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Restructuring and Insolvency

Frameworks across Europe after Directive (EU) 2019/1023 of 20 June 2019

A comprehensive
European Guide.

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Introduction

Restructuring and Insolvency frameworks across Europe after Directive (EU) 2019/1023 of 20 June 2019:

A comprehensive European Guide.

Directive 2019/1023, of the European parliament and of the council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (the "Directive"), aims to harmonize and modernize the restructuring and insolvency frameworks across EU member states. Its primary goals are to provide preventive restructuring frameworks, ensure a second chance for honest entrepreneurs, and improve the efficiency of insolvency procedures.

Due to the very different legal backgrounds across all EU member states and the very different stages of development of their restructuring frameworks, the Directive provided for a very significant amount of alternatives and opt-out possibilities. Consequently, the transposition of the Directive has led to substantial differences among the various EU member states.

In addition to this situation, not all member states have implemented the Directive, although the final term to perform such transposition finalized on 17 July 2021 (except in those countries who applied for an extension of an additional year, which were the vast majority of member states).

As a result of this, the manner and extent to which EU countries have implemented the Directive poses substantial differences across EU member states. In the following pages we provide an approach to the existing legal framework in several EU member States. In order to provide a more comprehensive approach of restructuring and insolvency proceedings Europe-wide, we have also included other non-EU jurisdictions where Andersen or its collaborating firms are present.

We trust that this first approach will be useful it providing a general overview of the situation in each of the countries we have analyzed, but such first approach should not be regarded as legal advice. Should you require our assistance, please contact any of the team members included in the relevant jurisdiction.

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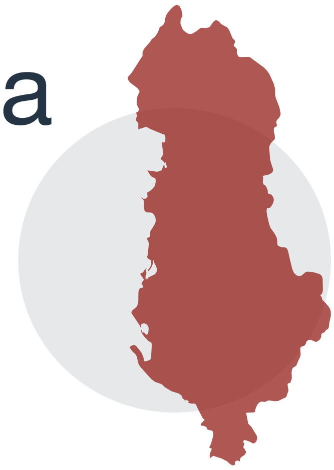

1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

Albania is currently negotiating to become a part of the EU and is therefore incorporating several EU Directives into its domestic legislation. However, the implementation of the Directive has not yet been required under Albanian law

In 2016, the Albanian Parliament enacted Law 110/2016 of June 9, 2016 on Bankruptcy (the "**Bankruptcy Act**"). The Bankruptcy Act sets out rules to deal with the collective discharge of debtors' obligations through the reorganization of their activities or liquidation all of the debtor's assets with a view to distributing the proceeds.

The Bankruptcy Act constitutes Albania's regulatory centerpiece containing measures closely similar to those provided for in the Directive. Indeed, the Bankruptcy Act establishes a comprehensive preventive restructuring framework that includes debt relief and measures to improve the efficiency of restructuring, insolvency and, ultimately, liquidation procedures.

2

What early warning mechanisms are available in your jurisdiction?

The nearest mechanism available under Albanian law to the early warning mechanisms due to be adopted under the Directive relates to the "impending insolvency ". This is defined as a situation where the debtor can objectively be expected to be unable to pay its debts within a period of 6 months or less. Impending insolvency can be verified by all creditors in the Albanian Commercial Register of Companies maintained by the Albanian National Business Center. This register keeps a record of all audited financial statements for all companies.

In addition to the provisions of the Bankruptcy Act, the Albanian Companies Act requires directors to establish an early warning system related to any developments that could threaten the existence of the company. Such a system becomes part of the company's internal regulations.

It is important to note that the above-mentioned warning mechanisms must be proven in court either by the creditor or by the debtor through documentary evidence of the debtor's insolvency. First of all, it should be pointed out that the Bankruptcy Act entered into force in May 2017, while the Directive became effective in 2019. This means that there is a fundamental need to bring the Albanian Bankruptcy Act in line with new developments in EU restructuring and insolvency legislation. In addition to this need for harmonization, pre-bankruptcy proceedings in particular call for further attention by the Albanian legislator, as these

proceedings are not properly addressed in the Bankruptcy Act. Therefore, preventive restructuring frameworks as part of the pre-bankruptcy stage will be among the matters to be addressed in any future legal initiative in Albania related to bankruptcy.

2

What protection is granted to new financing, interim financing and other restructuring related transactions?

None.

3

What are the duties the directors when here is a likelihood of insolvency?

Where there is a likelihood of insolvency, the directors must run an additional 'solvency test' to be legally acceptable. The directors will be liable to the company for the accuracy of the solvency test and will be required to execute a 'solvency certificate' confirming that the company's assets will suffice to meet its liabilities in full after the payment of any dividends and that the company will have enough liquid assets to meet its liabilities as they fall due over the next 12 months. This "solvency test" is a safeguard for companies and is provided for in Articles 77 to 79 of the Albanian Companies Act. The solvency test, and the corresponding liability of directors, are structured so as to prevent the distribution of dividends in the event of "undercapitalization".

4

Which options are available in your jurisdiction to enable insolvent debtors to be discharged of their debts?

The Bankruptcy Act states that the main goal of bankruptcy proceedings is the collective discharge of the debtor's obligations by reorganizing the activity or liquidating all the debtor's assets and distributing the proceeds. These are the two basic methods of discharging the debtor's obligations.

However, there are special rules for individual debtors (natural persons).

Discharge after bankruptcy releases an individual debtor from his or her outstanding obligations, allowing him or her to make a fresh financial start. To be eligible for discharge, an individual debtor must meet all the applicable statutory requirements.

Liquidation of the debtor's assets will be the primary debt repayment method. The debtor is then discharged from any obligations not covered by the insolvency proceedings. In addition, a custodian is appointed for five years - or such other period as the court may specify - to make annual payments to bankruptcy creditors whose claims were not fully paid in the liquidation. The debtor's funds over his/her living expenses will be instrumental in allowing the custodian to make further repayments. Throughout this process, the debtor must:

- engage in appropriate profit-making activities or seek employment and, if unemployed, not refuse reasonable employment;
- transfer to the custodian half of the value of any property acquired by way of inheritance or future inheritance rights;
- notify the custodian of any new place of residence or employment,
- comply with the court's or the custodian's requests for information on income or attempts to find employment;
- make payments to insolvency creditors only via the custodian.

Some debts may not be discharged, which means the debtor will still be liable for them. Debts that may not be discharged include:

- loans made to the debtor to pay insolvency expenses;
- liabilities arising out of fraud, misrepresentation or other acts of bad faith or willful misconduct;
- child support obligations (alimony);
- fines and administrative penalties;
- student loans;
- obligations arising from bodily injury caused by the debtor;
- debts that were not discharged in an earlier insolvency case; and,
- liabilities in respect of property transferred to persons related to the debtor.

5 What are the duties of the directors when there is a likelihood of insolvency?

As mentioned above, the Bankruptcy Act entered into force in May 2017, while the Directive became effective in 2019. As a result, there is an urgent need to bring the Albanian Bankruptcy Act in line with the new developments in EU restructuring and insolvency legislation. Pre-bankruptcy proceedings in particular require further attention from the Albanian legislator, as they are not adequately addressed in the Bankruptcy Act. Therefore, the preventive restructuring framework within the pre-bankruptcy stage will be among the issues to be addressed in any future legislative initiative in Albania related to bankruptcy.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

Although most of the Directive's provisions were to be transposed into national law by June 17, 2021, at the latest, the Belgian legislator only provided for transposition with an Act of June 7, 2023. This transposing Act came into force on September 1, 2023.

The transposing Act aligned the provisions of Book XX of the Code of Economic Law regarding insolvency of businesses with the Restructuring Directive. In addition, the legislator has seized the opportunity of this transposing Act to update the "toolbox of insolvency law" and substantially expand it.

The transposing Act primarily affects collective agreements entered into in the context of restructuring proceedings. An important innovation for Belgian law is that the "affected parties" (i.e., creditors and, if so provided for by national law, employees and shareholders) must vote on the restructuring plan in separate categories. Under pre-existing law, creditors presented with a restructuring plan by the debtor had to vote collectively on its approval. In the transposing law, the Belgian legislator opted for the exception for SMEs provided for in Article 9.4 of the Directive, so that SMEs are not required to have their creditors vote on the reorganization plan in categories. Large enterprises are always to let their creditors vote on the reorganization plan in categories.

2

What early warning mechanisms are available in your jurisdiction?

To ensure the survival of financially distressed companies and the interests of creditors to the greatest extent possible, the Belgian legislator found it necessary that companies (i) be aware as soon as possible of any financial difficulties they may be facing, (ii) be alerted to the possible consequences of their financial difficulties, and (iii) take appropriate and timely action to preserve their survival.

First, Belgian law allows the courts to gather useful information on debtors in financial difficulty. For example, default judgments and adversary judgments against debtors who have not contested the principal amount claimed are notified to the court where the debtor's center of main interests (COMI) is located. The same court is also notified when social or tax debts are not paid. Accountants and auditors must also notify the debtor's management body if they discover facts that might threaten the continuity of economic activity.

A specialized chamber of the court monitors the situation of companies in distress and can summon the debtor if the company's continuity is at risk. If an examination of the debtor's situation reveals that it is in a state of bankruptcy, this chamber may refer the file to the Public Prosecutor's Office or to the President of the Court with a view to appointing a provisional administrator for the debtor. This chamber may also file an action for the dissolution of the company.

Finally, the court may take interim measures to protect the continuity of the debtor's business. In this context, any interested party may request the president of the court to appoint a judicial trustee. The president may determine the scope of the trustee's mandate, which may include anything from monitoring the proceedings to the complete management of the company.

3 What are the preventive restructuring frameworks that have been implemented?

Belgian law envisages an out-of-court amicable agreement with creditors and a judicial reorganization procedure, both of which are intended to preserve the debtor's assets and the continuity of the debtor's business.

Out-of-court amicable agreement

If the debtor enters into an agreement with at least two creditors for the purpose of reorganizing its assets or business, the parties to the agreement may qualify for certain benefits, provided that certain conditions are met, and the agreement is filed with the Solvency Register. The advantage of this preventive restructuring is that the agreement - which is not made public - is enforceable against third parties if the creditor subsequently becomes insolvent, thus protecting payments or agreed collateral from claw-back. Moreover, the parties can apply to the court for the agreement to be declared enforceable.

Judicial reorganization procedure

Belgian law also establishes a judicial reorganization procedure, which can be initiated by the debtor by filing a petition with the court. Following the opening of this procedure, most enforcement measures will be stayed for up to four months, extendable to a total of 12 months if it is justified in the light of the circumstances and purpose of the proceedings and to the extent that the interests of the parties involved permit it. During this stay, the debtor - who remains in possession of the company - may restructure the business to achieve an agreement with all or part of its creditors.

The procedure to be followed will depend on certain choices the debtor has to make.

First, the debtor must determine whether it will be a public or private procedure. In the private procedure, creditors are not notified of its opening (thereby not compromising creditors' credit), but this will require the appointment of a restructuring expert.

Secondly, the debtor must determine whether to opt for an amicable agreement with one or more well-defined creditors or a collective agreement with all creditors. The collective agreement will result in a restructuring plan which is enforceable on all creditors, unlike the amicable agreement.

If the debtor opts for a collective agreement, the procedure to follow will depend on its size. There are different procedures for SMEs and large enterprises, but SMEs can voluntarily opt for the large enterprise procedure.

In the SME procedure, the law requires that the reorganization plan provides for a repayment of at least 20 percent to each creditor, with no reduction allowed for certain debts (e.g., labor/wage debts). The only possible measure for extraordinary creditors (i.e., creditors with security interests or retention of title) is a staggered payment over up to 24 months (no debt reduction). All creditors vote as a group on the plan, which is deemed approved if voted in favor by the creditors representing the majority of the aggregate value of the claims. The plan must then be ratified by the court, which may refuse to do so only if (i) the procedural rules have been violated, (ii) the plan is contrary to public order, (iii) the rights and interests of creditors are unreasonably affected, or (iv) the plan clearly does not offer a reasonable prospect of averting the liquidation or bankruptcy of the debtor or of ensuring the viability of the business. The court may also allow the debtor to submit an amended plan to the creditors. After ratification, the plan becomes binding on all creditors.

In the procedure for large enterprises, there is no minimum repayment, and the debts claims of extraordinary creditors can be reduced. The plan is deemed approved if a majority is found for it within each class of similar creditors determined by the debtor. The court may refuse approval of the plan if (i) the vote was not properly taken, (ii) a non-approving creditor is manifestly worse off under the reorganization plan than that creditor would be if the normal order of priority in bankruptcy were to be applied ("best interest test") (iii) new financing is not necessary to implement the reorganization plan and unduly prejudices the interests of the creditors. The court can ratify the plan even if not all categories of creditors agree to it, but in that case additional safeguards apply.

Transfer under court supervision

Finally, it is also possible to open a procedure for the transfer of all or part of the debtor's business. The transfer may be requested by the debtor or, in certain cases, by any interested party, provided the debtor agrees. The transfer is organized by a court-appointed administrator (trustee), who will receive offers and draw up one or more sale agreements for submission to the court, which will authorize the transfer of the debtor's business to the best bidder.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

Claims arising from existing contracts for services are not subject to stay in judicial reorganization procedures to the extent that they relate to services rendered after the opening of the judicial reorganization proceeding.

Claims relating to services performed during the judicial reorganization proceedings, regardless of whether they arise from new obligations of the debtor or from contracts existing at the time of commencement of the proceedings, are considered as debts of the bankruptcy estate in a subsequent liquidation or bankruptcy (with priority over pre-existing debts).

5

What are the duties of the directors when there is a likelihood of insolvency?

Directors should not continue with the company's business if there is no obvious prospect of survival ("wrongful trading"). If they do so, they may be held liable by the bankruptcy trustee in the interests of the bankruptcy estate. In this context, directors are required to call a meeting of shareholders in good time to discuss the continuation of the company if certain conditions are met and/or, among other things, to file for bankruptcy within one month of the company ceasing to pay its debts and losing its creditworthiness.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

The discharge of debts is only possible for individual (non-corporate) bankrupts. The bankruptcy trustee or the public prosecutor (as well as any other interested party such as a creditor) may ask the court not to grant the discharge of debts or to grant it only partially if the insolvent debtor committed serious and proven actions that contributed to its bankruptcy. In the absence of a third-party objection, the discharge is granted as a matter of right.

Some specific debts may not be discharged, such as debts arising from maintenance obligations (alimony - child support) and debts arising from the obligation to compensate for damages resulting from death or bodily injury caused by the debtor's fault.

The debtor will automatically be granted debt discharge at the end of a bankruptcy procedure, unless someone opposes this in case a gross error of the debtor has led to his bankruptcy or in case the debtor has willfully provided incorrect information to the bankruptcy trustee.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

No other matters to be addressed.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

Since Bosnia and Herzegovina is not a member of the EU (although it is a candidate country for EU membership as of December 2022), EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") does not apply in this jurisdiction. However, since 2016, the Bankruptcy Law of the Republic of Srpska has been in force, which contains provisions on restructuring.

2

What early warning mechanisms are available in your jurisdiction?

