

**C L I F F O R D
C H A N C E**

DEBT RESTRUCTURINGS IN EUROPE

MAY 2021

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INTRODUCTION



The ongoing pandemic continues to present businesses with many challenges and uncertainties. The resilience of businesses together with vital governmental support (by, for example, deferral of taxes or the provision of funding or grants) and temporary relaxation of formal legislative and administrative requirements have all had their part to play in sustaining businesses over the last year with a limited number of formal insolvency cases in most jurisdictions.

Certain sectors and businesses have understandably suffered more than others as the impact of the pandemic has stifled revenues without necessarily any reduction in the cost bases. Some businesses have already taken action to either temporarily extend their funding or secure their medium to long term financial futures by engaging with their stakeholders at an early stage. For other businesses the interim solutions or initial support and temporary measures may however not be enough in the future, especially as support measures are gradually reduced or withdrawn. Therefore the ability to find longer term solutions will come into sharp focus.

Although there may have been a relaxation of certain existing legislative measures, such as suspending mandatory obligations to file for formal insolvency processes or limiting creditor action, various legal reform projects which are designed to improve restructuring opportunities, have continued apace. In some cases they have been accelerated so that they can be set to work at a time when businesses need them most.

The new procedures in jurisdictions such as the Netherlands, Germany, and the UK all provide new opportunities for stakeholders involved in a distressed business. The new restructuring procedures emphasise the importance of being able to rescue a business and preserve value for its stakeholders and with this in mind, Clifford Chance has produced an overview of the key issues to be considered in European debt restructurings.

While certain jurisdictions have tried and tested procedures in addition to newer more versatile restructuring options, other jurisdictions may have largely traditional or untested insolvency and restructuring regimes.

Businesses may also span more than one jurisdiction and the spirit of cooperation and cross-border solutions continue to be present across the European Union, not least with the automatic recognition of insolvency and restructuring proceedings taking place in one member state being recognised in others under the Recast European Insolvency Regulation. Further, the advent of new minimum standards for restructuring frameworks advocated by the EU Restructuring Directive which is due to be implemented by EU member states by July 2021 (unless extended) will mean a greater convergence of restructuring procedures.

INTRODUCTION

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From the UK perspective, while it is no longer a member state, cooperation and coordination in cross-border restructuring cases is very much a feature of the continuing restructuring and insolvency regime within the UK and the English Courts remain very much open for international restructuring business.

We hope that you will find the overview a useful guide. Our specialists in each jurisdiction, whose contact details are provided in the relevant section of the guide, will be happy to elaborate on any of the issues covered and answer any further questions you may have.

ILSE VAN GASTEREN
Lead Co-ordinating Partner,
Continental Europe
Restructuring & Insolvency



PHILIP HERTZ
Global Head
Restructuring & Insolvency



GLOSSARY



Balance sheet test

- Measures a debtor's solvency by comparing the total assets of the company to its total liabilities. It is based on a financial accounting of the company's economic situation and relies on generally acceptable accounting principles or other fair valuation methods.

Cash flow test

- Indicates that a company is unable to pay its debts as they fall due. The company's inability to pay its debts must be proved to the satisfaction of the court.

Cram-down

- Cram-down allows a debtor to force confirmation of a composition plan or scheme of arrangement over the objections of dissenting creditors (or dissenting creditors within a given class) if certain tests are met.

Credit bid

- A concept found in the US Bankruptcy Code that allows holders of claims against a company to use those claims as acquisition currency in an auction.

Debt/equity swap

- An arrangement whereby a company's creditors agree to cancel some or all of the company's debt in exchange for equity in the company.

DIP finance

- Debtor-In-Possession financing. It is arranged by a company usually during a formal restructuring process. DIP financing is distinct from other financing methods in that it usually has priority over existing debt (including secured debt), equity and other claims (it is a concept which originated from the US Bankruptcy Code).

Subordination

- An arrangement by which one creditor (for example, a "junior lender") agrees not to be repaid by the debtor (the "borrower") until another creditor of that borrower (a "senior lender") has been repaid in full.

Hardening period

- Transactions concluded within a certain time period preceding the onset of insolvency (e.g. transactions at an undervalue, preferential transactions) may be liable to be set aside by an insolvency officeholder after the onset of insolvency.

