CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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ALBANIA

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The main piece of legislation governing insolvency and restructuring procedures in the Republic of *Albania is Law no. 110/2016, dated 27.10.2016 "On Bankruptcy"* (Bankruptcy Law). The implementation of the law is supported by secondary legislation in the form of Decisions of the Council of Ministers, such as:

- *DCoM No. 543, dated 19.09.2018 "On the approval of the Code of Ethics for bankruptcy administrators"*
- *DCoM No. 733, dated 13.11.2019 "On the approval of the national standards for the administration of the bankruptcy estate"*
- *DCoM No. 705, dated 09.09.2020, "On the criteria for determining the remuneration of the temporary bankruptcy administrator, the rules for the remuneration of the bankruptcy administrator as well as the criteria for calculation of the custodian remuneration"*
- *DCoM No. 65, dated 03.02.2021, approving the Regulation "On accelerated out-of-court reorganization agreements"*
- *DCoM No. 542, dated 19.09.2018 "On the organization and operation of the National Bankruptcy Agency"*, etc.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The legislation governing bankruptcy and reorganization has been amended frequently. There is a substantial caseload with the Albanian courts that remains yet unaddressed. The last change of the law in 2016 aims to deal with the situation and improve the bankruptcy or reorganization processes in the future without imposing an extra burden on courts.

1.3. Are there any special regimes applying to specific sectors?

The Bankruptcy Law does not apply in general to entities operating in the banking and financial sectors such as banks, pension funds, investment funds, insurance companies, and other institutions holding deposits from the public. The sectoral law regulates the bankruptcy procedure for these entities. There is an exception though, namely non-banking financial institutions. The exception is related to the fact that these institutions do not collect and hold any deposits, and as such the legislator has included non-banking financial intuitions in the list of entities obliged to abide by the Bankruptcy Law.

The Bankruptcy Law will apply to all other entities even the ones exercising their activity in strategic sectors, as long a specific law does not provide otherwise.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

In response to COVID-19, the Council of Ministers approved the *Normative Act No. 13*, dated February 2, 2020, *On specific measures to be taken for the enforcement, mediation, and bankruptcy activities during the epidemic state caused by COVID-19*. Based on this act, the bailiff, mediator, and bankruptcy administrator services as well as all the deadlines for performing related procedural actions were suspended until the termination of the epidemic state. The courts' activity and bailiff, mediators, or bankruptcy administrators' services restarted on May 27, 2020.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

To the best of our knowledge, there are no discussions for changes in bankruptcy legislation. However, considering the opening of the negotiations between Albania and the EU, it is logical to expect significant changes in Albanian legislation, including bankruptcy legislation.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The *UNCITRAL Model Law on Enterprise Group Insolvency* is not adopted in Albania and, for the time being, there has not been any announcement on any consideration for this adoption yet.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

In the case of legal entities, any member of the decision-making body/ies is obliged to file for bankruptcy within 60 days from the day of becoming aware, or should have become aware, of the state of insolvency.

As defined in the Bankruptcy Law, the state of insolvency will be considered the state where the debtor is unable to pay its obligations in time and/or the financial situation when the total value of the obligations of the debtor exceeds the total value of its assets.

Failure to file the request for bankruptcy in due time results in personal liability for the compensation of damages caused to creditors, and sanctions that may be imposed by the bankrupt-

cy court for the prohibition of the directors/managers or the debtor to exercise any management duty for a period of one to five years, depending on the scale of the breach.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

The Bankruptcy Law provides for two main procedures:

(i) a reorganization of the activity of the debtor's business concluded between the debtor and its majority creditors, voting in groups according to their rights and financial interests.

(ii) settling the debtor's obligations through the liquidation of the debtor's business and assets.

2.3. Who has the right to initiate insolvency proceedings?

The bankruptcy proceeding is initiated with the written request of the debtor or the creditor/s and is afterward approved by a decision of the bankruptcy court.

2.4. What are the consequences of commencing insolvency proceedings, in particular?

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

The bankruptcy procedures initiate upon the acceptance from the court of the request of the debtor or the creditors.

In the preliminary bankruptcy procedures, the period between the acceptance of the bankruptcy filing by the bankruptcy court and the opening of the bankruptcy proceedings, the bankruptcy court may appoint either a temporary bankruptcy administrator or a temporary supervisory administrator.

The temporary bankruptcy administrator assumes the role of the managing body/ies of the debtor and manages the daily activity of the debtor, guaranteeing the safety of the debtor's assets, etc.

If a supervisory administrator is appointed, they will function as the supervisor of the actions performed by the managing body/ies of the debtor, that remain in active duty but under supervision.

When the bankruptcy initiation is accepted, and the court appoints the bankruptcy administrator the management rights and duties will be entirely vested to the bankruptcy administrator. The debtor's management bodies shall have no say in the management of the estate or of the activity.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

The Bankruptcy Law provides that, once the bankruptcy procedure has started, no further claims may be filed against the debtor and all such claims should be raised in accordance with the rights of the creditors as per the provisions of the Bankruptcy Law.

In addition, following the commencement of the bankruptcy proceeding, no new obligatory enforcement procedures may be imposed on the debtor, while the already initiated enforcement procedures should be suspended.

Regarding extraterritoriality, the bankruptcy administrator is authorized to act outside the state of Albania, on behalf of a procedure, according to the Albanian bankruptcy law, only as permitted by the applicable foreign law

The decisions of Albanian courts extend their effects within the territory of the country unless duly recognized by the courts of the country of interest.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

In principle, the opening of bankruptcy proceedings does not affect contracts already in force that will continue to be valid and effective. The bankruptcy administrator or the debtor, under the supervision of the supervisory administrator, may terminate the contracts if this termination benefits the bankruptcy proceeding. The counterparty may not terminate the contracts but is entitled to a claim as a creditor in the bankruptcy procedure.

In addition, the Bankruptcy Law provides special provisions for the following contracts:

a) Lease agreements cannot be terminated upon the opening of bankruptcy proceedings, neither for failure to pay the lease price prior to the opening of the bankruptcy proceeding nor for the deterioration of the financial situation of the debtor.

b) Order contracts affecting the bankruptcy estate shall be terminated upon the opening of the bankruptcy proceeding unless the termination will cause damages to the bankruptcy estate. In these cases, the bankruptcy administrator will instruct the contracting party accordingly and such party will be included as a creditor in the procedure.

c) Public contracts, as a rule, are not terminated due to the initiation of bankruptcy proceedings; however, the public administration may terminate the contract when there exists an objective reason to believe that the fulfillment of the contract will be at risk.

d) Employment contracts are not immediately terminated upon the initiation of the procedure. The bankruptcy administrator may decide to terminate these contracts following strictly the procedure defined in the Labour Law.

Article 79 of the Bankruptcy Law provides for the right of the bankruptcy administrator/supervisory administrator/creditor to oppose any transaction performed by the debtor within a period of two years, prior to the opening of the bankruptcy proceeding, if such transactions have damaged the debtor's estate or have provided an unjustified preference to certain creditors.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The first step is the filing of the bankruptcy request with the court either by the debtor or the creditor. When filed by the debtor the request is accompanied by an extensive list of documents reflecting all the bankruptcy estate and obligations, including the list of creditors. On the other hand, the creditor should only file the request and the proof of outstanding debt.

Before starting the procedure, the bankruptcy court can order as a temporary measure a temporary bankruptcy administrator or a supervisory administrator.

In cases where the bankruptcy estate is not enough to cover the costs of the bankruptcy procedure, the bankruptcy court decides on the termination of the procedure due to lack of assets, thus this is an important milestone for the entire process.

After examination of the request in case of approval the bankruptcy court on the decision for the initiation of the Bankruptcy procedures, among others, provides for:

- the appointment of the bankruptcy administrator or supervisory administrator,
- the publication of the decision for the initiation of the bankruptcy procedures in the Commercial Register and the Official Gazette,
- the request for each person/entity that has claims against the debtor to submit the claims within 45 days from the publication of the decision with the Commercial Register, and
- appointment of the creditors' committee from the known creditors of the debtor.

Upon the initiation of the bankruptcy procedures the bankruptcy/supervisory administrator prepares a detailed inventory of the bankruptcy estate and an accurate list of creditors showing the amounts due and the classification of the creditors. Such an inventory is submitted to the court, creditors, committee of creditors, debtor, and the representative of the employees. All parties are entitled to make comments on the report. Based on the evaluation of the financial situation of the debtor, the court decides between the reorganization or liquidation of the assets of the debtor.

The creditors' committee has an important role as it is responsible for the supervision of the activity of the bankruptcy administrator and, in cases of reorganization, approves the reorganization plan.

Once bankruptcy proceedings are opened, the debtor loses entirely the right to manage the bankruptcy estate or may manage only under supervision and the administrators take respective control over the bankruptcy estate. The debtor is obliged to cooperate with the administrator and the court, specifically in terms of duties of disclosure and cooperation in order to assist the administrator with the fulfillment of its duties.

The creditors' claims are submitted to the administrator that is in charge of preparing an accurate inventory of claims. The list is submitted to the court within the time limits set by law.

As intermediary steps, there may be contestations, refusals, and delayed claims that are subject to the court's decision. Discharge of the obligation is made in the ranking mentioned in Section 2.6.

The next step is the finalization of the bankruptcy procedures as explained in Section 2.7.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Bankruptcy Law expressly provides the ranking of claims as below:

- Secured claims up to the value of the property serving as collateral.
- Claims from preferred creditors (i.e., employee claims for dismissal, work and health matters, alimony, tax obligations, etc.).
- Unsecured creditors' claims.
- Final creditors (i.e., interest on late payments, fines and administrative sanctions, payment to related parties with the debtor, etc.).
- Shareholders' claims.

The Bankruptcy Law dictates that the above priority must be respected. Prior the liquidating the claims in the above ranking, the expenses of the bankruptcy procedure or the so-called creditors of the bankruptcy procedures have priority and must be paid. Here are included court fees and remuneration of the administrator, experts, or similar costs.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

After the final distribution has been completed, the bankruptcy court orders the finalization of the bankruptcy procedure. The full payment to all bankruptcy creditors at any stage of the procedure is a cause for the finalization of the procedure. The decision of the court and the reasons for the finalization are officially announced.

From court practice in Albania, at least a period of two years should be expected for the finalization of bankruptcy procedures. In the last few years, the Albanian judicial system is undergoing reform in terms of the evaluation of judges and reorganization of courts. This reform has contributed to the further extension of court procedures overall, including bankruptcy procedures.

In the case of legal entities, when all creditors are fully settled, the distribution of full of assets after the liquidation leads to the dissolution of the legal entity. In this case, the administrator of the bankruptcy sends the decision of the bankruptcy court to the relevant registers, in order to erase the debtor from these registers.

2.8. Are there any liabilities that survive the insolvency proceedings?

When the debtor is an entity, any creditor may file a request to reopen the bankruptcy procedures if at any time from the termination of the bankruptcy procedures **(i)** are discovered new assets of the debtor **(ii)** new claims arise in relation to avoidance actions **(iii)** are identified responsibilities of the governing bodies.

This process may start regardless of the erasure and removal of the debtor from the registers of commercial companies. The company will have to be reactivated with the sole purpose of restarting the proceedings.

If the debtor is a natural person, they can request to be discharged from the remaining obligations to bankruptcy creditors. Discharge from remaining obligations is initiated through a written request of the debtor, to the bankruptcy court at any time during the liquidation proceedings. This request can be submitted together with the request for the initiation of the bankruptcy procedure and implies at the same time the request for the liquidation of the debtor's assets.

The Bankruptcy Law provides for a few cases when such discharge is not granted. However, even if granted, it does not apply to:

- loans granted to the debtor to pay the expenses of the bankruptcy procedure,
- obligations that arose as a result of fraud, false testimony, or other actions in bad faith or incorrect actions, committed intentionally by the debtor,
- obligations related to the financial support of children,
- fines and administrative sanctions,
- student loans,
- obligations arising from actions that have caused injury or death of a person,
- obligations that remain non-dischargeable from the previous bankruptcy procedure,
- obligations related to properties transferred to persons related to the debtor.

Thus, the above obligations shall survive the proceedings.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

In cases when a reorganization is possible, the Bankruptcy Law provides for two options of reorganization: **(i)** a *reorganization* proceeding; and **(ii)** a *fast-track reorganization* proceeding.

The fast-track reorganization is less formal and is based on an agreement reached among the debtor and creditors outside of the court and approved by the bankruptcy court.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

The basic requirement for deciding on the reorganization or the liquidation of the debtor is the financial situation during the initiation of the bankruptcy proceeding. In relation to the approval of the restructuring plans, see Section 3.6.

3.3. Who has the right to initiate formal restructuring proceedings?

Reorganization may be initiated after the initiation of bankruptcy procedures. The Bankruptcy Law provides that the bankruptcy court and the creditors may decide on the reorganization of the debtor if the financial situation shows potential

for the sustainability of the activity as a result of the implementation of the plan, as well as the possibility of its effective implementation.

3.4. What are the consequences of commencing restructuring proceedings, in particular?

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

See Section 2.4.1.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

See Section 2.4.2.

3.4.3. How do restructuring proceedings affect existing contracts?

See Section 2.4.3. In addition, the reorganization plan also addresses the modalities the activity of the entity will continue and how contracts will be managed.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

In principle, the opening of bankruptcy proceedings does not affect contracts already in force, which shall continue to be valid and effective. The bankruptcy administrator or the debtor, under the supervision of the supervisory administrator, may terminate the contracts if this decision benefits the bankruptcy proceeding.

3.5. Can third-party liabilities be released through restructuring proceedings?

Only the participants in the restructuring proceeding may be released from liabilities.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

(i) Reorganization procedure

In case reorganization is decided, a plan for reorganization must be filed with the bankruptcy court by:

- the bankruptcy or supervisory administrator,
- creditors with claims representing 20% or more of the total amount of claims, or
- the debtor together with the request for opening the bankruptcy proceeding or at a later stage.

The plan should contain actions to restructure the business, a general overview of the activity of the debtor and the circumstances causing difficulties, a list of applicable measures for the implementation of the plan, data on the financial means and assets to be used, a description of the proceedings of selling assets and debt-for-equity swaps, etc.

The reorganization plan is approved with the vote in favor of the creditors (present or represented) holding the majority of claims. The law provides also certain specific voting thresholds for approvals when different treatment of creditors within the same class is foreseen or when measures extend beyond five years.

Upon approval, the reorganization plan is binding to all creditors, even those who have dissented or were absent from the meeting.

(ii) Fast-track reorganization

The Bankruptcy Law provides that the debtor and the creditor/s may enter into an agreement drafted out of court that must be approved by the bankruptcy court.

This simplified option aims to provide the debtor with the possibility to overcome an inevitable situation of insolvency through an agreement with the creditors. The agreement may be executed when the parties can objectively foresee that the debtor will not be able to discharge its obligations in time for a period of six months.

Upon execution of the agreement, the debtor is eligible to file a request with the bankruptcy court for the approval of a fast-track reorganization proceeding.

The request for a fast-track reorganization proceeding should include:

a) a report of the debtor containing the causes of insolvency, financial statements for the last three years, a list of movable and immovable properties, cash flow and sources of income, a list of debtors and creditors, and a list of all legal proceedings in which the debtor is a party,

b) the proposal for reorganization plan, and

c) a notarial declaration evidencing the support of the creditor/creditors, representing 30% or more of the total amount of the claims registered in the debtor's account.

The request is examined by the bankruptcy court, in order to decide whether to open or refuse the fast-track reorganization proceeding and the appointment of a supervisory administrator.

The opening of the fast-track reorganization proceeding does

not affect the right of the debtor to manage/dispose of the bankruptcy estate unless such actions are considered extraordinary, and as such, are subject to the approval of the supervisory administrator.

The difference between the two reorganization proceedings is that fast-track reorganization proceedings are initiated by the debtor who has obtained the approval of the creditors on the matter.

3.7. How are restructuring proceedings normally finalized?

Notwithstanding the law has been in force for several years, there is no consolidated practice as regards reorganizations and liquidation procedures. There are only a few court decisions and they mostly regulate liquidation procedures. It appears that the consolidation of the procedures and truthful estimation of timelines for the completion of these procedures will take a few more years.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Based on the Bankruptcy Law's provisions, Albanian courts will have exclusive jurisdiction toward local debtors as long as Albania is considered their main interest center, meaning the main place where they conduct and manage their business activities and such place is known to third parties.

Foreign proceedings are taken into consideration through the recognition of a foreign decision affecting the bankruptcy estate of a debtor in Albania.

4.2. What are the preconditions for recognizing foreign decisions?

The recognition of foreign procedures and cooperation with foreign courts and other competent authorities is the competence of the Albanian bankruptcy courts. The foreign decision may be recognized by the bankruptcy court in Albania as long as it does not contradict the jurisdiction of the Albanian courts.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

The Bankruptcy Law provides for the duty of cooperation and support from Albanian courts with foreign courts and representatives during the application for recognition and after the recognition of a foreign court decision and/or during parallel procedures of bankruptcy.

Forms of cooperation may consist of **(i)** exchanges of information, **(ii)** the coordination for the supervision or administration of the assets of the debtor, **(iii)** the coordination of parallel procedures over the same debtor, etc.

Support during the application for recognition may consist of interim measures such as the suspension of execution procedures over the assets of the debtor or placing under administration the estate of the debtor.

Cooperation and support after the recognition of the foreign decision procedures may involve **(i)** the extension in time of the measures taken during the application for recognition of the foreign decision, **(ii)** the suspension of disposal rights over all or part of the assets of the debtor, **(iii)** the interruption of execution procedures over the assets of the debtor and any other measure which is deemed necessary case by case.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

The Bankruptcy Law defines equal rights for the local and foreign creditors in a bankruptcy proceeding in Albania.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

The Bankruptcy Law contains creditor-friendly tools, such as a debtors' civil liability for a late bankruptcy filing, initiation of bankruptcy proceedings upon request of the creditor, the right of creditors to vote on a material decision during bankruptcy proceedings, etc.

The frequent changes in bankruptcy legislation have negatively impacted the consolidation of court practices and the experience of courts so far is not substantial to really assess the regime positioning in practice.

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The *Law on Bankruptcy of Federation of Bosnia and Herzegovina*; the *Law on Bankruptcy of RS* and the *Law on Bankruptcy of Brcko District BiH*

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Legislative changes in the area of the *Law on Bankruptcy of FBiH* were quite frequent, with amendments occurring in 2003, 2004, 2006, and 2018. In July 2021, the new *Law on Bankruptcy of FBiH* entered into force. The *Law on Bankruptcy of RS* was not amended after 2016, while the *Law on Bankruptcy of Brcko District BiH* was adopted in 2019, and changes were made to it in 2020 and 2022.

1.3. Are there any special regimes applying to specific sectors?

No.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

There were no changes in the law specifically related to COVID-19. However, the adoption of the new *Law on Bankruptcy of FBiH* and the introduction of restructuring in pre-bankruptcy proceedings has probably facilitated the process for some companies that may have fallen into crisis due to the consequences caused by COVID-19.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

No.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

No.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

The management of the debtor is obliged to monitor the financial performance of the company and if the insolvency conditions are met, they are under the obligation to initiate the proceeding, within 60 days. If not initiated, the management may be fined, as well as sued for damages that occurred due to failure to timely file.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

The *Law on Bankruptcy of FBiH* and the *Law on Bankruptcy of Brcko District BiH* regulates pre-bankruptcy proceedings and bankruptcy proceedings, legal consequences of opening and conducting pre-bankruptcy proceedings and bankruptcy proceedings, reorganization of a bankrupt debtor unable to pay on the basis of a bankruptcy plan, and international bankruptcy.

The *Law on Bankruptcy of RS* regulates restructuring procedures and bankruptcy procedures, legal consequences that are regulated to the opening and implementation of restructuring and bankruptcy proceedings, bankruptcy reorganizations of the debtor unable to pay based on bankruptcy plan, and international bankruptcy.

2.3. Who has the right to initiate insolvency proceedings?

Bankruptcy proceedings are initiated by a written proposal. The bankruptcy debtor and every creditor who has a legal interest in conducting a bankruptcy proceeding are authorized to submit a proposal for the opening of the bankruptcy proceeding.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

With the opening of a bankruptcy proceeding, the rights of the bankrupt debtor to manage and dispose of the assets belonging to the bankruptcy estate, as well as the rights of the bodies of the bankrupt debtor, procurators, representatives, and attorneys of the bankrupt debtor, are transferred to the bankruptcy trustee.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

During the pre-bankruptcy proceeding, on the day of the opening of the pre-insolvency restructuring procedure all pending court proceedings, administrative, litigation, or enforcement are suspended and new actions against the debtor are not allowed, with the exception of any criminal proceedings. In FBH and the Brcko District, within 15 days after the examination hearing, any suspended litigation proceedings regarding the debtor can be resumed upon the request of such a creditor, while in the RS such proceedings can be resumed after the finality of the settlement/decision on termination of the pre-bankruptcy proceeding. Once the bankruptcy proceedings are opened, all court pending court proceedings, administrative, litigation, or enforcement are suspended until the completion of the proceeding (unless the conditions for the continuation of the proceeding are fulfilled).

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

The bankruptcy trustee can, if the bankrupt debtor or another contracting party at the time of opening the bankruptcy proceeding has not fulfilled or has not fully fulfilled the bilaterally binding contract, instead of the bankrupt debtor, fulfill the contract and fulfill the request from the other party. If the bankruptcy trustee refuses to perform, the other party can assert its claim due to non-performance only as a bankruptcy creditor.

If the time of delivery of an obligation under a fixed contract falls due after the opening of a bankruptcy proceeding, fulfillment cannot be claimed. The other contracting party with the bankruptcy debtor may assert a claim for compensation for non-performance as a bankruptcy creditor.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Bankruptcy proceedings are initiated by a written proposal. The bankruptcy debtor and every creditor who has a legal interest in conducting bankruptcy proceedings are authorized to submit a proposal. When the court receives the proposal, it is obliged to review the proposal within 15 days, and if it determines that the proposal is incomplete and that certain documentation is missing, then the proposal is returned to the proposer. By its legal nature, bankruptcy proceedings are urgent and all deadlines must be shortened in the shortest possible time. Based on the proposal for initiation of bankruptcy proceedings, the bankruptcy judge issues a decision on the initiation of preliminary bankruptcy proceedings in order to determine the conditions for opening the bankruptcy proceedings. During the previous procedure, the contractual party of the bankrupt debtor cannot cancel the permanent obligation relationship. The bankruptcy judge will schedule a hearing regarding the conditions for opening bankruptcy proceedings after receiving the report of the temporary bankruptcy trustee and will make a decision to open bankruptcy proceedings or reject a motion to open bankruptcy proceedings within three days of the conclusion of the court hearing. If bankruptcy proceedings are opened, the bankruptcy judge will appoint a bankruptcy trustee. The bodies of the bankruptcy procedure are the bankruptcy judge, the bankruptcy trustee, the assembly of creditors, and the board of creditors. The bankruptcy judge conducts and manages the bankruptcy proceeding from the submission of the proposal until the end of the bankruptcy proceeding and makes final and binding decisions. The most important decision of the bankruptcy judge is the appointment of the bankruptcy trustee. When a bankruptcy trustee is appointed, he must immediately take possession of the assets of the bankrupt debtor and immediately take the necessary measures in the inventory of assets, and the implementation of all other decisions made by the assembly of creditors. The bankruptcy judge supervises the work of the bankruptcy trustee. The third body in bankruptcy proceedings is the assembly of creditors. The creditors' assembly is convened by the bankruptcy judge. The fourth body is the board of creditors, which is elected by the assembly from the circle of creditors, and its members are bankruptcy creditors with the highest claims, creditors with small claims, representatives of employees of the bankrupt debtor, and various creditors. The creditors' committee considers the bankruptcy trustee's reports on the course of the bankruptcy proceeding and the state of the bankruptcy estate, giving an opinion on the liquidation of the bankruptcy estate, submitting complaints to the court about the work of the bankruptcy trustee, etc. With the opening of bankruptcy proceedings, the rights of the bankrupt debtor to manage and dispose of the assets belonging to the bankruptcy estate, as well as the rights of the bodies of the bankrupt debtor, procurators, representatives, and attorneys of the bankrupt debtor, are transferred to the bankruptcy trustee.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

In Federation of BiH and Brcko District BiH, before other bankruptcy creditors, the employees and former employees of the bankrupt debtor, except for the members of the company's management, members of the supervisory board, and the audit committee, are settled with employment claims incurred

up to the date of opening of bankruptcy proceedings in the total gross amount, severance pay up to the amount prescribed by law or collective agreement and claims based on compensation for damages suffered due to an injury at work or occupational disease and family members of an employee who died at work, which is paid in full.

In RS, claims that enjoy priority are:

1) claims originating from the period of the temporary administration and claims, which could not be settled by either the temporary trustee or the bankruptcy trustee, are settled before other bankruptcy creditors,

2) claims of the employees of the bankrupt debtor from the employment relationship for the last 12 months to the day of the opening of bankruptcy proceedings, but only in the amount of the lowest salary established by law and calculated contribution to the lowest salary;

3) claims of workers who exercise the right to compensation for injuries at work and family members of the deceased workers at work, which is paid in full

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Bankruptcy proceedings will be completed within one year, and, in complex cases, within two years from the day bankruptcy proceedings were opened. If the bankruptcy proceeding is not completed within one or two years, the procedure will continue and it may last one more year at most, and the bankruptcy judge will inform the president of the court about the reasons for extending the deadline.

After the bankruptcy trustee submits a report on the completed division, evidence of the completed division, and after the auditor's report on the evaluation of the final account in the bankruptcy proceedings is delivered, the bankruptcy judge will issue a decision on the conclusion of the bankruptcy proceeding.

2.8. Are there any liabilities that survive the insolvency proceedings?

Should the insolvency proceedings be concluded, but certain assets found thereafter, the court will order that the bankruptcy creditors be settled from such assets in accordance with the rules of the bankruptcy procedure.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

The bankruptcy laws of FBiH, RS, and Brcko District BiH proscribe financial and operational restructuring, which is a procedure led by the court with the aim of concluding an agreement in a pre-bankruptcy proceeding between creditors and debtors on the method of settling creditors' claims in order to improve the liquidity and solvency of the debtor.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

A restructuring plan can be drawn up and proposed only after the opening of bankruptcy proceedings. After bankruptcy proceedings are opened, the bankruptcy trustee and the bankruptcy debtor can submit the bankruptcy plan. If the bankruptcy plan has all the necessary characteristics, the phase of its adoption follows. A hearing is scheduled to discuss and vote on the bankruptcy plan. Bankruptcy creditors who have reported their claims, secured creditors, the bankruptcy trustee, and the debtor will be invited to this hearing. The bankruptcy plan will be considered adopted if it is accepted by the majority of creditors. Consent to the bankruptcy plan is also given by the bankruptcy trustee if he is not the proposer of the bankruptcy plan. After the bankruptcy plan is accepted by the creditors and the bankruptcy debtor agrees to it, the bankruptcy court decides whether to confirm the plan. The decision confirming or denying the bankruptcy plan is announced at a voting hearing or at a special hearing.

3.3. Who has the right to initiate formal restructuring proceedings?

The right to initiate restructuring proceedings belongs to the bankrupt debtor and bankruptcy trustee. A bankrupt debtor can submit a bankruptcy plan together with a proposal for opening bankruptcy proceedings. After the opening of the bankruptcy proceeding, the bankruptcy trustee and the individual debtor have the right to submit the bankruptcy plan to the court.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

It depends on the court's decision. In some cases, the bankruptcy trustee operates the business, but, in some cases, the management continues to operate the business. Supervision over the implementation of the bankruptcy plan is carried out either by the bankruptcy trustee or the creditors' committee. They are obliged to regularly submit a report to the bankruptcy judge regarding the implementation of the bankruptcy plan.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

See Section 2.4.2.

3.4.3. How do restructuring proceedings affect existing contracts?

N/A

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

N/A

3.5. Can third-party liabilities be released through restructuring proceedings?

Once the bankruptcy plan is confirmed by the court, it shall have an effect on all creditors, even those who did not participate or objected to the bankruptcy plan.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Submission of the bankruptcy plan, followed by a statement on the plan by the creditors' committee, the individual debtor, and the bankruptcy trustee

The scheduling of a hearing to discuss and vote on the bankruptcy plan. The bankruptcy plan is considered accepted if the majority of creditors voted for it. If the majority of creditors voted for the plan, the judge decides on the confirmation of the bankruptcy plan.

The decision confirming the bankruptcy plan or denying the confirmation is announced at the voting hearing or at a special hearing that will be held within 15 days from the day of the voting hearing.

3.7. How are restructuring proceedings normally finalized?

If the bankruptcy plan is adopted and the adoption decision becomes final, the bankruptcy court concludes the bankruptcy proceeding. The consequences of the conclusion of the bankruptcy proceeding are that the mandate of the bankruptcy trustee, the creditors' committee ends, and all powers are returned to the bankruptcy debtor.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Yes.

4.2. What are the preconditions for recognizing foreign decisions?

A foreign decision to open bankruptcy proceedings is recognized:

a) if it was issued by the court, i.e., a body that has international jurisdiction according to the regulations of the FBiH, RS, and Brcko District BiH.

b) if it is enforceable according to the regulations of the country where it was adopted, even if it is not legally binding,

c) if its recognition is not against the public order of the FBiH, RS, and Brcko District BiH.

The court will reject a proposal for the recognition of a foreign decision if, in the proceedings upon the objection of the bankruptcy debtor or another participant in the proceeding, it is determined that the act by which the proceeding was initiated was not delivered to the bankruptcy debtor in accordance with the law of the country in which the decision was made and if in that procedure, their basic rights to participate in the bankruptcy procedure were violated.

A foreign decision on the opening of bankruptcy proceedings is recognized even if it is not legally binding.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

The bankruptcy trustee of bankruptcy proceedings opened in the BiH and the bankruptcy trustee of bankruptcy proceedings opened in another country over the same bankruptcy debtor cooperate with each other. The bankruptcy trustee of a special bankruptcy proceeding in the BiH is obliged to enable the bankruptcy trustee of a foreign main bankruptcy proceeding to declare the method of liquidation of the property of the bankrupt debtor, which is included in the domestic special bankruptcy proceeding.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Foreign creditors in bankruptcy proceeding before a court in BiH enjoy the same rights and the same treatment as domestic creditors.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

We would conclude that the legislative framework for the insolvency proceeding in Bosnia and Herzegovina is rather neutral and should serve both the debtor, should there be an option to continue the business operations, as well as the creditors in their attempt to collect their claims.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

BULGARIA

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

National insolvency and restructuring matters are codified in Part Four and Part Five of the Bulgarian *Commerce Act*. They cover almost all aspects of insolvency and restructuring matters, both from a material and procedural point of view. For procedural matters not covered by the *Commerce Act*, the Bulgarian *Civil Procedure Code* applies (except for provisions the application of which is explicitly excluded by the *Commerce Act*).

Some specific questions related to insolvency procedures are governed by other pieces of legislation like the *Employees Guaranteed Receivables* in the event of *Employer's Insolvency Act* or *Ordinance No. 3 of 27.06.2005* on the rules for selection, qualification, and monitoring of insolvency administrators.

Cross-border insolvency proceedings in turn are governed by *Regulation (EU) 2015/848* of the European Parliament and of the Council of May 20, 2015, on Insolvency Proceedings.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Bulgaria does not have a well-established legal regime governing restructuring and insolvency matters. As an example, the Bulgarian *Commerce Act* has been amended more than 20 times in the last 10 years, whereas many of these amendments concern insolvency and restructuring proceedings. These frequent changes are a result of constant attempts of Bulgarian legislators to balance the interests of the insolvency creditors, the rights of the debtor, and the speed of insolvency proceedings (thus far, largely unsuccessful).

1.3. Are there any special regimes applying to specific sectors?

Banks are the only commercial enterprises whose insolvency is regulated not by the *Commerce Act*, but by the *Bank Insolvency Act*. Its provisions largely follow the structure of the *Commerce Act* with some specifics considering the large implications of the insolvency of a bank for the Bulgarian economy.

There have been plans for adopting a special legislative act for the insolvency procedure governing licensed energy suppliers, but no legislation has been adopted on the matter thus far.

While generally the insolvency procedure provisions of the *Commerce Act* are being applied, companies operating in some specific sectors, such as (but not limited to): pension funds, insurers, collective investment schemes, payment services providers, etc. fall within the scope of specific legislation which governs the effect of insolvency proceedings opened regarding them.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

By virtue of the *Act on the Measures and Actions during the State of Emergency* declared by a Resolution of the National Assembly on March 13, 2020, on addressing the consequences of the state of emergency, most court proceedings, including insolvency proceedings, were stayed for the period of the declared state of emergency, i.e., between March 13, 2020, and May 21, 2020. All deadlines under such court proceedings were suspended and deadlines expiring during the state of emergency were extended by one month as of the end of the state of emergency.

After the effect of the above measures expired, no further changes to restructuring or insolvency laws were adopted in response to the COVID-19 pandemic. On several occasions thereafter, Bulgarian courts (as a whole or in the respective regions where the pandemic situation was worse at the given time) suspended open court hearings (including insolvency hearings) for several weeks.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Yes, there are such proposed changes. A big overhaul of the insolvency and restructuring regime was prepared by the Bulgarian Ministry of Justice and judges and sent for discussion and adoption by the Bulgarian Parliament. Unfortunately, due to a political crisis, the Bulgarian Parliament was dissolved and early elections were called prior to the adoption of the amendments. Nevertheless, these changes do not seem to be of controversial nature and will most probably be voted on by the next Parliament.

In short, these are the main anticipated changes:

■ Changes to the insolvency proceedings: New guarantees against insolvency "forum shopping" by the debtor, improvement of the over-indebtedness definition (one of the alternative criteria to declare a debtor insolvent), multiple deadline changes, decoupling of invalidation claim deadlines and the accepted initial date of insolvency of the debtor (to speed up such invalidation claims, since often disputes about the exact insolvency date can take years), new claim templates, lower fees for certain claims and actions. In addition, the amended *Commerce Act* shall include a new obligation of the managers, shareholders, and employees of a company that is at immi-

nent risk of insolvency – to take all necessary actions to avoid insolvency and over-indebtedness of the company, as well as not to endanger the viability of the company intentionally or via gross negligence;

■ Special insolvency proceedings for a new category of debtors – entrepreneurs, to become effective after January 1, 2025, (currently, only traders, i.e. – companies and sole traders, may apply for the opening of insolvency proceedings). The definition of entrepreneurs encompasses "any natural person exercising an economic activity, trade or profession, insofar as his enterprise in terms of subject and volume does not require the conduct of business in a commercial manner." Such natural persons include most categories of self-employed persons under Bulgarian law – lawyers, notaries, enforcement agents, architects, artists, artisans, etc. The proposed changes include an option for the debt forgiveness (in certain circumstances) of the obligations of an entrepreneur and a sole trader, against whom insolvency proceedings were terminated due to insufficient assets to satisfy all creditors;

■ A major overhaul of restructuring proceedings – These changes aim to implement the provisions of *Directive (EU) 2019/1023* of the European Parliament and of the Council of June 20, 2019, *on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt*. Major changes include – the appointment of a restructuring practitioner be proposed by the debtor and the necessity of his/her appointment be assessed by the court (as opposed to his/her current *ex officio* appointment by the court), abolishing of the supervisory body of the creditors appointed under the current regime by the court at the proposal of the meeting of the creditors, lowering of the majority thresholds among the creditors, necessary to approve the restructuring plan, along with an option for the court to approve a restructuring plan even if such majority thresholds are not met (in certain circumstances), etc.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

As of August 2022, Bulgaria has not adopted the UNCITRAL Model Law on Enterprise Group Insolvency. We are not aware of any public or legislative discussion for amendment of Bulgarian insolvency legislation in order to implement elements of the aforementioned UNCITRAL model law.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

In Bulgaria, insolvency proceedings are opened against a trader (company or sole trader) that is insolvent or over-indebted. The sole trader or the management of the company is obliged to apply for initiation of insolvency proceedings within 30 days of the occurrence of the relevant circumstance. Should they fail to do so:

■ The management of the company becomes jointly liable with the company for all damage caused to creditors due to the delay in the initiation of the insolvency proceedings;

■ The management of the company bears criminal liability and may face up to three years of imprisonment (although such inaction is rarely prosecuted).

According to the *Commerce Act*:

■ a company is "over-indebted" if its total assets are insufficient to cover its liabilities;

■ a sole trader or company is "insolvent" if it is unable to pay:

  ■ an outstanding monetary obligation, related to a commercial transaction, including the validity, performance, non-performance, termination, annulment, and voidance of such a transaction or the consequences of its termination;

  ■ public receivables (e.g., taxes, social security contributions, custom duties due to the state and municipalities);

  ■ private state receivables (e.g., sums due under agreements with the state such as public procurement contracts);

  ■ an obligation to pay salaries to at least one-third of its employees which remains outstanding for more than two months.

As in certain cases, it may be hard to prove such inability to pay (as opposed to unwillingness), there are certain insolvency presumptions that may be employed in the insolvency application. The insolvency is presumed if:

■ prior to the filing of an application for initiation of insolvency proceedings, the trader has failed to submit for publication with the Bulgarian Commercial Register its financial statements for the last three years;

■ the debtor has suspended payments. A debtor is deemed to have suspended payments even if it has fully or partially paid its debts to certain creditors;

■ a creditor's receivable has remained unsatisfied six months after initiation of enforcement proceedings initiated to collect a sum awarded under an effective court/arbitration decision.

The court may reject the application for initiation of insolvency proceedings if the difficulties described above are not present or if they are only temporary. Usually, the assessment of the court is assisted by an accounting expert who calculates the following financial coefficients of the company: overall, current, quick, and absolute liquidity and financial autonomy.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Although it may be initiated either by a creditor or by the debtor itself and has different potential outcomes, Bulgarian law establishes only a single type of insolvency procedure (and a single restructuring procedure to be reviewed in Section 3 below).

2.3. Who has the right to initiate insolvency proceedings?

Insolvency proceedings may be initiated by:

■ The debtor, its successors, management bodies, liquidators, or general partners. Company shareholders which bear limited liability cannot initiate insolvency proceedings against the company (if they are not creditors);

■ A creditor of the debtor under a commercial transaction (non-commercial creditors such as employees are not eligible);

■ The National Revenue Agency – the Bulgarian central tax authority;

■ The General Labor Inspectorate – if salaries to at least one-third of the employees of the trader have not been paid for more than two months.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

The insolvency proceedings in Bulgaria have three phases (to be described in more detail in Section 2.5 below):

■ Preliminary phase – for the court to review whether the insolvency application is grounded – initiated after the filing of the insolvency application;

■ Opened insolvency proceedings phase – initiated after the court has ruled to open the insolvency proceedings; and

■ Sale of insolvency estate and distribution of assets phase – initiated after the court has declared the debtor insolvent.

During the preliminary phase, the management of the trader usually retains unfettered rights to operate the business of the company. However, at the request of a creditor (whose claim against the debtor has been supported by sufficient evidence or who is willing to provide a guarantee to secure potential damage to the debtor's business) or *ex officio*, the court may introduce interim measures to safeguard the insolvency estate. One of these measures is the appointment of a temporary insolvency administrator who supervises the business of the debtor. In such cases, the management bodies of the debtor may conclude new agreements only with the approval of the temporary insolvency administrator and in compliance with any additional interim measures approved by the court. The temporary insolvency administrator also represents the debtor in court proceedings (together with the management bodies of the debtor), retains the accounting documents of the debtor, and holds other specific powers related to the insolvency proceedings.

During the opened insolvency proceedings phase, the court is obliged to appoint a permanent insolvency administrator for the debtor. Usually, he/she has the same powers as the ones of the temporary insolvency administrator described above. However, should the court deem that the debtor, with its actions, endangers the interests of the creditors, it may deprive the management of the debtor of the right to manage its business and dispose of property and hand over these rights to the insolvency administrator.

