, which puts an end of the procedure. In case of breach of the agreement by the debtor, creditors with 15% or more of the receivables may initiate re-opening of the procedure without the burden to prove over indebtedness or insolvency. At this stage, a recovery plan may not be proposed and agreed upon.

Recent developments in the Bulgarian insolvency law include a draft amendment to the Bulgarian Commercial Act. The proposed changes introduce a procedure for stabilization of companies, prior to their entering into an insolvency procedure. The aim of the proposed procedure is to allow the companies to avoid insolvency. The draft amendment is submitted for discussion into the Bulgarian Parliament, but has not been adopted yet.

Our credentials

- Advice and assistance to a Bulgarian bank in cooperation with our office in Iceland for claiming receivables in a bankruptcy procedure of a bank in Iceland;
- Advising on the requirements and development of the insolvency procedure for a Turkish cosmetic company;
- Advice and assistance in the procedure for the closure of a local subsidiary of a mother company undergoing a bankruptcy procedure in Italy;
- Advising the insolvency administrator of an insolvent production company on the implications and procedures regarding reorganization;
- Litigation procedures and defense of a Hungarian bank in the insolvency procedures of Bulgarian debtors;
- Advising a foreign creditor of a Bulgarian debtor in relation to its claims towards the debtor.

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Czech Republic – EU Member State

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

Legal framework

Act on Insolvency and its Resolution.

Pre-insolvency / Hybrid / Restructuring proceedings

1. Moratorium (Protection against creditors):

- Opening of the procedure: only the debtor may file for a protection period with the insolvency court, within 7 days of the date of the delivery the insolvency petition submitted by the debtor (within 15 days of delivery of insolvency petition by the insolvency court to debtor in case of insolvency petition submitted by creditors).
- Purpose: Moratorium gives the debtor protection (for a maximum period of 4 months) against creditors and a possible court decision on insolvency of the debtor. Primarily, it opens the door to overcome the insolvency and to come to an agreement with creditors. Majority of creditors must agree with the proposal for a moratorium.

Insolvency proceedings

1. Konkurs (Bankruptcy):

- Opening of the procedure: bankruptcy may be initiated by the debtor itself or by any of its creditors.
- Purpose: the goal of Bankruptcy is to proportionally settle creditors' claims through a liquidation of the bankruptcy estate. Unsettled claims or their parts generally do not become extinguished.

2. Reorganizace (Reorganization):

- Opening of the procedure: the debtor or any of its creditors may file for the reorganization
- Purpose: reorganization is initiated by a court decision. Subsequently, a reorganization plan is made. The reorganization plan is a document describing all measures that shall be taken in order to restore the debtor´s business. After the reorganization is completed, business of the debtor should be viable and able to operate again in full power.

3. Oddlužení (Debt discharge):

- Opening of the procedure: only the debtor (natural person or legal entity with no business activity) may apply for a debt discharge.
- Purpose: to set a new start for the debtor either by sale of its property or by fulfillment of the schedule of payments for the time period of 5 years. Creditors should receive at least 30 % of the value of their claims.

Our credentials

- Leading producer of technical fabrics: legal advisory related to the company´s reorganization
- Transportation company: legal services connected with insolvency
- Czech subsidiary of a German construction company: contractual protection against unjustified insolvency petitions

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Finland – EU Member State

Overview of the pre-insolvency and insolvency proceedings: 3 different proceedings available

Legal framework

The Finnish insolvency legislation comprises primarily of two different insolvency proceedings for businesses having financial difficulties or being insolvent. These two proceedings are:

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

Pre-insolvency / Hybrid / Restructuring proceedings

The Finnish insolvency legislation does not include any regulated pre-insolvency proceedings. However, it is possible to try to reach an agreement on a contractual arrangement between distressed debtor and its creditor(s) on voluntary basis. The possibility to reach voluntary contractual arrangements, that aim to solve debtor's financial difficulties, can be considered before entering into judicial insolvency proceedings.

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

- Initiation of the arrangement: The distressed debtor and/or its creditor(s).
- Purpose: The debtor to negotiate an agreement with its main creditor(s) on debt restructuring and possible other means to avoid the debtor becoming insolvent. Informal and confidential procedure. Further, it is possible, if considered beneficial, to validate such an agreement on restructuring plan by the District Court.

Insolvency proceedings

1. Restructuring ("Yrityssaneeraus"):

- Initiation of the procedure: The debtor and/or the 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 the restructuring proceedings.
- Main criteria for the initiation: Restructuring proceeding may be commenced if:
  - The debtor together with two or several of its creditors, whose receivables exceed 1/5 of all debtor's debts, file an application for restructuring jointly, or the creditors, whose receivables exceed 1/5 of all debtor's debts, support the debtor's application for restructuring;
  - The debtor faces imminent insolvency; or
  - The debtor is insolvent.

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

- Purpose: To rehabilitate and to ensure continuation of 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, undertake measures to protect the interest of the creditors' collective and prepare a restructuring programme. The proceedings halts 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 confirmed by a court decision.

2. Bankruptcy ("Konkurssi"):

- Initiation of the procedure: The debtor or the creditor can file a petition for bankruptcy with a District Court which declares the insolvent debtor bankrupt if the prerequisites for the 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 realizing 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 at the commencement of bankruptcy become subject to the authority of the creditors. An estate administrator shall be appointed by the court, who shall see to the management and realization of the assets and to the overall administration of the bankruptcy estate.
- Outcome: The funds gathered through the realization of the debtor's assets shall be distributed to the creditors in accordance with the certified dispursement list. Once the bankruptcy estate has been scrutinized and the debtor's assets realized, the estate administrator shall draw up a final settlement of accounts. The bankruptcy proceedings is 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.

Our credentials

Our team advises

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

Our team advised

- A foreign company with matters relating to Finnish bankruptcy proceedings and available options, in a situation where their Finnish partner in a foreign joint venture had been declared as bankrupt in Finland.
- A domestic client with matter relating to Finnish bankruptcy proceedings and recovery to bankruptcy estate, in a situation, where their client had been declared bankrupt and the estate presented claims against the client.

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France – Leader of the Deloitte Legal's Insolvency Group EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 8 different proceedings available

Legal framework

French bankruptcy law is governed by the Commercial Code (Art L.610-1 to L.680-7 and Art R.600-1 to R.670-6).

Pre-insolvency / Hybrid / Restructuring proceedings

Confidential / voluntary / amicable proceedings - no automatic stay

1. Mandat ad hoc (Special Mediation):

- Initiation of the procedure: only the debtor (company/entrepreneur).
- Condition: any solvent debtor that is likely to face financial difficulties.
- Purpose: a special mediator ("Mandataire ad hoc") assists, under the supervision of the President of the Commercial Court (court is not involved), the debtor to negotiate an agreement with its main creditors (unanimity is required).
- Debtor in possession: the special mediator doesn't interfere with management.
- Informal procedure often used as a first step for the "Conciliation".

2. Conciliation (Conciliation):

- Initiation of the procedure: only the debtor (company/entrepreneur).
- Condition: a debtor facing a proven or foreseeable legal, economic or financial difficulty even if it is insolvent provided it has not been so for more than 45 days.
- Purpose: a conciliator ("Conciliateur") assists, under the supervision of the President of the Commercial Court (court is not involved), the debtor to negotiate an agreement with its main creditors. The agreement reached (unanimity is required) can be (i) noticed by the President of the Commercial Court or (ii) approved by the Commercial Court (approval entails specifics protective legal effects but limits the confidentiality).
- Debtor in possession: the conciliator doesn't interfere with management.
- Since 2014, introduction of a "pre-pack" asset sale plan: the conciliator can be instructed, at the debtor's request and following consultation with creditors who are participating to the Conciliation, to organize a partial or total sale of the business or its assets which will be implemented in the context of a Receivership. It is a hybrid tool that links confidential proceedings and insolvency/public proceedings.

Public / voluntary / court driven proceedings - automatic stay

3. Sauvegarde Accélérée (Accelerated Safeguard): created in 2014 – hybrid - pre-pack

- Initiation of the procedure: only the debtor (company/entrepreneur).
- Main criteria to benefit from this procedure :
  - A prior attempt for Conciliation is mandatory.
  - A pre-packaged restructuring plan aiming to ensure the sustainability of the debtor must be ready and supported by a 2/3 majority in value of each creditors'

committee (i.e. Financial creditors and suppliers) and where applicable, the bondholders' assembly.
  - The debtor can be insolvent, albeit not for more than 45 days prior to the request for the opening of the Conciliation which preceded the Accelerated Safeguard.
  - If the debtor doesn't issue consolidated accounts, 1 of the 3 following thresholds must be exceeded: 20 employees/ M3€ annual turnover/M1.5€ balance sheet.
- Creditors involved: all creditors except employees (they are normally paid).
- A court appointed receiver supervises the debtor and assist with the negotiations of the safeguard plan. A court appointed agent safeguards the interests of creditors.
- Purpose: to overcome the opposition of a minority group of creditors (banks, factors, leasing companies, bond holders and all kind of lenders) refusing to approve an agreement in the framework of a Conciliation where unanimity is required.
- Length of time: 3 months.
- Possible outcomes:
  - Success: A safeguard plan ("Plan de Sauvegarde") is quickly approved by a 2/3 majority in value of each creditors' committee and confirmed by a court decision. Beside discount and payment terms, creditors can choose or be imposed (cram down) a debt–for-equity swap for which the consent of the shareholders is necessary.
  - Failure:
    - The court rejects the safeguard plan approved by the creditors' committees and terminates the procedure.
    - The court acknowledges that creditors' committees could not approve the plan and terminates the procedure.

4. Sauvegarde Financière Accélérée (Accelerated Financial Safeguard): created in 2010 hybrid – pre-pack

- Since July 2014, it is a sub-category of the Sauvegarde Accélérée.
- Initiation of the procedure: same than Accelerated Safeguard.
- Main criteria to benefit from this procedure: same than Accelerated Safeguard with an additional one. The debtor's accounts show that due to the nature of its debts, it is likely that the adoption of a safeguard plan by only the financial creditors is possible.
- Court appointed receiver + court appointed agent: same than Accelerated Safeguard.
- Creditors involved: only financial creditors (banks, factors, leasing companies, bond holders and all kind of lenders).
- Purpose: same that Accelerated Safeguard but only involves financial creditors
- Length of time: 1 or 2 months.
- Possible outcomes: same than Accelerated Safeguard (safeguard plan).

5. Sauvegarde (Safeguard): created in 2005 - very similar to Receivership

- Initiation of the procedure: the debtor (company/entrepreneur).
- Main criteria: The debtor must be solvent but meets difficulties that it is not able to overcome on its own.
- Purpose: to facilitate the reorganization of the business in order to allow continuation of the economic activity, preservation of employment and settlement of liabilities.
- Court appointed receiver + court appointed agent: same than Accelerated Safeguard.
- Length of time: 6 months – further a specific and motivated request from the receiver, the debtor company or the public prosecutor, it can be renewed once for the same duration – Exceptionally and further a request from the public prosecutor, it can be renewed a second time for the same duration (max 18 months).

- Outcome:
  - Termination: upon a debtor's request if the prerequisites for the Safeguard's opening are no longer met (court decision).
  - Success: it shall give rise to a safeguard plan based on debts reorganization imposed on creditors via committees and confirmed by a court decision.
  - Failure: In case of insolvency, Safeguard is converted into Receivership or Liquidation (court decision).

Insolvency proceedings

1. Redressement Judiciaire (Receivership): created in 1985 – public – Automatic stay

- Initiation of the procedure: debtor (company/entrepreneur), creditors, public prosecutor.
- For insolvent debtors with a compulsory filling within 45 days from the suspension of payments date, otherwise the management can be sanctioned.
- Main criteria: The debtor must be insolvent (in suspension of payment).
- A court appointed receiver supervises the debtor and assist with the negotiations of the safeguard plan. A court appointed agent safeguards the interests of creditors.
- Debtor in possession except in case of mismanagement (management displacement).
- Length of time: same duration that Safeguard (max 18 months).
- Outcome:
  - 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 activities and part or all the assets and employees are taken over by a purchaser.
  - Failure: Receivership is converted into Liquidation.