Loan to Own/REO

- A "loan to own" or "real estate ownership" (REO) strategy or programme involves a bank or other lender taking ownership of real estate assets mortgaged to it, whether through enforcement of security or other available structures. Loan to own or REO techniques are often considered by lenders in relation to defaulting loans where, for example, the property is income producing or has significant development or growth potential and the lender believes that value will return over time.

Moratorium

- A limit/restriction on enforcement of claims imposed by the court, usually following the filing of an insolvency petition.

Preference

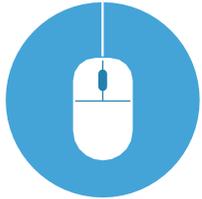
- A company gives a preference to one of its creditors/guarantors if the company does anything which puts them into a better position than they would have been in otherwise in the event of the company going into insolvent liquidation.

Pre-pack

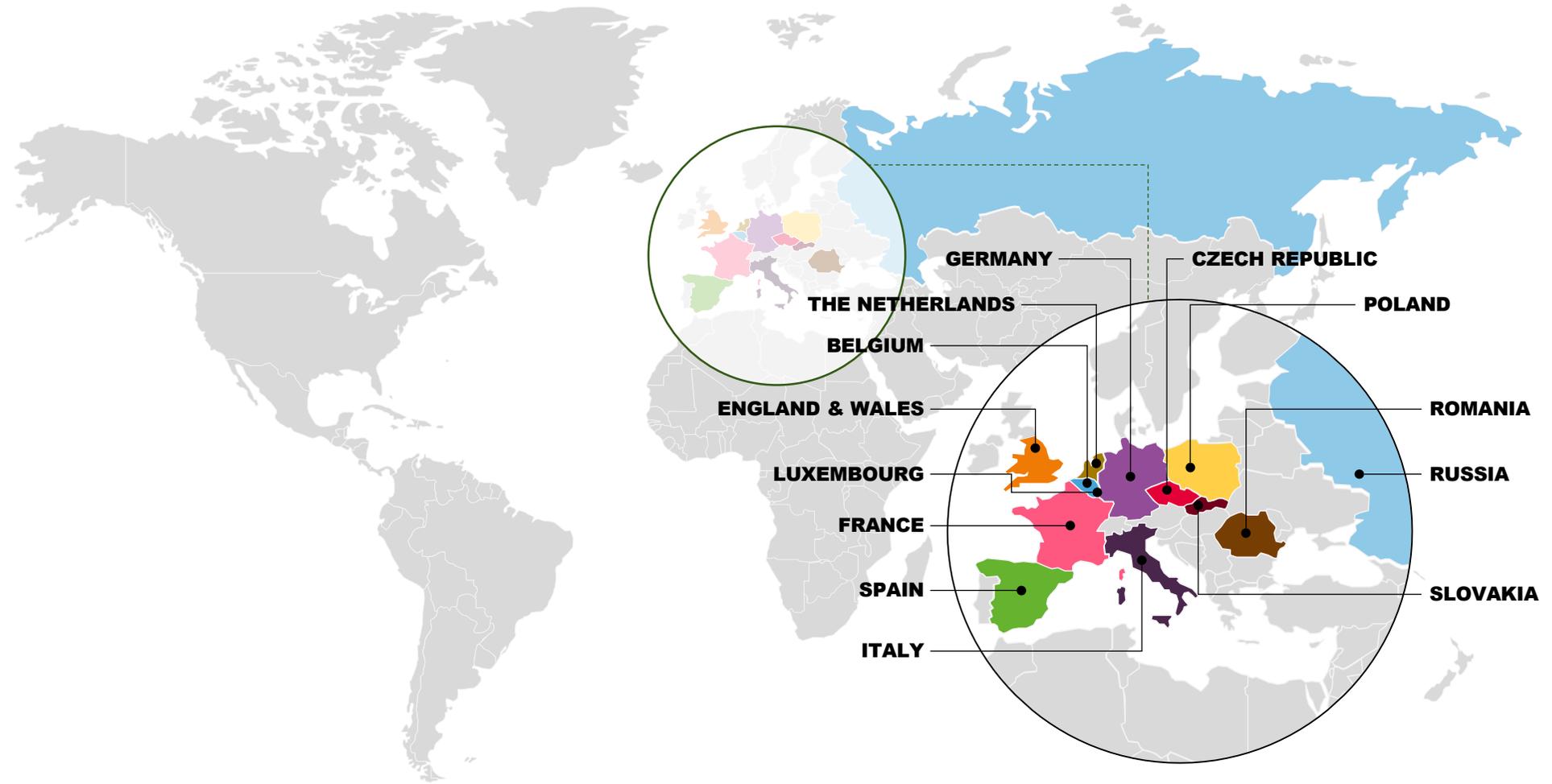
- An arrangement for the sale of a business negotiated prior to the company entering a formal insolvency process, after which the insolvency officeholder completes the sale, usually on the first day of the insolvency, thereby rescuing the business in whole or part.