With the decision to declare the debtor insolvent by which the last phase of the insolvency proceedings is initiated, the court shall terminate the commercial activities of the debtor and terminate the representative powers of its management bodies. Thereafter, the insolvency administrator remains the single legal representative of the insolvent debtor.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

In general, no moratorium or stay applies during the preliminary phase of the insolvency proceedings. However, as noted above, at the request of the creditor or *ex officio* the court may impose interim and precautionary measures against the debtor. In addition to the appointment of a temporary insolvency administrator mentioned in Section 2.4.1 above, such measures may include:

■ Distraint or attachment over assets of the debtor;

■ Staying of enforcement proceedings against debtor's property;

■ Sealing of premises, equipment, vehicles, and other places, wherein the debtor's property is stored.

After the opening of insolvency proceedings, in addition to the powers of the court to order additional precautionary measures as the ones described above, some measures are applied by virtue of the law:

■ All court and arbitration proceedings against the debtor are stayed. Some of them may be terminated if a certain creditor's claim has been accepted in the insolvency proceedings without objections or resumed if a creditor's claim has not been accepted/has been accepted with objections from the debtor/another creditor;

■ All enforcement proceedings against the debtor are stayed for good. Further enforcement on the debtor's assets is conducted only pursuant to the initiated insolvency proceedings;

With the decision to declare the debtor insolvent, in addition to the above moratorium, the court:

■ Terminates the business of the debtor (no further commercial transactions can be concluded or performed except in order to safeguard the insolvency estate);

■ Imposes a general distraint and attachment over the whole insolvency estate of the debtor;

■ deprives the debtor of the right to manage and dispose of the property included in the insolvency estate.

Bulgarian law does not differentiate between court cases initiated in Bulgaria or abroad and contracts with Bulgarian or foreign counterparties of the debtor. Naturally, such extra-territorial effect of the Bulgarian insolvency proceedings is effective only if the acts of the Bulgarian insolvency court are recognizable and recognized in the respective countries.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

The opening of the insolvency proceedings does not lead to the termination of existing contracts by virtue of the law and does not allow counter-parties to terminate them solely on the basis of the initiation of the insolvency proceedings. Naturally, the counter-party is allowed to terminate such contracts if the debtor defaults on its obligations (which is highly likely) or if the contract has specific provisions that allow the counter-party to terminate the agreement in the event the debtor becomes insolvent.

The insolvency administrator is entitled to terminate any existing agreement to which the debtor is a party to (in this case – the debtor being liable for the damage caused to the counter-party). Additionally, any counter-party may inquire whether the insolvency administrator intends to keep or terminate a certain contract. Where the insolvency administrator does not respond to a request, the contract is deemed to have been terminated. The decision of the insolvency administrator to keep an existing agreement with a counter-party does not oblige the insolvency administrator to pay the obligations of the debtor which have become due prior to the date of the decision of the court to open insolvency proceedings.

Additionally, there are certain categories of agreements entered into by the debtor that are considered invalid by virtue of the law and another category of agreements which can be invalidated by the court pursuant to the filing of an invalidation action.

Pursuant to the *Commerce Act*, the following actions and transactions of the debtor performed after the date of the court decision opening the insolvency proceedings shall be considered null and void with respect to insolvency creditors:

■ Performance of an obligation of the debtor incurred prior to the date of the court decision opening the insolvency proceedings;

■ Establishment of a pledge or mortgage over an element of the insolvency estate;

■ Any transaction with a right or an asset part of the insolvency estate.

The following actions and transactions of the debtor may be declared invalid with respect to the insolvency creditors if **(i)** performed/concluded after the date the debtor turned insolvent as determined by the insolvency court; and **(ii)** performed/concluded at the respective period of time prior to the filing of the insolvency application which initiated the proceedings:

■ Performance of an obligation of the debtor which was not yet due – one year prior to the application (two years prior, if the counter-party was aware that the debtor is insolvent at the time);

■ Establishment of a pledge or mortgage for a previously unsecured obligation or for a third-party obligation – one year prior to the application (two years prior, if the counter-party was aware that the debtor is insolvent at the time);

■ Performance of a due obligation of the debtor – six months prior to the application (one year prior, if the counter-party was aware that the debtor is insolvent at the time);

■ A transaction where the debtor has received consideration significantly below the fair market value – two years prior to

the application;

The following actions and transactions of the debtor may be declared invalid with respect to the insolvency creditors if performed/concluded at the respective period of time prior to the filing of the insolvency application which initiated the proceedings and irrespective of whether performed/concluded after the date the debtor turned insolvent as determined by the insolvency court:

- Gratuitous transactions to a related party – three years prior to the application;
- Gratuitous transaction to an unrelated party – two years prior to the application;
- Establishment of a mortgage, pledge or guarantee for collateral of an obligation to a related third party – two years prior to the application;
- Transactions that are harmful to creditors concluded with a related party – two years prior to the application.

The invalidation actions described above shall be filed by the insolvency administrator or, if the insolvency administrator is inactive – by any insolvency creditor, within one year of the date of the decision opening the insolvency proceedings, before a different panel of judges at the insolvency court.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

As described above, insolvency proceedings normally include three phases:

- Preliminary phase – for the court to review whether the insolvency application is grounded – initiated after the filing of the insolvency application;
- Opened insolvency proceedings phase – initiated after the court has ruled to open the insolvency proceedings;
- Sale of insolvency estate and distribution of assets phase – initiated after the court has declared the debtor insolvent.

Exceptions are possible in the following cases:

- If there are insufficient assets to cover the initial insolvency expenses and they are not prepaid as directed by the insolvency court, the latter declares the insolvency/over-indebtedness, sets its initial date, initiates the insolvency proceedings, admits collaterals, terminates the business of the debtor, declares it insolvent, and stays the proceedings.

Proceedings may be resumed within one year, upon application by the debtor or by a creditor, if the applicant proves that sufficient property is available or deposits the required amount for prepayment of the initial expenses. If no request to resume the proceedings is made, the court orders termination of the insolvency proceedings and deregistration of the debtor from the Commercial Register, foregoing the sale of the insolvency estate (if any) and distribution of assets to creditors;

- If the court considers that the continuation of the business of the debtor may harm the creditors and its recovery is impossible the court may combine phases two and three, i.e. – to open the insolvency proceedings and declare the debtor insolvent with a single decision;
- If a recovery plan is approved, the court terminates the proceedings prior to phase three, i.e. the insolvency estate is not sold and the debtor continues its business pursuant to the approved recovery plan.

In general, the three phases of the insolvency proceedings entail the following:

a) Preliminary phase

- Filing of the insolvency application – by the debtor or a creditor;
- Review of the application, usually, several court hearings are held to review the accounting books of the debtor, and examine an expert witness on the financial coefficients of the debtor, etc;
- If requested or *ex officio* – imposing of preliminary security measures on the debtor (such as the ones described above – appointment of a temporary insolvency administrator, imposing of attachments and distraints over debtor's property, etc.);

b) Opened insolvency proceedings phase

- Court ruling for opening of insolvency proceedings – determining the initial insolvency date, the appointment of the temporary insolvency administrator, imposing of security measures over the property of the debtor, scheduling a first meeting of the creditors, etc.;
- Holding of the first meeting of the creditors – As at this stage the list of approved creditors' claims has not been published yet, only creditors included in the accounting books available to the temporary insolvency administrator are eligible to participate. At this meeting the creditors hear the report of the temporary insolvency administrator, appoint a permanent insolvency administrator, and, optionally, a creditors' committee to assist and supervise the insolvency administrator when exercising his/her powers;

■ Lodging of creditor claims – Creditors have two deadlines to lodge their claims – one month after the decision to open insolvency or within an additional two-month period, in which, however, they do not have the right to contest other creditors' claims which have already been accepted in the initial period. Claims which have arisen prior to the insolvency decision and have been lodged after the expiry of the deadline are inadmissible;

■ Drafting of the lists of approved and rejected claims – After the expiry of the above deadlines and based on the evidence submitted by the creditors, the insolvency administrator drafts two lists – of approved and rejected creditors' claims and lodges it for approval by the insolvency court;

■ Filing of objections against the lists by the debtor and insolvency creditors and amendment/approval of the lists by the court – The debtor and creditors who filed their claims within the deadlines described above are entitled to object against an accepted creditor's receivable, while each rejected creditor is entitled to object against its rejection. Thereafter the court schedules one or several court hearings, hears the objections, admits the respective evidence, and renders a ruling approving and/or amending the lists proposed by the insolvency administrator. The debtor or creditors whose objection has been rejected or who are unsatisfied with the final versions of the lists may bring actions before a different panel of judges with the insolvency court to prove the existence of a rejected claim or prove the non-existence of an accepted claim. Such court actions may be reviewed by up to three court instances;

■ Holding of a second meeting of creditors – After approval of the lists of accepted/rejected claims, the court shall schedule a new meeting of creditors. This meeting may review the report of the insolvency administrator, set his/her salary, replace the insolvency administrator, appoint a creditors' committee, and adopt other decisions important for the course of the insolvency proceedings. Thereafter, the court shall schedule new meetings of creditors upon the request of the debtor, the insolvency administrator, the creditors' committee, or creditors whose receivables are at least 20% of the total accepted receivables;

■ Proposal of a recovery plan – Within one month of the court ruling that approves the lists of approved/rejected receivables, the debtor, the insolvency administrator, shareholders, a certain majority of employees of the debtor, or a certain majority of creditors are entitled to propose a recovery plan for the company of the debtor. The plan shall, amongst others include provisions regarding the level of satisfaction of different creditor categories, compared to the expected level of satisfaction if no plan is approved, guarantees that shall be given to all creditor categories, management, organizational, legal, financial, technical, and other actions for the implementation of the plan and the impact of the recovery plan on debtor's employees;

■ Admitting and approval of the plan – The court shall review the lawfulness of the proposed recovery plan. Should the court decide that the recovery plan meets the statutory requirements, the plan shall be put to a vote by the meeting of creditors. The creditors are divided into several categories, depending on the nature of their claim and their ranking (as described in the answer to Section 2.6.). The plan is considered adopted if approved by creditors with more than half of the accepted receivables. The approval of a recovery plan and its entry into force shall be confirmed by the court. The court grants its confirmation if, amongst others: the procedure has been lawfully conducted, the necessary majorities of creditors have approved the plan, no creditor shall receive more under the approved recovery plan than the amount of its receivable, and all creditors which voted against the plan shall receive satisfaction equal to the one if no recovery plan was confirmed. If a recovery plan is confirmed by the court, the latter terminates the insolvency proceedings and appoints a supervisory body of creditors to monitor the performance of the recovery plan (non-performance shall lead to re-initiation of the insolvency proceedings). If no recovery plan is proposed, approved by the creditors, and/or confirmed by the court, the insolvency proceedings enter their next phase with the declaration of the insolvency of the debtor.

c) Sale of assets and distribution of proceeds phase

■ Declaration of debtor's insolvency – In the absence of a recovery plan, the court renders a decision declaring the debtor insolvent. In addition, the court: terminates the commercial activities of the debtor and the representative powers of its management bodies, orders a general attachment and distraint over the debtor's property, bars the debtor from disposing of its property, and orders the initiation of the liquidation of the insolvency estate and distribution of the proceeds amongst the creditors;

■ Holding of a new meeting of creditors – Usually, a new meeting of creditors is held after the declaration of the debtor's insolvency with the main goal to give instructions to the insolvency administrator on creditors' preferred strategy for the sale of the insolvency estate;

■ Liquidation of the insolvency estate – The insolvency administrator, with the approval of the meeting of creditors and the court organizes public tenders (and in limited circumstances – direct negotiations with buyers) for the sale of assets belonging to the insolvency estate;

■ Distribution of proceeds – Pursuant to the accumulation of

sufficient proceeds from the sale of parts or the whole insolvency estate, and pursuant to the priority ranking of creditors described in the answer to Section 2.6., the insolvency administrator prepares a distribution list, to be announced in the building of the court and in the Bulgarian Commercial Register. Within 14 days of its announcement, all affected creditors are entitled to file objections against the distribution list before the insolvency court. The approved distribution list is thereafter approved and/or amended by the insolvency court (its ruling may be appealed by affected creditors before the appellate court). The distributions under the court-approved list are made by the insolvency administrator;

■ Termination of insolvency proceedings – After all creditor claims have been satisfied or the insolvency estate (bar unsellable assets) has been exhausted, the insolvency proceedings shall be terminated by the insolvency court (please refer to our answer to Section 2.7. for more details on the finalization of the insolvency proceedings).

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g. employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Yes, there is a complex system for the ranking of the priority of creditors' claims during the distribution of proceeds accumulated from the sale of the insolvency estate, the ranking being, as follows:

(a) receivables secured by a pledge or mortgage, interdiction or attachment, recorded under the procedure of the *Registered Pledges Act* – from the proceeds from the sale of the respective encumbered property;

(b) receivables, on account of which a right of retention is exercised – from the proceeds from the sale of the retained property;

(c) the following insolvency expenses are covered by creditors due to a lack of liquid assets in the insolvency estate: state fees, remuneration of the insolvency administrator, employee salaries after the date of the decision on initiation of the insolvency proceedings, expenses for collection, management, evaluation, and distribution of the insolvency estate, debtor allowance;

(d) employee claims, which have arisen prior to the date of the decision on initiation of the insolvency proceedings;

(e) alimony payable by the debtor to third parties under the law;

(f) public-law receivables of the State and the municipalities such as taxes, customs duties, fees, mandatory social-security contributions, and others, which have arisen prior to the date of the decision on initiation of insolvency proceedings;

(g) outstanding receivables, which have arisen after the date of the decision on initiation of the insolvency proceedings;

(h) any remaining unsecured receivables, which have arisen prior to the date of the decision on initiation of the insolvency proceedings;

(i) legal or contractual interests on an unsecured receivable, payable after the date of the decision on initiation of the bankruptcy proceedings;

(j) credit extended to the debtor by a partner or shareholder;

(k) a gratuitous transaction;

(l) other creditors' expenses related to their involvement in the insolvency proceedings (such as, for example, attorney fees).

When the proceeds from the (partial) sale of the insolvency estate are insufficient to fully satisfy the receivables of a respective category of debtors, such proceeds shall be distributed commensurately among the creditors of the respective category.

The concept of equitable subordination is not present in Bulgarian law. The aforementioned ranking of creditors is unalterable and creditor claims cannot be subordinated based on creditor's misconduct. However, as described above, certain transactions concluded by the debtor are deemed null and void. Another category of transactions can be attacked by a creditor/the insolvency administrator before Bulgarian courts as harmful to the insolvency estate. Therefore, the insolvency administrator/Bulgarian courts may deny the inclusion of such creditor claims in the list of approved claims, depriving such creditors of the opportunity to participate in the distribution of proceeds entirely.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

There are no strict timelines to finalize insolvency proceedings in Bulgaria. There are several intermediate recommended deadlines for the court, but they are rarely followed. Thus, insolvency proceedings may take several years or even a decade in worst cases from start to finish.

Insolvency proceedings are finalized, as follows:

(a) If a recovery plan is approved

With its decision approving the recovery plan, the court shall appoint the recovery plan supervisory body and terminate the insolvency proceedings.

The insolvency proceedings may be re-initiated pursuant to an application of creditors with at least 15% of the total receivables towards the debtor or of the recovery plan supervisory body if the debtor has defaulted on the agreed recovery plan.

(b) If no recovery plan has been approved

■ Within one month of exhaustion of the insolvency estate or satisfaction of all creditors, the insolvency administrator files a final report to the court for his/her activities;

■ Within 14 days of receipt of the report, the court schedules a final meeting of creditors, whereat the creditors discuss the report of the insolvency administrator and decide on the faith of the unsellable items part of the insolvency estate;

■ Thereafter, the court renders a decision that terminates the insolvency proceedings, terminates the rights of the insolvency administrator, and orders the deregistration of the trader from the Bulgarian Commercial Register. Alternatively, if all creditors have been satisfied and there are still assets in the insolvency estate, the debtor is not deregistered and may resume its business.

The insolvency proceedings may be re-initiated if within one year of their termination amounts set aside for contested claims are released or previously unknown assets are discovered.

2.8. Are there any liabilities that survive the insolvency proceedings?

(a) If a recovery plan is approved

If the insolvency proceedings have been terminated pursuant to the approval of a recovery plan, all creditor receivables included in the recovery plan survive the insolvency proceedings and shall be performed by the debtor, as agreed. Creditor claims not submitted to the insolvency court or creditor claims not included in the recovery plan are extinguished.

(b) If no recovery plan has been approved

If the insolvency proceedings have been terminated without a recovery plan (rather – through sale and distribution of the insolvency estate), no creditor receivables survive the termination of the insolvency proceedings. The only exception is in the event the insolvency proceedings are re-initiated if within one year of their termination amounts set aside for contested claims are released or previously unknown assets are discovered. In this case, creditors whose claims were accepted in the initial insolvency proceeding may participate in the distribution of the proceeds from these newly discovered assets. Creditor claims not submitted to the insolvency court are considered extinguished irrespective of such re-initiation.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

There is only one formal restructuring proceeding in Bulgaria – the one governed by Part Five of the Bulgarian *Commercial Act* (described in detail below). There are no informal restructuring proceedings although every debtor is free to voluntarily settle, defer and/or reschedule its obligations with its creditors. Such settlement is at the parties' discretion, except for obligations towards the National Revenue Agency, which may be forgiven, deferred, or rescheduled pursuant to a complicated procedure laid down in the Bulgarian *Tax and Social Insurance Procedure Code*.

The adoption, implementation, and supervision of a recovery plan within the main insolvency proceeding (described in detail above) have significant similarities to the restructuring proceeding.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

Restructuring proceedings may be opened by a trader that is not yet insolvent but is in imminent danger of insolvency. Imminent danger of insolvency is presumed if it is expected that the trader will fail to meet a commercial/public obligation within the following six months or may stop paying its debts altogether.

Restructuring proceedings may not be opened by a trader, that:

■ has failed to request its annual financial statements for the past three years to be announced in the Commercial Register within the legally defined deadlines;

■ has had a restructuring proceeding in the last three years prior to the restructuring petition;

■ has an insolvency petition filed against it;

■ has obligations towards related parties, representing at least one-fifth of their total obligations;

■ is a public company, exercising state monopoly or incorporated by a special law, a bank, or an insurer.

The restructuring proceedings are initiated by the filing of a restructuring petition by the trader. The petition shall list, amongst others: the amount, type, and due date of the trader's obligations, including obligations to related parties; data about the trader's creditors, about the commercial, arbitration, and enforcement proceedings pending against it; information about trader's property, encumbrances, future commercial

plans, a restructuring proposal. The petition shall be supported by evidence, including, but not limited to: lists of the different types of creditors (unsecured, secured, related parties, etc.), list of debtors, financial statements, a list of assets and liabilities of the trader, list of payments, a restructuring plan.

The restructuring plan is proposed by the trader and attached to the restructuring petition. The plan shall:

- Provide for no less than 50% satisfaction of unsecured and secured creditors, except for creditors which are related parties;
- Not defer trader's obligations for more than three years as of the termination of the restructuring proceedings;
- Include a fair market value estimation of the property of the trader to be sold under the plan;
- Have attached the preliminary consent of creditors who are to subscribe to shares in the trader against their receivables.

The restructuring court is entitled to terminate the restructuring proceedings should the court hold that the restructuring plan does not meet the above satisfaction criteria or that the restructuring plan does not correspond with the trader's economic and financial position.

After the restructuring practitioner (restructuring trustee) approves the list of restructuring creditors (to be described in more detail in the answer to Section 3.6. below), the restructuring plan is put to a vote before a meeting of the creditors chaired by the restructuring court. The creditors are divided into several categories, depending on the nature of their claim and their ranking (secured creditors, employees, National Revenue Agency, unsecured creditors, and related parties). The plan is considered approved if approved by creditors with more than three-quarters of the accepted receivables. The approval of a restructuring plan and its entry into force shall be confirmed by the court. The court grants its confirmation if, amongst others: the procedure has been lawfully conducted, the necessary majorities of creditors have approved the plan, and no creditor shall receive more under the approved restructuring plan than the amount of its receivable. If a restructuring plan is confirmed by the court, the court terminates the restructuring proceedings and appoints a supervisory body of creditors to monitor the performance of the restructuring plan (if such has been proposed by the creditors). If no restructuring plan is approved by the creditors and/or confirmed by the court, the restructuring proceedings are terminated without success.

The restructuring plan has no effect on the receivables of creditors who were not included in the list of creditors entitled to vote on the plan.

3.3. Who has the right to initiate formal restructuring proceedings?

Only the debtor is entitled to initiate formal restructuring proceedings. Neither the creditors nor public bodies have legal standing to file a restructuring petition.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

After the commencement of the restructuring proceedings, the management of the trader continues to operate the business but under the supervision of a restructuring trustee appointed by the court. Upon finding that the trader's actions may put the interests of its creditors at risk, the court may restrict or suspend the trader's right to manage and dispose of its property, and grant this right to the trustee.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

After the opening of the restructuring proceedings, in addition to the powers of the court to order additional precautionary measures, some measures are applied by virtue of the law:

- the trader may not make any payments on any payables, arising prior to the date of the application on initiation of the proceedings and remaining outstanding on their respective due dates, with the exception of transfers of amounts to settle public receivables;
- The statute of limitation of all creditor receivables is stayed during the restructuring proceedings;
- All enforcement proceedings against the debtor are stayed until termination of the restructuring proceedings. No new enforcement proceedings can be initiated against the debtor during the restructuring proceedings;

3.4.3. How do restructuring proceedings affect existing contracts?

Existing contracts are not terminated by virtue of the law. However, either the trader or the counterparty may apply for termination of each existing contract before the restructuring court. The restructuring court shall terminate such contracts only if the court finds that their performance will impede the performance of the trader's obligations under the restructuring plan and that the non-performance of the contract will not cause more than the usual damages to the counter-party. Upon termination of the contract, the counter-party shall be entitled to damages.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

Please refer to Sections 2.4.3 and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

Bulgarian restructuring proceedings do not foresee any specific mechanism by which liabilities of third parties may be released. Such release shall be agreed with the respective third-party independently from the restructuring proceeding.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Restructuring proceedings normally include the following steps:

- Filing of restructuring petition by the trader (its content is described in detail in Section 3.2.);

- Review of restructuring petition by the court. If the court deems that the petition meets all statutory requirements, the court opens the restructuring proceedings and:

  - Appoints a restructuring trustee and determines his/her remuneration. The trustee supervises the commercial activities of the trader (or takes over the management of the company if the court has ruled that the debtor endangers the rights of its creditors); reviews objections against the list of restructuring creditors; drafts a written report on the financial position and property of the debtor; reports to the court on all grounds to restrict the trader's business operations; assists the debtor and the creditors during the restructuring plan approval process;

  - Imposes, at its discretion, necessary interim, and precautionary measures;

  - May appoint a registered auditor to audit the debtor's books;

  - Sets a date for an open court hearing to vote on the proposed restructuring plan (not later than three months after the date the restructuring proceedings were opened).

- Finalization of the list of creditors. A list of creditors is drafted by the debtor and attached to the restructuring petition. This list is announced in the Bulgarian Commercial Register together with the court ruling to open restructuring proceedings. Each creditor is entitled to object within 14 days of the announcement against their non-inclusion in the list or the inclusion of the receivables of another creditor. Each creditor subjected to an objection has seven days to file an application with counterarguments. The restructuring trustee shall review the objections and update the list within 14 days of the expiration of the above terms. The thus updated list is reviewed and approved/amended by the court with a court ruling to be rendered not later than 14 days prior to the set date of the open court hearing;

- Holding of a court hearing to discuss the restructuring plan – The creditors and the debtor discuss the restructuring plan. Thereafter the different categories of creditors hold a vote on the proposed plan. The procedure is described in more detail in Section 3.2.;

- Confirmation of the approved restructuring plan by the court – Upon approval of the restructuring plan by the creditors, the court shall review the lawfulness of the plan and the approval procedure and confirm/refuse to confirm the restructuring plan. In any case, the restructuring proceedings are terminated following this court ruling. The procedure is described in more detail in Section 3.2.;

3.7. How are restructuring proceedings normally finalized?

The restructuring proceedings are finalized with a court ruling:

- upon the confirmation of the restructuring plan by the court;

- when the trader withdraws its proposal for a restructuring plan, before the creditors have voted on the plan;

- when a restructuring plan is not confirmed by the court within four months after the initiation of the proceedings, regardless of any suspensions thereof;

- when, after initiation of the proceedings, the trader becomes ineligible for restructuring (due to the circumstances described in Section 3.2.) or it is found that the details provided by the trader are false;

- when the trader fails to appear at the court hearing of the plan;

- upon violation of the court-imposed restrictions on the trader's actions;

- when the trader fails to cooperate with the trustee, the court-appointed auditor, fails to submit to the court, within the set time limit, any requested information and evidence, or fails to deposit the expenses set by the court for the remunerations of the trustee, the auditor or the forensic expert;

- when the proposed restructuring plan has not been adopted or confirmed by the court.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Bulgarian courts should not recognize foreign insolvency or restructuring proceedings over a local debtor.

If the court decision has been rendered by a court in a Member State of the EU, the provisions of *Regulation (EU) 2015/848* of the European Parliament and of the Council of May 20, 2015, on insolvency proceedings shall apply. Pursuant to Art. 3 of the Regulation "*The courts of the Member State within the territory of which the center of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings… In the case of a company or legal person, the place of the registered office shall be presumed to be the center of its main interests in the absence of proof to the contrary*". Therefore, pursuant to the Regulation, Bulgarian courts shall have jurisdiction to open insolvency proceedings against debtors whose center of main interests is in Bulgaria.

The only exception to the above rule is laid down in item 2 of Art. 3: "*Where the center of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State*".

Where the insolvency court decision has been rendered by a third country court, the provisions of the Bulgarian *Commerce Act* shall apply. Pursuant to Art. 757 of the *Commerce Act* "*On the basis of reciprocity, the Republic of Bulgaria shall recognize a foreign court decision declaring insolvency, if the decision is rendered by an authority of the State, where the debtor's registered office is located*". *Per argumentum e contrario,* a foreign insolvency decision over a Bulgarian debtor shall not be recognized.

4.2. What are the preconditions for recognizing foreign decisions?

As laid down above, Bulgarian courts would not recognize foreign insolvency or restructuring proceedings over a Bulgarian debtor.

The preconditions for recognizing foreign decisions concerning foreign debtors are, as follows:

If the court decision has been rendered by a court in a member state of the EU, the provisions of Articles 19 and 20 of *Regulation (EU) 2015/848* shall apply, namely:

- Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 (reviewed in Section 4.1.) shall be recognized in all other Member States from the moment that it becomes effective in the state of the opening of proceedings;
- The judgment opening insolvency proceedings shall, with no further formalities, produce the same effects in any other Member State as under the law of the state of the opening of proceedings, unless the regulation provides otherwise.

If the court decision has been rendered by a court of a third country, the decision shall be recognized pursuant to Art. 117 of the Bulgarian International *Private Law Code* and on the basis of the reciprocity (to be proven during the court proceedings):

Article 117. The judgments and authentic acts of the foreign courts and other authorities shall be entitled to recognition and enforcement where:

1. *The foreign court or authority had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the claimant or the registration thereof in the State of the court seized was the only ground for the foreign jurisdiction over disputes in rem;*

2. *The defendant was served a copy of the statement of claim, the parties were duly summoned, and fundamental principles of Bulgarian law, related to the defense of the said parties, have not been prejudiced;*

3. *If no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;*

4. *If no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition is sought and the enforcement is applied for has been rendered;*

5. *The recognition or enforcement is not contrary to Bulgarian public policy.*

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

Judicial cooperation between EU Member States' courts regarding cross-border insolvency proceedings is laid down in Art. 42 of *Regulation (EU) 2015/848*. Such cooperation may in particular concern:

- coordination in the appointment of the insolvency practitioners;
- communication of information by any means considered appropriate by the court;
- coordination of the administration and supervision of the

debtor's assets and affairs;

- coordination of the conduct of hearings;
- coordination in the approval of protocols, where necessary.

Judicial cooperation between Bulgarian courts and third-country courts does not have regulation in local Bulgarian legislation. However, Bulgaria has entered into mutual legal assistance treaties on civil proceedings with multiple third countries (amongst which the USA, China, Russia, Balkan countries, ex-USSR countries, and others) which lay down provisions on the procedure for legal assistance between public institutions and courts of the respective countries (although we are not aware of an MLAT specifically considering insolvency matters).

As for the question of what the recognition of foreign insolvency decisions depends on, see Sections 4.1. and 4.2.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Our view is that foreign creditors are treated fairly in restructuring and insolvency proceedings in Bulgaria. The legislation does in no way distinguish between foreign and national creditors. We have also not observed any practical discrimination by judges and insolvency administrators.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Bulgarian insolvency proceedings are debtor-friendly but mainly to debtors acting in bad faith and not debtors that hope to be restructured and resume their business (which rarely happens). This is because insolvency proceedings can take multiple years to finish (in some cases – more than a decade). Meanwhile, assets distributed by the debtor to related parties prior to the initiation of insolvency proceedings are difficult to return to the insolvency estate due to the difficulties of successfully concluding actions to invalidate the harmful transactions of the debtor (before up to three court instances).

On the contrary, the current restructuring regime is too creditor-friendly to the point it is impossible to implement, and we are not aware of any single restructuring proceeding that has been successfully initiated before a Bulgarian court. The few restructuring petitions filed by debtors to the respective courts have been dismissed, not meeting the requirements set by the *Commerce Act*. This is due to the vast requirements imposed on debtors for requisites of the restructuring petition and restructuring plan and few upsides for a debtor undergoing restructuring proceedings. Hopefully, the proposed changes to the restructuring regime described in Section 1.5. will repair some of the deficiencies of the current regime.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The primary legislation governing insolvency and restructuring proceedings in the Czech Republic is:

- *Act No. 182/2006 Coll., on Insolvency and Its Resolution* (Insolvency Act);
- *European Regulation No. 2015/848 on Insolvency Proceedings*.

Restructuring and insolvency matters are further regulated by:

- *Act No. 99/1963 Coll., Civil Procedure Code*, which applies to insolvency proceedings and incidental disputes where appropriate;
- *Act No. 312/2006 Coll., on Insolvency Administrators* (Trustees); and
- *Act No. 191/2020 Coll., on Certain Measures to Mitigate the Impact of the SARS CoV-2 Epidemic on Persons Participating in Court Proceedings, Victims, Victims of Crimes and Legal Entities*.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The Czech Insolvency Act has been amended more than 30 times since 2007, with some of the amendments implementing aspects of European legislation. However, this does not mean the system is not well-established; the insolvency regulation must be able to respond flexibly to changes in society, which naturally requires frequent updates.

1.3. Are there any special regimes applying to specific sectors?

The Insolvency Act does not apply to selected entities, such as the state, self-governing territorial units (regions and municipalities), the Czech National Bank, or public universities. A special regime under the Insolvency Act applies to banks and other financial institutions that are subject to special financial regulation (i.e., savings and credit co-operatives, investment firms, and certain insurance companies).

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

The above-mentioned *Act No. 191/2020 Coll.* was adopted in response to the COVID-19 pandemic and introduced multiple measures to mitigate the impact of COVID-19 on, *inter alia*, insolvent persons.

Specifically, *Act. No. 191/2020 Coll.* amended the Insolvency Act to include a so-called "extraordinary moratorium." The purpose of the extraordinary moratorium is to provide debtors who ran into temporary problems in connection with the COVID-19 pandemic with an effective instrument of protection against creditors and thus to provide debtors with additional time to solve their financial difficulties. During such an extraordinary moratorium, it is for example not possible to decide on the debtor's bankruptcy or to enforce a claim against the debtor.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

In January 2022, a draft law on preventive restructuring was submitted to the Czech government for consideration. The bill aims to transpose *Directive 2019/1023* on restructuring and insolvency. Preventive restructuring is supposed to represent a new legal institute intended for entrepreneurial legal entities in temporary financial difficulties. According to the proposed bill, the entrepreneur achieves its recovery mainly through negotiations with creditors over a restructuring plan. The goal of preventive restructuring is to avert impending bankruptcy in a timely and effective manner.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The *UNCITRAL Model Law on Enterprise Group Insolvency* has not been adopted in the Czech Republic as such. However, its provisions have been taken into account during the legislative process in the area of Czech insolvency law.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

There are two tests under the Insolvency Act:

1) The *insolvency* test, under which the debtor is considered insolvent if they have multiple creditors, monetary obligations for a period longer than 30 days after the due date, and are not able to fulfill them.

2) The *over-indebtedness* test, under which the debtor is considered insolvent if they have multiple creditors and their aggregate liabilities exceed the value of their assets.

If the directors of a company (or liquidator) fail to file for insolvency when one of the tests is fulfilled, each of them shall

be personally liable for damages to the creditors. Failure to file for insolvency may also trigger criminal liability.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

There are three ways of resolution of insolvency in the Czech Republic – bankruptcy, reorganization (restructuring), and debt relief. Bankruptcy and reorganization are available both to natural and legal persons; debt relief is only available to natural persons and to legal persons who are not entrepreneurs.

2.3. Who has the right to initiate insolvency proceedings?

Insolvency proceedings are always initiated by an insolvency motion to the insolvency court. The insolvency motion may be filed by the debtor (who has an obligation to file for insolvency without undue delay after they became aware, or with due care should have been aware of their insolvency), or its creditor(s).

2.4. What are the consequences of commencing insolvency proceedings, in particular:

There are several significant consequences associated with the commencement of insolvency proceedings. For example, claims that can be registered in the insolvency proceedings cannot be asserted by a lawsuit, the enforcement proceedings may be initiated and enforcement ordered but it cannot be carried out, etc.

Other important consequences are connected with the insolvency court's decision on the debtor's insolvency. Primarily, the decision on insolvency suspends judicial and arbitration proceedings on claims and other rights relating to a property, which should be registered in the insolvency proceedings by application, or which are regarded in the insolvency proceedings as having been registered, or on claims which are not satisfied in the insolvency proceedings, and new proceedings in such cases cannot be initiated.

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

In general, the management remains in charge of the debtor's assets until the insolvency court decides on the method of resolving the debtor's insolvency.

If the debtor's bankruptcy is declared, the competence to dispose of the debtor's assets passes to the insolvency trustee. For reorganization (restructuring), please see Section 3.4.1.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Yes, a legal person or a natural person who is an entrepreneur may ask the insolvency court to declare a moratorium, under the conditions set out in the Insolvency Act. As a result, the court may not declare the debtor's insolvency until the end of the moratorium period, which may not be longer than three months.

Yes, the moratorium has an extraterritorial effect.

For extraordinary moratoriums, please see Section 1.4.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

The Insolvency Act sets out the impact of bankruptcy on several types of contracts, including contracts on mutual performance, fixed-term contracts, and loan and lease contracts. In general, the insolvency trustee may refuse the performance of these contracts under certain statutory conditions.

The Insolvency Act provides for two options to challenge a debtor's pre-insolvency transactions:

1) Invalidity – if the debtor's legal act is found to be invalid by the insolvency court, the pecuniary gain obtained must be surrendered to the insolvency estate;

2) Ineffectuality – the insolvency trustee may challenge a debtor's valid legal acts by which the debtor reduced the possibility of satisfying creditors or favored some creditors at the expense of others. An ineffective legal act remains valid but the person who benefited from the legal act is obliged to provide equivalent compensation to the insolvency estate.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The basic steps of the insolvency proceedings are normally as follows:

1) Filing for insolvency – motion filed by the debtor or creditor (see Section 2.3.)

2) Assessment of the debtor's insolvency by the insolvency court

3) Decision of the insolvency court on the debtor's insolvency

4) Registration of claims – claims may be registered from the commencement of the insolvency proceedings until the deadline set out in the decision on the debtor's insolvency

5) The creditors' meeting

6) Decision of the insolvency court on the method of resolving the debtor's insolvency

7) Review of the registered claims

8) Implementation of the chosen method of resolving the debtor's insolvency

9) Termination of the insolvency proceedings

Creditors have multiple rights within the insolvency proceedings, such as the right to vote at the meeting of creditors or to challenge registered claims of other creditors.

Secured creditors have a privileged position in the insolvency proceedings as their claims are satisfied preferentially from the security. They also have significant rights in relation to managing and monetizing the secured property, especially the right to give binding instructions to the insolvency trustee in this regard.

For the role of the debtor and its directors in the insolvency proceedings, see especially Sections 2.4.1. and 3.4.1.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Yes, certain claims do enjoy priority in the insolvency proceedings. The claims are satisfied in the following order of priority:

1) Claims against the insolvency estate (e.g., advance payment for the costs of insolvency proceedings, cash expenses and remuneration of the insolvency trustee, taxes and other public charges, etc.) and claims in equal ranking to them (e.g., claims of employees, claims from pension insurance, etc.).

2) Claims of secured creditors – they are satisfied with the monetization of the asset by which their claim was secured.

3) Claims of unsecured creditors – they are satisfied proportionately from the proceeds of the sale of the debtor's property, which is not subject to security.

4) Subordinated claims – they can be satisfied only after all other claims have been fully satisfied.

5) Excluded claims – these are not satisfied at all in the insolvency proceedings (e.g., claims from gift contracts, contractual penalties arising after the date of declaration of insolvency, etc.).

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Creditors must register their claims in the period from the commencement of the insolvency proceedings until the deadline set out in the decision on the debtor's insolvency.

When the insolvency court declares the debtor's insolvency, it sets a date for the review meeting, where the registered claims are reviewed. The meeting must take place within seven days to two months of the deadline for the registration of claims. The insolvency court also calls the creditors' meeting to take place no later than three months after the declaration of insolvency. Afterward, the timeline depends on the method of resolving the debtor's insolvency.

If the debtor's insolvency is resolved by bankruptcy, the insolvency proceedings are terminated upon the cancellation of the debtor's bankruptcy by the insolvency court after all of the debtor's assets have been monetized.

In the case of debt relief, the insolvency proceedings end with the insolvency court's decision, in which the court takes note of the discharge of the debtor's debt and by which it exempts the debtor from paying the remaining debts.

For reorganization, see Section 3.7.

2.8. Are there any liabilities that survive the insolvency proceedings?

If the debtor's insolvency is resolved by bankruptcy, the debtor's liabilities that have not been satisfied continue to exist and may be enforced through enforcement proceedings.

In restructuring, the debtor pays its liabilities continuously throughout the reorganization. If the insolvency court decides to cancel the reorganization plan, the creditors can without further ado demand the satisfaction of their claims and other rights they had before its approval. The claims of creditors and third parties established by the reorganization plan are not affected.

In the case of debt relief, at the end of the insolvency proceedings, the debtor is granted exemption from paying outstanding liabilities if they have duly fulfilled the conditions of the debt relief.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

Under the Insolvency Act, a formal reorganization (restructuring) is available as one of three methods of resolving the debtor's insolvency.

Czech insolvency law recognizes so-called "pre-packaged reorganizations." In pre-packaged reorganizations, when the debtor files for insolvency, they may also submit a reorganization plan which has been already approved by at least half of all secured and half of the unsecured creditors (calculated according to the amount of their claims). This way, even debtors who do not fulfill the criteria for reorganization (see Section 3.2.) are able to resolve their insolvency through restructuring.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

In general, reorganization is permissible if the total annual net turnover of the debtor for the last accounting period preceding the insolvency proposal reached at least CZK 50 million (approximately EUR 2 million), or if the debtor employs at least 50 employees. On the other hand, reorganization is not permissible if the debtor is a legal entity in liquidation, a securities trader, or a person authorized to trade on a commodity exchange.

The reorganizational plan is usually drawn up by the debtor. It must be approved by the creditors' meeting and afterward by the insolvency court. The debtor and the insolvency trustee cooperate in the implementation of the reorganizational plan. The creditors' committee oversees the implementation.

3.3. Who has the right to initiate formal restructuring proceedings?

The motion to approve the reorganization can be filed by the debtor or a registered creditor. The person who files the motion to approve reorganization must in good faith believe that all the conditions for the approval of the reorganization plan are or will be fulfilled.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Throughout the reorganization, the debtor stays in possession of its assets, administers and disposes of its assets, and continues its business activities. These activities are supervised by the insolvency trustee, the creditors' committee, and the insolvency court. The debtor is obliged to comply with the approved reorganization plan and refrain from any acts that might thwart its fulfillment. Fundamental decisions and dispositions may be taken only with the consent of the creditors' committee.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

Yes, see Section 2.4.2.