There are no early warning mechanisms, nor are any prescribed by laws or regulations. However, a number of organizations and institutions have access to information on bank accounts of legal entities, which makes it possible for them to ascertain whether a corporation has had any bank accounts frozen. Obviously, banks do not allow full access to the accounts of their clients, nor do they provide detailed information, while the state´s Tax Administration has no visibility into the operations of companies at all times.

3

What are the preventive restructuring frameworks that have been implemented?

The Bankruptcy Law provides for a restructuring procedure that can only be initiated with the consent or at the request of the bankrupt debtor. The procedure is dealt with by the court after the submission of a restructuring plan. A court commissionaire is appointed to supervise the procedure. All creditors, who are required to register their claims and state whether they agree with the submitted restructuring plan, are notified of the above procedure. Based on the results of the financial and operational restructuring plan and the right to vote, creditors are classified as follows:

- creditors whose established claims are reduced in accordance with their claim reduction statement,
- creditors whose established claims are reduced by law;
- creditors whose claims are disputed;
- creditors whose claims are outside the restructuring process.

Creditors who agree with the proposed restructuring plan will have their claims reduced according to their claim reduction statement.

The legal effects arising from the commencement of restructuring proceedings shall be effective from the date of publication of the decision on the commencement of restructuring proceedings on the notice board of the competent court.

After submitting an application to commence the restructuring procedure and until a decision is taken confirming the restructuring procedure or rejecting the restructuring plan, the debtor may only make payments in the ordinary course of business.

During restructuring proceedings, the debtor may not dispose of or encumber any assets. Litigation, enforcement and administrative proceedings initiated against the debtor prior to the commencement of restructuring proceedings are stayed as of the date of such commencement.

If the restructuring plan (or an amended restructuring plan) envisages the conversion of claims brought by any credit institution into the debtor's core capital, which would allow the credit institution to exceed the limit for investments in the capital of non-financial institutions, the credit institution must obtain the prior approval of the Agency for Banking of the Republic of Srpska before scheduling a hearing for voting.

4 What protection is granted to new financing, interim financing and other restructuring related transactions?

There is no specific protection for new financing, nor additional provisions for new liabilities.

5 What are the duties of the directors when there is a likelihood of insolvency?

According to the Bankruptcy Law, directors who fail to timely file for restructuring or bankruptcy in the event of insolvency or impending insolvency face criminal liability. If the court initiates proceedings, the powers of directors or founders are withdrawn, as a trustee or bankruptcy administrator is appointed to manage the company's affairs and take care of the company's assets.

- The trustee's duties (if the restructuring procedure is initiated) include the following:
- to review the debtor's property and business activities;

- to draw up a list of creditors' claims, enter the list in the Register of Reported Claims and submit it to the Court, together with any applications for claims and their annexes, for publication on the Court's bulletin board, on the Court's electronic bulletin board, in the Official Gazette of the Republic of Srpska and on the website of the Agency for Intermediary, IT and Financial Services (APIF) within eight (8) days from the date of expiry of the deadline for reporting any claims;

- to compile a list of employees of the bankrupt debtor, calculating their claims in accordance with applicable regulations and informing such employees of the amount of their claim entered in the Record of Reported Claims;

- to publish a written statement on the reported claims of debtors and creditors no later than eight (8) days from the deadline for submitting a written statement on reported claims;

- to submit to the court documents gathered in connection with the creditors' claims within eight (8) days from the date of expiration of the period during which creditors may contest the reported claims;

- to publish any documents received at a later date;

- to declare whether the claim report is well-founded or to contest the report, stating the reasons for doing so, and to enter the data in the Record of Reported Claims;

- to dispute claims if the trustee suspects their existence based on the creditor's statements or for any other reason;

- to supervise the debtor's operations, in particular financial operations, the entering of new obligations with third parties, the granting of security, asset disposal and, generally, any operations so as to ensure that the debtor's assets are not impaired;

- to assess the extent to which creditors are satisfied in the event of bankruptcy proceedings;

- to issue an opinion as to whether the conditions for putting an end to the reorganization proceedings and the enforceability of their outcome have been met in practice;

- to appoint an auditor or any other expert;

- to submit a report to the court if the debtor acts contrary to the provisions of this law;

- to monitor the timely and complete settlement of the costs of the reorganization proceedings, and

- to perform any other duties in accordance with this law.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

In Bosnia and Herzegovina there are no options available to insolvent debtors for a discharge of their debts. Relief mechanisms, including grace periods, payment rescheduling or payment by installments are completely at the discretion of creditors.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

Because Bosnia and Herzegovina is not subject to Directive (EU) 2019/1023 of June 20, 2019, there are no specific matters that may need to be addressed.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") was transposed into Croatian law by the Act on Amendments to the Bankruptcy Act, NN 36/2022 of March 31, 2022 (the "**AA BA**").

The AA BA brings the previous Bankruptcy Act, NN 104/17 of October 16, 2017, in line with the Directive and regulates more efficiently certain issues related to the insolvency of business entities.

Although the Directive has been largely transposed into Croatian law, some of its provisions still need to be transposed and regulated in greater detail by adopting additional secondary legislation.

2

What early warning mechanisms are available in your jurisdiction?

The AA BA requires that debtors have access to clear and transparent early warning tools that can detect circumstances likely to give rise to insolvency, especially when the debtor has defaulted on certain types of payments, thus signaling to debtors the need for immediate action. The tools, the method of their use and the manner of publishing information will be regulated by an ordinance issued by the competent minister with the approval of other relevant ministers.

The establishment of early warning tools for SMEs is ensured by the Ministry responsible for entrepreneurship and crafts. The AA BA provides that the information on the content and method of preparation of restructuring plans shall be made publicly available on the e-Court Notice Board, specially adjusted to the needs of micro, small and medium-sized enterprises, in Croatian and English.

Furthermore, debtors and the general public will have access to relevant and up-to-date information on the e-Court Notice Board on the availability of early warning tools as well as on the procedures and measures related to restructuring and debt discharge. Such information must be easily accessible and presented in a user-friendly manner.

Debtors may also seek advice from public or private organizations to devise a strategy to avoid imminent insolvency. Employers must notify employees at least once a year of the latest information on early warning tools and restructuring and debt relief procedures and measures.

The purpose of making relevant information easily accessible, including the obligation to publish information, is to allow appropriate measures to be taken in good time to avert insolvency. However, the regulation on early warning tools and access to information is still pending. The effectiveness of the planned measures and tools to prevent insolvency will only be known once the ordinance has been adopted.

3 What are the preventive restructuring frameworks that have been implemented?

The transposition of the Directive resulted in significant changes to the previous Bankruptcy Act, NN 104/17 of October 16, 2017, in the section on pre-bankruptcy proceedings. The trustee's duties and responsibilities have been expanded. The trustee is now required to assist the debtor in the preparation of a restructuring plan and in the negotiations, and to take over the partial operation of the debtor's business and assets during such negotiations. The trustee has the authority to contest creditors' claims if the trustee has reasonable doubt as to their validity and to supervise the debtor's operations. However, the trustee has no authority to challenge legal transactions or take measures for the (non-) performance of a legal transaction believed to have been entered into with the intention of reducing the debtor's assets and defrauding creditors (claw-back). In such a case, the trustee must notify the court and request a stay of pre-bankruptcy proceedings and the opening of bankruptcy proceedings.

Furthermore, the debtor must submit a restructuring plan at the time of filing a petition to commence pre-bankruptcy proceedings (or no later than 21 days after the final decision on established and disputed creditors' claims). The restructuring plan must contain all relevant information necessary for the creditors to approve or reject it. In addition, the AA BA has amended the rules on the classification of creditors when deciding on the acceptance of the restructuring plan, by classifying shareholders, equity holders and holders of other founder's rights as a special group which may object to the restructuring plan. Each group of creditors still votes separately on the restructuring plan. The creditors are deemed to have accepted the restructuring plan if voted in favor by the majority of all creditors in each group and if the sum of all claims of creditors who have voted in favor is equal to twice the sum of claims of dissenting creditors. Provisions are also in place for the case where a certain group of creditors is deemed to have accepted the plan even if the required majority of votes within the group was not reached. This essentially prevents minority interests that are contrary to the interests of the debtor and all other creditors from blocking the adoption of the restructuring plan and the continuation of business operations, provided, of course, that the situation does not result in a violation of the principles of bankruptcy and pre-bankruptcy proceedings.

In addition, the rules on secured creditors have been amended to the effect that the restructuring plan may not impair the right of secured creditors to separate satisfaction of claims arising from assets subject to the right of separate satisfaction, unless the restructuring plan expressly provides otherwise. In such a case, the rights of secured creditors may be adversely affected if the restructuring plan restricts their rights without their consent, but secured creditors may not be put in a worse position than they would have been if no plan existed.

In addition, if the debtor is permitted to incur additional debt by way of bridging or new financing and bankruptcy proceedings are instituted against it, a new preferential class (creditors' claims based on bridging or new financing) is created between the first and second preferential classes, and creditors in this class have a higher priority than second-ranked creditors.

Enforcement and security proceedings against the debtor are stayed on the day of the opening of the pre-bankruptcy proceedings for any claims covered by such pre-bankruptcy proceedings. The stay is valid for 120 days which may be extended, prior to its expiry, for a further 90 days provided that relative progress has been made in the negotiations on the restructuring plan and that such a stay is necessary for the implementation of the plan. At the request of a party to the proceedings, the stay may be lifted if it transpires that some of the creditors who could prevent the adoption of the restructuring plan are not supporting the continuation of the negotiations. The court must suspend the execution and security proceedings if the termination of such proceedings is determined due to the opening of pre-bankruptcy proceedings in which a final decision on the acceptance of the restructuring plan, including the creditor's claim in respect of which the execution or security proceedings are being conducted, is taken.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

The AA BA provides that the debtor may, subject to the approval of the creditors representing more than two-thirds of the finally determined aggregate value of claims, take on new debt in money from an existing or new creditor for the purpose of obtaining such interim financing as is reasonably and immediately necessary for continuing with or increase the value of business during pre-bankruptcy. Such approval must be given in writing at or before the hearing to vote on the restructuring plan. In addition to any interim financing provided during pre-bankruptcy proceedings before the adoption of the restructuring plan, new financing also encompasses financing provided by an existing or new creditor to assist in the implementation of the restructuring plan, provided that such new financing does not adversely affect the creditor's interests and that such creditor is included in the restructuring plan.

With respect to interim and new financing, creditors are protected by being granted the right to satisfaction after first priority creditors. If the debtor is (subsequently) declared bankrupt, any interim and new financing cannot be declared null and void and the providers of such financing cannot be held liable on the grounds that the financing is detrimental to the general body of creditors, unless it is determined that the granting of the interim and/or new financing was contrary to the principle of good faith and fair dealing. As for other transactions related to the restructuring, the AA BA stipulates that any transaction that is reasonable and directly necessary for negotiating the restructuring plan cannot be declared void in subsequent bankruptcy proceedings against the debtor, unless such other transaction was entered in fraud, bad faith or in disregard of a conflict of interest. In other words, claims arising during the restructuring process cannot be declared void on the grounds that their granting ultimately resulted in the opening of bankruptcy proceedings as opposed to a restructuring.

5 What are the duties of the directors when there is a likelihood of insolvency?

The AA BA includes a provision further specifying the duties of a company directors and board in the event of a likelihood of insolvency, in which case they must:

- properly consider the interests of creditors, shareholders and other stakeholders with a special interest (in accordance with the rules on the transfer of businesses or undertakings to persons with a special interest where purchasers are related to the debtor);
- take reasonable steps to avoid insolvency; and
- avoid intentional or grossly negligent practices that threaten the viability of the business.

This also emphasizes the obligation of directors (including the board of directors) to manage the company's business in good faith, i.e., to consider the interests of other contracting parties or persons related to the debtor. No special misdemeanor/criminal liability is prescribed for non-compliance with these provisions by the company director/ board of directors. This means that no specific penalties are envisaged. The statutory duties of directors/boards of directors can also be applied to pre-bankruptcy proceedings where the company keeps its director/board of directors in pre-bankruptcy proceedings and such proceedings are conducted for the purpose of establishing the debtor's legal position and its relations with its creditors, in an attempt to avoid bankruptcy and ensure the viability of the business. In other words, it could be argued that the primary responsibility of directors/boards directors is to ensure that all creditors are paid, and only then to manage the debtor's business for the purpose of maximizing its value and assets. On the other hand, this provision does not apply to a company that is the subject of bankruptcy proceedings. In such a case the management of the company is taken over by the bankruptcy manager and the purpose of the bankruptcy proceedings is the collective satisfaction of the debtor's creditors by liquidating all the debtor's assets and distributing the proceeds among creditors.

6
What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

The AA BA has amended the provisions on the discharge of debts by providing that individual debtors may apply for this type of debt relief simultaneously with an application to commence bankruptcy proceedings. If the bankruptcy proceedings are filed by a third party, the debtor may file a petition for debt discharge no later than 15 days from the date of receipt of the bankruptcy order in which the court notifies the debtor of the possibility of having the debtor's debts discharged. Two declarations must be attached to the debtor's application for debt discharge: one assigning to the bankruptcy trustee all pledgeable claims arising from employment or other relevant existing claims, and a notarized declaration stating whether the debtor has successfully been discharged of his debts in the ten years preceding the filing of the petition for bankruptcy or otherwise has been refused such debt relief mechanism.

The petition of the individual debtor is decided by the court and the creditors may submit their allegations until the date of the hearing. An individual debtor is refused debt discharge if he obtained this type of debt relief in the previous 10 years or had his debt discharge application dismissed in the previous 3 years. Discharge from liabilities is granted after the expiry of the deadline for assigning claims. However, if no claims have been registered in the bankruptcy proceedings or if all established and registered claims (including the costs of the bankruptcy proceedings and other liabilities of the bankruptcy estate) have been settled, the court must decide on the debtor's application for discharge before the expiry of the deadline for the assignment of claims.

In the period following the discharge and before the expiry of the deadline for the assignment of claims, the debtor must continue to work (or find employment) and hand over half of any future assets acquired by inheritance or by chance (gifts, lottery winnings).

7
Are there any other matters specific to your jurisdiction that may need to be addressed?

In the Croatian legal system, various regulations apply to the debtor's discharge of liabilities, according to the debtor's status. Individual debtors, i.e., private individuals who pay income tax on the basis of self-employment pursuant to the provisions of the Income Tax Act NN 42/2020 of April 8, 2020, and private individuals who pay profit tax pursuant to the provisions of the Profit Tax Act NN 138/2020 of January 1, 2021, are subject to bankruptcy proceedings under the Bankruptcy Act NN 104/17 of October 16, 2017, and are subject to the above-mentioned rules on obligations discharge. Bankruptcy proceedings against individuals who are not self-employed (consumers) are conducted pursuant to the Consumer Bankruptcy Act NN 36/22 of March 31, 2022, which has also been amended to transpose the Directive as it relates to debt discharge.