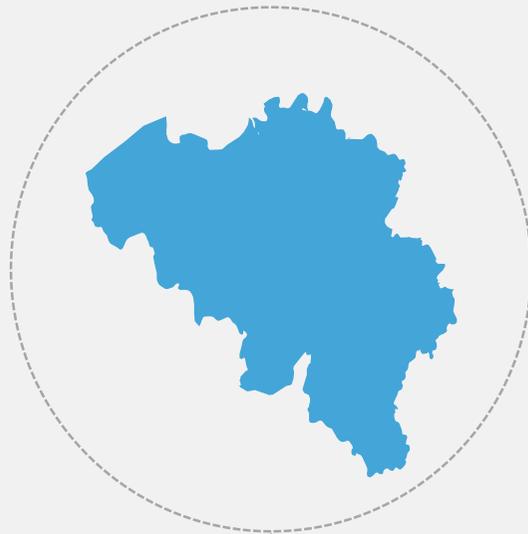
Transaction at undervalue

- A company enters into a transaction with a person at an undervalue if: (i) the company makes a gift to that person or otherwise enters into a transaction with that person for no consideration; or (ii) the company enters into a transaction with that person for a consideration the value of which is significantly less than the value of the consideration provided by the company.



Click on the relevant country below to be directed to the full summary





BELGIUM



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Insolvency Tests	Cash flow test and exhaustion of credit test apply to bankruptcy proceedings. Threat to business continuity test applies to judicial reorganisation proceedings.
Types of insolvency proceedings	<p>Bankruptcy: winding up proceeding to liquidate debtor's assets and distribute the proceeds amongst creditors.</p> <p>Judicial reorganisation: moratorium proceeding aimed at saving distressed economic activity through voluntary arrangement, collective judicial reorganisation or sale of the business.</p>
When does a moratorium apply?	<p>During insolvency proceedings, enforcement action against the debtor is generally suspended, except that:</p> <ul style="list-style-type: none"> • in bankruptcy, secured creditors can enforce their security after their claims have been verified (usually after two months), and owners can claim repossession of their goods; • security over assets in other jurisdictions remains enforceable in accordance with local rules; • contractual set-off arrangements remain enforceable; • subject to certain exceptions in case of reorganisation proceedings, security over receivables, financial instruments and cash accounts remains enforceable; and • rights of enforcement against third party guarantors or security providers remain unaffected.
Directors' duties to file	A debtor must file for bankruptcy or apply for the opening of reorganisation proceedings within one month of cessation of payments.
Average length of proceedings	<p>Bankruptcy: depending on the scale and complexity of the insolvency, from a few months to several years.</p> <p>Judicial reorganisation: initial moratorium of up to six months (subject to an extension in exceptional circumstances of up to 18 months) to devise and agree reorganisation measures, and definitive moratorium of maximum five years to implement the reorganisation.</p>