3.4.3. How do restructuring proceedings affect existing contracts?

The same rules as in bankruptcy apply, see Section 2.4.3. Generally, the debtor continues its business activities. However, if a contract is not fully fulfilled by either the debtor or the other party at the time of the commencement of a reorganization, the debtor may reject the performance of such contracts within a 30-day period, with the consent of the creditors' committee. In such a case, the other party may claim compensation for damage caused, but no later than 30 days after the date of rejection.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Sections 2.4.3. and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

No, third-party liabilities cannot be released in reorganizations.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The basic steps of the reorganization are as follows:

1) The decision of the insolvency court on the debtor's insolvency

2) The motion to approve reorganization – can be filed by the debtor until the decision of the insolvency court on the debtor's insolvency, or in other cases, no later than 10 days before the first creditors' meeting that is to take place after the decision on the debtor's insolvency

3) Approval of the motion to approve reorganization by the creditors' meeting

4) The decision of the insolvency court on the approval of the reorganization

5) Submission of the reorganizational plan to the insolvency court

6) Approval of the reorganizational plan by the creditors' meeting

7) Approval of the reorganizational plan by the insolvency court

8) Implementation of the reorganizational plan

9) Termination of the insolvency proceedings

In reorganizations, all rights of unsecured (as well as secured) creditors derive from a reorganization plan. The debtor may dispose of its assets in accordance with the reorganization plan under the supervision of the insolvency trustee and the creditors' committee. Sales and similar transactions that have been pre-negotiated prior to a reorganization (or the opening of insolvency proceedings) may be effectuated only if such transaction is included in the reorganization plan.

3.7. How are restructuring proceedings normally finalized?

In reorganizations, the insolvency proceedings are finalized by the insolvency court's decision on a) the cancellation of the

decision on approval of the reorganizational plan, b) the transformation of reorganization into bankruptcy, or c) the end of reorganization after the reorganizational plan was fulfilled.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Yes, foreign insolvency or restructuring proceedings are recognized in the Czech Republic.

4.2. What are the preconditions for recognizing foreign decisions?

In general, a foreign decision that is in legal force and enforceable may be recognized in the Czech Republic, provided that mutual recognition is guaranteed by the country whose public authority issued the decision. Decisions issued by the EU courts are recognized in the Czech Republic in accordance with the *EU Insolvency Regulation* (see Section 4.3.)

The recognition of a foreign decision in property matters is not declared by a special decision. A foreign decision is recognized by the Czech public authority taking it into account as if it were a decision of a Czech public authority. Foreign decisions in other matters are declared by a special decision.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

Yes, Czech courts cooperate with their counterparts in other jurisdictions.

Insolvency proceedings opened in another Member State of the EU are recognized in the Czech Republic in accordance with the *EU Insolvency Regulation*. In respect of insolvency proceedings opened in non-EU countries, *Czech Act No. 91/2012 Coll., on International Private Law* provides that foreign judgments rendered on insolvency proceedings are recognized in the Czech Republic on the condition of reciprocity, provided that the center of the debtor's main interests is situated in the foreign country that issued the judgment, and that the debtor's assets located in the Czech Republic have not been subject to already pending insolvency proceedings before Czech courts.

The *EU Insolvency Regulation* provides a general framework for mutual cooperation and communication between insolvency trustees and insolvency courts across the European Union, in order to facilitate the coordination of cross-border insolvency proceedings concerning the same debtor.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Foreign creditors are treated equally to domestic creditors under Czech law, in compliance with the principle of the equal treatment of creditors.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Generally, the Czech insolvency proceedings are more debtor-friendly. On average, secured creditors get paid approximately 25% of the value of their registered claims, and unsecured creditors receive only approximately 4%. Moreover, the insolvency trustee has a wide range of options to challenge creditors' claims, even those that are enforceable.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

In Estonia, insolvency matters are regulated in the *Bankruptcy Act* (*pankrotiseadus, PankrS*) and the *Insolvency of a Natural Person Act* (FiMS). Restructuring is regulated by the *Reorganization Act* (*saneerimisseadus*, SanS).

As Estonia is a member of the European Union, *Regulation (EU) 2015/848* of the European Parliament and of the Council of May 20, 2015, on insolvency proceedings (recast) applies, covering both bankruptcy and restructuring proceedings in cross-border insolvency cases.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Estonian insolvency law has recently been thoroughly revised. The first phase of the revision was mostly finalized at the beginning of 2021, comprising mainly of changes in the *Bankruptcy Act*. The second and final phase was completed in July 2022, by which substantive changes to restructuring proceedings, debt restructuring proceedings, insolvency proceedings of natural persons, and discharge of debt were made.

Relatively frequent and mainly case-law-based smaller changes in Estonian legislation concerning insolvency and restructuring occur.

1.3. Are there any special regimes applying to specific sectors?

Special insolvency regimes apply regarding highly regulated entities, for example, credit institutions. The corresponding legislation can be found, *inter alia*, in the *Credit Institutions Act (krediidiasutuste seadus*, KAS), *Creditors and Credit Intermediaries Act* (*krediidiandjate ja -vahendajate seadus*, KAVS) and *Covered Bonds Act* (*pandikirjaseadus*, PandiKS).

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

Both the *Bankruptcy Act* and the *Reorganization Act* were amended in response to the COVID-19 pandemic.

Section 193/2 of the *Bankruptcy Act* suspended the running term of obligation to file a bankruptcy petition beginning from the commencement of the COVID-19-related emergency situation declared by the Government of the Republic of Estonia on March 12, 2020, and ending two months after the termination of the emergency situation on May 17, 2020.

Amendments for the duration of the emergency situation were also made in section 55 of the *Reorganization Act*, listing options to amend reorganization plans. If it is required and justified in order to achieve the purposes of reorganization, the court was allowed to suspend the payments under the approved reorganization plan for up to three months (with the possibility of extension for another three months) or amend the reorganization plan. An application for such amendment of the reorganization plan was eligible to be filed up until March 31, 2021.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

As a thorough revision of the Estonian insolvency and restructuring law was recently finalized (see Section 1.2.), there are no additional area-changing amendments planned at this stage (as of the time of submitting this input).

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Estonia has not adopted the *UNICITRAL Model Law on Enterprise Group Insolvency*. Enterprise group insolvency as a legal instrument does not exist in Estonia. In such cases, *Regulation (EU) 2015/848* or the Estonian national law applies, which is based on an entity-based approach. To our understanding, it is unlikely that Estonia would adopt the Model Law in the near future.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

Insolvency is defined in section 1 of the *Bankruptcy Act*. A debtor is considered insolvent under Estonian law if they are unable to satisfy the claim of a creditor that has fallen due and such inability is not temporary due to the debtor's financial situation. In the case of legal persons, a debtor is also insolvent if the assets of the debtor are insufficient for covering their obligations and such insufficiency is not temporary due to the debtor's financial situation. In this case, claims that have not yet fallen due are also regarded as obligations.

This means that in order to be insolvent, the debtor must:

1) be unable to satisfy the claim of a creditor that has fallen due (in case of natural and legal persons) or

2) have insufficient assets for covering the debtor's obligations

(only in the case of legal persons) and

3) such inability must not be temporary due to the debtor's financial situation.

In addition to the *Bankruptcy Act*, obligations of the directors of the debtor are listed in the *Commercial Code*According to section 180 (5/1) of the *Commercial Code*, the management board of a private limited company is obliged to file a bankruptcy petition promptly, but no later than 20 days after the insolvency became evident. This obligation arises if the private limited company is insolvent and the insolvency is not temporary due to the company's economic situation. Section 306 (3/1) of the *Commercial Code* states an analogous obligation for the management board of a public limited company.

If the management board fails to file the bankruptcy petition in time, the management board members will be jointly and severally liable for compensation for the damage caused by their inactivity. A member of the management board will not be held liable if they prove that they have performed their actions with due diligence. This is regulated by the *Commercial Code*. Up until 2015, the failure to submit a petition for bankruptcy was also criminalized under the *Penal Code* (*karistusseadustik*, KarS).

In practice, management boards of insolvent companies often fail to file for bankruptcy in time in hopes of the abatement of bankruptcy proceedings. This, however, goes against the interests of the creditors. In order to deter such behavior, the Insolvency Division (to be established in the near future) will be able to commence a public investigation into the actions of the management board and apply a prohibition on business to the management board member(s).

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Three insolvency proceedings, based on whether the debtor is a natural or legal person, are established by Estonian law – *bankruptcy proceedings* (for both, natural and legal persons), *reorganization* proceedings (for private legal persons), and *debt restructuring* proceedings (for natural persons).

2.3. Who has the right to initiate insolvency proceedings?

According to section 9 of the *Bankruptcy Act*, the debtor or a creditor may file the bankruptcy petition and thus initiate insolvency proceedings. If the debtor is dead, a petition may also be filed by an heir, the executor of the will, or the administrator of the debtor's estate. However, in cases provided by law, other persons may also be able to file a bankruptcy petition (for example, in certain cases, the Financial Supervision Authority).

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

Upon the declaration of bankruptcy, a bankruptcy trustee will be appointed. The trustee will take the role of a management board member (the debtor's assets become the bankruptcy estate, the right to administer the debtor's assets and the right to be a participant in court proceedings in lieu of the debtor with regard to a dispute relating to the bankruptcy estate or the assets which may be included in the bankruptcy estate is transferred to the trustee, the debtor is deprived of the right to enter into transactions relating to the bankruptcy estate), determining the claims of the creditors, administrating the bankruptcy estate, ascertaining the causes of the insolvency, and organizing the continuation of the debtor if deemed necessary.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Enforcement proceedings end when the debtor is declared bankrupt, and any seizure of the debtor's assets is terminated with the declaration of bankruptcy (seizure or judicial mortgage of the property of the debtor applied to secure possible confiscation or substitution of confiscation in criminal proceedings shall not terminate with the declaration of bankruptcy). The court may also decide on the continuation of enforcement proceedings in limited and justified cases.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

The bankruptcy trustee may perform previously unperformed obligations arising from contracts entered into by the debtor. The trustee may also require the other party to perform their contractual obligations or waive the debtor's contractual obligations. The law provides for some limitations for these rights – for instance, the debtor's contractual obligations may not be waived if the obligation is secured by an advance notice registered in the land register. If the other party makes a proposal to the trustee to decide on the continuation or termination of a contract, the trustee must give a notice regarding that proposal immediately, but no later than within seven days.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The procedure begins with a bankruptcy petition submitted

to the court (see Section 2.3.). The court may then accept or refuse the petition on the grounds listed in section 14 (1) of the *Bankruptcy Act*.

If the court accepts the bankruptcy petition, it will then have 10 days to decide on the appointment of an interim trustee and make a ruling on the decision. The court will also schedule the time of the hearing of the bankruptcy petition if the court finds it necessary or if requested by the debtor, creditor, or interim trustee. If no hearing is scheduled, the petition will be held in written proceedings.

The obligations of the interim trustee are listed in section 22 (2) of the *Bankruptcy Act*, including the determination of the debtor's assets, verifying whether they are sufficient to cover the costs of the proceedings, assessing the financial situation and solvency of the debtor, and ensuring the preservation of the debtor's assets. In order to fulfill these obligations, the interim trustee has the right to obtain necessary information and documents from the debtor, state and local government agencies, credit institutions, and other persons.

If the bankruptcy petition was submitted by the debtor, the court will hear it within 10 days after the appointment of an interim trustee. This deadline can be extended to 30 days with good reason. If the petition was submitted by the creditor, the initial deadline is 30 days and, with good reason, it can be extended to two months.

In case the debtor does not have sufficient assets to cover the costs of the bankruptcy proceedings and more assets can't be reclaimed or recovered, the court will terminate the proceedings by abatement at this stage without declaring bankruptcy. The proceedings may also be terminated by abatement if the debtor's assets primarily consist of claims for recovery or claims against third persons and the satisfaction of these claims is unlikely. Abatement can be avoided if a court-ordered sum is paid to the deposit.

The court will declare bankruptcy if the debtor is insolvent by a bankruptcy ruling. Bankruptcy proceedings commence by the declaration of bankruptcy. A bankruptcy ruling shall be subject to immediate execution. Execution of a bankruptcy ruling shall not be suspended or postponed, and the manner or procedure provided by law for the execution of the bankruptcy ruling shall not be changed. The debtor or the petitioning creditor will then have 15 days to file an appeal.

The court will have to immediately publish a notice concerning the bankruptcy ruling in the Estonian official publication *Ametlikud Teadaanded*. A notice shall set out the name of the court which declared the bankruptcy, the date and time of the order, information concerning the debtor and the trustee, a proposal for the creditors to file their claims, the term for filing the claims, and the time and place of the first general meeting of creditors. A bankruptcy notice shall set out the consequences of failure to file a claim within the specified term.

Upon the declaration of bankruptcy, the debtor's assets will become the bankruptcy estate, the calculation of interests and fines for delay against the debtor are terminated, the debtor can no longer enter into transactions relating to the bankruptcy estate, and the trustee takes a managerial role.

The first general meeting of creditors is held no earlier than 15 and no later than 30 days after the declaration of bankruptcy. At that meeting, the creditors elect the bankruptcy committee, and decide on the approval of the trustee, and whether or not the debtor can continue their undertakings. Other general meetings are summoned by the trustee at their initiative or in cases prescribed by the law. The number of votes of each creditor is proportional to their claim.

The creditors must notify the trustee of all their claims no later than within two months of the bankruptcy notice being published. This note must consist of a written petition and proof of claim. Until the list of creditors is approved, creditors may also set off their claims.

A preliminary list of creditors is prepared no later than one month after the trustee has been notified of all claims. Creditors will then be able to examine the list. The trustee will publish a notice about the publication of this list and a deadline for filing objections in *Ametlikud Teadaanded*. The deadline for filing objections is determined by the trustee, however, it must be between 15-30 days. After this term is over, the trustee will forward the objections of both, themselves and other creditors, to the creditor who has received the objection and set a new 15-30-day deadline to submit positions and requests. Once this term is over, the trustee has 30 days to prepare the final list of creditors and submit it to the court for approval.

The court has 30 days to adjudicate the submitted objections, positions, requests, and petitions, determine the rankings of claims and the distribution ratios, and approve the list of creditors. This term can be extended by another 30 days. After this, payments can be made (see Section 2.6.).

A trustee may commence the sale of the bankruptcy estate after the first general meeting of creditors unless the creditors have decided otherwise at the meeting. As a rule, the bankruptcy estate is sold by auction.

Bankruptcy proceedings are terminated if the petition is dismissed, if the proceedings are abated, if the basis for bankruptcy ceases to exist, by approval of the final report or compromise, with the consent of creditors, or if the law provides another basis.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g.. employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Before the payment of money on the basis of distribution rations, payments relating to bankruptcy proceedings must be made first. Section 146 (1) of the *Bankruptcy Act* states a specific order in which these payments must be made:

1) claims arising from the exclusion or recovery of assets;

2) maintenance support paid to the debtor and their dependants;

3) expenses specified in section 142 (1) point 1 of the *Law of Succession Act* (if the bankruptcy proceedings concern an estate of a deceased person);

4) consolidated obligations;

5) costs of the bankruptcy proceedings.

Once the aforementioned payments have been made, the claims of the creditors will be satisfied in four rankings:

1) accepted claims secured by a pledge;

2) other accepted claims which were filed within the specified term;

3) other accepted claims which were not filed within the specified term;

4) claims specified in section 142 (1) point 3 of the *Law of Succession Act* and the claims for compulsory portions (if the bankruptcy proceedings concern an estate of a deceased person).

Claims of a lower ranking are satisfied after the claims of the preceding ranking have been satisfied in full. If the bankruptcy estate is not sufficient for satisfying all the claims of the same ranking, the claims shall be satisfied in proportion to the sizes of the claims. Therefore, persons holding claims of the same ranking are treated equally under the Estonian Bankruptcy law.

The debtor and the creditor may include a binding clause in their contract stating that the claim will be satisfied in a lower ranking.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

See Section 2.5.

An estimated timeframe for a bankruptcy procedure is considered to be around three years.

2.8. Are there any liabilities that survive the insolvency proceedings?

No, that is not applicable to legal persons.

After termination of bankruptcy proceedings, claims which could have been but were not filed during the bankruptcy proceedings and claims which were filed but were not satisfied or against which the debtor filed an objection may be filed by the creditors against the debtor pursuant to the general procedure. In such a case, interest and fines for delay shall not be calculated for the period of the bankruptcy proceedings. After termination of bankruptcy proceedings, creditors may also file claims arising from consolidated obligations which were not satisfied in the bankruptcy proceedings against the debtor. Claims arising during bankruptcy proceedings that cannot be filed in the bankruptcy proceedings may also be filed against the debtor pursuant to the general procedure. In such a case, the limitation period commences as of the termination of the bankruptcy proceedings.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

As a formal in-court procedure, Estonian law provides for the reorganization procedure of legal entities in the *Reorganization Act*. This does not restrict companies from finding alternative and informal ways to avoid insolvency.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

In the course of reorganization proceedings, a court commences reorganization proceedings if the submitted reorganization application meets the formal and material requirements set out in the *Reorganization Act* and in the *Code of Civil Procedure* (*tsiviilkohtumenetluse seadustik*, TsMS). A reorganization application sets out an explanation of the legal entity regarding the reasons for the economic difficulties and substantiates that: 1) the entity is likely to become insolvent in the future; 2) the entity requires reorganization; 3) the sustainable management of the entity is likely after the reorganization.

Regarding the opening of restructuring proceedings, a public notice is published in the official publication *Ametlikud Teadaanded* and the restructuring advisor is required to immediately inform creditors affected by the plan of the opening of restructuring proceedings, the amounts of their claims according to the list of debts, pledges, and consequences of the commencement of the proceedings.

The debtor might attach the project of the reorganization plan

to the application. After the commencement of reorganization proceedings, a reorganization adviser prepares a reorganization plan in cooperation with the debtor.

The reorganization plan is approved by the creditors by way of voting at a meeting or without holding a meeting. The number of votes that the creditor has are proportional to the size of their claim. The court may confirm an adopted reorganization plan or a plan that is not adopted by the creditors via a cross-class cram-down.

Once the reorganization plan is approved, the legal consequences prescribed in the plan apply to the debtor and creditors affected by the reorganization plan.

3.3. Who has the right to initiate formal restructuring proceedings?

According to section 7 (1) of the *Reorganization Act*, an application for the reorganization can be submitted by the debtor or a creditor (the debtor's written consent is needed). This is a recent change in the law that entered into force on July 1, 2022 – before that, only the undertaking could submit the petition.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Unlike in bankruptcy proceedings, the reorganization adviser does not take the role of a management board member and instead acts as an adviser and supervisor, the debtor remains in possession of the assets, eligible for entering into transactions and the management continues to operate.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

If the reorganization procedure is commenced, the court suspends enforcement proceedings regarding the assets of the debtor (with the exception of claims arising from employment contracts), and, upon application, the seizure of assets is terminated as well.

The court may also diverge from the stay if it is not necessary for the reorganization. Enforcement of claims regarding which the reorganization plan does not apply is continued but the enforcement of claims for which the plan applies is suspended.

3.4.3. How do restructuring proceedings affect existing contracts?

As a general rule, an agreement according to which a creditor may change or terminate a contract upon commencement of reorganization proceedings or approval of a reorganization plan is void under Estonian law.

Creditors to which a stay applies are prevented from withholding performance or terminating, accelerating, or, in any other way, modifying essential executory contracts to the detriment of the debtor, for debts that came into existence prior to the stay, solely by virtue of the fact that they were not paid by the debtor.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Section 2.3.4. for bankruptcy and Section 3.4.3. for reorganization.

3.5. Can third-party liabilities be released through restructuring proceedings?

If the debtor is not liable for the performance of the obligation, then no release is possible.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

See Section 3.2. and Section 3.7.

3.7. How are restructuring proceedings normally finalized?

Reorganization proceedings are terminated upon premature termination of the proceedings, revocation of the reorganization plan, implementation of the plan before the deadline. or expiry of the term for implementation of the reorganization plan. Upon implementation of a reorganization plan before the due date, reorganization proceedings are terminated if the debtor has performed all the obligations assumed in the reorganization plan before the expiry of the term for implementation of the reorganization plan.

The proceedings can be prematurely terminated only before the reorganization plan is approved.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Foreign insolvency or reorganization proceedings are recognized, if the proceedings have been initiated in accordance with the applicable law and are not subject to grounds for refusing recognition (for example, in conflict with public

order). In general, *Regulation (EU) 2015/848* or the *Code of Civil Proceedings* is applied.

4.2. What are the preconditions for recognizing foreign decisions?

The preconditions for recognizing foreign decisions largely depend on the act under which the proceedings were initiated. In general, *Regulation (EU) 2015/848* or the *Code of Civil Proceedings* is applied.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

Yes. The grounds for such cooperation are regulated mainly by *Regulation (EU) 2015/848* and the *Code of Civil Proceedings*.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

There is no special treatment for foreign creditors. Some special conditions (especially for notifications) arise from *Regulation (EU) 2015/848*.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Estonian insolvency law has a balanced approach with regard to the interests of both, the debtor and the creditors. The recent revision of Estonian insolvency law has further helped to balance out the scales.

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The general provisions concerning the restructuring and insolvency of an economic operator are regulated in:

- *2015/848/EU Regulation* on insolvency proceedings (recast);
- *Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings* (Bankruptcy Act);
- *Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings* (Companies Act);
- *Government Decree no. 106/1995 (IX.8) on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings*;
- *Act LXIV of 2021 on Restructuring and on the Amendment of Certain Acts for the Purpose of Approximation* (Restructuring Act);
- *Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies*;
- *Act XCIX of 2021 on the transitional rules connected to the state of emergency*;
- *Act CXXX of 2016 on the Code of Civil Procedure* (CPC).

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The Bankruptcy Act laying down the fundamental provisions applicable to liquidation and bankruptcy proceedings entered into force on January 1, 1992, thus, it has been in force for more than 30 years.

While the principles of the Bankruptcy Act remained much the same, the legal regime governing restructuring and insolvency has seen multiple revisions over the years. The Bankruptcy Act has been amended numerous times since its inception and there were other legislative changes in the area as well, e.g., specific transitional provisions have been introduced due to the COVID-19 pandemic and also the Restructuring Act, extending the arsenal of potential measures for restoring the debtor's financial stability, entered into force on July 1, 2022.

It must be noted that codification works have been carried out for a new Bankruptcy Act since 2018, but its adoption is not expected in the near future.

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1.3. Are there any special regimes applying to specific sectors?

In addition to the general laws listed in Section 1.1., other pieces of legislation provide for special rules applicable to the restructuring and insolvency matters of specific sectors and entities, see inter alia certain provisions of the following laws:

- *Act LXXXVIII of 2014 on Insurance Business Activity*;
- *Act XXXVII of 2014 on the Further Development of the Institutional System Promoting the Security of Certain Actors of the Financial Intermediary System*;
- *Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises*;
- *Act CXXXIX of 2013 on the National Bank of Hungary*.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

Certain changes have been introduced in the Hungarian restructuring and insolvency regulation as a response to the COVID-19 pandemic. Some of these amendments have already ceased to be effective, while others shall be applied until December 31, 2022. Due to the numerous amendments and legislative changes during the course of the last two and a half years, only some of the measures introduced as a response to the global pandemic are described below.

As an example of the measures that are no longer effective, legal persons and independent contractors qualifying as undertakings experiencing financial difficulties might file an application for a stay of payment with regard to a payment obligation arising from a business-to-business loan agreement.

Other measures remain in force until December 31, 2022, under the current regulation. *Inter alia*, certain provisions of the Bankruptcy Act shall be applied differently, e.g., the application for liquidation may only be filed on certain grounds if the claimed amount exceeds HUF 400,000 and the grace period of 75 days has lapsed.

In the case of liquidation proceedings of strategic importance, the part of the debtor's assets suitable for continuation of the economic activity during the liquidation procedure and suitable for sale as an independently functioning unit shall be operated independently by the liquidator, the provisions of which are detailed in *Act XCIX of 2021 on the transitional rules related to the state of emergency*.

Moreover, in view of the COVID-19 pandemic, a special reorganization procedure, that may be initiated by a business

organization threatened by insolvency, has been introduced as a new type of procedure. The objective of this reorganization procedure is to restore the solvency of the undertaking concerned, therefore, a reorganization plan shall be prepared and accepted by the creditors and the court. There are a number of similarities between the reorganization procedure and the bankruptcy procedure, however, the deadlines applicable to the procedural steps of the reorganization procedure are shorter than the ones applicable in bankruptcy procedures. An application for the reorganization may be filed only until December 31, 2022.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

According to the publicly available information, a few minor changes are expected in the provisions of the Bankruptcy Act as of October 1, 2022, and February 1, 2023. The latter changes are triggered by the new *Land Register Act* entering into force.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

No, Hungary has not yet adopted the *UNCITRAL Model Law on Enterprise Group Insolvency* and no public information is available on the consideration of its potential adoption in the near future.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

There is no specific insolvency test prescribed by the respective laws, however, the liability of the former executives of the economic operator may be established upon the action of any creditor or the liquidator (in the debtor's name) alleging that the former executives failed to exercise their management functions in the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying the potential danger of insolvency. The liability may only be established if, as a direct consequence of the actions or negligence of the former executives, the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons. The courts have interpreted this liability clause and concluded that an executive, disregarding the interests of creditors, shall bear liability in two instances: **(1)** if the debtor's assets decreased as a result of his actions, and/or **(2)** if his actions frustrated the satisfaction of creditors' claims in any other manner. Such other manner can be, for example, if he undertook obligations burdening the debtor, he accumulated debts, etc.

Therefore, in order to be exempt from personal liability, managers of the economic operators shall take into account the creditors' interests as well once a situation carrying the potential danger of insolvency arises.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

If an economic operator becomes insolvent, it may be subject to a liquidation procedure. Special provisions apply to simplified liquidation proceedings and liquidation proceedings having strategic importance.

Simplified liquidation proceedings may be applied if the debtor's available assets are insufficient even to cover the foreseeable costs of liquidation, or the liquidation proceedings are technically non-executable according to the general provisions due to discrepancies and deficiencies in the records and/or in the books.

As for liquidation proceedings having strategic importance, the Government may decide – by means of a decree – to apply special liquidation provisions with respect to the economic operators to whom the following criteria apply:

a) settlement of the debts of such operators or composition with creditors is in the interest of the national economy or is of particular common interest, or

b) the winding up of such operators without succession – where the lack of funding and insolvency cannot presumably be resolved – in a simplified, transparent, and standardized procedure is prioritized due to economic policy.

2.3. Who has the right to initiate insolvency proceedings?

Liquidation proceedings may be initiated:

- *ex officio*;
- upon the request of the debtor, creditor, or receiver;
- upon the notification of the court of firms;
- upon the notification of the criminal court.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

The management continues to operate during the course of liquidation proceedings as well. The Bankruptcy Act prescribes

certain obligations to the managers, inter alia to prepare, with the day preceding the opening of liquidation proceedings, a closing inventory, annual accounts, or simplified annual accounts, as well as a closing balance sheet and a tax return. These shall be presented to the liquidator and the tax authority. Managers shall inform without delay the employees, cooperative members, as well as the trade unions, and the workers' council about the opening of liquidation proceedings.

In addition, the debtor is placed under supervision, since the court shall appoint a liquidator company upon the commencement of the liquidation proceedings. The liquidator company is entitled to represent the debtor via a receiver who is a natural person tasked by the liquidator company to carry out the liquidation of the debtor.

The liquidator shall analyze the financial standing of the economic operator and the claims against it. The liquidator enjoys extensive privileges, including the powers to terminate, with immediate effect, the contracts concluded by the debtor as well as to collect the claims of the debtor when due, enforce its claims and sell its assets.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Upon the debtor's request, the court may allow a maximum period of 45 days for the debtor to settle its debt, except if the liquidation proceedings had been opened directly after bankruptcy proceedings. Therefore, there is no mandatory stay of payment, i.e., the court has discretion in allowing a stay of payment to the debtor.

Liquidation proceedings may be suspended, provided that the suspension is requested jointly by the debtor and the creditors filing for the liquidation proceedings. The request shall arrive at the court before the court orders the liquidation of the economic operator.

Both the additional 45 days granted for the debtor and the suspension of the proceedings shall apply to every creditor irrespective of their nationality.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

At the time of the opening of the liquidation proceedings, all debts of the economic operator shall be deemed due. The liquidator has the power to terminate, with immediate effect, the contracts concluded by the debtor. However, there are certain exceptions, e.g., the liquidator may not terminate with immediate effect the tenancy agreements of natural persons, employment contracts, etc.

The other party of the contract may enforce its claim arising from the termination, if any, within the framework of the liquidation procedure by notifying the liquidator within 40 days from the date when the termination was communicated.

The debtor's contracts concluded within a certain time period before the opening of the liquidation proceedings may be challenged by the creditors or the liquidator (acting in the name of the debtor). *Inter alia* contracts may be challenged if they have been intended to conceal the debtor's assets or to defraud any of the creditors, and the other party had or should have had knowledge of such intent or if they have been intended to give preference and privileges to any of the creditors, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that did not have any.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The main steps of liquidation proceedings can be summarized as follows.

Once the liquidation of the debtor is initiated, the court shall assess whether the debtor shall be deemed insolvent. If the court establishes the debtor's insolvency, the court orders the liquidation of the debtor. Once the resolution ordering the debtor's liquidation becomes final and binding, the court appoints a liquidator as well as orders the publication of the resolution on liquidation and on the appointment of the liquidator in the Company Gazette (*Cegkozlony*). The court shall also inform certain authorities and organizations about the ordering of the debtor's liquidation.

After the publication of the debtor's liquidation in the Company Gazette, the creditors have 40 days to notify their claims to the liquidator. The liquidator shall assess the financial status of the debtor as well as register the creditors' claims notified to him within the deadlines specified by the Bankruptcy Act. The liquidator has the right *inter alia* to terminate the debtor's contracts and to sell the assets of the debtor for the highest price possible on the market.

The creditors and the debtor shall have the right to conduct negotiations for the purpose of a settlement and to conclude a settlement agreement as a result of the negotiations.

Provided that the amount of money received during the liquidation procedure is sufficient to cover the claims of creditors, the liquidator shall prepare an interim liquidation account and he shall send it to the creditors and the court. The court

shall adopt a decision on the acceptance or the refusal of the interim account. If the court accepts the interim account, the liquidator shall satisfy the claims in accordance with it.

Upon conclusion of the liquidation proceedings the liquidator shall prepare the final liquidation balance sheet, the statement of revenues and expenditures, the final tax returns, the closing report, and a proposal for the distribution of assets, and shall send all these to the court and fulfill other obligations, e.g., arrange the placement of the economic operator's documents.

The court shall deliver the liquidation balance sheet, the closing report, and the proposal for the distribution of assets to the creditors. The creditors are entitled to raise objections to these documents. The court adjudicates the objections by holding a hearing.

Finally, based on the final liquidation balance sheet and the proposal for the distribution of assets, the court shall rule on the bearing of costs, the liquidator's fee, the satisfaction of the claims of creditors, and the closing of bank accounts. Furthermore, it shall oblige the liquidator to perform any additional measures that are still necessary for the closure of the liquidation proceedings. Simultaneously, the court shall adopt a decision on the conclusion of the liquidation and the dissolution of the debtor without succession as well as on the dissolution of any subsidiary of the debtor.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

The Bankruptcy Act determines the debt classes and the order of their satisfaction as listed below:

a) liquidation costs;

b) claims secured by a pledge up to the amount of the proceeds from the sale of the pledged property;

c) alimony, life annuity claims as well as claims for personal injury benefits and income supplement of miners;

d) with the exception of claims arising from bonds, other claims of private individuals not originating from economic activities (in particular claims resulting from lack of conformity of performance, compensation for damages or restitution, including amounts due to warranty as expected in the usual course of trade), claims of small and micro companies and small-scale agricultural producers, and the receivables of the Common Capital Fund of Cooperative Credit Institutions (*Szovetkezeti Hitelintezetek Tokefedezeti Kozos Alapja*) originating from the Common Capital Fund of Cooperative Credit Institutions receiving the rights and obligations of covered depositors;

e) debts owed to social security funds, taxes and outstanding public dues enforced as taxes, claims falling under the *Act on General Public Administration Procedures*, creditor's claims arising from criminal actions, and repayable State aid and financial aid from the European Union and other international resources by virtue of international agreements, as well as public utility charges and condominium maintenance fees, and the further claims of the Common Capital Fund of Cooperative Credit Institutions;

f) other claims;

g) irrespective of the time and grounds of occurrence, default interests and late charges, as well as surcharges and penalties and similar debts;

h) claims – with certain exceptions - held by:

ha) any member (shareholder) of such an economic operator with majority control,

hb) any executive officer of the economic operator,

hc) any executive employee,

hd) the close relatives and domestic partners of the persons mentioned above,

he) an economic operator under the debtor's majority control,

hf) a body (person) benefiting from the debtor's gratuitous contract.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Although the legal regime applicable to insolvency proceedings lays down certain deadlines as detailed below, the length of the proceedings depends on many factors, including the caseload of the court, the statements, and motions of the parties, as well as the remedies exhausted by them against certain decisions of the court and the actions of the liquidator.

The court shall adopt its resolution on the liquidation of the debtor within 60 days after the receipt of the application for the opening of liquidation proceedings. Once the resolution becomes final and binding, the court shall arrange for its publication in the Company Gazette without delay.

The creditors have 40 days to notify their claims to the liquidator, however, the liquidator shall register those claims too, which have been notified within 180 days after the publication of the resolution on liquidation, but these delayed claims may only be satisfied under special circumstances.

Specific deadlines apply to the actions of the liquidator as well, e.g., in the case of public sale of the debtor's assets, the public tender notice shall be published at least 15 days prior to the

public sale.

Once the final liquidation balance sheet, the statement of revenues and expenditures, the final tax returns, the closing report, and a proposal for distribution of assets are prepared by the liquidator and are sent to the court, the court shall send the liquidation balance sheet, the closing report and the proposal for the distribution of assets to the creditors within 30 days of receipt and the creditors shall have 30 days to raise objections to the beforementioned documents.

The court concludes the liquidation procedure by adopting a resolution on its conclusion, the satisfaction of the creditors, and the dissolution of the debtor without succession.

Due to the fact that liquidation proceedings include many steps and remedies, it may take years before they come to an end.

2.8. Are there any liabilities that survive the insolvency proceedings?

When the liquidation proceedings are concluded, the economic operator ceases to exist without a successor, thus no liability survives.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

The two main types of restructuring proceedings in Hungary are the bankruptcy proceedings governed by the Bankruptcy Act and the restructuring proceedings governed by the provisions of the Restructuring Act.

Bankruptcy shall mean the proceedings where the debtor is granted a stay of payment with a view to entering into a composition arrangement with creditors.

Restructuring shall mean measures aimed at restoring a debtor's financial stability that include changing the composition, conditions, or structure of the debtor's assets and liabilities or any other part of the debtor's capital structure. Restructuring can be carried out by selling the debtor's assets or parts of the business, selling shares held in the debtor, and selling the business as a going concern, as well as by making any operational changes necessary, or by a combination of these measures.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

Bankruptcy proceedings:

Executive officers of the debtor may submit an application to the court of law for opening bankruptcy proceedings. The debtor shall provide for its legal representation when submitting the application.

The debtor may not file an application for bankruptcy if

a) a procedure is pending for its restructuring;

b) the time period for implementing a restructuring plan having the necessary approvals has not elapsed yet;

c) before filing an application for bankruptcy, a restructuring procedure was in progress where the debtor was given a moratorium and one year has not elapsed from the date when the restructuring failed;

d) bankruptcy proceedings are pending against it; or

e) an application for its liquidation has been submitted, and a decision has already been adopted in the first instance on the debtor's liquidation.

The Bankruptcy Act lists the mandatory content and annexes of the application for opening bankruptcy proceedings as well as the subjects on which the debtor shall make statements.

Within 90 days of the opening of bankruptcy proceedings, the debtor shall call the creditors for a meeting to negotiate a composition, and shall invite the administrator (see Section 3.4.1.) and all known creditors directly by delivering them the documents specified in the Bankruptcy Act.

Composition means an agreement between the debtor and the creditors laying down the conditions for debt settlement, in particular, any allowances and/or payment facilities relating to the debt, remission or assumption of certain claims, receiving shares in the debtor in exchange for a debt, guarantees for the satisfaction of claims and other similar securities, approval of the debtor's program for financial recovery and for cutting losses, etc. A composition may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights according to certain provisions of the Bankruptcy Act, in respect of secured and unsecured claims alike. The composition agreement shall be made in writing.

The composition shall be filed with the court that shall deliver its decision on the approval of the composition arrangements within 15 working days of its receipt.

Restructuring proceedings:

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

Restructuring cannot be initiated if – *inter alia* –

a) a restructuring procedure or a reorganization procedure as defined by the law is in progress against the debtor in Hungary;

b) the debtor is undergoing dissolution proceedings;

c) in respect of the debtor a final decision to open

ca) bankruptcy proceedings or liquidation proceedings under the Bankruptcy Act was published,

cb) involuntary de-registration proceedings under *Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings* was published,

cc) compulsory winding-up proceedings, simplified de-registration proceedings under *Act CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations* was published,

cd) main proceedings or territorial proceedings listed in Annex "A" of *Regulation (EU) 2015/848* of the European Parliament and of the Council in a Member State was published.

Restructuring and its date shall be decided by the debtor's decision-making body. The Restructuring Acts lists the mandatory content and annexes of the application for opening restructuring proceedings.

During the restructuring procedure, the debtor shall register and classify the known claims of affected creditors. The restructuring plan shall be made in writing and shall contain everything prescribed by the Restructuring Act as to the content of the restructuring plan. The debtor shall discuss the restructuring plan with the affected creditors and, after the conclusion of the negotiations, submit the restructuring plan for adoption by the affected creditors with voting rights. A draft of a restructuring plan may be submitted for adoption, which has been approved by the debtor in advance, specifically by the debtor's decision-making body, or, if the debtor is a single-member legal person, founder, or sole member. The debtor and the affected creditors with voting rights shall participate in the adoption of the restructuring plan. The restructuring plan shall be considered adopted if supported in each class of creditors by the majority of all affected creditors with recognized or undisputed claims of that class of creditors.

The debtor shall submit the adopted restructuring plan to the court for confirmation. After the receipt of the request, the court shall call upon dissenting creditors, and in certain cases other persons and the equity holders to submit their counter-statement. After the receipt of the counter-statements (if any) and following the specific procedural steps set forth by the Restructuring Act, the court shall decide on the confirmation or the rejection of the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement.

3.3. Who has the right to initiate formal restructuring proceedings?

Both bankruptcy proceedings and restructuring proceedings may be initiated by the debtor itself.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

In the case of bankruptcy proceedings, the management continues to operate the business, however, an administrator is appointed by the court after the opening of the bankruptcy procedure. The directors and owners of a debtor economic operator may only exercise their respective rights if it does not violate the powers vested in the administrator.

The administrator shall execute its functions so as to monitor the debtor's business activities with a view to protect the creditors' interests and to make preparations for the composition with the creditors. Accordingly, the administrator shall *inter alia*:

a) review the debtor's financial standing, which may entail inspection of the debtor's books, assets and liabilities, contracts, and bank accounts, requesting information from the directors and owners of the economic operator, supervisory board members, and the auditor,

b) inform the creditors about his findings;

c) carry out – with the assistance of the debtor - the tasks relating to the registration and categorization of claims;

d) approve and endorse any financial commitment of the debtor after the time of the opening of bankruptcy proceedings;

e) advise the debtor to enforce its claims and shall oversee the way it is executed, and in the event of the debtor's failure to comply he shall notify its owners, supervisory board, and auditor;

f) contest, at its discretion, any contract or legal statement the debtor made in the absence of his approval or endorsement and shall initiate or open proceedings for the recovery of any payments effected unlawfully or arising out of or in connection with any unlawful claim;

g) categorize the claims registered and inform the creditors concerning the registration and categorization of their claims;

h) exercise joint power of representation and joint right of disposition over the bank accounts in certain cases specified by the Bankruptcy Act;

i) move to request an extension of stay of payment.

