# *Analysis of Key Policy Areas of Reform in the Existing Framework Governing Debt Restructuring in Latvia*

*5 June 2020*




This project is funded by the EU via the Structural Reform Support Programme and is implemented by the EBRD, in collaboration with the European Commission

# Annexes

## Annex 1. Evaluation criteria for companies in financial distress from the bank perspective

The IFRS Foundation is a not-for-profit international organisation responsible for developing a single set of high-quality global accounting standards, known as IFRS Standards. IFRS 9 specifies how an entity should classify and measure financial assets, financial liabilities, and some contracts to buy or sell non-financial items. Formally, the IFRS9[1] standards set the three main stages for bank loans:

1. Performing,
2. To-be-monitored,
3. Non-performing.

IFRS9 standards set the formal rules framework regarding the entering or exiting to/from certain stages.

Stages of companies entering into financial distress

The following stages of companies entering into financial distress and having non-performing loans can be identified simultaneously:

- Vulnerable – during this stage the company usually has vulnerabilities arising from company governance/management, non-standard accounting positions (with significant management assumptions), related party exposures (shareholder lending, non-performing investments in subsidiaries, etc). In a stable economy this can continue for a while, but in the case of industry problems or increasing competition, performance slowly worsens and deteriorates to the decline stage;
- Decline – clear negative trends in financial performance. The company's internal problems start to negatively influence the working capital, sales volumes and margins, inventories increase, there is a decline in cash levels and an increase in debt (both the bank limits used and delayed creditor payments). If no measures are applied and the business model is not changed/adapted, it can accelerate to the distress stage;
- Distress – significant cash flow and liquidity problems, intermediate settlements with creditors, company is attempting to "raise cash" at any cost, management is focusing on reducing losses, cost cutting and increasing liquidity. At this stage, the legal protection process might be already necessary.
- Crisis – liquidity is the prime concern, losses are increasing as a result and the balance structure is worsening further, selective asset sales (incl. sales at undervalue), in some cases management and key employees are changing.

The main idea behind this is – the faster a creditor notices a potential problem and the earlier stage that the company pays attention to, the more options for successful restructuring are available. For companies which are in crisis stage, there are very limited sets of options left – like forced assets sales, changes in the shareholder structure, legal protection or insolvency proceedings. During the decline stage, banks usually start to involve a restructuring specialist in the case.

Banks regularly monitor the following information: company financials, payment discipline, ad hoc company-related information (e.g. a serious accident in the production plant, entering into legal disputes with a company's debtor or creditor or the SRS, management change, the acquisition of other companies) and industry outlooks from a macroeconomic perspective.

Financials are monitored once a quarter, payment discipline – in accordance with repayment schedules (mostly – monthly). Other events are analysed on an ad hoc or planned basis – incl. making stress tests for the loan portfolio – if the negative trends in certain industries or enterprise groups have been noticed, or - negative events are expected (e.g. due to changes in legislation, tax impact, Brexit, changes in the business environment in the main export countries, etc).

To achieve this, banks are focusing on a list of key indicators and facts. Among others, the following early warning signals are used:

- Industry problems (adverse commodity price movements, changes in demand/technology, increase in competition, other sector players in distress, related industries in distress, etc);
- Delays in credit repayments (loan being in arrears);

[1] IFRS 9 financial instruments. Available at: https://www.ifrs.org/issued-standards/list-of-standards/ifrs-9-financial-instruments. [Accessed November 19, 2019].

- Breaches of financial covenants set in loan agreements (Debt/EBITDA, DSCR, capital ratio, NWC level, etc);
- Negative entries in credit registers regarding other creditor payments (LB Credit register, Creditreform, etc);
- Auditor statements, notes in statements, going concern, delay of audited reports, resignation of auditors;
- Tax debt evidence, tax debt increase;
- Significant change (negative trend) in sales volumes, gross margin, EBITDA, net working capital/liquidity, etc;
- Loss of substantial client/clients;
- Material changes in other financial items compared to other periods – related party exposure, stock, receivables, fixed assets, etc;
- No-clear-purpose or poorly performing investments;
- Recent changes of shareholders or management;

When the case is already entering into deeper trouble and a bank nominates a restructuring team to step in, the following steps are performed to diagnose the situation and to work out the options and scenarios:

- A focused meeting with the debtor, with the main goal – to identify the reasons for the problems and to identify the commitment and the ability to introduce radical changes into operations, and to find out what the company management's business restructuring plan is;
- An analysis of debt exposure of banks and all other creditors (incl. – to the related parties, persons);
- Overview of the set of collateral (incl. personal and corporate guarantees), overview of quality and assessment of the collateral's value;
- An analysis of the working capital structure - the structure of the maturity of receivables, stock and operating liabilities;
- An analysis of the trends of the key indicators in financial statements: sales, EBITDA margin, net financial debt/EBITDA, debt service coverage ratio, capital ratio, liquidity ratio, cash flow from operations, etc;
- An analysis of the necessary resources for working capital and capex financing, identification of assets suitable for sale and assessment of the value of this property;
- 1 year budget, by months, for the restructuring scenario, and in certain cases up to 5-year projections of cash flows based on conservative assumptions, and including "must" capex investments for survival during that period;
- The calculation of different scenarios (implementation of restructuring or the exit strategy);

The information sources used for analysis and warning signs:

- The company's management, shareholders, employees;
- The company's financials, auditor statements (annual statements can also be found in *Lursoft*);
- Public sources:
    - Enterprise Register (through *Lursoft*) – company status (insolvency, liquidation, merger, etc), commercial pledges, current tax debt (not working for VAT groups), limitations set by the SRS and bailiffs, changes in shareholders and/or management;
    - Credit register – size of debt, payment discipline to creditors (are there any arrears);
    - Credit risk insurance companies (*Coface*, *Euler Hermes*, etc) – especially in the case of non-recourse factoring;
    - State land register (Landbook) – information regarding the real estate collateral, its status, limitations;
    - Stock exchange – financials, stock price, company announcements;
    - Insolvency register – fact, the company status in the process, etc;
    - Court information, bailiffs – claims raised towards the pledged property, legal protection, insolvency processes, etc
    - SRS – tax debt, debt schedules (the obtaining of information requires the involvement of company management);
    - News portals;
    - The Insolvency practitioner or person supervising the legal protection process;
    - Company clients – the quality of service, products, recent changes, etc;

## Annex 2. Statistical overview of viability of companies in Latvia by count[2] (Data from the *Lursoft*)

| | Position | Micro companies (less than 10 employees; turnover ≤ EUR 2 million OR balance sheet total ≤ EUR 2 million) | | | | | | | | | | Small size companies (less than 50 employees; turnover ≤ EUR 10 million OR balance sheet total ≤ EUR 10 million) | Medium size companies (less than 250 employees; turnover ≤ EUR 50 million OR balance sheet total ≤ EUR 43 million) | Large size companies (less than 250 employees; turnover ≥ EUR 50 million OR balance sheet total ≥ EUR 43 million) | Grand total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Further micro companies' segregation by turnover amount | | | | | | | | | | | | | |
| | | Turnover EUR 0 | Turnover below EUR 10,000 | Turnover below EUR 25,000 | Turnover below EUR 50,000 | Turnover below EUR 100,000 | Turnover below EUR 200,000 | Turnover below EUR 500,000 | Turnover below EUR 1 million | Turnover below EUR 2 million | Turnover below EUR 2 million | | | | |
| | Submitted annual accounts for FY2018, as at 11 November 2019 | 23,507 | 18,894 | 14,878 | 16,030 | 9,401 | 7,673 | 6,416 | 2,325 | 1,051 | 534 | 9,024 | 1,640 | 300 | 111,673 |
| | Liquidate since annual accounts submission | 1,012 | 361 | 196 | 238 | 58 | 39 | 39 | 28 | 12 | 9 | 38 | 38 | 0 | 2,038 |
| | Suspended economic operations since annual accounts submission | 338 | 56 | 42 | 35 | 58 | 42 | 33 | 22 | 6 | 6 | 57 | 7 | 0 | 702 |
| | **Data on illiquid companies** | **20.52%** | **16.90%** | **13.39%** | **14.40%** | **8.52%** | **6.96%** | **5.82%** | **2.10%** | **0.95%** | **0.48%** | **8.20%** | **1.49%** | **0.27%** | **100%** |
| | Total of annual accounts submitted | **22,495** | **18,533** | **14,682** | **15,792** | **9,343** | **7,634** | **6,377** | **2,297** | **1,039** | **525** | **8,986** | **1,632** | **300** | **109,635** |
| Indicator No.1 | Negative equity as at 31 December] 2018, companies | 11,968 | 10,146 | 7,063 | 6,926 | 2,908 | 1,859 | 1,120 | 305 | 117 | 55 | 1,584 | 142 | 9 | **44,202** |
| Indicator No.2 | Total liquidity below 1 as at 31 December 2018, companies | 15,886 | 11,381 | 7,771 | 7,744 | 3,547 | 2,493 | 1,818 | 561 | 251 | 78 | 2,868 | 478 | 89 | **54,965** |
| Indicator No.3 | Losses for the period from 1 January] 2018 to 31 December 2018, companies | 16,111 | 11,497 | 7,424 | 7,315 | 3,178 | 2,066 | 1,336 | 382 | 139 | 57 | 2,232 | 320 | 45 | **52,102** |
| Indicator No.4 | Tax indebtedness as at 7 December, 2018, companies | 4,040 | 2,862 | 3,012 | 3,374 | 2,444 | 1,945 | 1,410 | 365 | 146 | 51 | 2,188 | 226 | 19 | **22,082** |
| | Tax indebtedness as at 7 January 2019, companies | 4,001 | 2,703 | 2,762 | 3,054 | 2,361 | 1,906 | 1,431 | 379 | 158 | 55 | 2,228 | 229 | 14 | **21,281** |
| | Negative equity as at 31 December 2018, %] from groups total | 53.20% | 54.75% | 48.11% | 43.86% | 31.12% | 24.35% | 17.56% | 13.28 | 11.26% | 10.48% | 17.63% | 8.70% | 3.00% | |
| | Total liquidity below 1 as at 31 December 2018, % from groups total | 70.62% | 61.41% | 52.93% | 49.04% | 37.96% | 32.66% | 28.52% | 24.42% | 24.16% | 14.86% | 31.92% | 29.29% | 29.67% | |
| | Losses for the period from 1 January 2018 to 31 December 2018, % from groups total | 71.62% | 62.04% | 50.57% | 46.32% | 34.01% | 27.06% | 20.95% | 16.63% | 13.38% | 10.86% | 24.84% | 19.61% | 15.00% | |
| | Tax indebtedness as at 7 December 2018, % from groups total | 17.96% | 15.44% | 20.51% | 21.37% | 26.16% | 25.48% | 22.11% | 15.89% | 14.05% | 9.71% | 24.35% | 13.85% | 6.33% | |
| | Tax indebtedness as at 7 January 2019, % from groups total | 17.79% | 14.58% | 18.81% | 19.34% | 25.27% | 24.97% | 22.44% | 16.50% | 15.21% | 10.48% | 24.79% | 14.03% | 4.67% | |
| | **CUMULATIVE TURNOVER (EUR 000,000)** | 0 | 77 | 249 | 563 | 668 | 1,084 | 1,987 | 1,596 | 1,427 | 2,375 | 15,112 | 14,859 | 23,006 | |
| | **% OF THE POPULATION** | 0.00% | 0.12% | 0.39% | 0.89% | 1.06% | 1.72% | 3.15% | 2.53% | 2.27% | 3.77% | 23.99% | 23.58% | 36.52% | |

[2] The term SME in the Report is used in line with the Cabinet Regulation No. 776 of 16 December 2014 Procedures by which Commercial Companies Declare Their Compliance with the Status of Small (Small) and Medium-Sized Commercial Companies and fall in the scope of Law On Control of Aid for Commercial Activity. For the purposes of these rules, an SME is to be defined in accordance with the provisions of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ('Commission Regulation No 651/2014').

| | Micro companies (less than 10 employees; turnover ≤ EUR 2 million OR balance sheet total ≤ EUR 2 million) | | | | | | | | | | Small size companies (less than 50 employees; turnover ≤ EUR 10 million OR balance sheet total ≤ EUR 10 million) | Medium size companies (less than 250 employees ; turnover ≤ EUR 50 million OR balance sheet total ≤ EUR 43 million) | Large size companies (less than 250 employees ; turnover ≥ EUR 50 million OR balance sheet total ≥ EUR 43 million) | Grand total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Further micro companies' segregation by turnover amount | | | | | | | | | | | | | |
| **COMBINATION OF CRITERIA** | Turnover EUR 0 | Turnover below EUR 10,000 | Turnover below EUR 25,000 | Turnover below EUR 50,000 | Turnover below EUR 100,000 | Turnover below EUR 200,000 | Turnover below EUR 500,000 | Turnover below EUR 1 million | Turnover below EUR 2 million | Turnover below EUR 2 million | | | | |
| Indicators No.1+No.2+No.3+ No.4 | 1,979 | 1,543 | 1,412 | 1,383 | 717 | 415 | 199 | 47 | 15 | 5 | 467 | 39 | 2 | **8,223** |
| Indicators No.1+No.2+No.3 | 8,559 | 6,934 | 4,479 | 4,358 | 1,496 | 929 | 516 | 143 | 66 | 26 | 894 | 86 | 6 | **28,492** |
| Indicators No.1+No.2+No.4 | 2,561 | 1,892 | 1,828 | 1,842 | 991 | 617 | 301 | 66 | 20 | 6 | 640 | 53 | 3 | **10,820** |
| Indicators No.2+No.3+No.4 | 2,168 | 1,661 | 1,523 | 1,491 | 826 | 484 | 263 | 58 | 20 | 7 | 609 | 64 | 3 | **9,177** |
| Indicators No.1+No.3+No.4 | 2,132 | 1,676 | 1,524 | 1,481 | 823 | 484 | 244 | 55 | 16 | 6 | 518 | 41 | 2 | **9,002** |
| Indicators No.1+No.2 | 10,589 | 8,754 | 6,127 | 6,018 | 2,213 | 1,397 | 812 | 212 | 92 | 38 | 1,263 | 128 | 8 | **37,651** |
| Indicators No.1+No.3 | 9,727 | 7,932 | 5,081 | 4,883 | 1,867 | 1,165 | 682 | 191 | 77 | 36 | 1,077 | 92 | 7 | **32,817** |
| Indicators No.1+No.4 | 2,777 | 2,067 | 2,001 | 2,009 | 1,178 | 744 | 379 | 84 | 22 | 7 | 727 | 57 | 3 | **12,055** |
| Indicators No.2+No.3 | 10,884 | 8,122 | 5,102 | 4,936 | 1,911 | 1,202 | 722 | 205 | 84 | 32 | 1,333 | 180 | 23 | **34,736** |
| Indicators No.2+No.4 | 3,054 | 2,101 | 2,076 | 2,167 | 1,299 | 900 | 562 | 127 | 46 | 12 | 1,113 | 131 | 10 | **13,598** |
| Indicators No.3+No.4 | 2,894 | 2,080 | 1,876 | 1,847 | 1,118 | 699 | 393 | 91 | 30 | 12 | 807 | 82 | 7 | **12,743** |

## Annex 3. Issues identified by research sources

| Citation of the Research source | Issues identified by research source |
|---|---|
| **Guidelines for Insolvency Policy Development for 2016-2020**[3] | a) **Low recovery rates.**<br>b) **High costs** of the insolvency proceedings.<br>c) **Lengthy** insolvency process.<br>d) **Late initiation** of insolvency procedures.<br>e) **Low number of successful** legal protection proceedings.<br>f) **No system of performance indicators** Compliant which could be used to measure the effectiveness of the current insolvency framework (*see* the report of the State Audit Office). |
| **Insolvency Abuse Report, (FICIL, Deloitte), 2016**[4] | a) It is **not possible to monitor** whether Insolvency practitioners comply with the law and submit reports and the measurement of the efficiency of a particular insolvency case/ Insolvency practitioner and the whole insolvency system is not possible.<br>b) Data in the **submitted reports from Insolvency practitioners** lack data, are not complete and consistent.<br>c) **The average recovery rate** for secured creditors is significantly less than international best practice benchmarks.<br>d) Wide scale of **abuse and problems** with the application of the Insolvency Law.<br>e) **Reluctance of** financially distressed debtors **to apply** for insolvency or restructuring proceedings. |
| **Corporate Governance in Latvia (OECD), 2017**[5] | a) Continuing – a significant **backlog of insolvency cases.**<br>b) Allegations of **abuse** by Insolvency practitioners.<br>c) **The average recovery rate** of secured creditors in Latvia was 42% over the last three years, which is substantially below the average recovery rate for secured creditors in OECD high income countries (72%) (FICIL, 2015).<br>d) **The recovery rate** for unsecured creditors (including the SRS) in the last seven years was less than 1% (FICIL, 2015).<br>e) "The absence of a government insolvency policy [and] chaotic and the fragmented **monitoring process** for insolvency proceedings as well as [the] ineffectiveness of law enforcement bodies [,] is the main reason for the **low inefficiency rates** of [the] insolvency system" (FICIL, 2015).<br>f) **Insolvency practitioners** are not sufficiently monitored by an overseeing body (State Audit Office, 2015).<br>g) Insufficient focus on the conservation and recovery of economic value - reflected in **low recovery rates** (State Audit Office, 2015).<br>h) **No strategy, objectives or quantifiable indicators** to monitor and improve the functioning of the insolvency system has been developed (State Audit Office, 2015). |

[3] Maksātnespējas politikas attīstības pamatnostādnes 2016. - 2020.gadam. Available at: http://polsis.mk.gov.lv/documents/5689. [Accessed December 4, 2019].

[4] Foreign Investors Council in Latvia, Riga, 2016. Available at: https://www.ficil.lv/wp-content/uploads/2017/04/16-04-06-FICIL-Insolvency-Abuse.pdf. [Accessed December 4, 2019].

[5] OECD (2017), Corporate Governance in Latvia, Corporate Governance, OECD Publishing, Paris. Available at: https://doi.org/10.1787/9789264268180-en. [Accessed December 4, 2019].

| | |
|---|---|
| **European Commission Country Report - Latvia, 2019**[6] | a) A new overview of insolvency jurisprudence in 2015- 2018 aims at improving consistency of case law and legal certainty and representatives of investors (FICIL) confirm a certain progress.<br>f) Disciplinary liability and control of Insolvency practitioners by the Insolvency Control Service under the Ministry of Justice appears to be in place, but to achieve its effectiveness, continuous action by authorities is needed.<br>g) On-site visits by the Control Service have discovered irregularities in 80% of visits (but mostly of minor significance, such as failing to submit a report to creditors, while sometimes more serious, e.g. charging of unreasonable costs). |
| **Helmuts Jauja and Artūrs Zandersons**<br>**The Effectiveness of the Regulatory Framework for the Legal Protection Process (2018)**[7] | **Main issues:**<br>a) **Business owners lack the financial expertise** on day-to-day business management and in regard to solving financial difficulties. Businesses often only restructure their debts during legal protection proceedings and pay little attention to restructuring of the commercial activity of the business;<br>b) **Businesses fail to solve their financial difficulties in time,** that is, by starting the legal protection proceedings, the development and coordination of their Restructuring plan with their creditors too late;<br>c) **Legal protection proceedings place a burden on the commercial activity of the debtor**. Suppliers in most cases request prepayment. A possibility Compliant that clients have a reserved attitude towards the debtor which results in difficulties in acquiring new business opportunities;<br>d) **Legal protection proceedings are being used for dishonest goals that contradict the goals of the legal protection proceedings** - in order to delay the collection of debts and "prepare" the company for insolvency proceedings, by transferring the business activities of the company to a different company, selling of separate assets or by adjusting the accounting documentation.<br>**Secondary issues:**<br>a) **Unsuccessful or lack of communication between the debtor and the creditors** can be the reason for the difficulties arising in obtaining the approval of creditors for the Restructuring plan;<br>b) **Actual inequality Compliant between the creditors of legal protection proceedings** because among unsecured creditors, there may be unofficial favourable creditors whose claims are also totally covered outside the Restructuring plan;<br>c) **The expense of legal protection proceedings may be burdensome for some small enterprises** which results in endangerment of the restructuring of these enterprises;<br>d) **The model of remuneration for the persons supervising the legal protection proceedings as established in law does not function** and creates additional time and financial resource expenses for the participants in legal protection proceedings;<br>e) **The limitation established in law for persons supervising legal protection proceedings to participate in the development of the Restructuring plan works only partially in practice** and from the perspective of the effectiveness of legal protection proceedings creates more complications than benefits.<br>f) **Legal protection proceedings are extensively used for the purposes of tax debt restructuring,** that is, by attracting other creditors after a tax surcharge. |

[6] COMMISSION STAFF WORKING DOCUMENT. Country Report Latvia 2019. Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK AND THE EUROGROUP 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, p.40. Available at: https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-latvia-en_1.pdf. [Accessed November 4, 2019].

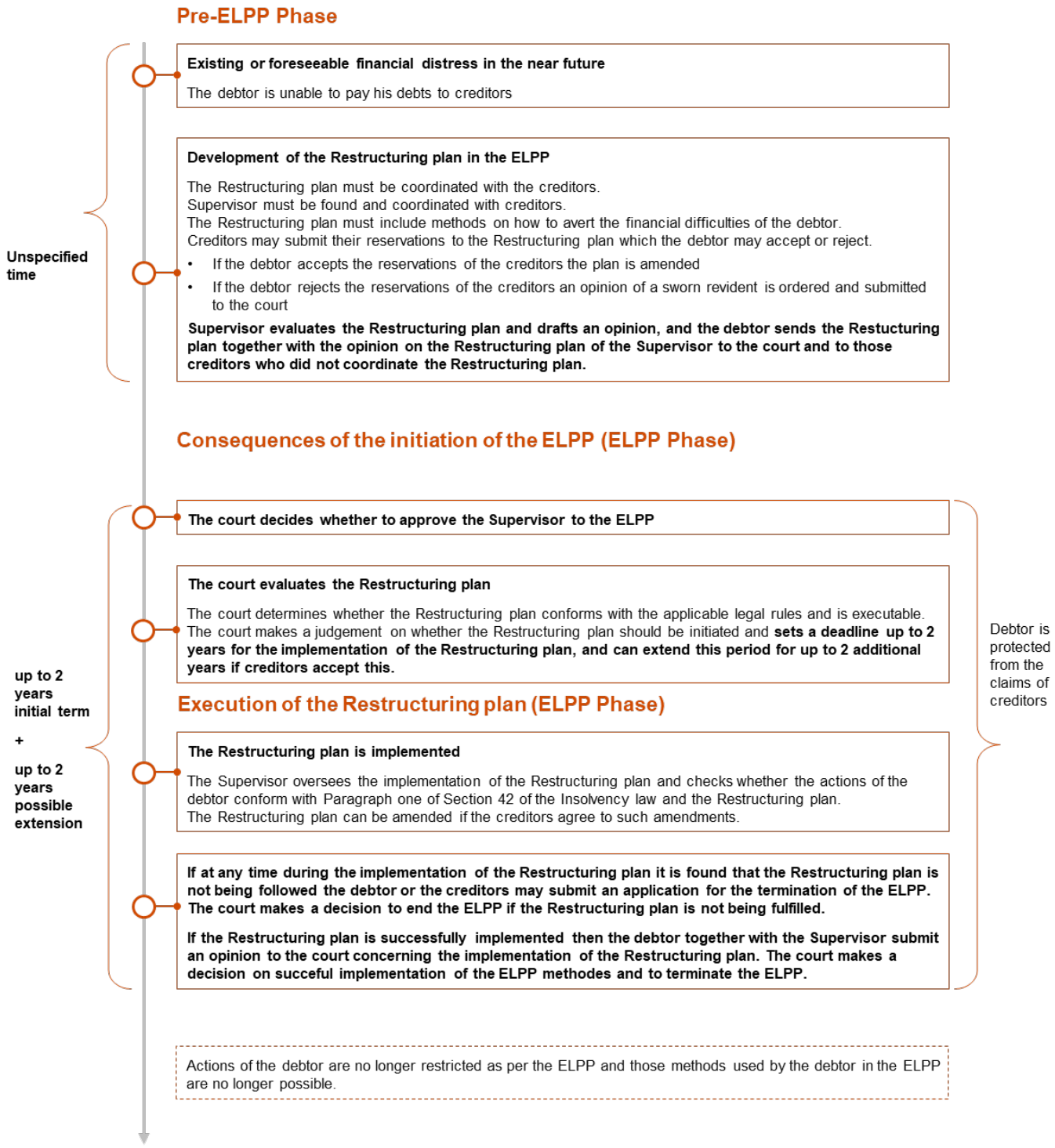
[7] Jauja, H., Zandersons, A., Par tiesiskās aizsardzības procesa regulējuma efektivitāti, 2018. Available at: http://petijumi.mk.gov.lv/sites/default/files/title_file/Zinojums_Par_tiesiskas_aizsardzibas_procesa_efe tivitati.pdf. [Accessed November 4, 2019].

| | |
|---|---|
| | Unlike private creditors, the tax administration does not possess the tools for the restructuring of tax debts outside of the legal protection proceedings. |
| **OECD 2019 Economic Survey Overview** | a) **The cost of approximately 900 Euros to initiate private insolvency procedures is out of reach for many low-income households** and should be waived for the poorest.<br>b) A 2017 reform strengthened the accountability and qualifications of Insolvency practitioners, but **trust in the independence of the judiciary remains low** among business, the public and judges themselves. |
| **International Monetary Fund, LATVIA EVALUATION OF THE INSOLVENCY FRAMEWORK[8]** | a) The general **efficiency** of the system, as evidenced in creditors' **recovery rates.**<br>b) The **lack of use** –and **misuse**- of Legal Protection Proceedings. Debt restructuring is poorly utilized by businesses and more should be done to advance the process to give companies their "second chance" for revitalization and long-term development.<br>c) The high number of **no-asset cases**. Fraudulent insolvency and the widespread cases of insolvency for companies that have no assets<br>d) **Difficulties in selling** businesses as a going concern. Lacking promotion for the sale of insolvent companies.<br>e) Further development of IT solutions and data collection methodology is necessary in the insolvency process. |
| **Doing Business 2019, (World Bank), 2019[9]** | a) **Recovery rates** (cents on the dollar) – 41.4 < OECD high income countries (70.5).<br>b) Time (years) – 1.5<br>c) **Cost** (% of estate) – 10.0 < OECD high income countries (9.3)<br>d) Outcome (0 as piecemeal sale and 1 as going concern) – 0<br>e) Strength of insolvency framework index (0-16) – 12.0<br>f) Resolving Insolvency: Latvia improved its insolvency system through a new insolvency law that for the first time allows financially distressed companies to continue operating by pursuing reorganization, and through stronger qualification standards for bankruptcy Insolvency practitioners. |