2. Liquidation Judiciaire (Liquidation): created in 1985 – Public – Automatic stay

- Initiation of the procedure: debtor (company/entrepreneur), creditors, public prosecutor.
- For insolvent debtors with a compulsory filling within 45 days (same than Receivership)
- Main criteria: The debtor must be insolvent and a reorganization is obviously impossible.
- Activity: Immediate termination (principle) unless a purchaser is identified (exceptional continuation of activity is authorized by the court for a 3-month period renewable 1 time)
- Management displacement: A court appointed liquidator represents the debtor and safeguards the interests of creditors.
- Outcome: ending the activity and selling all assets via one global sale (transfer of assets plan) or several sales of isolated assets (sale by mutual consents or by a public sale).

3. Rétablissement Professionnel (Professional Recovery): created in 2014 – second chance

- Involves individuals (entrepreneur) only, without employees, with assets of less than €3,000 and who were not subject to a Liquidation in the past 5 years.
- Expression of the concept in vogue of "second chance" given to entrepreneurs in difficulties but non recidivist.
- It doesn't produce the collateral effects of insolvency proceedings such as debtor divestiture (Liquidation). On the contrary, it facilitates its rebound.
- After a simple 4-month investigation, Professional Recovery entails a full erasing of debts.
- If the debtor has lied about his patrimony, the court orders Liquidation.

Our credentials

- Our team advised and represented
  - A French distressed company belonging to an Asian group operating a business of industrial transformation of seafood (M60€ annual turnover - 220 employees) within a pre-insolvency proceedings (conciliation) conducting to a debt restructuring and a share deal (company sale) in favor of a German competitor (court supervised voluntary agreement)
  - A Brazilian company for the takeover of great value equipment owned by a French bankrupted company (Liquidation) operating in the semiconductor industry (court process)
  - A French regional government providing new money and guarantees in favor of an agricultural cooperative being a subsidiary of a huge (M1200€ annual turnover) French group operating in the agribusiness subject to a pre-insolvency proceedings (Conciliation) allowing the financing of new equipment and a debt (M330€ bank debt) restructuring (court supervised voluntary agreement)
  - A French operator for the acquisition of a company business under receivership proceedings operating in the automatic distribution of beverages and snacks within a transfer of assets plan (court process)
  - A US movie star (major creditor and minority shareholder) for lodging its claims against a French company under receivership proceedings operating in the wine and spirits industry (M900€ annual turnover) conducting to a full recovery (100%) in execution of a successful reorganization plan (court process)
  - A French company operating in the semiconductor industry (M100€ annual turnover - 700 employees) within a pre-insolvency proceedings (special mediation) and then for filing a petition for bankruptcy (liquidation)
  - A French company group (M230€ annual turnover - 2500 employees) operating in France and abroad a consulting business (business intelligence, customer relation management, digital marketing) within a pre-insolvency proceedings (Conciliation) conducting to a debt restructuring (court supervised voluntary agreement)
  - One of the first ten players in Europe in the building and construction industry for the preparation of its foreign subsidiary's reorganization plan (cross-border)

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Germany – EU Member State

Overview of the insolvency proceedings: 1 uniform proceeding for reorganization and liquidation with 3 variations

Legal framework

German insolvency law isgoverned by the Insolvency Code (insolvenzordnung)

Standard insolvency proceedings

- Vorläufiges Insolvenzverfahren (Preliminary Insolvency Proceedings): pre-phase of insolvency proceedings
  - Initiation of the procedure: only upon petition by the debtor or any of its creditors to the insolvency court
  - Purpose: a preliminary insolvency administrator (vorläufiger Insolvenzverwalter) appointed by the insolvency court has to protect the debtor's estate against changes detrimental to the creditors, continue the debtor's enterprise until the insolvency court decides on the opening of the insolvency proceedings and to establish whether a reason to open insolvency proceedings exists

- Insolvenzverfahren (Insolvency Proceedings):
  - Opening of the procedure: only upon request by debtor or creditors and only if an insolvency reason is existent. Compulsory filing in case of illiquidity and over-indebtedness within three weeks after occurrence of insolvency
  - Purpose: an insolvency administrator takes over the control from the management. No distinction between reorganization and liquidation proceedings, but a uniform insolvency procedure. The purpose is the collective satisfaction of the debtor's creditors either by liquidation of the debtor's assets and distribution of the proceeds, or by reorganization of the debtor's enterprise.

Special insolvency proceedings

1. Insolvenzplan (Insolvency Plan):

- Opening of the procedure: Insolvency proceedings with an Insolvency Plan will only be initiated if an Insolvency Plan is presented to the insolvency court by the insolvency administrator or the debtor
- Purpose: the Insolvency Plan is only a variation of regular proceedings. The main objective is the reorganization by an arrangement settling the satisfaction of the creditors, the realization of the assets and their distribution, as well as the debtor's liability in deviation of regular insolvency proceedings. Additionally, after an amendment of the Insolvency Code in 2012, the debtor's shareholders can be forced to a debt-equity-swap. An Insolvency Plan makes particularly sense if it is necessary to maintain the insolvent legal entity, e.g. because important contracts or licenses will expire if the assets are transferred to a new company

2. Eigenverwaltung (Self Administration):

- Opening of the procedure: Insolvency proceedings in Self Administration will only commence if the insolvency court has issued a respective order. Furthermore, the debtor must have requested the Self Administration, and no circumstances that justify the expectation that the order will lead to a delay in the proceedings or other disadvantages to the creditors are known
- Purpose: the Self Administration is not a separate insolvency procedure, but only a variation of the regular insolvency procedure to the extent that the debtor or the debtor's directors may continue to manage and dispose of the assets involved in the insolvency proceedings after the commencement order. It is mainly used in reorganization scenarios and requires that the debtor is reliable

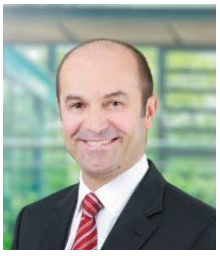
3. Schutzschirmverfahren (Protection Proceeding):

- Introduced in 2012 with the intention to facilitate reorganizations
- Opening of the procedure: not applicable in case of existing illiquidity and only if Self Administration and the envisaged reorganization are not without a reasonable chance
- Purpose: to prepare reorganization by means of a combined Insolvency Plan and Self Administration under creditor protection. The insolvency court grants a period of up to three months to prepare an Insolvency Plan

Our credentials

- Several strategic and financial investors in relation to the takeover of assets from the insolvency administrator of insolvent or distressed companies.
- Advice of a shareholder regarding subsidiaries in crisis and insolvency (care sector).
- Foreign company in the fashion sector regarding insolvency of main client.
- International electronic group in court proceeding in connection with defense against contest of insolvency debtor's transactions by the insolvency administrator.

Specialized lawyers in Germany



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Hungary – EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 2 different proceedings available

Legal framework

Act No. XLIX of 1991 on the Bankruptcy Proceedings and Insolvency Proceedings

Pre-insolvency / Hybrid / Restructuring proceedings

- **The amicable settlement** of any dispute arising from insolvency is possible, however, there are no statutory provisions which mandate the commencement of any mediation or conciliation procedure before initiating the respective insolvency proceeding. Once the statutory conditions of the initiation of such proceedings are fulfilled, the respective party may file the appropriate form with the competent court.

Insolvency proceedings

1. Csődeljárás (Bankruptcy Proceeding):

- Initiation of the procedure: only the debtor company shall be entitled to initiate a bankruptcy proceeding against itself.

- Purpose: the reorganization and reconstruction of the debtor company in order to stabilize its solvency and ensuring its further operation.

- Main criteria:
  - The debtor company is insolvent or threatened with insolvency.
  - The legal representation of the debtor company is mandatory.
  - The court shall appoint an asset manager.
  - The debtor shall be given a 120 days moratorium period regarding its payable debts (except for some privileged debts) for the purpose of reorganizing its operation and restructuring its debts.
  - The registration of claims is subject to the payment of a registration fee.

- Creditors involved: The creditor that
  - 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 become due under the bankruptcy proceeding and that has been registered by the asset manager;
  - has a claim deriving from shipping, supply, service, loan or other contract that becomes due in the future in respect of which the creditor has been already performed and that the asset manager registered.

- Possible outcome:
  - The solvency of the debtor company is solved, a settlement agreement is concluded between the parties 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.

2. Felszámolási eljárás (Liquidation Proceeding):

- Initiation of the procedure: either the debtor company, the creditor, the liquidator or the court that carried out the bankruptcy proceeding and in certain cases the court of company registration shall be entitled to initiate such proceeding.

- Purpose: the termination of the insolvent debtor without a legal successor in the course of which the creditors' claim being satisfied.

- Main criteria:
  - In case the creditor initiates the proceeding it shall point out the legal claim in respect of the debt, the due date of the debt, and the reason why it considers the debtor to be 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. In such notice the creditor shall indicate that in case the debtor fails to fulfil its obligation, the creditor will initiate a liquidation proceeding. This written notice shall be annexed to the application form, otherwise it will be rejected by the court.
  - Only final and binding claims that based on a court or authority decision can serve as a basis for this procedure or those overdue claims that being acknowledged or undisputed by the debtor.
  - The registration of claims is subject to the payment of a registration fee.
  - A liquidator shall be appointed by the court.
  - Two years following to the initiation of the procedure the preparation of the "liquidation closing balance sheet" is mandatory.
  - When satisfying the claims a strict satisfaction order shall be followed.

- Possible outcome: The assets of the debtor company being sold through public auction or tendering and the creditors' claim has been satisfied in a strict sequence. The operation of the debtor company is terminated without a legal successor.

Our credentials

- Advising a Hungarian real estate developer company in connection with the purchase of a claim against a real estate holding company under liquidation.
- Advising a Hungarian investment company in connection with the acquisition of a factoring company.
- Advising a Czech investment company in connection with the purchase of a non-performing loan portfolio of a bank.
- Advising a Hungarian Babk in connection with the enforcement of its claim against a company under liquidation

Specialized lawyers in Hungary

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Italy– EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 8 different proceedings available

Legal framework

Royal Decree no. 267 of March 16, 1942 (“Bankruptcy Law”) and special laws.

Pre-insolvency / Hybrid / Restructuring proceedings

1. “Accordi stragiudiziari con i creditori” (out-of-court composition with creditors): Not court supervised

- Opening of the procedure: Proposal of the company facing a period of crisis (in case there is insolvency, the arrangement may be declared null and void).
- Purpose: Individual arrangement with creditors for reduction of outstanding debt. A particular arrangement named “concordato stragiudiziale” (out of court arrangement with creditors) is executed with all the creditors, who agree to a total or partial waiver of their rights.

2. “Piano Attestato di Risanamento” (attested plan for restructuring): Not court supervised

- An entrepreneur can propose the restructuring of the debts or re-financing of activity on the basis of a plan attested by a third party expert. Any payment made in compliance with the plan is not revoked in case of future bankruptcy.

3. “Accordi di ristrutturazione dei debiti” (agreements for the restructuring of debts):court supervised

- Opening of the procedure: Proposal of the entrepreneur (natural persons and legal persons or other entities which may be subject to bankruptcy carrying out a commercial activity) who are facing a period of crisis (difficulty or insolvency).

- Purpose: Reduction of outstanding debts pursuant to agreements for the satisfaction, also partial, of consenting creditors (including fiscal arrangement), provided that all dissenting creditors are integrally satisfied. If the proposal of the arrangement is approved and accepted in writing by a qualified majority (60% - sixty per cent) of the creditors, the court approves the arrangement deemed attainable.

On 2015 the Italian Legislator introduced a new provision applicable to agreements for restructuring of debts towards banks or financial intermediaries provided that such debts represent, at least, 50% (fifty per cent), of the overall liabilities.

Such provision, called “Accordo di ristrutturazione con intermediari finanziari e convenzione di moratoria” (restructuring agreeement with financial intermediaries and standstill agreements) is aimed to facilitate the enforceability of restructuring agreements. Indeed in such scenario if:

- the restructuring agreement provides for the creation of one or more categories of banks and financial intermediary creditors having the same economic interests; and
- the financial creditors representing at least 75% (seventy five per cent) of the claims of the relevant category approve the agreement
- the debtor may ask the court to make such agreements binding over dissenting financial creditors. A comparable rule is stated for the standstill agreements.

4. "Transazione Fiscale" (agreement with tax Authority): court supervised

5. "Concordato preventivo" (Scheme of arrangement with creditors): court supervised

- Opening of the procedure: Upon application of the debtor (entrepreneur, natural persons and legal persons or other entities which may be subject to bankruptcy carrying out a commercial activity and facing a period of temporary/reversible crisis) submitting the proposed scheme of arrangement [which shall provide for the payment of at least 20% (twenty per cent) of the total amount of the unsecured claims] and a report from an independent expert assessing the truthfulness of the data and the attainability of the scheme, the court assesses the satisfaction of the requirements and declares the procedure open with decree.