In the case of restructuring proceedings, the management continues to operate the business. Following the decision on the initiation of a restructuring process, the debtor's executive officer shall be liable to take all necessary measures within his scope of responsibility in the interests of the creditors and for the relevant resolutions of the debtor's decision-making body, in particular for avoiding insolvency, and shall, furthermore, refrain from unduly favoring certain creditors, and from undertaking any business risk that may be considered unreasonable in light of the debtor's financial position.

There are certain cases, where the court appoints a practitioner in the field of restructuring or approves its participation upon request. The responsibilities of the practitioner in the field of restructuring shall include:

a) participating in the preparation of a restructuring plan;

b) providing assistance to the debtor and the creditors affected in the arrangement, negotiation, and adoption of the restructuring plan;

c) supervising the debtor's actions related to the negotiation of the restructuring plan and its adoption by the creditors affected;

d) during the negotiations on the restructuring plan, supervising the debtor's management.

The responsibilities of the practitioner in the field of restructuring shall cover the supervision of the debtor's financial affairs if the application for approval of the practitioner in the field of restructuring so specifies, or this is requested by the creditors. When the debtor's financial affairs are supervised by the practitioner in the field of restructuring:

a) the practitioner in the field of restructuring

aa) shall be given access to the debtor's documents, accounting records, and books and shall have the right to inspect the debtor's bank accounts, securities portfolio and goods stock, including his contracts,

ab) may request information from executive officers, members of the supervisory board, and employees of the debtor,

ac) shall monitor the debtor's foreseeable and actual income,

ad) shall request the executive officer to enforce the debtor's claims and shall monitor the implementation thereof,

ae) shall inform the creditors affected of the irregularities or deficiencies he has detected and which have not been remedied by the debtor, and of the measures he has taken, and

af) shall check the conditions of interim or new financing arrangements;

b) the debtor shall be allowed to undertake a new contractual (permanent) legal obligation, other than interim or new financing arrangements, only if the practitioner in the field of restructuring has consented in writing in advance; furthermore

c) the debtor shall be allowed to enter into a contract considered to be in excess of the scope of normal operations regarding its assets only upon the prior written consent of the practitioner in the field of restructuring, and in certain cases the holder of security and the affected creditor.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

In case of bankruptcy proceedings, the debtor is granted a stay of payment (moratorium) to preserve the assets under bankruptcy protection, during which the debtor, the administrator, the financial institutions carrying the accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the stay of payment.

The stay of payment shall not apply:

a) to claims for wages and other similar benefits existing at the time of submission of the application for the opening of bankruptcy proceedings and those arising thereafter, as well as the related taxes and other similar charges (including membership payments made to private pension funds), severance pay, maintenance payments, life-annuities, compensation contributions, restitution and miners' income supplement benefits, benefits and allowances of vocational students, furthermore, fees charged for electricity and natural gas (including network access fees) and all other fees charged for utilities due on the basis of certain compulsory services as well as certain costs and expenses of the administrator, which are not covered by the registration fees;

b) to any value added tax, excise tax, and products charges charged to the debtor after the opening of bankruptcy proceedings;

c) to refunds of sums transferred to debtor's account by mistake; and

d) to the payment obligations assumed with a view to carrying on the economic activity, as endorsed by the administrator.

Under the duration of the stay of payment:

a) setoff may not be applied against the debtor, however, setoff may be adjudicated in judicial proceedings initiated by the debtor and still in progress, if submitted before the opening of bankruptcy proceedings;

b) in general, payment orders may not be satisfied from the

debtor's accounts, and payment orders may not be submitted against the debtor;

c) the enforcement of money claims against the debtor – with certain exceptions – shall be suspended, and the enforcement of such claims may not be ordered;

d) in general, no satisfaction may be sought on the basis of a lien on the debtor's asset, moreover, the debtor may not be called to honor any security pledged before the opening of bankruptcy proceedings;

e) with the exception of certain claims, the debtor cannot affect any payment for claims existing at the time of the opening of bankruptcy proceedings, and the creditor – with certain exceptions - may not demand such payments;

f) the debtor shall be allowed to undertake any new commitment subject to the consent of the administrator;

g) payments may be made from the debtor's assets subject to authorization by the administrator, including for the liabilities assumed with a view to continuing the debtor's economic activity; and

h) a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of paying its debts incurred before the term of the temporary stay of payment.

In the case of restructuring proceedings, the court may order, at the debtor's request, a stay of individual enforcement actions (moratorium) in order to support the negotiations of a restructuring plan. The moratorium may be general or restricted. The moratorium may be extended and a new moratorium may also be ordered.

Unless otherwise provided by the Restructuring Act, the moratorium shall cover all claims that may be enforced against the debtor by the affected creditors, falling within the scope of general or restricted moratorium, including claims that fall due or that come into existence during the period of the moratorium.

During the moratorium, the creditor to whom the moratorium applies:

a) may not initiate enforcement against the debtor, and ongoing enforcement initiated after the starting date of the restructuring process shall be suspended;

b) may not initiate liquidation proceedings against the debtor;

c) may not exercise setoff against the debtor, with the exception specified in the Restructuring Act; and

d) shall refrain from making any claims against the debtor that is in breach of the provisions laid down in the Restructuring Act.

For the duration of the moratorium, in the legal relationship between the creditor and the debtor to which the moratorium applies:

a) the creditor shall not be entitled to contractual penalty, interest on late payment, default interest, lump-sum collection charge in connection with claims that became due before the moratorium, however, nominal interest shall apply for such periods as well;

b) the lien holder, the holder of the collateralized option to buy, or the beneficiary of the assignment of a right or claim by way of a guarantee may not exercise his rights related to enforcement, and the creditor may not take action against the obligor provided for in the Restructuring Act;

c) payment orders may not be satisfied from the debtor's accounts, and payment orders may not be submitted against the debtor.

As a general rule, during the moratorium, the creditors to whom the moratorium applies may not suspend the performance of essential contracts due to the non-payment of debts. Furthermore, essential contracts may not be terminated and may not be amended in any way or form to the debtor's disadvantage.

The general moratorium shall apply to every creditor, while the restricted moratorium shall only apply to the creditors specified by the debtor.

3.4.3. How do restructuring proceedings affect existing contracts?

With respect to bankruptcy proceedings, during the stay of the payment period, a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's failure to settle during the term of the stay of payment its debts incurred before the term of the temporary stay of payment. The administrator shall approve and endorse any financial commitment of the debtor after the opening of bankruptcy proceedings, therefore, he shall have the right to contest, at its discretion, any contract or legal statement the debtor made in the absence of his approval or endorsement. In addition, the Bankruptcy Act sets forth that the management of the debtor shall be restricted – following the temporary administrator taking office – from entering into any contract considered to be in excess of the scope of normal operations where the debtor's assets are concerned without the prior consent and endorsement of the temporary administrator, or from entering into any other commitment, including where the debtor is compelled to perform under an existing contract.

In the case of restructuring proceedings, if the responsibilities of the practitioner in the field of restructuring cover the supervision of the debtor's financial affairs, he/she has the

power to inspect the debtor's contracts. In addition, if the practitioner in the field of restructuring has supervision, the debtor shall be allowed to enter into a contract considered to be in excess of the scope of normal use of assets only upon the prior written consent of the practitioner in the field of restructuring.

Furthermore, as a general rule, during the moratorium, the creditors to whom the moratorium applies may not suspend the performance of essential contracts due to the non-payment of debts. In addition, essential contracts may not be terminated and may not be amended in any way or form to the debtor's disadvantage. (The creditors affected by the moratorium may exercise their contractual rights if the debtor fails to fulfil its contractual obligations apart from its payment obligation.)

Creditors – regardless of whether their claim is covered by the moratorium – may not withhold or suspend the performance of contracts with reference to a clause contained in the contract concluded with the debtor, and, additionally, contracts may not be terminated or amended in any way or form to the debtor's disadvantage on the grounds that

a) the debtor has decided to initiate restructuring;

b) the debtor has initiated the restructuring procedure;

c) in the restructuring procedure, the debtor applied for a moratorium; or

d) the court ordered a moratorium in the restructuring procedure.

During the moratorium, the scope of obligations a debtor may undertake based on a new contractual (long-term) legal relationship is limited.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

Please see Sections 2.4.3. and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

No. Neither the provisions applicable to bankruptcy proceedings, nor the ones applicable to restructuring proceedings set forth the release of third-party liabilities.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

In the case of bankruptcy proceedings, the debtor shall submit an application for the opening of bankruptcy proceedings to the court of law. The court shall – within one working day – provide for the publication of the application itself and the temporary stay of payment with immediate effect in the Company Gazette. If the court did not refuse the request for opening bankruptcy proceedings, it shall adopt a resolution within 15 days on the opening of bankruptcy proceedings and the appointment of a temporary administrator, as well as provide, without delay, for the publication of the ruling in the Company Gazette and for rendering the indication "cs. a." (under bankruptcy) to the debtor's name in the companies' registry. The provisions applicable to the stay of payment, detailed in Section 3.4.2., shall apply from the publication of the resolution.

The creditors shall register their claims with the debtor and the administrator within 30 days following the publication of the ruling ordering bankruptcy proceedings – or, in the case of claims arising after the opening of bankruptcy proceedings, within eight working days.

Within 90 days of the opening of bankruptcy proceedings, the debtor shall call the creditors for a meeting to negotiate a composition. Once a composition agreement is concluded, the debtor shall notify the court about the outcome of the composition conference and the court shall deliver its decision on the approval of the composition arrangements. If the composition arrangement is in conformity with the relevant legislation, the court shall grant approval and declare the bankruptcy proceedings dismissed. If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent *ex officio*, and shall order the liquidation of the debtor.

In the case of restructuring proceedings, if the debtor decides its restructuring, the debtor may request the adoption of judicial measures related to the restructuring process within the framework of non-contentious civil proceedings. Within five days of the adoption of the decision on restructuring, the debtor is liable to request the initiation of the restructuring proceedings by communicating the decision on initiating restructuring and the starting date thereof. If the application cannot be rejected, the court shall advise the affected creditors of their right to file, within 10 working days of receipt of the court ruling, a submission disputing the probability of the debtor becoming insolvent and thus the condition of the restructuring procedure. The court may order a moratorium at the debtor's request in order to support the negotiations of a restructuring plan. In the case of such resolution, the provisions applicable to the moratorium, detailed in Section 3.4.2., shall apply.

The debtor shall register and classify the known claims of

affected creditors. The restructuring plan shall be discussed with the affected creditors and once the restructuring plan is approved, it shall be filed with the court for confirmation.

The court shall call upon dissenting creditors, and in certain cases the equity holders to submit their counter-statement to the restructuring plan. Following the receipt of the counter-statements, the court shall decide on the confirmation or the rejection of the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement.

3.7. How are restructuring proceedings normally finalized?

In the case of bankruptcy proceedings, once a composition agreement is reached by the respective parties, the agreement shall be filed with the court for approval. If the court approves the agreement, it shall adopt a resolution thereon and declare the bankruptcy proceedings dismissed. If the respective parties cannot reach an agreement or if the agreement is not approved by the court, the court shall dismiss the bankruptcy proceedings and shall consequently declare the debtor insolvent *ex officio*, and shall order the liquidation of the debtor.

In the case of restructuring proceedings, the restructuring plan shall be submitted to the court, where the dissenting parties have the right to submit their counter-statements. If a counter-statement has been submitted, the court shall *ex officio* appoint a practitioner in the field of restructuring, and if an appointed practitioner in the field of restructuring is already involved, it may also appoint another practitioner in the field of restructuring if this is considered justified considering the exceptional complexity of the restructuring plan or the debtor's economic activity, financial situation, or on account of specific issues related to the counter-statement. Finally, the court shall confirm or reject the restructuring plan. If the restructuring plan is confirmed by the court, the rights and obligations contained in the plan shall apply to the debtor, all affected creditors, and the parties who joined the restructuring plan by means of a legal statement. If the restructuring plan is rejected by the court, the liquidation of the economic operator may be ordered.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

As a general rule, they do not, since the Bankruptcy Act sets forth that bankruptcy and liquidation proceedings are falling within the jurisdiction of Hungarian courts in the case of Hungarian debtors, and the Hungarian court responsible for the territory where the debtor's seat is registered shall have competence in these proceedings.

However, special provisions apply to the restructuring and insolvency of Hungarian branch offices of foreign-registered companies. If main insolvency proceedings (proceedings whose purpose is reorganization or liquidation) are opened against the foreign parent company abroad, this shall be reported to the competent Hungarian court within eight days from the opening of such foreign proceedings. At the same time, key elements of the foreign judgment opening insolvency proceedings and – where applicable – the decision on the appointment of an insolvency practitioner by the foreign court or authority shall be published on the website of the Company Gazette, including *inter alia*, an indication and address of the foreign court opening the main insolvency proceedings and the foreign insolvency practitioner's name and contact information. Apart from the cases falling within the scope of *Regulation 2015/848/EU*, main insolvency proceedings opened against the foreign parent company abroad shall apply to its Hungarian branch, if there is reciprocity between Hungary and the foreign state where main insolvency proceedings had been opened. If the branch is not involved in the main insolvency proceedings opened against the foreign parent company abroad under national law, the general court responsible for the territory where the branch is registered shall order the dissolution of the branch on its own motion on the basis of notification by the court of registry.

4.2. What are the preconditions for recognizing foreign decisions?

According to the general provisions of *Act XXVIII of 2017 on Private International Law* (PILA), a judgment adopted by a foreign court shall be recognized if **(i)** the jurisdiction of the foreign court is considered legitimate under the PILA; **(ii)** the judgment is construed as definitive (or equivalent) by the law of the state where it was adopted; and **(iii)** neither grounds for denial defined by the respective subsection of the PILA apply (e.g., the recognition of the foreign judgment is not contrary to Hungarian public policy, etc.).

In addition to the general requirements listed above, the recognition of judgments in insolvency proceedings is subject to reciprocity between Hungary and the state of the court which delivered that judgment. The PILA also sets forth that recognition of main insolvency proceedings conducted abroad shall not preclude the opening of secondary insolvency proceedings before a Hungarian court and a foreign judgment opening main insolvency proceedings have legal effects provided for in the law of the state opening proceedings only if no secondary insolvency proceedings are opened in Hungary.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

See Sections 4.1. and 4.2.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Generally, the same rules apply to foreign creditors as to domestic creditors, therefore they are treated in the same manner.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

It is hard to decide whether the overall restructuring and insolvency regime in Hungary is more creditor- or debtor-friendly since the perception differs depending on the type of procedure in question and on the circumstances of the case.

If the debtor has assets or its operation is profitable, liquidation proceedings may serve as effective tools for creditors to enforce their claims. Once the conditions of liquidation proceedings are fulfilled, the debtor may only avoid termination with the payment of its debt.

Bankruptcy proceedings may be viewed as debtor-friendly: if the debtor's assets do not cover the claims, there is significant pressure on the creditors to enter into a composition arrangement. If bankruptcy proceedings turn into liquidation, the termination of the company may take years and generate significant costs that decrease the satisfaction of creditors.

However, there are significant risks in bankruptcy proceedings for both sides.

The relatively new regulation on restructuring proceedings is considered more flexible than the one applicable to bankruptcy proceedings since it has both creditor- and debtor-friendly provisions.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The following pieces of legislation apply to restructuring and insolvency matters:

- *Insolvency Law no. 149* of June 29, 2012 (*Law no. 149/2012*);
- *Law on the activity of banks no. 202* of October 6, 2017 (*Law no. 202/2017*);
- *Law on the liquidation of banks no. 550* of July 21, 1995 (*Law no. 550/1995*);
- *Code of Civil Procedure no. 225* of May 30, 2003;
- *Civil Code no. 1107* of June 6, 2002.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The legislation of the Republic of Moldova regarding insolvency procedures is at the fourth stage of development. During 31 years of independence, the Republic of Moldova already has the fourth law in the field: *Law no. 851/1992* on bankruptcy, *Law no. 786/1996* on bankruptcy, *Insolvency Law no. 632/2001*, and *Insolvency Law no. 149/2012*. In 2020, by *Law no. 141/2020*, a series of amendments were introduced to *Insolvency Law no. 149/2012*. The multitude of changes to the legal framework in this segment shows that there are still gaps in the field of insolvency legislation.

1.3. Are there any special regimes applying to specific sectors?

Law no. 149/2012 governs in separate chapters:

- Some particularities of insolvency in agriculture (chapter VIII)
- The particularities of the insolvency of the peasant (farmer) household (chapter IX)
- The particularities of the insolvency of insurance companies (chapter X)
- The particularities of the insolvency of persons licensed or insured on the capital market (chapter XI)
- The particularities of the insolvency of savings and loan associations (chapter XII)

Law no. 149/2012 does not apply to banks. In this case, *Law no. 202/2017* and *Law no. 550/1995* are relevant.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

We are not aware of changes to restructuring or insolvency law adopted particularly in response to the COVID-19 pandemic.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

There are no proposed or upcoming major changes to the restructuring insolvency regime in the Republic of Moldova. The Moldovan legislator, however, implements periodically minor changes to the law. For instance, the last change took place in July 2022 when the legislator amended Art. 67 of *Law no. 149/2012* with respect to the supervision of the insolvency administrator/liquidator by the insolvency court.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Moldova has not adopted yet the *UNCITRAL Model Law on Enterprise Group Insolvency*, although discussions about its adoption have been taking place for a while.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

Art. 14 of *Law no. 149/2012* on insolvency governs the obligation of the debtor company to file the introductory request. Therefore, the debtor is obliged to file an introductory request if there is one of the grounds provided for in Art. 10 of *Law no. 149/2012* on insolvency (inability to pay or over-indebtedness of the debtor). Also, the debtor company has the obligation to file the introductory request if: **a)** the full execution of the due claims of one or more creditors may cause the impossibility of the full satisfaction of the claims of the other creditors; and **b)** during the liquidation, which is carried out according to other laws, it becomes obvious that the debtor cannot fully satisfy the creditors' claims. The debtor is obliged to file an introductory request immediately, but no later than the expiration of 30 days from the date of occurrence of the grounds indicated above. If the debtor does not file an introductory request in the cases and within the term provided above, the person who has the right to represent the debtor, the shareholders with unlimited liability, and the debtor's liquidators are subsidiarily liable to the creditors for the obligations arising after the expiration the 30-day period. These persons bear administrative liability in accordance with the law.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Law no. 149/2012 on insolvency governs the following insolvency procedures:

1. The *insolvency* procedure, through which the debtor enters, after an observation period, into:

a) *restructuring* procedure

b) *bankruptcy* procedure

2. *Simplified bankruptcy* procedure

3. *Accelerated restructuring* procedure (it is considered a pre-insolvency procedure)

2.3. Who has the right to initiate insolvency proceedings?

As a general matter and in principle, the introductory request may be filed by the debtor company or by its creditors. The executive body, the person who has the right to represent the debtor, shareholders with unlimited liability, and the debtor's liquidators, have the right to file an introductory request on behalf of the debtor.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

Chapter III of *Law no. 149/2012* on insolvency governs the effects of the initiation of the insolvency procedure. From the moment the insolvency procedure is initiated, the activity of the debtor's management bodies is suspended.

By the decision to initiate insolvency proceedings, the debtor's right to administer and dispose of the assets included in the debtor's estate is transferred to the insolvency administrator/liquidator. Any act of disposal by the debtor over an asset from the debtor's estate made after the initiation of the insolvency procedure is null and void. By the decision to initiate insolvency proceedings, the insolvency court orders the banks where the debtor has available accounts not to use them without an order from the insolvency administrator/liquidator. Violation of court orders involves the liability of the banks for the caused damage, as well as a judicial fine of 10% of the operated amount in the respective account(s).

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

In accordance with Art. 81 of *Law no. 149/2012*, another effect of the initiation of the insolvency procedure is the establishment of a moratorium on the enforcement of claims. The execution of the debtor's obligations not based on an act of the insolvency administrator/liquidator is prohibited for 180 days from the date of initiation of the insolvency procedure or the simplified bankruptcy procedure. For unsecured creditors, it is prohibited to individually enforce the debtor's amount during the entire insolvency process.

According to paragraph 3 of Art. 81 of Law no. 149/2012, for secured creditors, the ban on the capitalization of goods encumbered with guarantees is valid for 180 days from the date of initiation of the insolvency procedure, unless the debtor enters bankruptcy, in which case the ban on capitalization ends on the day the court issues the order regarding the initiation of bankruptcy proceedings. In case the procedure of restructuring of the debtor is initiated, the ban on forced execution of goods encumbered with guarantees is extended for the period of the moratorium.

According to paragraph 4 of Art. 81 of Law no. 149/2012, secured creditors are entitled to proceed with the compulsory pursuit of goods encumbered with guarantees before the expiration of the 180-day period only on the basis of a decision of the insolvency court, issued at the request of the secured creditor in the following cases:

a) the creditor proves that it suffers losses by reducing the value of the asset encumbered with a guarantee (including in the case of perishable assets) and that there is no real possibility of compensating the loss of the value of the asset in the insolvency procedure;

b) the encumbered asset is not essential for the successful restructuring of the debtor or for the sale of the debtor's business; or

c) the debtor's restructuring procedure plan was not confirmed

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

In accordance with Art. 89 of *Law no. 149/2012*, if, at the time of initiation of insolvency proceedings, a bilateral contract is not fully executed by the debtor or by the other party, the administrator/liquidator is entitled to execute it instead of the debtor or to ask the other party to execute it when they consider that the execution is in the interest of the debtor mass. If the debtor fails to fulfill its obligations under the contract that the administrator/liquidator intends to enforce, the breach must be remedied and the other party must be reinstated in the position prior to the breach

In accordance with Art. 91 of *Law no. 149/2012*, rental or lease agreements where the debtor is a tenant or lessee can be terminated by the administrator/liquidator without taking into account the term for which they were concluded.. If the administrator/liquidator disposes of immovable property that

the debtor was leasing, and the acquirer takes the place of the debtor in the lease relationship, the acquirer may terminate the lease agreements taking into account the legal term of termination.

Further, no public utility service provider that holds a dominant position (supply of electricity, natural gas, water, telephone services) has the right to unilaterally refuse or interrupt the provision of such services to the debtor from the moment of submitting the introductory request, even if the debtor has not paid for the services rendered prior to the submission of the introductory request. If insolvency proceedings, bankruptcy proceedings, or restructuring proceedings are initiated, the costs of current services are paid monthly based on the contracts concluded by the supplier with the administrator/liquidator. The reduction or interruption of the provision of the mentioned services can only take place if the administrator/liquidator or the debtor does not pay, according to the contract, the current services provided after the initiation of the legal process.

Also, in accordance with Art.104 of *Law no. 149/2012*, after the initiation of the insolvency procedure, the administrator/liquidator or any creditor with a legitimate interest, with the consent of the administrator/liquidator, may file legal claims (including counterclaims) in the insolvency court with the purpose to cancel the following legal acts:

a) any legal act concluded by the debtor in the last two years preceding the submission of the introductory request with the intention of preventing, delaying, or complicating the possibility of extinguishing creditors' claims, which affected the rights of creditors;

b) transfers of goods or the assumption of obligations free of charge by the debtor, made in the last two years preceding the submission of the introductory request, with the exception of the assumption of moral obligations or acts for the public good (sponsorship) in which the generosity of the donor is proportional to its assets;

c) the transfers of goods or undertakings of obligations by the debtor, made in the last two years prior to the submission of the introductory request, in which the benefit of the debtor is clearly greater than the one received;

d) the transfers of goods from the debtor to a creditor, performed in the last six months preceding the submission of the introductory request, which had the effect of increasing the amount that the creditor would receive in the event of the debtor's liquidation;

e) the transfers of goods from the debtor to a creditor, carried out in the last six months preceding the submission of the introductory request, to which the creditor was not entitled or which were made in order to settle a debt that had not reached maturity;

f) the free granting of a pledge or a mortgage, any other guarantee for a claim that was unsecured in the last six months preceding the submission of the introductory request or for a claim of a shareholder of the debtor;

g) any documents concluded and guarantees granted by the debtor after the submission of the introductory request.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The stages of the insolvency process can be divided into the following:

a) introducing the introductory request for initiation of the insolvency process;

b) accepting the introductory request and putting the debtor under observation;

c) adjudication of the introductory request with the issuance of one of the following solutions:

- ascertaining the insolvency of the debtor and initiation of the insolvency process;
- establishing the insolvency of the debtor and initiation of the simplified bankruptcy procedure;
- rejection of the introductory request and refusal to initiate an insolvency process.

d) challenging the debtor's legal documents;

e) the capitalization of the debtor assets and the satisfaction of creditors' claims;

f) termination of the insolvency process.

The insolvency court's competencies are:

- the reasoned pronouncement of the decision to initiate the insolvency process and, as the case may be, to enter into insolvency both through the bankruptcy procedure and through the debtor's restructuring procedure;
- examining the debtor's objections against the creditors' introductory request and judging the creditors' objections against the initiation of the procedure;
- the appointment of the provisional administrator and the fixing of his remuneration, the appointment of the insolvency administrator or, as the case may be, the liquidator to administer the procedure until his confirmation or, as the case may be, until his replacement by the meeting of creditors, as well as the establishment of his duties for this period;

- dismissal or acceptance of the request for resignation of the insolvency administrator/liquidator;
- lifting the debtor's right to continue his activity;
- holding accountable the members of the management bodies who contributed to the insolvency of the debtor, as well as notifying the criminal investigation bodies in relation to the reprehensible acts committed by them;
- judging the actions brought by the insolvency administrator/liquidator regarding the nullity of the legal documents concluded by the debtor prior to the filing of the lawsuit;
- resolving the appeals of the debtor, the creditors' committee, or any interested person against the measures taken by the provisional administrator, the insolvency administrator/liquidator;
- confirmation of the plan of the restructuring procedure or, as the case may be, liquidation after its voting by the creditors;
- settlement of the request submitted by the insolvency administrator or the creditors' committee regarding the termination of the restructuring procedure and entry into bankruptcy;
- examination of the report of the provisional administrator, or of the insolvency administrator/liquidator;
- canceling the decision of the meeting of creditors and the committee of creditors;
- the lifting of seizures on the debtor's patrimony and the cancellation of other insurance or limitation measures of the debtor, the insolvency administrator, and/or the liquidator in the right to administer and capitalize the debtor's assets, applied by other courts or by the bodies empowered in this sense;
- pronouncing the decision to terminate the process.

The competence of the insolvency court also includes judicial control over the activity of the provisional administrator, the insolvency administrator, and/or the liquidator.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

The debtor's assets primarily cover the expenses of the insolvency process.

Unsecured claims are divided into ranks and are paid in the following sequence:

1) claims for health damage or death;

2) salary claims of the employees, except for the persons indicated in Art. 247 of *Law no. 149/2012*, and the remuneration due for the created service works;

3) claims resulting from credits, loans, and internal and external state guarantees granted by the Ministry of Finance (capital, interest, contractual commissions), taxes, and other mandatory payments to the national public budget;

4) claims for restitution (payment) of debts towards state and mobilization reserves;

5) other unsecured claims that are not of lower rank;

6) unsecured claims of lower rank that have the following classes:

a) the interest on unsecured creditors' claims calculated after the filing of the lawsuit;

b) fines, penalties, and other sanctions for non-execution of obligations;

c) claims from the debtor's free services;

d) receivables resulting from loans of an associate, shareholder, or member of the debtor or affiliated persons;

e) salary claims of the persons indicated in Art. 247 of *Law no. 149/2012*.

Unsecured claims are executed according to their rank. Claims of the next rank are executed only after the claims of the previous rank have been fully executed. In case of insufficiency of the debtor's assets, the distribution of goods within the same rank is carried out proportionally.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Law no. 149/2012 does not provide for a fixed term and a timeline for insolvency proceedings. This timeline depends much on the number of creditors, the volume of the debtor's assets, and, of course, depends on the conduct of all participants in the insolvency proceedings.

However, the law provides for certain deadlines, in which certain actions must be taken by the court or by the participants in the proceedings. For instance, according to paragraph 3 of Art. 30 of *Law no. 149/2012*, the term for examination of the request for initiation of the insolvency process is no more than 60 working days from the date of the acceptance of the introductory request for examination. Depending on the circumstances of the case and the valid reasons, the insolvency court may decide to extend this deadline by 15 working days.

Another example is provided in paragraph 1 of Art. 114 of *Law no. 149/2012*, which mentions that the insolvency administrator will prepare and submit to the meeting of creditors, within the deadline set by the insolvency court (that cannot ex-

ceed 100 days from the date of the opening of the procedure), a report on the economic situation and the causes that led to the debtor's insolvency, mentioning the persons to whom this situation could be attributed.

Also, according to paragraph 6 of Art. 190 of *Law no. 149/2012*, the execution of the plan of the restructuring procedure will not exceed three years, calculated from the date of confirmation. In exceptional cases, thoroughly motivated, and provided that the debtor has complied with the restructuring plan in the first two years, the duration of the restructuring can be extended, by the decision of the meeting of creditors, only once, for a period of up to two years.

2.8. Are there any liabilities that survive the insolvency proceedings?

There is no express provision or regulation with respect to liabilities that survive the insolvency proceedings.

However, in accordance with Art.104 of *Law no. 149/2012*, after the initiation of the insolvency proceedings, the administrator/liquidator or any creditor with a legitimate interest, with the agreement of the administrator/liquidator, may file legal claims (including counterclaims) in the insolvency court with the purpose of canceling the transfers of assets or undertaken obligations free of charge which the debtor made in the last two years preceding the submission of the introductory request, with the exception of the undertakings of moral obligations or acts for the public good (sponsorship) in which the donor's generosity is proportional to the value of his assets.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

In terms of restructuring, *Law no. 149/2012* regulates two procedures:

1. the *restructuring* procedure

2. the *accelerated restructuring* procedure

These procedures are defined by the law as follows:

The Restructuring procedure – a procedure that applies to the debtor and which involves the drafting, approval, implementation, and compliance of a complex plan of measures in order to remediate the debtor financially and economically and pay off his debts according to the debt payment schedule.

The Accelerated restructuring procedure – a procedure by which the debtor, after an observation period, enters directly into the restructuring procedure. The purpose of the accelerated restructuring procedure is to safeguard the debtor in its financial difficulty so that it can continue its activity, keep its jobs, and pay off its debts through the implementation of a plan.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

See Sections 3.3., 3.6., and 3.7.

3.3. Who has the right to initiate formal restructuring proceedings?

According to Art. 184 of *Law no. 149/2012*, the restructuring procedure is applied by the order of the insolvency court based on a decision of the meeting of creditors. The decision of the meeting of creditors regarding the application of the restructuring procedure can be a separate one at any stage after the initiation of the insolvency process. This is relevant especially when the debtor did not propose a plan together with the initial application or within the term established immediately after the initiation of the insolvency procedure.

Alternatively, in accordance with paragraph 6 of Art. 21 of *Law no. 149/2012*, the debtor may declare in its introductory request that it is insolvent and intends to restructure its activity. In this case, the insolvency court will initiate the insolvency process by a non-challengeable decision within 20 working days. The court will establish a deadline for the debtor to file a restructuring plan.

In accordance with Art. 188 of *Law no. 149/2012*, the following categories of persons can propose a plan of the restructuring procedure, under the below conditions:

a) The debtor can propose the plan at the same time with the introductory request or the reply to the introductory request, or in a separate request expressly addressed to the insolvency court, but no later than the deadline established within the reporting meeting where the restructuring was approved;

b) The insolvency administrator can propose, at the request of creditors' meeting or creditors' committee, or by itself, the recovery of the debtor based on a plan, from the date of its designation and until the deadline for the presentation of the plan, established at the meeting of reporting creditors at which the restructuring of the debtor was approved;

c) the authorities of the central or local public administration may propose the plan in case of insolvency of the enterprises of vital importance for the national economy referred to in paragraph 6 of Art. 190 of *Law no. 149/2012*;

d) the meeting of creditors or the committee of creditors can propose the plan if the debtor or the administrator has not exercised the right to propose the plan within the terms provided above.

The debtor who, in an interval of three years prior to the formulation of the introductory requests, has been the subject of a procedure established on the basis of the law on insolvency, cannot propose a plan for the restructuring procedure. The same is applicable to the debtor whose administrators, directors, and/or shareholders (members, participants) have criminal records.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

See Section 2.4.1. which is applicable to this situation as well, in accordance with paragraph 3 of Art.184 of *Law no. 149/2012*.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

In addition, in accordance with paragraph 1 of Art. 184 of *Law no. 149/2012*, with the application by the insolvency court of the restructuring procedure, a moratorium is immediately instituted on the forced execution of the creditors' pecuniary obligations existing at the date of application of the restructuring procedure. Exceptions to this rule are: claims regarding the payment of salaries and alimony, regarding the recovery of damages caused to the health of employees or with the exception of claims arising in connection with their death, claims for reclaiming assets from illegal possession, as well as pecuniary and fiscal claims whose maturity occurred in the period after the opening of the restructuring procedure. Secured creditors can demand the enforcement of the secured assets.

See Section 2.4.2. in this regard.

3.4.3. How do restructuring proceedings affect existing contracts?

The plan of the restructuring procedure may provide that, during the period of the debtor's activity under supervision, certain contracts will be valid only after obtaining the consent of the insolvency administrator. At the conclusion of the acts of proportions or acts with conflict of interests, the debtor must request the consent of the creditors' committee or the assembly. If, according to the last financial report, the debts that arose after the debtor's restructuring procedure was filed, exceeded 20% of the value of the assets included in the table of validated claims, the subsequent legal acts that lead to the undertaking of new obligations of the debtor are concluded exclusively with the consent of the committee of creditors.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Section 2.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

N/A

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

In accordance with Art.182 of *Law no. 149/2012*, *restructuring* is an insolvency procedure applied to the debtor in order to pay off its debts, which provides for the preparation, approval, implementation, and compliance of a plan of the restructuring procedure, including, together or separately:

a) operational and/or financial restructuring of the debtor;

b) corporate restructuring by changing the share capital structure;

c) restricting the activity by liquidating some assets from the debtor's patrimony;

d) any other actions not prohibited by the legislation in force.

Examining the issue of accepting the plan of the debtor's restructuring procedure, the proposal of which was analyzed in Section 3.3., belongs to the exclusive competence of the meeting of creditors. Each class of creditors with voting rights votes separately on the plan of the restructuring procedure.

After acceptance by the meeting of creditors, the plan of the restructuring procedure must be confirmed by the insolvency court. With the confirmation of the plan of the restructuring procedure, the insolvency court may impose some conditions or restrictions on the debtor, consistent with the confirmed plan, for performing the activity.

In the organizational part, the plan of the restructuring procedure will regulate the supervision of its realization. In this case, supervision is limited to the execution by the debtor of the obligations specified in the plan. Supervisory duties fall within the competence of the insolvency administrator. In connection with this, the duties of the insolvency administrator and the members of the creditors' committee, as well as the supervision by the insolvency court continue.

The insolvency administrator and/or the debtor's representative will present quarterly to the creditors' committee if it has been established, and to the insolvency court, reports on the financial situation, including the prospects for realizing the

plan of the restructuring procedure. The presentation of these reports does not affect the right of the creditors' committee and the insolvency court to request at any time additional information and reports for a shorter period. After the approval by the creditors' committee, the reports will be registered in the insolvency court, and the debtor or the insolvency administrator will notify all creditors about this in order to consult the reports. If the debtor does not fulfill the obligations whose execution is supervised or if their execution is impossible, the insolvency administrator immediately informs the creditors' committee and the insolvency court about this.

3.7. How are restructuring proceedings normally finalized?

According to Art. 206 of *Law no. 149/2012*, by the decision confirming the plan of the restructuring procedure, the insolvency court orders the termination of the restructuring procedure and the application of the plan to the debtor. According to Art. 208 of the same law, after confirming the plan of the restructuring procedure, the debtor's activity is restructured accordingly. The claims and rights of creditors and other interested parties are modified according to the provisions of the plan.

After the decision confirming the plan of the restructuring procedure becomes final and irrevocable, the debtor regains the right to administer the debtor's assets in accordance with the confirmed plan, under the supervision or under the leadership of the insolvency administrator, until the insolvency court orders the conclusion of the restructuring procedure and undertaking all measures for the reinsertion of the debtor in the economic activity, or the termination of the plan and the transition to bankruptcy.

During the implementation of the plan of the restructuring procedure, the debtor will be supervised by the insolvency administrator or the debtor's representative under the supervision of the insolvency administrator. Shareholders do not have the right to intervene in the management of the activity or in the administration of the debtor's assets, except and within the limits of the cases expressly and limitedly provided by the law and in the plan of the restructuring procedure.

If, during the implementation of the plan of the restructuring procedure, the debtor does not comply with its provisions or the plan is not implemented within the deadline, the creditors' committee or each creditor can submit a new introductory request, which will have the effect of initiation of bankruptcy and liquidating the debtor's assets, and no further proof of its insolvency is required. The filing of bankruptcy proceedings as a result of non-execution of the plan of the restructuring procedure leads to the revocation of the plan. In this case, the creditors whose claims were extinguished as a result of the execution of the plan are obliged to return everything they received.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

According to Art. 467 of the *Code of Civil Procedure* of the Republic of Moldova, foreign court judgments, including out-of-court settlements, are recognized and enforced in the Republic of Moldova. This is done either on the basis of the international treaty to which the Republic of Moldova is a party or on the principle of reciprocity regarding the effects of foreign court judgments.

4.2. What are the preconditions for recognizing foreign decisions?

In order to be recognized and enforced on the territory of the Republic of Moldova, a foreign court judgment must be issued by a state court, including by specialized courts. These courts must be qualified under the legislation of that foreign state as courts, which are part of the judicial system. The foreign court judgment can be submitted for forced execution in the Republic of Moldova within three years from the date when it became final and binding, according to the law of the state where it was issued. The reinstatement of the deadline omitted for good reasons can be done by the court of the Republic of Moldova in the manner established in Art. 116 of the *Code of Civil Procedure*. Thus, the foreign court judgment becomes enforceable on the territory of the Republic of Moldova after it remains final.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

According to Art. 252 of *Law no. 149/2012*, if an insolvency process has been opened in another state against a debtor who has assets in the territory of the Republic of Moldova, execution of his assets can be initiated only if a bilateral agreement between the respective state and Republic of Moldova regarding cross-border insolvency has been concluded.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Depending on their priority in the enforcement of claims, creditors are divided into secured creditors, unsecured creditors, and creditors whose claims arose in connection with the filing of the insolvency process. *Law no. 149/2012* operates

with this unique classification of creditors and makes no difference in treatment between local creditors and foreign creditors.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

We believe that our insolvency law (*Law no. 149/2012*) is quite balanced with respect to rights and guarantees of the creditors and debtors, and is no more friendly to one party than the other. The insolvency law contains express and detailed guarantees with respect to both categories of subjects in the insolvency procedure.

For example, the debtor benefits from mechanisms of protection against the abusive claims advanced by the creditors which include: the presumption of inability to pay will operate only if the debtor is more than 60 days late in payment; in the reply to the introductory request (Art. 28 of *Law no. 149/2012*), the debtor will be able to overturn the presumption of inability to pay, by presenting evidence confirming that it has executed the pecuniary obligations or that there is a civil action related to this obligation, filed before the submission of the introductory request, or that the obligation can be extinguished by compensation, etc. On the other side, creditors are protected by using legal mechanisms such as the possibility of recovering the debtor's assets by canceling suspicious transactions (Arts. 104 and 105 of *Law no. 149/2012*), the possibility of exempting secured creditors from the moratorium on debt enforcement in the cases expressly provided by law (paragraph 4 of Art. 81 and Art. 184 of Law no. 149/2012), the continuation of increasing the interest related to the guaranteed part of the debt (paragraph 3 of Art. 75 of *Law no. 149/2012*).

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

In our jurisdiction, insolvency matters are subject to the Insolvency Act (*Official Gazette of Montenegro 1/2011, 53/2016, 32/2018*, *Decision of the Constitutional Court of Montenegro, 62/2018*, and *Decision of the Constitutional Court of Montenegro, 1/2022*), precisely to the insolvency through bankruptcy proceeding and restructuring.