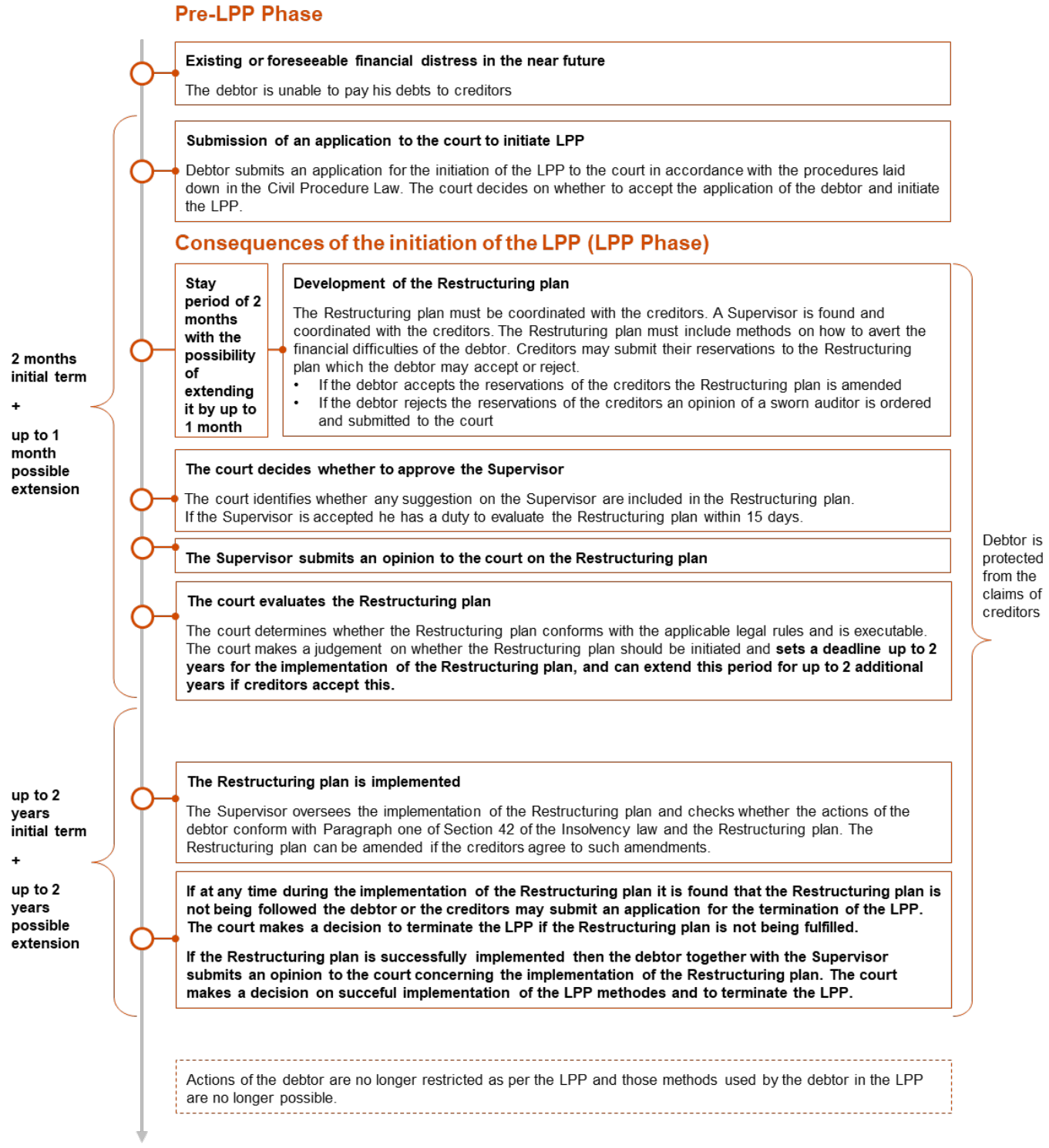
[8] Garrido, J. M., Rasekh, A., Rouillon, A., Republic of Latvia: Evaluation of the Insolvency Framework, International Monetary Fund, January 2019, page 28. Available at: https://www.ta.gov.lv/UserFiles/Failli/Latvia_-_Technical_Assistance_Report_on_Evaluation_of_the_Insolvency_Framework-FINAL_ENG.pdf. [Accessed November 4, 2019].

[9] Economy Profile of Latvia. Doing Business 2020 Indicators, World Bank Group. Available at: https://www.doingbusiness.org/content/dam/doingBusiness/country/l/latvia/LVA.pdf. [Accessed November 4, 2019].

## Annex 4. Schematic overview of ELPP in Latvia



## Annex 4. Schematic overview of LPP in Latvia



## Annex 5. Lists of interviewed stakeholders

| Institution | Position | Name, Surname | Date |
|---|---|---|---|
| Insolvency Control Service | Deputy Director | Alla Ličkovska | October 29, 2019 |
| | Director of the First Supervisory Department | Agnese Gabuža | October 29, 2019 |
| Ministry of Economics of the Republic of Latvia | Director at the Ministry of Economics, Business Competitiveness Department | Kristaps Soms | October 29, 2019 |
| | Lead Expert | Sigita Siliņa | October 29, 2019 |
| Ministry of Finance of the Republic of Latvia | Senior Expert, Tax Administration and International Administrative Cooperation Policy Unit | Kristīne Voiniča | November, via email |
| State Revenue Service | Head of Insolvency Proceedings Department | Aigars Vītols | November 8, 2019 |
| | Tax debt management specialist | Santa Deksne | November 8, 2019 |
| | Informatics Department, Customer Self-service Information Systems, systems-analyst | Irēna Dombrovska | November 8, 2019 |
| | Head of Risk Management Department | Anita Zeire | November 8, 2019 |
| Bank of Latvia Credit Register | Head of Financial Stability Department | Elmārs Zakulis | October 31, 2019 |
| | Head of Credit Register Department | Laura Ausekle | October 31, 2019 |
| | Deputy Head of Legal Department | Maija Āboliņa | October 31, 2019 |
| Financial and Capital Market Commission (FCMC) | Regulations division, Senior Methodology expert | Maija Valce | Via email |
| Riga City Latgale Suburb Court | Judge, deputy court president | Anda Kraukle | November 28, 2019 |
| Riga City Latgale Suburb Court | Judge | Uldis Apsītis | November 28, 2019 |
| Riga City Latgale Suburb Court | Judge | Inses Ušakova | November 28, 2019 |
| Riga City Latgale Suburb Court | Judge | Agnese Zemmere | November 28, 2019 |
| Finance Latvia Association | Member of the Board | Jānis Brazovskis | September 19, 2019 |
| | Chief Legal Officer, Member of Latvian Bar Association | Edgars Pastars | September 19, 2019 |
| AS "Citadele banka" | Head of Loan Recovery Sector | Ingus Rigass | September 19, 2019 |
| | Senior Project Manager, Corporate and SME Loan Monitoring and Restructuring Department | Ilgvars Poļanskis | September 19, 2019 |
| AS "Swedbank" | Head of the Legal Department | Ivars Dimants | November 21, 2019 |
| | Head of Financial Restructuring Department | Ingrīda Allika | September 19, 2019 |
| AS "SEB banka" | Local Head of SCM | Renārs Vīksna | November 7, 2019 |
| ZAB Sorainen | Dispute Resolution, Insolvency and Restructuring, and Public Projects | Edvīns Draba, Raivo Raudzeps | September 19, 2019 |

| | | | |
|---|---|---|---|
| **Latvian Chamber of Commerce and Industry (LCCI)** | Member of the Management Board, Director of the Policy Department | Katrīna Zariņa | November 11, 2019 |
| | Deputy Director of Policy Department | Jānis Lielpēteris | November 11, 2019 |
| **Latvian Council of Sworn Advocates** | Sworn attorney | Olavs Cers | November 14, 2019 |
| | Attorney at Law | Evita Ostrovska | November 14, 2019 |
| **Focus group discussion with the Latvian Association of Insolvency practitioners** | Insolvency practitioner, Lawyer, Partner of the Law Office Rasa & Ešenvalds | Jānis Ešenvalds | November 12, 2019 |
| | Attorney at Law, Managing Partner at A.Kazačkovs un partneri Law Office, Member of the Latvian Association of Insolvency practitioners of Insolvency Process | Mareks Diks | November 12, 2019 |
| | Attorney at Law, Insolvency practitioner | Kaspars Novicāns | November 12, 2019 |
| | Lawyer, Leading partner at Ieva Broka & Partners SIA | Ieva Broka | November 12, 2019 |
| **State Police of Latvia** | Senior Inspector at the State Police of Latvia | Aija Zālīte | November 8, 2019 |
| | Senior Inspector at the State Police of Latvia | Māris Iliško | November 8, 2019 |
| **Rīgas Siltums Ltd.** | Member of the Management Board | Birute Krūze | November 29, 2019 |
| **Latvian Council of Bailiffs** | Deputy Chairman of the Latvian Council of Bailiffs Sworn Bailiff | Andris Spore | November 19, 2019 |
| **Latvian Free Trade Union Confederation** | Lawyer, advisor in employment relations matters | Kaspars Rācenājs | December 3, 2019 |

## Annex 6. Overview of available types of legal entities for businesses in Latvia

| Legal form | Description |
|---|---|
| **Limited liability companies with no minimum capital requirement** | • A limited liability company (LLC or SIA) is a company with equity consisting of the total nominal value of shares.<br>• A limited liability company (LLC or SIA) is a private company and its shares are not publicly traded. The company is a legal person.<br>• The equity is EUR 1 - 2,799.<br>• Founders may only be natural persons, and the maximum number of founders is five;<br>• Shareholders may only be natural persons and the maximum number of shareholders is five<br>• The board of the company may only consist of shareholders |
| **Limited liability companies** | • A limited liability company (LLC or SIA) is a company with equity consisting of the total nominal value of shares.<br>• A limited liability company (LLC or SIA) is a private company and its shares are not publicly traded. The company is a legal person.<br>• Minimum equity is 2,800 EUR<br>• Founders may be both natural and legal persons<br>• The equity can be paid by cash or property contributions<br>• Each shareholder may only be a member of one LLC (SIA) with no minimum capital requirement |
| **Individual companies (farms)** | • A farm is a sole proprietorship that produces agricultural produce using land, the primary means of production specifically for this purpose. It is imperative that the farm owner owns or uses the land.<br>• A fisherman's farm is a sole proprietorship engaged in economic activities using the fish stock limits allocated for this purpose. The fisherman can also manage the land. |
| **Individual merchants** | • The individual merchant is a natural person registered in the Commercial Register.<br>• A natural person is required to register himself / herself as an individual merchant in the Commercial Register if he / she meets any of the following criteria:<br>• The annual turnover from operating activities exceeds 28,600 EUR;<br>• Its economic activity corresponds to that of a commercial agent (Article 45 of the Commercial Law) or that of a broker;<br>• Has an annual turnover of more than EUR 28,500 and employs more than five people simultaneously to conduct its business.<br>• A natural person may apply for registration in the Commercial Register even if he/she does not meet the above requirements. |
| **Individual companies** | • An individual company is a legal entity created to organize the property of a single natural person for the purpose of carrying out an economic activity.<br>• A family business is a legal entity created to organize joint ownership of a family business. The assets invested in such a business belong to the family members involved in the family business. |

| | |
|---|---|
| **Cooperatives** | • A cooperative society is a voluntary association of persons. The purpose of which is to promote the effective fulfilment of the members' common economic interests.<br>• The cooperative society has legal personality.<br>• The minimum number of founders of a cooperative society is three. Founders and members can be both natural and legal persons. |
| **General partnerships** | • A general partnership is a partnership, the purpose of which is to conduct commercial activities through a joint venture which has two or more members (members) under a partnership agreement. Members of the general partnership are personally liable for the liabilities of the general partnership. Membership in the general partnership can be a natural or legal person, as well as a legal partnership.<br>• The partnership can be established: For an indefinite period, for a specific term, until a specific goal is achieved. |
| **Stock companies** | • A stock company (SC or AS) is a company, the shares and stocks of which may be the subject of public circulation (publicly traded shares). The company is a legal person.<br>• If the shares, stocks are publicly traded, then it's called a joint stock company. In the United Kingdom it is known as a Public Limited Company (PLC).<br>• The Enterprise Register registers only stock companies (SC or AS).<br>• The Enterprise Register does not keep registers of shareholders, and therefore, no changes in the composition of shareholders need be notified to the Enterprise Register.<br>• Minimum equity is EUR 35,000<br>• The equity and the nominal value of one share can be divided by the smallest nominal value of the company's shares and 10 cents without a remainder. |
| **Others** | • Limited partnership<br>• Latvian company branch<br>• Branch of a foreign merchant<br>• European Company<br>• European economic interest groups |

## Annex 7. Questionnaire for benchmarking the Latvian legislation against jurisdictions that follow international best practices in debt restructuring (Spain, France, Czech Republic and Portugal)

### Czech Republic

**Questionnaire**

for benchmarking the Latvian legislation against jurisdictions that follow international best practices in debt restructuring

**Please list the regulatory documents (e.g. laws, bylaws, rules, regulations, guidelines etc.) and shorten them, if necessary**

Directive - Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and the amending to the Directive (EU) 2017/1132 (Directive on restructuring and insolvency);

Czech Insolvency Law ("CIL") - *Zákon č. 182/2006 Sb. Zákon o úpadku a způsobech jeho řešení (insolvenční zákon) [https://www.zakonyprolidi.cz/cs/2006-182]*

| No | Question | Reference to the Directive | Reference to specific national legal rules | Yes/No | Comments/ Answers |
|---|---|---|---|---|---|
| **A. Early warning tools available to business owners in your country** | | | | | |
| **1** | What early warning tools are available to businesses to warn them when risks of insolvency become evident? | Article 3 | | × | n/a – there is no established formal EWI system in Czech Republic |
| **1.1** | Do these aforementioned early warning tools include alert mechanisms when the debtor has not made certain types of payments? | Article 3 | | × | n/a |
| **1.2** | Do these aforementioned early warning tools include advisory services provided by public or private organisations? | Article 3 | | × | n/a |
| **1.3** | Do these aforementioned early warning tools include incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development? | Article 3 | | × | n/a |
| **2** | Which institutions are tasked by the law with warning companies of their possible insolvency risks? | *General* | | × | None by law. |
| **3** | How the country facilitates financial literacy of the companies (especially SMEs) and the quality of the restructuring in terms of economic viability? | *General* | | × | n/a |
| **4** | Please indicate the online platforms where check-lists for restructuring plans are available and which include practical tips for the development of debt restructuring plans in accordance with the applicable national legislation? | Paragraph 2 of Article 8 | | × | There is no official checklist. However, as an "attachment" of CIL there is a detailed list of mandatory parts and requirements (i.e. chapters etc.) of a reorganization plan example. Therefore, this can serve as a "checklist" and is available online as the entire CIL is as well. |

| | | | | |
|---|---|---|---|---|
| **5** | Are there any online guides and tools available for businesses (especially SMEs) on how to develop an adequate debt restructuring plan? (Please provide website address, if applicable) | Paragraph 4 of Article 3 | No | There is for example a general description of insolvency proceedings which serves a "guide" through the process. However, the reorganization (and entire insolvency proceedings) is rather and complicated and complex process, therefore the debtor should seek a professional advice from insolvency professionals such as lawyer, economic advisers. Insolvency trustee also oversees the process.<br><br>Even for the SMEs, a reorganization plan prepared in a "DIY way" is usually a suboptimal solution. |
| **6** | How the country prevents the detrimental effect of formal restructuring procedures to debtor's business? | General | × | n/a |
| **B. Limitations to utilize preventive restructuring** | | | | |
| **7** | Under which circumstances, if any, are debtors forbidden from utilizing preventive restructuring (for example, debtor has been sentenced for serious breaches of accounting or bookkeeping)? | Paragraph 2 of Article 4 | × | This applies to Formal Reorganization under CIL<br>Court can reject the application of the debtor for the permission to restructure debts if it can be reasonably presumed that the intent of the debtor is dishonest. Czech courts can use this mechanism to reject restructuring procedures which formally comply with the provisions of law and yet are noticeably fraudulent. Dishonesty is presumed where the debtor, the statutory representative of the debtor or a member of the statutory body: (i) within the past five years has initiated insolvency proceedings which have failed to reach a successful conclusion; (ii) in the last five years has been convicted for economic criminal offences and crimes related to property.<br><br>Generally, it is up to the court's decision and dishonest intent is not specifically described. For example, it can be the hiding of important information about the debtor's assets or debtor's action can aim to harm interests of the creditors (these actions do not have to be fall under definitions in the criminal code). |
| **8** | Can debtors initiate this process after adequate measures have been taken to remedy these offences or a certain time period has passed? | Paragraph 2 of Article 4 | n/a | See answer no. 7 |
| **9** | How the country prevents abuse of restructuring procedures (for instance using the procedures and stay for delaying insolvency)? | General | × | Apart from answer no. 7 there are several criminal offences listed in the criminal code such as *harm done to a creditor, favouritism of a creditor, causing bankruptcy* and other.<br>Formal proceedings are under Court's supervision, insolvency trustee is nominated as an oversight and the records are public.<br>There is also civil and criminal liability of the debtor's statutory representatives and directors (see answer no. 35).<br>Prosecutors can also "join" the proceedings and insolvency court provides them with all information requested. |
| **10** | Are there any viability tests set in the law and/or used in practice to determine whether preventive restructuring proceedings can be successfully utilized for companies in financial distress or to determine whether a company cannot be "saved" and preventive restructuring proceedings is not possible, i.e., the company must be liquidated? Please describe these tests. | Paragraph 3 of Article 4 | × | Czech Insolvency law prescribes the following minimal criteria for companies to whom compulsory reorganisation is accessible: (i) the debtor must have had a yearly revenue of at least EUR 2,000,000.00 for the period preceding insolvency proceedings; or (ii) must employ at least 50 employees. |

| | | | | |
|---|---|---|---|---|
| **C. Stay of individual enforcement actions** | | | | |
| **11** | Can the Court refuse or limit the application of any of the types of Stay of individual enforcement actions if the Court believes that any of them are not necessary or if their application would disturb the negotiation or coordination of the plan? | Article 6 | | Stay of individual enforcement actions is granted automatically in the insolvency proceedings (i.e. after commencement). It is based on *par conditio creditorium* principle. The moratorium is applicable to enforcement of claims of general and other unsecured creditors and also to prevent establishing a new security or collateral from debtor's assets. Generally, the stay applies to *pre-insolvency claims,* hence debtor is allowed to pay *new-after-insolvency* liabilities. However, these are defined in the law. In the reorganization, these would be also operating expenses.<br>Another instrument under CIL is moratorium. Under which a stay can be granted as well. The moratorium is granted if it is approved by more than 50% of creditors and lasts up to 3 months with the possibility of it being extended by additional 30 days. Extension must again be approved by the creditors.<br>Under moratorium, debtor can pay liabilities that are directly related to business operations and were incurred before the stay was granted (up to 30 days).<br>Supply contracts which existed at least for 3 months before the moratorium cannot be terminated from the supplier's side. This is to ensure the continuation of the business operations. |
| **12** | What types of Stay of individual enforcement actions are provided by law and available during the negotiations on the debt restructuring plan? | Article 6 | × | See no. 11 |
| **13** | Are Stay of individual enforcement actions applicable to all creditors? | Article 6 | No | See no. 11 for the general exceptions. |
| **14** | What are the exceptions to applying a Stay of individual enforcement actions to all creditors? | Article 6 | | Insolvency proceedings: generally, claims which were incurred after the insolvency ("claims toward the estate"). These are exhaustively listed in the CIL, the list also contains some pre-insolvency claims.<br><br>In moratorium claims related directly to continuation of business operations incurred 30 days prior the stay was granted (see no. 11). |
| **15** | What is the total duration of the Stay of individual enforcement actions? | Article 6 | × | Insolvency proceedings: stay is applicable for the specific claims (i.e. *pre-insolvency*) until the proceedings is finished.<br>Moratorium: Stay of individual enforcement actions can last up to 3 months with the possibility of being extended by an additional month. |
| **16** | Is it possible to extend the duration term of the Stay of individual enforcement actions? | Article 6 | | Yes. It applies to moratorium. |
| **17** | What pre conditions exist for extending the Stay of individual enforcement actions? | Article 6 | × | During moratorium, an extension can be granted upon debtor's request. The request must be approved by the creditors. |
| **18** | For how long the Stay of individual enforcement actions can be extended? | Article 6 | × | See answer in question 15. |
| **D. Restructuring plans** | | | | |
| **19** | Can the restructuring plan be prepared and submitted by the creditors if authorization from the debtor has been received? | Paragraph 8 of Article 4 | | Priority right to prepare the plan has the debtor. Time limit is 120 days, the limit can be extended by the court by up to 120 days.<br>Priority right does not have a debtor:<br>which to court that it does not have an intention to prepare a plan<br>whose creditors made such decision during a creditor's assembly |

| | | | | |
|---|---|---|---|---|
| | | | | whose right was cancelled, or the time limit shortened by a court e.g. when court can presume that the debtor it proceeds in a way that it can thwart reorganization, or it does not fulfil its obligations to secured creditors to pay interest from the collateral.<br>When debtor's priority right was cancelled or debtor did not possess such right, creditor's assembly can decide who has the right to prepare the plan. If such decision is not taken, a court can call upon other persons to prepare a plan (e.g. persons or creditors who joined the petition to allow reorganization). |
| **20** | Can the restructuring plan be prepared and submitted by the employees of the debtor if authorization from the debtor has been received? | Paragraph 8 of Article 4 | | Having the status of creditors, the employees of the debtor can prepare and submit the restructuring plan. |
| **21** | Do Courts consider the opinion of a qualified expert when evaluating the restructuring plan, especially the part of the plan which includes the reasoning that there are reasonable chances that it has the ability to overt the insolvency of the debtor? | Paragraph 1 of Article 8 | | Courts do not consult qualified experts when evaluating the restructuring plan.<br>Court however usually seeks and opinion of creditor's committee and from the insolvency trustee. Formally, the vote is up to the creditors, in other words creditors can vote "against" the opinion of the trustee and/or the creditors committee. The above-mentioned opinions usually much more "weight" if court were to step in to replace the vote of one or more groups of the creditors (i.e. cross-class cram-down). In this situation it is highly likely, that the court would decide also based on the opinions.<br>The restructuring plan is approved first by the vote of creditors and later the court.<br>The court evaluates whether the restructuring plan conforms with the formal requirements of the law, e.g., the restructuring plan has been approved by the creditors, that presumably there is no dishonest intention of the debtor, the RP passes the *best interest test*.<br>Courts do not evaluate the viability of the restructuring plan.<br>The issues in regard to fictitious creditors are tackled by way of a public verification process wherein creditors have a limited time to register their claims in a public register. Furthermore, the claims are verified by a trustee. |
| **22** | Does the aforementioned opinion of the expert include a substantial evaluation of the restructuring plan? | Paragraph 1 of Article 8 | | n/a – there is no expert opinion |
| **23** | Can the Court refuse to confirm the restructuring plan where the plan does not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business? | Paragraph 3 of Article 10 | | The court, in general, evaluates the mandatory requirements of the plan. Fairness of the plan and equal treatment of the creditors in the same classes is one of the criteria. The court also performs a *best interest test* to ensure that the creditors receive higher recovery than they would get in bankruptcy unless the creditors accept such recovery rate. |
| **24** | How can the Court confirm the debt restructuring plan on request of the debtor but against the will of the majority of creditors (some category of creditors has not approved the plan)? | Paragraph 1 of Article 11 | × | Cross-class cram-down Compliant in the Czech legal system. Court can replace the approval of one or more of the groups of the creditors, however at least on group of creditors must vote for the plan and such group cannot be the group with the equity holders. |
| **25** | Does the Court before deciding on the restructuring plan requests qualified experts to submit their opinions? | Paragraph 2 of Article 14 | No | |
| **26** | What are the qualification criteria for these aforementioned qualified experts? | Paragraph 2 of Article 14 | × | n/a |
| **27** | Are Courts obligated to substantially assess the insolvency methods included in | Paragraph 1 of Article 14 | | n/a |