- On 2015 the Italian Legislator amended this particular pre-insolvency proceedings, adding two new provisions to implement the procedure of the scheme of arrangement with creditors, with the purpose to provide a more flexible instrument. In this respect, the new provisions state that in the event the scheme of arrangement with creditors provides for:

  – a payment of less than 40 % (forty per cent) of the overall unsecured claims [30% (thirty per cent) in case of arrangements with creditors aimed at ensuring business continuity], one or more creditors representing at least 10% (ten per cent) of the overall claims may file a competing proposal and the related plan not later than 30 (thirty) days prior the date set by the court on which the creditors shall vote on the debtor's proposal and any competing proposal;
  – an offer by a third party to purchase the debtor's assets or business, or any part thereof, the court orders the opening of a competing procedure to find other subjects interested to the purchase of such assets or business.
  – The final approval of the scheme by the court must intervene within 9 (nine) months from the submission of the proposal.

- Purpose: Avoidance of bankruptcy, overcoming a period of difficulty on the basis of a plan intended to satisfy at least partially the creditors; continuation of the undertaking retaining the direction and the availability of the assets. The proposal is subject to the favorable vote of the majority of the credits admitted to the vote (also with respect to specific category of creditors, if organized). Privileged creditors to be integrally satisfied do not have voting right unless they waive, totally or partially, their privilege.

- Beside the above-mentioned general procedure, the Italian Bankruptcy Law provides for two particular kinds of composition with creditors:

- "Concordato preventivo con riserva" (Composition with creditors filed without a scheme of arrangement): court supervised

  - Opening of the procedure: the debtor may file a petition with the court without attaching the scheme of the arrangement; indeed the rule granted to the debtor a period of time decided by the Judge that may fluctuate between 60 (sixty) to 120 (one hundred and twenty) days according to the circumstances to file the final plan.

- Besides such differences the structure remains the same of above mentioned composition with creditors.

  - Purpose: the Italian Legislator created the above mentioned form of composition with creditor targeting two goals:
    - anticipate a shield against the creditors, introducing a legal institute inspired to the Automatic Stay provided by the US Bankruptcy Code; and
    - Ease the access to this kind of proceeding (allowing the debtor to elaborate the plan within one/two months after the filing of the application).

- "Concordato preventivo con continuità aziendale" (Composition with creditors aimed at ensuring business continuity): court supervised

  - Opening of the procedure: in addition to the above mentioned requirements demanded by the Bankruptcy Code in a composition with creditors, a debtor shall also provide the court with:

    - a specific analysis of the costs and revenues expected by the prosecution of the business;
    - the amount of economic resources necessary to ensure the business continuity; and
    - the related source of financing.

- Moreover the report drafted by an independent expert shall also certify, in addition to the normal requirements, that the execution of such particular plan is instrumental to a better compensation of the creditors.

  - Purpose: to maintain operative the business in the market. To reach that goal the Italian Legislator grants specific and additional legal instruments (protections) to the debtor who filed a scheme of arrangement aimed at ensuring business continuity; indeed as a result of this specific proceeding:

    - the debtor may request a one year grace period against all the secured creditors;
    - the executory agreements may not be terminated; and
    - the debtor admitted to composition with creditors proceedings may continue to perform contracts with governmental authorities and participate in public tenders if it complies with specific terms stated in article 186-bis, paragraph 3 and 4, of the Bankruptcy Code.

6. "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 great-sized commercial undertakings and protection of employment by means of carrying on, restarting or converting the business activities.

Insolvency proceedings

1. "Fallimento" (Bankruptcy): court supervised

- Opening of the procedure: upon filing of a Petition for Bankruptcy ("Istanza di fallimento") by one or more creditor(s), the debtor, or the Public Prosecutor, the competent court declares the bankruptcy with decision.
- Purpose: liquidation of the assets for the satisfaction of creditors. The procedure can be closed with either of the following: (a) bankruptcy arrangement ("concordato fallimentare") proposed by the debtor or one or more creditors for the satisfaction of all, to be approved by all the creditors and by the court; (b) final distribution of the assets ascertained with decree; (c) insufficiency of the assets ascertained with decree; (d) integral payment of the liabilities ascertained with decree; (e) revocation of the declaration of bankruptcy.

2. "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, 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.

Our credentials

- Assistance provided to two Italian companies operating, respectively, in the fashion and mechanical industry, in order to draft and execute a scheme of composition with creditors aimed at the liquidation of all the assets of such companies;
- Assistance provided to a French company in order to purchase assets and trademark from an Italian bankruptcy procedure;
- Assistance provided to an Italian company operating in the electrical appliance industry in order to liquidate all its assets;
- Assistance provided to a German company in order to purchase an Italian company and its subsidiaries after having finalized a debts restructuring agreement related to such subsidiaries.
- Assistance provided to companies involved in distressed M&A operations;
- Assistance provided to companies in order to draft and execute debts restructuring agreements;

- Assistance provided to several companies, facing a period of economic/financial crisis, in order to evaluate the most suitable pre-insolvency/insolvency procedure to deal with the situation and subsequent assistance in the related procedure.

Specialized lawyers in Italy

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Luxembourg – EU Member State

Overview of the main insolvency procedures in Luxembourg jurisdiction: Court-driven restructuring proceedings are available into Luxembourg law, but for practical reasons, these are rarely used.5 different proceedings available.

Legal Framework

- Bankruptcy (*faillite*) is governed by the Commercial Code (article 437 to article 614), as introduced by the law of the 2nd of July 1870 and reorganization proceedings are governed by specific legislation.
- Articles 203 and 203-1 of the law on commercial companies dated 10 August 1915, amended by the law of the 10th of August 2016 (the "**Law**").

Pre-insolvency / Hybrid / Restructuring proceedings

Reorganization proceedings can only be petitioned by the debtor. In the first stage, the court rules on the global merits of the claim. If the court considers there are sufficient grounds for reorganization proceedings, it will open a preliminary phase and appoint judges and/or experts to investigate and report on the debtor's state of affairs. After hearing these reports, the court grants or denies the merits of the proceedings.

Three types of reorganization proceedings are available under Luxembourg law:

1. **Sursis de paiement (reprieve from payments) -regulated under articles 593 of the Commercial Code):**

- **The reprieve from payment** allows (i) a debtor who faces temporary liquidity difficulties (who must be due to extraordinary and unexpected circumstances and its audited balance sheet must demonstrate an excess of assets over liabilities) to defer its payments until its financial liabilities can be met and (ii) allows to restructure its debt with the consent of a majority of its creditors outside of insolvency proceedings.
- During the investigation phase, the court has discretion to grant a temporary stay, either immediately or at a later stage during the procedure.
- The reprieve from payments requires the consent of a majority of creditors representing 75% of the debtor's liabilities **and** the approval of the Luxembourg Superior Court of Justice.
- During the period of time the reprieve from payment is in force, the debtor loses the right to manage its assets alone. A court-appointed commissioner (*commissaire*) will then be appointed in order to supervise and monitor the operation of the debtor.

2. **Concordat préventif de faillite (composition with creditors to avoid insolvency) - regulated by the Luxembourg act of 14 April 1886):**

- **A composition** is an agreement between a company experiencing financial difficulties and its creditors **under the control and with the approval of the court** in order to avoid insolvency.

- In accordance with the law of 14 April 1886 on composition with creditors, these proceedings are subject to approval of a majority of creditors representing 75% of the debtor's liabilities.
- If ratified by the court, the composition is only binding on the creditors existing at the date of the composition.

3. Gestion contrôlée (controlled management) -regulated by the Luxembourg grand ducal decree of 24 May 1935):

- **Controlled management** is considered as a **privilege** granted by the court to protect a company which has suffered an impaired creditworthiness or which has difficulties in meeting all of its commitments when due and has demonstrated that it is possible to recover.
- Controlled management aims at effecting the reorganization or the orderly liquidation of the debtor's business, under the supervision of one or several court-appointed commissioners.
- The purpose is to assist the company either by reorganizing its business or by converting its assets into cash under the supervision of the court and of the commissioners appointed by the court **and** with the approval of the creditors.
- If the court accepts the application made by the distressed company, it appoints a judge to prepare a report on the financial situation of the company. The appointment of the judge prevents creditors from enforcing claims or court decisions against the applicant, although creditors may still commence or continue court proceedings against it. At the same time, the applicant loses the right to dispose of, pledge, or mortgage its assets or enter into contracts without the judge's authorization. Acts that have not been authorized are null and void.
- During the entire court procedure, the company will benefit from a suspension of enforcement measures from secured and unsecured creditors.
- The plan must be approved by more than 50% in number of the creditors representing more than 50% in value of the debtor's liabilities. Even if the plan has received the necessary number of votes, the court may refuse to approve it.
- Once approved, the plan becomes binding on all creditors, co-debtors, guarantors, and the applicant. If the company does not perform its obligations under the plan, any creditor may institute court proceedings for cancellation. The court will then decide whether to terminate the plan and declare the company bankrupt.

Insolvency proceedings

Under Luxembourg law, a company is considered insolvent when (i) it has ceased to pay its debts and (ii) its creditworthiness is impaired. It means in practice that the company has no cash available to settle its debts and it is not able to access further financing.

Most of the insolvency cases opened in Luxembourg are subject to bankruptcy.

1. Faillite (bankruptcy proceedings) -regulated under articles 437 to 592 of the Luxembourg Commercial Code):

Insolvency proceedings (*faillite*) can be initiated either by the company itself, by the court of the district where its registered office is located, or by a creditor of the company. When initiated by the company itself, the insolvency petition must be made within one month of becoming insolvent.

On granting the petition, the court will appoint a receiver (*curateur*) in charge of the liquidation and a judge (*juge commissaire*) to supervise the proceedings. It will also determine the date on which the company is considered to have ceased to make payments in discharge of its obligations.

The receiver administrates the liquidation of the insolvent company. He realizes the assets of the insolvent company and liquidates its debts under the supervision of the supervisory judge. The receiver acts in the best interest of the creditors.

An insolvency judgement has the **effect** of stopping all attachment or garnishment proceedings brought by unsecured or non-privileged creditors.

However, the stay of enforcement does not apply to Luxembourg law security interests (like pledges) governed by the Luxembourg law on financial collateral arrangements. A vendor can also retain title in contract (and therefore retain possession) of the assets until he receives payment (similar to the English law position on retention of title). Finally, if a creditor holds a mortgage and has begun proceedings to seize the property, the receiver may order an end to the proceedings and sell the property, distributing the proceeds to creditors with claims secured by the mortgage.

If the proceeds from the sale are insufficient to reimburse the secured creditors, then they are treated as unsecured creditors with respect to the balance of their claims. As previously mentioned, certain transactions carried-out during the "suspect period" may be declared void on application to the court. Again such rules are not applicable for certain Luxembourg law security interests (like pledges) governed by the Luxembourg law on financial collateral arrangements.

2. Liquidation judiciaire (compulsory liquidation):

Compulsory liquidation is usually ordered following an application by the State Prosecutor. Compulsory liquidation can be ordered by the court if a commercial company subject to the Law has pursued illegal activities, or has seriously infringed the provisions of, among other things, the Commercial Code, the domiciliation law or the Law.

Current reform proposal

Draft law number 6539, filed on the 1st of February 2013 proposes to modernize the insolvency laws in Luxembourg (the "Draft Law"). Its main features are as follows:

- **Preventative**
  The Draft Law provides for improved data collection among tax and social security authorities in respect of companies in financial difficulties.
- **Restorative**
  The Draft Law includes a restorative dimension with the objective to give to an unfortunate trader a second chance which is only possible if a more favorable environment is created.
- **Repressive**
  Prevent traders having acted in bad faith availing themselves of the bankruptcy procedure to escape the debts of the company. For instance, it is planned to extend the scope of the reckless bankruptcy so as to reach more persons.
- **Social**
  The aim is to preserve the business in order to protect jobs, and thus minimize the societal impact of insolvencies.