Consumer bankruptcy proceedings can only be brought if the consumer is insolvent, i.e., if he/she is unable to meet one or more outstanding financial obligations with a total value of more than approximately EUR 2,650.00 for at least 90 consecutive days. Such proceedings are conducted before the court and involve a trustee who helps the debtor draw up a plan to meet his/her debts. If the plan is accepted by the creditors and the court, and the plan is properly implemented (the debtor's assets are realized and the creditors are satisfied as and in accordance with the law), the court will enter a decision on the termination of the consumer bankruptcy proceedings and set a conduct review period. A conduct review period may not be shorter than one year or longer than five years. At the end of the conduct review period (or earlier if the debtor has fulfilled all his/her obligations in the meantime), the court will enter an order releasing the debtor from his/her obligations.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") was transposed into the Finnish legal system by Act 386/2022 of 25 May 2002 on the Amendment of the Restructuring of Enterprises Act (the "**Amendment Act**"). The Amendment Act introduced provisions on the early restructuring procedure into Act No. 47/1993 of January 25, 1993 on the Restructuring of Enterprises (as amended) (the "**Restructuring Act**"). In addition, some other amendments were made to the Restructuring Act which did not result directly from the Directive. The purpose of these amendments was to develop the restructuring proceedings in general and to address issues that had arisen under the old legislation. The Amendment Act entered into force on July 1, 2022.

2

What early warning mechanisms are available in your jurisdiction?

In Finland, the early warning mechanism required by the Directive has been implemented with the Early Warning Service of the Ministry of Economic Affairs and Employment of Finland and the Center for Economic Development, Transport and the Environment. The service consists of a national telephone service and integrated regional services. Together they form a nationwide financial advisory network.

The Early Warning Service aims to provide independent, confidential and free advice and support to SMEs in distress. In terms of the possibility of reviving business operations, it is essential to apply for restructuring proceedings early enough so that business operations may resume. One of the goals of the Early Warning Service is to ensure that companies timely embark on and are able to benefit from early restructuring proceedings.

3

What are the preventive restructuring frameworks that have been implemented?

The provisions applicable to early restructuring proceedings were incorporated into the Restructuring Act as a result of the Directive. The early restructuring proceedings constitute a completely new procedure that meets the requirements of the Directive as it relates to preventive restructuring frameworks.

Early restructuring proceedings may involve restructuring the debts of a debtor, i.e., any debts incurred before the filing of the petition, including secured debts and debts the basis or amount of which is contingent, contested or otherwise unclear. However, the underfunding of a pension fund established by the debtor is not deemed to be a restructuring debt. As part of a restructuring plan, the payment schedule for these debts may be altered and/or the balance of these unpaid debts reduced (i.e., a haircut).

In early restructuring proceedings, creditor categories are formed in the same way as in ordinary restructuring proceedings. The categories of creditors are as follows: (i) secured creditors; (ii) creditors holding a floating charge as security for their claims; (iii) creditors other than secured creditors, such that a category is formed by creditors whose claims are enforceable without a judgment or court order (public creditors); and (iv) subordinated creditors, whose claims are paid only after the other categories of creditors are paid in full (shareholder loans and subordinated loans).

The early restructuring proceedings allow cram-down in several situations. First, cram-down is permitted if all known creditors accept the restructuring plan. Second, cram-down is also possible if more than 50 percent of the creditors in each category of creditors accept the restructuring plan and the aggregate value of the claims of the creditors in favor of the approval in each category of creditors is more than half of the aggregate value of the claims of voting creditors. However, in such cases, the plan cannot be approved if any of the impediments specified in the Restructuring Act apply.

Where the court decides to commence early restructuring proceedings, it must also rule on whether to impose a moratorium on payments, seizure or other enforcement measures, i.e., a stay. The interdiction is valid for three months from the date of issuance. The court may extend this period at the request of the debtor, the creditor or the liquidator provided it is justified, in particular taking into account the progress of the restructuring proceedings. However, the prohibition may not exceed 12 months. The interdiction applies to all debts subject to restructuring.

If the debtor's assets are sold or otherwise disposed of in the course of bankruptcy at the request of the debtor in the course of early restructuring proceedings or within three months from the date of termination of the proceedings for reasons other than the confirmation of the restructuring program, then the cut-off date for claw-back purposes is considered to be the date on which the request for early restructuring proceedings was filed.

4 What protection is granted to new financing, interim financing and other restructuring related transactions?

If the debtor is declared bankrupt following a petition for bankruptcy filed before the completion of the restructuring plan or, if the restructuring proceedings were terminated and no restructuring plan was approved, on the basis of a petition for bankruptcy pending during the restructuring proceedings or filed within three months after the termination of such proceedings, debts incurred between the commencement and the termination of such proceedings, together with interest accrued thereon until the date of repayment, shall be repaid in bankruptcy with priority immediately after secured debts.

5 What are the duties of the directors when there is a likelihood of insolvency?

The implementation of Article 19 of the Directive did not require any changes to the existing legislation in Finland. According to the Finnish Act 624/2006 of July 21, 2006 on limited liability companies, the management of the company must act with due care and promote the interests of the company. In addition, the provisions of the Finnish Act 758/1991 of April 26, 1991, on the recovery of assets from bankruptcy estates in general and the provisions of the Act 39/1889 of December 19, 1889, on the Finnish Criminal Code, on offenses committed by a debtor have already implemented the requirements of the Directive. After the commencement of restructuring proceedings and during the proceedings, the administrator must protect the interests of creditors in accordance with the Restructuring Act. There is no direct obligation for a company or its directors to file for restructuring proceedings or bankruptcy.

6 What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

Restructuring proceedings allow debtors to be partially discharged from their debts. According to the Restructuring Act, the person subject to restructuring proceedings may be a private entrepreneur, a general partnership, a limited partnership, a company, a cooperative, a housing company or an association engaged in an economic activity. Private entrepreneurs include self-employed individuals and individuals engaged in agriculture or commercial fishing. However, certain credit institutions, insurance companies and pension funds, partnerships, companies and cooperatives in liquidation and institutions in crisis management cannot be involved in restructuring proceedings.

Only debts incurred before the filing of the petition for restructuring proceedings can be subject to debt reduction or other debt restructuring methods.

Debt reduction requires the court's approval of the draft restructuring plan and of the debt reductions proposed therein. The draft restructuring plan must contain a report on the debtor's financial status and other circumstances relevant to the restructuring, as well as provisions on measures and arrangements related to the status of the debtor and creditors and aimed at the continuation, alteration or cessation of activities. The plan must include a division of creditors into groups and a lack of voting rights. The court may then approve the plan provided that this is approved by all known creditors or if the plan is approved by the majority of creditors in each class of creditors and none of the impediments to approval listed in the Restructuring Act apply.

The Restructuring Act includes no restrictions on the possibility of reapplying for restructuring. A new petition may be filed once a previous restructuring plan is completed, and the conditions set forth in the Restructuring Act are satisfied.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

The Finnish Restructuring Act was remarkably comprehensive before the transposition of the Directive. Therefore, the Directive has not directly resulted in mandatory changes to the Restructuring Act, except for the addition of the early restructuring procedure.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

The EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") has been implemented by the Corporate Stabilization and Restructuring Act (Unternehmensstabilisierungs- und -restrukturierungsgesetz, "**StaRUG**"). In response to the COVID-19 pandemic, the legislative process was significantly accelerated, with just over three months elapsing between the Ministry of Justice's initial draft publication and the final reading. This swift timeline is notable considering the law's extensive impact and importance. The StaRUG came into force on January 1, 2021 and has been applicable in Germany since then.

The StaRUG provides companies in crisis with a set of instruments that they can use for restructuring without having to open formal proceedings – as is the case with insolvency. It contains regulations for the early detection of corporate crises and reorganization, restructuring and stabilization instruments to avoid insolvency proceedings. The StaRUG establishes a new type of procedure between a private autonomous pre-court restructuring and formal judicial restructuring as part of insolvency proceedings. Under the StaRUG it is possible to gradually increase the degree of impairment of creditors' and shareholders' rights. If necessary, a restructuring plan can be submitted too, which can be agreed without the involvement of the court. The company chooses – within the limits of the law – which creditors are to be included. This is done by closely involving the respective groups of creditors, initially with minimal impairment of the rights of third parties. In addition, the court may, upon request, appoint a restructuring officer to supervise the proceedings and advise the debtor company during such proceedings.

2

What early warning mechanisms are available in your jurisdiction?

Early crisis detection is now explicitly addressed in StaRUG, as mandated by the Directive. Section 1 StaRUG provides that the members of the management bodies are obligated to continuously monitor any developments that might threaten the company's financial position. If any such developments are identified, the directors must take appropriate countermeasures, implement appropriate monitoring mechanisms and inform the supervisory bodies accordingly. Indicators of potential problems include changes in market conditions, new competitive influences and, above all, internal distortions within the company. If profitability declines, credit lines are overdrawn, or market share is lost, and these developments adversely affect the value of the company as measured by objective financial ratios, the directors must act accordingly. This duty of management to implement a crisis early warning system is not new in German law, as it is already contemplated in Section 91 (2) of the German Stock Corporations Act (AktG), to cite but one example.

The law does not specify how the early crisis detection system must be designed in particular. However, pursuant to Section 101 StaRUG, the Federal Ministry of Justice shall provide information on instruments that enable the responsible bodies to detect economic crises at an early stage. This information is provided in form of checklists that can be used to roughly determine whether a company is financially exposed. In addition, references to state advisory services are provided to enable small businesses to identify and resolve potential crises at an early stage. A central element of the early crisis detection system is the company's liquidity planning for the next two years which every management body should establish for their company. Furthermore, Section 102 StaRUG imposes a statutory duty for tax advisors, auditors and attorneys to inform their clients of obvious evidence of insolvency in the course of compiling annual financial statements.

3

What are the preventive restructuring frameworks that have been implemented?

The key element of the measures provided for in StaRUG is the preparation of a restructuring plan pursuant to Section 2 et seq. StaRUG for the purpose of restructuring the company if the company is not yet illiquid (*zahlungsunfähig*) but is at least facing imminent illiquidity (*drohend zahlungsunfähig*), Section 29 StaRUG.

The restructuring plan sets out which rights of creditors are to be interfered with in order to restructure the imminent illiquid company. This restructuring plan is similar to an insolvency plan under Section 217 et seq. of the German Insolvency Act. The plan consists of a descriptive part and a formative part and contains various annexes. The descriptive part provides an overview of the company’s current financial situation, including the underlying causes of the crisis and the potential measures to avoid insolvency and stabilize the situation. The formative part deals with the actual implementation of such measures, e.g., a debt-equity swap, a deferral or waiver of claims, a capital increase, or a capital reduction with the issue of new company shares. However, unlike in insolvency plan proceedings, restructure plan proceedings do not have to include all creditors and shareholders. Instead, the company makes an objective decision on the parties who are to be affected by the plan.

Similar to an insolvency plan, the restructuring plan and the measures to be implemented with it can, in principle, be structured flexibly, with the StaRUG expressly emphasizing the following legal relationships as being open to a restructuring:

- liabilities of the debtor (e.g. through (partial) waiver of claims)
- collateral provided by the debtor
- Third-party collateral (against appropriate compensation) provided by companies affiliated with the debtor (e.g. through release of collateral).
- contractual "individual provisions" in multilateral legal relationships between the debtor and a plurality of creditors; this refers in particular to syndicated loan agreements (e.g. by extending maturities, amending so-called covenants or termination rights in a syndicated loan agreement), but also, under certain circumstances, bond terms and conditions (whereby in the case of the latter it must be considered in each individual case whether inclusion in a restructuring plan brings advantages compared to a (possibly parallel) restructuring of the bond under the existing provisions of the German Bond Act (Schuldverschreibungsgesetz))
- arrangements between creditors contained in these multilateral agreements or intercreditor agreements concluded in connection therewith, to which the debtor itself - as in the case of intercreditor agreements - does not even have to be a party (e.g. by amending required consent thresholds in syndicated loan agreements or adjusting intercreditor agreements)
- existing share and membership rights in the debtor (e.g. by a debt-to-equity swap).

However, debts arising from employment, tort claims and fines, administrative fines and periodic penalty payments as well as comparable penalties are excluded. The plan may also provide that only the debts of individual creditors or groups of creditors are to be repayed. The restructuring plan may not, however, impair existing contractual relationships that have not yet been completely fulfilled by both contracting parties.

For the purpose of adopting a restructuring plan, creditor groups are formed, to which all creditors covered by the plan are assigned based on their legal status and economic interest, Section 9 StaRUG.

As a rule, these are:

1. creditors with security interest
2. unsecured creditors
3. creditors whose claims would be subordinated insolvency proceedings
4. shareholders

Each group must approve the restructuring plan with 75% of its voting rights (Section 25 StaRUG). A majority vote of all creditor groups (cross-class cram-down) may replace the approval of a dissenting creditor group (Section 26 StaRUG). This plan confirmation procedure may be conducted in or out of court.

The voting rights are based on the following criteria:

Participant	Criteria
Secures creditors	Value of collateral
Unsecured creditors	Amount of claim
Shareholders	Nominal share of the debtor's subscribed capital or assets

According to Section 26 StaRUG a dissenting creditor group can be outvoted ("crammed down") if (1) the affected parties are not worse off as a result of the restructuring plan; (2) it received appropriate economic value of the restructuring; and (3) the majority of the groups have agreed to the plan.

The debtor may decide whether the vote is to take place out-of-court or whether a judicial plan agreement procedure it to be conducted. However, the judicial plan agreement procedure pretty much corresponds to the voting procedure out of court.

Once the plan is confirmed by the court, all creditors, including dissenting creditors, are bound. A restructuring plan confirmed by the court is also enforceable. To ensure that the restructuring objectives are achieved, the court may, at the debtor's request, issue prohibiting creditors from enforcing their claims by way of compulsory execution (Zwangsvollstreckung) and from realizing collateral through various stabilization orders, e.g., a prohibition of enforcement measures, Section 49 (1) no. 1 StaRUG.

The moratorium may be ordered for a period of up to three months. The duration of the court order may be extended for a maximum period of up to eight months. During the moratorium, the right of creditors of the debtor to file for insolvency is suspended, Section 58 StaRUG. This allows the company breathing space for the preparation of the restructuring plan. The moratorium is, however, subject to a certain requirements: (1) the provision of a restructuring plan; (2) a liquidity plan for at least six months; and (3) there being no significant outstanding payments to employees, the tax authorities, social insurance, or suppliers.

If such stabilization orders are issued, the court must appoint a restructuring officer as an independent supervising and mediation body. The restructuring officer's scope of control and participation of power is at the discretion of the court.

Furthermore, the court must appoint a restructuring officer in particular if consumers, micro or small and middle sized enterprises are involved, or it is foreseeable that the plan only be enforceable against the resistance of the individual parties affected by the plan, Section 73 StaRUG.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

The continued existence of a company in a restructuring phase requires one thing above all: liquidity. Under Section 12 of the StaRUG, the restructuring plan may include provisions for new financing commitments and their collateralization, if these are necessary for the success of the restructuring. Regarding new financing, the disbursement and collateralization of a loan receive increased protection against claw-back claims, making them exempt from such claims.

However, under Section 55 StaRUG the financing bank is permitted to terminate the loan due to a deterioration in financial circumstances. Despite this, the bank is prohibited from enforcing its security rights, which could potentially lead to the debtor's insolvency. If insolvency occurs, the restructuring court will generally dismiss the restructuring case. However, Section 33(4) StaRUG provides an exception to this rule as long as the court has not revoked a stabilization order in accordance with Section 59 StaRUG.