Also, insolvency of the banks is regulated through special norms, precisely through provisions of the Banks' Insolvency and Liquidation Act (*Official Gazette of the Republic of Montenegro, 47/2001* and *Official Gazette of Montenegro 62/2008, 44/2010*, and *72/2019*)

Additionally, the Insurance Companies' Liquidation and Bankruptcy Act (*Official Gazette of Montenegro 42/2015*) regulates insolvency matters in insurance companies.

However, in this guide, we will deal with the Insolvency Act which applies to the insolvency of other companies and is most used in practice.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

We believe our legislation has a detailed and well-established insolvency proceeding, as well as passing, adopting, and implementing a restructuring plan. Recent amendments to the Insolvency Act entered into force on January 18, 2022, and they mainly refer to the provisions regarding the election of the administrator as a key figure in the implementation of the insolvency proceeding.

1.3. Are there any special regimes applying to specific sectors?

The existing Insolvency Act of Montenegro does not provide for any special regimes applying to specific sectors, however, it is not applied to banks.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

There were no changes in the Insolvency Act in response to the COVID-19 pandemic.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Currently, there are no indications of amendments, given that the most recent amendments entered into force beginning of this year. However, it always depends on the current needs of the economy and business sector.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Our country has not yet adopted the *UNCITRAL Model Law* in the insolvency area, however, it is realistic to expect it to happen in the future.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

Our legal system does not provide for an "insolvency test," however the Insolvency Act differentiates the reasons for bankruptcy, in terms of permanent incapability of payments or over-indebtedness.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

As indicated above, insolvency, in terms of the Insolvency Act, shall be implemented through bankruptcy and restructuring.

2.3. Who has the right to initiate insolvency proceedings?

Insolvency proceedings may be initiated upon a proposal by the bankruptcy creditor, bankruptcy debtor, or liquidator.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

The debtor is subject to supervision through an administrator assuming the rights and obligations of the debtor's authority as a legal person, hence, when the debtor continues to operate, operations are managed by the administrator, meaning management does not continue to operate the business.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

We shall indicate the different approaches in the two most recent Montenegrin pieces of legislation that regulate insolvency matters, primarily the *Companies' Insolvency Act* which stopped being in force on the day the Insolvency Act entered into force.

The *Companies' Insolvency Act* that formerly regulated the area provided that when requests for initiating insolvency proceedings are filed, it immediately triggers a temporary suspension of all the claims or activities aimed at settling the claims against debtors (moratorium), including:

(1) All actions aimed at settling or charging the debts, taxes, penalties, or other liabilities incurred before the date of request filing, except in the procedure of reporting the claims;

(2) All actions aimed at establishing, changing, or implementing the liens or securing the claims against the assets from the bankruptcy estate;

(3) All actions aimed at acquiring, confiscating, or selling any secured assets under lien out of the debtor's bankruptcy estate or other actions taken over the assets from the bankruptcy estate. However, this piece of legislation is no longer in force.

On the other hand, under the current norms, all court and administrative procedures related to the bankruptcy debtor and their assets are stopped at the moment of the occurrence of legal consequences created by the initiation of the insolvency proceeding.

A lawsuit in which the bankruptcy debtor acts as the claimant shall be continued once the administrator informs the court competent for the particular lawsuit that the procedure was taken over. An administrative procedure initiated at the debtor's request shall be continued once the administrator informs the authority that the procedure was taken over.

A lawsuit in which the debtor acts as the respondent shall be continued if:

1) The claimant, acting as bankruptcy and secured creditor filed a timely and proper request for a claim;

2) The administrator contested the request for claims at the examination hearing;

3) The claimant is, as the bankruptcy or secured creditor, referred, by virtue of the judge's conclusion, to the continuation of a suspended lawsuit for the purpose of establishing the grounds for the claim;

4) The claimant, as the bankruptcy or secured creditor, suggested the continuation of the suspended procedure within eight days from the date of receipt of the conclusion made by the bankruptcy judge.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

Insolvency procedures can have various repercussions, depending on the type of pre-insolvency transactions carried out with the contracting party.

In bilateral contracts, if the debtor and the contracting party failed to meet their liabilities thereunder wholly or partially until the initiation of the insolvency proceeding, the administrator may meet the obligations under the contract instead of the bankruptcy debtor and require their fulfillment from the other party. If the administrator refuses the fulfillment of the obligations, a contracting party with the bankruptcy debtor may collect their claims in the capacity of a creditor. If the debtor's co-contractor invites the administrator to give their position regarding the obligations under the contract, the administrator shall inform the debtor's co-contractor in writing whether they intend to fulfill such obligations within 15 days from the date of receiving the invitation.

If the administrator says that the obligations arising from the contract will be met, and ceases to fulfill them in the course of the insolvency proceeding, claims under such a contract shall fall into the first payment line, as the expenditure of the insolvency proceeding.

In the case of financial leasing, the repercussion of insolvency proceedings over the leasing recipient-debtor shall be reflected in that the grantor of the leasing shall be entitled to a separate settlement and priority rights over the subject of the leasing. Depending on the manner the insolvency proceeding is terminated, the repercussions shall be the following:

In case of bankruptcy, the debtor, i.e., the administrator shall give the subject of the leasing to the leasing grantor, within 30 days from the receipt of the written request, that may be sent following the decision on the bankruptcy and sale of assets, except in case the leasing grantor agrees with a different decision or that the funds accrued through the sale are used to settle the obligation towards the leasing grantor, as the obligation of the bankruptcy estate.

In case of restructuring, the debtor, i.e., the administrator, shall inform the leasing grantor in writing of the intention to continue to use the assets subject to the leasing, within eight days from the date of receipt of the written request.

In terms of fixed contracts entered into in the pre-insolvency stage over one contracting party, aimed at performing fixed affairs, the law provides that if the time of fulfillment of obligations arising from the fixed contract follows the initiation of the insolvency proceeding, a contracting party of the debtor may not require the fulfillment of such obligations, but may request the compensation due to non-performance, in the capacity of the bankruptcy creditor.

In lease agreements, the lease shall not cease by the initiation of an insolvency proceeding.

In commission contracts, there is a differentiation between the two consequences of initiating the insolvency proceeding.

Insolvency Act provides that in case of the principal's insolvency, the debtor's contracting party, i.e., the seller or its commissioner, who has not been paid in full, may request the goods sent to the debtor and not delivered to the desired place until the date of initiating the insolvency proceeding to be

returned (right to return).

The *Obligation Relations Act* provides that in case of a commissioner's insolvency, the principal may require the exclusion from the bankruptcy estate which was given to the commissioner to sell at their account, as well as the things the commissioner supplied at their account.

The order shall cease to be valid ex lege once the principal or the agent undergo insolvency.

In case of bankruptcy of a policyholder, the insurance shall be continued, however, both parties are entitled to terminate the insurance agreement within three months of the initiation of the insolvency, in which case the policyholder's bankruptcy estate implies a part of the paid premium corresponding to the remaining duration of insurance. In case of the insurer's bankruptcy, the insurance contract shall terminate upon the expiry of 30 days following the initiation of bankruptcy.

The Insolvency Act acknowledges the contestation of the debtor's legal activities, therefore it provides that legal affairs and other actions concluded, i.e., taken prior to the initiation of an insolvency proceeding, that impede evenly settlement of bankruptcy creditors or harm creditors, as well as legal affairs and other matters that favor certain creditors, may be contested by the administrator, on behalf of the debtor, or by creditors, in accordance with that law. Additionally, legal affairs, legal and procedural actions under which an enforcement decision has been passed or which were taken under the enforcement document or in the enforcement procedure, may also be contested if they meet the requirements referred to in that act. Should the contestation request be adopted, the legal effects of the enforcement decision in terms of the bankruptcy estate shall cease to be in force.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Insolvency proceedings are implemented at the Commercial Court of Montenegro as a court with subject matter jurisdiction. It is initiated as per the proposals of the persons indicated in Section 2.3. Insolvency proceedings bodies include the bankruptcy judge, an administrator, and the creditors' board. The court shall pass a decision on the initiation of the previous insolvency proceeding within three days from the submission of the proposal, therefore, for the sake of establishing the existence of reasons for initiating the insolvency proceeding. By rule, the previous insolvency proceedings shall last 30 days from the date of proposal submission, while the authorities for a temporary administrator shall be defined through a decision on its appointment and shall be valid until the adoption of the decision on initiating the insolvency proceeding. To that end, a bankruptcy judge shall schedule the hearing to discuss the existence of reasons to initiate the insolvency proceeding, which are supposed to be attended by the proposal petitioner, bankruptcy debtor, and the administrator appointed in the previous insolvency proceeding. Insolvency proceedings shall be led without the previous insolvency proceedings in the following circumstances: if a debtor files a petition for initiating insolvency proceedings if a creditor files a petition to initiate insolvency proceedings while the debtor acknowledges the existence of insolvency reasons when the proceedings are initiated at creditor's proposal since the insolvency reasons were met, reflected in the fact that the creditor was not able to settle their claims in the enforcement procedure within 45 days as of the date when the enforcement began.

A judge shall decide regarding the petition for initiating insolvency proceedings.

Following this, creditors shall file a petition for their claims within 30 days from the date of publishing the ad regarding the initiation of insolvency proceedings in the Official Gazette of Montenegro.

Secured creditors shall file a petition for the claims in the same way as regular bankruptcy creditors. On the contrary, creditors with an exclusion right shall file a petition to have the matter not included in the bankruptcy estate excluded.

Upon the expiry of a deadline for filing the petitions for claims, a bankruptcy judge shall submit all the petitions for claims to the administrator to adopt the list of all acknowledged and contested claims at the previously scheduled examination hearing as a final one. The claim shall be deemed final if not contested by the administrator or bankruptcy creditors until the conclusion of the examination hearing. A final list defining claims and payment schedules shall be binding upon the debtors and creditors.

In case the bankruptcy debtor, following the initiation of an insolvency proceeding, fails to file a statement of intention to restructure the company or a restructuring plan has not been submitted within the deadline prescribed by law, or a submitted restructuring plan has not been adopted, or a debtor requests the court to adopt a decision on going bankrupt, the judge shall adopt a decision on going bankrupt. Following this decision, the assets are cashed in, therefore, the administrator publicly advertises and implements the sale of the debtor's complete or partial assets. The administrator shall evaluate the purpose of the debtor's sale as a legal entity, i.e., either the complete assets or in parts, and inform thereof the creditors' board. The sale of assets is performed through a public bid, through the collection of bids, or through a direct bargain, in line with the act.

The judge shall pass a decision defining the final hearing.

The court may, finally, order a liquidation to be implemented in line with the Insolvency Act.

If the continuation of the debtor's operations is economically justified, or if going bankrupt does not provide for a more favorable settlement of the creditors, the restructuring shall be implemented. A restructuring plan can be filed simultaneously with an insolvency proceedings petition or following the initiation of the insolvency proceedings, in line with the act.

The restructuring procedure is elaborated in Section 3.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Payment schedules are divided into three categories:

1) The first payment schedule includes:

a. Claims under the gross salaries of employees and former employees in the amount of base remunerations achieved at the employer with interest accrued from the maturity date to the date of initiating the insolvency proceeding;

b. Employees' claims for injuries at work with the debtor, prior to and after filing the petition to initiate the insolvency proceeding;

2) The second payment schedule includes claims under the contributions for pension and disability insurance of the employees and former employees that are not included in the first payment schedule;

3) The third payment schedule includes claims of other creditors.

Claims of creditors who agreed, prior to the initiation of the insolvency proceeding, to be settled only after full settlement of the claims of one or more creditors, shall be settled following the complete settlement of the third payment schedule with accrued interest.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

One of the basic principles of insolvency proceedings is the principle of urgency, therefore a deadlock or termination of the proceedings is not allowed. However, the Insolvency Act does not provide for the final deadline or timeframe within which the proceeding has to be completed.

Insolvency proceedings last from the publishing in the Official Gazette of Montenegro until their completion.

Ways to terminate insolvency proceedings have been stated through the steps in insolvency proceedings in Section 2.5.

2.8. Are there any liabilities that survive the insolvency proceedings?

Definitely, yes. These imply bankruptcy estate liabilities. Namely, once insolvency proceedings are terminated, the company is stricken off the registry, however, if there is a dispute not terminated until the moment the insolvency proceedings are terminated, such a dispute remains the liability of a bankruptcy estate of a former debtor. An administrator is appointed as the representative of the bankruptcy estate and governs the proceedings until terminated.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

According to our legislation, there is only one type of restructuring in our jurisdiction, namely *formal restructuring*.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

Restructuring, as one of the types of insolvency, shall be initiated through a petition for restructuring, that may be filed along with the proposal for insolvency initiation or following the initiation, within 60 days. Restructuring is implemented if it enables a more favorable settlement of creditors when compared to going bankrupt, and especially if there are economically-driven conditions for the debtor's continuation of operations. At the hearing envisaged for consideration of the restructuring plan and creditors' voting, the judge shall pass a decision either confirming the adoption of such a plan or dismissing it. The decision confirming the adoption of the restructuring plan shall be published at the information board in court and in the Official Gazette of Montenegro.

3.3. Who has the right to initiate formal restructuring proceedings?

A restructuring plan may be submitted by a debtor, administrator, the secured creditor having at least 30% secured claims in comparison to the total claims towards the debtor, creditors having at least 30% unsecured claim in comparison to the total claims towards the debtors, as well as persons being the owners of at least 30% of debtor's capital.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

Once the restructuring plan has been adopted, all claims and rights of creditors and other persons, as well as the obligations of the debtor referred to in the restructuring plan are exclusively subject to the requirements in the restructuring plan. Creditors, whose claims occurred prior to the adoption of the restructuring plan but have not been covered therein, and who

have not filed a petition regarding their claims in the insolvency proceeding, may not settle their claims through forced execution during the implementation of the restructuring plan. The adoption of the decision on restructuring terminates all the consequences of initiating the insolvency proceeding, and the label "under the insolvency proceeding" shall be deleted from the name of the debtor, while when this decision becomes final, the insolvency proceeding is terminated completely. By virtue of a court decision, the adopted restructuring plan is an enforceable document and shall be deemed a new contract for the settlement of claims contained therein. Affairs and activities taken by the debtor must be in accordance with the adopted restructuring plan.

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Management shall continue managing the company on their own, however, they are completely bound to comply with the restructuring plan, given that if not, it shall be terminated and the debtor goes bankrupt.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

Given that all the consequences of the insolvency are terminated by the adoption of the restructuring plan, it implies that all the procedures existing prior to the initiation of the insolvency are continued as well as the company's operations in line with the restructuring plan.

3.4.3. How do restructuring proceedings affect existing contracts?

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

Part of the answer to these two questions is contained in Section 2.4.3. However, concerning the claims arising prior to the initiation of insolvency proceedings, to be settled they must be reported in the insolvency proceedings, and in the case of adoption of a restructuring plan, they must be envisaged within it.

Therefore, once a restructuring plan has been adopted, all claims and rights of creditors and other persons, as well as the obligations of the debtor, referred to in the restructuring plan, are exclusively subject to the requirements in the restructuring plan. Creditors, whose claims occurred prior to the adoption of the restructuring plan but have not been covered therein, and who have not filed a petition regarding their claims in the insolvency proceeding, may not settle their claims through forced execution during the implementation of the restructuring plan.

3.5. Can third-party liabilities be released through restructuring proceedings?

Third parties may release the debtor of their obligations through the principle of *debt acquittance*, if that is what has been implied by this question.

If this implies the debt acquittance of the debt that third parties have against the debtor, we are not sure that this principle may be applied, given that the debtor has liabilities against their creditors, therefore applying this principle may hamper the collection of their claims.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

For a restructuring plan to be considered at all, it should be filed in the first place. A bankruptcy judge is the one having the key role in this phase, since they hold a hearing to consider the restructuring plan, followed by voting, with all the creditors having the right to vote in proportion to the amount of their claims. The restructuring plan shall be deemed adopted in one class of creditors if the restructuring plan has been voted for by the creditors having simply the majority of claims in comparison to total claims by creditors in such a class. At the hearing envisaged for consideration of the restructuring plan and creditors' voting, the judge shall pass a decision either confirming the adoption of such a plan or dismissing it. Finally, through execution of the restructuring plan by which the debtor fulfilled all the obligations envisaged therein, creditors' claims are terminated.

Other persons may, as stated in Section 3.3., submit the restructuring plan and depending on that take their position in the procedure.

3.7. How are restructuring proceedings normally finalized?

Through the execution of the restructuring plan by which the debtor fulfilled all the obligations envisaged therein, creditors' claims are terminated, hence the restructuring proceeding is finalized. However, if the restructuring plan is not complied with, such a proceeding is terminated, and the company goes bankrupt.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

The commercial court is the first instance court in recognition and execution of foreign court decisions adopted by commer-

cial courts as well as foreign arbitration decisions. The Insolvency Act provides for the reasons to apply provisions related to international insolvency, hence it provides that insolvency proceedings are subject to the governing law of the country in which the proceedings are initiated, unless otherwise defined by this law. On the contrary, in case of recognition of foreign proceedings in line with this law, the secured rights and right to exclusion over matters or rights located on the territory of Montenegro, Montenegrin regulations shall apply. Upon the initiation of the insolvency proceeding over the debtor whose registered seat is in Montenegro, i.e., whose main place of interest is in Montenegro, foreign proceedings may only be recognized as secondary foreign proceedings.

4.2. What are the preconditions for recognizing foreign decisions?

A foreign representative is entitled to direct actions before Montenegrin courts. In case of filing the request for recognition, for the purpose of proving their capacity, the representative shall file the following: A decision on initiating the foreign proceeding and appointment of a foreign representative in original form or certified copy, translated into the language in official use at the competent court in Montenegro, along with evidence of its enforceability according to the law of a foreign country; a certificate of a foreign court or other competent body proving the existence of foreign proceedings and appointment of a foreign representative; other evidence proving the existence of foreign proceedings and appointment of a foreign representative which the competent court in Montenegro deems acceptable, in the absence of previously mentioned evidence. The foreign representative may file a request with the competent Montenegrin court regarding the recognition of foreign proceedings in which it has been appointed if legally required capacities are previously proven. Along with the request for recognition, a statement given by the foreign representative is also filed, indicating all foreign proceedings related to the debtor and familiar to the foreign representative, translated into the language in official use at the competent court in Montenegro.

Sections 4.1. and 4.2. refer to recognition of a foreign decision on initiating the insolvency, given that the Montenegrin Insolvency Act provides for such type of recognition, all aiming at avoiding parallel insolvency proceedings, to secure the rights of both debtors and creditors, hence in such a case a distinction is made between the main and the secondary insolvency proceeding (4.1.).

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

At the request of a foreign representative and from the moment of filing the request for recognition of foreign proceedings up until the decision-making regarding such a request, the court may provide necessary legal assistance of a temporary nature in case such assistance is urgently needed to protect debtor's assets or creditors' interests. Following the recognition of foreign proceedings, either as the main or secondary ones, and if necessary in order to protect the debtor's assets or creditors' interests, the court may, at the request of a foreign representative, provide suitable assistance through establishing the following measures: 1) the prohibition to initiate new ones, or termination of initiated proceedings in relation to assets, rights, obligations, or liabilities of the debtor; the prohibition of enforcement over the debtor's assets if enforcement has not been terminated; the prohibition to transfer, encumber, or otherwise dispose of the debtor's assets; implementing evidence through hearing the witnesses or otherwise, as well as providing information related to the assets, operations, rights, obligations, or liabilities of debtors; entrusting to the foreign representative or other person appointed by the court to manage or sell the debtor's assets or part of assets located in Montenegro; prolonging the validity of security measures; providing other authorities vested in the administrator under the law or establishing other prohibitions in accordance with law.

Following the recognition of foreign proceedings, either as the main or secondary ones, the court may, at the request of the foreign representative, entrust the division of debtor's assets or part of assets located in Montenegro to a foreign representative or other person defined by the court, provided that the court establishes that proper protection of creditors' interests in Montenegro has been accounted for.

When providing assistance to a foreign representative in case of secondary foreign proceedings, according to this article, a court shall establish that such assistance refers to assets which, in accordance with this law, are supposed to be managed within such a secondary foreign proceeding or it refers to information necessary in such a proceeding.

The law sets forth that the court is obliged to cooperate to the full extent with foreign courts and other competent authorities or foreign representatives, either directly or through an administrator.

The court is entitled to directly address, i.e., to directly require information or assistance from foreign courts and other competent authorities or from foreign representatives.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Except for the cases of secured rights and rights to exclusion, a creditor whose claim has been partially settled in the proceeding conducted in accordance with the law regulating insolvency matters, cannot receive, in a foreign country, a payment accounting for the same claim in the insolvency proceeding conducted against the same debtor, all until the payments against other creditors of the same payment schedule or class in restructuring are proportionally lower than the amount already received by such creditor.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Through the interpretation of the very notion of insolvency proceedings, it might be said that the regime favors neither the debtor nor the creditors, but it is initiated to the benefit of both.

Insolvency is a legally-regulated procedure implemented over the legal entities – debtors who face serious impediments in their operations, while the main goal of insolvency is to enable the most favorable collective settlement of those having some claims against it – creditors, by selling the legal entity's assets to settle those claims. Additionally, when implementing a restructuring plan, there are positive effects both on debtors and creditors, given that creditors are those who decide on the adoption of the restructuring plan, by giving their vote aiming at fulfilling their personal needs, while, on the other hand, a debtor is given a chance for a new beginning.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

POLAND

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

Polish insolvency and restructuring proceedings are primarily regulated by the *Bankruptcy Law* of February 28, 2003 (Bankruptcy Law) and the *Restructuring Law* of May 15, 2015 (Restructuring Law). While an autonomous legal act concerning the Restructuring Law was adopted relatively recently, prior to that date, restructuring proceedings were regulated under the Bankruptcy Law.

In June 2020, an additional type of restructuring proceedings (i.e. simplified restructuring proceedings) was introduced by legislation known as *Shield 4.0*. It was partially an answer to the COVID-19 pandemic and also – as it became a permanent fixture to the restructuring law – the ongoing demand for a less court-controlled procedure that would ensure that proceedings are completed quickly and are easily accessible.

As regards international instruments applying to cross-border insolvency matters, the key legislation is the *EU Regulation on Insolvency Proceedings* (*Regulation no. 848/2015*, – EIR). It is also good to remember that Polish Bankruptcy Law implements *Cross-Border Insolvency Regulations 2006* (CBIR 2006) while the decision on opening insolvency proceedings in the UK will not be directly recognized by Polish courts, it should make it easier to complete such a procedure.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The insolvency and restructuring law in Poland is still evolving and the changes made thereto are usually a result of the implementation of EU law or – as the last few years have shown – a response to changes in the demands of the evolving market.

An example of the former would be the upcoming implementation of the EU's *Restructuring and Insolvency Directive (2019/1023*) and of the latter – both an introduction of new simplified restructuring proceedings and new provisions speeding up bankruptcy procedures of natural persons carrying out no economic activity, each introduced in 2020.

1.3. Are there any special regimes applying to specific sectors?

There are certain entities and their categories that are excluded from bankruptcy and restructuring proceedings. For example, public autonomous health care centers, higher education schools, or investment funds cannot be declared bankrupt, while such entities as state banks and mortgage-lending banks, insurance establishments, and reinsurance establishments cannot be subject to restructuring proceedings.

There are also separate bankruptcy proceedings, including in particular against developers, banks and credit unions, insurance and reinsurance undertakings, and bond issuers. In the case of restructuring proceedings, there are special regimes for developers and bond issuers.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

Not long after the beginning of the COVID-19 pandemic in Poland, on April 13, 2020, a moratorium on the filing of bankruptcy declarations was introduced.

In accordance with Polish law, there is a 30-day deadline for a company to file for a declaration of bankruptcy (or restructuring) once the company becomes insolvent. If the obliged representatives (e.g., Management Board) miss the deadline, they may become liable for the company's debts.

To avoid a situation where the courts are flooded with bankruptcy applications, the so-called moratorium stipulated that if insolvency arose during the COVID-19 pandemic (with the presumption that any insolvency that arose during a state of epidemic appeared due to COVID-19), the 30-day deadline for a company to submit a bankruptcy application does not commence.

Furthermore, and as was already mentioned, in response to COVID-19, a new type of restructuring proceedings (i.e., simplified restructuring proceedings) was introduced. These proceedings enabled a debtor to initiate and conduct restructuring proceedings practically without a court review, with the court's role limited only to the possible approval of the arrangement at the final stage of the restructuring proceedings. While at first it was a temporary solution, due to its popularity and the clear demand for such simplified proceedings (in accordance with the statistics it accounted for approximately 80% of restructuring proceedings in Poland), it has now found its place in the *Restructuring Law* for good.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

The EU's *Restructuring and Insolvency Directive* (*2019/1023*) has not been implemented in Poland yet, but the first draft of the implementation act was published in July 2022. The deadline to implement the directive expired on July 17, 2022, but considering that the draft was published only recently, it is highly likely that the implementation of the act will take place in the fourth quarter of 2022 if not later.

Implementing the directive will undoubtedly bring numerous changes to existing legislation, but at the same time – despite the directive still awaiting implementation, the Restructuring Law and Bankruptcy Law already regulates a host of solutions introduced therein.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The UNCITRAL Model Law on Enterprise Group Insolvency was not adopted in Poland and, so far, no formal drafts were published.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

There are two insolvency tests:

a. *liquidity test* which is met when the debtor is unable to pay its overdue debts and the delay in payment exceeds three months;

b. *balance sheet test* which is met when:

i. the debtor becomes over-indebted, i.e., if, according to the debtor's balance sheet, its obligations, excluding balance-sheet provisions for obligations and liabilities towards affiliates, exceed the value of its assets; and

ii. if the above situation continues uninterruptedly for longer than 24 months.

This test does not apply to all entities, but it does apply to companies and/or certain partnerships.

The Management Board of an insolvent company is obliged to file a bankruptcy petition within 30 days of the fulfillment of either of the insolvency tests. The members of the Management Board are liable for any damage caused as a result of their failure to file a petition within the time limit unless they are not at fault.

It is important to note that in such a situation, the Management Board would be liable only for the damages calculated as a difference between the amount that could have been obtained in the proceedings if the petition was filed on time and on the date of filing the petition.

Furthermore, members of the Management Board may also be prohibited from holding managerial positions or conducting business activity for a period of one to 10 years in the case of, among other, willful failure to file for bankruptcy in the event of the company's insolvency.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Currently, there is only one type of insolvency procedure, i.e., liquidation bankruptcy.

Bankruptcy proceedings can only be initiated in relation to a debtor who has become insolvent (i.e., as opposed to a debtor only threatened with insolvency which is the case with restructuring proceedings).

In those proceedings, the satisfaction of the claims of the creditors of a given company is possible through the liquidation (compulsory sale) of the bankrupt's assets. It is necessary to appoint a receiver (*syndyk*), who manages the assets of the bankrupt, and then brings the entire process of liquidation of the company to a conclusion. The bankrupt is deprived of the right to manage and dispose of the property.

The receiver sells movable and immovable property belonging to the bankrupt. The obtained funds of the bankruptcy estate are divided among the creditors on the basis of a previously prepared distribution plan. It is important to note that the creditors benefiting from a security interest enjoy priority in satisfaction to the extent covered by the secured assets. As a result, it is quite common that the majority of the liquidation proceeds from the bankruptcy sale of an asset (or the debtor's business as a whole) are used to satisfy secured creditors.

However, it is also important to note that as part of the changes that came into force in 2016, the legislator introduced a new regulation within Bankruptcy Law, similar to the arrangement proceedings under Restructuring Law. This is the so-called arrangement in bankruptcy. This institution allows a bankrupt entity to enter into an arrangement with its creditors when, after the bankruptcy proceedings are opened, it turns out that it would be more advantageous for the creditors as a whole to be satisfied under the terms of an arrangement than through the sale of the bankrupt's assets. In particular, the arrangement in bankruptcy is applicable in situations where it was not possible to open or continue restructuring proceedings, but already after the declaration of bankruptcy, there was a chance to save the bankrupt's enterprise. In practice, however, such a situation is very rare and the application of arrangement provisions in bankruptcy is very limited.

2.3. Who has the right to initiate insolvency proceedings?

In order to initiate bankruptcy proceedings, a prerequisite is the filing of a petition by an authorized entity with a competent court. Bankruptcy proceedings are never initiated *ex officio*. Such an application may be filed by any creditor, and in the case of the existence of grounds for declaring bankruptcy,

such an application is obligatorily filed by the debtor himself.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

No, as of the date of the declaration of bankruptcy, the bankrupt entity loses the right to operate the assets comprising the bankruptcy estate and the possibility of using and disposing of them. Management of the property is assumed by the receiver, even when the assets have not been yet released to them. Any actions by the bankrupt entity regarding the bankruptcy estate are void – this includes actions regarding repayments made to the bankrupt entity, which should be addressed directly to the receiver.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Upon declaration of bankruptcy, court, administrative, as well as proceedings before administrative courts involving the bankruptcy estate may only be initiated and conducted by or against the receiver.

With respect to execution proceedings, the proceedings initiated prior to the declaration of bankruptcy shall be suspended by operation of law on the day of the declaration of bankruptcy. These proceedings shall be discontinued by operation of law after the ruling on the declaration of bankruptcy has become final and non-appealable. Furthermore, following the declaration of bankruptcy, no execution can be commenced against any part of the bankruptcy estate.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

There is a host of specific provisions regulating the impact that declaring bankruptcy has on existing contracts. There are a few general rules that are important to keep in mind:

a. acts (including contracts or, for example, court settlements) performed free of charge (or significantly undervalued) within one year before filing the bankruptcy petition, whereby the debtor disposed of its assets, may be challenged;

b. securities and payments of an unenforceable debt, given or made by the debtor within six months before filing the bankruptcy petition, are ineffective towards the bankruptcy estate;

c. the receiver may, with the prior consent of the judge-commissioner, perform the debtor's obligation resulting from the contract and demand the other party to render reciprocal performance, or withdraw from the contract with effect as of the date of declaration of bankruptcy;

d. clause stipulating that a legal relationship to which the bankrupt is a party, may be modified or terminated if a bankruptcy petition is filed or if bankruptcy is declared, is invalid.

It is important to remember that the final result may differ depending on, for example, which party went into insolvency or whether the contract was at least partially performed.

However, should the contract become ineffective (either by operation of law or – with respect to the bankruptcy estate – based on the decision of the judge-commissioner), the other party would be obliged to contribute to the bankruptcy estate anything that has been transferred out of or has not been contributed to in result of an ineffective act.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

In general, there are two main stages of bankruptcy proceedings: stage one takes place after filing the bankruptcy petition, and stage two starts once the court issues the decision to open bankruptcy proceedings.

The court's decision on opening bankruptcy proceedings is effective and enforceable as of the date of its issue. The date of the order is the date of declaring (opening) the bankruptcy which is important for calculating the deadlines mentioned in Section 2.4.

During stage one of the proceedings, an interim court supervisor (*tymczasowy nadzorca sadowy*) might be appointed. In such a case, the debtor can no longer dispose of its assets (outside the scope of day-to-day management) if no approval from the interim court supervisor is obtained. The debtor might be also deprived of its powers in full or other steps to secure the debtor's assets might be undertaken.

Once bankruptcy proceedings are opened, the bankrupt loses the right to manage and the possibility to use and dispose of the property included in the bankruptcy estate, and the receiver takes control over the bankruptcy estate. The debtor is obliged to cooperate with the receiver and the court, specifically in terms of duties of disclosure and cooperation in order to assist the insolvency administrator with the fulfillment of its duties.

The key elements of the proceedings include (they usually take place at least partially simultaneously):

a. Submission of claims

A personal creditor of the bankrupt entity who wishes to participate in the bankruptcy proceedings should report their

claim to the receiver.

There are few instances where despite the creditor's failure to report their claim, the claim will be included in the list of claims *ex officio* – those cases include in particular claims secured by a mortgage, pledge, registered pledge, tax lien, maritime mortgage, or by another entry in the land register or the ship's registry, and if it arises from an employment relationship. Creditors *in rem* are included in the list of creditors *ex officio*.

b. List of claims

After the expiration of the deadline for submission of claims and verification thereof, the receiver is obliged to prepare a list of claims. After it is prepared, the receiver submits it to the judge-commissioner. Upon its approval by the judge-commissioner, information on the preparation of the list of claims is announced. Within two weeks of the announcement, a creditor may file an objection if their claim was recognized only in part or not at all.

c. Determination of the composition of the bankruptcy estate

With certain exceptions, as of the date of bankruptcy, the bankrupt entity's assets become the bankruptcy estate, which serves to satisfy the bankrupt entity's creditors. In order to determine what assets are included in the bankruptcy estate, the trustee prepares an inventory and an inventory of accounts receivable. These assets, after their liquidation, will serve to satisfy creditors.

d. Liquidation of the bankruptcy estate

Once bankruptcy proceedings are opened, the receiver also proceeds to draw up a liquidation plan, which specifies the proposed means of selling the bankrupt entity's assets, in particular the sale of the business, the timing of the sale, an estimate of expenses, and the economic justification for the continued operation of the bankrupt entity's business.

Liquidation of the bankruptcy estate is carried out either by selling the bankrupt entity's assets or by collecting debts from the bankrupt entity's debtors and exercising its other property rights. When liquidating the bankruptcy estate, the main focus of the receiver should be the welfare of the creditors, including in particular their level of satisfaction.

e. Distribution of funds among creditors

The distribution of funds shall be made either once or several times as the bankruptcy estate is liquidated. In each case, a plan of distribution is drawn up.

Distribution takes place several times usually in cases where the assets are liquidated separately and/or there are secured creditors in which case separate distribution plans are usually prepared for each liquidated secured asset.

As for non-secured creditors, the trustee distributes the sums among them in accordance with the rules provided by the Bankruptcy Law, i.e.: **(i)** creditors are divided into four categories, **(ii)** until creditors in a higher category are satisfied in full, no creditors in a further category may be satisfied, **(iii)** within one category, creditors are satisfied in proportion to the amount of their claim.

f. Closing the proceedings

In the standard case, upon execution of the final distribution plan, the court declares that the insolvency proceedings have ended.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Under the Bankruptcy Law, secured creditors enjoy preferential treatment with regard to the liquidation of secured assets. These creditors enjoy priority in satisfaction to the extent covered by the secured assets (excluding costs of liquidation of the secured asset and other costs of bankruptcy proceedings determined in accordance with the Bankruptcy Law).

The remaining claims are divided into four categories, as listed below:

I. the first category – among others: employees' claims (with exceptions, such as in particular claims for remuneration of the bankrupt entity's representative or remuneration of the person performing acts connected with administration or supervision over the bankrupt entity's enterprise), maintenance claims and workers' compensation, social security contributions defined in the Social Security System, particular amounts resulting from restructuring proceedings of the debtor;

II. the second category – other receivables if they are not subject to satisfaction in other categories, in particular taxes and other public tributes, and the remaining receivables under social insurance premiums;

III. the third category – interest on receivables included in higher categories in the order in which the principal is subject to satisfaction, as well as judicial and administrative penalties of fine, and receivables in respect of donations and legacies;

IV. the fourth category – receivables of shareholders under a loan or another act in law of similar effects, in the particular supply of goods with deferred due date made to the bankrupt entity being a company in the period of five years before the declaration of bankruptcy, along with interest.

The claims are satisfied in accordance with rules described in Section 2.5.e. The main rule is to satisfy the costs of proceedings and other liabilities of the bankruptcy estate. There are

also some additional, specific provisions concerning the liquidation of the bankruptcy estate in the case where a bankrupt entity is a natural person and the bankruptcy estate includes a flat in which the bankrupt entity lives since it is necessary to meet the housing needs of the bankrupt entity and its dependents.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Currently, the estimated time of insolvency proceedings in Poland is up to a few years. Typically, once the list of claims is approved and the final distribution plan is executed, the court declares that the insolvency proceedings have ended.

In the case of legal entities, once the court's decision becomes final and binding, they are deregistered. If any assets are left, they are distributed among the stakeholders or the company may continue its existence (provided that the shareholders take action quickly enough).

2.8. Are there any liabilities that survive the insolvency proceedings?

Where legal entities are concerned, no liabilities survive the insolvency proceedings – if the bankrupt entity's assets are not sufficient to satisfy all of its creditors, such an entity is deregistered upon completion of the proceedings.

In the case of natural persons, the situation is different and there are certain categories of liabilities that survive the proceedings, in particular: **(i)** obligations on the grounds of maintenance or alimony; **(ii)** obligations to pay the fines pronounced by a court, to discharge the duty of redressing damages and of compensating for the wrong suffered; **(iii)** the obligation to pay punitive damages or a pecuniary benefit, as pronounced by a court as a criminal measure or a measure connected with subjecting a perpetrator to probation; **(iv)** obligations which the bankrupt entity has not disclosed intentionally, provided that the creditor did not participate in the proceedings.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

In Poland, there are four types of formal restructuring proceedings regulated by the *Act of May 15, 2015 – Restructuring Law*, i.e.:

1) arrangement approval proceedings (*postepowanie o zatwierdzenie ukladu*) – allows an arrangement with creditors with minimal court involvement; it is dedicated to debtors who are able to reach an agreement with the majority of their creditors without court involvement;

2) accelerated arrangement proceedings (*przyspieszone postepowanie ukladowe*) – characterized by a number of simplifications, which are designed to bring about an arrangement with creditors in the shortest possible time, assumed to be about 2-3 months;

3) arrangement proceedings (Pol. *postepowanie ukladowe*) – dedicated only to those debtors that are in dispute with their counterparties, i.e., do not recognize the obligation to pay certain monetary obligations and do not meet the criteria for implementing the arrangement approval procedure and the accelerated arrangement procedure;

4) remedial proceedings (Pol. *postepowanie sanacyjne*) – provides the fullest protection against execution, under this procedure, the debtor cannot only restructure the debt but also bring about economic recovery by carrying out remedial measures that interfere with the structure of the enterprise.

Informal restructuring proceedings in Poland are carried out without court involvement and without following any statutory procedures. This involves the debtor negotiating with his creditors to sign an agreement setting out the terms of restructuring existing debt.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

The entry requirements to restructuring are the insolvency of a debtor or the risk of insolvency of a debtor and the filing of a restructuring application by such a debtor to the restructuring court (the district court – commercial court).

An integral part of the application is the initial restructuring plan prepared by the debtor.

The legislation does not impose a specific deadline for filing a restructuring application. However, it is in the interest of the debtor to file a restructuring application as soon as possible after the risk of insolvency has been established.

In proceedings for approval of an arrangement, accelerated arrangement proceedings, and arrangement proceedings, the commencement of implementation of the restructuring plan is not conditional on its approval by an order of the judge-commissioner or the restructuring court.

In contrast, in remedial proceedings, the prerequisite for implementing the restructuring plan is its approval by the judge-commissioner. Indeed, in a remedial procedure, approval of the plan is a condition for taking such measures as downsizing, disposal of property, or withdrawal from certain contracts.

The restructuring authorities, i.e., the administrator, the court supervisor, and the supervisor of the arrangement are responsible for the proper implementation of the restructuring plan.

3.3. Who has the right to initiate formal restructuring proceedings?

The right to initiate formal restructuring proceedings lies with an insolvent debtor or a debtor at risk of insolvency.

The initiation of remedial proceedings may additionally be carried out by a personal creditor of the insolvent debtor, which is a legal person, and the curator of a legal person registered in the National Court Register.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

In proceedings for the approval of an arrangement, accelerated arrangement proceedings, and arrangement proceedings, the management shall continue to operate the business, with the proviso, however, that any acts exceeding the scope of ordinary management shall require the consent of the restructuring authority (e.g., the disposal of substantial assets or the conclusion of a new contract).

In remedial proceedings, as a general rule, the court removes the ability of the management to carry out operational business and appoints an administrator for this purpose.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

The statutory suspension of the debtor's or the administrator's performance of obligations that are covered by the arrangement shall apply throughout the restructuring proceedings. The statutory suspension of the performance of obligations may not be lifted even with the mutual consent of the debtor and the creditor. From the date of the opening of restructuring proceedings until the date of their completion, the fate of debts will be determined by the concluded arrangement.