Our credentials

- Voluntary liquidations: Our colleagues has been appointed as liquidator of around eighty Investment Funds, Management Companies and other commercial companies. Liquidation of these entities involved in certain cases having to sell illiquid assets on the secondary market, continue to hedge various positions, filing tax reclaims, managing claw-back claims, asset tracing, multijurisdictional litigations.
- Judicial Liquidations: Our colleagues were in charge of Provisional Administrator Engagements of two banks who had liquidity issues. For one of the two previously mentioned banks, our colleagues also acted as court appointed liquidator.
  Our colleagues were also in charge of Provisional Administrator Engagements of an entity active in the life insurance business.
  Our colleagues also assisted an entity to escape from insolvency through restructuring under a waiver of creditors.

Specialized lawyer in Luxembourg

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Netherlands– EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 5 different proceedings available

Legal framework

Dutch bankruptcy law is governed by the Dutch Bankruptcy Act Faillissementswet).

Pre-insolvency / Hybrid / Restructuring proceedings

Strictly speaking, there is nopre-insolvency procedure under Dutch law, however a non-regulated processe may qualify as in practice.

1. Voluntary debt restructuring:

- Opening of the procedure: n.a. (non-regulated)
- Purpose: In order to prevent a bankruptcy, a debtor can negotiate a 'composition' with its creditors with the aim of obtaining a postponement of payment or (partial) debt-forgiveness. This is an informal procedure which is not regulated and as such can be initiated voluntarily by the debtor at any time by approaching its creditors with a composition plan. Creditors are free to decide whether they want to cooperate with a composition or not. If only a portion of the creditors wishes to cooperate with the composition plan, the plan may be executed, at the initiative of the debtor, with regard to those creditors. In principle, execution of the composition plan does not bind any creditors who have not agreed to the composition plan. It is possible to request a court to oblige a creditor to cooperate with the composition, however, only under exceptional circumstances is a court likely to order a creditor to cooperate

Insolvency proceedings

1. Het Faillissement (bankruptcy for companies and natural persons):

- Opening of the procedure: the debtor, one of its creditors, the public prosecutor (for reasons of public interest), any temporary receiver appointed by the court
- Purpose: a bankruptcy is a judicial attachment on all assets of the debtor for the benefit of his creditors, almost always resulting in the execution of such assets. A bankruptcy aims at the distribution of the proceeds of the execution of the debtor's assets to all its creditors, with due observance of the rights of the debtor. Further, it serves to terminate (all) existing attachments and prevent future separate attachments and executions by one or more creditors.

2. De Surséance van betaling (moratorium of payments):

- Opening of the procedure: only the debtor (companies and natural persons with a business only)
- Purpose: moratorium or suspension of payments is a voluntary reorganization procedure. Intended to bridge the debtor's temporary payment problems by granting the debtor temporary relief from its payment obligations, giving the debtor an opportunity to reorganize, search for new means to finance existing debts 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. Only the (managing directors of the) debtor is (are) authorized to request a suspension of payments. The managing directors do not need the approval of the general meeting of shareholders (unless the articles of association provide otherwise). 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 creditors by the court. For a number of reasons (e.g. the loss of control; protection of employee rights) the suspension of payments is not a very useful means of reorganization

3. De schuldsaneringsregeling natuurlijke personen (debt restructuring for natural persons only):

- Opening of the procedure: the debtor (only natural persons) and the municipal executive of the debtors domicile.
- Purpose: it enables natural persons who are in financial difficulties to start with a “clean sheet” if they observe the conditions imposed on them by the court during the debt restructuring period which lasts three to five years depending on the circumstances

Our credentials

- Advised client on different insolvency scenarios
- Advised client in financial distress on the sale of a retail chain
- Advised managing directors of companies in financial distress on directors liability
- Advised client on recovery options

Specialized lawyers in Netherlands

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Norway– Non EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 3 different proceedings available

Legal framework

Norwegian bankruptcy law is governed by the Bankruptcy Act of June 8, 1984 and the Creditors Security Act of June 8, 1984.

Pre-insolvency / Hybrid / Restructuring proceedings

1. Voluntary judicial debt restructure agreement: court supervised voluntary agreement

- Opening of the procedure: illiquid debtor company
- Purpose: an independent court-appointed receiver (and debt negotiations committee) assists the debtor company to negotiate an agreement with its creditors
- Note: all creditors must accept the proposed settlement

2. Compulsory composition: court supervised compulsory agreement

- Opening of procedure: illiquid debtor company
- Purpose: an independent court-appointed receiver (and debt negotiations committee) assists the debtor company to negotiate an agreement with its main creditors
- Note: minimum 25 % dividend to all creditors. 3/5 of creditors and 3/5 of total claims when ≥ 50 % dividend. ¾ of creditors and ¾ of total claims when < 50 % dividend. The settlement must be affirmed by the court/magistrates

Insolvency proceedings

1. Bankruptcy proceedings:

- Opening of the procedure: insolvent debtor company, petitioning creditor and the court
- Purpose: to end the activity and sell the assets
  - As a going concern
  - Or several sales of isolated assets

Our credentials

Our team in Norway has advised and represented or been administrator of an estate for:

- A real estate agency business in regards of creditor negotiations and liquidation.
- Several doctor enterprises, with liquidation/bankruptcy proceedings and return of the bankrupt estate.
- Bankruptcy proceedings in regards of a national call-center corporation.
- Bankruptcy proceedings of a large concert organizer company.
- Bankruptcy proceedings of several companies in a national contractor corporation.

Specialized lawyers in Norway

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Poland– EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 5 different proceedings available

Legal framework

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. Bankruptcy Law (Dz.U. z 2015 r. poz. 233) and the new act on Restructuring Law (Dz.U. z 2015 r. poz. 978), which entered into force on 1 January 2016, respectively.

Pre-insolvency / Hybrid / Restructuring proceedings

General Remarks

- Completely new legal framework for pre-insolvency ("restructuring") proceedings since 1 January 2016.
- Currently 4 restructuring proceedings available.
- All restructuring proceedings may be initiated if the debtor is insolvent within the meaning of the Bankruptcy Law or at risk of insolvency (his economic situation indicates that he may soon become insolvent).
- Restructuring proceedings are intended to provide an opportunity for a debtor to avoid declaration of bankruptcy through enabling him to undergo restructuring.
- The essential component of all restructuring proceedings is an arrangement – legal act similar to court settlement, containing terms of restructuring.
- The arrangement binds the debtor and his creditors if it is approved by the court.

Outline of specific proceedings

1. Postępowanie o zatwierdzenie układu (Arrangement approval proceedings):

- Initiation of the procedure: Only the debtor may initiate restructuring proceedings by entering into a contract for exercising supervision over the course of the proceedings with a licensed restructuring counsellor chosen by the debtor.
- Main criteria to benefit from the proceedings: The proceedings are only allowed if the total disputed claims which give the right to vote on arrangement do not exceed 15 % of the total claims giving the right to vote on the arrangement.
- Purpose: The debtor is entitled to negotiate the terms of the arrangement without involvement of the court, the proceedings are supervised only by the licensed restructuring counsellor and the court receives an application for approval of the arrangement after it is concluded.
- Conclusion of an arrangement: The arrangement is concluded as a result of collecting creditors' votes by the debtor himself, without involvement of the court.
- Management of the debtor's assets in course of the proceedings: The debtor is allowed to manage all of his assets without limitations.

2. Przyspieszone postępowanie układowe (Accelerated arrangement proceedings):

- Initiation of the procedure: Only the debtor may initiate the proceedings by filing an application to the court including in particular arrangement proposals, preliminary restructuring plan, an up-to-date inventory of the assets, with the estimated valuation of component parts thereof and the list of creditors (containing the amount of receivable debts owed to each of them).
- Main criteria to benefit from the proceedings: The proceedings are only allowed if the total disputed claims which give the right to vote on arrangement do not exceed 15 % of the total claims giving the right to vote on the arrangement.
- Significant effects of opening of the proceedings: Pending execution proceedings concerning a receivable debt covered by the arrangement are suspended by operation of law on the day when the proceedings are opened.
- Purpose: Restructuring proceedings combined with a court supervision, which are meant to be used when the debtor is not able to successfully negotiate terms of the arrangement without involvement of the court.
- Conclusion of an arrangement: The arrangement is reached on the meeting of creditors convened by the judge-commissioner.
- Management of the debtor's assets in course of the proceedings: The debtor is allowed to manage his assets, but he cannot perform activities which fall beyond the scope of ordinary business activities. Such activities require consent of the court supervisor.

3. Postępowanie układowe (Arrangement proceedings):

- Initiation of the procedure: Only the debtor may initiate the proceedings by filing an application to the court including in particular arrangement proposals, preliminary restructuring plan and the list of creditors (containing the amount of receivable debts owed to each of them).
- Main criteria to benefit from the proceedings: The proceedings are allowed if the total disputed claims which give the right to vote on arrangementexceed 15 % of the total claims giving the right to vote on the arrangement. The court is obliged to refuse to open the arrangement proceedings if the ability of the debtor to cover, on a current basis, the cost of the proceedings and the liabilities arising after its opening has not been credibly established.
- Significant effects of opening of the proceedings: Pending execution proceedings concerning a receivable debt covered by the arrangement are suspended by operation of law on the day when arrangement proceedings are opened.
- Purpose: Restructuring proceedings combined with a court supervision, which are meant to be used when the debtor cannot take benefits from the abovementioned proceedings. The proceedings require greater involvement of the court supervisor than accelerated arrangement proceedings.
- Conclusion of an arrangement: The arrangement is reached on the meeting of creditors convened by the judge-commissioner.
- Management of the debtor's assets in course of the proceedings: The debtor is allowed to manage his assets, but he cannot perform activities which fall beyond the scope of ordinary business activities. Such activities require consent of the court supervisor.

4. Postępowanie sanacyjne (Remedial proceedings):

- Initiation of the procedure: The proceedings are initiated by filing an application to the court by the personal creditor of the debtor or by the debtor himself. If the application is filed by the debtor it must include in particular preliminary restructuring plan and the list of creditors (containing the amount of receivable debts owed to each of them).
- Main criteria to benefit from the proceedings: The court is obliged to refuse to open remedial proceedings if the ability of the debtor to cover, on a current basis, the cost of the proceedings and the liabilities arising after its opening has not been credibly established.
- Significant effects of opening of the proceedings: Pending execution proceedings directed at the debtor's assets included in the remedial estate are suspended by operation of law on the day of opening the proceedings. Opening of remedial proceedings enables renunciation of the mutual contracts which have not been carried out in full or in part and simplifies restructuring of employment.
- Purpose: The proceedings are supposed to be used, when abovementioned ordinary restructuring proceedings are ineffectual. After the opening of the proceedings the debtor loses the authority to manage his assets (as a rule) and the court appoints the receiver, who is authorized to manage the debtor's assets.
- Conclusion of an arrangement: The arrangement is reached on the meeting of creditors convened by the judge-commissioner.
- Management of the debtor's assets in course of the proceedings: The debtor can manage his assets only in special circumstances and only under the court's permit.

Insolvency proceedings

1. Postępowanie upadłościowe (Bankruptcy proceedings):

- **Initiation of the procedure:** the bankruptcy petition may be filed by the debtor (compulsory filling within 30 days from the day, when the debtor became insolvent within the meaning of the Bankruptcy Law, otherwise the management can be sanctioned) or by any debtor's personal creditor.
- **Main criteria:** Bankruptcy may be declared in respect of a debtor who becomes insolvent. The debtor is deemed insolvent if he has lost the ability to fulfill his matured pecuniary liabilities (presumably in case of delay exceeding three months). Legal entities are also deemed insolvent in case of long-term negative equity position (specified in details in the provisions of Bankruptcy Law).
- **Purpose:** to satisfy the claims of the creditors to the maximum extent possible and, if feasible, for the existing business of the debtor to continue operating.
- **Possible outcomes:** a bankruptcy proceeding usually leads to the liquidation of the debtor's assets, but it is also permissible to:
  - approve pre-pack application appended to the bankruptcy petition and to sell the debtor's enterprise, organized part of enterprise or assets forming a substantial part of the enterprise under the terms indicated in prepack application,
  - conclude an arrangement between the creditors and the debtor aimed at restructuring of liabilities by an agreement with the creditors and maintaining the operation of the debtor's business.