The plan and any implementation measures, which may include new and interim financing among other things, are safeguard by Sections 89 and 90 StaRUG. These protective provisions aim to incentivize potential investors to provide restructuring financing without fear of facing avoidance claims from an administrator in the event of insolvency.

Section 89 StaRUG ensures that investors are not put at a disadvantage simply because they were aware of the restructuring or the use of the stabilization framework.

Furthermore, once the court's approval of the plan becomes effective, Section 90 StaRUG protects the plan provisions and their implementation, provided they were part of the restructuring plan confirmed under Section 60 StaRUG. This protection extends to objections until a sustainable restructuring is achieved.

5

What are the duties of the directors when there is a likelihood of insolvency?

Before the Directive, German law already outlined the responsibilities of directors in the face of potential insolvency. However, the legislator used the transposition of the Directive into national law as an opportunity to refine the existing provisions, incorporating aspects developed through the case law of the Federal Court of Justice.

When a crisis becomes apparent, the director must take appropriate countermeasures and immediately report to the supervisory bodies – typically the advisory board (Beirat) or the supervisory board (Aufsichtsrat). Directors decide within their scope of discretionary powers, which measures to implement to overcome the crisis. Within that scope the directors of a German limited liability company (GmbH) must exercise the care of a prudent business – and in case of a German Stock Corporation (AG) - conscientious director.

Directors are obliged to focus solely on the company's interests. However, in the event of illiquidity or over indebtedness, they must prioritize asset preservation and the creditor protection.

Section 15a of the Insolvency Act requires representative bodies to file an insolvency petition if the company becomes illiquid (zahlungsunfähig) or over-indebted (überschuldet). Failure to file, timely file or properly file a petition can result in prosecution for aggravating insolvency. However, during a pending restructuring project, the duty to file for insolvency under Section 15a of the Insolvency Act is replaced by the obligation to notify the occurrence of illiquidity or over-indebtedness pursuant to Section 43 StaRUG. Upon such notification, the restructuring court must terminate the restructuring case.

With the reform of insolvency legislation, the legislator harmonized the rules on prohibited payments after the occurrence of insolvency of limited liability legal entities (e.g., corporations), which were previously scattered in several company laws. These rules are now consolidated in Section 15b of the Insolvency Act, regardless of their legal form:

Directors are subject to comprehensive payment restrictions, with limited exemptions for "privileged" essential payments to ensure the business continuity. Payment decisions must adhere to the standards of a prudent and conscientious director. If directors make payments in violation of these rules, they may be liable to the company for damages.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

Sections 286 et seq. of the German Insolvency Act set out rules for debt discharge of debtors, which apply exclusively to individuals and not to legal entities.

To initiate debt discharge, the debtors must submit a petition to the insolvency court along with the application to open insolvency proceedings. Throughout the insolvency proceedings, the debtor is required to assign their garnishable income to a trustee for a period of three years (Section 287 of the Insolvency Act). During this period, the debtor must maintain reasonable employment or be self-employed. Upon completion of this period, the insolvency court will issue an order granting residual debt discharge.

However, at the request of a creditor, discharge may be denied under certain circumstances. For example, if the debtor has provided false information during the insolvency proceedings, concealed assets, failed to fulfill cooperation, or refused gainful employment despite having the ability to work.

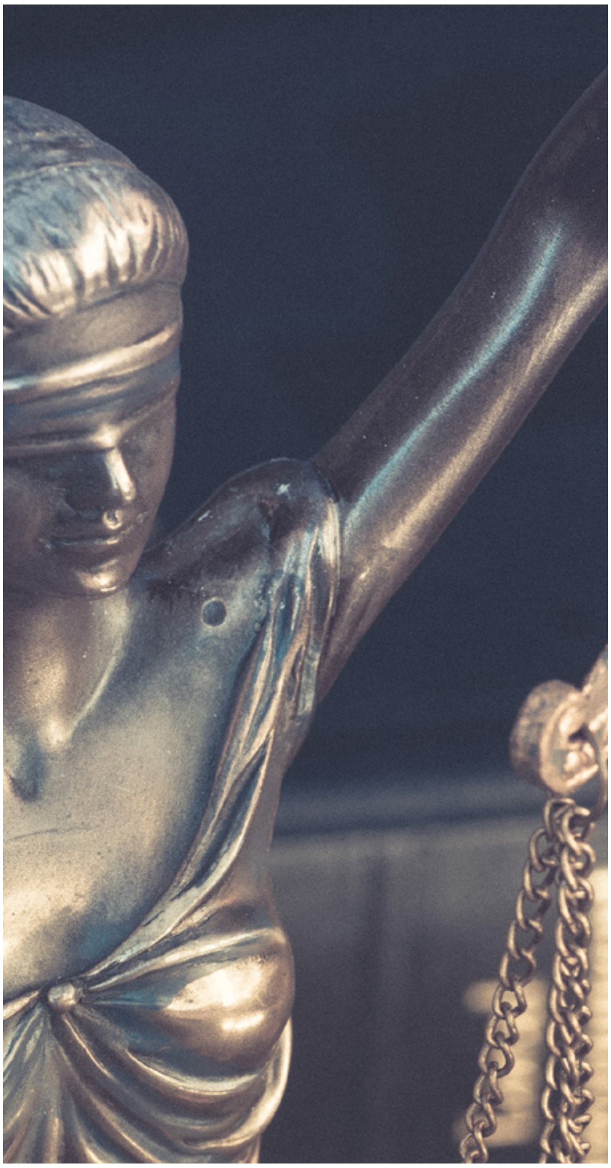
7

Are there any other matters specific to your jurisdiction that may need to be addressed?

The harmonization of substantive insolvency regulations is a critical concern to the German legal system, and also to all other European Union member states. In late 2020, the European Commission launched the initiative "Insolvency Law - Greater Convergence of National Legislation to Promote Cross-Border Investment" and called for a public consultation. The objective of the initiative is to align the rules on avoidance and those on the liability of directors and officers, the filing of claims and the realization of collateral. The ultimate goal is to create a predictable and secure environment conductive to cross-border investments. Currently, divergent rules are criticized for hindering the swift recovery of corporate assets. Foreign insolvency jurisdictions remain uncertain for potential investors, especially concerning avoidance risks.

In response to these challenges, German professional associations advocate for shorter forecasting periods for over-indebtedness and improved financial planning to avoid unnecessary insolvency filings and relieve directors from liability. This is seen as urgently necessary in view of the current macroeconomic distortions and the associated lack of medium-term predictability of market developments.

A first harmonization proposal is expected from Brussels by the end of the year. This may be the first decisive step towards the harmonization of substantive European insolvency law.



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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the “**Directive**”) has already been implemented by Act No. 64 of 2021 on Restructuring and Harmonization of Other Acts (the "**Act**") as an implementation of Directives 2008/94/EC and 2006/123/EC, also taking into account the recommendations of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. The Act also contains provisions for implementing Regulation No. 2015/848/EC. The Act came into force on July 01, 2022, which means that the restructuring procedure is now available. As the procedure has recently been introduced and is not in all cases public, we have limited information on these procedures and to our knowledge very few of them have been initiated.

2

What early warning mechanisms are available in your jurisdiction?

According to the Act, the government shall publish information materials, including methodological guidelines, and provide other services intended to detect unfavorable debt trends and a potential deterioration of an enterprise's financial situation that may result in insolvency (early warning tools) on the online platform designated for the provision of government information services, especially for SMEs and their members and directors. Early warning tools help enterprises to identify financial risks, avoid undue business risks and properly manage financial difficulties. The government has not yet published these materials.

3

What are the preventive restructuring frameworks that have been implemented?

Restructuring consists of a pre-insolvency procedure designed to address the situation of companies in financial difficulties and to restore their liquidity to avoid insolvency. The procedure starts with confidential negotiations and becomes public only after the debtor applies for a general moratorium. The procedure does not require the involvement of all creditors, as the restructuring can be successful if an agreement is reached with the largest creditors. The out-of-court procedure starts with a resolution of the members (general meeting) and the Metropolitan Court has exclusive jurisdiction with mandatory legal representation on the side of the debtor. A restructuring practitioner may assist in the proceedings, which is mandatory in some cases. The court may also appoint a restructuring practitioner if it sees fit. If the restructuring plan is not approved, liquidation does not automatically follow (unlike bankruptcy).

The main creditors (or all creditors if the debtor so decides) are invited to take part in the restructuring procedure. Only invited creditors are bound by the outcome of the proceedings unless the debtor applies for a general moratorium. Creditors may object to the terms of the restructuring procedure. Creditors are classified into different classes by the debtor's management, which must be approved by the court no later than 120 days from the opening of the proceedings. After the formation of creditor classes, only interim and new financing providers may participate. Creditor claims are classified as follows: a) secured claims, b) claims related to the debtor's business activity, c) unclassified claims, d) claims arising from transactions in the debtor's interest (which is not a sequence of satisfaction). The content of each class is specified by the Act. Creditors may dispute their classification within 15 days.

The procedure also allows for cram-down. Generally, the restructuring plan is deemed approved if supported by a simple majority of the creditors holding undisputed claims across all classes (double quorum required: both in terms of the number of votes - where each HUF 100,000 undisputed claim equals 1 vote - and in terms of the number of creditors). There is a special quorum for SMEs. A cross-creditor cram-down may be requested by the debtor (or by a creditor with the debtor's approval) or by the sole or majority shareholder if the restructuring plan is approved by any class of creditors (except for claims in the debtor's interest). Cross-creditor cram-down must be resolved by the court and is subject to several conditions.

Unless otherwise provided by the Act, where a moratorium is granted, all claims of participating creditors are affected. This means that the invited creditors may not:

- start enforcement proceedings whilst ongoing enforcement proceedings are stayed;
- start liquidation proceedings;
- set off their claims against their debts to the debtor;
- take any steps to recover their claims in violation of the moratorium.

Claims subject to a moratorium do not attract interest on arrears, late payment charges, or collection fees that became due before the restructuring, but the moratorium does not apply to transaction interest. Similarly, mortgage foreclosures, call options and assignments of securities are excluded from the moratorium, while the debtor's bank accounts are protected from seizure (close-out netting, cash deposits are treated similarly to bankruptcy proceedings, while the Act does not restrict the purpose of settlements).

Creditors subject to a moratorium of their claims may not suspend the performance of essential executory contracts arising from the debtor's outstanding debts due to non-payment of debts that became due and payable before the moratorium. Such contracts may not be terminated or amended to the detriment of the debtor, without prejudice to the creditor's rights arising from any other type of breach.

However, it is important to note that during the moratorium the debtor must satisfy the claims that are not covered by the moratorium, and creditors - whether or not their claim is covered by the moratorium - may not withhold or suspend performance of executory contracts relying on a clause contained in the contract entered into with the debtor, nor may such contracts be terminated or amended to the detriment of the debtor as a result of the opening of proceedings or the granting of a moratorium. The moratorium is effective for an initial period of 4 months, which can be extended up to a total of 12 months. However, creditors may apply for the termination of the moratorium, usually after 90 days.

A court-endorsed restructuring plan is binding on the debtor, all creditors covered by the plan, and, generally, on any parties who have joined the restructuring plan by means of a legal statement. A restructuring plan confirmed by a final court ruling is also interpreted as an admission of debt. Beneficiaries of the obligations included in a restructuring plan may - after the due date - request the court of first instance to issue an enforcement order based on the restructuring plan confirmed with prejudice in relation to such obligation.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

New financing, interim financing, payment of reasonable and immediately necessary expenses related to the negotiation of the restructuring plan, other payments, and the performance of contracts do not become void and unenforceable if the debtor subsequently becomes insolvent on the grounds that such transactions are detrimental to the creditors, unless other reasons for rendering the transaction void or unenforceable exist. This applies to all reasonable transactions necessary for the implementation of the restructuring plan and executed consistently with it as approved by the court. No civil, administrative or criminal liability proceedings may be instigated against providers of new financing or interim financing if the debtor goes into bankruptcy on the grounds that such transactions are detrimental to creditors (unless the financing was provided prior to the impending insolvency). In the event of a liquidation based on a petition filed within 180 days of the collapse of the restructuring, creditors providing new or interim financing will be satisfied immediately after any secured creditors. These protective rules apply to new financing only if the restructuring plan is approved by the court, and to interim financing and transactions that are urgently necessary for negotiating a restructuring plan if it is approved by the secured creditors and 75% (votes) of the other creditors or by the court as part of the restructuring plan.

5

What are the duties of the directors when there is a likelihood of insolvency?

In Hungary, the management must manage the company in the company's best interest in the ordinary course of business. This principle is replaced by the duty to act in the primary interest of creditors only in the event of imminent insolvency. In these circumstances, the company may not apply for restructuring, but only for reorganization or bankruptcy. Restructuring may be initiated only if there is a likelihood of insolvency, which means that the duties of the management are defined somewhere between the two conflicting principles referred to above. If the restructuring is approved, the management must take every action to protect the interests of creditors (including refraining from unduly favoring certain creditors), obtain all necessary resolutions of the shareholders to avoid insolvency, and not taking any business risk that may be considered unreasonable in light of the debtor's financial position. Management rights are subject to the approval of the restructuring practitioner only in limited cases. In summary, this means that the management must protect the interests of the company, taking into account the interests of creditors and shareholders(and employees, if any. This is activated by the resolution on restructuring, not by the likelihood of insolvency. However, as a result of the above principles, the management is responsible for informing the members of the likelihood of insolvency so that the required decisions can be taken.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

In Hungary insolvent debtors may only apply for bankruptcy and liquidation. As liquidation effectively means the cessation of the debtor's business, a discharge is only relevant if the debtor can survive the liquidation procedure by settling his debts with the creditors.

All debtors who are eligible to file for bankruptcy or who are able to reach a settlement as part of liquidation proceedings may benefit from discharge. No disqualifying factors apply.

In bankruptcy or liquidation proceedings, debts covered by the discharge are determined by the settlement agreement between the debtor and the creditors. There are no excluded debts. In restructuring proceedings, on the other hand, the debtor can decide which creditors he wants to involve at the beginning of the proceedings.

The only condition to benefit from the discharge is the execution of the settlement agreement. Otherwise, the bankruptcy turns into a liquidation or, if a settlement is entered as part of liquidation proceedings, the liquidation is automatically decided by the court. The restructuring procedure does not automatically turn into liquidation if the restructuring plan is not implemented. In this case, creditors may choose to enforce their rights and claims under the restructuring plan or to start liquidation proceedings. In the first case, and if so approved by the court, enforcement of the restructuring plan is considered as an amendment to the original composition between the debtor and the creditor. No time limits apply to the discharge, the duration of which depends on the agreement between the debtor and the creditors.

There are a number of rules that prevent debtors from conducting parallel proceedings and starting such proceedings during a certain period of time:

Thus, a debtor may not apply for bankruptcy if:

- undergoing restructuring procedure;

- during the implementation of a restructuring plan as approved by the court in restructuring proceedings, and confirmed by means of a cross-class cram-down, is still open;

- a restructuring procedure was in progress where the debtor was given moratorium and one year has not elapsed from the date of failure of the restructuring plan;

- the debtor is undergoing bankruptcy;

- a request for the debtor's liquidation has been submitted, and a decision has already been taken in the first instance for the debtor's liquidation;

- before the satisfaction of any creditor's claim that existed at the time of ordering the previous bankruptcy proceedings or that was established by such proceedings, and

- within two years following the time of publication of the final decision on previous bankruptcy proceedings, or

- if the court ex officio refused the debtor's request for a prior bankruptcy, and if within the one-year period following the time of publication of the final ruling thereof,

- within the period specified in the restructuring plan for its implementation.