| | | | | |
|---|---|---|---|---|
| | the restructuring plan by evaluating the justification of their applicability and the possibility of their execution? | | | |
| **28** | What criteria must occur for the plan prepared by the creditors and employees to become binding for the debtor and other creditors who did not participate in the preparation of the plan? | Paragraph 8 of Article 4 | × | Same process as a plan prepared by debtor. |
| **29** | In what categories are the creditors who vote on the debt restructuring plans divided? | Paragraph 1 of Article 9 | × | Creditors are divided to groups in a way that each group is coherent so that in each group there are creditors with same position in the proceedings and similar interests.<br>Other specified groups are:<br>Each secured creditor<br>Equity holders<br>Creditors whose claims are not affected by the plan (*unimpaired claims*) |
| **30** | Which persons or categories of creditors are not permitted to vote on the debt restructuring plans? | Paragraph 1 of Article 9 | × | Creditors that are not affected by the plan (*unimpaired claims*).<br>Related parties and creditors from the concern (e.g. group) if the plan was prepared by the debtor or a related party or creditor from the concern.<br>Creditors not voting on the restructuring plan are nevertheless bound by it after it is approved by the court. Moreover, the debtor has a duty to notify all domestic and foreign creditors and to disclose all of the existing debts. |
| **E. Preventive restructuring proceedings** | | | | |
| **31** | Are there any preventive restructuring proceedings totally existing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are organised outside of the Courts. | Paragraph 5 of Article 4 | | Preventive restructuring proceedings which Compliant outside of the court procedure are regulated by Corporate law and Civil law.<br>These proceedings are not subject to any *lex specialis* norms and retain the nature of any other private or commercial transactions. |
| **32** | Are there any preventive restructuring proceedings Partially existsing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are partially organised outside of the Courts. | Paragraph 5 of Article 4 | | Creditors are bound by the private or commercial agreements they conclude with the debtor on the restructuring of debt.<br>Nevertheless, such agreements are not public. |
| **33** | How are creditors restricted from undermining the business operations of the debtor when preventive restructuring proceedings have been initiated (for example, by refusing to deliver manufacturing materials and including within agreements clauses that allow for the annulment of obligations if preventive restructuring proceedings are initiated)? | Paragraph 5 of Article 7 | × | See answer no. 11. |
| **34** | Does the law include specific types of deals which are allowed in the preventive restructuring procedure and cannot be later disputed in the insolvency proceedings? | Paragraph 1 of Article 18 | | Transactions during reorganization are part of the insolvency proceedings.<br>Generally, transactions or (legal) acts during insolvency proceedings are governed by the law. In the other words a transaction against the law could be deemed void automatically.<br>Insolvency law recognizes transactions that took place prior the commencement of the insolvency proceedings. These can fall under definition of reviewable transactions - undervalues, *preferences* and *fraudulent transfers (these can fall under definition of reviewable transactions, undervalued preferences and fraudulent transfers).* |

| | | | | |
|---|---|---|---|---|
| | | | | As preventive restructuring is not yet transposed to the Czech laws it is not clear which transactions under the preventive restructuring procedure would have an "indemnity".<br>If the aforementioned transactions are identified it is within the competency of the trustee to pursue legal action for the annulment of the said transactions.<br>Trustee generally evaluates and, if necessary, disputes those transactions which have been concluded within one year before the insolvency proceedings.<br>However, transactions concluded with related parties within three years before insolvency proceedings can also be disputed.<br>Moreover, every evidently fraudulent transaction can be disputed if it occurred within 5 years before the initiation of the insolvency proceedings.<br>One of the conditions for a transaction to qualify as a reviewable transaction is that the truncation must have had taken place when the debtor was fulfilling insolvency criteria or the transaction lead to debtor's insolvency.<br>Transactions of criminal nature are investigated and prosecuted as criminal offences, however, companies cannot be held criminally liable. |
| **35** | Are the capital holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | | Equity holders should not hinder implementation of approved plan, equity holders also should not hinder the preparation of the plan nor the proceedings in general.<br>There is a personal and criminal liability of the statutory representatives and directors – see description below.<br>Directors of companies are obliged to file for insolvency without delay if the criteria of imminent insolvency are met and have to prove that they have taken measures to prevent it.<br>If the aforementioned obligation is not met, directors can be held liable for damages.<br>Moreover, the court may demand that earnings of directors made within the two preceding years before insolvency is declared be returned to the debtor. |
| **36** | How are the equity holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | × | See answer no. 35. |
| **37** | Are employees informed of the preventive restructuring proceedings? | Article 13 | | Nothing in law ensures that employees are informed of the preventive restructuring proceedings, however, in practice the employer usually informs the employees and cooperation is established between the parties. |
| **38** | How are employees protected from the negative consequences of preventive restructuring? | Article 13 | × | Employee claims (i.e. unpaid salaries) are one of the priority claims. Usually, the employees get a compensation from the employment bureau and the bureau then holds the claims against the debtor. |
| **39** | How the supplied New and Interim financing in the preventive restructuring proceedings is protected in the event of further insolvency proceedings of the debtor? | Article 17 | × | n/a |
| **Court supervision and appeal of judgments** | | | | |
| **40** | Under which circumstances in the phase of preventive restructuring proceedings or the termination process of the proceedings can the Court evaluate or automatically decide that the debtor has an obligation to request for the initiation of the insolvency proceedings that can result in liquidation? | Paragraph 7 of Article 7 | × | n/a |

| | | | | |
|---|---|---|---|---|
| **41** | Under which circumstances is the Court obliged to appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | × | n/a |
| **42** | Under which circumstances the Court does not appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | × | n/a |
| **43** | What is the role and expertise of restructuring practitioner in the country? | General | × | n/a |
| **44** | What are the rights and obligations of the Administrator before and after the Court decision to appoint/accept him, for example, can the administrator participate in the drafting of the restructuring plan? | Paragraph 3 of Article 5 | × | Trustee's main role is oversight in reorganization. If debtor losses possession right's they are transferred to the trustee. |
| **45** | Which decisions of the Court in relation to preventive restructuring proceedings can be appealed in a higher institution or Court? | Paragraph 1 of Article 16 | × | n/a |
| **46** | Who can appeal the aforementioned judgments of the Court? | Paragraph 1 of Article 16 | × | n/a |
| **47** | What decisions can the Court make in the appeal procedure in relation to preventive restructuring proceedings? | Paragraph 4 of Article 16 | × | n/a |
| **Other** | | | | |
| **48** | Overall review of main KPIs of restructuring in Latvia and in particular countries (number of cases, success rate etc) | General | × | n/a |
| **49** | Does the country have any legal framework of private restructuring workouts? What is a private restructuring practice in the country and how popular/efficient it is? | General | × | n/a |
| | ***Additional Benchmarking*** | | | |
| 50 | Does the Czech legal system permit the concept of "unaffected creditors" (i.e., that debtors can select to which creditors the Restructuring Plan applies)? If this is indeed the case can you very briefly explain how it works in practice and more specifically why affected creditors might approve Restructuring Plans that affect their claims but leave others unaffected? | Paragraph 1 of Article 8 | × | In short, Czech legislation includes concept of creditors which are not affected by the Restructuring Plan; however, it is different (in both principle and use in practice) from the concept in Directive 2019/1023.<br><br>The main difference is that Directive 2019/1023 intends to allow for a Restructuring Plan to be approved by and to have an effect only on selected creditors' groups (e.g. financial creditors such as banks or bond holders).<br><br>Furthermore, preventive restructuring does not possess the same "cut off'' effect on all claims which arose prior to the insolvency as the reorganization during insolvency proceedings, meaning that a creditor either files a claim or the claim ceases to exist.<br><br>*Detailed comments and differences:*<br><br>a) When we speak about the "Czech concept", it is important to stress that it is still as part of insolvency proceedings – (compulsory) reorganization, thus we are not talking about preventive restructuring in terms of Directive 2019/1023, which is yet to be implemented to |

| | | | |
|---|---|---|---|
| | | | Czech national legislation. Furthermore, it is also important to note, that no tool similar to the preventive restructuring is available in Czech legal system as of today.<br><br>b) Technically speaking, insolvency proceedings affect all claims which have to be filed and processed during the proceedings.<br><br>c) The “Czech concept” is called unimpaired claims. These have a separate group in the Restructuring Plan. For purposes of the approval process of the Restructuring Plan it is assumed as if these creditors voted in favour.<br><br>d) For a claim to be considered as unpaired in the proceedings, the Restructuring Plan must not change the amount, due date, and its other properties and rights connected with the claim.<br><br>e) If a benefit of instalments was lost due to late payments from debtor – these claims can also be considered as unimpaired if:<br><br>i. The Restructuring Plan sets the future instalments in the same manner as before and;<br><br>ii. The Restructuring Plan does not affect other rights connected with the claim and the unpaid instalments are to be repaid immediately after the Restructuring Plan comes into effect.<br><br>f) Examples of the unpaired claims from practice are warranty claims in the retail business and leasing companies.<br><br>g) Restructuring Plan includes all groups including the unpaired claims as described above. On the contrary, the approach of Directive 2019/1023 allows for an entire class(es) of creditors to be excluded from the Restructuring Plan (“…named individually or described…” – refer to Art 8 (e)). The intend is that the debtor can restructure, for example, only the financial liabilities (e.g. bonds, bank debt) and suppliers’ claims can be kept as is. |
| 51 | Do creditors have to justify their reasons for rejecting Restructuring Plans? | × | No, they do not. |
| 52 | Can shareholders/directors of debtors be held liable for obstructing the formal Debt Restructuring proceedings? Are there any issues with piercing the corporate veil? We are thinking about introducing automatic fines for these persons when documents in relation to Debt Restructuring are not submitted on time. Might Czechia have any experience worth sharing? | × | In short - practically any stakeholder can be held liable for damages (mainly to creditors) as part of a civil lawsuit, or even under criminal liability (as there are insolvency related crimes in Czech criminal code).<br><br>Czech legislation recognizes specifically the liability of the directors and other statutory bodies (both in Insolvency law and in Corporate law.<br><br>However, Czech legislation does not have any automatic fines you mentioned. Given the complexity of the proceedings and thus many parallel options that can occur, the underlying principle is that the liability of the directors (and also a section on dishonest intent of the debtor for that matter) is described more broadly and it is up to the supervising judge, taking into account also precedent rulings, to assess the given case. Hence when setting a mechanism of automatic fines, it would have to be well thought out.<br><br>I know that the background and PR of the LPP in Latvia is not perfect euphemistically speaking. However, the principle of the preventive restructuring process should be an early, effective and a consensual solution with limited involvement of the court, thus there must be a balance between the usability and prevention against abuse. Given the more limited court involvement there will be a need for more specific set of rules and focus on consensus between creditors and equity holders. We are currently thinking that these principles regarding are |

| | | | |
|---|---|---|---|
| | | | worth obeying during the implementation of Directive 2019/1023:<br>a) there must a clear setup how the preventive restructuring would transfer to insolvency proceedings. Furthermore, the adopted plan should include some milestones. When these are not met should lead to renegotiation and adoption of amended plan. If the amended plan is not adopted, even insolvency might occur;<br>b) viability of the plan and restructuring ability of the company should be reviewed by a professional restructuring advisor;<br>c) honest intent of the company should assure i.e. repeated attempts, unsuccessful restructuring, criminal record and other red flags of the company or even of the directors should be considered. Up to discussion is the revocability of the creditors' support of the stay;<br>d) equity holders should be one specific creditor group (same approach as in compulsory reorganization). It is still being discussed as how to treat a potential disagreement between directors and equity holders. For SMEs the role of director and an equity holder can be blurred sometimes. Therefore, I suppose the rules regarding the liability of statutory representatives need to be strictly upheld;<br>e) furthermore, the adoption of preventive restructuring will probably result in a separate law, thus both (compulsory) reorganization and preventive restructuring will coexist in our legal system as per current thinking they are two separate tools for slightly different situations.<br>From my limited knowledge of Latvian insolvency law, the LPP is somewhat similar to preventive restructuring and there is no reorganization under the insolvency law however one can somehow get back to the LPP / ELPP from the insolvency proceedings. |
| 53 | How are liabilities applied to Supervisors/insolvency practitioners tasked with supervising formal Debt Restructuring proceedings? | × | Court can remove the trustee w/ or w/o a motion from a debtor or a creditor. This can happen e.g. when the trustee:<br>a) does not fulfil his obligation(s);<br>b) does not act with "due professional care";<br>c) seriously breached duties imposed by law or court.<br>Court can also penalize the trustee up to approx. 8’000 EUR. The trustee's licence can also be revoked under certain conditions.<br>In general, the trustee has the same "managerial responsibility" as directors and other statutory bodies (main points what can be a breach of the duties is described in previous paragraph). There is also a responsibility, to some degree, for employees' actions when the trustee is in-possession.<br>The trustees' liability is basically automatic. Thus, to get rid of the liability the trustee must prove the damages or other form detriment caused to a party could not have been prevented even if the trustee did everything to prevent such an event. I suppose that in practice the trustee would try to describe what he did to prevent the damages and what were the (objective) reasons which prevented him to succeed. The disputes regarding the trustee's liability (and claim of the other party) would be then examined by the court (most of the cases are examined by the insolvency court). |

Furthermore, the trustee can also be held criminally liable as Czech legal system has several insolvency-specific crimes. This would go through regular process where the police and AG is involved (AG's office sometimes requests to join some high level proceedings). As these are crimes, naturally other persons apart from the trustee can be prosecuted.

Re insolvency trustees there is one more specific rule in Czech law which might not be in other legal systems - when there are insolvencies / reorganization of companies from the same group ("concern" in jurisdictions) the trustee is supposed to be the same person.

## France

**Questionnaire**

for benchmarking the Latvian legislation against jurisdictions that follow international best practices in debt restructuring

**Please list the regulatory documents (e.g. laws, bylaws, rules, regulations, guidelines etc.) and shorten them, if necessary**

**Directive** - Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending to the Directive (EU) 2017/1132 (Directive on restructuring and insolvency);

| No | Question | Reference to the Directive | Reference to specific national legal rules | Yes/No | Comments/ Answers |
|---|---|---|---|---|---|
| **A. Early warning tools available to business owners in your country** | | | | | |
| 1 | What early warning tools are available to businesses to warn them when risks of insolvency become evident? | Article 3 | | × | Early warning tools include:<br><br>1°) Self-assessment and business monitoring, including 'traditional' indicators for identifying a situation of difficulty:<br>• Financial performance<br>• Cash flow monitoring<br>• Late payment of suppliers (overdues)<br>• Payroll settlement delays<br>• Announcement of employee restructuring plans<br>• Highly discounted debt<br>• Defection of bankers<br>...<br><br>External warning tools or parties may include:<br>• Rating by rating agencies<br>• Rating by Banque de France<br>• Information from credit insurers and factoring companies<br><br>2°) Alert mechanisms<br>External early warning tools may include, among others:<br><br>(i) Warnings issued by auditors ('going concern') ('alert/ warning procedure') : in France, if the auditor note some items which question the capacity of the Company to operate on a going concern basis<br>=> **obligation** for the auditor to (i) first, ask , then, alert, the Management then the Board of the Company and (ii) in case of unsatisfactory answers or actions, inform the Chairman of the Commercial Court<br><br>(ii) Alert procedures also exist for other third parties (shareholders/ partners, staff representatives, chairman of the Commercial Court): they can (not an obligation)<br><br>Please note the Commercial Courts propose a set of 'auto-diagnosis tools' to enable the entrepreneur or company to assess the situation of his company. |

| | | | | | |
|---|---|---|---|---|---|
| **1.1** | Do these aforementioned early warning tools include alert mechanisms when the debtor has not made certain types of payments? | Article 3 | | Yes | **Internal alert mechanisms:**<br>from indicators based on the current financial situation of the company:<br>e.g. delays in payments of suppliers, employees, etc<br><br>**External alert mechanisms:**<br>- supplier overdues<br>- overdue payments to Banks: after a certain period of time, banks report overdue payments to Banque de France (=> impact of rating issued by Banque de France)<br>- overdue payment to social & tax administration |
| **1.2** | Do these aforementioned early warning tools include advisory services provided by public or private organisations? | Article 3 | | Yes | In France, advisory services provided by public or private organisations include, among others:<br>- Commercial Courts<br>- CIP ("Centre d'Information sur la Prévention des difficultés des entreprises")<br>- La médiation des entreprises<br>- Credit Mediation (public) (linked to Banque de France): for banking difficulties<br>- CODEFI ("Comité départemental d'examen des problèmes de financement des entreprises")<br>- CIRI ("Comité Interministériel de Restructuration Industrielle") (only for large and medim-sized companies - often, if headcounts > 400 people)<br>- URSSAF (social tax administration) and CCSF ("Commission départementale des Chefs des Services Financiers ") |
| **1.3** | Do these aforementioned early warning tools include incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development? | Article 3 | Obligation of the auditor: Law n° 84-148 dated 1 March 1984, amended by Law n° 94-475 dated 10 June 1994 | Yes | Yes<br><br>- obligation for the auditor to launch a warning procedure (or alert procedure) if they identify risks on the company capacity to operate on a going concern basis<br>- incentives for other third parties (shareholders, partners, staff representative…)<br>- in case of late or no payment, tax authorities and social security (URSSAF) |
| **2** | Which institutions are tasked by the law with warning companies of their possible insolvency risks? | General | | × | Obligations of the auditors:<br>• A permanent obligation of spontaneous control including:<br>- An obligation to verify and control information (art. L. 823-10 C.com);<br>- An obligation to disclose any irregularities encountered (art. L. 823-12 C.com)<br>• An obligation to certify the accounts (art. L. 823-9 C.com)<br>• An obligation to prevent difficulties: conciliation procedure and alert procedure (art. L. 234-4 et s. and L. 612-3 C.com) |
| **3** | How the country facilitates financial literacy of the companies (especially SMEs) and the quality of the restructuring in terms of economic viability? | General | | × | France facilitates the financial literacy of the companies and the quality of restructuring in terms of economic viability at different level:<br>- when applicable/ involved, tax and social security authorities (CCSF/ URSSAF) can agree with a payment schedule of the social and tax debt<br>- CODEFI (SMEs < 400 people) or CIRI (for larges companies > 400 people) assist the Company in their negotiations with (i) public tax and/ or social security authorities and (ii) with banks and other creditors.<br>In addition, the Commercial Court (or the chairman of the Commercial Court), the "Administrateurs judiciaires" and "Mandataires judiciaires" plays a significant role in the quality of the restructuring (protection of the company and of the creditors) |

| | | | | | |
|---|---|---|---|---|---|
| **4** | Please indicate the online platforms where check-lists for restructuring plans are available and which include practical tips for the development of debt restructuring plans in accordance with the applicable national legislation? | Paragraph 2 of Article 8 | Infogreffe (Commercial Court administration service)<br><br>Industry & Commercial Chamber<br><br>CIP<br><br>BPI | × | **1°) Infogreffe** (Commercial Court administration service)<br><br>**2°) Regional Commercial Chambers** provide (i) guidelines regarding pre-insolvency and restructuring procedures and (ii) a list of professional bodies / advisors that can assist the company (Legal advisors of the Chamber of Commerce, Centre of Mediation and Arbitrage of Paris, Centre of Information on the anticipation of the difficulties of the companies, Credit Mediator, Consular Observatory of the companies with difficulties)<br><br>As an example, the check-list of the Chamber of Commerce Seine et Marne includes questions regarding the environment, the commercial and financial performance of the business. They give indications of the stage of the financial difficulties and advise on the next steps.<br><br>**3°) CIP** ("Centre d'Information sur la Prévention des difficultés des entreprises")<br><br>**4°) BPI** ("Banque Publique d'Investissement" : Invesvtment Public Bank) |
| **5** | Are there any online guides and tools available for businesses (especially SMEs) on how to develop an adequate debt restructuring plan? (Please provide website address, if applicable) | Paragraph 4 of Article 3 | | | *Please refer to answer to question 3* |
| **6** | How the country prevents the detrimental effect of formal restructuring procedures to debtor's business? | General | | × | For instance:<br>• **Confidentiality** of pre-insolvency proceedings such as "mandate ad hoc" and "conciliation"<br>• **Timeline**: accelerated proceedings (accelerated safeguard procedure (3 months max) and financial accelerated safeguard procedure(1+1=2 months max)<br>• **Best effort** of creditors: in a "conciliation" proceeding, the company can request a formal court approval of the workout agreement - this measure aims at seeking the "best efforts" that could be granted by the creditors. However, in this case, the court will render a judgment that will be public. However, the content of the agreement will not be disclosed in the judgment.<br>• **New Money**: in "conciliation" proceedings, creditors who would have granted new money facilities will beneficiate from a statutory priority of payment should the company subsequently file for insolvency. |
| **B. Limitations to utilize preventive restructuring** | | | | | |
| **7** | Under which circumstances, if any, are debtors forbidden from utilizing preventive restructuring (for example, debtor has been sentenced for serious breaches of accounting or bookkeeping)? | Paragraph 2 of Article 4 | | × | n/a<br><br>**No circumstance under which debtors are forbidden from utilizing preventive restructuring**<br><br>However, please note, when a company has just gone through a "conciliation" proceeding (preventive proceeding), there is a legal 3-month waiting period before the company can request the opening of another conciliation. |
| **8** | Can debtors initiate this process after adequate measures have been taken to remedy these offences or a certain time period has passed? | Paragraph 2 of Article 4 | | | n/a |

| | | | | |
|---|---|---|---|---|
| **9** | How the country prevents abuse of restructuring procedures (for instance using the procedures and stay for delaying insolvency)? | General | × | In France, preventing abuse of restructuring proceedings as there are basically conditions for the opening of restructuring preventive proceedings ("mandate ad hoc" or "conciliation"):<br><br>(i) the company should not be in a state of cessation of payments ("état de cessation des paiements" meaning the company has not been insolvent over the last 45 days at the date of the request)<br>(ii) Proven difficulties<br>Both conditions should be documented/ justified by the Company when filing the request to the Chairman of the Commercial Court - proven difficulties considered by the Commercial Court at the request date.<br>(iii) Please also note that both in the Mandate ad Hoc and Conciliation procedures, the chairman of the Commercial Court appoints respectively a "mandataire ad hoc"/ "conciliator" - namely a third party who reports directly to the Chairman of the Commercial Court.<br>The opening of insolvency procedure is managed by the Commercial Court which supervised the procedure. Moreover, insolvency procedures are delimited in time and is followed by the Court. |
| **10** | Are there any viability tests set in the law and/or used in practice to determine whether preventive restructuring proceedings can be successfully utilized for companies in financial distress or to determine whether a company cannot be “saved” and preventive restructuring proceedings is not possible, i.e., the company must be liquidated? Please describe these tests. | Paragraph 3 of Article 4 | × | No viability test BUT a key criterion is to assess whether the Company has/ has not been in a state of cessation of payments for more than the last 45 days, which will trigger the type and nature of procedure (pre-insolvency proceedings vs insolvency proceedings). |
| **C. Stay of individual enforcement actions** | | | | |
| **11** | Can the Court refuse or limit the application of any of the types of Stay of individual enforcement actions if the Court believes that any of them are not necessary or if their application would disturb the negotiation or coordination of the plan? | Article 6 | Yes | |
| **12** | What types of Stay of individual enforcement actions are provided by law and available during the negotiations on the debt restructuring plan? | Article 6 | × | Safeguard and receivership proceedings provide "automatically" a stay of individual enforcement actions from the date of the opening judgement.<br>=> in such case: all liabilities are frozen at the date of the beginning of the proceeding. For instance, the opening of a receivership proceeding results that any payment of a liabilities dated before the opening date is forbidden (see exceptions in questions 11 below).<br><br>In Mandate ad Hoc and Conciliation (pre-insolvency proceedings), no systematic stay - they typically consist in:<br>- with banks or financial creditors: frozen capital payments (market practice: the debtor usually keeps on paying interests)<br>- with other creditors: it depends on the nature of the relationship and difficulties |

| | | | | |
|---|---|---|---|---|
| **13** | Are Stay of individual enforcement actions applicable to all creditors? | Article 6 | | It is applicable and automatic to all creditors in the case of insolvency proceedings (receivership, liquidation) and for safeguard proceedings.<br><br>Other procedures (pre-insolvency proceedings such as mandate ad hoc and conciliation - no automatic stay) usually aims at a specific group of creditors (ex. banks, commercial partners...)<br><br>In addition, in France, the "procédure de sauvegarde financière accélée" typically applicable to financial creditors only. |
| **14** | What are the exceptions to applying a Stay of individual enforcement actions to all creditors? | Article 6 | | The following exceptions to the automatic stay are provided:<br>(i) "Clause de réserve de propriété" ("ownership reserve clause") (article 2367 of the Code Civil, L 624-16 Commerce Code): when the goods or services have not been fully paid by the debtor and under certain conditions, the creditor can claim the ownership of the goods or services.<br>(ii) Retention right;<br>(iii) Set-off between connected claims: the French Supreme Court held that obligations are connected when they (i) result from a single contract, (ii) are carried out under a contract setting out the business relationship between the parties, or (iii) are carried out under separate contracts which constitute a single global contractual arrangement;<br>(iv) Claims secured by a security interest conferring a retention right: during the observation period, at the request of the administrator, the insolvency judge may exceptionally authorize the payment of a pre-filing creditor to obtain from that creditor the surrender of the retained asset to the estate. The asset must be necessary to the debtor's pursuit of its business activity. Note that creditors with a retention right resulting from possession of an asset belonging to the debtor company (and not from a security interest) have the same rights; and<br>(v) Claims assigned by way of Daily assignment of receivables: Daily assignment refers to the assignment for security by a credit institution of any claim that it may hold against a third party private-law or public-law legal entity or individual (if the claim relates to his business activities), simply upon submission of an advice note. The credit institution to which the debtor's receivables have been assigned by way of Daily assignment can directly seek payment of the assigned receivables, notwithstanding any filing for safeguard or reorganisation proceedings. |
| **15** | What is the total duration of the Stay of individual enforcement actions? | Article 6 | × | Variable depending on the period of the proceedings (pre-insolvency vs insolvency).<br><br>In insolvency proceedings, the total duration of the stay of individual enforcement actions is typically the same as the duration of the proceeding. |
| **16** | Is it possible to extend the duration term of the Stay of individual enforcement actions? | Article 6 | Yes | cf. response above |
| **17** | What pre conditions exist for extending the Stay of individual enforcement actions? | Article 6 | × | The stay of individual enforcement actions can be extended, for instance, if the Court judges that more time is needed to assess the feasibility of a continuation plan or to find a better exit option. |