Our credentials

- Investment fund - legal advisory services provided to the buy side (Investment fund)in the acquisition of an organized part of the enterprise from the bankruptcy trustee (one of the biggest transactions of this kind in Poland).
- Company from the steel sector – legal advisory related to lease of an organized part of the enterprise from the bankruptcy trustee.
- Leading Polish mining company - legal advisory on the key legal risks (especially resulting from the Bankruptcy Law) associated with the proposed acquisition of an organized part of an enterprise (a mine) from an entity that meets the main criteria to be declared bankrupt.
- Leading Polish energy distributor - an overview of the financial and legal situation of two contractors of the client in order to evaluate the risk of becoming insolvent by these contractors as a result of payment of contractual penalties.
- Mining sector company - analysis of legal and financial standing of the Client and its changes based on financial documentation delivered, legal assessment of risks and meeting conditions to be declared bankrupt and the risk of dismissal of a bankruptcy application
- Construction industry company - analysis of legal and financial standing of the Client in terms of (i) compliance with legal obligation of Management to file for bankruptcy if the conditions for bankruptcy declaration are met, (ii) legal conditions of arrangements allowing for continuation of its business operation, (iii) impact of declaration of bankruptcy on selected key contracts, collaterals established and agreements concluded with other companies from the capital group of the Client.
- Construction company – in-depth analysis of restructuring scenarios and preparation of restructuring plan and strategy.

Specialized lawyers in Poland

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Portugal– EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 3 different proceedings available

Legal framework

Portugal bankruptcy law is generally governed by the Insolvency and Corporate Recovery Code (CIRE). The CIRE was approved by Decree-Law no. 53/2004 and was recently amended by Law no. 26/2015.

CIRE also governs the Special Revitalization Proceeding (PER), approved by Law no. 16/2012.

Apart from the general regime governed by the CIRE there is also ancillary legislation, regarding specific issues, such as the Extrajudicial System for Corporate Recovery (SIREVE), approved by the Decree-Law no. 178/2012

Pre-insolvency / Hybrid / Restructuring proceedings

1. Extrajudicial System for Corporate Recovery [Sistema de recuperação de Empresas por Via Extrajudicial (SIREVE)]:

- Prerequisites: It is applicable to companies in difficult financial situation or in imminent risk of insolvency.
- The procedure begins with the debtor's request before a public entity, the Institute for Support to Small-and Medium-sized Enterprises and Investment (IAPMEI).

  – SIREVE offers an extra-judicial conciliation proceeding to allow the recovery of companies facing insolvency or experiencing financial difficulties. This process is conducted by the IAPMEI.
  – This proceeding is only available for companies that are in a pre-insolvency situation or insolvent and its aim is to reach an agreement between the company and all or some of its creditors allowing the recovery of the financial situation of the company.

Relevant ideas: (i) The plan approved only binds the creditors that have approved it; (ii) The proceedings filed against the debtor by the creditors that have approved the plan are ended; (iii) All the other proceedings will continue; and (iv) The debtor at any time and if applicable can file for a Special Revitalization Proceeding (PER).

Insolvency proceedings

1. Special Revitalization Proceeding [Processo Especial de Revitalização (PER)]:

- Prerequisites: It is applicable to natural persons and to companies, with the exception of public entities, insurance companies, credit institutions, financial companies, investment firms, collective investment undertakings. Recent Supreme Court decisions establish that it's only applicable to natural persons that are merchants, entrepreneurs or that develop an economic activity on their own. This procedure aims to achieve the recovery of a debtor

that is in a *"difficult economic situation"* or in a "*situation of merely imminent insolvency*" without starting an insolvency procedure.

- The procedure begins with the debtor's request before the competent court. This request shall be accompanied by several necessary documents, including a written declaration signed by at least one creditor stating that negotiations have begun in order to initiate a Special Revitalization Proceeding.

  – The creditor's claims must be submitted to the interim administrator within 20 (twenty) days from the public announcement of his appointment by the court. The interim administrator establishes the amount recognized to each creditor. Appeal may be possible if the creditor does not agree with the amount of credits recognized.
  – The PER takes approximately 4 (four) to 6 (six) months. The negotiations between the debtor and the creditors have a maximum duration of 2 (two) months extended by 1 (one) month. The Judge designates an interim administrator responsible for the supervisory of this proceeding.
  – The PER can have 2 (two) outcomes: (i) the approval of a recovery plan or (ii) the refusal of that plan.
  – A complex system of approvals by creditors is set forth in CIRE and must be met in order to approve a PER.

- Relevant ideas: (i) The plan approved binds all the creditors (except social security debts and tax debts); (ii) If the process ends without the approval of the plan, and the opinion of the interim administrator is towards the debtor's insolvency PER converts into an insolvency procedure (with immediate declaration of insolvency of the debtor); and (iii) All pending enforcement proceedings regarding debt recovery filed against the debtor are suspended.

2. Insolvency Procedure (Processo de Insolvência):

- Prerequisites: Under Portuguese law, *"insolvency"* is defined as a debtor's inability to meet his commitments as they fall due.It means that pursuant to the CIRE a company/natural person is insolvent when it is unable to pay its debts that have fallen due or when its liabilities are clearly greater that its assets, according to the relevant accounting standards.

- The procedure begins with a request submitted by the one of the following parties: (i) the debtor, (ii) any party liable for the debtor's debts, (iii) any creditor (iv) and, under certain, circumstances, the Public Prosecutor. The procedure can also begin after the refusal of the recovery plan under the Special Revitalization Proceeding.

  – The debtor must apply for a declaration of insolvency within 30 (thirty) days from the date on which he/she/it becomes aware of his/her/its insolvency, or on the date by which he/she/it should have become aware of it.
  – CIRE presumes that awareness of the insolvency occurs 3 (three) months after the general failure to meet: (i) debts regarding taxes and social security payments and contributions; (ii) debts arising from an employment contract or from the breach or termination of such contract and (iii) rentals for any type of hire.
  – The procedure begins with a written request by one of the above mentioned entities. This procedure must be filed before the court of the debtor's head office or domicile.

- The court decides on the admissibility of the petition and may name an insolvency administrator for the company with powers to manage the company (however, the assembly of creditors may vote to replace the appointed administrator).
- The creditor's claims must be submitted to the insolvency administrator within 30 (thirty) days from the public announce of the declaration of insolvency. The insolvency administrator establishes the amount recognized to each creditor. Appeal may be possible if the creditor does not agree with the amount of credits recognized.
- The assembly of creditors can approve and validate a recovery plan or decide on the liquidation of the company.
- Regarding the recovery plan, its goal is the recovery of the company. The court must validate the approval of the plan within 10 (ten) days of receiving the documentation evidencing the respective approval.
- A complex system of approvals by creditors is set forth in CIRE and must be met in order to approve either the recovery plan or the liquidation of the company.
- The insolvency Law establishes a liquidation procedure of insolvent companies. When a company is declared insolvent, the creditors can vote the company's liquidation. The decision to liquidate is taken in the assembly of creditors. After the company's liquidation by the insolvency administrator, the product of the sale of assets is distributed according to the priority of the credits.
- The CIRE establishes four classes of credits: secured, preferential, subordinated and non-secured.
- The CIRE sets out a proceeding to punish the insolvent entity or its directors' fraudulent behavior, when their conduct caused or increased the insolvency.

- Relevant ideas: (i) The insolvency procedure can promote a recovery of the debtor; (ii) Under certain conditions the debtor may continue to administer the bankrupt estate; (iii) All pending enforcement proceedings filed against the debtor are suspended (iv) New enforcement proceedings filed against the debtor (to the recovery of debts) outside of the insolvency procedure will be rejected by the court; and (v) New or pending judicial proceedings can be attached to the insolvency procedure.

Our credentials

Our team advised and represented

- Companies and natural persons (both debtors and creditors) in debt restructuring procedures, in over 1500 (one thousand and five hundred) pre-insolvency and insolvency proceedings.
- A Portuguese Banking syndicates and a Portuguese Bank in credit recovery (negotiations and drafting of the contracts until the credit recovery, in some cases through insolvency proceedings).
- A Portuguese Bank and a French company in assets recovery in various insolvency procedures conducting to the recovery of those assets.
- Several small and medium Portuguese companies within pre-insolvency proceedings conducting to their debt restructuring.
- A Multinational renting company against several clients in various pre-insolvency proceedings, in special revitalization proceedings and insolvency procedures. In this capacity we have presented several claims including against a major Portuguese furniture retailer, requested several insolvency procedures, including a major Portuguese

Construction firm and its subsidiaries and recovered assets and credits in special revitalization proceedings and insolvency procedures.

- A pharmaceutical company in the negotiations carry out within a special revitalization proceeding regarding a relevant Portuguese Hospital.
- A client in a major and unprecedented evaluation exercises of the estimated recoveries, per asset and per creditor class, of insolvent or distressed banks and financial institutions following the application of resolution measures, recapitalization, nationalization and/or judicial liquidation under the Portuguese and European legal framework.
- Several clients in the acquisition of great value equipment (industrial equipment) and other assets as well as on the transfer of the commercial or industrial establishment within the insolvency procedure (liquidation in the insolvency procedure).

Specialized lawyers in Portugal

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Romania– EU Member State

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

Legal framework

Law no. 85/2014 regarding the procedures of insolvency prevention and the insolvency proceedings.

Pre-insolvency / Hybrid / Restructuring proceedings

The Romanian legislation provides for two optional procedures for distressed undertakings by giving the opportunity to safeguard their activity resorting to mechanisms and amiable procedures of renegotiating their debts outside the judicial insolvency procedure, respectively:

1. **Mandatul ad-hoc (ad-hoc mandate) – Amicable settlement proceeding supervised by an ad-hoc proxy appointed by the court.** Features:

    - Initiation of the procedure: undertakings facing financial difficulties, without being insolvent;
    - Distressed undertaking asks the court to appoint an ad-hoc proxy which has the task of making the debtor and one or more of its creditors reach an agreement with the view to overcome the difficulties the debtor faces;
    - Confidential and short procedure (lasting not more than 90 days);
    - Purpose: safeguarding the distressed undertaking, with the view to maintain its activity, the jobs and covering the debts of the respective undertaking.

2. **Concordatul preventiv (compromise proceedings)- Amicable settlement proceeding which, to a certain extent, is similar to the reorganization during the insolvency procedure:**

    - Initiation of the procedure: undertakings facing financial difficulties, without being insolvent, which observe certain conditions related to their overall worthiness, some of these conditions being similar to the ones applicable in case of debtors for which a reorganization plan may be proposed;
    - Distressed undertaking asks the court to appoint a conciliator which collaborates with the debtor in order to elaborate a concordat offer, which includes a concordat project and a redressing plan;
    - The conciliator may resort to the acknowledgement of the concordat by the syndic judge. As of the respective acknowledgement, all the forced execution procedures are suspended;
    - Purpose: safeguarding the distressed undertaking, with the view to maintain its activity, preserving the jobs and covering the debts of the respective undertaking.

Insolvency proceedings

In accordance with Law no. 85/2014, insolvency is defined as a state of debtor's patrimony characterized by the deficiency of available monetary funds for the payment of its due debts. The procedure may be opened: i) by a creditor having a receivable certain, liquid in an amount of more

than RON 40,000 (approx. EUR 9,000) and due for more than 60 days, ii) by the debtor which is under insolvency state for more than 30 days and has debts of at least RON 40,000. Failure of the debtor's representative to observe such an obligation, for more than 6 months as of the mentioned term is qualified as criminal offence.

Purpose: settlement of insolvent debtor's liabilities (both through the debtor's reorganization or liquidation of its patrimony).

1. Procedura insolventei (insolvency proceedings)– features:

- A judicial administrator shall be appointed by court and shall either manage the activity of the debtor (in case where the management right of the debtor was suppressed by court) or simply supervise the debtor's activity (in case where the debtor preserves the management power);
- Upon the opening of insolvency procedure, the debtor, the judicial administrator or a creditor which holds at least 20% of the total value of the receivables against the insolvent company may propose a reorganization plan;
- The reorganization plan must be approved by (i) half plus one of the categories of creditors - voting of the reorganization plan is made on categories of creditors (e.g. secured, unsecured, budgetary) and (ii) by at least 30% of the total value of claims – and confirmed by court;
- The reorganization plan may provide for a maximum 3 years reorganization period, during which the activity of the debtor shall be managed by the debtor itself under the supervision of the judicial administrator. However, under certain conditions, the reorganization period may be extended with 1 year (therefore the total duration of a reorganization plan is of 4 years as of its confirmation date).