The debtor may not start restructuring proceedings if:

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

b. the debtor is undergoing dissolution proceedings;

c. a final decision to open
- bankruptcy proceedings, liquidation proceedings under the Bankruptcy Act was published against the debtor,
- involuntary de-registration proceedings under Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings was published against the debtor,
- 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 against the debtor, or
- main proceedings or territorial proceedings listed in Annex "A" of Regulation (EU) 2015/848 of the European Parliament and of the Council was requested against the debtor in the Member State in which the proceedings were opened;

d. during the previous restructuring, the period of implementation of the restructuring plan confirmed by the court - confirmed by means of a cross-class cram-down -, the reorganization plan confirmed by the court in the reorganization procedure defined by law or in bankruptcy proceedings within the framework of court-approved composition arrangement in a bankruptcy procedure provided for in the Bankruptcy Act has not yet ended, or in the case of liquidation concluded with a settlement, fulfillment of the obligation assumed in the settlement is still in progress under the conditions agreed in the settlement;

e. the debtor received a moratorium in the previous restructuring or reorganization procedure provided for by other legislation and three years have not passed since the day of the opening of the previous restructuring or reorganization procedure provided for by other legislation, except for the case under Paragraph d);

f. fon the first day of the restructuring process
- the debtor has any undisputed or acknowledged debt or debts that is more than thirty days overdue, which combined exceed 10 per cent of the claims against him, or
- enforcement is in progress against the debtor;

g. any of the debtor's financial reports under Act C of 2000 on Accounting for the three business years prior to the first day of the restructuring process have not been published and lodged; or

h. criminal proceedings are in progress where criminal law measures may be imposed upon the debtor.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

No.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

During the Covid 19 pandemic, the Italian government adopted several measures directly or indirectly related to restructuring matters.

In particular, the Italian government decided to postpone several times the entry into force of the new Code of Business Crisis and Insolvency (the "**Code**" or "**CCII**"), which first appeared in January 2019 with the issuance of Legislative Decree 14/2019), initially set for August 15, 2020, and through various amendments and additions due to the pandemic crisis has come into force on July 15, 2022. This was the deadline for the transposition of EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Insolvency Directive**" or the "**Directive**").

On July 1, the Legislative Decree of June 17, 2022, transposing the EU Insolvency Directive, was published in the Official Gazette.

This is a fundamental departure from the 1942 Bankruptcy Act. The Code now sets out to guarantee the continuity of businesses by identifying financial and economic difficulties at an early stage and offering solutions to management to overcome the crisis, as required by the EU Insolvency Directive.

The Code's principal innovation is the introduction of new tools for the timely management of a crisis, such as the *composizione negoziata della crisi*. To ensure an optimal use of this tool, all companies are required to establish an internal management and accounting system (*adeguati assetti organizzativi, amministrativi e contabili*), appropriate to the size and nature of the company. This is to: a) identify equity, economic and financial imbalances; b) verify the sustainability of debt and the prospects of business continuity for the following 12 months; c) ensure the availability of information for access to the *composizione negoziata* in case of need.

In this context, the Code defines the alerts that signal a possible crisis, such as, for example, salaries overdue for at least 30 days and exceeding half of the total monthly salaries; payables to suppliers overdue for at least 90 days and exceeding the outstanding payables; payables for taxes and social security contributions exceeding certain limits (as regulated by Article 25-novies of the Law).

If these alerts exceed such limits, the request to activate a *composizione negoziata* application comes from the Qualified Public Creditors (INPS, INAIL, *Agenzia Entrate and Agenzia della Riscossione*) and, if applicable, from the Auditor. The Auditor's timely disclosure and his supervisory role in the assessment of liability in the event of damage to the company and its creditors are taken into account.

The *composizione negoziata della crisi* is set in motion by filing a request with the competent Chamber of Commerce. The entrepreneur must file certain documents on the website and request the appointment of an expert (appointed from a published list of accountants, lawyers, consultants, etc.), which is a mediator/facilitator to reach an understanding between the company and its creditors.

During the negotiations, the entrepreneur remains in full charge of the business, but he must inform the expert of any extraordinary management action or activity that is not consistent with the negotiations and the turnaround target. Creditors (especially banks and financial intermediaries) must actively participate in the negotiations.

The entrepreneur may also request protective measures for the company's assets (such as a stay of enforcement proceedings or of the filing for bankruptcy, but not for the claims of employees).

Negotiations may take up to 180 days, at the end of which the expert must issue a final report on the course of negotiations. This period can result in a mutual agreement on restructuring and rescheduling or a standstill agreement with creditors (best result) or in no agreement. In this latter case, the entrepreneur can file a petition for a simplified composition with creditors (*concordato semplificato*) for the liquidation of assets under Article 25-sexies of the Act and, finally or try to access to one of the crisis regulation tools provided for by the Act, as noted below.

In summary, the Code has made numerous changes, all aimed at anticipating the business crisis and dealing with it effectively, to the benefit of both the entrepreneur and the creditors.

2

What early warning mechanisms are available in your jurisdiction?

In line with EU regulations, the Code has created numerous early warning mechanisms.

The responsibility for timely ascertaining the state of crisis remains with the administrator, who is required to implement appropriate:

- organizational arrangements (organizational chart, function chart);
- administrative structures (procedures); and
- accounting arrangements (administrative - accounting system).

These arrangements must be commensurate with the nature and size of the enterprise.

Their purpose is to enable the preparation, at short and regular intervals, of an up-to-date income statement, balance sheet and financial position, on the basis of which a forecast of cash flows for the next 12 months can be made. These cash flows must be capable of ensuring that liabilities incurred over this period are covered.

The crisis prevention system is also based on the analysis of the company's operations as reflected in the balance sheet, income statement and financial ratios, to verify the company's ability to continue as a going concern.

The Code also lists parameters that, if exceeded, are indicative of an emerging crisis and the consequent obligation to take appropriate measures to overcome the situation.

Indicators of a crisis are (a) the existence of debts overdue for more than 30 days for an amount greater than half of the total monthly payroll; (b) the existence of debts to suppliers overdue for at least 90 days for an amount greater than the amount of non-overdue debts; (c) the existence of debts to banks and other financial intermediaries that are overdue for more than 60 days, provided that they represent in the aggregate at least 5 percent of the company's total exposures; and (d) the existence of debts to qualified public institutions, INPS, INAIL, *Agenzia delle Entrate* and *Agenzia delle Entrate Riscossione*, each with its own specific limits of reporting.

3 What are the preventive restructuring frameworks that have been implemented?

The Code has implemented certain crisis and enterprise regulation tools, which consist of measures, agreements and procedures aimed at reorganizing the enterprise by changing the composition, status or structure of its assets, liabilities or share capital, or at liquidating its assets or property, which - at the debtor's request - may be preceded by the negotiated crisis resolution.

These tools are primarily divided into the following procedures:

a. Agreements as part of the implementation of certified reorganization plans (Art. 56 CCII)

The debtor may put forward an analytical reorganization and financial recovery plan for submission to its creditors, with whom it will enter into agreements.

An external expert must certify the accuracy of the company's data and the feasibility of the plan.

There is no provision for establishing classes of creditors, but since it is a private instrument (with no judicial involvement), it is essentially aimed at financial creditors.

The plan has the effect of exempting all acts and payments enforceable under the plan from revocatory actions.

b. Debt restructuring agreements (Art. 57 CCII), including facilitated (Art. 60 CCII) and extended effectiveness agreements (Art. 61 CCII)

The debtor may enter into a debt restructuring agreement with creditors representing a significant portion of the overall claims.

As a general rule, creditors who do not adhere to the agreement must be paid in full. In ordinary agreements, adherence must be at least equal to 60 percent of the claims.

In facilitated agreements it must be at least 30 percent provided that (a) no moratorium on claims not covered by the agreement is proposed and (b) no asset protection measures are requested and/or granted.

In the case of extended effect agreements, it is provided that the debtor enters into the agreement with a single class of creditors and that adherents must represent at least 75 percent of the creditors in that class. In this situation, the effects of the agreement may also extend to non-adherent creditors of that category.

This particular agreement assumes that the business activity is planned and that the restructuring does not have involve liquidation unless this is so agreed with banks and financial intermediaries.

If the debtor's debts to banks and financial intermediaries amount to at least half of the total debts, the restructuring agreement may identify one or more classes among these types of creditors having a homogeneous legal position and economic interests.

The category of creditors is determined taking into account the homogeneity of their legal position and economic interests (the definition of category overlaps with the definition of "class").

The debtor may also propose - during the negotiations preceding the execution of the agreements - the partial and/or deferred payment of

- any taxes and related accessories administered by the Tax Agencies; and
- contributions administered by social security, welfare and insurance Institutions and related accessories

(Tax and Social Security Settlement).

The tax and social security authorities may join the agreement by signing it within 90 days of the proposal's formulation.

The agreements, together with a business plan, comprehensive documentation and the certified opinion of a third-party professional, must be approved by the court.

In the case of a tax and social security settlement, the third-party professional must also certify the suitability of the proposed treatment (understood as the best treatment achievable by the creditors) compared to the hypothesis of judicial liquidation (i.e., bankruptcy).

If the tax and social security settlement is not complied with, the court may approve the restructuring arrangements (i.e., cram down):

- where adherence is essential to reach the legal majority;
- where the administration's proposal for satisfaction proves to be more advantageous over liquidation (bankruptcy).

The implications of these agreements are manifold:

- exemption from obligations in the event of capital losses;
- the granting, at the debtor's request, of protective and precautionary measures for the company's assets against all creditors or specific creditors;
- exemption from bankruptcy or ordinary bankruptcy revocation for any acts and payments made and any security granted on the debtor's assets in connection with and/or in execution of the agreement or any acts and payments made or security granted lawfully afterwards;
- exemption from fraudulent and simple bankruptcy for payments and transactions made pursuant to approved debt restructuring agreements.

c. Moratorium agreement (Art. 62 CCII)

This is a provisional crisis regulation instrument that allows the debtor to agree with a group of creditors on a deferral of the maturity of their claims and then expand the effects of the deferral to non-member creditors in the same group.

This is an out-of-court negotiation and does not require court approval.

d. Restructuring plan subject to homologation (Art. 64bis CCII)

This is a new instrument where a debtor in a state of financial distress or insolvency that seeks relief by dividing creditors them into classes and distributing the proceeds obtained from the plan, even in exceptional cases:

- the distribution restrictions provided for in insolvency proceedings (pre-emption and privilege);
- the provisions applicable to the graduation of legitimate causes of pre-emption (i.e., exception to the par condicio creditorum);
- all provided that the proposal is approved unanimously by the classes of creditors.
- In this case, Article 11(1) of the Directive has been implemented.

The provision does not specify the time or manner of satisfying creditors' claims, except in the case of employees' salary claims, which are secured by statutory privilege and must be satisfied in full and in cash within 30 days of the court's approval.

Classes of creditors are always formed taking into account the legal position and economic interests of each creditor.

For each class of creditors, the proposal shall be deemed approved if a majority of the claims entitled to vote is obtained, or otherwise if two-thirds of the claims of the creditors entitled to vote have voted in favor of the proposal, provided that creditors holding at least one-half of the total claims of the same class have voted.

The following are not entitled to vote and as such are not included in any class:

- creditors with a right of pre-emption if fully satisfied in cash within 180 days of the approval, provided that the collateral supporting the mortgage or pledge receivable remains in place until the liquidation of the assets and rights on which it exists;
- receivables for wages and salaries as fully satisfied in cash within 30 days after approval.

The application for a restructuring plan subject to homologation is subject to the same effects as the application for access to an arrangement with creditors. A certificate issued by a third-party professional as to the veracity of the company's data and the feasibility of the plan is also required.

The tax and social security cram down is not applicable in this case, with the result that the debtor must obtain the approval of the tax and social security authorities.

If the restructuring plan is not approved by all creditor classes, the debtor can amend the application by proposing a composition with the creditors.

e. Composition with creditors on a going-concern or liquidation basis (Art. 84 CCII)

This is a voluntary insolvency procedure in which the debtor makes a proposal to the creditors, accompanied by a plan with real prospects of implementation, in which he proposes to satisfy claims in the form, manner and time frame specified therein.

The debtor may propose to divide creditors into classes (always taking into account their legal status and homogeneous economic interests), which is mandatory in the case of a going-concern arrangement.

Two types of composition with creditors are possible: a going-concern composition and a liquidation composition.

The arrangement with creditors as a going concern is based on the direct or indirect continuation of the business activity, which becomes a means to achieve the satisfaction of creditors.

In a going concern arrangement, creditors are satisfied to an extent that may or may not be predominantly from the proceeds generated by the going concern itself (relative priority rule).

In the case of a composition with creditors in liquidation, the proposal must include a contribution of external resources (i.e., external financing) that increases the assets available at the time of the petition by at least 10% and ensures the satisfaction of unsecured creditors and preferential creditors that have been downgraded as a result of insolvency by at least 20% of their total amount.

Creditors with a lien, pledge or mortgage may be satisfied even if not in full, provided that the amount is not less than the proceeds from the liquidation of the assets or rights in respect of which the preferential claim exists, less the estimated amount of the costs of the proceedings relating to the assets or rights and the share of general expenses. The remaining portion of the claim is treated as an unsecured claim.

In the case of a composition with creditors as a going concern, the proceeds of the liquidation shall be distributed in accordance with the ranking of the preferential claims; for the amount exceeding the proceeds of the liquidation, it is sufficient that the treatment given to any claims included in the class is at least equal to that given to equally ranked classes and more favorable than the treatment given to lower ranked classes.

As also specified in the Directive (art. 11 (1) lett. C)):

- the liquidation value of the business is distributed in accordance with the absolute priority rule;
- the value obtained from continuing

to operate the business (continuity surplus) is distributed according to the relative priority rule, which states that it is sufficient that receivables of any given class are paid in equal measure with respect to the classes of equal rank and in greater measure with respect to the class of inferior rank.

The only exception to the relative priority rule relates to employment claims.

The division of creditors into classes is required for:

- tax or social security receivables for which full satisfaction is not expected;
- holders of guarantees provided by third parties;
- creditors who are satisfied even partially with benefits other than money;
- proposers of the arrangement and related parties.

Creditors with a lien, pledge and mortgage affected by the restructuring are also divided into classes, provided that the conditions for exclusion from voting are not met.

In addition, small companies, holders of unsecured claims arising from contracts for the supply of goods and services, are placed in separate classes.

In any case, the division into classes may not alter the legitimate order of the causes of pre-emption.

The debtor may propose a partial and/or deferred payment of taxes and ancillary charges administered by the tax authorities and of contributions and ancillary charges administered by social security, welfare and insurance agencies, if the plan provides for satisfaction in an amount not less than that which could be realized from the proceeds in the event of liquidation, taking into account the market value attributable to the assets or rights in respect of which the cause of pre-emption exists, as established in the certified report of the third party expert (Tax and Social Security Settlement).