Contacts



BERT DE MAEYER
PARTNER

T +32 2 533 5055
E bert.demaeyer@cliffordchance.com



DOROTHÉE VERMEIREN
PARTNER

T +32 2 533 5063
E dorothee.vermeiren@cliffordchance.com



ALEXANDER TANGUY
ASSOCIATE

T +32 2 533 5037
E alexander.tanguy@cliffordchance.com



HÉLÈNE VOLKOVA
ASSOCIATE

T +32 2 533 5926
E helene.volkova@cliffordchance.com

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<p>Are “Pre-packed” restructuring options available?</p>	<p>Pursuant to a new law dated 11 March 2021, it is possible for a debtor to engage in confidential and consensual 'pre-pack' reorganisation proceedings which take the form of a voluntary arrangement or a collective judicial reorganisation. A moratorium on enforcement action can be requested pending the duration of such "pre-packed" restructuring for a maximum duration of four months. If successful, the pe-packed restructuring will be validated through expedited formal restructuring proceedings. The prepack restructuring option will in principle cease to exist on 30 June 2021, unless its application is extended.</p> <p>There is otherwise no specific legal framework for a pre-packed restructuring, notably as far as a reorganisation through a sale of the business is concerned. While, in practice, it is possible to prepare a sales process confidentially, the debtor will have to undergo the regular reorganisation process to effect the actual sale.</p>
<p>Are “Credit Bids” available?</p>	<p>Not available.</p>
<p>Is “Cram down” possible?</p>	<p>Yes, in reorganisation. An approved reorganisation plan binds dissenting creditors, including secured creditors, provided that the plan allows for payment of interest on their claims and that repayment of their claims is not suspended for more than 24 months or, if at the end of the initial suspension the debtor requests an extension and demonstrates that the suspended claims will be paid in full, within 36 months.</p>
<p>Debt/equity swaps possible?</p>	<p>Yes, a collective judicial reorganisation plan may include debt/equity swaps. However, such debt/equity swap would require a capital increase in accordance with normally applicable corporate procedures</p>
<p>Can creditors influence appointment of insolvency officeholder?</p>	<p>Insolvency officials are, in principle, appointed by the court using a list of recognised insolvency officials without involvement of the creditors. However, prior to and whilst reorganisation proceedings are pending, a debtor can request the court to appoint a particular official of its choice.</p>
<p>Equitable subordination of shareholder loans?</p>	<p>Not applicable.</p>

BELGIUM

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Effectiveness of subordination arrangements	Subordination arrangements are effective in insolvency if backed up by a pledge.
Share pledges	Share security can, notwithstanding the insolvency of the security provider, be enforced by creditors without court approval by selling the shares and applying the proceeds against the secured debt, or, in some circumstances, by appropriation.
Is debtor-in-possession finance possible?	Yes, in reorganisation. New liabilities contracted or accrued in reorganisation must be paid on their due date and will be payable ahead of all ordinary and, in special circumstances, secured creditors, if the debtor subsequently becomes bankrupt.
Set-off and netting on insolvency?	Contractual set-off and netting is effective in insolvency.
Hardening periods	Certain preferences and transactions at an undervalue are voidable if made during the pre-bankruptcy hardening period of six months.
Preferences/transactions subject to challenge	<ul style="list-style-type: none"> • Disposals of assets made without consideration, or at a significant undervalue. • Payments made in respect of liabilities that were not yet due and payable. • Payments in kind, unless the payment in kind is an agreed enforcement method of a financial collateral arrangement. • All transactions with a counterparty who had knowledge of the insolvency of the debtor. • New security granted for pre-existing debts.

BELGIUM

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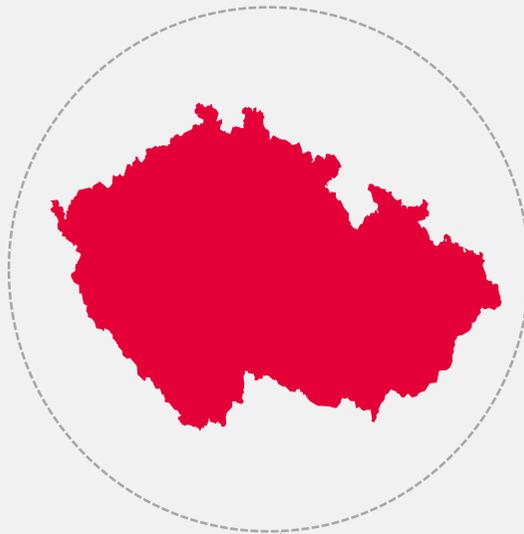
Liability of directors	<p>Specific liabilities apply in cases of insolvency. Directors (including de jure and de facto directors) may incur liability for:</p> <ul style="list-style-type: none"> • failure to file for bankruptcy within one month of the cessation of payments where it satisfies the insolvency test; • the insufficiency of the company's assets in case of serious breach (gross negligence) which contributed to the bankruptcy; • the insufficiency of the company's assets in case of wrongful trading; and • certain unpaid social contributions or for not preparing and submitting financial statements. <p>The liability of directors is subject to certain statutory caps depending on the size of the company under company legislation implemented from 1 January 2020. The caps do not apply in cases of recurring breaches, fraud or gross misconduct, and certain social security debt liabilities arising upon insolvency.</p>
Priority of creditors	<p>In general, security will rank by order of creation or, if registration is required to perfect the security, by the date of registration. Certain judicial costs will rank ahead of security. Also, although they do not create a priority, rights of unpaid creditors to detain or retain assets are enforceable against other creditors and may be an obstacle to enforcement.</p>
Lender or Borrower friendly?	<p>Creditor friendly for secured creditors.</p>
Enforcement: Property or shares	<p>Simple and flexible rules exist for enforcing share security (see above). Enforcement of security over real estate is generally by way of a court supervised public auction.</p>
“Loan to own” possible?	<p>Subject to appropriate structuring, “Loan to own” may be possible. Alternatively an investor may be able to acquire the business through a competitive sale process (sale of business under judicial supervision) or under a collective judicial reorganisation plan.</p>