2. Procedura falimentului (bankruptcy proceedings)– features:

- May be initiated by court in case where (i) the reorganization plan is not successful, (ii) a reorganization plan was not submitted in court at all or although submitted it was not approved by creditors/confirmed by court, (iii) in case of specific situations (e.g., lack of headquarters, lack of legal representative etc.), at the request of the debtor/creditor or as assessed by court;
- A liquidator is appointed by court with the purpose to liquidate debtor's patrimony;
- Upon the liquidation the debtor shall be de-registered from the Trade Registry.

Our credentials

- Assistance in the acquisition of a secured receivable for the purpose of taking over the secured immovable asset, allowing the purchaser to consolidate its position and to extend its business;
- Assistance in the acquisition of the secured receivable for the purpose of taking over the secured immovable asset, involving extremely active debtor and group companies (pre-securing the immovable asset in favor of a group company before filing for insolvency, challenging the secured receivable to be purchased by the client, opening litigation files at every step);
- Sell-side legal assistance to one of the largest banks in Romania (and in the region) in relation to the cross-border assignments of approx. EUR 130 mil non-performing loans;

- Day to day assistance to various creditors during the insolvency of their debtors (legal advice, court representation or assistance during takeover of assets).

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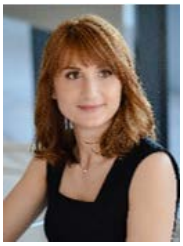

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Spain– EU Member State

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

Legal framework

Insolvency Act 22/200., dated 9th July (2003)

Pre-insolvency / Hybrid / Restructuring proceedings

1. Preconcurso (Notification of negotiations) - (Article 5 bis):

- Opening of the procedure: only the debtor company
- Purpose: this regime allows the debtor to avoid the entire restructuring process of a company if a refinancing composition with its creditors is reached or if obtaining adhesions to an advanced proposal of composition in a three months period. Once the submission of the communication is filed, the debtor take advantage of the protective shield provided by Article 5 bis with respect to property or rights that are necessary for the continuity of their professional or business activity, suspending or paralyzing judicial enforcements that may occur on such property and preventing from creditors´ requests for the declaration of opening the insolvency proceedings.

2. Homologación de acuerdos de refinanciacon (Homologation of a refinancing agreements) - (Additional Provision four):

- Opening of the procedure: the debtor company or any creditor who has signed the refinancing agreement
- Purpose: a refinancing agreement may be judicially homologated when it has been signed by creditors who represent at least 51 per cent of the financial liabilities. The refinancing composition have to consist of, at least, a significant extension of the credit available or the amendment or extinction of its obligations, either by extension of their term of expiry, or the establishment of others contracted to substitute these are secured, as long as these respond to a feasibility plan that permits continuity of the professional or business activity in the short and medium term

Insolvency proceedings

1. Concurso (Insolvency proceedings):

- Opening of the procedure: the debtor, any of his creditors and the insolvency mediator, in the event of current or imminent insolvency
- Purpose: collective seizure to sell all assets and pay all creditors with the assistance of an insolvency practitioner appointed by the Commercial Court

2. Petición de acuerdo extrajudicial de pago (Petition for an out of court payment agreement) - (Title X):

- Opening of the procedure: only the debtor company
- Purpose: to reach an out of court payment agreement with his creditors with the assistance of an insolvency mediator when the debtor is in a state of insolvency

Our credentials

Our team advised and represented

- A national group of frozen products in its judicial reorganization through a collective agreement with more than 500 creditors and more than 10.000 employees
- A foreign Bank in challenging the judicial homologation of a refinancing agreement
- A National Bank developing an efficient management of his credit portfolio increasing the recovery and reorganizing the team in charge
- A textile group designing a legal strategy to avoid the opening of insolvency proceedings
- Several companies (media sector, food industry or IT) in the conveyance of production units process
- A media group designing a legal strategy regarding the insolvency of its subsidiary
- We have been appointed as the insolvency practitioner in several court proceedings of large companies (food industry, textile industry, construction or toll road)

Specialized lawyers in Spain

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Sweden– EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 3 different proceedings available

Legal framework

Swedish insolvency legislation is governed by the Bankruptcy Act (SFS 1987:672) and the Company Reorganization Act (SFS 1996:764)

The Swedish insolvency legislation essentially includes two types of proceedings for businesses with financial difficulties: bankruptcy and company reorganization. These procedures are governed by the Bankruptcy Act (SFS 1987:672) and the Company Reorganization Act (SFS 1996:764)

Pre-insolvency / Hybrid / Restructuring proceedings

1. Underhandsackord (Amicable settlement proceeding): Voluntary agreement

- Opening of the procedure: a debtor company that is not insolvent or that is under Company Reorganization procedure (see the below)
- Purpose: a voluntary settlement between the debtor and the creditors in order to avoid becoming insolvent. If the debtor company is under a Company Reorganization procedure an independent third party appointed by the court, a “rekonstruktör” (administrator), assists with the settlement procedure under the supervision of the court. Under a reorganization procedure it is also possible under certain circumstances to achieve a compulsory 50 % settlement covering all creditors, provided that 60% of the creditors owning 60 % of the debts vote in favor of. A settlement lower than 50 % require a majority of 75 % of the creditors owning 75 % of the debts

Insolvency proceedings

1. Konkurs (Bankruptcy):

- Created in 1987. 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: mainly intended to liquidate the debtor's business activities; realize its assets and distribute the surplus among the creditors. To under coordinate forms satisfy a collective of creditors’ claims on an individual debtor. The debtor can be either a physical person or a legal entity
- If the debtor is a legal entity the bankruptcy results in the liquidation of the company. Liquidation can also be done voluntarily and as a compulsory liquidation under the Companies Act

2. Företagsrekonstruktion (Company Reorganization):

- Created in 1996. The Company Reorganization Act (SFS 1996:764)
- Opening of the procedure: both the debtor and the creditor can file for a company reorganization with the district court
- Purpose: intended as an alternative to bankruptcy in specific cases, meaning that a failed reorganization does not result in bankruptcy, which is a completely different procedure. The debtor applies for reorganization of the company's business activity, in order to meet financial agreement with the creditors without having to file for bankruptcy. The aim is to allow the debtor to continue with its business activity
- The reorganization procedure is carried out with the assistance of an independent administrator appointed by court

Proposed changes in Swedish insolvency proceeding legislation

The Swedish government has proposed a change in the current legislation on insolvency legislation. The proposition has not yet been presented to the Swedish parliament. The proposition includes both of the two insolvency proceedings described above, in one combined act

Insolvensförfarande (Insolvency procedure):

- The new Insolvency Act
- Opening of the procedure: an insolvency procedure can be initiated by either the debtor or one of its creditors, through a written application to the district court
- Purpose: to meet the common interests of the creditors by realizing the assets of the debtor to be distributed among the creditors. The general basis for initiating an insolvency proceeding is that the debtor is insolvent or illiquid. The debtor can apply for initiating the insolvency procedure under self-management, meaning that the debtor may himself, in consultation with one or more administrator, continue to manage and rule over his assets during the insolvency procedure. An application for insolvency procedure under self-management is to include a reconstruction plan

Our credentials

Our team advised and represented

- Liquidation of a Swedish subsidiary to a global motion picture production and distribution company
- Liquidation of a Swedish subsidiary of a global Manufacturer of recording media and energy products
- Liquidation of a Swedish subsidiary of a leading provider within the healthcare and life sciences segments
- Advice regarding various insolvency matters for a large Swedish real estate company
- Advising board of directors of a large media communication company in matters relating to capital deficiency, etc.

Specialized lawyers in Sweden

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Switzerland– Non EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 5 different proceedings available

Legal framework

Insolvency and bankruptcy law is governed by the Swiss Code of Obligations (art. 725 and 725a SCO) and by the Swiss Federal Act on Debt Enforcement and Bankruptcy (DEBA).

Pre-insolvency / Hybrid / Restructuring proceedings

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

1. Restructuring measures:

- Opening of the procedure: by the debtor.
- Purpose: in case of capital loss exceeding 50% of the sum of the capital and reserves, the debtor has the obligation to propose restructuring measures (e.g. capital increase or capital reduction, dissolution of general reserves, restructuring merger, restructuring loan, contribution to shareholders' equity, sale of some assets, subordination agreements with its creditors) to the General assembly of the debtor and to implement them. In case of over-indebtedness, the debtor must inform the court.

2. Notification to the court:

- Opening of the procedure: upon request to the court by the debtor or the debtor's auditors.
- Purpose: if the debtor is over-indebted and has not been able to implement restructuring measures, the debtor and its auditors have the obligation to notify the court, which will open formal bankruptcy proceedings against the debtor, unless the latter or one of its creditors request the postponement of the bankruptcy proceedings (see below).

Insolvency - Bankruptcy proceedings

1. Concordat (Debt restructuring proceedings):

- Opening of the procedure: request of the debtor or of a creditor to the court.
- Purpose: the court fixes a 4 to 6 months' debt restructuring moratorium (sursis concordataire), which can be extended up to 12 months and in extraordinary or complex matters up to 24 months. The court appoints a commissioner (commissaire), who controls the debtor's activities. The moratorium's objective is to provide the debtor with a limited period of time to find ways to restructure the company and carry on its activity without the threat of enforcement proceedings and to enter into a debt restructuring agreement, while guaranteeing the conservation of the debtor's assets. Debt restructuring proceedings are published in the Official Gazette.

- The debt restructuring moratorium ends in the following ways:
  - Conclusion of an ordinary debt restructuring agreement (debt-rescheduling or dividend agreement) enabling the debtor to continue doing business by proportionally satisfying its existing creditors for their claims (concordat ordinaire);
  - Conclusion of a debt restructuring agreement with assignment of the assets whereby 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 (concordat par abandon d'actifs). This agreement leads ultimately to the winding-up of the debtor.
- If the creditors or the court refuses the debt restructuring agreement or if the court revokes the moratorium, the creditors may request the immediate opening of bankruptcy proceedings. The court pronounces the bankruptcy of the debtor automatically and immediately.

2. Ajournement de la faillite (Postponement of the bankruptcy proceedings):

- Opening of the procedure: upon request of the debtor or a creditor to the court.
- Purpose: the court can postpone the bankruptcy proceedings provided that there is prospect of financial restructuring. The objective is to allow for a reorganization of a debtor rather than for a sale of its assets within the course of bankruptcy proceedings. Such reorganization may occur under the supervision of an administrator (curateur), appointed by the court. The postponement of the bankruptcy proceedings are only published if third parties need to be protected.

3. Procedure de faillite (Bankruptcy proceedings):

- Opening of the procedure: initiated by an insolvent debtor, a creditor who has successfully requested for the opening of bankruptcy proceedings or upon request addressed to the court by the debtor's auditors in case of over-indebtedness and absence of action 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

Our credentials

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

Specialized lawyers in Switzerland

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Ukraine – Non EU Member State

Overview of the main pre-insolvency and insolvency proceedings: 5 different proceedings available

Legal framework

Law of Ukraine “On renewing of the debtor’s solvency or recognition of its bankruptcy”.