The Court may approve the composition with creditors (i.e., cram down):

- where adherence is essential to reach the legal majority;
- (where the administration's proposal for satisfaction proves to be more advantageous over liquidation (bankruptcy.

In this case, the proposal is first examined by the Court and only then submitted to the creditors for a vote.

As a rule, the composition agreement is approved by a vote of creditors representing a majority of the claims.

Composition agreements in continuity are approved if all classes of creditors vote in favor. In each class, the proposal is approved if a majority of the creditors' claims admitted to voting is reached, or if two-thirds of the voting creditors' claims have voted in favor, provided that creditors holding at least half of the total claims of the same class have voted.

In the event of creditors' approval, the proposal is subject to further control by the Court in the approval procedure.

After the approval, the proposal becomes binding on all creditors, who must be satisfied under the terms and conditions of the proposal.

The implications of the composition are the same of in case of debt restructuring agreements.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

Article 99 of the Code grants distressed entrepreneurs the possibility to secure financing, recognized as pre-deductible, which is necessary for the continuation of the company's operations until the approval of the chosen reorganization procedure, the composition with creditors or the restructuring agreement. The debtor must specify the purpose of the financing, the fact that it cannot be obtained otherwise, and the reasons for which the absence of such financing would result in material damage to the company's business or the continuation of the proceedings. A report by an independent expert confirming the existence of the necessary requirements is also mandatory.

Article 101 of the Code also recognizes the pre-deductibility of loans granted as part of the execution of an agreement with creditors or an approved debt restructuring agreement. Such loans must be expressly included in the plan in order to be pre-deductible.

Pre-deductibility is maintained even if judicial liquidation proceedings are subsequently instituted, provided that no acts in fraud of creditors are established.

Finally, Article 102 of the Code also recognizes the pre-deductibility of loans granted by shareholders in any form, including the issuance of guarantees and counter-guarantees, up to 80 percent of their amount.

5

What are the duties of the directors when there is a likelihood of insolvency?

Once the existence of an ongoing or potential crisis has been established (also by means of appropriate organizational measures), directors are called upon to "activate" instruments and initiatives to address such situation.

The Code provides some important indications that seem to allow the interest in relation to which the directors' action is functional (and therefore the scope of discretion granted to them) to be adapted according to the different "stages" of the crisis.

Article 4(2)(b) and (c) provides for the duty to "promptly take appropriate initiatives to identify solutions to overcome the conditions set forth in Article 12(1)" (i.e., the duty to "take appropriate initiatives with a view to finding solutions to the conditions set forth in Article 12(1)" (i.e., the conditions of "asset or economic-financial imbalance that make the crisis or insolvency likely); and, upon the activation of one of the procedures provided for by the Code , to manage the company "in the priority interest of the creditors", expressly without prejudice to the provisions of Articles 16(4) and 21 of the Code: in less serious cases of "crisis", management decisions must seek "not to harm the financial-economic sustainability of the business", while where there is a state of "reversible insolvency" the interest of the creditors becomes "overriding".

Article 120-bis of the Code then excludes tout court the shareholders from the competence to take decisions concerning the management of the crisis, which are assigned exclusively to the directors.

In other words, under the Code, the purpose towards which the entire management is to be oriented is no longer that of the shareholders to recover the value of the investment, but becomes the best satisfaction of the reasons of the creditors existing at the time the insolvency (albeit reversible) is declared, albeit through the continuation of the business (and not the preservation of its residual value in a liquidation perspective).

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

The New Code confirmed the discharge of debts for entrepreneurs in bankruptcy proceedings. It also extended this benefit to consumers in over-indebtedness proceedings and to private individuals.

The establishment of discharge of debts is regulated by articles 278 to 283 of the aforementioned Act.

The debtor is entitled to obtain the discharge of his debts within three years from the opening of winding-up proceedings or from the termination of the proceedings, whichever is earlier, provided that the following conditions are fulfilled:

1. the debtor must not have been sentenced by a final judgment for reckless bankruptcy or for offences against the public economy, industry and trade, or other offences committed in connection with business activity.
2. The debtor must have not misappropriated assets, must have not aggravated the insolvency by making the reconstruction of assets and the movement of business seriously difficult, or misused credit.
3. The debtor must not have hindered bankruptcy proceedings and must have provided all relevant information and documents to the authorities.
4. The debtor must not have benefited from discharge of debts during the previous five years, and
5. the debtor must not have had his debts discharged twice.

Articles 282 and 283 introduced debt discharge provisions for over-indebted private individuals. According to Article 282, the discharge of debts for private individual in winding-up proceedings takes place at the end of such proceedings or three years after their opening. In any case, it is not subject to the submission of a specific application. In addition to winding-up proceedings, Article 283 allows access to establishment of discharge of debts also to private individuals that will be unable to offer any benefit to creditors, not even in the future.

7 Are there any other matters specific to your jurisdiction that may need to be addressed?

No other matters to be addressed.

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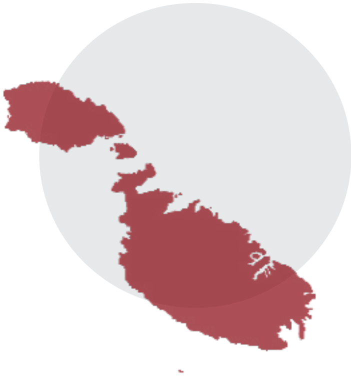

1

What is the status of the transposition of EU Directive 2019/1023 in your Jurisdiction, and what are the relevant legislative developments provided for in the Directive?

The transposition of EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "Directive") into Maltese law took place through the enactment of three new pieces of legislation passed by the Maltese Parliament. The successful transposition of the Directive, once adopted and implemented in practice, will have a substantial impact on the current Maltese restructuring and insolvency law landscape. The recent legislative reform of insolvency and company restructuring law (the "Reform" or the "Acts') fulfils the main objective to transpose the EU Directive as follows:

1. **'Commercial Code (Amendment)' Act** - This constitutes an update of certain provisions of the Maltese Commercial Code largely by replacing the name "curator" by that of "receiver", by extending the jurisdiction of the Civil Court (Commercial Section) within the insolvency legislation, and by strengthening the existing legal framework on bankruptcy and discharge of debt.

2. **'Pre-Insolvency Act'** – This is a new Act that seeks to reinforce the insolvency legislative framework and to provide for a pre-restructuring and restructuring framework.

3. **'Insolvency Practitioners Act'** – This is also a new Act intended to implement a modern framework that fosters the efficiency and effectiveness of the existing insolvency legal framework by setting out rules applicable to insolvency practitioners.

2

What early warning mechanisms are available in your jurisdiction?

Prior to the Insolvency Reform, the Maltese legal framework provided very limited scope and opportunity for the early detection of insolvency, mainly because it is the sole and primary responsibility of the directors. Upon identifying a potential insolvency situation, the directors are required to take appropriate measures such as seeking a compromise or arrangement between the company and its creditors, or engaging in out-of-court voluntary mediation, or applying to the courts to commence company recovery proceedings.

The shortcomings in Maltese legislation have been identified and addressed in the Insolvency Reform. One of the main objectives of the Pre-Insolvency Act is to provide for early warning tools and crisis prevention mechanisms. The most important innovation introduced by this Act is the establishment of an automated IT-based system that triggers an alert if certain payments are not made in a timely manner. Such measures will be implemented by the Office of the Official Receiver within the Malta Business Registry, also referred to as the Competent Authority. For example, if payments such as taxes, loans and utility bills are not made on time, debtors will be alerted to take immediate action and report to the Competent Authority on the steps that have been taken to prevent insolvency and ensure the viability of the business.

The debtor's officials (such as directors and/or other persons who perform substantially the same duties) will have a greater responsibility to monitor such alerts and may require the debtor to consider its financial situation in more detail.

Finally, the competent authority will be responsible for developing and maintaining relevant and up-to-date information on the availability of early warning mechanisms. Further information and details on the early warning mechanisms to be put in place in Malta should be made publicly available in due course.

3

What are the preventive restructuring frameworks that have been implemented?

When an application for preventive restructuring proceedings is filed with the court, an insolvency practitioner is appointed to guide the debtor throughout the proceedings. The Second Schedule to the Pre-Insolvency Act lists the necessary information to be included in the restructuring plan, and provides a list of required documents to be attached to the restructuring plan. The Pre-Insolvency Act introduces three different types of Preventive Restructuring Procedures, namely:

1. **Standard Procedure;**
2. **Pre-Formulated Procedure; and**
3. **Pre-Approved Procedure.**

The Act requires that all creditors be considered affected parties. However, the debtor may exclude the creditor's claims from the restructuring plan:

a. where the relevant claim is to be settled in full; or

b. where the exclusion of the claim is justified taking into account the financial circumstances of the debtor, for example in the case of claims secured by an asset of the debtor.

According to the Pre-Insolvency Law, the class of a claim, which is determined by its monetary value, governs the course of action available to creditors. Claims are divided into five classes as listed below:

1. secured claims;
2. unsecured claims;
3. claims for the payment of wages (which are not privileged claims over the debtor's assets);
4. subordinate claims (i.e., claims that remain unpaid until senior debts are satisfied); and
5. claims related to shares, equity or ownership rights.

The Act allows for further subdivision of the above categories into different subcategories based on the specific characteristics of the claims. This is done to distinguish between claims of different legal priority within the same group. For example, secured claims may be further subdivided by ranking, e.g., first-priority security claims would include those that have the highest priority among the secured claims and are secured by a first-priority security interest on certain assets. Second-ranking security interests would include those that are secured by a security interest on certain assets but have a lower priority than first-ranking security interests. Finally, floating charge claims would include those having a type of security interest covering all or a specific class of assets that may change over time as the company's assets change. However, in the absence of such subdivision, all claims within the same class are to be treated equally.

The Pre-Insolvency Act provides for cross-class cram-down where the restructuring plan:

- **a.** adequately addresses the best interest of the creditors;
- **b.** ensures that no class of creditors will receive more than the full amount of their claims; and
- **c.** ensures that, if the standard ranking of liquidation priority were to be implemented, any dissenting class of affected parties' claims would be treated at least as favorably as those of the majority.

According to the Pre-Insolvency Act, once the debtor is placed under a standard preventive restructuring procedure by the court, the enforcement of all financial claims against the debtor is suspended for four months as from the date of the application. The Act, however, establishes that any claims of employees may not be suspended.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

The Pre-Insolvency Act provides that, in the event of subsequent insolvency proceedings concerning the debtor, any interim financing obtained, whether as part of a restructuring plan or otherwise, shall be protected as an enforceable claim and shall not be declared void, voidable or unenforceable. The financial assistance provided by interim financing providers shall be protected from any allegations that such financial assistance is detrimental to the creditors."

5

What are the duties of the directors when there is a likelihood of insolvency?

Under the Maltese Companies Act company directors are accountable in relation to insolvency. The Companies Act provides that directors have a duty to:

1. file an insolvency petition as soon as they become aware that the company is in such financial distress that it is unable, or is likely to become unable, to pay its debts.

2. Maintain proper and current accounting records. In insolvency proceedings, directors may be held personally liable if it is proven that proper accounting records were not kept during the two years leading up to the dissolution of the company. This liability also extends to the period between the company's registration and dissolution, whichever is shorter, if the company is insolvent and unable to pay its debts at the time of dissolution.

3. Not to engage in any acts of fraudulent preference. According to the Companies Act, any act that seeks to strip a company of its assets or rights six months before its dissolution, such act is considered to be a fraudulent preference against its creditors, if the act is performed for no consideration, at a discount, or if it favours a creditor.

4. Not to engage in any fraudulent acts. If a company is found to be responsible for fraudulent trading, directors may be held personally liable. A director's knowledge of and participation in the actions intended to defraud creditors is one of the conditions for liability to arise.

6

What are the possibilities allowing insolvent debtors to be discharged of their debts in your jurisdiction?

The Maltese Commercial Code provides that insolvent debtors shall not be discharged of their debts until a declaration of bankruptcy has been confirmed by the court. Once the ranking of creditors has been determined, and further examination has been carried out, the court will determine whether the insolvent company should be granted the possibility of rehabilitation and a chance to resume trading. However, this is subject to the condition that there is no evidence of deception or fraud on the part of the insolvent company. If the possibility of rehabilitation is granted, it has the effect of releasing the insolvent company from all debts (including present and future possessions) that could be claimed against him at any time prior to the declaration of bankruptcy. However, this does not apply to insolvent debtors who have been adjudged fraudulent bankrupts.

The Act amending the Commercial Code adds a list of debts which are not dischargeable, such as fines owed under Maltese law, civil debts owed by way of damages, wages constituting a privileged claim on the debtor's assets under Maltese employment law, debts owed in respect of fraudulent or wrongful trading within the meaning of the relevant provisions of the Companies Act of Malta and alimony within the meaning of the relevant provisions of the Civil Code. It can therefore be reasonably assumed that other types of debts not specifically listed will be deemed to be discharged (in whole or in part) by the court, depending on the circumstances of the case.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

Prior to the Reform, Maltese legislation focused on liquidation rather than early restructuring and other pre-insolvency solutions. Therefore, the transposition of the Directive offers more opportunities for entrepreneurs to receive a second chance. Previous restructuring procedures left companies and entrepreneurs unable to control their own assets and other day-to-day operations of their businesses. In contrast, the Reform gives entrepreneurs better control over their businesses, therefore avoiding unnecessary expenses and better ensures the continuation of such businesses. Moreover, businesses in financial difficulties will have access to restructuring tools at an early stage when their chances of survival are higher.

The "breathing space" provided to debtors from enforcement measures is long (twelve months with a two-month extension). Viable companies will now have access to a time-limited "breathing space" from enforcement measures of up to four months, extendable to a maximum of 12 months. This should not only expedite negotiations and shorten proceedings, but also provide further predictability and legal certainty for creditors. Finally, Malta's Insolvency Reform has the potential to encourage restorative financing for companies in financial distress or those that have embarked on an early restructuring process. This is in stark contrast to the previous insolvency laws, which for so long neglected restructuring processes and interim financing. The newly enacted legislation is intended to provide greater protection and access to financing, which should maximize the chances of a successful restructuring.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

Poland was due to implement EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") by July 2022.

The bill amending the Restructuring Act and Bankruptcy Act (the "**Bill**") submitted to Parliament at the end of 2023 was witdrawn by the new Government.

New assumptions for the Directive implementation published recently do not differ materialy from the Bill so (given the limited necessity for changes in the existing laws) we present the Bill as probable solutions for the amendments.

The Directive has already been partially transposed into the Acts on Restructuring and Bankruptcy Laws (partially, also on the occasion of the special Covid-19 related procedure applicable in 2020 - 2021, then transposed into the regular restructuring laws). However, it is still necessary to implement the Directive with regard to the stay of individual enforcement measures, the approval of a restructuring plan despite the objection of a group of creditors and the protection of new financing, interim financing and other restructuring-related matters.

2

What early warning mechanisms are available in your jurisdiction?

The information accompanying the Bill states that an early warning mechanism has already been made available via a program operated by the Polish Agency for the Development of Entrepreneurship (PARP). PARP's website lists several editions of grant programs for economic awareness and education focused on SMEs. PARP also refers to the self-assessment engine (Resc-EWE) provided by the Family Business Foundation.

3

What are the preventive restructuring frameworks that have been implemented?