The provisions of the Restructuring Law also provide for the suspension of enforcement proceedings conducted so far with respect to the liabilities covered by the arrangement (unlike in the remedial proceedings, where the possibility of conducting enforcement proceedings has been excluded as a rule), as well as the prohibition of initiating new enforcement proceedings.

3.4.3. How do restructuring proceedings affect existing contracts?

The purpose of restructuring proceedings is to avoid bankruptcy, so the legislator has introduced the so-called "contract durability compulsion." This means that from the date of the opening of restructuring proceedings, it is not permissible to terminate a lease or rental agreement, a credit agreement, a leasing agreement, a property insurance agreement, a bank account, a suretyship, a guarantee, or a letter of credit.

Within the framework of the remedial procedure, the legislator has granted the debtor the unilateral right to terminate reciprocal contracts that have proven to be unprofitable or too costly for the debtor's assets. Furthermore, in the remedial procedure, the debtor has been equipped with the right to terminate employment contracts and even to rescind non-compete agreements without being entitled to compensation.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

With regard to restructuring, see Section 3.4.3.

With regard to insolvency proceedings, some of the contracts expire automatically. Among the most relevant contracts that expire on the date of bankruptcy, we can distinguish: contracts of mandate or commission, where the bankrupt entity was the principal or commissary; agency agreements; loan agreements, when the object of lending has not been handed over; loan agreements if the object of the loan has not been disbursed; loan agreements to the extent that the funds have not been transferred to the bankrupt entity; storage agreements concluded with a bank.

The bankruptcy declaration has no automatic effect on the bankrupt entity's property lease agreement. The agreement binds the parties as long as the property has been released to the tenant. However, the trustee may terminate this type of agreement with three months' notice, also if the agreement did not provide for this possibility. The agreement is terminated by order of the judge-commissioner if its continuance hinders the liquidation of the bankruptcy estate or if the rent is underestimated.

The same applies to the lease agreement of the bankrupt entity's real estate and the lease or rental agreement of the enterprise or its organized part.

The trustee may also terminate a lease or tenancy agreement in which the bankrupt entity is a tenant (lessee).

With regard to other contracts, it is up to the trustee to decide whether to terminate the contract or continue to perform it. These are mainly reciprocal contracts, e.g., a sales contract, a work contract, or a construction contract.

3.5. Can third-party liabilities be released through restructuring proceedings?

Through restructuring proceedings, only the debtor's liabilities may be released.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The first step is a thorough analysis of the company's situation by the debtor and the restructuring advisor and the completion and development of relevant documentation, in particular a description of the company, a preliminary restructuring plan, arrangement proposals, an up-to-date list of assets, a list of creditors, a list of claims and disputed claims.

The completed documentation is submitted by the debtor to the court together with the application for restructuring.

Subsequently, the court considers the restructuring application and opens the proceedings.

At the same time, the court appoints a court supervisor or administrator.

The court supervisor or administrator notifies all known creditors of the opening of the restructuring proceedings, whom he/she instructs about the changes brought about by the restructuring in the sphere of the debtor's liabilities and assets. This is the first formal letter addressed to the creditors.

Next, the court supervisor or administrator prepares the restructuring plan and draws up the arrangement proposals.

The next step is to draw up a list of claims and an inventory of disputed claims, as well as an inventory (except in the case of accelerated arrangement proceedings) by the court supervisor or administrator.

The list of creditors drawn up must be approved by the judge-commissioner.

At the stage of establishing the inventory of claims in the arrangement and remedial proceedings, the creditor has the right to file an objection, which is considered by the judge-commissioner. The creditor also has the right to request a statement of reasons for the decision and to bring a complaint against the decision. The debtor has the right to file objections to the disputed claims. If the judge-commissioner grants the debtor's request, amendments will be made.

This is followed by the judge-commissioner setting a date for a creditors' meeting to vote on the arrangement. At this meeting, the creditors' acceptance or refusal of the arrangement takes place.

If they accept, the court approves the arrangement, which ends the proceedings. The court may also refuse to approve the arrangement and discontinue the proceedings.

3.7. How are restructuring proceedings normally finalized?

Restructuring proceedings are normally finalized with the approval of an arrangement with creditors by the court or discontinuance of the proceedings.

Arrangement approval proceedings, in which entities come to court with an already approved arrangement, have the highest efficiency, calculated as the ratio of approved arrangements to discontinued proceedings.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Polish courts have exclusive jurisdiction over bankruptcy and restructuring proceedings concerning debtors that have their center of main interests in Poland (a jurisdiction agreement does not apply).

Recognition of foreign restructuring and bankruptcy proceedings may take place if it concerns a case that does not fall within the exclusive jurisdiction of Polish courts, i.e., may take place in cases where proceedings concern a debtor who conducts business activities in Poland that is not the center of its main interests in Poland or has their place of residence and/or registered office or assets in Poland. This is the so-called "optional jurisdiction" of the Polish courts.

4.2. What are the preconditions for recognizing foreign decisions?

A foreign decision on the opening of restructuring and insolvency proceedings is subject to recognition if it concerns a case that does not fall within the exclusive jurisdiction of the Polish courts (See Section 4.1).

In the case of bankruptcy proceedings, the Polish legislator has additionally specified the premise of compliance with the fundamental principles of the legal order in Poland.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

When parallel restructuring and insolvency proceedings are conducted (in cases not subject to the exclusive jurisdiction of the Polish courts), international cooperation of the authorities of these proceedings is necessary to ensure the efficient and effective conduct of restructuring and bankruptcy and to avoid double satisfaction of creditors. This means that the court and especially the judge-commissioner has an obligation to cooperate with the foreign court and administrator. However, this does not mean that this cooperation must always be direct. When choosing certain methods and forms of cross-border cooperation, the court and the judge-commissioner should bear in mind the postulate of efficiency in the application of the law. According to this postulate, judicial authorities of the proceedings should use such methods of cooperation that will have an effect to achieve the desired state of affairs, which means that the scope and forms of cooperation may vary depending on the needs of the specific proceedings. The first and essential element guaranteeing effective cooperation is the possibility of direct communication. Hence, the court and the judge-commissioner may communicate directly with a foreign court and a foreign administrator, including by telephone, fax, or e-mail, and the court supervisor or administrator appointed in restructuring proceedings and the trustee appointed in bankruptcy proceedings will be able to communicate with the foreign court and the foreign administrator directly or through the judge-commissioner.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

In restructuring and insolvency proceedings, a foreign creditor shall use the rights enjoyed by a local creditor. An additional obligation of foreign creditors is to designate an attorney for service in Poland if no attorney has been appointed to pursue the case.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

There is a more debtor-friendly restructuring regime in Poland. The premise of restructuring law regulations is to increase the powers of the debtor at the expense of creditors or the court. Judicial authorities, if at all, only resolve disputes. Bankruptcy procedures are slightly different and favor the debtor's creditors to a large extent.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

In Romania, restructuring and insolvency proceedings related to companies are both governed by *Law no. 85/2014 on insolvency proceedings* (tr. *Lege nr. 85/2014 privind procedura insolventei*) (Insolvency Law).

In principle, the following proceedings may be applied to debtors (legal entities and, in some cases, certain categories of natural persons): general proceedings, by way of which, following an observation period, a debtor may undergo **(A)** judicial reorganization proceedings or **(B)** bankruptcy proceedings (the later directly or upon failure of judicial reorganization proceedings).

Within judicial reorganization proceedings the debtor continues to conduct limited commercial activities under judicial observation, provided that such activities are directed exclusively towards payment of its debts, according to an (approved) payment schedule.

Bankruptcy proceedings (also referred to as liquidation proceedings) are aiming at liquidating all of the debtor's assets in order to settle its debts. Bankruptcy proceedings trigger the dissolution of the debtor and its deletion from the register where it is registered (i.e., trade registry, etc.).

The insolvency of natural persons is governed by *Law no.151/2015 on the insolvency procedure of individuals*. Given that this legislation has entered into force quite recently, namely on January 1, 2018, there is no consistent judicial practice on this issue.

Additionally, cross-border insolvency proceedings are governed by *Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings*. This has seen constant application in most of the cross-border insolvency proceedings, but also the previous *EC Regulation 1346* as well.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Considering the evolution over time of the legislation that has been constantly updated following the 2008 economic downturn, the legal regime related to insolvency matters in Romania is well-established, being substantially amended only twice in the past 20 years (through *Law no. 85/2006 on insolvency proceedings* and through *Law no. 85/2014 on insolvency proceedings*) and having minor modifications over time given European directives or according to the evolution of the relevant case law.

The latest amendment of the Insolvency law is related to the implementation of the *EU Directive on preventive restructuring (2019/1023*) through *Law no. 216/2022*, which entered into force on July 17, 2022.

1.3. Are there any special regimes applying to specific sectors?

The 2nd title of the Insolvency Law, entitled "Insolvency Proceeding" contains special legal provisions for the following practice areas:

Chapter II. Special provisions concerning the insolvency of a group of companies;

Chapter III. Special rules concerning the bankruptcy of credit institutions;

Chapter IV. Provisions concerning insurance/re-insurance undertakings.

In addition, according to Section 1.1., the Romanian legislation also provides a special regime for the insolvency of natural persons, governed by *Law no. 151/2015* regarding the insolvency procedure of natural persons.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

On March 16, 2020, a state of emergency was decreed in Romania for a period of 30 days, with measures being adopted in all areas with social and economic impact by *Presidential Decree no. 195/2020*. Among them, temporary measures have also been instituted in the field of justice, so implicitly in the case of settling insolvency matters, these being applied exclusively during the state of emergency.

Most of the measures had as objectives the digitization of the justice system and the suspension of civil trials, except for the cases of special urgency established by the list of the Management Colleges of the High Court of Cassation and Justice and of the Courts of Appeal.

In insolvency, according to the guidelines of the High Court of Cassation and Justice and of the Courts of Appeal, it was concluded that during the state of emergency in Romania, the trial continues only regarding the claims for the provisional suspension of the procedures for the enforcement of the debtor's assets until the decision on the opening of the insolvency procedure, the rest of the cases being suspended until the end of the state of emergency.

Moreover, as per *Decree No. 195/2020*, the insolvency proce-

dure is not suspended, but only the trials regarding the main insolvency file and the associated/related files.

Basically, as in most European countries, the legislation sought to aid the continuation of the new and/or pending procedures, including therein the insolvency procedures, by allowing more digitalization of the overall process and thus limiting social contact when it was not absolutely necessary.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Given that the latest amendment to the Insolvency Law entered into force on July 17, 2022, (see Section 1.2.), having an important input on the restructuring proceedings governed by the Romanian legislation, we don't foresee any other substantial changes soon.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The *UNCITRAL Model Law on Enterprise Group Insolvency*, issued by the UNCITRAL secretariat on May 30, 1997, has been implemented into the national legislation in 2002, as per the legal provisions established in the 3rd Title of the Insolvency Law.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

According to the Insolvency Law and other normative acts with impact in the field of insolvency, the debtor's directors are subject to the following obligations and sanctions

A. Failure to file for insolvency or filing too late

The directors of an insolvent company are under the obligation to file for insolvency within 30 days of the occurrence of insolvency.

In case of failure to file for insolvency, or late filings (i.e., later than six months after the expiry of the above-mentioned 30-day term), the legal representative(s) of the debtor (may) commit the crime of "simple bankruptcy" (tr. *bancruta simpla*).

B. Other cases of criminal liability

The director(s) of a debtor may, in principle, be held liable, if they *inter alia* **A.** used the assets or the credits of the legal entity for their own benefit or for the benefit of other persons; **B.** performed production activities, trading acts, or provided services for personal purposes under the umbrella of the legal entity; **C.** have ordered, for personal interest, the continuation of an activity which was manifestly causing the legal entity to be unable to make payments; **D.** have kept fictitious accounting records, caused some accounting documents to disappear or failed to keep the accounting records as required by the law; **E.** have embezzled or concealed part of the assets of the legal entity or fictitiously increased the liabilities thereof; **F.** used subversive means to procure funds for the legal entity in order to delay the inability to make payments; **G.** during the month before payments were ceased, have paid or instructed payments to a specific creditor to the detriment of the other creditors; **H.** have intentionally committed any other act that concurred to the insolvency of the debtor, as determined according to this chapter.

Respective actions may trigger joint and several liabilities of directors. In simple terms, in order to avoid criminal charges, a director would have to prove that they did not play an active role in the management of the company or opposed the performance of respective transactions/activities.

C. Civil liability (legal and or contractual)

The company's director(s) may also be held liable from a civil point of view, according to the mandate granted by the company.

Directors can be held liable to the extent they have performed transactions/activities exceeding the limits of the mandate granted to them and if transactions/activities were in breach of legal provisions.

D. Interdiction

Pursuant to *Law no. 31/1990 on commercial companies* (Companies' Act), persons convicted of fraud, embezzlement, bankruptcy-related crimes, and other crimes against property may not legally act as founders, directors, or members of the managing bodies of a company under Romanian law.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

In addition to Section 1.1., the insolvency procedure governed by the Insolvency Law is divided into two different types: the general procedure and the simplified procedure. In turn, the general procedure is divided into two stages:

General proceeding

A. Judicial reorganization proceedings

Judicial reorganization proceedings imply the drafting, approval, implementation, and observance of a reorganization plan setting forth one or all of the following: the operational and/or financial reorganization of the debtor, the corporate reorganization of the debtor by changing the shareholding

structure, and reducing activities by way of disposal of assets from the debtor's estate, etc.

The reorganization plan may entail either the restructuring of the debtor with the continuation of its activity or, as an alternative, the disposal of certain (or even all) assets from the debtor's estate, or a combination thereof. Further, the reorganization plan may entail amendments to the debtor's constitutive act, without the approval of the debtor's shareholders.

A reorganization plan may be advanced by the following persons: **(A)** the debtor, with the approval of its sole shareholder or the shareholders' meeting **(B)** the judicial administrator, or **(C)** one or more creditors holding together more than 20% of the aggregate amount of all payables.

The reorganization plan shall mention the prospects for a recovery in light of the possibilities and the specifics of the debtor's business, the availability of financial means as well as the market conditions for the debtor's line of business. The reorganization plan shall also indicate the creditors' categories, the quantum of their debts, and the payment plan for said debts.

The reorganization plan is subject to approval by the creditors and to confirmation by the syndic judge.

During the confirmation of a reorganization plan and full consummation thereof, the debtor's estate is managed by the special trustee under the supervision of the judicial administrator.

The reorganization shall be terminated by the court either by allowing the debtor to recommence full commercial activities or ordering the commencement of bankruptcy proceedings (in case of non-performance of the reorganization plan).

B. Bankruptcy proceedings

Bankruptcy proceedings (or liquidation) essentially aim at liquidating all of the debtor's assets with a view to covering its receivables.

In the decision by way of which the debtor is placed into bankruptcy proceedings, the bankruptcy judge shall also pronounce the following: **(A)** the withdrawal of the debtor's right to manage its estate; **(B)** the appointment of the liquidator; **(C)** the term until the debtor/ judicial administrator has to hand over the management of the debtor's estate to the liquidator (together with a complete list of all actions performed after the commencement of the proceedings); **(D)** the notification regarding the commencement of the bankruptcy proceedings; **(E)** a complete list with all the creditors and their contact details with the indication of all the debts which arose after the commencement of the proceedings.

In case the debtor undergoes bankruptcy after confirmation of a reorganization plan, the creditors will participate in the bankruptcy proceedings with the amounts registered in the reorganization plan less the sums already distributed to them.

Transactions between the confirmation date of the reorganization plan and the commencement of the bankruptcy proceedings are presumed to be fraudulent except when the contracting party proves its good faith (tr. *buna credinta*) when concluding the transaction. Any gratuitous transactions (tr. *acte cu* titlu gratuit) are null and void.

As a general rule, liquidation starts once an inventory is completed. The liquidation of the debtor's estate is performed by the liquidator under the supervision of the bankruptcy judge and of the creditors.

The main goal of the liquidation is to maximize the proceeds from the debtor's estate. In principle, the sale of the debtor's assets shall be performed through tender proceedings. However, direct negotiation may be allowed under certain circumstances.

Moneys resulting from liquidation are subject to (partial) distribution to the creditors already during the procedure. At the closing of the liquidation, the final distribution takes place

Simplified proceedings

Simplified proceedings are characterized by the interdiction to undergo a reorganization procedure but not by the absence of an observation period. In most cases when the application of the simplified procedure is requested, a short period of time will be necessary in order to prove whether the conditions for simplified proceedings are met.

Simplified proceedings may directly be opened as bankruptcy proceedings, whereas the applicable procedural rules resemble the ones applicable in the case of general proceedings. There are minor differences only.

In simplified proceedings, the duties of the judicial administrator shall be performed/taken over by a liquidator.

The simplified procedure applies to the following categories of debtors (in a state of insolvency or imminent insolvency):

(A) Legal Entities which fulfill one of the following conditions:

(i) They do not own any assets;

(ii) their constitutive or accounting documents cannot be found;

(iii) their managing directors cannot be found;

(iv) their seat no longer exists or it differs from the one registered with the trade registry;

(B) Legal Entities which did not provide the court with all relevant documents; and

(C) companies that have been canceled from the trade registry prior to the insolvency application.

2.3. Who has the right to initiate insolvency proceedings?

General (insolvency) proceedings may be initiated by the debtor, by its creditors, or, in certain situations, by institutions provided by law, by way of filing a respective request with the competent court.

A debtor is obliged to request the commencement of the proceedings within 30 days of the date when it has become insolvent.

A debtor is insolvent in the event it disposes of insufficient monetary funds to settle its payables when due. If a debtor has not settled its payables to one or more creditors within 60 days of such payables becoming due, insolvency will be presumed *de iure*.

A creditor may file for insolvency of its debtor, if it holds against such a debtor, a certain, liquid, and exercisable receivable exceeding RON 50,000 (approximately EUR 10,000), which has remained unpaid for more than 60 days upon being due.

The procedure is opened by the competent court by rendering a decision in this respect (which decision takes immediate effect).

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

Within 10 days from the commencement of the general proceedings (or as the case may be, from the date the debtor's right to manage its estate has been withdrawn), the shareholders' meeting of the debtor (or its sole shareholder) must appoint a special trustee (legal or natural person).

As long as the debtor's right to manage their estate has not been withdrawn, the special trustee shall direct the debtor's activity.

If the powers of the debtor's management to manage the estate have been withdrawn, the management of the debtor's assets is taken over by the judicial administrator (tr. *administrator judiciar*), and the competencies of the special trustee are limited to representing the debtor's shareholders' interests in the insolvency proceedings.

According to the above-mentioned, the company's management does not play a significant role in the insolvency proceedings.

Their main tasks are:

- To provide the special trustee or the judicial administrator with all the documents provided by the Law, especially with the debtor's accountancy.
- To elect the special trustee, which represents the interests of the general stakeholders in the insolvency procedure

Given this, the mandate of the company's managers is terminated *ex lege* from the date the debtor's right to manage its estate has been withdrawn, or as the case may be, from the date the special trustee is appointed.

From the date of opening the insolvency procedure, the debtor's activity is supervised by the judicial administrator, or even led by him, in case of lifting the debtor's right of administration. The main duties of the judicial administrator are detailed in Section 2.5.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

The efficiency of the insolvency procedure comes from its cumulative, collective character, but above all from its unitary nature, given that, as of the opening of the proceeding, the creditors' rights against the debtor may be recovered only through the insolvency proceeding, by lodging proofs of debt.

After the opening of the insolvency proceeding, all court actions, out-of-court actions, or enforcement procedures for the recovery of claims against the debtor's estate, born *prior* to the commencement of the insolvency proceeding, are stayed.

An exception to the above-mentioned stay applies to court actions intended to determine the existence and/or amount of some claims against the debtor arising *after* the opening of the proceeding. These claims are not subject to the suspension referred. In this case, the creditors may file a payment request (tr. *cerere de plata*) during the observation and reorganization period that shall be reviewed and answered by the judicial administrator.

On the other hand, the suspended claims may be reopened only if the decision ordering the opening of the proceeding is canceled, the resolution ordering the opening of the proceeding is revoked or the proceeding is closed according to Art. 178 of the Insolvency Law (if all creditors included in the final table of claims receive the amounts owed to them in the observation period or waive the trial during the observation period).

Where the decision to open the proceeding is canceled or revoked, as appropriate, the court actions or out-of-court actions for recovery of claims against the debtor's estate may be reopened and the enforcement procedure may be resumed.

The suspension of the above-mentioned claims is over on the date the decision to open the proceeding remains final. From this moment, both the judicial and extrajudicial action, as well as the stayed enforcement procedures, cease.

Given that the law does not provide special treatment for extraterritorial claims or enforcements and according to the principle *ubi lex non distinguit, nec nos distinguere debemus*, the suspension procedure governed by Art. 75 of the Insolvency Law also applies to extraterritorial court actions, out-of-court actions or forced execution procedures.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

As a general rule, the judicial administrator is entitled to terminate contracts concluded by the debtor, which have not yet been substantially performed by the parties thereto. In the event such a contract is so terminated, neither party shall perform its further obligations and the debtor's counterparty may only file a claim for damages against the debtor's estate for the recovery of losses incurred. There are, however, specific rules for certain types of contracts. In such cases, as per the doctrine and case law, the debtor's contractual party may only claim the actual loss (tr. *prejudiciul efectiv suferit*) following the termination of the pending contract by the judicial administrator.

The judicial administrator is also entitled to challenge the validity of certain actions/transactions performed or concluded within a specified period prior to the opening of the general proceedings, which are deemed detrimental to the creditors and which may therefore be set aside if certain prerequisites are fulfilled.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

See Section 2.2.

In addition, the participants carrying out all the steps provided by the Insolvency Law are: **(A)** the court, **(B)** the syndic judge, **(C)** the creditor's meeting and the creditors' committee, **(D)** the special trustee (tr. *administrator special*), and **(E)** the judicial administrator (tr. *administrator judiciar*) and the receiver (tr. *lichidator*);

(A) The court

All procedures (other than appeals) are incumbent on the Insolvency Section of the county court (tr. *tribunalul*) in the administrative district of which the debtor has its registered seat. The courts competent for appeals are the Courts of Appeal.

Summoning of parties as well as communicating any procedural deeds, notifications, etc. shall be performed via the Romanian Insolvency Procedures Bulletin.

(B) The syndic judge

The main duties of the syndic judge are: **(i)** rendering decisions on the opening of the proceedings (general or simplified proceedings, as the case may be), **(ii)** appointing a judicial administrator or a liquidator (as the case may be), **(iii)** resolving upon any claims filed by the judicial administrator or the liquidator for the cancellation of fraudulent transactions performed by the debtor, **(iv)** confirming the reorganization plan approved by the creditors committee (see Section 2.3.1.); **(v)** rendering the decision for closing the proceedings.

(C) The creditors' meeting and the creditors' committee

The creditors' meeting shall be convened and chaired by the judicial administrator unless otherwise specified by the law or ordered by the bankruptcy judge. The agenda for each session of the creditors' meeting must be made public in advance to all creditors. Matters not on the agenda may not be discussed in the respective session unless all creditors are present.

Sessions of the creditors' meeting are legally held if attended by **(i)** creditors holding at least 30 % of the total value of the payables due and **(ii)** a simple majority of the members on the creditors' committee. Decisions at the creditors' meeting require the vote of creditors holding at least half of the amount of the aggregate payables.

If a large(r) number of creditors is involved in the proceedings, the bankruptcy judge shall appoint a committee of three to five creditors for active involvement in the proceedings, particularly in supervising and/or approving certain actions/transactions of the judicial administrator or the liquidator (as applicable), i.e., the creditors' committee.

The creditors making up the creditors' committee shall be selected from the ones in the (preliminary) creditors' table holding the biggest receivables. All categories of creditors (i.e., state institutions, secured and unsecured creditors, etc.) should be represented.

The tasks of the creditors' meeting and the tasks of the creditors' committee (see the subsequent paragraph) are in essence the same. Should the bankruptcy judge not appoint a creditor's committee, the tasks of the latter shall be performed by the creditor's meeting.

The main tasks/rights of the creditors' committee (or creditors' meeting, as the case may be) are: **(i)** analyzing the economic situation of the debtor and advancing recommendations to the creditors meeting as regards maintaining the debtor's activity and proposed reorganization plans; **(ii)** reporting to the creditors' meeting on the performance of the judicial administrator's duties; **(iii)** requesting the withdrawal of the debtor's right to manage its estate; **(iv)** filing claims for the annulment of certain fraudulent transactions performed by the debtor if the judicial administrator fails to act in this respect.

(D) The special trustee – See Section 2.4.1.

(E) The judicial administrator and the receiver

The judicial administrator is appointed by the court when issuing the decision on the opening of the proceedings (judicial reorganization proceedings). Only a certified insolvency practitioner may hold the position of judicial administrator.

Creditors holding at least 50% of the aggregate amount of the debtor's due payables may, by way of the first creditors' meeting, apply with the court to appoint a specific judicial administrator. Otherwise, the syndic judge shall temporarily appoint an insolvency practitioner selected, at his discretion, from the official list published by the National Union of Insolvency Practitioners. Such a temporary appointment would be made until the first creditors' meeting.

One of the main tasks of the judicial administrator is to notify all of the debtor's creditors and to examine the statement of claims filed by said creditors. Following such examination, the judicial administrator shall draw up and file with the court the preliminary and (subsequently) the final table of the creditors holding accepted claims against the debtor. If the judicial administrator has accepted a creditor's claim by including it in the creditors' table, said creditor shall be entitled to participate in the proceedings (and potentially be allocated proceeds obtained therefrom).

Also, the judicial administrator has the right to terminate contracts or to challenge the validity of certain actions concluded by the debtor before entering into insolvency. In this regard, please see Section 2.4.3.

Regularly throughout the proceedings, the judicial administrator shall submit to the bankruptcy judge a report on the performance of their duties as well as a substantiated presentation of the costs incurred by the proceedings as well as costs incurred on funds from the debtor's estate.

In case of bankruptcy proceedings, the duties of the judicial administrator shall be performed by the receiver. As opposed to the judicial administrator, the receiver is not able to take part in any measures aiming at reorganization.

Consequently, the main task of the receiver will be the liquidation of the debtor's estate in order to settle the debtor's payables. The liquidator would still be able to perform the above-mentioned duties of the judicial administrator, however, such tasks would be performed within the limits of the liquidation proceedings, respectively having the sole and exclusive purpose of liquidating the debtor's assets (if any).

(F) The statutory manager(s) of the debtor – See Section 2.4.1.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

The order of priority of claims of unsecured creditors within bankruptcy proceedings is the following:

(A) taxes, stamp duties, and any other expenses in connection with the sale of the debtor's assets and the insolvency procedure generally, including expenses necessary for preserving and administrating the debtor's estate, as well as the remuneration of the experts involved in the insolvency procedure (e.g., the judicial administrator, the liquidator);

(B) claims resulting from financing granted to the debtor in the observation period (respecting other certain legal conditions) or from financial resources obtained in order to facilitate achievement of the reorganization plan;

(C) receivables from financing granted in insolvency prevention procedures, as well as the practitioner's fees from such procedures;

(D) claims resulting from labor relations;

(E) claims resulting from the debtor's activity being continued after the opening of the proceeding, the ones related to the rights determined in favor of the counterparty pursuant to the motion for indemnification established following the termination of a contract by the judicial administrator, and the ones payable to third party acquirers acting in good faith or subsequent acquirers that restitute to the debtor the assets or the value thereof according to the admission of the judicial administrator's claims regarding the validity of certain actions/transactions (see Section 2.4.3.)

(F) budgetary claims;

(G) claims consisting in amounts payable by the debtor to third parties based on some obligations to provide financial support, minor children allowance, or to pay periodic amounts destined to assure the living means;

(H) claims consisting in the amounts determined by the syndic judge for support of the debtor and their family, where the debtor is an individual;

(I) claims representing bank loans and the related expenses

and interests, the ones resulting from delivery of products, provision of services or other works, from rents, as well as the claims resulting from the termination of leasing contracts under certain specific conditions;

(J) other unsecured claims; and

(K) subordinated claims, in the following preferential order:

i. the claims arising in the patrimony of bad faith third party acquirers of the debtor's assets and the ones due to subsequent bad faith acquirers according to the admission of the judicial administrator's claims regarding the validity of certain actions/transactions (see Section 2.4.3.), as well as the shareholder loans granted to the debtor – legal entity – by an associate or shareholder holding at least 10% of the share capital and from the voting rights in the general meeting of shareholders, respectively, or by a member of the economic interest group, respectively;

ii. benefits not distributed to associates;

iii. claims arising out of free deeds.

Claims of an inferior category shall be satisfied only after all claims from categories having superior rank were satisfied. Claims of creditors of the same priority are satisfied on a *pro rata* basis, considering the amount of their respective claims specified in the creditors' table.

In case of secured creditors, the funds obtained from the sale of assets from the debtor's estate, encumbered in the favor of a creditor by mortgages, pledges, retention rights, or other security interests, shall be distributed in the following order:

(A) taxes, stamp duties, and any other expenses in connection with the sale of the respective asset serving as collateral, including costs arising for the preservations of the respective collateral, as well as the remuneration of the experts involved in the insolvency proceedings (including the judicial administrator, receivers);

(B) claims of the respective secured creditor privileged creditors arising during the insolvency proceeding, including capital, interests, as well as other accessories, as the case may be;

(C) the claims of privileged creditors, comprising the entire capital, interests, increases, and penalties of whatever nature, including claims resulting from leasing contracts rescinded before the opening of the insolvency proceeding.

Should amounts resulting from the sale of collateral not suffice to fully cover the secured debts, it would be treated as unsecured creditors as regards the difference. Further, a creditor holding a secured receivable is entitled to participate in any distributions made prior to the sale of the asset(s) in which he holds the security interest. Respective sums received will be deducted from the sums such creditor is entitled to from the sale of its collateral.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

The Insolvency Law does not provide for a period of time or a deadline for completing the insolvency procedure, but it establishes the principle of carrying out the procedure in a timely and reasonable time, in an objective and impartial manner, with minimum costs.

Moreover, even from the court practice, we cannot statistically detach a term in which the insolvency procedure is completed, its duration depending on the complexity of the debtor's activity, the value of his assets, and the procedural stages to be followed (judicial reorganization, simplified procedure, bankruptcy, etc.).

Domestic case law provides a wide range of timelines for such procedures ranging from 12 months up to even eight years, in the most complex matters.

The insolvency procedure is finalized by:

- The debtor's reintegration into the civil circuit: In case of achieving all the objectives set by the reorganization plan, the debtor resumes his commercial activity (business as usual);

- The dissolution of the company: After the assets from the debtor's estate have been liquidated, the syndic judge will give a sentence of closure of the procedure, which also orders the removal of the debtor from the register in which he is registered. The judicial administrator has the obligation to send the decision of conclusion to the registers where the debtor is registered and other administrative tasks in order to dissolve and deregister the debtor.

2.8. Are there any liabilities that survive the insolvency proceedings?

In theory, no. All payments towards creditors have to be made as per the provision of the insolvency law, by observing the ranking thereof. Closing the insolvency procedure would generally close all liabilities registered by the creditors therein.

In practice, however, we have seen payment plans concluded throughout the duration of the insolvency procedures in respect of current claims (i.e., born after the commencement of the insolvency proceedings), where such plans continued even after the closing of the insolvency procedure.

Only in case of filing a claim by the judicial administrator to attract liability against the persons responsible for the debtor's entry into insolvency, does their obligation to repair the created damage subsist after the closure of the procedure.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

The Insolvency Law provides for both insolvency prevention procedures and procedures for the creditor's recovery after the opening of the insolvency procedure.

Regarding the mechanisms made available to the debtor in difficulty (i.e., temporary cash flow difficulties without being a state of payment cessation), but which do not meet the conditions for the opening of insolvency proceedings, the Insolvency Law, as amended by *Law 216/2022 on the implementation of EU Directive no. 2019/1023*, provides the following procedures:

1. Early warning procedure

Provided by Chapter III, the procedure represents an innovation brought by *EU Directive no. 2019/1023* and consists in sending to the debtor an alert message regarding the non-execution of certain obligations by the tax body, the general assessment of the financial situation, the information on recovery solutions.

Also, the early warning procedure can be implemented by private entities, not only by the entity within the tax body.

2. Restructuring agreement

This is a relatively new procedure, in this aspect *EU Directive no. 2019/1023* coming to replace the *ad hoc* mandate procedure, retained by the practice as ineffective and used quite rarely by debtors.

In the *ad hoc* mandate procedure, the debtor could have filed a request for the appointment of an *ad hoc* trustee with the president of the Tribunal. The object of the ad hoc mandate was to conclude, within 90 days of appointment, a settlement between the debtor and one or several of its creditors, in view of overcoming the state of difficulty of the debtor's business.

The restructuring agreement represents, in fact, a contract proposed by the debtor and negotiated between the debtor and its creditors for the recovery of the business, there being similarities with the judicial reorganization plan both in terms of the data it must contain and in terms of voting by categories of creditors. After the creditors' vote, the restructuring agreement must be confirmed by the syndic judge, in an urgent procedure

If a restructuring agreement is voted on and confirmed according to the Insolvency Law, the debtor's activity will have to be restructured in accordance with its provisions. In particular, the rights of creditors holding claims forming the object of restructuring (including creditors who voted against or did not vote on it) will be modified in accordance with the provisions of the confirmed restructuring agreement.

The procedure ends either by fulfilling the restructuring agreement or by failing it, in the latter case, the law ordering the rebirth of the reduced claims by the agreement, as well as the recalculation of the accessories that have been suspended for the duration of the agreement.

3. The creditors arrangement

The creditors arrangement procedure involves the conclusion of a contract between the debtor in financial difficulty and the creditors who hold at least 75% of the accepted and undisputed claims. According to the changes brought by *EU Directive no. 2019/1023*, the creditors arrangement procedure can also be opened by creditors, and not only by the debtor.

The voting process on the restructuring plan is similar to the one on the restructuring agreement with the following particularities:

- in order to vote on the restructuring plan, within the same category of claims, one or more subcategories belonging to creditors with common specific interests may be constituted, whose treatment may be different from one subcategory of claims to another;
- in the case of creating sub-categories of claims, the category is considered to have voted for the restructuring plan if the acceptance is achieved by the absolute majority of the value of the claims in that category.

After the vote on the restructuring plan, it must be confirmed by the syndic judge, similar to the restructuring agreement procedure, through a non-contentious procedure.

Also, the closing of the creditors' arrangement procedure is similar to that of the restructuring agreement.

In regard to the judicial reorganization proceedings opened after the beginning of the insolvency procedure, see Section 2.2.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

See Sections 2.2. and 3.1.

3.3. Who has the right to initiate formal restructuring proceedings?

See Sections 2.2. and 3.1.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

During the insolvency prevention procedures, the debtor's activity is conducted by his own management and supervised by the restructuring administrator/ the administrator of creditors' arrangement.

In regard to the judicial reorganization proceedings opened after the beginning of the insolvency procedure, see Section 2.2.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

The creditors arrangement procedure presented in Section 3.1., provides for a suspension period for the enforcement against the debtor.

According to this measure, from the date of the opening of the procedure, enforcements against the debtor, irrespective of the nature of the claim, shall be suspended by *ex lege* for a period of four months.

The suspension period may be extended for good grounds up to a maximum period of 12 months.

By exception, enforcement of wage claims shall not be suspended; (consequently, during the period of suspension, the limitation period of the right to seek enforcement will also be suspended, and the accrual of interest, late payment penalties, and any other costs relating to the claims affected, up to the date of approval of the plan, will be suspended by operation of law);

3.4.3. How do restructuring proceedings affect existing contracts?

The evolution of the debtor's contracts in the insolvency prevention procedures is dependent on the provisions of the restructuring agreements. Thus, both the performance of contracts, respectively the rights and obligations of the parties can form the subject of negotiation between the debtor and his creditors, the Insolvency Law not providing imperative or prohibitive rules in this regard.

A single exception is provided by the creditors arrangement procedure. Thus, in the case of claims arising before the intervention of the suspension of enforcement procedures (provided in Section 3.4.2.), creditors cannot refuse the performance of ongoing essential contracts, cannot terminate, execute in advance or modify these contracts to the debtor's detriment, exclusively for the non-payment of debts and only if the debtor respects the rest of his obligations from these contracts that reach maturity during the suspension of enforcement. This prohibition remains until the homologation of the restructuring plan.

Therefore, after the negotiation, voting, confirmation, or homologation of the restructuring agreements/restructuring plan, the contracts will be modified according to the will of the parties, to achieve the objectives contained in the restructuring agreement/restructuring plan.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Section 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

N/A

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

See Section 3.1.

3.7. How are restructuring proceedings normally finalized?

See Section 3.1.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Yes, the recognition of foreign insolvency or restructuring proceedings operates *ex lege* in case of EU Member States, *Regulation (EU) 2015/848* (Regulation) being applicable.

According to Art. 3 Para. 1 of the Regulation, *the courts of the Member State within the territory of which the center of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main insolvency proceedings")*.

The center of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. In the case of a company or legal person, the place of the registered office shall be presumed to be the center of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member

State within the 3-month period prior to the request for the opening of insolvency proceedings.

Also, according to Art. 3 Para. 2 of the Regulation, *where the center of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.*

Given this, the recognition of the main insolvency proceedings shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings, being governed by the provisions of Chapter III from the Regulation.

In what regards insolvency proceedings and decisions from non-EU Member States, those are governed, from case to case, by particular bilateral treaties with each country rendering such a court decision.

In the case of the absence of such treaties, the Insolvency Law provides, through Title III. Cross-Border Insolvency, a special legal regime for the recognition of foreign insolvency proceedings.

According to this, in addition to other formal conditions regarding the content of the request, competence and the person able to file the request, Art. 289 of the Insolvency Law provides that, in order to obtain the recognition of a foreign decision in Romania, there must be reciprocity regarding the effects of foreign judgments between Romania and the state of the court which pronounced the decision.

4.2. What are the preconditions for recognizing foreign decisions?

The Regulation provides for the immediate recognition of judgments concerning the opening, conduct, and closure of insolvency proceedings that fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings.

Given this, the Regulation provides for automatic recognition of foreign decisions and insolvency proceedings, meaning that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States.

In regard to insolvency-related decisions from non-EU Member States, those are governed, from case to case, by particular bilateral treaties with other countries. In the case of a lack of such treaties, an *exequatur* procedure must be followed.

We have seen in practice forum shopping situations, with debtors opting for example for debtor-friendly jurisdiction. In such cases, it falls with the court handling the specific request to check if indeed the debtor has its COMI within the Member State where the request for main insolvency proceedings has been filed. We have seen both foreign and domestic courts denying such requests where the debtor clearly has not met the COMI standards, already quite clearly defined by the available European case law.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

In the European Union, the judicial cooperation between courts in the member states is governed by Art. 42 of the Regulation. The cooperation regards, in particular, but is not limited to, the following:

- coordination in the appointment of insolvency practitioners;
- communication of information by any means considered appropriate by the court;
- coordination of the administration and supervision of the debtor's assets and affairs;
- coordination of the conduct of hearings;
- coordination in the approval of protocols, where necessary.

Additionally, the Regulation also provides through Art. 43 for the cooperation between insolvency practitioners and courts, establishing the following:

- an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;
- an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and
- an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

In regard to non-EU countries, judicial cooperation, as well as other interstate cooperation, is governed by particular bilateral

treaties with other countries.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

The Romanian legislation doesn't provide any special regime to foreign creditors. Given this, the Insolvency Law provides the same rights and obligations for the foreign creditors, being treated equally as the domestic creditors.

Also, foreign creditors are treated fairly by the judicial administrator/ syndic judge, without any kind of discrimination compared to domestic creditors.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Overall, given the evolution of the applicable domestic and international applicable legislation, we deem we have debtor-friendly legislation with increased rights toward the budgetary creditors.

The suspension of the enforcements against the debtor's estate during the creditors' arrangement, the suspension and termination of other claims against the debtor in the insolvency procedure, the judicial administrator's possibility to terminate contracts or to challenge the validity of certain actions/ transactions performed in the past by the debtor are just some of the measures regulated by law for the priority protection of the debtor's interests.