Pre-insolvency / Hybrid / Restructuring proceedings

1. Extrajudicial restructuring procedures:

- Opening of the procedure: all extrajudicial restructuring procedures are executed based on an agreement of the parties
- Purpose: usually, the goal of this procedure is to involve the creditors to deal with the difficulties that the debtor is facing

Insolvency - Bankruptcy proceedings

1. Rozporiadzhennia mainom borzhnyka (Debtor’s property administration):

- Opening of the procedure: is opened by a judge within 5 days after filing the application by the debtor or the creditor on commencement of the Bankruptcy procedure to the Commercial court
- Purpose: the goal of this procedure it to use an objective third party “Rozporiadnik maina borzhnika” to identify the financial status of the debtor and to deal with creditors’ claims (form to be registered), to call the creditors committee

2. Sanatsiia borzhnyka (Restructuring of the debtor):

- Opening of the procedure: the decision on initiation of the debtor Restructuring (Sanatsiia borzhnika) procedure is made by the Creditors’ Committee decision with its further approval by the Commercial court in terms that does not exceed the terms of the Property administration procedure
- Purpose: the Restructuring of the debtor is aimed to renew the debtor’s solvency, therefore, the following actions may be taken:
  - Elaboration and adoption of the Schedule of Restructuring
  - Sale of the debtor’s assets as an integral property complex
  - Sale of a part of the debtor’s assets
  - Schedule of Restructuring is developed by the Restructuring Administrator, approved by the Creditors’ Committee and adopted by Commercial Court

3. Likvidatsiia bankruta (Liquidation of the bankrupt):

- Opening of the procedure: by the Creditors' Committee with further adoption of this decision by the Commercial court; or by the Commercial court itself in case settlements with creditors are not made in due course as set forth in the Schedule of Restructuring ("Sanatsiia plan" used during the "Sanatsiia borzhnika" stage), and absence of initiative of the Creditors' Committee on prolongation of the terms or making amendments to the Schedule of Restructuring
- Purpose: to terminate the business activity and sell the debtor's assets through open sale or using other procedure, upon decision of the creditors committee

4. Myrova Ugoda (Settlement agreement):

- Opening of the procedure: the decision on conclusion of the Settlement agreement is adopted by the Creditors' Committee by the simple majority of votes of people present at the meeting, provided that all creditors, whose claims are secured by pledge, agree in writing to conclude the Settlement agreement. After approval of the Settlement agreement, the Commercial Court shall terminate the Bankruptcy procedure
- Purpose: to terminate the Bankruptcy procedure and settle all the disputes between the debtor and all creditors

Our credentials

- Legal, tax and financial due diligence as well as consulting to various companies international banks and leading Ukrainian manufacturing and industrial companies

Specialized lawyers in Ukraine

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United Kingdom

For legal, regulatory and other reasons not all Deloitte Member firms, including Deloitte UK, provide legal services. The UK chapter of this Guide has been provided by an independent UK law firm Michcon de Reya LLP. And because the legal framework is slightly different in the constituent parts of the United Kingdom, Mishcon De Reya have in turn consulted Tughans and Gilson Gray, Northern Irish and Scottish law firms respectively. The Deloitte Legal network has nonexclusive agreements with a number of independent law firms including Mishcon de Reya, which allows for mutual collaboration on appropriate projects. None of these agreements are in the nature of a partnership or alliance. Deloitte Legal has not been involved in the United Kingdom section and Mishcon de Reya is solely responsible for its content.

MAIN LEGAL FRAMEWORK

- The Insolvency Act 1986 and The Insolvency (Scotland) Rules 1986
- The Insolvency (Northern Ireland) Order 1989
- Company Directors Disqualification Act 1986 and Company Directors Disqualification (NI) Order 2002
- The Enterprise Act 2002
- Companies Act 2006
- Small Business, Enterprise and Employment Act 2015
- The Insolvency (Scotland) Rules 1986 (as variously amended)
- The Cross-Border Insolvency Regulations 2006 and The Cross-Border Insolvency Regulations (Northern Ireland) 2007
- The Protected Trust Deeds (Scotland) Regulations 2013
- EC Regulation on Insolvency Proceedings

The main corporate insolvency procedures are:

- Company Voluntary Arrangements
- Administrations
- Liquidations
- Scheme of arrangement

The main personal insolvency procedures are:

- Individual Voluntary Arrangements
- Bankruptcy
- Trust Deeds (Scotland)
- Debt Arrangement Schemes

Pre-insolvency / Hybrid / Restructuring proceedings

CORPORATE PRE-INSOLVENCY:

1. Company Voluntary Arrangement ("CVA"):

- A CVA is a flexible process by which a company may restructure its debts on binding terms, which are agreed between the company and creditors. The arrangement is implemented

under the supervision of a nominated insolvency practitioner and the objective is to enable the insolvent entity to recover and avert a formal procedure.

- The directors of a company may propose a CVA. If the company concerned is in administration or liquidation, its administrator / liquidator may propose a CVA.
- A CVA is a form of consensual procedure and requires unsecured creditors of no less than 75% in value who attend the CVA proposal meeting (in person or by proxy) to vote in favor of the CVA proposal for the process to be started. A CVA cannot compromise secured debts.

INDIVIDUAL PRE-INSOLVENCY:

2. Individual Voluntary Arrangements ("IVAs"):

- An IVA is an agreement between an insolvent individual and his or her creditors. The agreement will generally either compromise, or provide a framework for the settlement of, the individual's debts. IVAs can enable individuals to avoid bankruptcy.
- Any insolvent individual may propose an IVA to his or her creditors. A court order can also be sought to prevent creditors from taking recovery action in respect of their debts until they have voted on the IVA proposal. An IVA comes into force if more than 75% (by value) of those creditors attending the creditors' meeting, to consider the proposal, vote in favour of it.
- When an IVA comes into effect, it binds all creditors who were entitled to be notified of the IVA proposals, even if they voted against the IVA or did not, in fact, receive notice of the proposals.

Insolvency proceedings

CORPORATE INSOLVENCY:

1. Scheme of Arrangement:

- Opening: a Scheme can be initiated by the company itself or by the company's Administrator or Liquidator. The process is relatively complex and costly and there is no moratorium so creditors may take enforcement action against the company up until the point where the Scheme is sanctioned by the court. It is not necessary for the company to show that it is, or likely to become insolvent.
- Purpose: like a CVA, a Scheme of Arrangement (scheme) enables a company to reach a compromise or arrangement with its creditors or a certain class of creditors.

2. Administration:

- Administration is a formal procedure, which is conducted by an insolvency practitioner who acts as administrator. Upon the administrator's appointment, the directors cease to have power to conduct business or act as agent of the company. The procedure allows the restructuring of a business or the realization of the business and/or its assets under the protection of a statutory moratorium. It is available in circumstances where the company is or is likely to become unable to pay its debts. An administration must achieve one or more of the statutory objectives: (a) the rescue the company as a going concern; or (b) to achieve a better result for the creditors as a whole than would be likely if the company

were wound up (without first being in administration); or (c) realization of assets to make a distribution to secured or preferential creditors.

- The procedure is available to companies registered in the UK, the European Economic Area ("EEA") or outside the EEA but with the centre of main interests ("COMI") in the UK, of which Scotland is a part.
- Out of court procedure: the appointment of administrators can be initiated without formal court proceedings in certain circumstances. The "out of court" procedure is instigated by passing the requisite resolutions and filing notices at court. It can be instigated by the company, its directors or a holder of a qualifying floating charge, but is only available in certain limited circumstances, e.g. where there are no other ongoing insolvency proceedings.
- Court application: an application to court for an order placing a company into administration can be made by a creditor, the company or its directors, (and less commonly certain other persons or supervisory entities). The court must be satisfied that the company is, or is likely to become, unable to pay its debts and that an order is reasonably likely to achieve one of the statutory purposes of an administration. There are circusmtances where the out of court procedure cannot be pursued and a court order is therefore necessary in order to effect the appointment, e.g. - where the appointment of an administrator is sought by a creditor (other than a qualifiying floating charge holder) and/or where other insolvency proceedings have been instigated and/or are underway.
- Pre-pack administration sale: this is a mechanism whereby the sale of the business and assets of an insolvent company are 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, and are most often progressed under the protection of an interim moratorium. The objective is to maximize the value of the business, by facilitating continuity of trade and the preservation of the business' goodwill and reputation.

3. Liquidation: Voluntary / Compulsory:

- Unlike administration, the liquidation procedure is not directed at rescuing the underlying business. Liquidation facilitates the orderly winding up of a business' affairs. If the business is solvent, a "members' voluntary liquidation" ("MVL") is likely to be the appropriate route. If it is insolvent, the company may be placed into "creditors' voluntary liquidation" ("CVL") or "compulsory liquidation". In all cases, the liquidation is conducted by an insolvency practitioner, who acts as liquidator. The liquidator has extensive powers to act on behalf of the company. Generally, the company is dissolved once the liquidator has realized all the company's assets and, where applicable, has made distributions to creditors (and to shareholders if there are surplus funds available after payment of all creditors).
- Voluntary liquidation: in both a MVL and a CVL, the procedure is commenced by the passing of the requisite resolutions. A MVL is initiated by the shareholders, whereas a CVL is commenced by the directors and endorsed by shareholders. A creditor is unable to place a company into voluntary liquidation.
- Compulsory liquidation: this is the procedure whereby the company is placed into liquidation by order of the court (a winding up order). The proceedings, by which such an order can be sought, are commenced by the presentation of a winding up petition. A petition may be presented by the company, or a shareholder, the directors or, as is most common, one or more of the company's creditors. Provisional liquidators can be appointed by the court at any time after the petition is presented if there is cause to do so (often

immediately on presentation) when e.g. there are assets that need to be protected pending a winding up order being made.

PERSONAL INSOLVENCY:

4. Bankruptcy:

- Bankruptcy is a formal process by which an insolvency practitioner – acting as trustee in bankruptcy - realizes an insolvent individual's assets and distributes the proceeds amongst his creditors.
- Any insolvent individual may petition the court or apply to the Office of the Accountant in Bankruptcy for his own bankruptcy. Alternatively, a creditor may present a bankruptcy petition against an individual.
- The assets, which comprise the individual's "bankruptcy estate" vest in the trustee in bankruptcy. The ability of a bankrupt to (among other things) trade, act as a director, and take credit is restricted during the course of the bankruptcy. The purpose of these restrictions is to protect the public. An individual's bankruptcy usually lasts for one year (although it can be extended) and the process by which the trustee realizes and distributes the assets in the bankruptcy estate may take longer than the duration of the individuals' bankruptcy.

5. Trust Deeds:

- A trust deed is a statutory mechanism whereby a voluntary arrangement can be entered into by a debtor to convey assets to a trustee for the benefit of their creditors generally.
- A voluntary trust deed is not binding on any creditor who does not consent to its terms, although there is a statutory mechanism whereby a trust deed can become protected.
- A trust deed must convey the debtor's whole estate to the trustee, in the same way as would happen in a bankruptcy, although it is possible to exclude property the debtor's dwelling house.

6. Debt Arrangement Schemes ("DAS"):

- DAS is a Scottish Government-run debt management tool which allows someone to repay their debts through a debt payment programme ("DPP") via an approved DAS Administrator who is usually an insolvency practitioner.
- DAS is not bankruptcy but is rather a scheme that allows an individual (or in certain circumstances a business) to pay off debts over an extended period of time while giving protection from creditor actions. The DPP can last for any "reasonable" length of time (for businesses that is a five year maximum period) and, if approved, freezes all interest, fees and other charges on the debts included.
- Creditors are given 21 days notice of the proposed DPP within which they can object to it. However, unlike the active creditor approval required in a CVA creditors are deemed to approve the DPP proposal even if they do not respond. Even if objections are received, the DAS Administrator can still "approve" the DPP if they deem it to be "reasonable", leaving a creditor to appeal to the DAS Administrator and then the court.

Additional tools available within insolvency proceedings

- **Asset Recovery and Asset Protection:**

The insolvency regime, together with asset recovery and protection tools, can be used to assist creditors and/or the insolvency officeholder-holder. These include:

- Applications for interim freezing orders (arrestments on the dependence), search and seize orders (interim recovery orders), and imaging and preservation orders (Administration of Justice Act section 1 orders),
- Applications for summary remedies against delinquent directors and for recovery of company assets,
- Summary proceedings for enforcing judgments or equivalent, e.g. extract leases,
- Proceedings to enforce securities, e.g. repossession following calling-up.

Our credentials

- Acting for the administrators of a Formula One Team on all aspects of the administration including trading the team, sale of assets, disputes, investigations and litigation.
- Acting for the sole shareholder of a property development company in a claim brought against the former administrators of the company, pursuant to paragraph 75 of Schedule B1 to the Insolvency Act 1986, and related to the sale of the company's main asset at an undervalue. Claims were also made against the appointing bank for its role in procuring the administrators' breaches of duty.
- Acting for the liquidators of a telecommunications company in relation to a contentious aspect of the liquidation of this Luxembourg entity, which formed part of a group of companies which were the subject of the UK's biggest pre-pack administration in 2009.
- Advising the principal creditor in respect of high profile bankruptcy litigation.
- Advising government in respect of a scheme of arrangement of which was used to provide financial support following financial collapse of a mutual society.
- Advising the administrators of a leisure and hotel complex in respect of significant title rectification matters and the bringing to market and disposal of the asset.
- Advising the administrators of a mixed-use development in respect of a debt restructure for the companies and the exit of the administrators by way of three interlocking company voluntary arrangements.
- Various instructions acting for Scottish and foreign insolvency practitioners in all aspects of Scottish insolvency work, including restructuring and recovery and compliance, and acting for lenders in relation to security enforcement, refinancing, turnarounds and exits.