| | | | | |
|---|---|---|---|---|
| **18** | For how long the Stay of individual enforcement actions can be extended? | Article 6 | × | cf. response above |
| **D. Restructuring plans** | | | | |
| **19** | Can the restructuring plan be prepared and submitted by the creditors if authorization from the debtor has been received? | Paragraph 8 of Article 4 | Yes | Yes, in a receivership ("redressement judiciaire") and if the observation period results in a decision to go into a restructuring plan ("plan de continuation"), creditors **CAN** propose a restructuring plan as an alternative to the one proposed by the debtor.<br><br>Please note that:<br>(i) in safeguard proceedings, the restructuring plan ("safeguard plan") is prepared by the debtor - with the assistance of the Administrator - to the Commercial Court.<br><br>In a receivership (insolvency proceedings - "redressement judiciaire"), the restructuring plan ("plan de continuation") is prepared by the Administrator - with the assistance of the debtor.<br><br>In both cases, the plan is settled by the Commercial Court.<br><br>(ii) Please note that in both cases, creditors' committees can be set up during the observation period ("période d'observation"). In such cases, the debtor - with the assistance of the administrator - will negotiate with each creditor committee in order to gather the necessary support of 2/3 majority in value.<br>The setup of creditors committee applies when the debtor (i) has audited accounts, (ii) headcounts > 150 people and (iii) turnover > €20m. |
| **20** | Can the restructuring plan be prepared and submitted by the employees of the debtor if authorization from the debtor has been received? | Paragraph 8 of Article 4 | No | |
| **21** | Do Courts consider the opinion of a qualified expert when evaluating the restructuring plan, especially the part of the plan which includes the reasoning that there are reasonable chances that it has the ability to overt the insolvency of the debtor? | Paragraph 1 of Article 8 | Yes | Please note that the assessment by an expert is not an obligation.<br>Moreover, the receiver always prepares a report on the proposed restructuring plan to present his point of view. The Court take note of this report but is not obliged to follow it. |
| **22** | Does the aforementioned opinion of the expert include a substantial evaluation of the restructuring plan? | Paragraph 1 of Article 8 | Yes | Yes, if applicable (assessment of the viability of the plan typically based on projected trading performance and cash forecasts)<br><br>Please note that the assessment by an expert is not an obligation |
| **23** | Can the Court refuse to confirm the restructuring plan where the plan does not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business? | Paragraph 3 of Article 10 | Yes | |
| **24** | How can the Court confirm the debt restructuring plan on request of the debtor but against the will of the majority of creditors (some category of creditors has not approved the plan)? | Paragraph 1 of Article 11 | × | |

| | | | | |
|---|---|---|---|---|
| **25** | Does the Court before deciding on the restructuring plan requests qualified experts to submit their opinions? | Paragraph 2 of Article 14 | Yes | |
| **26** | What are the qualification criteria for these aforementioned qualified experts? | Paragraph 2 of Article 14 | × | Judicial administrators / receivers, court administrators are registered on a national list established by the National Commission on Registration and Discipline of Court Administrators and Agents |
| **27** | Are Courts obligated to substantially assess the insolvency methods included in the restructuring plan by evaluating the justification of their applicability and the possibility of their execution? | Paragraph 1 of Article 14 | | |
| **28** | What criteria must occur for the plan prepared by the creditors and employees to become binding for the debtor and other creditors who did not participate in the preparation of the plan? | Paragraph 8 of Article 4 | × | Please refer to question 16:<br>N/A once the plan is settled by the Court<br><br>Please note that, in Safeguard / receivership :<br>If both committees (a credit institutions committee, the major suppliers committee) and the general meeting of bondholders accept the draft plan and the court is satisfied that the plan protects the interests of the creditors as a whole, the court will approve the safeguard plan. From the date of the judgment approving the plan, the plan will be binding on all members of the committees and on the bondholders, including those who voted against the draft plan. |
| **29** | In what categories are the creditors who vote on the debt restructuring plans divided? | Paragraph 1 of Article 9 | × | In the context of the safeguard proceedings and for companies whose annual accounts were certified by a statutory auditor or established by a chartered accountant and that employ more than 150 employees or have an annual turnover of more than EUR 20 million, three classes of creditors must be organised:<br>- Financial institutions committee;<br>- Major trade creditors committee (trade creditors who hold more than 3% of the total trade claims); and<br>- Bondholders group.<br><br>These committees and the Bondholders group are invited to vote on the draft safeguard plan proposed by the company (including debt restructuring, recapitalisation of the company, debt-for-equity swaps, etc.) at two-thirds majority (by value) for each class.<br><br>If the committees do not vote on the draft safeguard plan within six months from the date of the opening judgment or if they refuse to adopt the plan, the consultation of the creditors may be done individually or collectively. If the creditors agreed to grant longer payment terms or remission of debt, the Commercial court will recognise their existence. The Commercial court can impose longer payment terms on creditors who did not agree to any longer payment terms or remission of debt (but in this situation, the safeguard plan cannot last longer than 10 years).<br><br>=> The adoption of the safeguard plan terminates the safeguard proceedings. |
| **30** | Which persons or categories of creditors are not permitted to vote on the debt restructuring plans? | Paragraph 1 of Article 9 | × | **If creditors' committees are setup,** "small" creditors are not given a voting right - in the committee of major trade creditors, the threshold is typically 3% of the total amount of supplier payables at the date of the opening of the proceeding. |

| E. Preventive restructuring proceedings | | | | |
|---|---|---|---|---|
| **31** | Are there any preventive restructuring proceedings totally existing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are organised outside of the Courts. | Paragraph 5 of Article 4 | No | No preventive restructuring proceedings totally outside the Court proceedings.<br><br>However, please note any company is still free to go into a mediation or arbitrage with a specific creditor or group of creditors (e.g. mediation on credit, CCSF) |
| **32** | Are there any preventive restructuring proceedings Partially existsing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are partially organised outside of the Courts. | Paragraph 5 of Article 4 | Yes | Pre-insolvency proceedings include 2 proceedings which are considered as "out-of-court" although their opening is requested to the Commercial Court:<br><br>(i) **Mandat ad hoc** aims to protect the company through negotiated agreement with its main creditors.<br>- Mandate ad hoc aims at reaching an out-of-court agreement between parties even though the Mandate ad hoc is opened through a request to the Commercial Court.<br>- When opening the mandate ad hoc, the Chairman of the Commercial Court appoints a "mandataire ad hoc".<br>- The mandate ad hoc can be freely terminated.<br><br>Please note that the mandate ad hoc is confidential, voluntary, out-of-court procedures with no automatic stay of enforcement actions (but with the assistance of the appointed mandataire ad hoc).<br><br>The “Mandataire ad hoc” assists, under the supervision of the President of the Commercial Court (court is not involved), the debtor to negotiate an agreement with its main creditors (unanimity is required).<br><br>(ii) **Conciliation** - a conciliator (“Conciliateur”) assists, under the supervision of the President of the Commercial Court (court is not involved), the debtor to negotiate an agreement with its main creditors. The agreement reached (unanimity is required) can be (i) noticed by the President of the Commercial Court or (ii) approved by the Commercial Court (approval entails specifics protective legal effects but limits the confidentiality). |
| **33** | How are creditors restricted from undermining the business operations of the debtor when preventive restructuring proceedings have been initiated (for example, by refusing to deliver manufacturing materials and including within agreements clauses that allow for the annulment of obligations if preventive restructuring proceedings are initiated)? | Paragraph 5 of Article 7 | × | In mandate ad hoc and conciliation (pre-insolvency and out-of-court procedures):<br>=> No restriction for creditors who are included in the scope of creditors targeted by the preventive proceedings<br><br>In safeguard proceedings, which (i) allow still-solvent companies<br>that face difficulties to be restructured at a preventive stage under the Court’s supervision and (ii) is not confidential:<br>=> Liabilities are frozen |
| **34** | Does the law include specific types of deals which are allowed in the preventive restructuring procedure and cannot be later disputed in the insolvency proceedings? | Paragraph 1 of Article 18 | | In conciliation proceedings and when the conciliation agreement is approved by the Commercial Court, there is 2 main "types of deals" which are allowed in the preventive restructuring procedure and cannot be later disputed in the insolvency proceedings<br>- "New Money": in this situation, creditors who would have granted new money facilities will beneficiate from a statutory priority of payment should the company subsequently file for insolvency.<br>- Guarantees: renegotiated guarantees are confirmed ie cannot be questioned in case of a "suspicious" period at a later stage (should the company subsequently file for insolvency). |

| | | | | |
|---|---|---|---|---|
| **35** | Are the capital holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | | |
| **36** | How are the equity holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | × | |
| **37** | Are employees informed of the preventive restructuring proceedings? | Article 13 | | Preventive restructuring proceedings such as "mandate ad hoc" and "conciliation" are **confidential** - and then, employees will not be informed - except when the Company requests a formal court approval of the conciliation agreement (this measure aims at seeking the best efforts that could be granted by the creditors). In this case, the court will render a judgment that will be public. However, the content of the agreement will not be disclosed in the judgment. |
| **38** | How are employees protected from the negative consequences of preventive restructuring? | Article 13 | × | Not applicable |
| **39** | How the supplied New and Interim financing in the preventive restructuring proceedings is protected in the event of further insolvency proceedings of the debtor? | Article 17 | × | In conciliation preventive proceedings, new financing can benefit from the privilege of "new money". New money facilities benefit from a statutory priority of payment in case the company would subsequently file for insolvency. |
| **Court supervision and appeal of judgments** | | | | |
| **40** | Under which circumstances in the phase of preventive restructuring proceedings or the termination process of the proceedings can the Court evaluate or automatically decide that the debtor has an obligation to request for the initiation of the insolvency proceedings that can result in liquidation? | Paragraph 7 of Article 7 | × | In the context of preventive restructuring proceedings (such as mandate ad hoc, conciliation and safeguard), when the company is in a state of cessation of payment, preventive proceeding is converted into receivership or liquidation (court decision). In the absence of continuation plan or approved sale, the receivership is converted in liquidation.<br><br>And if the Court judges that the company will not be able to respect the commitments taken in its restructuring plan or that the activity cannot be continued, it can initiate an insolvency proceeding. |
| **41** | Under which circumstances is the Court obliged to appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | × | In preventive restructuring proceedings:<br>(i) Mandate ad hoc: when opening the mandate ad hoc, the Chairman of the Commercial Court appoints a **"mandataire ad hoc"**.<br><br>The "Mandataire ad hoc" assists, under the supervision of the President of the Commercial Court (court is not involved), the debtor to negotiate an agreement with its main creditors (unanimity is required).<br><br>(ii) Conciliation: a **conciliator** ("Conciliateur") assists, under the supervision of the President of the Commercial Court, the debtor to negotiate an agreement with its main creditors.<br><br>Please note that, in safeguard proceedings, the Court has to appoint an Administrator. For Safeguard procedures, the company can participate in the choice of the Administrator. |
| **42** | Under which circumstances the Court does not appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | × | No administrator in pre-insolvency proceedings such as mandate ad hoc and conciliation. |
| **43** | What is the role and expertise of restructuring practitioner in the country? | General | × | |

| | | | | |
|---|---|---|---|---|
| **44** | What are the rights and obligations of the Administrator before and after the Court decision to appoint/accept him, for example, can the administrator participate in the drafting of the restructuring plan? | Paragraph 3 of Article 5 | × | In safeguard proceedings, the restructuring plan ("safeguard plan") is prepared by the debtor - with the assistance of the Administrator.<br><br>In a receivership (insolvency proceedings - "redressement judiciaire"), the restructuring plan ("plan de continuation") is prepared by the Administrator - with the assistance of the debtor.<br><br>In both cases, the plan is settled by the Commercial Court. |
| **45** | Which decisions of the Court in relation to preventive restructuring proceedings can be appealed in a higher institution or Court? | Paragraph 1 of Article 16 | × | N/A (no Court decision in Mandate ad Hoc nor Conciliation - except in case where the debtor asks for the approval by the Commercial Court) |
| **46** | Who can appeal the aforementioned judgments of the Court? | Paragraph 1 of Article 16 | × | N/A |
| **47** | What decisions can the Court make in the appeal procedure in relation to preventive restructuring proceedings? | Paragraph 4 of Article 16 | × | N/A |
| **Other** | | | | |
| **48** | Overall review of main KPIs of restructuring in **France** and in particular countries (number of cases, success rate etc) | General | × | In France:<br>- number of cases of insolvency proceedings from Jan 19 to Oct 19: see spreadsheet "Question 43"<br>- number of cases of pre-insolvency and insolvency proceedings over H1 2018: see spreadsheet "Question 43"<br>- in 2018, 42 companies called upon the CIRI (CIRI: Comité Interministérial de Restructuration Industrielle), corresponding to circa 60 638 jobs |
| **49** | Does the country have any legal framework of private restructuring workouts? What is a private restructuring practice in particular countries and how popular/efficient is it? | General | × | |
| | ***Additional Benchmarking*** | | | |
| **50** | Does the French legal system permit the concept of "unaffected creditors" (i.e., that debtors can select to which creditors the Restructuring Plan applies)? If this is indeed the case can you very briefly explain how it works in practice and more specifically why affected creditors might approve Restructuring Plans that affect their claims but leave others unaffected? | | × | **In restructuring plans in the context of a safeguard or receivership, there is no unaffected party.**<br><br>**In preventive proceedings ("mandat ad hoc" or "conciliation"), the debtor defines the scope of creditors targeted by the preventive proceedings (ie choose the third parties with which he want to re-negociate with the assistance of the mandataire ad hoc)**<br><br>**Please note in the specific case of accelerated financial safeguard (specific safeguard proceeding which applies to company who have to deal with a financial debt issue), the accelerated financial safeguard excludes de facto all other creditors which are not financial (NB: it is the definition of the proceeding not the choice of the debtor).** |
| **51** | Do creditors have to justify their reasons for rejecting Restructuring Plans? | | × | No |

| | | | |
|---|---|---|---|
| **52** | Can shareholders/directors of debtors be held liable for obstructing the formal Debt Restructuring proceedings? Are there any issues with piercing the corporate veil? We are thinking about introducing automatic fines for these persons when documents in relation to Debt Restructuring are not submitted on time. Might France have any experience worth sharing? | × | No, however, in specific cases, for example, if setup of committees of creditors in which creditors have proposed their own restructuring plan and to evict the shareholder who would block the restructuring plan, the commercial court can ask, in specific cases, for the 'forced' sale of shares (or dilution of the shareholder by way of a capital increase) (mainly since law dated 2015 called "Loi Macron").<br><br>In insolvency proceedings, the company - represented by the 'mandataire social' (legal representative of the company) - is responsible - e.g. (in your example) in case of submitting late documents<br><br>In the extreme case, the engagement of the judicial administrator (in receivership only) can be extended (=> "full power" granted to run the company). |
| **53** | How are liabilities applied to Supervisors/insolvency practitioners tasked with supervising formal Debt Restructuring proceedings? | × | From the opening date of the proceedings (safeguard or receivership), fees of supervisors and insolvency practitioners (Judicial administrators / receivers, law firms, financial advisors...) should be paid at due date; if not paid, they will be paid before any other creditor (except some exceptions). |

**French guidelines:**

**Infogreffe (Commercial Court administration service)**:

https://www.infogreffe.com/informations-et-dossiers-entreprises/prevention.html#1

https://www.infogreffe.com/documents/10179/6761653/Pr%C3%A9vention+des+difficult%C3%A9s+des+entreprises+-+tableau+d%27auto-diagnostic/74273c1a-8261-420d-971d-0f4318518171

**Industry & Commercial Chamber:**

https://www.entreprises.cci-paris-idf.fr/web/pme/surmonter-vos-difficultes

**CIP ("Centre d'Information sur la Prévention des difficultés des entreprises")**:

https://www.cip-national.fr/prevention-des-difficultes-des-entreprises/outils-et-solutions-difficultes-entreprise/

**BPI**:

https://bpifrance-creation.fr/encyclopedie/prevenir-traiter-difficultes/prevention-difficultes/autodiagnostic-tpe

## Portugal

**Questionnaire**

for benchmarking the Latvian legislation against jurisdictions that follow international best practices in debt restructuring

**Please list the regulatory documents (e.g. laws, bylaws, rules, regulations, guidelines etc.) and shorten them, if necessary**

**Directive -** Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending to the Directive (EU) 2017/1132 (Directive on restructuring and insolvency);

**The Insolvency and Business Recovery Code, approved by Decree-Law No 53/2004 of 18 March 2004 and revised by Law No 16/2012 of 20 April 2012, Decree-Law No 26/2015 of 6 February 2015, Decree-Law No 79/2017 of 30 June 2017 and Law No 8/2018 of 2 March 2018, which will be referred to hereinafter by its Portuguese abbreviation,** CIRE**.**

**Decree-Law No 49/2019** - creates the early warning mechanism called MAP

**Council of Ministers Resolution n.º 43/2011** - defines the guiding principles **for the out-of-court recovery**

| No | Question | Reference to the Directive | Reference to specific national legal rules | Yes/No | Comments/ Answers |
|---|---|---|---|---|---|
| **A. Early warning tools available to business owners** | | | | | |
| **1** | What early warning tools are available to businesses to warn them when risks of insolvency become evident? | Article 3 | Law 8/2018, March 2 Decree Law 47/2019, April 11 | Yes | Businesses have available a online tool for the self-assessment of its financial conditions called "Autodiagnóstico Financeiro" from IAPMEI ("Instituto de Apoio às Pequenas e Médias Empresas e à Inovação"), a Government institution to support competitivity and innovation in SME's. This tool was developed for the basis of negotiations under the Out-of-court Regime for the Business Recovery (Regime Extrajudicial de Recuperação de Empresas - RERE). Beyond this tool it was recently placed into law the creation of a Early Warning Mechanism (Mecanismo de Alerta Precoce - MAP). Under this, IAPMEI is responsible for analysing economical and financial information, evaluate the businesses situation and identify support mechanisms for the business. The Tax Authority is responsible for, at the end of each year, communicate the availability of the MAP. |
| **1.1** | Do these aforementioned early warning tools include alert mechanisms when the debtor has not made certain types of payments? | Article 3 | Law 8/2018, March 2 Decree Law 47/2019, April 11 | No | The indicators on MAP are not yet known but will probably be based on the Self-Assessment tool, which include: working capital needs, leverage ratios and debt structure, liquidity ratios, profitability ratios, EBITDA, profit per employee, current capital level vs initial capital |
| **1.2** | Do these aforementioned early warning tools include advisory services provided by public or private organisations? | Article 3 | Law 8/2018, March 2 Decree Law 47/2019, April 11 | No | Other public entities (Tax Authority, IAPMEI and Bank of Portugal) participate only on a data input basis or for communication purposes |
| **1.3** | Do these aforementioned early warning tools include incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development? | Article 3 | Law 8/2018, March 2 Decree Law 47/2019, April 11 | No | No other parties are identified |

| | | | | | |
|---|---|---|---|---|---|
| **2** | Which institutions are tasked with warning companies of their possible insolvency risks? | General | Law 8/2018, March 2 Decree Law 47/2019, April 11 | × | The Tax Authority is responsible for alerting the businesses of the availability of MAP, through the available emails on the database |
| **3** | Please indicate the online platforms where check-lists for restructuring plans are available and which include practical tips for the development of debt restructuring plans in accordance with the applicable national legislation? | Paragraph 2 of Article 8 | n/a | × | The online platform with information and FAQ's regarding PER (Special Revitalization Process) and RERE are available. These platforms however do not include checklists for the development of restructuring plans. |
| **4** | Are there any online guides and tools available for businesses (especially SMEs) on how to develop an adequate debt restructuring plan? | Paragraph 4 of Article 3 | n/a | No | CIRE only determines a general guidance on the development of the restructuring plan, indicating that it must contain at least the description of the financial and credit situation |
| **B. Limitations to utilize preventive restructuring** | | | | | |
| **5** | Under which circumstances, if any, are debtors forbidden from utilizing preventive restructuring (for example, debtor has been sentenced for serious breaches of accounting or bookkeeping)? | Paragraph 2 of Article 4 | CIRE, art.º 2<br>CIRE, art.º 17-A<br>CIRE, art.º 17-G | × | PER and RERE can be filed by any company as long as it is in a difficult economic situation or in a situation of imminent insolvency which is still capable of recovery, with the exception of (i) public companies and (ii) insurance companies, financial institutions and investment companies (which have their own regime). Additionally, in what concerns particularly to PER, if a company ends negotiations on its own initiative, it will be no longer able to enter a new proceeding for a 2-year period |
| **6** | Can debtors initiate this process after adequate measures have been taken to remedy these offences or a certain time period has passed? | Paragraph 2 of Article 4 | n/a | No | See above |
| **7** | Are there any viability tests set in the law and/or used in practice to determine whether preventive restructuring proceedings can be successfully utilized for companies in financial distress or to determine whether a company cannot be “saved” and preventive restructuring proceedings is not possible, i.e., the company must be liquidated? Please describe these tests. | Paragraph 3 of Article 4 | CIRE, art.º 17-A<br>CIRE, art.º 17-B | × | The law does not define a specific test. However, this process can only be pursued by companies that are in a difficult financial situation (defined as the serious inability to punctually comply with its obligations due to lack of liquidity or inability to obtain additional credit). Additionally, the Decree-Law added to article 17 that this situation must be certified by the accountant or auditor |
| **C. Stay of individual enforcement actions** | | | | | |
| **8** | Can the Court refuse or limit the application of any of the types of Stay of individual enforcement actions if the Court believes that any of them are not necessary or if their application would disturb the negotiation or coordination of the plan? | Article 6 | CIRE, art.º 17-E | No | The law does not specify situations where the court can refuse or limit the stay of enforcement actions but rather indicates that the initiation of a insolvency process or PER/RERE process suspends any prior enforcement action on the company (the PER/RERE also suspends any previous insolvency process as long as no decision has been made). To note that this only suspends actions on the company, so if previous actions targeted both the company and its shareholders/personal guarantors, the actions over the personal guarantors continue. Additionally, if there is an enforcement after the approval of the plan that respects debts invoked before the PER but overdue only after the PER (and that therefore could not be claimed), the case law considers that the suspension does not apply |

| | | | | | |
|---|---|---|---|---|---|
| **9** | What types of Stay of individual enforcement actions are provided by law and available during the negotiations on the debt restructuring plan? | Article 6 | CIRE, art.º 17-E | × | The law indicates that during the negotiations for the debt restructuring the following are suspended automatically: i) previous insolvency process, as long as no decision was made, ii) previous enforcement actions. There are two mains exclusions to this principle: (i) during a RERE proceeding in which the enforcement actions may not be suspended if agreed upon between the company and its creditors since this is an out-of-court negotiation and (ii) during a PER proceeding if the final agreement so determines |
| **10** | Are Stay of individual enforcement actions applicable to all creditors? | Article 6 | CIRE, art.º 17-E | No | Under the PER, suspension applies to all creditors. However, under the RERE the enforcement actions are only suspended for the creditors participating in the negotiation |
| **11** | What are the exceptions to applying a Stay of individual enforcement actions to all creditors? | Article 6 | CIRE, art.º 17-E | No | See above |
| **12** | What is the total duration of the Stay of individual enforcement actions? | Article 6 | CIRE, art.º 17-E | × | The previous enforcement actions are suspended as long as the restructuring is being negotiated. As soon as the agreement is approved and confirmed by the Court, these actions are closed |
| **13** | Is it possible to extend the duration term of the Stay of individual enforcement actions? | Article 6 | CIRE, art.º 17-E | No | No term defined in law. The suspension holds until the approval of the PER/RERE plan |
| **14** | What pre conditions exist for extending the Stay of individual enforcement actions? | Article 6 | CIRE, art.º 17-E | × | Not applicable given answer above |
| **15** | For how long the Stay of individual enforcement actions can be extended? | Article 6 | CIRE, art.º 17-E | × | Not applicable given answer above |
| **D. Restructuring plans** | | | | | |
| **16** | Can the restructuring plan be prepared and submitted by the creditors if authorization from the debtor has been received? | Paragraph 8 of Article 4 | CIRE, art.º 17-C | No | The process is submitted by the company to the proper court. The process cannot be solely initiated by the company, as it is required that at least 10% of the non-subordinated creditors agree. However, the debtor and/or its creditors (which own at least 5% of the credits) can request to the Court to lower the 10% requirement considering the total amount of the credits and the composition of the creditors |
| **17** | Can the restructuring plan be prepared and submitted by the employees of the debtor if authorization from the debtor has been received? | Paragraph 8 of Article 4 | CIRE, art.º 17-C | No | Same as above |
| **18** | Do Courts consider the opinion of a qualified expert when evaluating the restructuring plan, especially the part of the plan which includes the reasoning that there are reasonable chances that it has the ability to overt the insolvency of the debtor? | Paragraph 1 of Article 8 | CIRE, art.º 17-F | No | The restructuring plan is not evaluated by the court but rather it is negotiated between the company and the creditors out-of-court. Under the RERE the negotiation is conducted totally without the intervention of the judicial administrator. Under the PER, the judicial administrator participates in the negotiations, but only for guiding and monitoring the negotiations. Additionally, under Civil Law (which guides whenever there are no specific regulations in CIRE) defines that the judge may use experts. In practice, most companies use specialized third-parties to develop a plan and most judicial administrators have training in accounting/economy |
| **19** | Does the aforementioned opinion of the expert include a substantial evaluation of the restructuring plan? | Paragraph 1 of Article 8 | n/a | No | Judges may use experts' opinion, but no specific tasks are defined |