On the other hand, the creditor's interests are not completely neglected, the Insolvency Law recognizes the creditors' existing rights and observes the rank priority of claims, based on a clearly determined and uniformly applicable set of rules and assuring a fair treatment for all creditors of the same rank in order to maximize the creditors' chances for assets leverage and debts recovery.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The primary legislation governing insolvency and restructuring proceedings consists of the *Bankruptcy Act* (*Official Gazette of the Republic of Serbia nos. 104/2009*, *99/2011*, *71/2012*, *83/2014*, *113/2017*, *44/2018*, and *95/2018*), the *Act on Bankruptcy and Liquidation of Banks and Insurance Undertakings (Official Gazette of the Republic of Serbia nos. 14/2015* and *44/2018*), and the *Consensual Financial Restructuring Act (Official Gazette of the Republic of Serbia nos. 89/2015*). Serbian corporate and labor law regulations apply to restructuring proceedings outside of insolvency proceedings.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Serbia has a well-established legal regime governing restructuring and insolvency.

1.3. Are there any special regimes applying to specific sectors?

Yes, a special regime applies to banks and insurance companies.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

No changes regarding restructuring or insolvency laws were adopted in response to the COVID-19 pandemic.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

There are no proposed changes to the restructuring insolvency regime in Serbia. However, as of 2021, a draft for the *Amendments to the Bankruptcy Act* has been announced.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Serbia has not adopted the *UNCITRAL Model Law on Enterprise Group Insolvency* but has adopted the *UNCITRAL Model Law on Cross-Border Insolvency*.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

N/A

2.2. What types of insolvency procedures are established by law in your jurisdiction?

The *Bankruptcy Act* establishes two types of insolvency procedures:

1) Bankruptcy – the settlement of creditors from the entire property value of the debtor.

2) Restructuring – the settlement of creditors according to the adopted reorganization plan (redefining debtor-creditor relations, status changes of the debtor, or another manner provided for in the reorganization plan) (see Section 3.).

2.3. Who has the right to initiate insolvency proceedings?

Bankruptcy proceedings can be initiated by creditors, the debtor itself, or a dissolution trustee.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

As of the day of commencement of insolvency proceedings, management ceases to operate the business, with exception of the potential finalization of already initiated operations which is subjected to the approval of the creditor's board. When the bankruptcy proceedings are formally initiated, the representative and management rights of the directors, representatives, and attorneys, as well as the management and supervisory bodies of the debtor cease and are transferred to the bankruptcy trustee. The bankruptcy trustee is a legal representative of the bankrupt debtor.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Moratorium – if found necessary, the court may impose a moratorium as one of the security measures provided by the applicable law. A moratorium can be imposed solely, or alongside other security measures.

The *Bankruptcy Act* does not allow stay.

2.4.3. How does it impact the existing contracts (e.g. is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

On the day of the opening of bankruptcy proceedings, all creditors' claims against the debtor, which are not due, are considered due (not vice versa) and can be realized (i.e., collected) exclusively under the rules of bankruptcy proceedings. In cases in which compensation of mutual claims is allowed under the *Bankruptcy Act*, a request for compensation must be presented within the deadline for submission of the claim application.

In the case of non-fulfilled existing contracts, the bankruptcy trustee can decide to fulfill the contract (instead of the bankrupt debtor) and demand fulfillment from the other party.

If the bankruptcy trustee refuses to keep the contract in force, the other party can realize his claim as a bankruptcy creditor.

The debtor's pre-insolvency transactions can be challenged under the rules of the *Bankruptcy Act*. In a case when is determined that the debtor's pre-insolvency transactions disrupt the settlement of bankruptcy creditors or damage creditors, i.e., put individual creditors in a more favorable position, the transactions may be challenged by the bankruptcy trustee (on behalf of the bankruptcy debtor and creditors). The legal business or legal action of the debtor may be contested through a lawsuit.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The steps that insolvency proceedings normally include are the following:

- Initiation of bankruptcy proceedings by filing a bankruptcy petition (see Section 2.3.).

- Deciding on the initiation of preliminary proceedings by the court whose main goal is to determine the existence of bankruptcy grounds and in which phase certain preliminary measures can be adopted in order to secure debtor's assets (e.g., ban of payments from debtor's bank account).

- Passing the decision on opening the bankruptcy proceedings, which sets the dates for the first creditors' hearing (in which the Creditor's Board is appointed) and examination hearing (on which creditors can contest other creditors' claims).

- When the bankruptcy proceedings are opened, the representative and management rights are transferred to the bankruptcy trustee (see Section 2.4.).

- The bankruptcy trustee compiles a list of all known creditors.

- Creditors submit their claims to the competent court. After the expiration of the deadline for reporting claims, the court delivers all claims reports to the bankruptcy trustee.

- The bankruptcy trustee determines the merits, scope, and payment order of each claim and, in doing so, compiles a list of recognized and contested claims, as well as the order of settlement of separate and lien creditors.

- The final list of all claims reports is drawn up at the examination hearing.

- In case the petition for reorganization is not passed, the bankruptcy trustee takes measures on selling the debtor's assets.

- Upon selling all the available assets, the bankruptcy trustee drafts a decision for the main division of the bankruptcy estate, subject to creditors' right to object.

- The court decides on the main division of the bankruptcy estate and conducts the main division of the bankruptcy estate.

- The court issues a decision on closing the bankruptcy proceedings at the final hearing.

The key participants in bankruptcy proceedings are: 1) the competent court, 2) the bankruptcy trustee, 3) the Creditors' Meeting, 4) the Creditors' Board, 5) individual creditors

- The role of the competent court is to fully conduct and manage bankruptcy proceedings. The courts conduct bankruptcy proceedings *ex officio*. However, the competent court is entitled to decide on the initiation of preliminary bankruptcy proceedings, determines the existence of bankruptcy grounds, decides on the opening of bankruptcy proceedings, appoints, and dismisses the bankruptcy trustee, approves the costs of the bankruptcy proceedings and the obligations of the bankruptcy estate. etc.

- The bankruptcy trustee represents the bankruptcy debtor in all affairs related to bankruptcy proceedings (See Section 2.4.).

- The Creditors' Meeting consists of all creditors of the bankruptcy estate. It decides on the continuation of bankruptcy proceedings through reorganization or bankruptcy, reviews the reports of the bankruptcy trustee, etc.

- The Creditors' Board consists of a maximum of seven creditors and renders an opinion on the continuation of ongoing affairs of the debtor, monitors the operations of the bankrupt-

cy trustee, and provides consent for certain actions (e.g., the decision on the manner of selling of debtor's assets), examines the final report of the bankruptcy trustee, and reports on developments in proceedings to the Creditors' Meeting, etc.

■ Individual creditors, based on the type of their claim, can be **(i)** unsecured creditors which are settled in accordance with general payment orders **(ii)** secured creditors which have priority in settlement from pledge on the securing their claim **(iii)** pledge creditors who only have the pledge on debtor's asset and not a claim against it.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

In the Republic of Serbia, bankruptcy creditors are placed in payment queues, depending on their claims, meaning specific creditors' claims enjoy priority.

1) the first payment order includes the unpaid net wages of current and former employees at the minimum rate for the year preceding the formal initiation of bankruptcy proceedings and unpaid contributions;

2) the second payment order includes claims based on all taxes due in the last three months before the opening of bankruptcy proceedings;

3) the third payment order includes the claims of unsecured bankruptcy creditors;

4) the fourth payment order includes unsecured loans given by its affiliated companies in the last two years.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

There is no final deadline for the completion of bankruptcy proceedings. However, the *Bankruptcy Act* sets the principle of urgency which means stoppages and interruptions are not allowed. In this procedure *restitutio in integrum* is not allowed and it is not possible to declare an extraordinary legal remedy or to request a retrial. Furthermore, the court may decide on outside hearings.

2.8. Are there any liabilities that survive the insolvency proceedings?

N/A

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

There are no available informal restructuring proceedings in Serbia. Restructuring proceedings are regulated by the *Bankruptcy Act* and are formally led by the bankruptcy court. The key document in restructuring proceedings is a reorganization plan (regular or pre-packed reorganization plan) which is an act of mixed legal nature – it is a contract between a debtor and its creditors, created under the control of and approved by a court, which alters the debtor's liabilities, generally via partial write off or deadline rescheduling

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

A company may undergo restructuring proceedings in case it is unable to pay off its debts and restructuring is a more favorable way of paying off the liabilities than undergoing bankruptcy proceedings.

A reorganization plan may be filed along with a bankruptcy petition (pre-packed reorganization plan), or during the ongoing bankruptcy proceeding (under the term of 90 days from bankruptcy opening. In these cases, the court decides on commencing and schedules a hearing to discuss whether the conditions for initiating the bankruptcy procedure are met (preliminary proceedings are optional). In preliminary proceedings, the court may engage a professional to validate the data from the reorganization plan. In addition, during preliminary proceedings, the court may impose measures to prevent changes in the financial state of the debtor.

If the reorganization plan is not dismissed, the court schedules a hearing to discuss and vote on the proposed reorganization plan. Creditors are classified in at least two classes based on the priority of their claims and securities, and the reorganization plan is deemed accepted if it is accepted within all classes of creditors.

3.3. Who has the right to initiate formal restructuring proceedings?

Bankruptcy trustees, secured creditors, or individuals/entities who own at least 30% of capital and the debtor have the right to initiate formal reorganization proceedings.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Management continues to operate the business and follows the reorganization plan in terms of settlement of creditors. The debtor is subject to special supervision by a commission appointed in an adopted reorganization plan.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

Moratorium/stay does not apply in general. However, moratorium/stay and its scope may be regulated in a reorganization plan.

3.4.3. How do restructuring proceedings affect existing contracts?

Restructuring proceedings affect existing contracts in such a way that an adopted reorganization plan is deemed a new contract between a debtor and creditors and has legal effect as a title to a writ of execution.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

In restructuring processes, existing contracts are replaced by a reorganization plan.

In bankruptcy processes, existing contracts remain in force. The bankruptcy trustee shall decide on fulfilling the contractual obligations.

3.5. Can third-party liabilities be released through restructuring proceedings?

Third-party liabilities can be released through restructuring proceedings if such measure is included in a reorganization plan which is adopted in accordance with *Bankruptcy Act*.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Restructuring proceedings normally include:

1) The proposition of a reorganization plan – by either the debtor itself/shareholders holding more than 30% of shares, creditor;

2) Voting on the proposed reorganization plan in a hearing before a competent court (which shall be held within 60-90 days of filing a proposition of reorganization plan) – all creditors have the right to vote;

3) The court issues a decision confirming the adoption of a reorganization plan (if the reorganization plan is accepted by all classes of creditors) or a decision confirming that the reorganization plan is not adopted.

3.7. How are restructuring proceedings normally finalized?

Restructuring proceedings are usually finalized according to the reorganization plan and paying off the liabilities. If restructuring proceedings are not successful, the debtor may undergo bankruptcy proceedings.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

The *Bankruptcy Act* contains provisions allowing recognition of foreign insolvency/restructuring proceedings as either a foreign main proceeding or a foreign non-main proceeding.

A foreign proceeding will be recognized in Serbia as a foreign main proceeding if the debtor's center of main interests (COMI) is in the foreign jurisdiction. A court will determine the debtor's COMI by looking to, *inter alia*, the location of the debtor's management and registered seat of business, as well as the location that significant creditors of the debtor recognize as being the center of the debtor's operations.

The definition of a foreign non-main proceeding in Serbia is derived from the *UNCITRAL Model Law of Cross-Border Insolvency* and refers to any foreign proceeding other than a foreign main proceeding.

Whether the insolvency proceeding is determined by the Serbian court to be a foreign main or non-main proceeding has significant implications on the treatment of that proceeding and the debtor. If the proceeding is determined by the Serbian court to be a foreign main proceeding, the debtor is entitled to certain automatic relief by the Serbian court.

4.2. What are the preconditions for recognizing foreign decisions?

Having in mind that Serbia adopted the *UNCITRAL Model Law on Cross-Border Insolvency* through the *Bankruptcy Act*, the said preconditions are as follows:

1) the existence of the foreign proceeding within the meaning of collective judicial, or administrative settlement of claims under insolvency law;

2) the appointment of the foreign representative authorized in a foreign proceeding to administer the insolvency/restructuring of the debtor's assets/affairs or to act;

3) the proper application is submitted to the Serbian court.

Therefore, when applying to the Serbian court for recognition of the foreign proceeding, a foreign representative shall file an application accompanied by a certified copy of a decision on commencing the foreign proceeding and appointing the foreign representative or a certificate of the foreign court affirming that, or any other evidence acceptable to the court confirming those facts.

The Serbian court is entitled to presume that documents submitted in support of the application are authentic, whether

or not have been legalized. Also, the debtor's registered seat of business, or permanent residence in the case of an individual, is presumed to be their COMI.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

Domestic courts are obliged to cooperate with their foreign counterparts to the greatest extent. Various factors influence courts' cooperation. Herein are only the most frequent examples: the governing law, divergent interpretation of the laws, jurisdiction, the debtor's COMI, the location of the creditor's assets, the domicile of creditors, communication, etc.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Serbian law provides that foreign creditors shall be treated equally to domestic creditors. This means that foreign creditors have the same rights regarding the commencement of, and participation in, a restructuring/insolvency proceeding under Serbian laws.

Initially, under Serbian law, whenever notification on a proceeding is to be given to creditors in Serbia, such notification shall also be given to the known creditors that do not have addresses in Serbia.

The equal treatment rule does not affect the ranking of claims in a proceeding under Serbian laws. This also means that the foreign creditors' claims shall not be ranked lower than equivalent local claims.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

A restructuring procedure in Serbia is equally friendly to creditors and debtors as the procedure shall be commenced with the participation and agreement of all parties and shall give a chance to debtors to successfully overcome financial difficulties and pay off their debts. The same is true when it comes to the complexity of the proceedings. In practice, reorganization plans are rarely successful, and many debtors undergo insolvency proceedings eventually.

The insolvency regime is more creditor-friendly, having in mind that every step in this procedure is directed towards preserving the estate of the debtor and protecting the rights and interests of creditors to ensure payment of liabilities.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1 What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The Slovak insolvency regime is primarily governed by *Act No. 7/2005 Coll. on Bankruptcy and Restructuring* as amended (Insolvency Act) and *Act No. 111/2022 Coll. on Solving Threatened Insolvency* (Act on Preventive Restructuring) as well as related secondary legislation elaborating on the details of some related instruments. A definition of a "*company in crisis*" is also included in *Act No. 513/1991 Coll. Commercial Code* as amended (Commercial Code) which can be confusing.

Cross-border insolvencies are subject to the *European Regulation on Insolvency Proceedings (2015/848*) (Regulation).

Foreign insolvencies outside the EU may be governed by international treaties or agreements (if applicable) or are subject to the mutual recognition principle under international law.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The Slovak regime frequently changes due to the requirements resulting from practice (the identification of legislative gaps or efforts to make the system more effective, transparent, and enforceable) or changes to other laws (e.g., the implementation of the *EU Directive on preventive restructuring (2019/1023*)).

1.3. Are there any special regimes applying to specific sectors?

Yes.

Firstly, special regimes concern certain financial entities such as banks, electronic money institutions, insurance/reinsurance companies, payment system operators, the central depository of securities, investment companies, health insurance companies, and their Slovak branches.

Secondly, small bankruptcy (a more streamlined process) applies to certain entities and situations:

- individual persons and small businesses;
- insolvencies resulting from the confiscation of property under criminal proceedings;
- insolvencies of operators of critical infrastructure.

Thirdly, individual persons who are debtors can be subject to the discharge of debts either through bankruptcy or repayment in installments, subject to separate provisions.

Fourthly, the state, municipalities, self-governing regional institutions, and companies established, budgeted, or otherwise related to them, as well as the National Bank of Slovakia (NBS) Deposit Protection Fund and the Investment Guarantee Fund are excluded from the application of Slovak insolvency law.

Our focus in this guide (unless otherwise stated) is on the insolvency or (preventive) restructuring of larger businesses.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

In response to the COVID-19 pandemic, the Slovak Republic introduced a bankruptcy moratorium to help entrepreneurs overcome the negative impacts of this crisis on their businesses in spring 2020. The moratorium was an opt-in model and entrepreneurs were entitled to apply for temporary bankruptcy protection subject to certain conditions. The original application until October 1, 2020, was extended until December 31, 2020, with the new law effective on January 1, 2021, making the bankruptcy moratorium a "standard" instrument irrespective of the COVID-19 pandemic, although stricter against debtors, as the consent of the creditors is required in comparison to the bankruptcy moratorium under the COVID-19 regime. The concept was incorporated into the Act on Preventive Restructuring and is a part of the preventive mechanism, which is still an opt-in model.

In spring 2020, Slovakia also implemented a loan moratorium applicable to banking as well as non-banking credit providers, subsequently extended until March 31, 2021.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Not to our knowledge.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

No, and we do not have knowledge of any considerations in that respect.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

Through its statutory body, the debtor is obliged to monitor its financial situation and the status of equity and liabilities constantly in order to foresee any possible threatened insolvency

in time and adopt suitable preventive measures to avoid it.

Slovak insolvency law regulates the process after the occurrence of insolvency (*upadok*) or threatened insolvency *(hroziaci upadok*).

The recognition of threatened insolvency does not have strict criteria (as the situation can be industry-specific or seasonal), only indicators that signal to the debtor the obligation to adopt preventive measures. Threatened insolvency occurs in particular if illiquidity is threatened (as specified below), i.e., if, considering all circumstances, it can be reasonably assumed that the debtor will become illiquid within the next 12 months. Another consideration can be if the debtor is in crisis in accordance with the Slovak Commercial Code, i.e., if the ratio of its equity to liabilities falls below 8:100. Another sign can be if the debtor is on the list of debtors maintained under special laws, e.g., list of debtors maintained by health insurance companies or tax authorities.

Slovak insolvency law sets out the criteria for two forms of insolvency tests:

- The debtor's inability to pay its overdue debts (the liquidity test): this happens if the debtor is unable to settle at least two monetary obligations held by more than one creditor for more than 90 days after maturity. All obligations originally belonging to one creditor 90 days before the filing are deemed as one obligation. Under certain conditions, the debtor can be assumed as liquid, whereby more details are regulated in the underlying secondary legislation.

- Over-indebtedness (the balance sheet test): this applies to a debtor obliged to do accounting if it has more than one creditor and the value of its obligations exceeds the value of its assets. The valuation is made based on the accounts or an expert opinion, taking into consideration any positive going concern prognosis.

The details are further stipulated in secondary legislation.

If the tests are fulfilled, the debtor is obliged to file for bankruptcy or initiate a formal restructuring. Further consequences against the debtor are described in Section 2.3.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Slovak insolvency law recognizes the following insolvency procedures available to debtors (legal entities) in financial difficulties:

- bankruptcy proceedings (*konkurz*), a process leading to the liquidation of the insolvent debtor;

- formal restructuring (*restrukturalizacia*), which enables the debtor's business to continue, and

- (public/non-public) preventive restructuring under the new Act on Preventive Restructuring.

Further, only bankruptcy proceedings will be covered in this Section 2.

2.3. Who has the right to initiate insolvency proceedings?

A creditor may only initiate the bankruptcy proceeding if illiquidity can reasonably be expected, i.e., the conditions for the liquidity test are met and one creditor requested the debtor to pay in writing.

The debtor must initiate bankruptcy proceedings within 30 days from learning, or with due professional care should have learned, of insolvency in any form. This obligation applies to the debtor's statutory body as well as the liquidator and the debtor´s legal representative. The failure to observe this obligation can make such a person subject to a fine of EUR 12,000 and liable for damages to the extent of unsatisfied claims unless otherwise evidenced.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

In bankruptcy proceedings, once the court formally approves the bankruptcy, the trustee takes over the management of the company and performs legal acts in the name of and on behalf of the debtor.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

Bankruptcy proceedings have the following effects:

- most court and similar proceedings concerning the bankruptcy assets are interrupted (e.g., alimony proceedings or criminal proceedings); they can be reopened on a motion of the trustee; new proceedings can be filed only on the trustee´s motion;

- enforcement proceedings are stayed; proceeds are paid to the bankruptcy assets if not already paid to the given creditor;

- no new securities can be established;

- one-sided legal acts (e.g., POAs) concerning the bankruptcy assets are terminated;

- set-offs are subject to special provisions;

■ contractual restrictions or prohibitions on the assignment of claims are not effective;

■ any corporate reorganizations are subject to the trustee´s consent;

■ the maturity of any debtor´s claims or claims against the debtor is generally accelerated.

Extraterritorial effects depend on the respective provisions of international treaties, such as the Regulation and the principle of mutual recognition (also see Section 4).

2.4.3. How does it impact the existing contracts (e.g., is the counterparty free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

Any contractual provisions entitling the counterparty to terminate or withdraw from the existing contract only due to bankruptcy are ineffective.

If the debtor has already performed under the contract and the counterparty did not or only partially performed, the trustee may demand the performance or withdraw from the contract (to the extent of not-yet-performed obligations); vice versa, the counterparty may withdraw from the contract to the extent of obligations not-yet-performed by the debtor and apply its claims through the registration of the claims in the bankruptcy proceedings.

In the case of the contracts for repeated or continuing activities (except for the employment agreements and apartment leases), the trustee may terminate such contracts on a two-month termination period unless a shorter period is given by law or the contract.

The counterparty may refuse performance until it is given (the security for) the counter-performance by the debtor, if applicable.

In addition, the trustee has wide powers to contest certain transactions effected by the debtor before and after the start of insolvency, if such transactions qualify as **(i)** preferential, **(ii)** being undervalued; **(iii)** intentionally curtailing creditors' rights; or **(iv)** acts made by the debtor within six months after the cancellation of insolvency if the new insolvency was declared over the debtor and such acts cannot be deemed as made within the ordinary course of business. The trustee may generally challenge these transactions occurring up to one year before the start of insolvency, extended to three years if the transaction was made between close/linked persons, or five years in the case of the intentional curtailing of rights. The trustee must apply these rights within one year after the declaration of insolvency, otherwise, this right expires.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

In the case of bankruptcy, there are two initial phases: commencement of bankruptcy and declaration of bankruptcy.

A. *Commencement of bankruptcy*

If the insolvency petition meets the formal criteria, the competent court decides within 15 days from the commencement of bankruptcy, with various effects including:

■ the debtor is obliged to limit its activities to the ordinary course of business;

■ the security enforcement or enforcement proceedings not generally commencing or continuing;

■ the company's liquidation being interrupted, as well as any merger/demerger processes.

If there is doubt about the sufficiency of the debtor's assets, the competent court may appoint a preliminary insolvency trustee to establish if the debtor has sufficient assets to cover the insolvency costs. In this phase, the debtor may pay mature obligations or initiate restructuring proceedings, resulting in the interruption or termination of the insolvency proceeding.

B. *Declaration of bankruptcy*

If the conditions are met (the debtor is still insolvent and has sufficient assets), the court declares the insolvency of the debtor, and the formal insolvency proceedings start: the insolvency trustee is appointed and takes charge of the debtor's assets, and creditors are asked to register their claims. Further actions in the insolvency proceedings subsequently aim at selling the debtor's assets and the collective satisfaction of creditors' claims.

Courts generally fulfill the role of the supervision authority over the bankruptcy proceedings and can replace any missing instruction from the creditors' committee (or in its absence).

As already mentioned, the management of the debtor is taken over by the trustee. Directors are obliged to fully cooperate with the trustee. Shareholders are not generally involved in the bankruptcy.

Creditors must register their claims within 45 days from the declaration of bankruptcy. Secured creditors also have to apply their security rights in time; otherwise, they will not be reflected.

Registered (uncontested) creditors form the creditors' meeting

and the appointed creditors from the creditors' meeting form the creditors' committee of three or five members. The trustee is obliged to work closely with the creditors' committee, provide it with quarterly reports on its activities, request instructions concerning the disposal of the bankruptcy assets, etc.

Most further work is then with the trustee. However, if the trustee fails to perform certain acts (in particular the contestation of pre-insolvency transactions based on the creditor´s motion in due time), the creditor itself can proceed with such contestation with the court on its own.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Insolvency claims are generally split into the following categories:

- claims against bankruptcy assets that are preferentially satisfied from bankruptcy proceeds, before any other claims: these are the claims arising after bankruptcy and related to the bankruptcy assets; the satisfaction is made in an order given by the Insolvency Act starting from the costs of the trustee, alimony for children, costs for operating the bankruptcy assets, employment costs and ending with taxes, customs, health insurance, and social insurance costs and other unspecified costs;
- secured claims: claims to be preferentially satisfied from the secured assets, after the deduction of respective claims against bankruptcy assets;
- unsecured claims: claims of other creditors, and claims of secured creditors to the extent they are not satisfied with secured assets;
- subordinated claims: claims with a subordination obligation or claims of related parties which are to be satisfied last.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Apart from the deadline for the registration of claims (creditors of claims registered later lose the voting rights and secured ranking) and the first creditors' meeting, there are no deadlines for bankruptcy proceedings. They generally end on the sale of all bankruptcy assets and the distribution of proceeds to creditors, as applicable.

In practice, bankruptcy proceedings last several years as there are usually other related court proceedings, such as due to the contestation of pre-insolvency transactions, objection to registered claims, or exclusion of assets from bankruptcy assets.

2.8. Are there any liabilities that survive the insolvency proceedings?

The registered claims to which the debtor did not object can be subject to enforcement after the termination of the bankruptcy proceedings. In practice, this is applicable in cases where the bankruptcy was terminated by the court, e.g., because the conditions of the initiation were not met. Otherwise, the bankruptcy continues until the sale of all bankruptcy assets followed by the liquidation of the debtor (which is a legal entity) and its deletion from the Commercial Register.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

Slovak insolvency law recognizes:

- formal restructuring: if the debtor is already insolvent; and
- public/non-public preventive restructuring: if insolvency is only threatened.

Informal restructuring is not governed by law; it is usually subject to the individual agreement of amended conditions with the particular creditor(s) (typically financial institutions).

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

Formal restructuring applies when the debtor is already insolvent. The primary condition is the restructuring opinion prepared by the chosen trustee, who recommends the restructuring and the manner of its implementation. Once the restructuring has formally started, the trustee or debtor (depending on who initiated the restructuring) prepares the restructuring plan which is to be subsequently approved by the creditors' committee, the general meeting of all creditors, and the court. Voting at the general meeting is affected in various groups; each secured creditor represents one separate group and then there are one or more groups of unsecured creditors and shareholders.

If one or more groups at the general meeting vote against the plan, the court may replace such refusal with its decision if the conditions are met (e.g., most creditors voted in favor of the plan and the members of the refusing group will not apparently be in a worse position than on eventual satisfaction under bankruptcy). Finally, the court may approve the plan only if the statutory conditions are met, e.g., unsecured creditors are to be satisfied with at least 50% of their claims unless they agree with a lower level of satisfaction, whereby such high level of mandatory satisfaction is mostly the dealbreaker in most plans. However, such obligation results from the negative

experience of restructurings in the past when some entities tended to use the restructuring for "cleaning" their entity from (mostly) unsecured claims for minimum satisfaction.

Once the court approves the restructuring plan, non-registered claims become unenforceable and the debtor is obliged to advance in accordance with the approved plan. If so assumed under the plan, the trustee may be appointed as the supervisor if the debtor complies with the plan.

Non-public preventive restructuring is possible only if creditors are entities subject to supervision by the NBS or a similar foreign institution, whereby there is very little regulation of the process. After the notification to the court by the debtor (with the consent of the affected creditors), the debtor has three months to submit the restructuring plan and the court has 15 days for its approval or rejection (e.g., if the plan could damage other creditors not affected by the plan). Otherwise, the process is subject to individual negotiations.

Public preventive restructuring resembles formal restructuring, but the filing has to contain the concept of the restructuring plan. The professional advisor has to be engaged unless the debtor obtains the required creditors' consent for a moratorium. A preliminary injunction and moratorium can be imposed and, overall, the negotiations are more flexible. The debtor has to present a realistic, well-prepared plan and various analyses required by law in order to persuade the creditors to support it (again, the refusal of some groups can be replaced by a court decision if the conditions are met). The approval process is similar to the formal restructuring and the fulfillment may be also subject to supervision by the trustee.

The Act on Preventive Restructuring has been effective only since July 17, 2022, so there is no practical experience with its application in daily practice.

3.3. Who has the right to initiate formal restructuring proceedings?

A creditor may only initiate a formal restructuring with the consent of the debtor.

The debtor may initiate a formal restructuring and preventive restructuring if the conditions are met.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Under both restructuring regimes, the management continues to operate the business, but it is obliged to perform only ordinary acts and is obliged to avoid any (extraordinary) disposal of the debtor's assets.

It can also be determined that certain acts are subject to the consent of the trustee (under formal restructuring) or the advisor (under preventive restructuring). In the absence of consent, such legal acts would be valid, but they can be contested in bankruptcy proceedings (if applicable).

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

Formal restructuring has the following effects:

- claims (including secured claims) against the debtor which are to be registered cannot be enforced, and pending enforcement proceedings are interrupted;
- a counterparty may not terminate or withdraw from a contract due to the restructuring or claims arising before restructuring, and any such contractual provisions are ineffective;
- set-offs are generally not possible;
- any corporate reorganizations are impossible and already approved reorganizations cannot be registered in the Commercial Register.

The moratorium is an opt-in instrument under the public preventive restructuring subject to the creditors' consent. It can be provided for three months with a possible extension up to a further three months on an application and the written consent of the creditors' committee.

Subject to certain conditions, the debtor is protected from creditor insolvencies, (security) enforcement, contractual terminations, set-offs and acquitted from the obligation to file for bankruptcy. On the other hand, the debtor has several obligations such as to primarily settle the claims necessary for the maintenance of business arising after the moratorium (excluding the claims of related parties) and to abstain from making material disposals of assets and taking actions beyond the ordinary course of business.

3.4.3. How do restructuring proceedings affect existing contracts?

Apart from the prohibition on termination or withdrawal (see Section 3.4.2.), existing contracts are to be observed as before; new contracts may be subject to the trustee's approval if not considered as made within the ordinary scope of business. If the counterparty is obliged to perform under the existing contract in advance, it may refuse the performance until it has been provided some security or counter-performance.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Sections 2.4.3., 3.4.2., and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

In a formal restructuring, third-party liabilities remain unaffected by the plan.

The rights of creditors against third parties under a public preventive restructuring also remain unaffected by the plan, unless the given creditor agreed otherwise in writing.

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

Formal restructuring

A. *Restructuring opinion and petition*

A restructuring opinion prepared by a trustee foregoes formal restructuring proceedings. This can be initiated by the debtor or a creditor; however, the creditor may do so only if the debtor cooperates and agrees. If the trustee recommends restructuring, the debtor or creditor (depending on who asked for the restructuring opinion) can file a restructuring petition.

Similar to bankruptcy proceedings, restructuring proceedings also have two initial phases: commencement and approval of restructuring.

B. *Commencement of restructuring proceeding*

The commencement of restructuring proceedings has similar effects as the commencement of bankruptcy (e.g., the debtor is obliged to limit its activities to the ordinary course of business); see Section 3.4.2. for further effects.

C. *Approval of restructuring*

If the conditions are met, the court approves the restructuring and the formal restructuring proceedings start: the restructuring trustee is appointed, and creditors are asked to register their claims. In contrast to bankruptcy proceedings, the debtor remains in charge of its assets, but its legal acts are subject to approval by the restructuring trustee to the extent stipulated by the court. See Section 3.2. for details on the approval of the restructuring plan.

Similar to bankruptcy, the trustee is the first supervisory authority over the debtor, manages the registration of claims, and creditors' meeting, and prepares the plan if the motion was filed by the creditor and not the debtor.

The court has another supervisory position (including over the trustee), can cancel the restructuring if the conditions are not met or breached (which puts the debtor into bankruptcy), and plays the final approval role over the restructuring plan.

Creditors have to register their claims (together with security if applicable) within 30 from the approval of the restructuring; otherwise, they are not considered and are thus unenforceable. Creditors are represented through the creditors' meeting and the creditors' committee (similar to bankruptcy).

Shareholders can also become involved, in particular, if their rights are affected by the plan. The debtor manages the assets subject to the potential trustee's consent.

Preventive restructuring

As explained in Section 3.2., preventive restructuring is a voluntary option of the debtor to avoid threatened insolvency.

As opposed to formal restructuring, creditors do not have to register their claims in public preventive restructuring. The debtor is obliged to prepare the list of all creditors together with an application for public preventive restructuring, whereby creditors may review the list and ask for correction or completion within 30 days after the approval of the preventive restructuring.

Some creditors are not affected by preventive restructurings, such as employees, small creditors, and tax/customs authorities.

Preventive restructuring is less formal and more flexible than formal restructuring, whereby a professional advisor (such as a lawyer or an economic advisor), who has the trust of relevant creditors, takes the main role in guiding the debtor through the whole process, managing it, preparing the plan and communicating it with creditors.

The Act on Preventive Restructuring requires a special exam for trustees dealing with preventive restructurings, as such trustees are expected to be more experienced – having sufficient expertise to manage preventive restructurings.

3.7. How are restructuring proceedings normally finalized?

All forms of restructuring finish on the approval of the restructuring plan by the court as the last authority.

If the court rejects the plan, it also terminates the formal restructuring. Once such a decision is valid and effective, the court declares the debtor bankrupt.

In the case of preventive restructuring, the rejection of the plan does not mean automatic bankruptcy as in the case of formal restructuring. The debtor may adopt other measures to save its business.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Processes within the EU are governed by the Regulation, setting up details on determining the center of main interests, secondary proceedings, mutual cooperation, etc.

Otherwise, in the absence of an international agreement or treaty, the recognition of foreign proceedings by Slovak courts is based on the request of the foreign trustee and the following:

- the mutual recognition principle, i.e., the foreign state would also recognize Slovak insolvency proceedings if applicable;
- the existence of a certified interest by a foreign trustee regarding Slovakia, which is typically given if the debtor has any assets in Slovakia;
- the absence of any other pending insolvency proceedings in Slovakia or in any other foreign country.

The court may recognize some effects of Slovak insolvency proceedings under Slovak law on foreign proceedings or vice versa, or determine that certain effects of foreign insolvency proceedings do not apply in Slovakia.

Irrespective of the recognition of foreign proceedings, creditors may also initiate a Slovak insolvency proceeding against a debtor governed by Slovak law. In such a case, the recognition of foreign proceedings is canceled by law.

4.2. What are the preconditions for recognizing foreign decisions?

See Section 4.1.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

Cooperation is quite frequent within the EU as it is governed by the Regulation.

Cooperation with non-EU countries is governed by the principles in Section 4.2. However, such cases are very rare, as generally conducting business in Slovakia on a permanent basis requires some form of legal establishment.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Foreign creditors are generally treated in the same manner as Slovak creditors. Foreign creditors have to register their claims in accordance with Slovak insolvency law and using the mandatory electronic forms prescribed by law. Foreign creditors from the EU may also register their claims using the electronic form under Article 55 of the Regulation.

Foreign creditors that do not have a seat or branch office in Slovakia are obliged to appoint a representative for delivery in Slovakia and notify the trustee of such an appointment. Otherwise, all documents will be delivered to such foreign creditors only by publication in the Commercial Journal.

In practice, trustees tend to inform all foreign creditors known to them in writing in English of basic information about Slovak insolvency, the need to register a claim, deadlines, etc.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Both processes try to balance the position of the debtor and creditors. Creditors are typically more protected, as the debtor holds all information about its situation, business, accounts, etc., and can thus decide which information it shares with creditors. For example, even if restructurings enable debtors to save their business, it is generally up to creditors to approve the restructuring plan, although the court may replace the consent of some groups with its decision, subject to certain conditions.

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SENICA

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The following legislation and international instruments apply to restructuring and insolvency matters in Slovenia:

- The *Act on Financial Operations, Insolvency Procedures and Compulsory Winding Up* (*ZFPPIPP*, Insolvency Act);
- The *Act on Aid for Rescue and Restructuring of Companies and Cooperatives in Trouble* (*ZPRPGDZT*);
- The *Act on the use of funds obtained from the purchase price on the basis of the Act on the Ownership Transformation of Companies* (*ZUKLPP*);
- The *Regulation on the content of the restructuring program, insurance, control and record-keeping in the allocation of aid for the rescue and restructuring of companies and cooperatives in difficulty*;
- *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty*;
- *Regulation (EU) 2015/848*.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

In 2007, the Insolvency Act was adopted and has been amended seven times between 2007 and 2016. The latest amendment *ZFPPIPP-G* entered into force on April 26, 2016. Since 2016, only individual provisions have been partially corrected by decisions of the Constitutional Court of the Republic of Slovenia and adapted to deal with the COVID-19 epidemic.

1.3. Are there any special regimes applying to specific sectors?

Special regimes apply to banks, insurance, brokerage, and fund management companies, regulated primarily by industry specifics legislation. In general, the Insolvency Act in large parts applies also for these legal entities, however specific deviations, like, for example, the process of appointment of a bankruptcy receiver, apply.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

Yes, Slovenia adopted two acts: The *Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigate Its Consequences for Citizens and the Economy* (*ZIUZEOP*) and the *Act on Intervention Measures to Help Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic* (*ZIUPOPDVE*).

The *ZIUPOPDVE* stipulates that management is not obliged to file a proposal for the initiation of bankruptcy proceedings or compulsory settlement proceedings if the long-term insolvency of the company is the result of the declaration of an epidemic. This measure was valid until March 31, 2021.

Further, the act stipulates that the period for which the court can postpone the decision on the creditor's proposal for the initiation of bankruptcy, and the period during which the debtor justifies their request for the postponement of the decision, is four months if insolvency of the debtor as a result of the declaration of an epidemic. This measure is used in bankruptcy proceedings, which are initiated at the proposal of a creditor until March 31, 2021, at the latest.

The same provisions are is also provided in the *ZIUZEOP*.

The *ZIUZEOP* establishes an irrebuttable presumption that a legal entity, entrepreneur, or private individual has become permanently insolvent even if they are more than one month late with the payment of wages and contributions to workers, from the time they received reimbursements of paid wage compensations and contributions.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Currently, no changes related to restructuring and insolvency legislation are envisaged.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Slovenia has incorporated the *UNCITRAL Legislative Guide on Insolvency Law* into the Insolvency Act, so we act in accordance with the *UNCITRAL Model Law on Enterprise Group Insolvency*.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

The Slovenian Insolvency Act does not have a specific insolvency test, however under the Insolvency Act, once a debtor becomes insolvent, management must limit its operations, treat all creditors equally, and either financially restructure the company or file for insolvency.

Insolvency shall be the situation where the debtor **(i)** within an extended period of time is not able to settle all their liabilities

falling due within such period of time (*continuous insolvency*) or **(ii)** becomes insolvent.

The decision on whether a company is insolvent (**i, ii**) is left to management, which is considered to include corporate finance professionals. For this purpose, the Insolvency Act sets out certain rebuttable and irrebuttable presumptions to assist management in assessing the occurrence of insolvency as follows:

I. Unless it is proven otherwise, a debtor shall be considered *continuously insolvent*:

a) for a debtor who is a legal person, businessperson, or a private person:

- if they are more than two months in arrears in meeting one or more obligations in a total amount exceeding 20% of the amount of their liabilities shown in the last published annual report or
- if the funds in their accounts are insufficient for executing the enforcement order or realizing the enforcement draft, and such a situation continues without interruption for a period of 60 days or with interruptions for more than 60 days of the most recent 90-day period, and such a situation continues on the date prior to filing the petition for the initiation of insolvency proceedings, or
- if they do not have at least one bank account open with payment services provision in the Republic of Slovenia and if they have not settled their liabilities under the enforcement order within 60 days of the date when the enforcement order becomes final,

b) for a debtor for whom compulsory settlement or simplified compulsory settlement proceedings have been initiated and ended by a final confirmation of compulsory settlement or simplified compulsory settlement if they are more than two months in arrears with:

- payment of their liabilities under the confirmed compulsory settlement or simplified compulsory settlement or
- payment of their liabilities arising prior to the commencement of compulsory settlement or simplified compulsory settlement proceedings to creditors with the right to separate satisfaction, or
- the scheduled implementation of other financial restructuring measures defined by the financial restructuring plan,

c) for a debtor who is a consumer:

- if they are delayed for more than two months in meeting one or more obligations in the total amount exceeding the amount of three times the amount of their salary, compensation, or other remunerations received in a regular manner in periods not longer than two months, or
- if they are unemployed and do not receive any other regular remunerations and are delayed in meeting their obligations for more than two months, in an amount exceeding EUR 1,000.