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About Mishcon de Reya LLP

Mishcon de Reya is one of the largest independent law firms in the UK employing more than 700 people with over 400 lawyers offering a wide range of legal services to companies and individuals. Mishcon de Reya has and established and respected insolvency practice which includes 3 partners and 5 lawyers. For more information, see www.mishcon.com.

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About Tughans

Tughans is one of Northern Irelands oldest and largest commercial law firms and has one of the largest and most experienced insolvency and restructuring teams in the region with 3 partners and 10 lawyers specialising in insolvency and restructuring matters, serving high profile clients from both private and public sectors. For more information see www.tughans.com.

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About Gilson Gray

Gilson Gray offers specialist legal, property and financial services in Scotland with offices in Edinburgh and Glasgow. Its two specialist insolvency partners advise on all aspects of insolvency work. For more information, see www.gilsongray.co.uk.

Directors

Debtors

Creditors

Insolvency Group

Expertise

Deloitte Legal

Purchasers

Insolvency Practitioners

Shareholders

Overview of Deloitte Legal's services[5]

Legal advices to debtors (distressed companies)

- Flash diagnosis of the situation of the distressed company and/or the group from a multidisciplinary perspective to determine possible recovery solutions and the risk of collateral damage to secure further business
- Definition of the appropriate strategy, whether pre-insolvency or insolvency situations
- Consulting on preventive legal measures
- Advice on corporate reorganizations/redundancy plans (in collaboration with the labor law teams as appropriate)
- Supporting an active and constructive dialogue with the creditors to find out-of-court solutions
- Standstill agreement, waiver, debt restructuring within an amicable context (outside of/prior to insolvency proceedings)
- Legal advice on refinancing agreements: new money, bridge facilities, short, medium or long term credit, factor – leasing – lease back
- Assistance in obtaining loans from mezzanine funds or other non-financial institutions
- Negotiation with stakeholders/creditors (secured and unsecured, banks, suppliers, public authorities)/creditors'& bondholders' committees or assemblies/social representatives/judges/courts/insolvency practitioners (judicial insolvency receivers, administrators & liquidators)
- Secured and structured sale of the company/business/activities in distress
- Collection of receivables
- Depending on local applicable legislation, checking whether the legal conditions for opening of proceedings are met
- Legal advisory in all stages of insolvency proceedings including appraisal of possible options/outcomes (from the petition for bankruptcy until the termination of the procedure)
- Assistance or effective representation in court proceedings
- Preparation and implementation of the final outcome determined by the parties/court (reorganization plan, repayment plan, debt-equity swap, share capital increase, sale of assets plan)

[5]The overview of Deloitte Legal's services is without prejudice to the ability of all the contributors to render all the legal services listed in this guide.

Legal advices to purchasers who contemplate to acquire a distressed company[5]

- Advising investors, competitors (industrial and commercial companies), classical investment funds, specialized turnaround funds, venture capital funds, hedge funds across all industries
- Share deals or asset (businesses/activities, business units, hard assets, soft assets) deals: all types of transactions
- Acquisition of debts
- Legal limited due diligences in collaboration with the labor law, tax and financial teams
- Identification of all kind of financial and legal liabilities that can be transferred to the purchaser
- Determining the scope of the takeover (shares, business divisions, tangible and intangible assets, inventories, contracts, employees)
- Management Buy Out advisory
- Negotiation with the shareholders & management of the target company/stakeholders/creditors/judges/courts/judicial receivers, administrators & liquidators/competition authorities
- Preparation of the acquisition documents and agreements: letter of interest (LOI), memorandum of understanding (MOU), offer, purchase agreements/deed of conveyance/warranties, escrow agreement, trust agreement, indemnities and liabilities if applicable, etc.
- Implementation and assistance all along the process (in and out of court process)
- Ensuring a transfer of shares or assets free of encumbrances
- Clearance of competition/concentration issues
- Registration formalities
- Post-transaction assistance

[5]The overview of Deloitte Legal's services is without prejudice to the ability of all the contributors to render all the legal services listed in this guide.

Legal advices to creditors holding a claim against a distressed company[5]

- Advising lenders, banks, bondholders, other type of financial institutions and hedge funds with distressed debts, public authorities, suppliers
- Analysis of relevant contractsand security agreements relating to the receivables (supply agreement, loan notes, liens, etc.)
- Suggesting options for dealing with financially unstable customers
- Analysis of the debtor' situation and assessment of credit recovery possibilities
- Design of credit recovery strategies and tools to improve collection
- Assistance with necessary actions to enforce payment, including legal steps such as taking interim protective measures (seizures of asset, claim or bank account)
- Assistance in the protection of receivables and guarantees attached
- Assistance in the assignment of claim (transfer of receivables) or delegation of payment
- Legal advice within the course of insolvency proceedings
- Checking whether the legal conditions for offsetting are met
- Lodging claims and assisting in the event of dispute
- Assistance for challenging fraudulent transactions prejudicing the creditor rights
- Defining the fate of ongoing contracts (continuation/termination)
- Claiming for the ownership and the return of assets/inventories held by the company in distress (retention of title clause, leasing agreement, transfer agreement)
- Checking whether the legal conditions for using a retention of title clause are met
- Choice of repayment solutions offer
- Assistance for negotiating and drafting term sheet agreements and settlement agreements
- Assistance or representation in creditors'& bondholders' committees or assemblies to negotiate with the company in distress on how to resolve the bankruptcy and more generally during the insolvency processing
- Suggesting outcomes and all kind of sustainable reorganization solutions
- Analysis of receivables ranking and estimate of recovery possibilities within the distribution process
- Supporting the distribution process in favor of the creditor (payout)
- Risk management advice
- Analysis of potential liabilities for abusive support

[5]The overview of Deloitte Legal's services is without prejudice to the ability of all the contributors to render all the legal services listed in this guide.

Legal advices to shareholders and directors of a distressed company[5]

- Definition of the appropriate strategy
- Assistance or representation during general shareholder meetings or board meetings
- Assistance, representation and advisory services before and during the whole (pre-) insolvency process
- Determination of the potential legal risks:
  - Proceedings against the shareholders/directors which might have caused the insolvency
  - Potential liabilities: civil, financial, professional, criminal, tax, social, environmental, etc.
  - Mismanagement faults
  - De facto management situation
  - Risk that the insolvency procedure already opened against the distress company be extended to other entities of the group (risk of contagion)
- Suggesting preventive (prevention of potential risks) and curative actions
- Negotiating a transactional solution to avoid judicial condemnation
- Assistance (defense) in case of petition for liability (court process)

[5]The overview of Deloitte Legal's services is without prejudice to the ability of all the contributors to render all the legal services listed in this guide.

Legal advices to insolvency practitioners[5]

- Assistance all along the pre-insolvency/insolvency proceedings from the opening until the termination:
  - Representation before court in case of litigation
  - Drafting deeds
  - Legal recommendations
- Assistance in the framework of EU Regulation 2015/848 of 20 May 2015 on insolvency proceedings:
  - Within group coordination proceedings
  - For cooperation purpose:
    - Between insolvency practitioners
    - Between insolvency practitioners and courts
  - In case of undertaking to be taken to avoid the opening of secondary insolvency proceedings in other Member States

[5]The overview of Deloitte Legal's services is without prejudice to the ability of all the contributors to render all the legal services listed in this guide.

Disclaimer

We have prepared this guide based on our understanding of the legislation, case law and practice as at November 2016.

It is possible that matters may have changed since publication or the relevant authorities may not agree with our interpretation.

The guide is intended to provide an overview of the various insolvency related regimes in the jurisdictions covered; it is not comprehensive and does not take account of individual facts and circumstances.

None of the contributors is by means of this guide providing professional advice or services and the contributors do not have any responsibility, collectively or individually, to any party that places any reliance whatsoever on the content of this guide.

It is recommended that you take specific professional advice before taking any decision or action that will affect your business or your finances.

Deloitte Legal can help companies with difficult choices and decisions in the process of recovery.

About Deloitte Legal

The business world has changed and so has the type of legal support businesses require.

Globalization is driving the need for cross-jurisdictional advice. Many businesses have operations in multiple geographies and need legal advisors from a network that can deliver legal solutions reliably wherever an entity operates.

The volume, complexity and pace of regulatory changes worldwide have become an ongoing challenge. Businesses continue to focus on achieving more with fewer resources and as a result are looking to service providers to deliver greater value more efficiently.

A better choice for business

Deloitte Legal has more than 1,700 lawyers worldwide in 74 countries, comprising one of the largest legal practices in Continental Europe and with substantial operations elsewhere in the world.

Deloitte Legal assists organizations with both day-to-day operational needs as well as business life events. Deloitte Legal provides pragmatic legal advice that aligns with your business objectives across four major areas of legal practice:

- Corporate and M&A Solutions
- Commercial Law Solutions
- Employment and Pension Solutions
- Tax Controversy Solutions

Deloitte Legal is focused on helping clients to take action today to achieve their business objectives tomorrow.

The power of global reach

Deloitte Legal approaches the delivery of legal services differently.

The model of Deloitte Legal is different. It is based on well-established local practices; each with a strong foundation of lawyers who both understand the local business environment and are experienced in serving multinational clients as part of a larger global client service team within one of the largest professional services networks in the world.

Deloitte Legal's services

Commercial law

Companies are facing an increasing number of business challenges globally including more rigorous trade regulations and enforcement by local authorities. Deloitte Legal provides services related to:

- **Bankruptcy, Insolvency** and Corporate Restructuring
- Business Law Litigation
- Intellectual Property Rights (Registration, Protection, and Defense)
- Legal Framework of Supply Chain Management and Distribution Network
- Real Estate (Acquisition, Disposal, Portfolio Management)
- Restructuring of business Functions and Outsourcing
- Statutory and Regulatory Compliance
- Unfair Competition and Antitrust

Corporate and M&A

Managing a business today is complex. Leaders need guidance on a broad range of activities including business start-up requirements, trading activities of an entity, expansion efforts, dissolving or unwinding of a business.

Deloitte Legal provides service related to:

- Acquisitions and Divestitures, Joint Ventures
- Corporate reorganizations (national and cross border)
- Family Protocols
- Legal Purchases and Vendor Due Diligence
- Post-Merger Integration (Legal) (PMI), Legal Entity Reduction
- Private Equity and Venture Capital
- Shareholder Agreements

Employment and Pensions

Uncertain economic times require companies to be agile and flexible in their staffing to remain competitive.

Complex polices, frequent legislative changes and global operations make managing employee relations and compliance with employment law challenging for businesses. Deloitte Legal provides services related to:

- Estates and Trusts
- Individual Employment Law
- Labor Law Issues in Restructuring
- Mobility and Immigration
- National and International Social Security Law
- Pension and Benefits
- Relationship with Work Representative Bodies

Tax controversy

Multinational organizations increasingly spend time and resources managing tax controversies in both headquarter and foreign jurisdictions. Deloitte Legal provides businesses with cohesive perspective allowing them to make informed business decisions at any stage of the tax controversy cycle. Services include:

- Tax audit strategy and consulting
- Tax controversy lifecycle management
- Dispute resolution

Deloitte Legal's global capabilities

Countries where legal services are provided by Deloitte Legal

Country
1. Albania
2. Algeria
3. Argentina
4. Australia
5. Azerbaijan
6. Belarus
7. Belgium
8. Benin
9. Brazil
10. Bulgaria
11. Cameroon
12. Canada
13. Chile
14. China
15. Colombia
16. Congo, Rep. of
17. Costa Rica
18. Croatia
19. Cyprus
20. Czech Rep.

Country
21. Democratic Rep of Congo
22. Denmark
23. Dominican Rep.
24. Ecuador
25. El Salvador
26. Equatorial Guinea
27. Estonia
28. Finland
29. France
30. Gabon
31. Georgia
32. Germany
33. Guatemala
34. Honduras
35. Hungary
36. Iceland
37. Ireland
38. Italy
39. Ivory Coast
40. Japan

Country
41. Kazakhstan
42. Kosovo
43. Latvia
44. Lithuania
45. Luxembourg
46. Malta
47. Mexico
48. Morocco
49. Netherlands
50. Nicaragua
51. Norway
52. Panama
53. Paraguay
54. Peru
55. Poland
56. Portugal
57. Romania
58. Russia
59. Senegal
60. Serbia

Country
61. Slovakia
62. Slovenia
63. South Africa
64. South Korea
65. Spain
66. Sweden
67. Switzerland
68. Taiwan
69. Thailand
70. Tunisia
71. Turkey
72. Ukraine
73. Uruguay
74. Venezuela

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