| | | | | | |
|---|---|---|---|---|---|
| **20** | Can the Court refuse to confirm the restructuring plan where the plan does not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business? | Paragraph 3 of Article 10 | CIRE, art.º 17-F<br>CIRE, art.º 215<br>CIRE, art.º 216 | No | The Court can only refuse the restructuring plan if: i) the plan is not approved by the majority of the creditors (approval defined in PER as: voted by at least 1/3 of the creditors and >50% of favourable voting non-subordinated credits), ii) there were breaches in procedural rules. Beyond this, the Court may refuse the plan by request of the participants if: i) the plan is less favourable to the creditors interests than the total absence of a plan, ii) the plan gives a greater benefit to a creditor than the value of the credits in paper, iii) if the plan violates the principle of equality between the creditors, under which the creditors within the same category of creditors need to have the same treatment, unless they expressly consent otherwise |
| **21** | How can the Court confirm the debt restructuring plan on request of the debtor but against the will of the majority of creditors (some category of creditors has not approved the plan)? | Paragraph 1 of Article 11 | CIRE, art.º 17-F<br>CIRE, art.º 73 | × | The restructuring plan has to be approved by the majority of the creditors (approval defined in PER as: voted by at least 1/3 of the creditors and >50% of favourable voting non-subordinated credits). The plan must be approved by the majority of the creditors to be approved by the Court. The only exception are subordinated creditors, which do not have voting rights (unless specifically granted by the Court). Under the RERE the restructuring plan is only binding for the participating creditors |
| **22** | Does the Court before deciding on the restructuring plan requests qualified experts to submit their opinions? | Paragraph 2 of Article 14 | n/a | No | Not applicable given answer to question 18 |
| **23** | What are the qualification criteria for these aforementioned qualified experts? | Paragraph 2 of Article 14 | n/a | × | Not applicable given answer above |
| **24** | Are Courts obligated to substantially assess the insolvency methods included in the restructuring plan by evaluating the justification of their applicability and the possibility of their execution? | Paragraph 1 of Article 14 | CIRE, art.º 17-F | No | The judicial administrator (Court) only participates in the PER negotiations for guiding and monitoring purposes. The negotiation and approval of the restructuring plan is the company and creditors responsibility.<br>The Court only intervenes to (i) validate the list of credits claimed in the process; (ii) homologate the restructuring plan approved by the creditors. For that purpose, the judges will only validate if the formal rules of the process have been complied with and if there is no violation of the principle of equality of creditors. |
| **25** | What criteria must occur for the plan prepared by the creditors and employees to become binding for the debtor and other creditors who did not participate in the preparation of the plan? | Paragraph 8 of Article 4 | CIRE, art.º 17-C<br>CIRE, art.º 17-F | × | The restructuring plan must be submitted by the company, so there is no plan prepared only by the creditors or employees. Under the PER, the restructuring plan approved by the majority of the creditors is binding to the remaining creditors. In the RERE, the restructuring plan is only binding for the participating creditors (the scope of the negotiation is only the credits of those creditors) |
| **26** | In what categories are the creditors who vote on the debt restructuring plans divided? | Paragraph 1 of Article 9 | CIRE, art.º 47<br>CIRE, art.º 50 | × | The creditors are divided in 4 categories (secured, privileged, common and subordinated). However, subordinated credits do not have a voting right. Additionally, each of these categories can be classified as conditional |
| **27** | Which persons or categories of creditors are not permitted to vote on the debt restructuring plans? | Paragraph 1 of Article 9 | CIRE, art.º 73 | × | Only creditors with a credit recognized by the judicial administrator can have voting rights. Subordinated creditors also have no voting rights. Additionally, the voting right of a creditor can be challenged. Moreover, the creditors with credits that are not affected by the plan's dispositions do not have any voting rights |

| E. Preventive restructuring proceedings | | | | | The special revitalisation procedure, which applies only to companies (Articles 17-A to 17- J of CIRE); |
|---|---|---|---|---|---|
| **28** | Are there any preventive restructuring proceedings totally existing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are organised outside of the Courts. | Paragraph 5 of Article 4 | Law 8/2018, art.º2 | Yes | The RERE - Regime Extrajudicial de Recuperação de Empresas (Out-of-court Regime for the Business Recovery) defines the possibility of an out-of-court voluntary restructuring agreement between the company and one or more creditors. The RERE is a voluntary proceeding, where the restructuring agreed plan is only applicable for the participating creditors, and typically confidential. The content of the negotiation is defined freely by the entities. To be subject to the RERE regime, the negotiation must involve 15% of the creditors and the negotiation protocol must be deposited in the Commercial Registry |
| **29** | Are there any preventive restructuring proceedings Partially existsing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are partially organised outside of the Courts. | Paragraph 5 of Article 4 | CIRE, art.º 17-F Law 8/2018, art.º2 | Yes | CIRE also defines that the PER may begin with an out-of-court agreement as long as the majority of the creditors are involved in the out-of-court agreement and the necessary documents are presented |
| **30** | How are creditors restricted from undermining the business operations of the debtor when preventive restructuring proceedings have been initiated (for example, by refusing to deliver manufacturing materials and including within agreements clauses that allow for the annulment of obligations if preventive restructuring proceedings are initiated)? | Paragraph 5 of Article 7 | CIRE, art.º 17-D Council of Ministers Resolution n.º 43/2011 | × | During the negotiations both parties should act according to the principles defined in the Council of Ministers Resolution n.º 43/2011, namely i) the entities must act in good faith and work for a solution that satisfies all the involved parties, ii) entities must cooperate, iii) entities must share information and the company must be transparent. Additionally, during the negotiations, the following services cannot be interrupted, even if there are amounts due: water, electricity, gas, postal services, water treatment, waste management |
| **31** | Does the law include specific types of deals which are allowed in the preventive restructuring procedure and cannot be later disputed in the insolvency proceedings? | Paragraph 1 of Article 18 | CIRE, art.º 120 | Yes | Any transaction negotiated under the PER and RERE cannot be disputed in the insolvency process. During the insolvency process all other transactions that is harmful to the creditors or acted in bad faith can be resolved if they met some specific requirements established by law. |
| **32** | Are the capital holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | n/a | No | No specific clause under the law indicates this. However, the plan must be submitted by the company and consequently satisfying by the shareholders. Additionally, according to article 17-D from CIRE, the administrators are liable together with the company for any harm caused to creditors due to misinformation |
| **33** | How are the equity holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | n/a | × | Not applicable given answer above |
| **34** | Are employees informed of the preventive restructuring proceedings? | Article 13 | CIRE, art.º 17-D | Yes | The company must communicate with all creditors not involved in the initial request, that a PER process is ongoing. This includes the employees as part of the company's creditors (privileged claims) |
| **35** | How are employees protected from the negative consequences of preventive restructuring? | Article 13 | CIRE, art.º 17-D CIRE, art.º 47 | × | As part of the insolvency or restructuring plan there can exist layoffs. The claims from employees' contest for the total credit claimed in the judicial process. The claims from the employees include not only overdue salary and subsidies but also the indemnity from layoffs (compensation equivalent to 12 days per each year of seniority) |
| **36** | | Article 17 | CIRE, art.º 17-H | × | The creditors that supply additional financing during the negotiation for the revitalization of the company rank before the employee's credits (except for employee credits with special privileged rights over the real estate facility where they work) |

| F. Court supervision and appeal of judgments | | | | | |
|---|---|---|---|---|---|
| **37** | Under which circumstances in the phase of preventive restructuring proceedings or the termination process of the proceedings can the Court evaluate or automatically decide that the debtor has an obligation to request for the initiation of the insolvency proceedings that can result in liquidation? | Paragraph 7 of Article 7 | CIRE, art.º 17-F<br>CIRE, art.º 17-G | × | If the PER is rejected in Court and the parties conclude that a restructuring plan will not be possible, the judicial administrator is responsible for, after hearing both the company and the creditors, decide on whether the company is in an insolvency state or not. Additionally, based on the opinion from the accountant or auditor, the judicial administrator can also conclude that the company is not capable of recovery thus not approving the restructuring on the basis of an insolvency situation |
| **38** | Under which circumstances is the Court obliged to appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | CIRE, art.º 17-C<br>CIRE, art.º 32 | × | After being presented the PER restructuring plan to the Court, the judge must immediately nominate a provisional judicial administrator. In this decision the judge may consider the proposed administrator in the initial request of the company |
| **39** | Under which circumstances the Court does not appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | CIRE, art.º 17-I | × | In case of a RERE the agreement can occur fully out-of-court, with no judicial administrator being pointed. Only in the event of a RERE initiating a PER will there be a nomination of a judicial administrator |
| **40** | What are the rights and obligations of the Administrator before and after the Court decision to appoint/accept him, for example, can the administrator participate in the drafting of the restructuring plan? | Paragraph 3 of Article 5 | CIRE, art.º 33 | × | The rights and competencies of the judicial administrator include: i) maintenance and preservation of the net worth of the company, ii) acts like disposal of assets must be approved by the administrator, iii) the administrator must be granted access to the company's facilities, iv) developing inspections to the company's accounts, v) monitor and approve the restructuring negotiations and plan. The restructuring plan is negotiated out-of-court |
| **41** | Which decisions of the Court in relation to preventive restructuring proceedings can be appealed in a higher institution or Court? | Paragraph 1 of Article 16 | CIRE, art.º 17-F | × | The Court's decision is binding. In the case of a PER the unfavourable decision of the Court/judicial administrator can be appealed during the next 5 days after the decision |
| **42** | Who can appeal the aforementioned judgments of the Court? | Paragraph 1 of Article 16 | CIRE, art.º 40 | × | May appeal: i) the company or its shareholders, ii) recognized creditors, iii) legal representatives of the debts, iv) spouse or heirs |
| **43** | What decisions can the Court make in the appeal procedure in relation to preventive restructuring proceedings? | Paragraph 4 of Article 16 | n/a | × | If there was an appeal the process goes to the Court of Appeal. The Court of Appeal may: i) issue a note for the District Court to repeat the voting if the appeal indicates inconsistencies on the accounting of the votes, ii) revert the non-approval decision of the District Court if it does not support the exitance of defects in the procedures of the participants / negotiation |
| | ***Additional Benchmarking*** | | | | |
| **44** | Does the Portuguese legal system permit the concept of "unaffected creditors" (i.e., that debtors can select to which creditors the Restructuring Plan applies)? If this is indeed the case can you very briefly explain how it works in practice and more specifically why affected creditors might approve Restructuring Plans that affect their claims but leave others unaffected? | | Law 8/2018, art.º2<br>Council of Ministers Resolution n.º 43/2011 | × | The concept of unaffected creditor is not defined in Portuguese law. However, under RERE it is possible for debtors to select specific creditors to negotiate with (must involve at least 15% of the creditors). RERE is a voluntary process and the restructuring plan is only binding for the participating creditors (the scope of the negotiation is only the credits of those creditors).<br>In terms of process / how it works it follows:<br>1) Debtor proposes the negotiation protocol<br>2) Debtor and at least 15% of the creditors approve the protocol<br>3) Document from accountant or auditor is obtained attesting the financial difficulties (but with recoverability) of the company and credits<br>4) Deposit of the negotiation protocol<br>5) Start of negotiations (maximum of 3 months) |

| | | | | |
|---|---|---|---|---|
| | | | | 6) Debtor presents the financial diagnostic document<br><br>7) Restructuring plan is agreed and signed<br><br>8) Registry of the closing of negotiations with IAPMEI<br><br>This process may be selected as it is confidential and therefore will have no reputation impact on the debtor. Additionally, there are some fiscal benefits from the results of this negotiation.<br><br>Under a PER proceedings, different measures can be envisaged for different categories of creditors, and it may even happen that some categories of creditors are not covered by any measure.<br><br>However, the restructuring plan must abide by the principle of equality of creditors, which means, for instance, that creditors whose credits were recognize as secured cannot be treated differently among each other (except if they accept said differentiated treatment, which is presumed if said creditor votes in favour of the plan), but they can be subject to a different treatment compared with the remaining creditors that are not included in same category of creditors. |
| **45** | Do creditors have to justify their reasons for rejecting Restructuring Plans? | CIRE, art.º 211 | × | Based on the regulatory requirements, when the restructuring plan is under vote creditors' written vote must include the approval or non-approval of the plan and if there is any conditional to the approval it is considered a non-approval of the existing plan. No other contents are defined.<br><br>In addition to this, and in what concerns to PER proceedings, after the debtor deposits the final version of the plan, creditors have 5 days, if they wish to, to plead particular circumstances likely to lead to the company's failure to approve it, with the company having 5 days after the expiry of the first period within which the debtor can amend the plan accordingly, in which case it must deposit the new version. After that and during the 10 days period stablished for voting, creditors may ask the court to refuse the plan based on: 1) Breach of procedural rules, 2) plan being less favourable to the creditors' interests than the total absence of plan, 3) plan giving a benefit to a creditor with an economic value greater than the value of its credits on paper. |
| **46** | Can shareholders/directors of debtors be held liable for obstructing the formal Debt Restructuring proceedings? Are there any issues with piercing the corporate veil? We are thinking about introducing automatic fines for these persons when documents in relation to Debt Restructuring are not submitted on time. Might Portugal have any experience worth sharing? | CIRE, art.º 83<br>CIRE, art.º 17-D<br>Council of Ministers Resolution n.º 43/2011 | × | The debtor has the duty to collaborate with the insolvency administrator and/or creditors in terms of information and other.<br><br>Moreover, if said insolvency is considered as wrongful (which are the cases in which the situation of insolvency was created or aggravated as a result of the intentional or grossly negligent conduct of the debtor or its directors, formally appointed or acting as such without a formal appointment, in the three years preceding the initiation of the insolvency proceedings) the directors, chartered accountants and statutory auditors can be held liable.<br><br>The Portuguese law provides some circumstances under which the insolvency of a company is always qualified as wrongful, namely when its directors have destroyed, damaged, rendered unusable, hidden, or made the debtor's assets disappear, in whole or in a considerable part, among others.<br><br>Serious misconduct shall be presumed in some other cases, namely when the debtor's failure to request the declaration of insolvency within the legally prescribed time limit. |

| | | | | |
|---|---|---|---|---|
| | | | | If some requirements are met, the directors may be considered personally liable for the Company situation and face serious consequences, such as the inhibition to manage a company for a certain time period and may have to compensate directly the creditors of the Company. This process is autonomous to the restructuring process.<br><br>Additionally, the restructuring process is guided by the guiding principles defined in the Council of Ministers Resolution n.º 43/2011. |
| **47** | How are liabilities applied to Supervisors/insolvency practitioners tasked with supervising formal Debt Restructuring proceedings? | CIRE, art.º 59 | × | The activity of the insolvency administrator overseen by the judge, which may ask for information at any point in time.<br><br>The insolvency administrator is held liable for any loss caused on either the debtor or creditors in cases of:<br><br>1) Non-compliance with its duties<br><br>2) If the insolvent state is insufficient to cover the claims of the creditors due to actions of the administrator<br><br>3) Jointly liable for incorrect or omissions of information, if it is proven that no sufficient diligence was applied<br><br>The liability of the insolvency administrator is limited to the period after its nomination and for a period of 2 years. |

***Link to Portuguese guidelines on debt restructuring:***

https://dre.pt/web/guest/pesquisa/-/search/146924/details/maximized.

## Spain

**Questionnaire**

for benchmarking the Latvian legislation against jurisdictions that follow international best practices in debt restructuring

**Please list the regulatory documents (e.g. laws, bylaws, rules, regulations, guidelines etc.) and shorten them, if necessary**

**Directive -** Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending to the Directive (EU) 2017/1132 (Directive on restructuring and insolvency);

| No | Question | Reference to the Directive | Reference to specific national legal rules | Yes/No | Comments/ Answers |
|---|---|---|---|---|---|
| **A. Early warning tools available to business owners in your country** | | | | | |
| **1** | What early warning tools are available to businesses to warn them when risks of insolvency become evident? | Article 3 | - | No | There aren't any warning tools in the Spanish legislation. |
| **1.1** | Do these aforementioned early warning tools include alert mechanisms when the debtor has not made certain types of payments? | Article 3 | - | No | |
| **1.2** | Do these aforementioned early warning tools include advisory services provided by public or private organisations? | Article 3 | - | No | |
| **1.3** | Do these aforementioned early warning tools include incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development? | Article 3 | art. 91.7 Spanish Insolvency Law ("LC") | Yes | As we mention, we don't have any early warning tools. Nevertheless, the Spanish Insolvency Act rewards the creditor who presents a bankruptcy petition, granting some privileges regarding his credit. |
| **2** | Which institutions are tasked by the law with warning companies of their possible insolvency risks? | General | - | No | There aren't any supervising institutions. The Insolvency Act has a reactive approach, giving the debtor and its creditors the opportunity to file for insolvency |
| **3** | How the country facilitates financial literacy of the companies (especially SMEs) and the quality of the restructuring in terms of economic viability? | General | - | No | There aren't any specific programs on financial education. In fact, recent studies have shown that Spanish SMEs barely use the special mechanisms established by the Law. |
| **4** | Please indicate the online platforms where check-lists for restructuring plans are available and which include practical tips for the development of debt restructuring plans in accordance with the applicable national legislation? | Paragraph 2 of Article 8 | art. 198 LC | Yes | https://www.publicidadconcursal.es/concursal-web/. This is the website where the resolutions of the Insolvency Procedure were published. In this sense take into account that not all the resolutions where public and this public site was created around 2013/2014. |
| **5** | Are there any online guides and tools available for businesses (especially SMEs) on how to develop an adequate debt restructuring plan? (Please provide website address, if applicable) | Paragraph 4 of Article 3 | art. 232.2 LC | No | We don't have these kinds of guides. However, according to Article 232.2 LC, there is one form to be used by debtors whose liabilities don't exceed 5.000.000 €: https://www.boe.es/buscar/doc.php?id=BOE-A-2015-14225 |

| | | | | | |
|---|---|---|---|---|---|
| 6 | How the country prevents the detrimental effect of formal restructuring procedures to debtor's business? | General | arts. 71,71 bis and DA 4ª.13 LC | No | We don't have any mechanisms to prevent this effect. However, we can point out that the restructuring agreements which are approved by the judge couldn't be claimed in case there were harmful to the Insolvency Procedure. |
| **B. Limitations to utilize preventive restructuring** | | | | | |
| 7 | Under which circumstances, if any, are debtors forbidden from utilizing preventive restructuring (for example, debtor has been sentenced for serious breaches of accounting or bookkeeping)? | Paragraph 2 of Article 4 | arts. 71 bis, 231.3, 231.4 and DA 4º LC. | Yes | The Spanish debt Restructuring, and insolvency framework contains two distinct procedures which are accessible to different subjects. Debtors with a total debt value up to EUR 5,000,000.00 have access to one kind of debt restructuring procedure intended for SMEs and natural persons (Extrajudicial Payment agreement). At the same time all the debtors have access to a different debt restructuring procedure which is intended and suited more for larger businesses (Restructuring agreement). |
| 8 | Can debtors initiate this process after adequate measures have been taken to remedy these offences or a certain time period has passed? | Paragraph 2 of Article 4 | art. 231.3 and 4, and DA 4ª.12 LC | No | Spanish insolvency law gives access to an Extrajudicial Payment agreement procedure to debtors, who may be natural persons or legal entities or even corporations, if they comply with the following criteria: (i) the debtor has not been sentenced for crimes (against the heritage, against the socio-economic order, of false documents, against the Public Treasury, the Social Security or against the rights of the workers in the last 10 years; (ii) the debtor has not reached an Extrajudicial Payment or Restructuring agreement or has not been under an insolvent liquidation procedure in the last 5 years; (iii) the debtor has initiated negotiations for a Restructuring agreement or a judge has accepted the initiation of Insolvent liquidation proceedings.<br>Access to a Restructuring agreement procedure is not permitted for those debtors who have had a Restructuring agreement approved within the last year.<br>Spanish courts and appointed debt restructuring practitioners consider the potential outcome of the Debt Restructuring and can request external advice to assess its usefulness. |
| 9 | How the country prevents abuse of restructuring procedures (for instance using the procedures and stay for delaying insolvency)? | General | - | No | There are no real actions in this way. Moreover, the debtors usually use the mechanism regulated in order to extend the insolvency procedure. Is usual to use the a pre insolvency claim (art. 5 bis LC) in order to obtain 4 months to claim for the insolvency procedure but this article was created in order to allow the debtor to achieve a restructuring agreement. In the other hand you can't use art. 5 bis communication if you used it in the last year. |
| 10 | Are there any viability tests set in the law and/or used in practice to determine whether preventive restructuring proceedings can be successfully utilized for companies in financial distress or to determine whether a company cannot be "saved" and preventive restructuring proceedings is not possible, i.e., the company must be liquidated? Please describe these tests. | Paragraph 3 of Article 4 | - | No | According to the Article 6.2.2 LC Spanish debtors must submit viability plans together with the filing for the insolvency procedure. Moreover, these are later subject to judicial review. |
| **C. Stay of individual enforcement actions** | | | | | |
| 11 | Can the Court refuse or limit the application of any of the types of Stay of individual enforcement actions if the Court believes that any of them are not necessary or if their application would disturb the negotiation or coordination of the plan? | Article 6 | art 5 bis LC | No | Once the art. 5 bis LC communication is made by the debtor all the enforcements against necessary assets were automatically interrupted. So, the debtor has to identify which assets are necessary. The creditor can appeal the court decision. |

| | | | | | |
|---|---|---|---|---|---|
| 12 | What types of Stay of individual enforcement actions are provided by law and available during the negotiations on the debt restructuring plan? | Article 6 | art. 5 bis LC. | × | Before insolvency declaration, and in case that the debtor makes the art. 5 bis LC communication. all kind of enforcement action - except public enforcement- against assets which are necessary were interrupted in a four months period. And there is no possibility to initiated new enforcement procedures against this kind of assets. |
| 13 | Are Stay of individual enforcement actions applicable to all creditors? | Article 6 | art. 5 bis.4 LC. | No | Stay of enforcement doesn`t affect public creditors. |
| 14 | What are the exceptions to applying a Stay of individual enforcement actions to all creditors? | Article 6 | art. 5 bis.4 LC. | | Stay of enforcement doesn`t affect public creditors. And the credits which are granted by Mortgage, Pledge or similar can initiate the individual enforcement but they will be interrupted for the Cooling off period. |
| 15 | What is the total duration of the Stay of individual enforcement actions? | Article 6 | art. 5 bis 4 LC | × | There is no specific term. The Stay of Period finish in four different circumstances: (i) the debtor arrange a restructuring agreement; (ii) The judge rule one resolution processing the restructuring agreement; (iii) the debtor achieve some "extra judicial Payment agreement" and; (iv) the debtor has been declared insolvent by the judge - in this case new rules about the cooling off period will be applicable-. |
| 16 | Is it possible to extend the duration term of the Stay of individual enforcement actions? | Article 6 | - | No | We refer to question 12 |
| 17 | What pre conditions exist for extending the Stay of individual enforcement actions? | Article 6 | - | × | We refer to question 12 |
| 18 | For how long the Stay of individual enforcement actions can be extended? | Article 6 | - | × | We refer to question 12 |
| **D. Restructuring plans** | | | | | |
| 19 | Can the restructuring plan be prepared and submitted by the creditors if authorization from the debtor has been received? | Paragraph 8 of Article 4 | arts. 236.3 and DA 4ª.5 LC | Yes | In case of an "Extra Judicial Payment agreement" the creditors can submit new proposals or amendments to the debtor's proposal, but always after the intermediary, on behalf of the debtor, has presented his own proposal.<br>In case of a restructuring agreement, the debtor or the creditor can ask for the Court's authorization. |
| 20 | Can the restructuring plan be prepared and submitted by the employees of the debtor if authorization from the debtor has been received? | Paragraph 8 of Article 4 | arts. 236.3 and DA 4ª.1 LC | No | "Extra Judicial Payment agreement": In this case employees don't have legitimacy, but they could made it because they are creditors.<br>Restructuring Agreement: The employees don't have legitimacy because this type of agreements only mainly affects financial creditors. |
| 21 | Do Courts consider the opinion of a qualified expert when evaluating the restructuring plan, especially the part of the plan which includes the reasoning that there are reasonable chances that it has the ability to overt the insolvency of the debtor? | Paragraph 1 of Article 8 | arts. 71 bis.4, 236 and DA 4ª.4 LC | Yes | "Extra Judicial Payment agreement": There is an intermediary who makes the agreement proposal and their annex (viability plan and other). In case they proposal is approved they only has to sing it in a public deed.<br>Restructuring Agreement: It is necessary to present one evaluation made by a qualified expert and one certificate about the majorities made by the auditor. |
| 22 | Does the aforementioned opinion of the expert include a substantial evaluation of the restructuring plan? | Paragraph 1 of Article 8 | arts. 71 bis.4, 236 and DA 4ª.4 LC | Yes | |
| 23 | Can the Court refuse to confirm the restructuring plan where the plan does not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business? | Paragraph 3 of Article 10 | art. 236,239 and DA 4ª.7 LC | No | It is not possible. In both cases the creditors have to claim against the agreements regarding the arguments exposed in the question 24 |

| | | | | | |
|---|---|---|---|---|---|
| **24** | How can the Court confirm the debt restructuring plan on request of the debtor but against the will of the majority of creditors (some category of creditors has not approved the plan)? | Paragraph 1 of Article 11 | art. 238 bis and DA 4ª.4 LC | × | The Insolvency Law Stablish some majorities in order to apply some drag along mechanism. |
| **25** | Does the Court before deciding on the restructuring plan requests qualified experts to submit their opinions? | Paragraph 2 of Article 14 | DA 4ª. 5 LC | Yes | The expert's opinions have to be submitted with the initial proposal. |
| **26** | What are the qualification criteria for these aforementioned qualified experts? | Paragraph 2 of Article 14 | art. 71.4 and 233 LC | × | Restructuring Agreement: The experts are selected by the business registry. The Insolvency law only stablish that this expert has to be qualified.<br>Extra Judicial Payment agreement: It has to be a lawyer, or an economist and he/she has to be an intermediary according to the Law 5/2012 about intermediation in civil and commercial matters. |
| **27** | Are Courts obligated to substantially assess the insolvency methods included in the restructuring plan by evaluating the justification of their applicability and the possibility of their execution? | Paragraph 1 of Article 14 | | No | The court can evaluate the restructuring plan and extra judicial agreement only from two points of view: (i) the majorities or (ii) if the proposal implies an unreasonable/ disproportional scarify for the creditors. |
| **28** | What criteria must occur for the plan prepared by the creditors and employees to become binding for the debtor and other creditors who did not participate in the preparation of the plan? | Paragraph 8 of Article 4 | | × | Restructuring Agreement: Once it's approved by the majorities required it is applicable to the Financial Creditors and other who accept it - except public creditors-. The creditors who reject the proposal could be affected by it in case the drag along mechanism is applied.<br>Extra Judicial Payment agreement: It works similar than the Restructuring Agreement but there are some specialities regarding the type of Creditors.<br><br>In both cases, the Insolvency Law Stablish some majorities in order to apply some drag along mechanism. |
| **29** | In what categories are the creditors who vote on the debt restructuring plans divided? | Paragraph 1 of Article 9 | art 231.5, DA 4º.1 LC | × | According to Spanish legislation, claims of creditors are classified as (i) preferential (further subdivided into claims with special preference and general preference claims); (ii) ordinary; and (iii) subordinated.<br>In Spain cross-class cram-down would be applied in relation to two classes of creditors – the secured creditors class and unsecured creditors class. |
| **27** | Which persons or categories of creditors are not permitted to vote on the debt restructuring plans? | Paragraph 1 of Article 9 | art 231.5, DA 4º.1 LC | × | Restructuring Agreement: This agreement only concern to financial creditors. The rest of creditors - except public creditors- could adhere to the proposal.<br>Extra judicial payment agreement: Public Creditors |
| | ***E. Preventive restructuring proceedings*** | | | | |
| **28** | Are there any preventive restructuring proceedings totally existing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are organised outside of the Courts. | Paragraph 5 of Article 4 | - | No | We can point only particular agreement between the debtor and the creditors. |
| **29** | Are there any preventive restructuring proceedings Partially existsing outside the Court procedure but are binding to the creditors? Please describe these measures or occasions which are partially organised outside of the Courts. | Paragraph 5 of Article 4 | arts. 71 bis,236 and DA 4ªLC | Yes | The restructuring Agreement and the Extra Judicial Payment agreement are proceedings partially outside the Court. Mainly the negotiations are partially outside the Court, but the creditors claim and the approval of the Court - in the case of the restructuring Agreement- is followed under the Court. |