II. Unless it is proven otherwise, a debtor shall be considered insolvent:

- if the value of their assets is lesser than the sum of their liabilities (overindebtedness),
- for a debtor who is a company: also if the loss for the current year together with the losses brought forward amounts to one-half of the share capital, and such loss cannot be deducted from profit brought forward or from reserves.

It shall apply and evidence to the contrary shall not be allowed, that a legal person, entrepreneur, or private person becomes illiquid for an extended period of time if it is delayed for more than two months:

- in paying wages to its employees up to the level of the minimum wage or
- in paying taxes and contributions which the payer must calculate and pay together with the wages to its employees,
- and such a situation continues on the day prior to filing a petition for bankruptcy.

If a debtor underwent compulsory settlement proceedings or simplified compulsory settlement which was finalized by a final confirmation of the compulsory settlement or simplified compulsory settlement, it shall apply, if not proven otherwise, that the final decision on the confirmation of compulsory settlement or simplified compulsory settlement terminated the status of the debtor's insolvency.

If the company becomes insolvent, management must submit a report on the financial restructuring measures to the supervisory board (or to the shareholders) within one month of the insolvency. Such a report must include a description of the company's financial position, an analysis of the causes of the insolvency, and management's opinion as to whether there is at least a 50% probability that the financial restructuring of the company can be successfully implemented so as to restore the company's solvency in the short and long term. On the basis of these conclusions, management determines the next steps (taking action, calling a general meeting, initiating insolvency proceedings, etc.).

If management or (if appointed) the supervisory board of a company have not discharged their respective duties, their members will be jointly and severally liable for any damages incurred by the creditors due to the members' failure to achieve complete payment in bankruptcy proceedings. The Insolvency act specifies rules on damage liability, exemptions, limitations

of liability, and other specifics. In case the company cannot pay creditors' claims, a claim for damages against the management board and supervisory board members can be exercised by creditors, and by a bankruptcy administrator for the benefit of creditors in a bankruptcy proceeding.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Insolvency proceedings established by law in our law system are:

- the compulsory settlement procedure;
- the *simplified forced settlement* procedure; and
- *bankruptcy* proceedings.

Bankruptcy proceedings are divided into *bankruptcy proceedings against a legal entity*, *personal bankruptcy proceedings* and *estate bankruptcy proceedings*.

2.3. Who has the right to initiate insolvency proceedings?

A proposal to initiate bankruptcy proceedings is eligible to be filed by:

- a debtor,
- a personally liable partner of the debtor,
- a creditor who is likely to demonstrate:
  - their claim against the debtor against whom they propose to initiate proceedings, and
  - the circumstance that the debtor is late in paying this claim for more than two months,
- the Public Guarantee, Alimony and Disability Fund of the Republic of Slovenia, which probably shows:
  - workers' claims against the debtor, against whom they propose to initiate proceedings, and
  - the fact that the debtor is late in paying these claims for more than two months.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

In a bankruptcy proceeding, management does not continue to operate the business, for the compulsory settlement proceeding please see Section 3.4.1.

They are replaced by an administrator who, in the bankruptcy proceedings, manages the affairs of the insolvent debtor in accordance with the needs of the proceedings and represents the debtor:

a. in procedural and other legal actions related to the examination of claims and separation and exclusion rights,

b. in procedural and other actions related to contesting the legal actions of an insolvent debtor,

c. in legal transactions and other actions necessary for the liquidation of the bankruptcy estate,

d. in exercising resignation and other rights acquired by the insolvent debtor as a legal consequence of the initiation of bankruptcy proceedings, and

e. in other legal transactions that the insolvent debtor can carry out in accordance with the Insolvency Act.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

The initiation of bankruptcy proceedings has the following legal consequences for enforcement or security proceedings that were initiated against the insolvent debtor before the commencement of the proceedings:

a. if in the enforcement procedure or in the security procedure with a lien on immovable property or with a lien on movable property, the creditor has not yet obtained the right to separate by the commencement of the bankruptcy procedure, the enforcement or security procedure is stopped when the bankruptcy procedure is started,

b. if the creditor in the enforcement procedure or in the security procedure with a lien on real estate or with a lien on movable property obtained the right to separate before the start of bankruptcy proceedings and if the sale of the property that is the subject of the separation has not yet been completed before the commencement of the bankruptcy proceedings in the enforcement procedure rights, the enforcement or security procedure is interrupted by the initiation of bankruptcy proceedings,

c. if the creditor in the enforcement procedure obtained the right to separate before the commencement of the bankruptcy procedure and if the property subject to the right of divorce was sold in the enforcement procedure before the start of the bankruptcy procedure, the commencement of the bankruptcy procedure does not affect the course of this enforcement procedure.

d. the security procedure with a temporary injunction or a preliminary injunction is stopped with the commencement of the bankruptcy procedure and all actions taken in this procedure are annulled.

The legal consequences of insolvency proceedings are gov-

erned by the law of the country where the insolvency proceedings are opened unless otherwise provided by law in the particular case. Certain legal consequences of insolvency proceedings have the same effect in an EU Member State as in the Republic of Slovenia and arise at the moment determined by Slovenian law for the occurrence of those legal consequences.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

Upon the initiation of bankruptcy proceedings, the debtor in bankruptcy shall acquire the right to withdraw from a mutually unfulfilled bilateral contract and may exercise their right to withdraw from the contract within three months subject to the court's approval.

If the other party to the contract is the first to fulfill the mutually unfulfilled bilateral contract, a right shall arise to such a party upon the initiation of bankruptcy proceedings to decline such fulfillment as long as the debtor in bankruptcy does not carry out fulfillment or provide it with adequate security.

If the time limit for fulfillment of the liabilities of a debtor in bankruptcy on the basis of a mutually unfulfilled bilateral contract, which is determined as an essential element of such contract, expires after the initiation of bankruptcy proceedings, and the debtor in bankruptcy does not fulfill their liability within such a time limit, the contract shall be rescinded and the other party to the contract shall have no right to persist in fulfilling of the liability.

In order for an act of a debtor to be voidable, the cumulative prerequisites set out in Insolvency Act must be met, namely: 1. the act was performed during the period of voidability (depending on circumstances 12 or 36 months before the initiation of the insolvency procedure), 2. the act results in unequal treatment of creditors (*objective condition of avoidability*); and 3. the person in whose favor the act was performed knew or ought to have known at the time the act was performed that the debtor was insolvent (*subjective condition of avoidability*). A rebut action shall be filed within 12 months following the final notice of initiation of bankruptcy proceedings.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

■ Bankruptcy proceedings are initiated by an application for the initiation of bankruptcy proceedings by an eligible claimant. Within 15 days after receiving the creditor's proposal for the initiation of bankruptcy proceedings, the debtor may object that they are not insolvent or that the creditor's claim does not exist.

■ The court decides on the application and issues a resolution initiating the bankruptcy proceedings.

■ The court notifies the creditors of the initiation of bankruptcy proceedings by means of a summons published on the homepage of the AJPES – the Agency of the Republic of Slovenia for Public Legal Records and Related Services in Slovenian language. Foreign creditors are not notified separately. With the publication, all deadlines start to run.

■ The creditor (also applicable to foreign creditors) must declare their claim against the insolvent debtor within three months of the announcement of the initiation of the bankruptcy proceedings. If the creditor misses the time limit for filing the claim, their claim in relation to the debtor in bankruptcy shall terminate and the court shall reject the late filing of the claim if the debtor is a legal entity.

■ The insolvency administrator takes over all the business, as they conduct the bankruptcy proceedings.

■ A creditors' committee may be formed at the request of creditors. It is a body of creditors that in insolvency proceedings performs procedural actions.

■ Within one month after the expiry of the deadline for reporting a claim, the administrator must make a definite statement about each timely reported claim, whether they acknowledge or deny it. The administrator must rule on the timely reported claims by submitting a list to the court.

■ The creditor may file an objection against the basic list of verified claims or may dispute a timely reported claim of another creditor.

■ If an objection has been filed against the basic list of verified claims, the administrator must submit to the court a supplemented list of tested claims, with which they complete the basic list of tested claims.

■ The administrator then submits to the court a final list of the claims tested.

■ Follows the realization of the general and special assets of the bankruptcy estate.

■ A final distribution of the bankruptcy estate is made, out of which creditors are repaid.

■ The administrator must submit their final report to the court within one month after the final distribution. The court issues an order terminating the insolvency proceedings on the basis of the insolvency administrator's final report.

The bankrupt debtor is *ex officio* deleted from the register on the basis of a final decision on the termination of the bankruptcy proceedings.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

Priority claims are the following unsecured claims:

1. wages and salary compensation for the last six months before the initiation of insolvency proceedings,

2. compensation for injuries related to work for the debtor and occupational diseases,

3. unpaid severance pay for termination of employment before the start of bankruptcy proceedings, which are due to employees according to the law governing employment relationships, but no more than the amount of severance pay determined for an employee whose employment contract is terminated by the employer for business reasons,

4. wages and salary compensation to employees whose work becomes unnecessary due to the initiation of bankruptcy proceedings, for the period from the initiation of bankruptcy proceedings until the expiration of the notice period,

5. severance payments to workers whose employment contracts were terminated by the manager because their work became unnecessary due to the initiation of bankruptcy proceedings or during the proceedings,

6. taxes and contributions that the payer must calculate or pay at the same time as the payments from points 1, 3, 4, and 5 of this section,

7. compensation for unused annual leave for the current calendar year,

8. claims from credits given on the basis of the law regulating aid for rescue and restructuring of companies and cooperatives in difficulty, and guarantees given for these credits.

9. unsecured claims for the payment of contributions that arose before the initiation of insolvency proceedings.

Subordinated claims are unsecured claims that, based on the legal relationship between the debtor and creditor, if the debtor becomes insolvent, are paid only after payment of other unsecured claims against the debtor.

Secured creditors receive a separate payment from the proceeds of the sale of encumbered assets which are subject to the right to separate settlement (special distribution estate). Where there is more than one secured creditor on the same encumbered assets, the creditors will receive payment according to the priority of rights to separate settlements.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

In bankruptcy proceedings, the creditor must register their claim against the insolvent debtor within three months after the announcement of the initiation of the proceedings, unless otherwise specified.

The court must issue a decision deciding on the initiation of bankruptcy proceedings within three working days.

The bankruptcy proceedings are finalized by the court issuing an order terminating the insolvency proceedings on the basis of the insolvency administrator's final report.

The bankrupt debtor is ex officio deleted from the register on the basis of a final decision on the termination of the bankruptcy proceedings.

Please also see Section 2.5.

2.8. Are there any liabilities that survive the insolvency proceedings?

Upon deletion from the register, the debtor ceases to exist as a legal person, so there are no liabilities that survive the bankruptcy proceedings.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

Formal and informal restructuring proceedings available in Slovenia are

- the *extrajudicial restructuring* procedure;
- the preventive restructuring procedure;
- the compulsory settlement procedure; and
- the *simplified forced settlement* procedure.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

The entry requirements are the same as described in Section 2.1.

If a company becomes insolvent, its management must submit a report on financial restructuring measures to the supervisory board within one month of the insolvency.

The shareholders and, if appointed, the supervisory board must give an opinion on the report on the financial restructur-

ing measures received within five working days, including an assessment of whether the company is insolvent and whether the proposed measures are necessary and appropriate.

Financial restructuring measures are then implemented and must contain:

- a description of the facts and circumstances from which it follows that the debtor is insolvent,
- a proposal for forced settlement,
- an assessment of the share of payment of unsecured creditors' claims and the deadlines for their payment, if bankruptcy proceedings were initiated against the debtor,
- a description of other financial restructuring measures that the debtor will implement, and for each of these measures an implementation schedule, an estimate of implementation costs, and an assessment of the effects of the implementation of the measure on the elimination of the causes of insolvency, and the short-term and long-term solvency of the debtor,
- a description of the facts and circumstances from which it follows that the debtor will be able to fulfill all his obligations in accordance with the proposed forced settlement.

Where compulsory administration of the company also relates to secured claims, the financial restructuring plan must also contain a more detailed description of the measures and the manner in which the compulsory administration will be implemented in order to restructure the secured claims.

3.3. Who has the right to initiate formal restructuring proceedings?

A proposal to start the compulsory settlement procedure and simplified forced settlement procedure is entitled to be submitted by:

- the debtor;
- the personally liable partner of the debtor; and
- creditors who are joint holders of financial claims against the debtor, the sum of which exceeds 20% of the debtor's financial obligations, as shown in the last publicly published annual report of the debtor.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

Even though the authors of the Insolvency Act claimed that they have basically copied the German insolvency Act (*Insolvenzordnung*), this is not true, as, in Slovenia, in the compulsory settlement procedure, the company's management continues to operate the business.

In insolvency proceedings, the administrator supervises the insolvent debtor's business and the fulfillment of its obligations. For this purpose, the insolvent debtor must provide him with all the information necessary for supervision and enable him to inspect his business books and documentation.

If during the supervision the administrator finds that there is a reason for objection to conducting the forced settlement procedure, they must file an objection against conducting the forced settlement procedure.

The administrator must prepare a report on the progress of the procedure (a regular report) for each calendar quarter.

Within one month after the expiry of the deadline for reporting a claim the administrator must make a definite statement about each timely reported claim, whether they acknowledge or deny it. The administrator must rule on the timely reported claims by submitting the basic list of tested claims.

If an objection has been filed against the basic list of tested claims, the administrator must submit to the court a supplemented list of tested claims.

The administrator must also submit to the court a final list of verified claims.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

Enforcement or security proceedings that were initiated against an insolvent debtor before the commencement of the compulsory settlement procedure shall be terminated upon the commencement of the compulsory settlement procedure.

The enforcement or security procedure may be continued only on the basis of the decision of the court conducting the forced settlement procedure.

3.4.3. How do restructuring proceedings affect existing contracts?

The creditor's non-monetary claim against the insolvent debtor shall be converted into a monetary claim at the market value upon initiation of the compulsory settlement procedure.

Monetary and non-monetary claims of creditors against the insolvent debtor, the subject of which are periodic duties, are converted into one-time monetary claims upon the initiation of the forced settlement procedure.

Monetary claims of creditors against the insolvent debtor, which are expressed in a foreign currency, are converted into claims expressed in euros at the start of the forced settlement procedure, at the exchange rate published or set and published by the Bank of Slovenia and valid on the day of the start of the forced settlement procedure.

If at the start of the forced settlement procedure there is a claim of an individual creditor against the insolvent debtor and a counterclaim of the insolvent debtor against this creditor, the claims are considered to be set off with the commencement of the forced settlement procedure.

Neither the initiation of the forced settlement process nor the confirmed forced settlement has an effect on qualified financial contracts and offset arrangements (for example closed-out netting agreements) and other qualified contracts, as defined by the Insolvency Act.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

3.5. Can third-party liabilities be released through restructuring proceedings?

A confirmed compulsory settlement shall not affect claims by creditors against third-parties (e.g., guarantors, joint and several fellow debtors of an insolvent debtor, and persons liable to recourse).

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

- Restructuring proceedings are initiated by an application for the initiate of restructuring proceedings by an eligible claimant.
- The court shall notify the creditors of the initiation of the forced settlement procedure by means of a summons.
- Possible objections follow.
- Preparation of a financial restructuring plan.
- Preparation of the business valuation report.
- The creditor must register his claim against the insolvent debtor within one month after the announcement of the initiation of this procedure.
- Formation of the creditors' committee.
- The court appoints an administrator to supervise the restructuring proceedings.
- Within one month after the expiry of the deadline for reporting a claim, the administrator must make a definite statement about each timely reported claim, whether they acknowledge or deny it. The administrator must rule on the timely reported claims by submitting a list to the court.
- Creditors vote on the compulsory settlement, followed by a confirmation of the compulsory settlement by the court.
- For each calendar quarter, management must compile a report on the implementation of financial restructuring measures.
- End of compulsory settlement once all obligations under the restructuring plan have been met.

The court with its decision on the confirmation of the agreement on financial restructuring determines that the approved agreement on financial restructuring has an effect:

- for the claims of all creditors who agreed to the conclusion of the agreement,
- for ordinary financial claims, listed in the basic list of financial claims, of those creditors who did not agree to the conclusion of the agreement, and
- for secured financial claims, listed in the basic list of financial claims, of those creditors who did not agree to the conclusion of the agreement.

3.7. How are restructuring proceedings normally finalized?

As described above, forced settlement finalizes once all obligations under the forced settlement plan have been met.

According to the *Slovenian Statistical Report on Insolvency Cases* (S-INS) in 2021, nine compulsory settlement proceedings were pending before the court, four of which have been confirmed (the financial restructuring plan has been approved) and four of them have been rejected (initiation of the bankruptcy procedure).

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Yes, the domestic courts are competent to decide on the recognition of foreign insolvency proceedings and to cooperate with foreign courts, which have actual jurisdiction over domestic insolvency proceedings.

4.2. What are the preconditions for recognizing foreign decisions?

1. A request for recognition of a foreign court proceeding due to insolvency may be filed by a person who was appointed as administrator in this procedure.

2. The request for recognition must be accompanied by:

- a certified copy of the decision of a foreign court on the initiation of insolvency proceedings or
- a statement from a foreign court confirming that foreign insolvency proceedings have been initiated and a foreign administrator has been appointed, and
- a translation of the documents into the language in official use at the court.

3. The foreign administrator must attach their statement to the request for recognition, in which they list all foreign insolvency proceedings pending against the debtor of which they are aware.

For the recognition of foreign proceedings due to insolvency, the general rules on the recognition and enforcement of foreign court decisions, specified in the law governing private international law and procedure, apply.

If the insolvency proceeding is held in another Member State, they have direct legal effect in the Republic of Slovenia. The rules of *Regulation (EU) 2015/848* and the specific rules of law are laid down in the Insolvency Act.

The court may determine only those legal consequences of a foreign insolvency proceeding that enable the interests of creditors and other persons, including the debtor, for whom these legal consequences are to be adequately protected and do not contravene Slovenian *ordre public*.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

The Insolvency Act provides the possibility of coordination between domestic and foreign insolvency courts and appointed administrators, where such coordination may be executed in any form which provides for the realization of the purpose of cooperation.

The Insolvency Act also expressly states that a Slovenian court may refuse to recognize foreign insolvency proceedings or a request on the part of a foreign court or receiver for assistance or cooperation if this would contravene Slovenian *ordre public*.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Foreign creditors are treated in all respects equally to domestic creditors with the exception of the publication of the initiation of the insolvency proceeding by the court on the AJPES.

Even though the Insolvency Act provides that the appointed administrator must, as soon as possible and not later than within one month following the initiation of domestic bankruptcy proceedings, provide all known foreign creditors of the debtor in bankruptcy with a notification of the initiation of bankruptcy proceedings, foreign creditors have less time for filing their claims and risk the debtor not recording their claims in their books.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Initially, the Slovenian insolvency law was more debtor-friendly but in recent years, creditors have come to the fore, gaining more opportunities to participate actively in insolvency proceedings. Creditors are, for example in a forced settlement proceeding, able to restructure the debtor independently of the debtor (decisions of the general meeting) and have the option of a debt-to-equity swap. In this way, they can squeeze out the existing shareholders and take over the debtor. Since the last overhaul of the Insolvency Act, the scales are thus tipped in favor of creditors.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

The main legislative and regulatory provisions that govern the Turkish restructuring and insolvency system are regulated under the *Enforcement and Bankruptcy Law no. 2004* (EBL) while the *Turkish Commercial Code no. 6102* and *Banking Law no. 5411* contain some provisions on the matter specific to banks and financial institutions. In addition, the *Law on the Procedure for the Collection of Public Receivables no. 6183* has a scope of application in insolvency matters where a public authority is a creditor. No international instruments apply in respect thereof.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

The legal regime is established with sporadic legislative changes.

1.3. Are there any special regimes applying to specific sectors?

No special regimes apply to specific sectors.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

During the COVID-19 pandemic, numerous temporary measures were introduced in Turkish law to prevent the loss of rights due to the inability to take legal actions. Under *Law no. 7226*, in general, the duration of litigation and the duration of certain legal proceedings, for instance, the statute of limitations and final terms, have been suspended in Turkish law. However, since all these regulations were provisional, they have been lifted with the decline in the COVID-19 pandemic. Furthermore, some amendments were introduced to the EBL in the meantime. Although there is no preamble for the amendments, the amendment regarding the introduction of e-auction sale of seized assets might be interpreted as a change in response to the COVID-19 pandemic since from now on, the sale of confiscated assets will be conducted entirely in an electronic environment.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Currently, there are no proposed or upcoming changes to the restructuring insolvency regime in Turkey.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Turkey has not adopted or, to the best of our knowledge, is not considering adopting the *UNCITRAL Model Law on Enterprise Group Insolvency*.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test, and what are the consequences for failure to meet these obligations?

By law, directors or officers of the debtor company must prudentially assess whether they should file for insolvency and that they should hence not use the insolvency institution for fraudulent activities. Within this respect, if they do not file for insolvency when necessary or file for insolvency fraudulently, or intentionally reduce the assets held by debtors, a civil lawsuit may be brought against them.

In particular, a lawsuit for the annulment of the disposition, regulated in the EBL Art. 277 may be filed by the creditors against the debtors in case the debtor company malevolently tries to sell out its assets. In this respect, the creditor, who cannot collect his/her receivables through insolvency proceedings, may file the said lawsuit against the debtor and the third party who malevolently tried to sell/buy out the debtor's properties in the last five years.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

Under the EBL, insolvency proceedings can be initiated by general insolvency proceedings based on the creditor's claim as per Art. 155-166 of the EBL; the insolvency method pertaining to commercial papers and bills as per Art. 167 and 171-176 of the EBL; or the direct insolvency method through a lawsuit as per Art. 177-178 of the EBL.

2.3. Who has the right to initiate insolvency proceedings?

Under Turkish law, both debtor and creditor are entitled to initiate insolvency proceedings depending on the type of insolvency procedure. In principle, general insolvency claims and insolvency methods pertaining to commercial papers and bills could solely be undertaken by the creditor. On the other hand, in the direct insolvency method, the creditor, the debtor, the company itself, or the liquidation administrator has the right to initiate insolvency proceedings.

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business, and/or is the debtor subject to supervision?

Once the insolvency proceedings are initiated, the power of disposition is transferred to the bankrupt's estate under EBL Art. 191. Therefore, the debtor company's representative has no authority or control over the debtor company's receivables which are included in the bankrupt's estate. However, in practice, the bankrupt estate usually manages the process with the unofficial involvement of the debtor company's representative.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

In Turkish law, the institution moratorium, also known as *concordat*, was introduced to the EBL on February 28, 2018, replacing the institution of the postponement of insolvency. Concordat is a legal institution that allows companies to restructure their debts under the supervision of the court and thus, enabling creditors to collect their receivables in a certain plan and period. In a nutshell, the preliminary project of the concordat, the comparative benefit table, the audit report giving reasonable assurance, the list showing the creditors, the amount of receivables, and the status of receivable privileges, are all documents that merchant debtors must submit to the court in order to declare a concordat. Non-merchant debtors must also submit documents outlining the status of their assets.

For the concordat to have an extraterritorial effect, a bilateral or multilateral agreement must be signed between the country of enforcement and Turkey. Yet currently, such an agreement regarding concordat with any country does not exist. In principle, creditors residing in foreign countries can claim their receivables according to the terms of the concordat. Still, they are legally not obliged to recognize the concordat or its terms and conditions.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

Depending on the type of the contract, the contractual relationship may terminate or not. At first, some particular kinds of contracts terminate *ex officio* in case of insolvency, including attorney agreements, insurance contracts, etc. On the other hand, certain contracts which are not explicitly stated in the applicable laws will still be in effect, e.g., sales contracts, ordinary lease contracts, and bailment contracts. Depending on the performance stage of a contract, different legal results may arise for such contracts. For instance, if the purchase price has been fully paid at the time of the debtor's insolvency, whereas the goods have not yet been delivered, the creditor may request the cost of the goods from the insolvency office as an insolvency claim. Another scenario is that, in the case of insolvency, since the debtor's power of disposal is completely transferred to the bankrupt's estate, the estate may become a party to the said contract and may decide to deliver the goods directly to the creditor. Nevertheless, within the framework of freedom of contract, insolvency proceedings could always be incorporated into the terms of a contract as grounds for termination.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

The general insolvency proceeding, based on the creditor's claim and the insolvency method pertaining to commercial papers and bills are similar in several aspects. In both procedures, the creditor first applies to the enforcement office and files an insolvency proceeding against the debtor, accordingly, the enforcement office sends an insolvency payment order to the debtor. The only difference is the nature of the document on which the creditor bases their receivables: while no documentation is required in the general insolvency method, commercial papers and bills are needed for the latter.

On the other hand, in the direct insolvency method, it is not essential for the creditor to file an insolvency claim or to send a payment order against the debtor. If one of the legal reasons specified under EBL Art. 177 is present [e.g., in case the debtor's place of residence is unknown], the creditor, debtor, company itself, or liquidation administrator may immediately apply to the commercial court and ask for the debtor's insolvency. Typical roles for all insolvency proceedings can be listed as follows:

- The debtor: Once the proceeding is initiated, the debtor has no power of disposition over receivables included in the bankrupt's estate until the completion of the insolvency proceedings.
- The directors of the debtor: The directors of the debtor company whose insolvency is requested are no longer permitted to act or dispose of any assets.
- The shareholders of the debtor: In case a shareholder is also a member of the board in a joint-stock company, such a shareholder has to return the money which they have taken under the title of dividend share or another title in return for the services to the creditors of the company within last three years before the opening of the insolvency lawsuit.
- The secured creditors: According to EBL Art. 195, debts

of the insolvent become due with filing an insolvency lawsuit except for receivables secured by the pledge of an immovable.

■ The unsecured creditors: The claims of unsecured creditors must be registered in the record of claims during the bankruptcy proceedings.

■ The insolvency administrator: The insolvency officeholder mainly sells the pledged goods and reimburses the creditor according to EBL Art. 185. Also, they have the right to file an action of nullity according to Art. 187, regulate the record of claims and determine the order in which claims are to be satisfied according to Art. 226.

■ The court: When an insolvency request is made, the court might initially take any precautionary actions that it considers necessary to protect the creditors' interests. The court also will render the insolvency and closing decision. The court has hence an exclusive authority upon the insolvency process.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

According to EBL articles 206 and 207, specific stakeholders' claims are prioritized during insolvency proceedings as pledged receivables, public receivables, privileged receivables, and non-privileged receivables. However, privileged receivables, which are in third place, are also ranked among each other. In this respect, the order of the privileged receivables are as follows: employees' receivables, all kinds of alimony receivables arising from family law that must be paid in cash, receivables of persons whose property has been left to the administration of the bankrupt due to guardianship, and receivables specified as privileged in related laws. The creditor may file an objection lawsuit against both the creditor and the insolvency administration within 15 days of the announcement of the list of creditors, according to EBL Art. 235.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

Although it varies depending on each company's financial situation, insolvency proceedings could take years. Completing the entire insolvency process results in liquidating the debtor's assets and issuing a certificate of insolvency if the creditors are not fully satisfied, and this, in practice, is often a time-consuming process.

2.8. Are there any liabilities that survive the insolvency proceedings?

In principle, there won't be a post-liability for the debtor after the decision of insolvency, except for incomplete debts. In this respect, a certificate of insolvency (*aciz vesikasi*) shall be issued for the creditors who are not fully satisfied after the liquidation process. Accordingly, with the certificate of insolvency, the creditor may be able to pursue new proceedings against the debtor if the debtor acquires new assets according to EBL Art. 251.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

Under Turkish law, there are three formal restructuring proceedings. The first one is the *restructuring of corporations and cooperatives via reconciliation* regulated under EBL Art. 309/m (*sermaye sirketleri ve kooperatiflerin uzlasma yoluyla yeniden yapilandirilmasi*). This restructuring proceeding is the legal institution that allows corporations and cooperatives to continue their activities by reconciling with their creditors and adapting their debts and, if necessary, their management organizations to new conditions. The second is the *concordat* regulated under EBL Art. 285, in which the debtor and the creditor agree and promise to pay the debtor's debts on a specific schedule. The third and the last one is *financial restructuring*, regulated under the provisional Art. 32 of the *Banking Law*, enabling the debtors who have credit relations with banks, financial leasing companies, factoring companies, or financing companies operating in Turkey to fulfill their repayment obligations as per the measures to be taken within the scope of the framework agreement regarding their loan debts to these institutions (*finansal yeniden yapilandirma*). Alternatively, the parties may also agree through a deal within the freedom of contract, under the law of obligations, that the debtor will pay its debts by a specific plan and term.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

a. *Restructuring of Corporations and Cooperatives via Reconciliation*

This restructuring proceeding is regulated between the EBL Art. 309/m-309/u and the *Regulation on Restructuring of Corporations and Cooperatives via Reconciliation* (Restructuring Regulation). The first prerequisite is that the company that seeks to benefit from this must be a stock corporation (*sermaye sirketi*) or cooperative (*kooperatif*. Secondly, a restructuring project must be submitted, and this project should include, *inter alia*, the conditions under which the debts will be satisfied, how financial instruments will be obtained to ensure this payment, and what changes will be made in the business. While preparing this restructuring project, the debtor company may undertake to pay some of its debts at previously agreed terms without making any amendments according to EBL Art. 309/m-u. Therefore, unlike the *concordat*, the debtor can divide

the creditors into different groups and make separate offers to each group. However, all other creditors should review and approve each payment offer. Thus, the debtor invites the creditors who will be affected by the project to the negotiation meeting by registered letter with return receipt, and these creditors vote on the restructuring project according to Art. 10 of the Restructuring Regulation. In this context, the debtor is obliged to provide the necessary information and documents to the creditors who will be affected by the project. Afterward, in the event that creditors accept the reconstruction project, the debtor may apply to the commercial court for the approval of the project in question by providing the notarized records of necessary documents.

b. *Concordat*

A *concordat* is typically referred to as an enforcement institution that enables a debtor to improve its financial situation by negotiating with its creditors under the court's supervision. It is regulated under EBL Articles 285 and 309. In the doctrine, *concordat* procedures are mainly classified into three categories. This classification is based on the formation period, process, and context of the *concordat* in question. These are called ordinary *concordat* (*adi konkordato*), *concordat in bankruptcy (iflas ici konkordato*), and *concordat by way of cession of assets* (*malvarliginin terki suretiyle konkordato*).

- In the *ordinary concordat* proceeding, the debtor mainly requests a reduction in its payment obligations by submitting relevant evidencing documents listed in EBL Art. 286 from the commercial court. If the court approves the proposal and documentation, it will appoint a commissioner according to EBL Art. 287. This commissioner will examine the debtor's business activities and provide their opinion on, among others debtor's post concordat financial status. Then, the court will grant a one-year-stay period to the debtor, which can be extended for another six months. The proposal must be approved by half of the creditors and creditors representing half of the total amount of credit, or a quarter of the creditors and the creditors representing two-thirds of the total amount of credit according to Art. 302. The commissioner will then present the proposed ballot and the report to the court and the court will determine and render a concordat decision according to EBL Art. 305.

- In the *concordat in bankruptcy*, all conditions for approval of the *concordat* proposal are identical to those of the ordinary concordat.

- In the *concordat by way of cession of assets*, the proposal additionally must include how the assets will be handled, sold and other points according to EBL Art. 309/b. With the finalization of the decision of approval of the *concordat*, the *concordat* officers carry out the liquidation process since the debtor will lose their power of disposition. These officers are elected by the creditors who decide on the *concordat* and take office after the execution court approves the decision on its selection according to Art. 309/a/II.

c. *Financial Restructuring*

According to the provisional Art. 32 of the *Banking Law* and the *Regulation on Debt Restructuring in the Financial Sector* (Debt Restructuring Regulation) receivables can be restructured within the scope of Framework Agreements prepared by the Banks Association of Turkey with the opinions of the Participation Banks Association of Turkey and the Financial Leasing, Factoring and Financing Companies Association, and following the approval of these agreements by the Banking Regulation and Supervision Board.

3.3. Who has the right to initiate formal restructuring proceedings?

In the *restructuring of corporations and cooperatives via reconciliation*, corporations and cooperatives have a right to initiate the proceeding. Any debtor can apply for *concordat* as stipulated in EBL Art. 285. In this respect, legal entities, and all natural persons, regardless of whether they are merchants or not, can apply to the *concordat* institution. Debtors may apply to the financial restructuring institution regarding their debts if they have a loan arrangement with banks and leasing companies, factoring, or financing organizations operating in Turkey.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

a. *Restructuring of Corporations and Cooperatives via Reconciliation*

Yes, in principle, the company's organs can continue their activities according to EBL Art. 309/r. On the other hand, when applying to the court for the approval of the restructuring project, if the restriction of the power of disposition is explicitly requested, the court may rule in this direction.

b. *Concordat*

According to EBL Art. 287, with the grant of the provisional period, the court will appoint a commissioner, however, the debtor will continue its business activities within the framework of the commissioner's supervision. On the other hand, in concordat by way of cession of assets, upon the finalization of the approval decision regarding the *concordat*, the liquidation process is carried out by the *concordat* officers since the debtor will lose their power of disposition.

c. *Financial Restructuring*

Since this institution only restructures the loans in question, the debtor continues its business activities.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

In all *concordat* proceedings, once the court accepts the *concordat* proposal and relevant documents, the moratorium period commences for the debtor according to EBL Art. 287. In the *restructuring of corporations and cooperatives via reconciliation*, no stay/moratorium institution is available for the debtor prior to the project being presented to the court. If the Framework Agreement is approved, a moratorium can be applied as per the provisions of the agreement according to Art. 6 of the *Debt Restructuring Regulation*.

3.4.3. How do restructuring proceedings affect existing contracts?

a. *Restructuring of Corporations and Cooperatives via Reconciliation*

When the court approves the restructuring project, the provisions stipulated in the project are applied primarily to project-affected creditors. Therefore, previously concluded contract provisions will not be applicable.

b. *Concordat*

Under EBL Art. 296/1, even if there are provisions in the contract stating that the debtor's request for a *concordat* would constitute a breach of the contract, the contract should not be terminated on the grounds that the debtor has applied for *concordat*.

c. *Financial Restructuring*

The Framework Agreement will determine the framework of the restructuring process; as such, it will also determine which existing contracts will continue with the same terms and conditions.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Sections 2.4.3. and 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

There must be an agreement to release third-party liabilities. In principle, third-party liabilities will not terminate *per se*. Under EBL Art. 297, the courts will be able to take all the measures they deem necessary for the preservation of the debtor's assets. Therefore, the courts can decide on third-party liabilities, for instance, to prevent the letters of guarantee from being foreclosed.

3.6. Which steps do restructuring proceedings typically include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)

a. *Restructuring of Corporations and Cooperatives via Reconciliation*

As further explained in Section 3.2., the debtor company first submits the restructuring project to the approval of its creditors and then requests the court to approve the project. Upon the request of the debtor or any creditor, the court may issue injunctions, and these provisional remedies must be limited to creditors affected by the project according to EBL Art. 309/o.

b. *Concordat*

In the *ordinary concordat* and *concordat in bankruptcy* proceedings, the commissioner will be appointed by the court to examine whether the *concordat* can be successful, according to EBL Art. 287. The commissioner drafts official reports for the court regarding the restructuring process. In the concordat by way of cession of assets, the liquidator will have the power of disposition. The interests of the creditors must be protected by the board of creditors, which the creditors elected to decide on the concordat request.

In all restructuring proceedings, the court will examine and approve the restructuring project and request reports on whether or not the project will be successful. If the court rules that the restructuring project will not be successful, it can always decide to enforce the bankruptcy provisions.

c. *Financial Restructuring*

According to the provisional Art. 34 of the *Banking Law*, determination of the financial situation of the debtor will be conducted by independent audit organizations or institutions determined under the Framework Agreement or creditor institutions only if the debtor authorizes these institutions. Accordingly, the Banking Regulation and Supervision Board will approve the Framework Agreement and supervise whether it complies with the relevant legislation and notifies the inconsistent provisions to the Banks Association of Turkey according to Art. 7 of the *Debt Restructuring Regulation*. The procedures and principles regarding all other steps of the financial restructuring will be regulated by the Framework Agreements drafted as per the regulations issued by the Banking Regulatory and Supervisory Agency according to provisional Art. 32 of the *Banking Law*.

3.7. How are restructuring proceedings normally finalized?

a. *Restructuring of Corporations and Cooperatives via Reconciliation*

In accordance with EBL Art. 309/r, the execution of the project will cease with the annulment decision of the Court of Appeal. Another termination procedure is related to annulment. Pursuant to the attribution of EBL Art. 309/s to Art. 307-308, provisions regarding the annulment of *concordat* will be applied.

b. *Concordat*

In the *concordat by way of cession of assets*, *concordat* liquidators are obliged to prepare the final report upon the end of the liquidation, and the annual activity report if the liquidation lasts longer than one year and submit it to the board of creditors, according to EBL Art. 309/j. Approved reports are submitted through the creditors' board by the commercial court, which is the certification authority.

c. *Financial Restructuring*

According to the Art. 6/e of the *Debt Restructuring Regulation*, since the Framework Agreement will constitute the essential elements of the contract, the finalization of the proceeding will be stipulated within the agreement as well.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Although there is no explicit provision or established scholarly matter on this in our legal system regarding the recognition of a foreign insolvency or restructuring proceedings about a foreign company; as the Turkish courts consider themselves definitive competent court regarding insolvency or restructuring proceedings, or as this subject is considered a public policy matter in Turkey, Turkish courts would not recognize a foreign insolvency or restructuring proceedings over a local debtor.

4.2. What are the preconditions for recognizing foreign decisions?

Recognition and enforcement of foreign court decisions are regulated under Art. 50 of the *Turkish International Private and Civil Procedure Law no. 5718* [IPCPL]. For such recognition and enforcement, there are three conditions: there must be a decision ruled by an authorized foreign court, the decision in question must be related to a civil law matter, and the decision must be final.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

For local debtors – Turkish legal and real persons – the issue of cooperation with counterparts in other jurisdictions would not come to the fore since Turkish courts would not be likely to recognize the foreign decision on this matter. Even though judicial cooperation is possible with countries that are party to judicial assistance treaties, there would be limited need for cooperation for the subject matter. Firstly, Turkish courts would not examine the merits of the lawsuit except for public order reasons. Secondly, Turkish courts would not be likely to recognize foreign court decisions about a Turkish company, as explained under Section 4.1.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

Firstly, EBL does not distinguish between local and foreign creditors in terms of the provisions they must abide by. For instance, foreign creditors can register with the table for ranking of creditors, same as local creditors and if this registration request is rejected, foreign creditors can file an appeal against the unfavorable decision. Therefore, in principle, foreign creditors are treated the same as local creditors. As an exception, according to Art. 48 of IPCPL, a foreign legal entity or a natural person who files a lawsuit or participates in a lawsuit before Turkish courts must submit a monetary guarantee to the court to cover the loss and damage of the other party. However, an exemption could be provided based on reciprocity.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Based on the above explanations, the Turkish restructuring and insolvency regime could be deemed neutral for both parties. As elaborated, debtors have the opportunity to benefit from restructuring remedies, and debtor's management, although supervised, could still run the company, hence encouraging the continuity of the company. As for the creditors, debt collection, especially for those whose receivables are secured and privileged creditors are often less problematic given that their receivables are prioritized. Unsecured creditors also have a say in the debtor's insolvency proceedings with the collaboration of the insolvency administration. On the other hand, EBL also contains provisions protecting the assets of the debtor company against any kind of unjust initiative. In sum, the Turkish legal regime provides a balanced environment for the parties.

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