BELGIUM

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Tenants' position on owner enforcement/insolvency proceedings	The secured creditor or buyer under an enforcement sale are not entitled to evict sitting tenants (other than in accordance with the terms of the lease).
Forfeiture/termination right against insolvent tenant?	Contractual termination rights in lease agreements triggered by the filing for or opening of insolvency proceedings are generally not effective. Bankruptcy receivers can adopt leases but rent will be payable and if rent is not paid the lease can be terminated.
Officeholder's liability i.e. if the Lender goes into possession what liabilities if any would it have?	None unless, by excessively interfering in the decision-making process and affairs of the debtor, lenders are found to be shadow directors.
Property taxes/taxes payable on enforcement	Property taxes and VAT apply to the enforcement sale of certain types of assets.
Impact of Covid-19 on the above described insolvency and restructuring processes	<p>A statutory moratorium on bankruptcy and dissolution proceedings, enforcement measures, termination of pre-existing agreements for payment defaults and the obligation to file for bankruptcy was adopted in April 2020 as a response to the Covid-19 pandemic. After the expiry of this first moratorium on 17 June 2020, a second moratorium with a more limited scope was adopted and remained in force until 31 January 2021.</p> <p>On 11 March 2021, the Belgian legislator adopted a new law aimed at giving companies additional tools to cope with the consequences of the Covid-19 pandemic, notably by introducing pre-packed restructuring options into Belgian law (see above).</p>
Any imminent reforms which could impact the position outlined above	Not applicable.



CZECH REPUBLIC

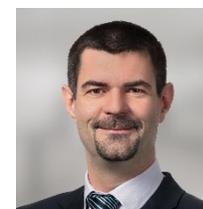


CZECH REPUBLIC



Insolvency Tests	Cash flow test and balance sheet test.
Types of insolvency proceedings	<ul style="list-style-type: none"> Liquidation (bankruptcy), i.e. a sale of the estate (piecemeal or as a going concern) with satisfaction of creditors through distribution of the proceeds. Reorganisation, i.e. a non-liquidation reorganisation measure, typically a re-capitalisation or a going-concern sale, based on a reorganisation plan approved by creditors and the court.
When does a moratorium apply?	<p>An automatic stay commences as of the publication of the insolvency petition in the on-line insolvency register.</p> <p>Subject to the approval of majority of the creditors, a debtor may also ask for a court-ordered moratorium before the opening of the insolvency proceedings.</p>
Directors' duties to file	Directors have a duty to file an insolvency petition without undue delay after they determine that the company meets the insolvency tests (or should have determined such insolvency had they exercised due care).
Average length of proceedings	<p>The court should determine insolvency without undue delay in the case of a creditor's insolvency petition and within 15 days in the case of the debtor's petition.</p> <p>After the court determines insolvency, it has up to three months to decide on liquidation (bankruptcy) or reorganisation options.</p> <p>The average overall length of insolvency proceedings varies case-by-case but usually exceeds several years. However, the sale of the estate would normally take place a lot faster, usually within the first 12 months.</p>
Are "Pre-packed" restructuring options available?	Yes, where agreed upon by the majority of both secured and unsecured creditors, based on the amount of their receivables.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Yes, in reorganisation.
Debt/equity swaps possible?	Yes.