| | | | | | |
|---|---|---|---|---|---|
| **30** | How are creditors restricted from undermining the business operations of the debtor when preventive restructuring proceedings have been initiated (for example, by refusing to deliver manufacturing materials and including within agreements clauses that allow for the annulment of obligations if preventive restructuring proceedings are initiated)? | Paragraph 5 of Article 7 | arts. 5 bis and 61.3 LC. | × | In case the Debtor Claim for the 5 bis communication or for an Extra Judicial Payment Agreement the enforcement actions will be interrupted. In case of contracts there isn't any prevision but it's possible to consider that invalid the contract clauses which empower one party of the contract to solve it because of the Insolvency situation. |
| **31** | Does the law include specific types of deals which are allowed in the preventive restructuring procedure and cannot be later disputed in the insolvency proceedings? | Paragraph 1 of Article 18 | art 71 bis and DA 4º.13 LC | No | Only the Restructuring Agreements which has been approved by the Court. These agreements could imply some specific deals (mortgage, sales, pledge, other). But there isn't any specific list of deals. |
| **32** | Are the capital holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | - | No | There isn't any prevision in this sense. |
| **33** | How are the equity holders restricted from hindering the initiation or implementation of the debt restructuring plan? | Article 12 | - | × | - |
| **34** | Are employees informed of the preventive restructuring proceedings? | Article 13 | - | No | - |
| **35** | How are employees protected from the negative consequences of preventive restructuring? | Article 13 | - | × | There isn't any prevision in this sense. |
| **36** | How the supplied New and Interim financing in the preventive restructuring proceedings is protected in the event of further insolvency proceedings of the debtor? | Article 17 | art. 71, 71 bis, 84.2.11º and DA 4º LC | × | The "fresh money" is protected in two ways: (i) 50% of it is consider a Claim against the state and (ii) the agreement of this new financing is protected in case it has been approved by the Court. |
| **Court supervision and appeal of judgments** | | | | | |
| **37** | Under which circumstances in the phase of preventive restructuring proceedings or the termination process of the proceedings can the Court evaluate or automatically decide that the debtor has an obligation to request for the initiation of the insolvency proceedings that can result in liquidation? | Paragraph 7 of Article 7 | Article 5 bis | × | The Court can't decide the start of the insolvency proceedings. It is the debtor or one of his creditors who must file for insolvency. In case the debtor communicated the Court his will to start one of the preventive restructuring proceedings under Article 5 bis, after 3 months since this communication, the debtor has the obligation to request for the initiation of the insolvency proceedings, in the term of 1 month |
| **38** | Under which circumstances is the Court obliged to appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | | × | According to the Spanish legal framework, prior to the initiation of the Extrajudicial Agreement procedure, a mediator or an intermediary from a public list must be appointed by the commercial register upon a submitted petition from the debtor.<br>This intermediary will be appointed as an insolvency practitioner where the agreement is unfulfilled and the debtor files for insolvency. |
| **39** | Under which circumstances the Court does not appoint an Administrator to the preventive restructuring proceedings? | Paragraph 3 of Article 5 | | × | The Administrator is only appointed at the termination of the preventive restructuring proceedings, once the debtor or a creditor files an insolvency petition and the Court renders a decision declaring the start of the insolvency proceedings |

| | | | | | |
|---|---|---|---|---|---|
| **40** | What is the role and expertise of restructuring practitioner in the country? | General | | × | Insolvency practitioners in Spain are neither required to pass professional exams nor are they subject to licencing. Nevertheless, they must meet certain criteria for them to be appointed. Insolvency practitioners must be lawyers or economists with at least 5 years of professional experience, credible training and participation in bankruptcy proceedings. Legal entities can also perform the duties of insolvency practitioners if they meet these criteria. |
| **41** | What are the rights and obligations of the Administrator before and after the Court decision to appoint/accept him, for example, can the administrator participate in the drafting of the restructuring plan? | Paragraph 3 of Article 5 | | × | Not applicable. In extrajudicial payment agreements, the intermediary drafts the proposed agreement, including payment and viability plans. |
| **42** | Which decisions of the Court in relation to preventive restructuring proceedings can be appealed in a higher institution or Court? | Paragraph 1 of Article 16 | DA 4ª. 7 LC and Article 239 LC | × | Courts in Spain are also limited in deciding on confirmation of restructuring plans. Creditors need to raise claims for the courts to have the authority to reject restructuring plans on these grounds.<br>Under extrajudicial payment agreements, dissenting creditors may challenge restructuring plans before the court which has jurisdiction over the debtor's insolvency proceedings within ten days of publication.<br>The objection shall not suspend the execution of the resolution and may only be based on the lack of concurrence of the majorities required for the adoption of the resolution, taking into account, if appropriate, the creditors who should be present but have not been summoned, on the exceeding of the limits established by law or on the disproportionate nature of the measures agreed.<br>All disputes are dealt with jointly under the bankruptcy proceedings and decisions to annul agreements are published in the Insolvency Register. Moreover, the annulment of the agreement gives rise to the conduct of the consecutive competition.<br>Subject to refinancing agreements, the competence to hear the approval will correspond to the commercial judge who, where appropriate, is competent to declare the insolvency proceedings.<br>The application may be made by the debtor or by any creditor who has signed the refinancing agreement and shall be accompanied by the refinancing agreement adopted, the auditor's certification of the sufficiency of the majorities required to adopt the agreements with the effects envisaged for each case, the reports, if any, issued by independent experts and the certification of the capital increase agreement if it has already been adopted. The judge, having examined the request for homologation, issues an order admitting it for processing and declares the suspension of the singular executions until homologation is agreed upon.<br>The judge grants the approval provided that the agreement meets the necessary requirements and declares the extension of effects when the auditor certifies the concurrence of the required majorities.<br>The resolution approving the approval of the refinancing agreement is adopted through an urgent procedure within fifteen days and is published employing a notice inserted in the Insolvency Public Registry and the "Official State Gazette", using an extract containing the required data.<br>Within fifteen days of the publication, the creditors of financial liabilities affected by the judicial homologation who have not signed the homologation agreement or who have shown their disagreement with it may challenge it. |

| | | | | | |
|---|---|---|---|---|---|
| | | | | | All objections are dealt with jointly by the bankruptcy proceedings, and all objections are notified to the debtor and the other creditors who are parties to the refinancing agreement so that they can appeal the objection. The decision on the challenge to the approval, which must be made within 30 days, is not subject to appeal and is be given the same publicity as that provided for the approval decision. |
| **43** | Who can appeal the aforementioned judgments of the Court? | Paragraph 1 of Article 16 | DA 4ª. 7 LC and Article 239 LC | × | In Spain, under certain circumstances, creditors who did not support the agreement and are affected by it can challenge the court decision with which the restructuring agreement has been approved. The resulting court decision on the aforementioned claim cannot be appealed and is final.<br>Creditors who have not voted in favour or have voiced their opposition can challenge the extrajudicial payment agreement if they are affected by it. The initiation of the challenge does not suspend the execution of the agreement.<br>The ruling on the challenge can be further appealed and, in the case, that the agreement is annulled upon the challenge of the creditors insolvency proceedings for the debtor are automatically initiated. |
| **44** | What decisions can the Court make in the appeal procedure in relation to preventive restructuring proceedings? | Paragraph 4 of Article 16 | | × | Not applicable |
| **Other** | | | | | |
| **45** | Overall review of main KPIs of restructuring in Latvia and in particular countries (number of cases, success rate etc) | General | | × | The most relevant cases in Spain in the last years are Abengoa, FCC and Isolux. Isolux was declared in insolvency. We don't have official figures about the restructuring. |
| **46** | Does the country have any legal framework of private restructuring workouts? What is a private restructuring practice in particular countries and how popular/efficient is it? | General | | × | The legal framework in Spain only establish the systems described above. Despite the debtor and the creditors may arrange their individual agreements. |
| **Additional Benchmarking** | | | | | |
| **47** | Does the Spanish legal system permit the concept of "unaffected creditors" (i.e., that debtors can select to which creditors the Restructuring Plan applies)? If this is indeed the case can you very briefly explain how it works in practice and more specifically why affected creditors might approve Restructuring Plans that affect their claims but leave others unaffected? | | | × | Spanish insolvency law was first familiarized with the concept of unaffected creditors in 2013 and additional reforms in 2015 further cemented the concept in the Spanish debt restructuring framework. Under comparable refinancing agreements, creditors in Spain are separated into four distinct classes: (i) financial creditors, (ii) commercial creditors (suppliers), (iii) public creditors and (iv) workers, only financial creditors may be affected by debt restructuring while commercial creditors may voluntarily participate and can therefore also be exempt from the application of the Restructuring Plan which has to be later confirmed by court. At the same time, bilateral or multi-operator agreements are not subject to such court homologation.<br><br>Voluntary bilateral agreements are concluded between the debtor and those creditors which agree to be affected by the Restructuring Plan. Creditors not party to the agreement remain unaffected. Affected creditors have something to gain from such agreements – they may benefit from further securitization of their claims or any other benefit as precluded in the individualized agreement if the debtor later becomes insolvent and the Restructuring Plan is confirmed by the court. |

| | | | |
|---|---|---|---|
| | | | While being applicable to debtors of all types, in practice such agreements are usually concluded between large companies and their financial creditors. Furthermore, the use remains low, the main reason for this being that debt restructuring in general is initiated too late and because the aforementioned agreements are designed for large companies while the Spanish business environment mostly consists of SMEs. |
| **48** | Do creditors have to justify their reasons for rejecting Restructuring Plans? | × | In this case, the justification does not apply. |
| **49** | Can shareholders/directors of debtors be held liable for obstructing the formal Debt Restructuring proceedings? Are there any issues with piercing the corporate veil? We are thinking about introducing automatic fines for these persons when documents in relation to Debt Restructuring are not submitted on time. Might Spain have any experience worth sharing? | × | To date, there are no provisions in this regard in Spanish insolvency law. |
| **50** | How are liabilities applied to Supervisors/insolvency practitioners tasked with supervising formal Debt Restructuring proceedings? | × | Regarding this question, please note, that culpability systems in Spanish legislation are related to causes linked to accounting, fraudulent sales of assets and the delay in the application for bankruptcy. |

***Spain Guidelines:***

**Guidelines from the COEO (Spanish Confederation of Business Organisations), which represents the business community in Spain:** https://contenidos.ceoe.es/CEOE/var/pool/pdf/publications_docs-file-349-guia-de-actuacion-de-la-empresa-ante-la-insolvencia-abril-2017.pdf.

**Article from the Spanish government website:**
http://www.mineco.gob.es/portal/site/mineco/menuitem.ac30f9268750bd56a0b0240e026041a0/?vgnextoid=8f17b11729c94410VgnVCM1000001d04140aRCRD&vgnextchannel=47386e0005e08310VgnVCM1000001d04140aRCRD.

## Annex 8. Benchmarking the local legislation against Directive 2019/2013

| | |
|---|---|
| **Glossary** | • **EDS** – Electronic Declaration System;<br>• **SRS** – State Revenue Service;<br>• **SMEs** – Small and medium-sized enterprises;<br>• **Plan –** the plan of measures of the legal protection proceedings;<br>• **LPP –** the legal protection proceedings;<br>• **OCLPP –** out-of-court legal protection proceedings;<br>• **Supervisor** – the person supervising the legal protection proceedings. |

| Article of Directive | Text of the Directive | Mandatory/ Optional | Compliant / Partially exists / Does not exist in regard to Latvian legal system |
|---|---|---|---|
| **Article 3**<br>**Early warning and access to information** | | | |
| Article 3 (1) | Member States shall ensure that debtors have access to one or more clear and transparent **early warning tools** which can **detect** circumstances that could give rise to a likelihood of **insolvency** and can signal to them the need to act without delay. For the purposes of the first subparagraph, Member States may make use of up-to-date **IT technologies** for notifications and for communication. | Mandatory | Compliant |
| Article 3 (2) | Early warning tools may include the following: | Optional | Compliant |
| Article 3 (2) (a) | (a) **alert mechanisms** when the debtor has not made certain types of payments; | Optional | Compliant |
| Article 3 (2) (b) | (b) **advisory services** provided by public or private organisations. | Optional | Compliant |
| Article 3 (2) (c) | (c) incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development. | Optional | Partially exists |
| Article 3 (3) | Member States shall ensure that debtors and employees' representatives have **access** to relevant and up-to-date information about the availability of **early warning tools** as well as of the procedures and measures concerning restructuring and discharge of debt. | Mandatory | Compliant |
| Article 3 (4) | Member States shall ensure that information on **access to early warning tools** is publicly **available online** and that, in particular for **SMEs**, it is easily accessible and presented in a user-friendly manner. | Mandatory | Compliant |
| Article 3 (5) | Member States may provide **support to employees'** representatives for the assessment of the economic situation of the debtor. | Optional | Does not exist |
| **Article 4**<br>**Availability of preventive restructuring frameworks** | | | |
| Article 4 (1) | Member States shall ensure that, where there is a **likelihood of insolvency**, debtors have **access to a preventive restructuring** framework that enables them to restructure, with a view to **preventing insolvency** and ensuring their **viability**, without prejudice to other solutions for avoiding insolvency, thereby **protecting jobs** and **maintaining** business activity. | Mandatory | Compliant |

| | | | |
|---|---|---|---|
| Article 4 (2) | Member States may provide that debtors that have been sentenced for **serious breaches** of accounting or bookkeeping obligations under national law are allowed to **access a preventive restructuring** framework **only after** those debtors have taken adequate measures to **remedy** the issues that gave rise to the sentence, with a view to providing creditors with the necessary information to enable them to take a decision during restructuring negotiations. | Optional | Does not exist |
| Article 4 (3) | Member States may maintain or **introduce a viability test** under national law, provided that such a test has the **purpose of excluding debtors that do not have a prospect of viability**, and that it can be carried out without detriment to the debtors' assets. | Optional | Partially exists |
| Article 4 (4) | Member States **may limit the number of times** within a certain period a debtor **can access a preventive restructuring** framework as provided for under this Directive. | Optional | Compliant |
| Article 4 (5) | The **preventive restructuring** framework provided for under this Directive may consist of one or more procedures, measures or provisions, **some of which may take place out of court**, without prejudice to any other restructuring frameworks under national law. | Mandatory | Compliant |
| Article 4 (5) | Member States shall ensure that such restructuring framework affords debtors and affected parties the rights and safeguards provided for in this Title in a coherent manner. | Mandatory | Compliant |
| Article 4 (6) | Member States may put in place provisions **limiting the involvement of a judicial or administrative authority** in a preventive restructuring framework to **where it is necessary** and proportionate while ensuring that rights of any affected parties and relevant stakeholders are safeguarded. | Optional | Compliant |
| Article 4 (7) | Preventive restructuring frameworks provided for under this Directive shall be available on application by debtors. | Mandatory | Compliant |
| Article 4 (8) | Member States may also provide that **preventive restructuring** frameworks provided for under this Directive **are available at the request of creditors and employees' representatives**, subject to the agreement of the debtor. Member States may limit that requirement to obtain the debtor's agreement to cases where debtors are SMEs. | Optional | Does not exist |
| **Article 5<br>Debtor in possession** | | | |
| Article 5 (1) | Member States shall ensure that **debtors accessing preventive restructuring procedures remain totally, or at least partially, in control** of their assets and the day-to-day operation of their business. | Mandatory | Compliant |
| Article 5 (2) | Where necessary, the **appointment** by a judicial or administrative authority **of a practitioner** in the field of restructuring **shall be decided on a case-by-case basis**, except in certain circumstances where Member States may require the mandatory appointment of such a practitioner in every case. | Optional (MS to decide alternative) | Does not exist |
| Article 5 (3) | Member States **shall provide for the appointment of a practitioner** in the field of restructuring, to assist the debtor and creditors in negotiating and drafting the plan, at least in the following cases:<br><br>(a)**where a general stay of individual enforcement actions**, in accordance with Article 6(3), **is granted** by a judicial or administrative authority, and the judicial or administrative authority decides that such a practitioner is necessary to safeguard the interest of the parties; | Mandatory | Partially exists |

| | | | |
|---|---|---|---|
| | (b)**where the restructuring plan needs to be confirmed** by a judicial or administrative authority **by means of a cross-class cram-down**, in accordance with Article 11; or<br>(c) where it is requested by the debtor or by a majority of the creditors, provided that, in the latter case, the cost of the practitioner is borne by the creditors. | | |
| **Article 6**<br>**Stay of individual enforcement actions** | | | |
| **Article 6 (1)** | Member States shall ensure that debtors can benefit from a stay of individual enforcement actions to support the negotiations of a restructuring plan in a preventive restructuring framework. | **Mandatory** | **Compliant** |
| **Article 6 (1)** | Member States may provide that judicial or administrative authorities can refuse to grant a stay of individual enforcement actions where such a stay is not necessary or where it would not achieve the objective set out in the first subparagraph. | **Optional** | **Does not exist** |
| **Article 6 (2)** | Without prejudice to paragraphs 4 and 5, Member States shall ensure that a stay of individual enforcement actions can cover all types of claims, including secured claims and preferential claims. | **Mandatory** | **Compliant** |
| **Article 6 (3)** | Member States may provide that a stay of individual enforcement actions can be general, covering all creditors, or can be limited, covering one or more individual creditors or categories of creditors. | **Optional (MS to decide alternative)** | **Compliant** |
| **Article 6 (3)** | Where a stay is limited, the stay shall only apply to creditors that have been informed, in accordance with national law, of negotiations as referred to in paragraph 1 on the restructuring plan or of the stay. | **Mandatory** | **Compliant** |
| **Article 6 (4)** | Member States may exclude certain claims or categories of claims from the scope of the stay of individual enforcement actions, in well-defined circumstances, where such an exclusion is duly justified and where:<br><br>(a) enforcement is not likely to jeopardise the restructuring of the business; or<br><br>(b) the stay would unfairly prejudice the creditors of those claims. | **Optional** | **Does not exist** |
| **Article 6 (5)** | Paragraph 2 shall not apply to workers' claims. | **Mandatory** | **Partially exists** |
| **Article 6 (5)** | By way of derogation from the first subparagraph, Member States may apply paragraph 2 to workers' claims if, and to the extent that, Member States ensure that the payment of such claims is guaranteed in preventive restructuring frameworks at a similar level of protection. | **Optional** | **Partially exists** |
| **Article 6 (6)** | The initial duration of a stay of individual enforcement actions shall be limited to a maximum period of no more than four months. | **Mandatory** | **Compliant** |
| **Article 6 (7)** | Notwithstanding paragraph 6, Member States may enable judicial or administrative authorities to extend the duration of a stay of individual enforcement actions or to grant a new stay of individual enforcement actions, at the request of the debtor, a creditor or, where applicable, a practitioner in the field of restructuring. Such extension or new stay of individual enforcement actions shall be granted only if well-defined circumstances show that such extension or new stay is duly justified, such as:<br><br>(a)relevant progress has been made in the negotiations on the restructuring plan;<br><br>(b)the continuation of the stay of individual enforcement actions does not unfairly prejudice the rights or interests of any affected parties; or<br><br>(c)insolvency proceedings which could end in the liquidation of the | **Optional** | **Partially exists** |

| | | | |
|---|---|---|---|
| | debtor under national law have not yet been opened in respect of the debtor. | | |
| Article 6 (8) | The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed 12 months.<br><br>Where Member States choose to implement this Directive by means of one or more procedures or measures which do not fulfil the conditions for notification under Annex A to Regulation (EU) 2015/848, the total duration of the stay under such procedures shall be limited to no more than four months if the centre of main interests of the debtor has been transferred from another Member State within a three-month period prior to the filing of a request for the opening of preventive restructuring proceedings. | Mandatory | Compliant |
| Article 6 (9) | Member States shall ensure that judicial or administrative authorities can lift a stay of individual enforcement actions in the following cases: | Mandatory | Partially exists |
| Article 6 (9) (a) | (a)the stay no longer fulfils the objective of supporting the negotiations on the restructuring plan, for example if it becomes apparent that a proportion of creditors which, under national law, could prevent the adoption of the restructuring plan do not support the continuation of the negotiations; | Mandatory | Partially exists |
| Article 6 (9) (b) | (b) at the request of the debtor or the practitioner in the field of restructuring; | Mandatory | Does not exist |
| Article 6 (9) (c) | (c) where so provided for in national law, if one or more creditors or one or more classes of creditors are, or would be, unfairly prejudiced by a stay of individual enforcement actions; or | Optional | Does not exist |
| Article 6 (9) (d) | (d)where so provided for in national law, if the stay gives rise to the insolvency of a creditor. | Optional | Does not exist |
| Article 6 (9) | Member States may limit the power, under the first subparagraph, to lift the stay of individual enforcement actions to situations where creditors had not had the opportunity to be heard before the stay came into force or before an extension of the period was granted by a judicial or administrative authority. | Optional | Does not exist |
| Article 6 (9) | Member States may provide for a minimum period, which does not exceed the period referred to in paragraph 6, during which a stay of individual enforcement actions cannot be lifted. | Optional | Partially exists |
| **Article 7<br>Consequences of the stay of individual enforcement actions** | | | |
| Article 7 (1) | Where an obligation on a debtor, provided for under national law, to file for the opening of insolvency proceedings which could end in the liquidation of the debtor, arises during a stay of individual enforcement actions, that obligation shall be suspended for the duration of that stay. | Mandatory | Compliant |
| Article 7 (2) | A stay of individual enforcement actions in accordance with Article 6 shall suspend, for the duration of the stay, the opening, at the request of one or more creditors, of insolvency proceedings which could end in the liquidation of the debtor. | Mandatory | Compliant |
| Article 7 (3) | Member States may derogate from paragraphs 1 and 2 in situations where a debtor is unable to pay its debts as they fall due. In such cases, Member States shall ensure that a judicial or administrative authority can decide to keep in place the benefit of the stay of individual enforcement actions, if, taking into account the circumstances of the case, the opening of insolvency proceedings which could end in the liquidation of the debtor would not be in the general interest of creditors. | Optional | Does not exist |

| | | | |
|---|---|---|---|
| Article 7 (4) | Member States shall provide for rules preventing creditors to which the stay applies from withholding performance or terminating, accelerating or, in any other way, modifying essential executory contracts to the detriment of the debtor, for debts that came into existence prior to the stay, solely by virtue of the fact that they were not paid by the debtor. 'Essential executory contracts' shall be understood to mean executory contracts which are necessary for the continuation of the day-to-day operations of the business, including contracts concerning supplies, the suspension of which would lead to the debtor's activities coming to a standstill. | Mandatory | Partially exists |
| Article 7 (4) | The first subparagraph shall not preclude Member States from affording such creditors appropriate safeguards with a view to preventing unfair prejudice being caused to such creditors as a result of that subparagraph. | Optional | Partially exists |
| Article 7 (4) | Member States may provide that this paragraph also applies to non-essential executory contracts. | Optional | Partially exists |
| Article 7 (5) | Member States shall ensure that creditors are not allowed to withhold performance or terminate, accelerate or, in any other way, modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of:<br><br>(a) a request for the opening of preventive restructuring proceedings;<br><br>(b) a request for a stay of individual enforcement actions;<br><br>(c) the opening of preventive restructuring proceedings; or<br><br>(d) the granting of a stay of individual enforcement actions as such. | Mandatory | Partially exists |
| Article 7 (6) | Member States may provide that a stay of individual enforcement actions does not apply to netting arrangements, including close-out netting arrangements, on financial markets, energy markets and commodity markets, even in circumstances where Article 31(1) does not apply, if such arrangements are enforceable under national insolvency law. The stay shall, however, apply to the enforcement by a creditor of a claim against a debtor arising as a result of the operation of a netting arrangement.<br><br>The first subparagraph shall not apply to contracts for the supply of goods, services or energy necessary for the operation of the debtor's business, unless such contracts take the form of a position traded on an exchange or other market, such that it can be substituted at any time at current market value. | Optional (with Mandatory provision, which must be fallowed, if the first paragraph is applied) | Partially exists |
| Article 7 (7) | Member States shall ensure that the expiry of a stay of individual enforcement actions without the adoption of a restructuring plan does not, of itself, give rise to the opening of an insolvency procedure which could end in the liquidation of the debtor, unless the other conditions for such opening laid down by national law are fulfilled. | Mandatory | Partially exists |
| **Article 8<br>Content of restructuring plans** | | | |
| Article 8 (1) | Member States shall require that restructuring plans submitted for adoption in accordance with Article 9, or for confirmation by a judicial or administrative authority in accordance with Article 10, contain at least the following information: | Mandatory | Partially exists |
| Article 8 (1) (a) | (a) the identity of the debtor; | Mandatory | Compliant |
| Article 8 (1) (b) | (b) the debtor's assets and liabilities at the time of submission of the restructuring plan, including a value for the assets, a description of the economic situation of the debtor and the position of workers, and | Mandatory | Partially exists |