The Bill provides that preventive restructuring will be carried out in the following restructuring proceedings:

1. proceedings for the approval of an arrangement with creditors ("PZU");
2. accelerated arrangement proceedings ("PPU");
3. arrangement proceedings ("PU").

At present, the Act of May 15, 2015 – Restructuring Law provides that:

1. the creditors' arrangement proposal may divide creditors into groups of different categories of interests, in particular secured creditors who have agreed to be included in the arrangement. The terms of the debt restructuring must be identical for all creditors and, if the arrangement is voted on in creditor groups, it must also be identical for creditors included in the same group unless a creditor expressly agrees to less favorable terms. A creditor who has provided or will provide financing after the commencement of the debt restructuring proceedings may benefit from more favorable debt restructuring terms;
2. a debtor may also submit an arrangement proposal limited to selected debts, the restructuring of which is crucial for the further operation of the debtor's business (partial arrangement). Objections to a partial arrangement raised by creditors must be based on objective, unambiguous and economically justified reasons related to the legal relationship between creditors and a debtor (underlying a debt to be restructured). In particular, liabilities may be included in the partial arrangement if they arise from: (i) the debtor's financing via loans, credit facilities and similar instruments; (ii) contracts that are essential for the functioning of the debtor's business (e.g. for the supply of essential materials or leases for key assets); (iii) claims secured by a mortgage, pledge, registered pledge, tax pledge or maritime mortgage on assets necessary for the debtor's business; (iv) claims of the largest amount.
3. The inclusion of a creditor secured by a right in rem (as listed above) in a partial arrangement a) does not require consent if an arrangement proposal provides for (a) full repayment (with interest) but within the time limit specified therein (i.e., the repayment is merely extended) or (b) satisfaction of such creditor's claim for an amount not less than that to be expected from a foreclosure sale of the collateral.

The Bill provides that claims secured by the debtor's property shall be included in the creditors' arrangement by operation of the law, with or without the approval of the creditors.

According to the Restructuring Law the arrangement is adopted even if it does not obtain the required majority in some groups of creditors, if the creditors representing two-thirds of the aggregate amount of the claims of the voting creditors have voted in favor of the arrangement, and the creditors from any dissenting group(s) are satisfied to an extent no less favorable than in the case of bankruptcy. A partial arrangement is adopted by a majority of the creditors who have cast a valid vote, representing two-thirds of the aggregate amount of the claims included in the partial arrangement. The Bill provides for the implementation of the cramdown mechanism laid down in Article 11 sec. 1 c) of the Directive, whereby the arrangement may be approved despite objections from a group of creditors.

The Bill introduces a mechanism for approving the arrangement even if a group of creditors objects, by adopting the principle that in the absence of a majority in favor of the arrangement in each group of creditors, a court may - the arrangement may be approved by the court at the request of the debtor or with his consent - determine the adoption of the arrangement, if the majority of the group of creditors voted in favor of the arrangement, including at least one group of secured creditors with rights in rem on the debtor's property or creditors with a higher priority than creditors of category II of the Bankruptcy Law, and, if this condition is not met, at least one group of creditors has voted in favor of the arrangement, provided that this group falls within the category of creditors who, if bankruptcy proceedings had been instituted, would have received partial satisfaction using a valuation assuming the continuation of the debtor's business (Art. 11 (1) (b) (i) and (ii) of the Directive).

The Bill provides that enforcement proceedings in respect of the debtor's assets commenced prior to the start of the restructuring proceedings shall be stayed by operation of the law for four months from the date of the start of the restructuring proceedings, whereupon a judge-commissioner or a court may extend such stay for a period not exceeding twelve months in total.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

Currently, a creditor who, after the commencement of restructuring proceedings, has provided or will provide fresh financing (e.g., via a loan, necessary for the implementation of the restructuring plan) may receive more favorable terms in the restructuring of the debtor's liabilities.

According to the Bill, financing granted to a restructured debtor for the implementation of a restructuring plan, included in such plan or financing granted to ensure the continuation of the debtor's business or to preserve or increase the value of the debtor's enterprise may not be considered invalid or unenforceable if the judge-commissioner or the creditors' committee has consented to it. Such financing providers shall not be liable if such financing is detrimental to the general body of creditors.

5

What are the duties of the directors when there is a likelihood of insolvency?

The general rule under Article 19 of the Directive has already been implemented by prohibiting and penalizing certain actions under the Polish Criminal Code.

According to the Bankruptcy Law, the debtor is obliged to file a bankruptcy petition with the court not later than thirty days from the date on which circumstances justifying the declaration of bankruptcy have arisen.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

As a general rule, a private individual bankrupt may submit a repayment plan and apply for a discharge of any residual obligations not satisfied in the bankruptcy proceedings, or for discharge without a repayment plan if his personal situation clearly indicates that he will permanently be unable to make repayments under the repayment plan.

In the order approving the payment plan, the court shall determine whether the bankrupt has caused or significantly aggravated his insolvency intentionally or as a result of gross negligence. The court's ruling shall also determine the extent and for what period (not exceeding thirty-six months) the bankrupt shall be obliged to pay any debts recognized in the claims list and not fulfilled in the course of the bankruptcy proceedings on the basis of the payment plans. The court shall also specify the part of the bankrupt's obligations incurred prior to the date of the bankruptcy declaration to be discharged after the implementation of the payment plan. If it is established that the bankrupt deliberately caused or significantly aggravated his insolvency or through acts of gross negligence, the repayment plan may not be established for a period of less than thirty-six months or more than eighty-four months.

Obligations arising from pensions for compensation for sickness, inability to work, disability or death; obligations to pay court imposed fines, and obligations to pay damages and compensation for harm suffered; obligations to pay a sum or a cash benefit ordered by the court as a penal measure or a measure related to the probation of the offender; obligations to compensate for damages resulting from a crime or misdemeanor established by a final court judgment, and obligations that the bankrupt intentionally failed to disclose if the creditor did not participate in the proceedings.

As a general rule, the court will reject an application for a repayment plan or debt relief if, during the ten years preceding the filing of the bankruptcy petition, the bankrupt has been the subject of bankruptcy proceedings in which he was released from all or part of his obligations, unless the granting of the application is justified on grounds of equity or humanitarian considerations.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "**Directive**") was fully transposed into the Portuguese legal system by Act No 9/2022, of 11 January.

Remarkably, no new preventive restructuring procedure has been established in Portugal. Instead, legislators have chosen to rely on the well-established *Processo Especial de Revitalização* (Special Revitalization Process, "**PER**") making the required adjustments to ensure conformity with the Directive.

Of particular note is the introduction of the cross-class cram-down, a concept with no precedent in the Portuguese legal system. Otherwise, changes to Portugal's insolvency regulations seek to introducing greater efficiency in the conduct of proceedings and greater protection for debtors during the negotiation period, whilst strengthening the principle of equal treatment of creditors and enhancing the protection of the company's financial partners during the PER.

2

What early warning mechanisms are available in your jurisdiction?

Since 2022, and with the aim of implementing the Directive, Portugal has had an early warning mechanism called "MAP".

MAP is a tool providing enterprises with a set of financial and economic indicators based on the data contained in the Simplified Business Information (IES) system.

It is intended to provide regular access to details on the financial position of enterprises in the last three years and their development over the same period ,thus allowing users to identify weaknesses and the possibility of using various public aid instruments to support recapitalization and the reinvestment of profits. Taking into account the size and business sector of enterprises, MAP provides some specific indicators that allow to understand, an enterprise's operational efficiency, capacity to support financial expenses, financial stability and level of financial autonomy.

3

What are the preventive restructuring frameworks that have been implemented?

In Portugal, the PER is the preventive restructuring framework provided for in the

Insolvency and Corporate Restructuring Law, as amended by Law 9/2022, which transposed the Directive.

The PER is a special procedure available to financially distressed companies or companies at risk of insolvency, as an alternative to insolvency.

It is a fast-track judicial procedure aimed at facilitating negotiations between the company and its creditors, with the ultimate goal of approving a recovery plan that fosters the revitalization of the company by allowing it to continue operating.

The company is required to classify creditors affected by the reorganization plan into different categories based on the nature of their claim. These categories include secured creditors, preferential creditors, ordinary and subordinated creditors. It is important that the universe of the company's creditors be reflected in these categories, taking into account the existence of adequate common interests. These include employees, shareholders, banks, suppliers and public creditors. This classification is intended to clearly differentiate various types of creditors and to ensure that their rights and interests are adequately represented and protected in the reorganization plan.

Where different categories of creditors exist, the plan will be deemed to have been approved when voted by more than 2/3 of the votes cast in the relevant category (abstentions are disregarded). The PER shall be deemed approved in the following circumstances:

a. if voted affirmatively by all the categories formed;

b. if voted favorably by the majority of the categories formed, provided that at least one of these categories is of secured creditors;

c. where there are no categories of secured creditors, the PER must be voted in favor by a majority of the categories formed, provided that at least one of the categories is of non-subordinated creditors;

d. in the event of a tie, the favorable vote of at least one category of non-lower-ranking creditors.

This system allows what the Directive calls a forced restructuring of debt against classes of creditors or cross-class cram-down.

4 What protection is granted to new financing, interim financing and other restructuring related transactions?

Company financing partners wether in the context of a PER (new financing) or of the implementation of the recovery plan (interim financing), have a claim on the insolvent estate up to an amount equal to 25% of the company's non-subordinated liabilities at the time of the company's insolvency declaration if this occurs within two years from the date of the final and non-appealable judgment approving the plan.

Credits arising from financing shall retain a general preferential status, ranking above the general preferential status granted to employees, but for the portion exceeding the 25% referred to in the preceding paragraph.

This privilege is now extended to credits resulting from interim financing granted by creditors, partners, shareholders and any other person especially related to the company.

Acts of interim financing may not be challenged or declared null and void or unenforceable. Furthermore, and except in cases expressly provided by law, finance providers are protected from incurring civil, administrative or criminal liability based on allegations that the financing is detrimental to all creditors.

5 What are the duties of the directors when there is a likelihood of insolvency?

Directors have a duty to file an insolvency petition no later than 30 days from the date on which they became aware of the insolvency situation. Also, following the transposition of the Directive into the Portuguese legal system, directors must consider the interests of creditors, equity holders and other stakeholders, take steps to avoid insolvency, and steer clear of intentional or grossly negligent acts that threaten the viability of the company.

6 What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

After the transposition of the Directive into Portuguese law, with regard to the discharge of residual debts, the assignment period has been reduced from five to three years and the period for applying for refusal of discharge from one year to six months.

On the other hand, the judge may extend the assignment period to a maximum of three years upon a justified request of the debtor, an insolvency creditor, the insolvency administrator (if still in office) or the trustee responsible for supervising the debtor's performance of his obligations. If the judge finds that there is a serious likelihood that the debtor will fail to meet his legal obligations, the judge shall order an extension.

Provision is made for the possibility of supervening liquidation after the liquidation of the debtor's assets has been completed and once the insolvency proceedings have drawn to a close. It will now be possible for the trustee to seize and dispose of assets that are then part of the debtor's estate during the assignment period, and then to distribute the proceeds among the creditors in the same manner as disposable income.
In an innovative move, it is established that in appeals against decisions rendered in the case of discharge of residual debts, the value of the claim is determined by the debtor's dischargeable debts (and not by his assets, as could result from the general rule of the CIRE on the value of the claim).

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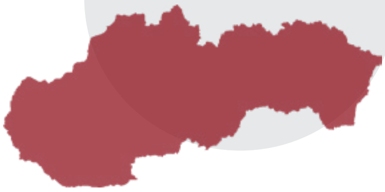

1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the "Directive") was transposed into the Slovak legal system by Act No. 111/2022 Coll. of March 16, 2022 on Solving an Impending Insolvency and on Amendments to Certain Laws. Some other existing acts have also been amended, including Act No. 7/2005 Coll. of December 9, 2004 on Bankruptcy and Restructuring and on Amendments to Certain Laws or the Commercial Code; certain provisions of the Act on Solving an Impending Insolvency entered into force on May 1, 2022, and the rest on July 17, 2022.

2

What early warning mechanisms are available in your jurisdiction?

Early warning mechanisms largely consist of advisory services provided by public or private organizations trusted by creditors with the experience, technical and human resources necessary to address the debtor's imminent insolvency. The debtor is obliged to appoint an advisor in the case of preventive public restructuring unless interim protection is granted. Also, debtors are required to inform their creditors of their intention to appoint an advisor.

3

What are the preventive restructuring frameworks that have been implemented?

Preventive restructuring offers an alternative to more invasive insolvency-oriented procedures such as bankruptcy or formal court-administered restructuring. Although informal composition arrangements between debtors and their major creditors have been used in practice prior to the adoption of the Law on Solving an Impending Insolvency, the formal recognition of preventive restructuring is widely seen as a step in the right direction. While it is too early to tell whether the new legislation will actually have the desired effect, and some of its aspects would certainly require further clarity and fine-tuning, the business community's initial reaction to the changes is positive.

According to the Act on the Solving an Impending Insolvency, the preventive procedure is divided into the following stages:

- public preventive restructuring,
- non-public preventive restructuring.

Only corporate debtors can be the subject of preventive proceedings, with the exception of the state, municipalities, self-governing regions, etc.

As part of the preventive procedure, the debtor is granted temporary protection by the court. Such temporary protection is effective from the date of the court's order approving the preventive public reorganization for a period of 3 months. This initial period may be subsequently extended in accordance with the provisions of the Act on Solving an Impending Insolvency, provided that the applicable conditions are fulfilled.

During the period of temporary protection:

- bankruptcy may not be declared against the debtor or start restructuring;
- bankruptcy or reorganization proceedings initiated under the general law on bankruptcy proceedings shall be stayed, and discontinued as soon as the application for commencement of such proceedings is received by the court;
- no execution or similar enforcement proceedings may be brought against the debtor; as soon as the application for such proceedings is lodged with the relevant court, the proceeding shall be stayed, unless, stated otherwise in the Act on Solving an Impending Insolvency (e. g. in case of tax arrears, customs debts, etc.);
- it is not possible to commence the enforcement of a security right against the debtor over property belonging to the debtor and to enforce such security right,
- it is not possible to set off a related claim against the debtor;
- the creditor cannot terminate any financing agreed with the debtor before the temporary protection. The debtor may, with the approval of the creditors' committee, arrange crisis financing ensuring the orderly operation of its business during the period of temporary protection.

Temporary protection expires upon:

- the court’s receipt of the debtor's application for the termination of the temporary protection;
- the court’s ruling on the application for confirmation of the public plan,
- the court’s ruling to discontinue the public preventive restructuring, or
- the expiry of the period for which the temporary protection was granted or extended.

Creditors are divided into affected and non-affected creditors (employment claims against the debtor, small creditors for an amount not exceeding EUR 5,000, trustees, non-monetary creditors, etc.) based on the amount of their claims, the form of the claim, and other relevant criteria. In the public plan, a separate group of affected creditors is created for each class of secured creditors, unsecured creditors, creditors of related claims, subordinated creditors and shareholders.

If a class of creditors does not approve the public plan, the debtor is entitled to file an application for confirmation of the public plan by the court, substituting the court's decision for the group's approval. The court will do so only if the dissenting class of creditors is treated no less favorably than any other creditor of the same class and no more favorably than any subordinate class, and no class receives more than the original amount of the claim under the public plan. At the same time, the court shall substitute the approval of the class if the public plan has been approved by a supermajority of the classes, at least one of which is a class of secured and unsecured creditors, or if the public plan has been approved by at least a supermajority of the classes that could be at least partially satisfied in a best-case alternative scenario.

If the debtor has become insolvent in the course of a public preventive restructuring and the public preventive restructuring plan has not been confirmed by the court by virtue of a special regulation, an application for approval of the restructuring may be filed not earlier than two years after the end of the public preventive restructuring.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

During the period of temporary protection (in the case of public preventive restructuring), the creditor cannot terminate the debtor's financing agreed before the granting of temporary protection claiming that the debtor does not fulfill any agreed financial ratios. However, the debtor is not entitled to draw funds from such financing without the consent of the creditors' committee.

The debtor may, with the consent of the creditors' committee, obtain crisis financing to ensure the proper operation of its business during the period of temporary protection. Crisis financing also includes financing agreed prior to the granting of temporary protection and used by the debtor with the consent of the creditors' committee after the granting of temporary protection. In particular, crisis financing may not be used to refinance the debtor's financing provided before the granting of temporary protection.

5

What are the duties of the directors when there is a likelihood of insolvency?

In dealing with imminent insolvency, the debtor's statutory body should consider appointing an adviser who is trusted by his creditors and has the necessary expertise and experience, technical and human resources to manage the situation. The debtor's statutory body may appoint more than one adviser. If the debtor's statutory body is considering appointing an adviser to resolve the debtor's impending insolvency, it shall inform the relevant creditors accordingly. In selecting and appointing an adviser, the debtor's statutory body shall, in particular, consider the expertise of the adviser and any recommendations and objections of the relevant creditors.

If imminent insolvency results in a preventive procedure, the debtor's statutory body is required to act proactively, to seek a mutually agreeable solution to the impending insolvency, and to act in a manner that does not compromise the accomplishment of the purpose of the preventive procedure. In a public preventive restructuring, the debtor's statutory body is required to provide creditors with all relevant information necessary to make informed decisions. If the competent court confirms a public plan or a non-public preventive restructuring plan, the debtor's statutory body must implement the public plan or non-public plan and refrain from any action that may frustrate or impede the proper or timely implementation of the public plan or non-public plan.

6

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

In general, the discharge of a debtor's obligations/debts is not an obstacle to the debtor's continuing business. However, debts can be discharged only through bankruptcy or under a repayment plan. In the case of a repayment plan, there are no special restrictions on the debtor to pursue his business activities. In the case of bankruptcy, special regulations provide for certain restrictions. For example, the debtor is disqualified from carrying on a business for three years after the bankruptcy is declared invalid (e.g., due to lack of assets), and not earlier than one year after the debtor has settled its bankruptcy-related liabilities. Special regulations may provide additional restrictions.

7

Are there any other matters specific to your jurisdiction that may need to be addressed?

No.

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1

In your Jurisdiction, what is the status of the transposition of the Directive and which are the relevant legislative developments containing the measures provided for in the Directive?

In Spain, the Directive was transposed by Act 16/2022 of September 5, 2022, amending the Insolvency Act, approved by Royal Legislative Decree 1/2020 of May 5 (the "Act 16/2022").

In addition to transposing the Directive, Act 16/2022 amends certain other key aspects of insolvency proceedings, such as the transfer of productive units in insolvency proceedings, and introduces the pre-pack procedure in Spain. In fact, Act 16/2022 amended more than one third of Spain's Insolvency Act.

Act 16/2022 entered into force on September 6, 2022 and has been applied in major restructurings since then.

2

What early warning mechanisms are available in your jurisdiction?

Additional Provision No. 5 of Act 16/2022 establishes that public authorities shall maintain a self-assessment mechanism that allows small and medium enterprises to assess their solvency (*click to access*) Likewise, Additional Provision No. 7 grants a 6-month time limit for developing a mechanism by which members of a company's management body may be provided, upon request, with a risk assessment of the company based on its financial statements by the Registrar of Companies. This mechanism has not been implemented yet.

3

What are the preventive restructuring frameworks that have been implemented?

Under Spanish law there are two different restructuring frameworks: (i) the notice of the commencement of negotiations with creditors (*comunicación de inicio de negociaciones con los acreedores*); and (ii) restructuring plans (*planes de reestructuración*). Both were In place prior to Act 16/2022, but they have been largely amended as a result of the transposition of the Directive. The normal course of action is to serve notice of the commencement of negotiations with creditors, in order to agree a restructuring plan.

Notice of the commencement of negotiations with creditors

This procedure starts by sending a notice to the courts that would have jurisdiction to handle the company's insolvency proceedings. The notice may be public or private.

The procedure does not alter the powers of the debtor's management bodies, but it does have certain implications for the credits and agreements entered into by the debtor:

- **i.** contracts containing reciprocal obligations that have not been discharged in full by both parties will not be automatically terminated by the notice or equivalent or related circumstances. However, a of such agreements occurred after the notice will be accepted as valid grounds for the termination.

- **ii.** Any guarantees or security granted by third parties will generally remain unaffected, except where the debtor specifically requests that the enforcement of such guarantees or security, when given by other companies of the debtor's group, be suspended.

- **iii.** Enforcement proceedings related to any assets necessary to enable the debtor to continue carrying on his business will be stayed, and no new such proceedings may be commenced. Also, the stay will not affect the enforcement of financial guarantees under Royal Decree 5/2005 (which transposed Directive 2002/47 on financial collateral arrangements, employment, credits or credits arising from tort. Enforcement proceedings related to public credits will continue their course until the debtor's assets are about to be disposed of to repay the debt.

- **iv.** Insolvency proceedings started by creditors will be suspended for the length of the notice period. Where the debtor files a bankruptcy petition, this will be prioritized by the courts over any insolvency petition lodged by the creditors. Remarkably, the consequences of a bankruptcy declaration in Spain are harsher when the petition was made by a creditor.

The above effects will continue for a maximum of 3 months, but may be extended for another 3 months provided that creditors representing 50% of the debts included in the restructuring plan agree to such extension. Certain creditors are not affected by this suspension.

The debtor may not file a new notice for a period of one year.

Restructuring plan

Restructuring plans, as provided I the directive are pre-insolvency instruments aimed at reaching an agreement between the debtor and its creditors, with a view to modifying the liabilities and/or assets of the debtor so as to defuse such situation. While in theoretical terms it would be possible to agree a restructuring plan outside the framework provided by law, this situation would be extremely rare, since the provisions governing restructuring plans will need to be applied if any of the following effects are sought: (i) that the plan I affects dissenting creditors or even dissenting shareholders (ii) the plan requires that theearly termination of agreements be requested from the courts; (iii) protection against claw-back actions is foreseen; or (iv) fresh money is to be granted in the context of the restructuring and the preferred ranking awarded to such fresh money by law is to be grante.

A restructuring plan can potentially encompass nearly all types of debts, with the exception of (i) employment debts; (ii) debts arising from tort; (iii) alimony debts (if the debtor is an individual). Certain debts to public authorities, which rank higher than ordinary claims, may be subject to a moratorium only if the debtor is not in arrears with its tax and social security debts. In practice, this means that no public debts will be affected by the restructuring plan, because the vast majority of public claims in insolvency scenarios arise from tax and social security liabilities.

Contrary to a bankruptcy, a restructuring plan needs not cover all existing debts. Therefore, a restructuring plan may include only one or several types of debts.
In the course of restructuring proceedings, credits are classified into different classes pursuant to the following rules:

i. Classes are formed around a common interest as determined by objective criteria. Such interest is deemed to exist when credits rank equally in bankruptcy proceedings.

ii. Debts of equal ranking may be divided into different classes where this is sufficiently warranted due to the financing nature of a credit, conflicting interests or the impact of the restructuring plan, among other reasons.

iii. Debts of SMEs will be included in a separate class if such liabilities are to be written off by 50% or more.

iv. Debts owed to public authorities will form a separate class from other equally ranked debts.

A class shall be deemed to have accepted the plan and thus to accede to it when 2/3 of the credits included in a class have voted in favor. If the class corresponds to secured creditors, the required majority shall be 75%. the members of the syndicated will be understood to have have accepted the plan as a whole, if the above majorities (or such lower majorities provided in their arrangements) are reached.. If the required majority is not reached, the creditors voting in favor of the restructuring plan will be deemed to have individually accepted the plan. This does not apply if the syndicated arrangement was structured as a separate class.

Third-party guarantees or collateral are not affected by the plan, notwithstanding its approval, unless specifically requested in respect of other group companies, if the enforcement of such guarantee or collateral could result in the insolvency of the guarantor and the debtor.

Where shareholders are required to approve the plan, the ordinary majorities provided by law apply, rather than any enhanced quorums or majorities that may be provided for in the debtor's by-laws.

As provided in the Directive, cross-class cram-down is possible. In those cases where there is not an unanimous acceptance by all classes affected, the plan may be deemed to have been approved if accepted by a majority of the classes, provided that at least one of the classes approving the plan:

i. is a class consisting of preferential creditors, either generally over all of the debtor's assets or over certain specific assets, such as creditors holding in-rem collateral;

ii. failing the above, one of the classes that has accepted the plan can reasonably be expected to receive payment if the debtor is valued as a going concern. In this case, the report of a restructuring expert is required.

In the case of a corporate debtor, shareholders who do not have unlimited liability for the debtor's debts may also be crammed down without their consent if they did not approve the restructuring plan.

Shareholders and the debtor may be crammed down as well, but this possibility is only available for companies exceeding a certain threshold, which basically excludes more than 90% of the businesses in Spain.

In the case of subsequent bankruptcy proceedings, if the restructuring plan as confirmed by a court involved more than 50% of the debtor's liabilities, neither the plan nor certain other actions related to it are subject to claw-back actions, unless there is proof of fraud against the creditors.

If a restructuring plan involves less than 51% of the debtor's liabilities, the agreement may be subject to claw-back actions, but neither the plan nor the actions related to it are presumed to be detrimental to the bankruptcy estate. The exclusion of this presumption is very relevant relevant, since such presumption, greatly simplifies the exercise of claw-back actions in Spanish bankruptcy proceedings.

4

What protection is granted to new financing, interim financing and other restructuring related transactions?

Interim financing (i.e., financing considered reasonable and necessary to ensure the continuity of the debtor's operations pending the negotiation or judicial confirmation of the plan), as well as any new financing envisaged in the plan and required for its implementation, is protected from claw-back actions under the same conditions as those described in point 3 above for the plan and its related operations.

This protection is also granted in cases where the financing has been provided by persons specifically related to the debtor, but such financing shall only be protected if the liabilities affected by the plan, deducting those arising from debt vis-à-vis specifically related persons, exceed 60% of the total debt.

5

What are the duties of the directors when there is a likelihood of insolvency?

Notwithstanding the provisions of Article 19 of the Directive, Spanish law does not alter the duties of directors in the event of insolvency.

5

What possibilities exist in your jurisdiction so as to allow that insolvent debtors is discharged of its debts?

Individuals (irrespective of their status as entrepreneurs) may apply for the discharge of their debts. Debtors are required to act in good faith. The application may be made subject to a payment plan that does not involve the liquidation of the insolvency estate, or in the course of liquidating the insolvency estate. The fact that the request is made under a payment plan or in the course of the liquidation of the bankruptcy estate affects the time limit for filing a new request for discharge: five years in the case of a request made under a payment plan and two years where the request is made in the course of the liquidation of the bankruptcy estate.

The following individuals are not eligible for debt relief in the form of discharge:

i. debtors who, in the 10 years preceding their request for debt discharge were convicted of certain offenses (e.g., against the social security, tax offenses, forgery, etc.) carrying a penalty of three years' imprisonment or more. The above does not apply where the debtor's criminal liability has been extinguished and any pecuniary liabilities arising from the crime have been settled.

ii. Debtors convicted for very serious administrative violations related to tax, social security or social order in the ten years preceding their request for debt discharge , unless their liability has been satisfied. In the case of debtors found liable of serious violations, the discharge may only affect a maximum of 50% of the dischargeable debt by the tax authorities.

iii. Where the insolvency has been declared negligent, for reasons other than the debtor's delay in filing for insolvency. In this case, the judge may gran debt relief in the form of discharge depending on the circumstances of the case.

iv. Where the debtor assisted in the action(s) which caused the bankruptcy proceedings of a third party to become negligent.

The discharge covers all of the debtor's debts except:

i. debts arising from any pecuniary liability related to crime, death, personal injury, working accidents and professional illness;

ii. alimony;

iii. employment debts arising from the lower of (a) latest 60 days or (b) three times the national minimum wage.

iv. penalties arising from criminal proceedings.

v. costs and expenses arising from the petition of discharge before the courts

vi. secured debts, but only up to the amount they are considered covered by the relevant security under applicable bankruptcy laws, roughly 90% of the value of the collateral; and

vii. exceptionally, any debts that the court is of the opinion that, if discharged, might result in the relevant creditor(s) becoming insolvent

viii. debts owed to public authorities up to an amount of €10,000 may be discharged, provided that they relate to tax or social security and only in the first petition of discharge. Other public debts may not be discharged.

The significant number of debts excluded from the discharge, particularly those that relate to debts owed to public authorities, raises severe concerns as to the real usefulness of the discharge in Spain.

The discharge granted by the court may be set aside in the following circumstances:

i. where there is evidence of asset concealment by the debtor;

ii. assets acquired by inheritance, donation or prizes within 3 years as from the discharge; and

iii. where the debtor has been convicted in criminal or administrative proceedings of the type referred to in paragraphs (i) and (ii) above within 3 years of the release.

6

Are there any other matters specific to your jurisdiction that may need to be addressed?

The following matters are specific to Spain:

Facilitation of the sale of business units

After the enactment of Act 16/2022, it has become clear that insolvency proceedings are aimed at preserving economically viable businesses, and that this interest takes precedence over the satisfaction of creditors. One of the business preservation measures is the formal incorporation of the pre-pack mechanism into insolvency legislation. The scope of employment and social security debts transferred with the business unit (a classic and very important area of concern in any transfer of undertakings) has been clarified so as to include only debts related to the employees being transferred with the business unit.

New insolvency state

Traditionally, a debtor was considered insolvent if it was unable to pay its obligations as they became due and payable. Insolvency could be either actual or impending, and in either case the debtor would be entitled to file for bankruptcy. Both current and threatened insolvency may also justify the pre-insolvency measures described in [__] above. Such measures (but not the filing of a bankruptcy petition) may also be warranted if there is a likelihood of insolvency in the next two years unless such measures are taken. However, the scope of such measures will be limited.

New Insolvency proceedings for micro enterprises:

Individuals and legal entities will not be subject to bankruptcy proceedings or pre-insolvency remedies:

i. where the average number of employees in the year prior to the filing is less than 10; and

ii. where their turnover is less than €600,000 or the aggregate liabilities amount to less than €300,000, as determined by the financial statements corresponding to the year immediately prior to the filing.

In this case, a specific procedure referred to as continuity plan (aimed at agreeing a composition with the creditors) will be followed. Alternatively, the debtor's assets will be liquidated. The procedure also provides for the possibility to use the pre-insolvency remedy referred to under 3 above (notice of commencement of negotiations).

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