| | | | |
|---|---|---|---|
| | a description of the causes and the extent of the difficulties of the debtor; | Mandatory | |
| Article 8 (1) (c) | (c) the affected parties, whether named individually or described by categories of debt in accordance with national law, as well as their claims or interests covered by the restructuring plan; | | Compliant |
| Article 8 (1) (d) | (d) where applicable, the classes into which the affected parties have been grouped, for the purpose of adopting the restructuring plan, and the respective values of claims and interests in each class; | Mandatory | Compliant |
| Article 8 (1) (e) | (e) where applicable, the parties, whether named individually or described by categories of debt in accordance with national law, which are not affected by the restructuring plan, together with a description of the reasons why it is proposed not to affect them; | Mandatory | Does not exist |
| Article 8 (1) (f) | (f) where applicable, the identity of the practitioner in the field of restructuring; | Mandatory | Compliant |
| Article 8 (1) (g) | (g) the terms of the restructuring plan, including, in particular: | Mandatory | Partially exists |
| Article 8 (1) (g) (i) | (i) any proposed restructuring measures as referred to in point (1) of Article 2(1); | Mandatory | Compliant |
| Article 8 (1) (g) (ii) | (ii) where applicable, the proposed duration of any proposed restructuring measures; | Mandatory | Compliant |
| Article 8 (1) (g) (iii) | (iii) the arrangements with regard to informing and consulting the employees' representatives in accordance with Union and national law; | Mandatory | Partially exists |
| Article 8 (1) (g) (iv) | (iv) where applicable, overall consequences as regards employment such as dismissals, short-time working arrangements or similar; | Mandatory | Does not exist |
| Article 8 (1) (g) (v) | (v) the estimated financial flows of the debtor, if provided for by national law; and | Mandatory | Compliant |
| Article 8 (1) (g) (vi) | (vi) any new financing anticipated as part of the restructuring plan, and the reasons why the new financing is necessary to implement that plan; | Mandatory | Partially exists |
| Article 8 (1) (h) | (h) a statement of reasons which explains why the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business, including the necessary pre-conditions for the success of the plan. Member States may require that that statement of reasons be made or validated either by an external expert or by the practitioner in the field of restructuring if such a practitioner is appointed. | Mandatory | Partially exists |
| Article 8 (2) | Member States shall make available online a comprehensive checklist for restructuring plans, adapted to the needs of SMEs. The checklist shall include practical guidelines on how the restructuring plan has to be drafted under national law.<br><br>The checklist shall be made available in the official language or languages of the Member State. Member States shall consider making the checklist available in at least one other language, in particular in a language used in international business. | Mandatory | Partially exists |
| **Article 9**<br>**Adoption of restructuring plans** | | | |
| Article 9 (1) | Member States shall ensure that, irrespective of who applies for a preventive restructuring procedure in accordance with Article 4, debtors have the right to submit restructuring plans for adoption by the affected parties. | Mandatory | Compliant |
| Article 9 (1) | Member States may also provide that creditors and practitioners in the field of restructuring have the right to submit restructuring plans and provide for conditions under which they may do so. | Optional | Partially exists |

| | | | |
|---|---|---|---|
| Article 9 (2) | Member States shall ensure that affected parties have a right to vote on the adoption of a restructuring plan. | Mandatory | Compliant |
| Article 9 (2) | Parties that are not affected by a restructuring plan shall not have voting rights in the adoption of that plan. | Mandatory | Partially exists |
| Article 9 (3) | Notwithstanding paragraph 2, Member States may exclude from the right to vote the following: | Optional | Compliant |
| Article 9 (3) (a) | (a) equity holders; | Optional | Compliant |
| Article 9 (3) (b) | (b) creditors whose claims rank below the claims of ordinary unsecured creditors in the normal ranking of liquidation priorities; or | Optional | Does not exist |
| Article 9 (3) (c) | (c) any related party of the debtor or the debtor's business, with a conflict of interest under national law. | Optional | Partially exists |
| Article 9 (4) | Member States shall ensure that affected parties are treated in separate classes which reflect sufficient commonality of interest based on verifiable criteria, in accordance with national law. As a minimum, creditors of secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. | Mandatory | Compliant |
| Article 9 (4) | Member States may also provide that workers' claims are treated in a separate class of their own. | Optional | Does not exist |
| Article 9 (4) | Member States may provide that debtors that are SMEs can opt not to treat affected parties in separate classes. | Optional | Does not exist |
| Article 9 (4) | Member States shall put in place appropriate measures to ensure that class formation is done with a particular view to protecting vulnerable creditors such as small suppliers. | Mandatory | Partially exists |
| Article 9 (5) | Voting rights and the formation of classes shall be examined by a judicial or administrative authority when a request for confirmation of the restructuring plan is submitted. | Mandatory | Partially exists |
| Article 9 (5) | Member States may require a judicial or administrative authority to examine and confirm the voting rights and formation of classes at an earlier stage than that referred to in the first subparagraph. | Optional | Does not exist |
| Article 9 (6) | A restructuring plan shall be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each class. | Mandatory | Compliant |
| Article 9 (6) | Member States may, in addition, require that a majority in the number of affected parties is obtained in each class. | Optional | Does not exist |
| Article 9 (6) | Member States shall lay down the majorities required for the adoption of a restructuring plan. Those majorities shall not be higher than 75 % of the amount of claims or interests in each class or, where applicable, of the number of affected parties in each class. | Mandatory | Compliant |
| Article 9 (7) | Notwithstanding paragraphs 2 to 6, Member States may provide that a formal vote on the adoption of a restructuring plan can be replaced by an agreement with the requisite majority. | Optional | Compliant |
| **Article 10<br>Confirmation of restructuring plans** | | | |
| Article 10 (1) | Member States shall ensure that at least the following restructuring plans are binding on the parties only if they are confirmed by a judicial or administrative authority: | Mandatory | Compliant |
| Article 10 (1) (a) | (a) restructuring plans which affect the claims or interests of dissenting affected parties; | Mandatory | Compliant |
| Article 10 (1) (b) | (b) restructuring plans which provide for new financing; | Mandatory | Compliant |
| Article 10 (1) (c) | (c) restructuring plans which involve the loss of more than 25 % of the workforce, if such loss is permitted under national law. | Mandatory | Compliant |

| | | | |
|---|---|---|---|
| **Article 10 (2)** | Member States shall ensure that the conditions under which a restructuring plan can be confirmed by a judicial or administrative authority are clearly specified and include at least the following: | **Mandatory** | **Partially exists** |
| **Article 10 (2) (a)** | (a) the restructuring plan has been adopted in accordance with Article 9; | **Mandatory** | **Compliant** |
| **Article 10 (2) (b)** | (b) creditors with sufficient commonality of interest in the same class are treated equally, and in a manner proportionate to their claim; | **Mandatory** | **Compliant** |
| **Article 10 (2) (c)** | (c)notification of the restructuring plan has been given in accordance with national law to all affected parties; | **Mandatory** | **Compliant** |
| **Article 10 (2) (d)** | (d) where there are dissenting creditors, the restructuring plan satisfies the best-interest-of-creditors test; | **Mandatory** | **Compliant** |
| **Article 10 (2) (e)** | (e) where applicable, any new financing is necessary to implement the restructuring plan and does not unfairly prejudice the interests of creditors. | **Mandatory** | **Partially exists** |
| **Article 10 (2)** | Compliance with point (d) of the first subparagraph shall be examined by a judicial or administrative authority only if the restructuring plan is challenged on that ground. | **Mandatory** | **Partially exists** |
| **Article 10 (3)** | Member States shall ensure that judicial or administrative authorities are able to refuse to confirm a restructuring plan where that plan would not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business. | **Mandatory** | **Compliant** |
| **Article 10 (4)** | Member States shall ensure that where a judicial or administrative authority is required to confirm a restructuring plan in order for it to become binding, the decision is taken in an efficient manner with a view to expeditious treatment of the matter. | **Mandatory** | **Compliant** |
| **Article 11**<br>**Cross-class cram-down** | | | |
| **Article 11 (1)** | Member States shall ensure that a restructuring plan which is not approved by affected parties, as provided for in Article 9(6), in every voting class, may be confirmed by a judicial or administrative authority upon the proposal of a debtor or with the debtor's agreement, and become binding upon dissenting voting classes where the restructuring plan fulfils at least the following conditions: | **Mandatory** | **Does not exist** |
| **Article 11 (1) (a)** | (a) it complies with Article 10(2) and (3); | **Mandatory** | **Does not exist** |
| **Article 11 (1) (b)** | (b) it has been approved by: | **Mandatory** | **Does not exist** |
| **Article 11 (1) (b) (i)** | (i) a majority of the voting classes of affected parties, provided that at least one of those classes is a secured creditors class or is senior to the ordinary unsecured creditors class; or, failing that, | **Mandatory** | **Does not exist** |
| **Article 11 (1) (b) (ii)** | (ii) at least one of the voting classes of affected parties or where so provided under national law, impaired parties, other than an equity-holders class or any other class which, upon a valuation of the debtor as a going concern, would not receive any payment or keep any interest, or, where so provided under national law, which could be reasonably presumed not to receive any payment or keep any interest, if the normal ranking of liquidation priorities were applied under national law; | **Mandatory** | **Does not exist** |
| **Article 11 (1) (c)** | (c) it ensures that dissenting voting classes of affected creditors are treated at least as favourably as any other class of the same rank and more favourably than any junior class; and | **Mandatory** | **Does not exist** |
| **Article 11 (1) (d)** | (d) no class of affected parties can, under the restructuring plan, receive or keep more than the full amount of its claims or interests. | **Mandatory** | **Does not exist** |

| | | | |
|---|---|---|---|
| **Article 11 (1)** | By way of derogation from the first subparagraph, Member States may limit the requirement to obtain the debtor's agreement to cases where debtors are SMEs. | **Optional** | **Does not exist** |
| **Article 11 (1)** | Member States may increase the minimum number of classes of affected parties or, where so provided under national law, impaired parties, required to approve the plan as laid down in point (b)(ii) of the first subparagraph. | **Optional** | **Does not exist** |
| **Article 11 (2)** | By way of derogation from point (c) of paragraph 1, Member States may provide that the claims of affected creditors in a dissenting voting class are satisfied in full by the same or equivalent means where a more junior class is to receive any payment or keep any interest under the restructuring plan. | **Optional** | **Does not exist** |
| **Article 11 (2)** | Member States may maintain or introduce provisions derogating from the first subparagraph where they are necessary in order to achieve the aims of the restructuring plan and where the restructuring plan does not unfairly prejudice the rights or interests of any affected parties. | **Optional** | **Does not exist** |
| **Article 12<br>Equity holders** | | | |
| **Article 12 (1)** | Where Member States exclude equity holders from the application of Articles 9 to 11, they shall ensure by other means that those equity holders are not allowed to unreasonably prevent or create obstacles to the adoption and confirmation of a restructuring plan. | **Mandatory** | **Partially exists** |
| **Article 12 (2)** | Member States shall also ensure that equity holders are not allowed to unreasonably prevent or create obstacles to the implementation of a restructuring plan. | **Mandatory** | **Partially exists** |
| **Article 12 (3)** | Member States may adapt what it means to unreasonably prevent or create obstacles under this Article to take into account, inter alia: whether the debtor is an SME or a large enterprise; the proposed restructuring measures touching upon the rights of equity holders; the type of equity holder; whether the debtor is a legal or a natural person; or whether partners in a company have limited or unlimited liability. | **Optional** | **Does not exist** |
| **Article 13<br>Workers** | | | |
| **Article 13 (1)** | Members States shall ensure that individual and collective workers' rights, under Union and national labour law, such as the following, are not affected by the preventive restructuring framework: | **Mandatory** | **Compliant** |
| **Article 13 (1) (a)** | (a) the right to collective bargaining and industrial action; and | **Mandatory** | **Compliant** |
| **Article 13 (1) (b)** | (b) the right to information and consultation in accordance with Directive 2002/14/EC and Directive 2009/38/EC, in particular: | **Mandatory** | **Compliant** |
| **Article 13 (1) (b) (i)** | (i) information to employees' representatives about the recent and probable development of the undertaking's or the establishment's activities and economic situation, enabling them to communicate to the debtor concerns about the situation of the business and as regards the need to consider restructuring mechanisms; | **Mandatory** | **Compliant** |
| **Article 13 (1) (b) (ii)** | (ii) information to employees' representatives about any preventive restructuring procedure which could have an impact on employment, such as on the ability of workers to recover their wages and any future payments, including occupational pensions; | **Mandatory** | **Compliant** |
| **Article 13 (1) (b) (iii)** | (iii) information to and consultation of employees' representatives about restructuring plans before they are submitted for adoption in accordance with Article 9, or for confirmation by a judicial or administrative authority in accordance with Article 10; | **Mandatory** | **Compliant** |

| | | | |
|---|---|---|---|
| Article 13 (1) (c) | (c) the rights guaranteed by Directives 98/59/EC, 2001/23/EC and 2008/94/EC. | Mandatory | Compliant |
| Article 13 (2) | Where the restructuring plan includes measures leading to changes in the work organisation or in contractual relations with workers, those measures shall be approved by those workers, if national law or collective agreements provide for such approval in such cases. | Mandatory | Compliant |
| **Article 14**<br>**Valuation by the judicial or administrative authority** | | | |
| Article 14 (1) | The judicial or administrative authority shall take a decision on the valuation of the debtor's business only where a restructuring plan is challenged by a dissenting affected party on the grounds of either: | Mandatory | Partially exists |
| Article 14 (1) (a) | (a) an alleged failure to satisfy the best-interest-of-creditors test under point (6) of Article 2(1); or | Mandatory | Compliant |
| Article 14 (1) (b) | (b) an alleged breach of the conditions for a cross-class cram-down under point (ii) of Article 11(1)(b). | Mandatory | Does not exist |
| Article 14 (2) | Member States shall ensure that, for the purpose of taking a decision on a valuation in accordance with paragraph 1, judicial or administrative authorities may appoint or hear properly qualified experts. | Mandatory | Partially exists |
| Article 14 (3) | For the purposes of paragraph 1, Member States shall ensure that a dissenting affected party may lodge a challenge with the judicial or administrative authority called upon to confirm the restructuring plan. | Mandatory | Partially exists |
| Article 14 (3) | Member States may provide that such a challenge can be lodged in the context of an appeal against a decision on the confirmation of a restructuring plan. | Optional | Does not exist |
| **Article 15**<br>**Effects of restructuring plans** | | | |
| Article 15 (1) | Member States shall ensure that restructuring plans that are confirmed by a judicial or administrative authority are binding upon all affected parties named or described in accordance with point (c) of Article 8(1). | Mandatory | Compliant |
| Article 15 (2) | Member States shall ensure that creditors that are not involved in the adoption of a restructuring plan under national law are not affected by the plan. | Mandatory | Does not exist |
| **Article 16**<br>**Appeals** | | | |
| Article 16 (1) | Member States shall ensure that any appeal provided for under national law against a decision to confirm or reject a restructuring plan taken by a judicial authority is brought before a higher judicial authority. | Mandatory | Partially exists |
| Article 16 (1) | Member States shall ensure that an appeal against a decision to confirm or reject a restructuring plan taken by an administrative authority is brought before a judicial authority. | Mandatory | Partially exists |
| Article 16 (2) | Appeals shall be resolved in an efficient manner with a view to expeditious treatment. | Mandatory | Partially exists |
| Article 16 (3) | An appeal against a decision confirming a restructuring plan shall have no suspensive effects on the execution of that plan. | Mandatory | Partially exists |
| Article 16 (3) | By way of derogation from the first subparagraph, Member States may provide that judicial authorities can suspend the execution of the restructuring plan or parts thereof where necessary and appropriate to safeguard the interests of a party. | Optional | Does not exist |

| | | | |
|---|---|---|---|
| **Article 16 (4)** | Member States shall ensure that, where an appeal pursuant to paragraph 3 is upheld, the judicial authority may either: | **Mandatory** | **Does not exist** |
| **Article 16 (4) (a)** | (a) set aside the restructuring plan; or | **Mandatory** | **Does not exist** |
| **Article 16 (4) (b)** | (b) confirm the restructuring plan, either with amendments, where so provided under national law, or without amendments. | **Mandatory** | **Does not exist** |
| **Article 16 (4)** | Member States may provide that, where a plan is confirmed under point (b) of the first subparagraph, compensation is granted to any party that incurred monetary losses and whose appeal is upheld. | **Optional** | **Does not exist** |
| **Article 17**<br>**Protection for new financing and interim financing** | | | |
| **Article 17 (1)** | Member States shall ensure that new financing and interim financing are adequately protected. As a minimum, in the case of any subsequent insolvency of the debtor: | **Mandatory** | **Partially exists** |
| **Article 17 (1) (a)** | (a) new financing and interim financing shall not be declared void, voidable or unenforceable; and | **Mandatory** | **Partially exists** |
| **Article 17 (1) (b)** | (b) the grantors of such financing shall not incur civil, administrative or criminal liability, on the ground that such financing is detrimental to the general body of creditors, unless other additional grounds laid down by national law are present. | **Mandatory** | **Partially exists** |
| **Article 17 (2)** | Member States may provide that paragraph 1 shall only apply to new financing if the restructuring plan has been confirmed by a judicial or administrative authority, and to interim financing which has been subject to ex ante control. | **Optional** | **Partially exists** |
| **Article 17 (3)** | Member States may exclude from the application of paragraph 1 interim financing which is granted after the debtor has become unable to pay its debts as they fall due. | **Optional** | **Does not exist** |
| **Article 17 (4)** | Member States may provide that grantors of new or interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims. | **Optional** | **Compliant** |
| **Article 18**<br>**Protection for other restructuring related transactions** | | | |
| **Article 18 (1)** | Without prejudice to Article 17, Member States shall ensure that, in the event of any subsequent insolvency of a debtor, transactions that are reasonable and immediately necessary for the negotiation of a restructuring plan are not declared void, voidable or unenforceable on the ground that such transactions are detrimental to the general body of creditors, unless other additional grounds laid down by national law are present. | **Mandatory** | **Partially exists** |
| **Article 18 (2)** | Member States may provide that paragraph 1 only applies where the plan is confirmed by a judicial or administrative authority or where such transactions were subject to ex ante control. | **Optional** | **Partially exists** |
| **Article 18 (3)** | Member States may exclude from the application of paragraph 1 transactions that are carried out after the debtor has become unable to pay its debts as they fall due. | **Optional** | **Does not exist** |
| **Article 18 (4)** | Transactions referred to in paragraph 1 shall include, as a minimum: | **Mandatory** | **Partially exists** |
| **Article 18 (4) (a)** | (a) the payment of fees for and costs of negotiating, adopting or confirming a restructuring plan; | **Mandatory** | **Partially exists** |
| **Article 18 (4) (b)** | (b) the payment of fees for and costs of seeking professional advice closely connected with the restructuring; | **Mandatory** | **Partially exists** |

| | | | |
|---|---|---|---|
| **Article 18 (4) (c)** | (c) the payment of workers' wages for work already carried out without prejudice to other protection provided in Union or national law; | **Mandatory** | **Partially exists** |
| **Article 18 (4) (d)** | (d) any payments and disbursements made in the ordinary course of business other than those referred to in points (a) to (c). | **Mandatory** | **Partially exists** |
| **Article 18 (5)** | Without prejudice to Article 17, Member States shall ensure that, in the event of any subsequent insolvency of the debtor, transactions that are reasonable and immediately necessary for the implementation of a restructuring plan, and that are carried out in accordance with the restructuring plan confirmed by a judicial or administrative authority, are not declared void, voidable or unenforceable on the ground that such transactions are detrimental to the general body of creditors, unless other additional grounds laid down by national law are present. | **Mandatory** | **Partially exists** |
| **Article 19**<br>**Duties of directors where there is a likelihood of insolvency** | | | |
| **Article 19** | Member States shall ensure that, where there is a likelihood of insolvency, directors, have due regard, as a minimum, to the following: | **Mandatory** | **Partially exists** |
| **Article 19 (a)** | (a) the interests of creditors, equity holders and other stakeholders; | **Mandatory** | **Partially exists** |
| **Article 19 (b)** | (b) the need to take steps to avoid insolvency; and | **Mandatory** | **Partially exists** |
| **Article 19 (c)** | (c) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business. | **Mandatory** | **Compliant** |
| **Article 20**<br>**Access to discharge** | | | |
| **Article 20 (1)** | 1. Member States shall ensure that insolvent entrepreneurs have access to at least one procedure that can lead to a full discharge of debt in accordance with this Directive. | **Mandatory** | **Compliant** |
| **Article 20 (1)** | Member States may require that the trade, business, craft or profession to which an insolvent entrepreneur's debts are related has ceased. | **Optional** | **Does not exist** |
| **Article 20 (2)** | Member States in which a full discharge of debt is conditional on a partial repayment of debt by the entrepreneur shall ensure that the related repayment obligation is based on the individual situation of the entrepreneur and, in particular, is proportionate to the entrepreneur's seizable or disposable income and assets during the discharge period, and takes into account the equitable interest of creditors. | **Mandatory** | **Compliant** |
| **Article 20 (3)** | Member States shall ensure that entrepreneurs who have been discharged from their debts may benefit from existing national frameworks providing for business support for entrepreneurs, including access to relevant and up-to-date information about these frameworks. | **Mandatory** | **Partially exists** |
| **Article 21**<br>**Discharge period** | | | |
| **Article 21 (1) (a) (b)** | 1. Member States shall ensure that the period after which insolvent entrepreneurs are able to be fully discharged from their debts is no longer than three years starting at the latest from the date of either:<br>(a) in the case of a procedure which includes a repayment plan, the decision by a judicial or administrative authority to confirm the plan or the start of the implementation of the plan; or<br>(b) in the case of any other procedure, the decision by the judicial or administrative authority to open the procedure, or the establishment of the entrepreneur's insolvency estate. | **Mandatory** | **Partially exists** |

| | | | |
|---|---|---|---|
| **Article 21 (2)** | 2. Member States shall ensure that insolvent entrepreneurs who have complied with their obligations, where such obligations exist under national law, are discharged of their debt on expiry of the discharge period without the need to apply to a judicial or administrative authority to open a procedure additional to those referred to in paragraph 1. | **Mandatory** | **Partially exists** |
| **Article 21 (2)** | Without prejudice to the first subparagraph, Member States may maintain or introduce provisions allowing the judicial or administrative authority to verify whether the entrepreneurs have fulfilled the obligations for obtaining a discharge of debt. | **Optional** | **Partially exists** |
| **Article 21 (3)** | 3. Member States may provide that a full discharge of debt does not hinder the continuation of an insolvency procedure that entails the realisation and distribution of assets of an entrepreneur that formed part of the insolvency estate of that entrepreneur as at the date of expiry of the discharge period. | **Optional** | **Not Applicable** |
| **Article 22**<br>**Disqualification period** | | | |
| **Article 22 (1)** | 1. Member States shall ensure that, where an insolvent entrepreneur obtains a discharge of debt in accordance with this Directive, any disqualifications from taking up or pursuing a trade, business, craft or profession on the sole ground that the entrepreneur is insolvent, shall cease to have effect, at the latest, at the end of the discharge period. | **Mandatory** | **Compliant** |
| **Article 22 (2)** | 2. Member States shall ensure that, on expiry of the discharge period, the disqualifications referred to in paragraph 1 of this Article cease to have effect without the need to apply to a judicial or administrative authority to open a procedure additional to those referred to in Article 21(1). | **Mandatory** | **Compliant** |
| **Article 23**<br>**Derogations** | | | |
| **Article 23 (1)** | 1. By way of derogation from Articles 20 to 22, Member States shall maintain or introduce provisions denying or restricting access to discharge of debt, revoking the benefit of such discharge or providing for longer periods for obtaining a full discharge of debt or longer disqualification periods, where the insolvent entrepreneur acted dishonestly or in bad faith under national law towards creditors or other stakeholders when becoming indebted, during the insolvency proceedings or during the payment of the debt, without prejudice to national rules on burden of proof. | **Optional** | **Compliant** |
| **Article 23 (2)** | By way of derogation from Articles 20 to 22, Member States may maintain or introduce provisions denying or restricting access to discharge of debt, revoking the benefit of discharge or providing for longer periods for obtaining a full discharge of debt or longer disqualification periods in certain well-defined circumstances and where such derogations are duly justified, such as where:<br><br>(a) the insolvent entrepreneur has substantially violated obligations under a repayment plan or any other legal obligation aimed at safeguarding the interests of creditors, including the obligation to maximise returns to creditors;<br><br>(b) the insolvent entrepreneur has failed to comply with information or cooperation obligations under Union and national law;<br><br>(c) there are abusive applications for a discharge of debt;<br><br>(d) there is a further application for a discharge within a certain period after the insolvent entrepreneur was granted a full discharge of debt or was denied a full discharge of debt due to a serious | **Optional** | **Partially exists** |

| | | | |
|---|---|---|---|
| | violation of information or cooperation obligations;<br><br>(e) the cost of the procedure leading to the discharge of debt is not covered; or<br><br>(f) a derogation is necessary to guarantee the balance between the rights of the debtor and the rights of one or more creditors. | | |
| **Article 23 (3)** | By way of derogation from Article 21, Member States may provide for longer discharge periods in cases where:<br><br>(a) protective measures are approved or ordered by a judicial or administrative authority in order to safeguard the main residence of the insolvent entrepreneur and, where applicable, of the entrepreneur's family, or the essential assets for the continuation of the entrepreneur's trade, business, craft or profession; or<br><br>(b) the main residence of the insolvent entrepreneur and, where applicable, of the entrepreneur's family, is not realised. | **Optional** | **Partially exists** |
| **Article 23 (4)** | Member States may exclude specific categories of debt from discharge of debt, or restrict access to discharge of debt or lay down a longer discharge period where such exclusions, restrictions or longer periods are duly justified, such as in the case of:<br><br>(a) secured debts;<br><br>(b) debts arising from or in connection with criminal penalties;<br><br>(c) debts arising from tortious liability;<br><br>(d) debts regarding maintenance obligations arising from a family relationship, parentage, marriage or affinity;<br><br>(e) debts incurred after the application for or opening of the procedure leading to a discharge of debt; and<br><br>(f) debts arising from the obligation to pay the cost of the procedure leading to a discharge of debt. | **Optional** | **Partially exists** |
| **Article 23 (5)** | By way of derogation from Article 22, Member States may provide for longer or indefinite disqualification periods where the insolvent entrepreneur is a member of a profession:<br><br>(a) to which specific ethical rules or specific rules on reputation or expertise apply, and the entrepreneur has infringed those rules; or<br><br>(b) dealing with the management of the property of others.<br><br>The first subparagraph shall also apply where an insolvent entrepreneur requests access to a profession as referred to in point (a) or (b) of that subparagraph. | **Optional** | **Partially exists** |
| **Article 23 (6)** | This Directive is without prejudice to national rules regarding disqualifications ordered by a judicial or administrative authority other than those referred to in Article 22. | **Mandatory** | **Not Applicable** |
| **Article 24**<br>**Consolidation of proceedings regarding professional and personal debts**<br>**Derogations** | | | |
| **Article 24 (1)** | Member States shall ensure that, where insolvent entrepreneurs have professional debts incurred in the course of their trade, business, craft or profession as well as personal debts incurred outside those activities, which cannot be reasonably separated, such debts, if dischargeable, shall be treated in a single procedure for the purposes of obtaining a full discharge of debt. | **Mandatory** | **Partially exists** |

| | | | |
|---|---|---|---|
| **Article 24 (2)** | Member States may provide that, where professional debts and personal debts can be separated, those debts are to be treated, for the purposes of obtaining a full discharge of debt, either in separate but coordinated procedures or in the same procedure. | **Optional** | **Partially exists** |
| **Article 25**<br>**Judicial and administrative authorities** | | | |
| **Article 25** | Without prejudice to judicial independence and to any differences in the organisation of the judiciary across the Union, Member States shall ensure that: | **Mandatory** | **Partially exists** |
| **Article 25 (a)** | (a) members of the judicial and administrative authorities dealing with procedures concerning restructuring, insolvency and discharge of debt receive suitable training and have the necessary expertise for their responsibilities; and | **Mandatory** | **Partially exists** |
| **Article 25 (b)** | (b) procedures concerning restructuring, insolvency and discharge of debt are dealt with in an efficient manner, with a view to the expeditious treatment of procedures. | **Mandatory** | **Compliant** |
| **Article 26**<br>**Practitioners in procedures concerning restructuring, insolvency and discharge of debt** | | | |
| **Article 26 (1)** | Member States shall ensure that: | **Mandatory** | **Partially exists** |
| **Article 26 (1) (a)** | (a) practitioners appointed by a judicial or administrative authority in procedures concerning restructuring, insolvency and discharge of debt ('practitioners') receive suitable training and have the necessary expertise for their responsibilities; | **Mandatory** | **Partially exists** |
| **Article 26 (1) (b)** | (b) the conditions for eligibility, as well as the process for the appointment, removal and resignation of practitioners are clear, transparent and fair; | **Mandatory** | **Compliant** |
| **Article 26 (1) (c)** | (c) in appointing a practitioner for a particular case, including cases with cross-border elements, due consideration is given to the practitioner's experience and expertise, and to the specific features of the case; and | **Mandatory** | **Compliant** |
| **Article 26 (1) (d)** | (d) in order to avoid any conflict of interest, debtors and creditors have the opportunity to either object to the selection or appointment of a practitioner or request the replacement of the practitioner. | **Mandatory** | **Compliant** |
| **Article 26 (2)** | The Commission shall facilitate the sharing of best practices between Member States with a view to improving the quality of training across the Union, including by means of the exchange of experiences and capacity building tools. | **Mandatory** | **Not applicable** |
| **Article 27**<br>**Supervision and remuneration of practitioners** | | | |
| **Article 27 (1)** | Member States shall put in place appropriate oversight and regulatory mechanisms to ensure that the work of practitioners is effectively supervised, with a view to ensuring that their services are provided in an effective and competent way, and, in relation to the parties involved, are provided impartially and independently. Those mechanisms shall also include measures for the accountability of practitioners who have failed in their duties. | **Mandatory** | **Compliant** |
| **Article 27 (2)** | Member States shall ensure that information about the authorities or bodies exercising oversight over practitioners is publicly available. | **Mandatory** | **Compliant** |
| **Article 27 (3)** | Member States may encourage the development of and adherence to codes of conduct by practitioners. | **Optional** | **Compliant** |

| | | | |
|---|---|---|---|
| **Article 27 (4)** | Member States shall ensure that the remuneration of practitioners is governed by rules that are consistent with the objective of an efficient resolution of procedures. | **Mandatory** | **Partially exists** |
| **Article 27 (4)** | Member States shall ensure that appropriate procedures are in place to resolve any disputes over remuneration. | **Mandatory** | **Partially exists** |
| **Article 28**<br>**Use of electronic means of communication** | | | |
| **Article 28** | Member States shall ensure that, in procedures concerning restructuring, insolvency and discharge of debt, the parties to the procedure, the practitioner and the judicial or administrative authority are able to perform by use of electronic means of communication, including in cross-border situations, at least the following actions:<br><br>(a) filing of claims;<br><br>(b) submission of restructuring or repayment plans;<br><br>(c) notifications to creditors;<br><br>(d) lodging of challenges and appeals. | **Mandatory** | **Compliant** |

## Annex 9. Main sanctions and liabilities including automated liquidations per local legislation

| Legal form | | Infringement | Sanctions and liabilities |
|---|---|---|---|
| **The Criminal Law** | **Paragraph one and two of Section 177** | Fraud | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property |
| | **Paragraph one and two of Section 179** | Misappropriation | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property |
| | **Paragraph one and two of Section 196** | Use of and Exceeding Authority in Bad Faith | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property, with the deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a certain period of time |
| | **Section 197** | Neglect | A temporary deprivation of liberty or community service, or a fine |
| | **Paragraph one and two of Section 210** | Fraudulent Obtaining and Use of Credit and Other Loans | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine |
| | **Paragraph one and two of Section 213** | Driving into Insolvency | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a certain period of time |
| | **Paragraph two of Section 214** | Submission of a False Application for Insolvency | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine |
| | **Paragraph three of Section 215** | Delay of Insolvency Proceedings<br><br>(provision of false information; illegal performance of transactions, concealing property or transactions, concealing, destroying or forging of documents) | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a certain period of time |
| | **Paragraph one and two of Section 215.[1]** | Violation of Legal Protection Proceedings Regulations<br><br>(provision of false information; illegal performance of transactions, concealing property or transactions, concealing, destroying or forging of documents) | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a certain period of time |
| | **Paragraph one, two and three of Section 217** | Violation of Provisions Regarding Accounting and Statistical Information | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine |
| | **Paragraph two and three of Section 218** | Evasion of Tax Payments and Payments Equivalent Thereto | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property and with the deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to a specific employment, or the right to take up a specific office for a certain period of time |

| | | | |
|---|---|---|---|
| | **Paragraph two and three of Section 219** | Avoiding Submission of Declaration | The deprivation of liberty or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property |
| | **Section 220** | Concealment of Property<br><br>(For a person who commits alienation, damaging, destruction, squandering, hiding or other concealing of property or financial resources for the purpose of evading payment of a debt or fulfilment of some other obligation) | A temporary deprivation of liberty or community service, or a fine |
| | **Chapter VIII.[1] Coercive Measures Applicable to Legal Persons** | For a legal person several coercive measures may be specified, if a natural person has committed the offence in the interests of the legal person, for the benefit of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person | For a legal person one of the following coercive measures may be specified:<br>1) liquidation;<br>2) restriction of rights;<br>3) confiscation of property;<br>4) recovery of money. |
| **Law on Taxes and Duties** | **Section 60** | **Grounds for Refunding Late Tax Payments from the Member of the Board of Directors** | The SRS has the right to initiate proceedings on refunding late tax payments of a legal person to the budget from the member of the board of directors, if all of the criteria referred to henceforth are met:<br>1) the amount of late tax payments exceeds the sum total of 50 minimum monthly wages determined in the Republic of Latvia;<br>2) the decision to recover late tax payments has been notified to the legal person;<br>3) it has been established that after occurrence of late tax payments the legal person has alienated assets from such person which complies with the concept of an interested party within the meaning of the Insolvency Law in relation to the member of the board of directors;<br>4) an act of the impossibility of recovery has been drawn up;<br>5) the legal person has not fulfilled the obligation laid down in the Insolvency Law to submit an application for insolvency proceedings of a legal person. |
| **Latvian Administrative Violation Code** | **Section 159** | Evasion of Taxes and Payments Imposed Together Therewith | Fine up to EUR 2'100, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies |
| | **Section 159.[8]** | Failure to Comply with the Deadline for the Submission of Tax and Informative Declarations | A fine, which amount depends on violated deadline and type of declaration |
| | **Section 159.[9]** | Failure to Co-operate with Officials of the Tax Authority | A fine up to EUR 700, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies |

| | | | |
|---|---|---|---|
| | **Section 166.[3]** | Violation of the Provisions Regarding Submission of Information and Documents to be Submitted to the Enterprise Register | A warning or a fine up to EUR 700 |
| | **Section 166.[6]** | Failure to Comply with the Provisions Regarding Accounting, Submission of Reports and Statistical Information | A fine up to EUR 430, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies |
| | **Section 166.[35]** | Failure to File an Insolvency Application | A fine up to EUR 700, with or without the suspension of the right for the member of the board of representative of the debtor to hold certain offices in commercial companies |
| | **Section 166.[36]** | Violation of Insolvency Proceedings and Legal Protection Proceedings Regulations | A fine up to EUR 700, with or without the suspension of the right for the member of the board of representative of the debtor to hold certain offices in commercial companies |
| **The Commercial Law and the relevant provisions of the Civil Law** | **Section 169** | Liability of Members of the Board of Directors and of the Council | Members of the board of directors and council shall be solidarily liable for losses that they have caused to the company |
| | **Section 314.[1]** | Termination of Activities of the Company on the Basis of a Decision of the Commercial Register Office or Tax Authority | Activities of the company may be terminated on the basis of a decision of the Commercial Register Office if there are no board of directors for a certain period of time or the company cannot be reached at its legal address for a certain period of time;<br><br>Activities of the company may be terminated on the basis of a decision of the SRS if a) the company has not submitted an annual report within certain period of time and at least six months have passed since the violation was committed; b) the company has not submitted the declarations for the time period of six months, provided for in tax laws, within one month after administrative punishment was imposed; c) activities of the company have been suspended on the basis of a decision of the tax authority, and the company has not rectified the indicated deficiency within three months after activities thereof were suspended. |
| **The Insolvency Law** | **Section 72.[1]** | Liability of the Members of Board of Directors for Failing to Provide Documents to the Insolvency administrator of the insolvency proceedings, or the documents are in a state, which does not allow obtaining a true and fair view of the debtor's transactions and the state of property within the last three years preceding the proclamation of the insolvency proceedings | Responsibility to cover losses in the amount of uncovered creditors, which were not satisfied within the scope of the debtor's insolvency proceedings |

## Annex 10. SRS Taxpayer rating system indicators and interface per EDS

| Dimensions of analysis | Rating system indicators |
|---|---|
| **Evaluation of registration data** | 1. **Evaluation of registration data:** source of information for assessment of the indicator – records of activities of the SRS restricting economic activity, taxpayer registration data, indicators of the SRS risk management system. |
| **Tax reporting discipline** | 2. **Tax reporting discipline:** source of information for assessment of the indicator – Information of the SRS regarding the late submission of declarations. |
| **Debt payments administered by the SRS** | 3. **Total debt administered by the SRS:** source of information for estimating the indicator – SRS tax debt accounting information.<br>4. **Total debt ratio of payments administered by SRS to contributions payments administered by SRS:** source of information for assessment of indicator – SRS tax debt accounting and tax contribution information.<br>5. **Changes in the total debt of payments administered by the SRS:** source of information for estimating the indicator – SRS tax debt accounting information. |
| **Wages and salaries indicators** | 6. **Correspondence of the average monthly salary with the average monthly salary in the country:** source of measurement – tax reports submitted by taxpayers.<br>7. **Correspondence of average monthly salary to average monthly salary in industry:** source of measurement – tax reports submitted by taxpayers.<br>8. **Changes in average monthly salary:** source of measurement – tax reports submitted by taxpayers. |
| **Economic operations indicators** | 9. **Profitability ratio:** source of information for assessment of the indicator – profit or loss statement of annual reports submitted by taxpayers.<br>10. **Total liquidity ratio:** source of information for assessment of indicator – balance sheets of annual reports submitted by taxpayers.<br>11. **Absolute liquidity ratio:** source of information for assessment of indicator – balance sheets of annual reports submitted by taxpayers.<br>12. **Financial Independence Indicator:** source of information for assessment of indicator – balance sheets of annual reports submitted by taxpayers. |

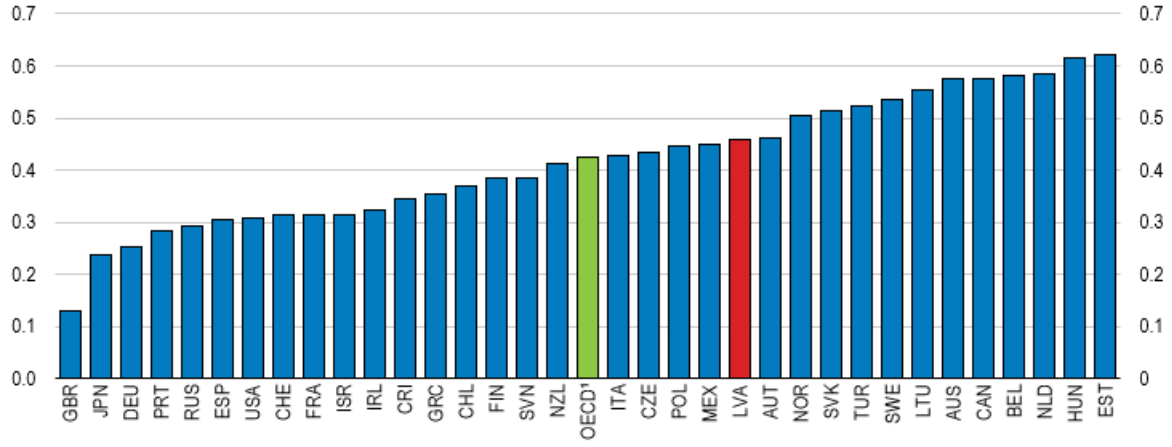
## Annex 11. Sources of background information.

Information on insolvency regime, debt recovery and access to finance in Latvia, Overall indicative results of legal protection proceedings and Comparision of Statistical data of insolvency proceedings in Portugal, Latvia, Spain and France, UK, 2018



**Figure 1.17. The insolvency regime could be more efficient**

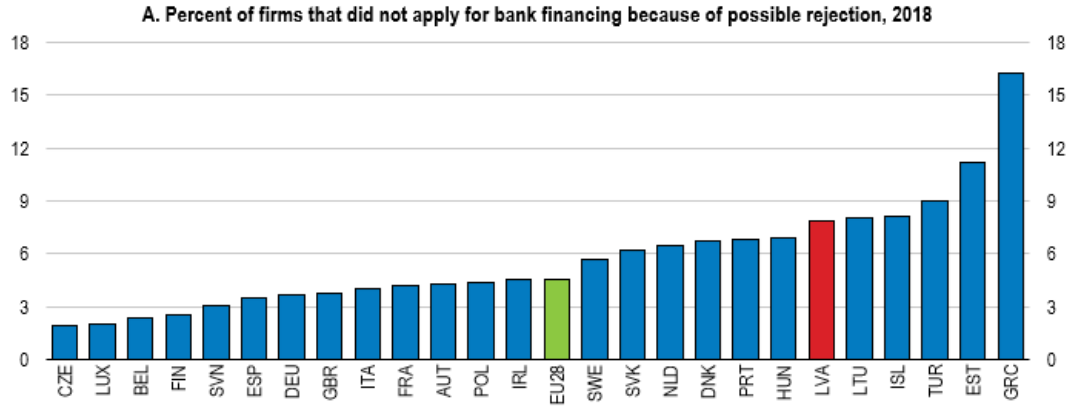
The OECD insolvency regime indicator, 2016

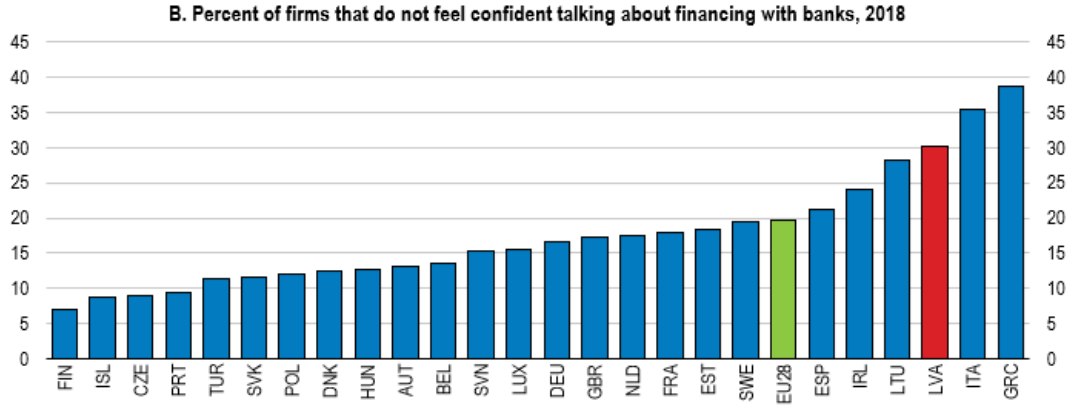



1. Unweighted average of available countries.

Note: A higher value corresponds to an insolvency regime that is most likely to delay the initiation of and increase the length of insolvency proceedings. Composite indicator based on 13 components: time to discharge; exemption of assets; early warning mechanisms; pre-insolvency regimes; special insolvency procedures for SMEs; creditor ability to initiate restructuring; availability and length of a stay on assets; possibility and priority of new financing; possibility to 'cram-down' on dissenting creditors and dismissal of management during restructuring; degree of involvement of courts; distinction between honest and fraudulent entrepreneurs and the rights of employees. For more details, see Source.

*Source* : Adalet McGowan, M., D. Andrews and V. Millot (2017), "Insolvency Regimes, Zombie Firms and Capital Reallocation", OECD Economics Department Working Papers, No. 1399; and Adalet McGowan, M. and D. Andrews (2017), "The Design of Insolvency Regimes", OECD Economics Department Working Papers, forthcoming.




*Source*: 2018 SAFE Survey on the access to finance of enterprises.

| Overall indicative results of legal protection proceedings per the relevant year [10] | | | | |
|---|---|---|---|---|
| | Year* | 2017 | 2018 | 2019 |
| 1 | **Initiated matters of legal protection proceedings** | 149 | 150 | 129 |
| 2 | **Approved restructuring plans** | 36 | 19 | 30 |
| 3 | The share of approved restructuring plans out of initiated matters (row 1), % | 24% | 13% | 23% |
| 4 | **Initiated matters, but restructuring plans were not approved by the court** | 113 | 131 | 99 |
| 5 | **Terminated matters of legal protection proceedings** (The debtor has complied with the restructuring plan) | 153 | 147 | 145 |
| 6 | **Terminated matters of legal protection proceedings that were initiated** | 10 | 9 | 10 |
| 7 | The share of successfully terminated matters out of initiated matters (row 1), % | 7% | 6% | 8% |
| 8 | **Initiated, but not yet terminated matters (still in process)** | 3 | 17 | 48 |
| 9 | The share of not terminated matters out of initiated matters (row 1), % | 2% | 11% | 37% |
| 10 | **Legal protection proceedings have been rejected (restructuring plans were not approved)** | 115 | 115 | 109 |

[10] Number of terminated insolvency procedures and LPP and their reasons. Available at: https://www.lursoft.lv/exec?act=MNR_LSTAT&stat_id=549 https://ws.ur.gov.lv/urpubl?act=MNR_STAT&stat_id=530&tablesequence=&tablepage=2. [Accessed 11 February, 2020].

| | | | | | |
|---|---|---|---|---|---|
| 11 | The share of denied matters out of initiated matters (row 1), % | | 77% | 77% | 84% |
| 12 | Grounds for rejection | Noncompliant application for legal protection proceedings | 22 | 14 | 5 |
| 13 | | The majority of the creditors didn't approve | 92 | 97 | 101 |
| 14 | | Noncompliant plan of measures of legal protection proceedings | 1 | 4 | 3 |

*The above mentioned numbers are not connected to each other due to the fact that some matters of legal protection proceedings were realized at the turn of the years.

| Overall indicative results of extrajudicial legal protection proceedings | | | | |
|---|---|---|---|---|
| | **Year** | **2017** | **2018** | **2019** |
| 15 | **Initiated matters of extrajudicial legal protection proceedings** | 2 | 0 | 1 |
| 16 | **Approved restructuring plans** | 11 | 3 | 5 |
| 17 | **Terminated matters of extrajudicial legal protection proceedings** | 8 | 6 | 4 |
| 18 | **The overall number of extrajudicial legal protection proceedings** | **21** | **9** | **10** |

**Comparison of Statistical data of insolvency proceedings in Portugal, Latvia, Spain and France, UK, 2018.**

| Position / Country | Portugal | France | Spain[11] | UK[12] | Latvia |
|---|---|---|---|---|---|
| **Types of insolvency procedures** | Processo de insolvência,<br>Processo especial de revitalização | Sauvegarde,<br>Sauvegarde accélérée<br>Sauvegarde financière accélérée<br>Redressement judiciaire<br>Liquidation judiciaire | Concurso<br>Procedimiento de homologación de acuerdos de refinanciación<br>Procedimiento de acuerdos extrajudiciales de pago,Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio | Winding-up by or subject to the supervision of the court<br>Creditors' voluntary winding-up (with confirmation by the court)<br>Administration, including appointments made by filing prescribed documents with the court<br>Voluntary arrangements under insolvency legislation<br>Bankruptcy or sequestration. | 1.LPP<br>2.ELPP |
| **All together** | 12,883 | | | | |
| **Insolvency cases initiated** | 12,438 | 37,214 | 2,569 | Winding-up by or subject to the | 590[14] |

[11] El número de deudores concursados disminuye un 3,7% en tasa anual en el cuarto trimestre de 2018. Available at: https://www.ine.es/daco/daco42/epc/epc0418.pdf. Registro Público Concursal. Available at: https://www.publicidadconcursal.es/. [Accessed November 4, 2019].

[12] Insolvency Service Official Statistics. Available at: https://www.gov.uk/government/collections/insolvency-service-official-statistics, Company Insolvency Statistics Releases. Available at: https://www.gov.uk/government/collections/company-insolvency-statistics-releases. [Accessed December 12, 2019].

[14] Insolvency of a legal person.

| | | | | | |
|---|---|---|---|---|---|
| | | | 3,593[13] contest declaration cases, 2,316 opening cases, 189 sentences of approval of the agreement | supervision of the court (Compulsory liquidations) - 3,140 | |
| | | | | Creditors' voluntary winding-up (with confirmation by the court) - 12,495 | |
| **Debt Restructuring cases initiated** | Processo especial de revitalização[15]<br>1st quarter: 108[16]<br>2nd quarter:118[17]<br>3rd quarter: 92[18]<br>4th quarter:127[19]<br><br>Per year: 445 | | All together - 3664[20]<br>Number or Procedimiento de homologación de acuerdos de refinanciación - 62[21]<br>Extrajudicial Payment Agreements - 10[22]<br>Creditors led:<br>Intervention 31<br>Suspension 189<br>Debtor in possession:<br>Intervention - 2,793<br>Suspension - 105 | Administration, including appointments made by filing prescribed documents with the court - 1463 | Tiesiskās aizsardzības process - 150 |
| **Reorganisation cases initiated** | | 16,359 | | | |
| **Safeguard cases initiated** | | 1,054 | | | |
| **Other** | | | Suspension with Liquidation – 474 (Debtor in possession) | Voluntary arrangements under insolvency legislation - 355 | Ārpustiesas tiesiskās aizsardzības process - 9 |
| | | | | Receivership appointments - 1 | |

[13] Estadistica concursal: El concurso de acreedores en cifras. Anuario 2018. Available at: http://www.registradores.org/wp-content/estadisticas/mercantil/concursal/Anuario_Concursal_2018.pdf, p.111. [Accessed November 14, 2019].

[15] Initiated Special revitalization processes in Portugal in the courts of first instance, 4 quarter, 2018

[16] Destaque Estatistico Trimestral. 1º Trimestre de 2018. Available at: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Destaques/20180731_D54_FalenciasInsolvencias_2018_T1.pdf. [Accessed November 14, 2019].

[17] Destaque Estatistico Trimestral. 2º Trimestre de 2018. Available at: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Destaques/20181031_D57_FalenciasInsolvencias_2018_T2.pdf. [Accessed November 14, 2019].

[18] Destaque Estatistico Trimestral. 3º Trimestre de 2018. Available at: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Destaques/20190131_D60_FalenciasInsolvencias_2018_T3.pdf. [Accessed November 14, 2019].

[19] Destaque Estatistico Trimestral. 4º Trimestre de 2018. Available at: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Destaques/20190430_D63_FalenciasInsolvencias_2018_T4.pdf. [Accessed November 14, 2019].

[20] http://www.registradores.org/wp-content Estadistica concursal. El concurso de acreedores en cifras. Annuario 2018. Available at:/estadisticas/mercantil/concursal/Anuario_Concursal_2018.pdf. [Accessed November 14, 2019].

[21] Atlas concursal 2019. Available at: http://economistas.es/Contenido/Consejo/Estudios%20y%20trabajos/Atlas%20concursal%202019.pdf

[22] Estadistica concursal. El concurso de acreedores en cifras. Annuario 2018. Available at:http://www.registradores.org/wp-content/estadisticas/mercantil/concursal/Anuario_Concursal_2018.pdf, p.102. [Accessed November 14, 2019].