Contacts



MILOŠ FELGR
PARTNER

T +420 222 55 5209
E milos.felgr
@cliffordchance.com



PAVEL BOGUSKÝ
SENIOR ASSOCIATE

T +420 222 55 5266
E pavel.bogusky
@cliffordchance.com



PETR CHYTIL
ASSOCIATE

T +420 222 55 5273
E petr.chytil
@cliffordchance.com

CZECH REPUBLIC

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Can creditors influence appointment of insolvency officeholder?	Yes, the majority of creditors may remove an insolvency trustee appointed by the court or at the election of the debtor in a pre-pack reorganisation and appoint a new one.
Equitable subordination of shareholder loans?	Not applicable, but restrictions on voting apply.
Effectiveness of subordination arrangements	Subordinated claims will be paid subject to the terms of contractual subordination.
Share pledges	A pledge over shares which belong to the insolvent debtor's estate will be caught by the automatic stay and can only be enforced inside the insolvency proceedings, unless the share pledge qualifies as financial collateral. A share pledge not caught by the automatic stay can be enforced pursuant to the terms of the charge agreement which may include a private enforcement option.
Is debtor-in-possession finance possible?	Yes, subject to a creditors' committee approval and certain other conditions. Debtor-in-possession ('DIP') finance will have priority over general creditors but not secured creditors in liquidation (bankruptcy). In a reorganisation, secured creditors may, under certain circumstances, have to suffer a dilution as new security may be created to secure the receivables arising under DIP finance.
Set-off and netting on insolvency?	In general, set-off is permitted if triggered prior to the date of determination of the type of insolvency proceedings. However, set-off will generally be prohibited upon the debtor or any creditor filing a motion for approval of reorganisation, the declaration of a court-ordered moratorium, and if a preliminary injunction is issued by the insolvency court. Insolvency proceedings do not prejudice close-out netting.
Hardening periods	No specific security hardening periods, but transactions at undervalue and preferential transactions are subject to challenge if entered into within one year (or three years if made with connected parties), and fraudulent transactions are subject to challenge if entered within five years, prior to the commencement of insolvency proceedings.
Preferences/transactions subject to challenge	See above.

CZECH REPUBLIC

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Liability of directors	Directors who are in breach of the duty to file an insolvency petition will be liable to creditors for damages presumed to equal the difference between the creditors' proven claims and the amounts recovered in the insolvency proceedings. In addition, directors may be ordered to pay compensation to the debtor's estate if they breached the duty of due care and contributed to the debtor's insolvency.
Priority of creditors	<p>Generally, the ranking of claims under non-insolvency law (i.e. the priority of secured claims and the subordination of junior claims) is respected in insolvency subject to certain exceptions. However, under non-insolvency law as applicable from 2014, registered security interests provide a higher ranking than other methods of taking security. These new rules have not, however, been reflected in insolvency law and this conflict remains unresolved.</p> <p>Post-commencement claims are generally preferred to pre-commencement unsecured claims.</p>
Lender or Borrower friendly?	Mostly neutral.
Enforcement: Property or shares?	<p>Outside of insolvency, private enforcement is allowed and may include forfeiture of the collateral (be it real estate or shares) to the secured creditor if agreed upon with the debtor.</p> <p>Within insolvency, only the methods set out in insolvency law are allowed for enforcement of security. In liquidation, the decision on the method of liquidation of the debtor's estate is made by the insolvency trustee, subject to the approval by the creditors' committee and the court. With respect to assets subject to security interests, however, the secured creditor may give instructions regarding the administration and sale of the secured assets to the insolvency trustee, pre-empting the creditors' committee powers.</p>

CZECH REPUBLIC

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Enforcement: Property or shares? (continued)	<p>An acquirer of real estate out of liquidation will generally obtain clean title to the assets sold, without any pre-existing security interests. This will be the case with other types of collateral as well. Conversely, a share deal with the insolvency trustee will not, without further arrangements, release security interests over real estate or other assets owned by the company whose shares are sold.</p> <p>In reorganisation, it will be for the reorganisation plan to determine the fate of secured claims and security interests.</p>
“Loan to own” possible?	<p>“Loan to own” strategy is possible by means of a debt/equity swap under a reorganisation plan. In liquidation, this strategy may be complicated by rules preventing estate sales to connected parties.</p>
Tenants’ position on owner enforcement/insolvency proceedings	<p>The insolvency trustee of an insolvent landlord has a statutory right to terminate (at its discretion) a lease or sub-lease agreement after liquidation (bankruptcy) is declared, with the termination period stipulated by law or the agreement. Only a tenant under a lease or sub-lease agreement concluded for a definite term may try to reverse such termination.</p> <p>In reorganisation, the right of termination may be exercised by the debtor itself instead of the insolvency trustee, subject to the approval of the creditors' committee.</p>
Forfeiture/termination right against insolvent tenant?	<p>Similar terms to those described above apply. In insolvency, a landlord may not terminate a lease or sub-lease agreement (i) on the grounds of the debtor’s default in the payment of rent or other payment prior to such declaration, or (ii) due to the deterioration of the debtor’s economic situation.</p>
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	<p>In insolvency, forfeiture of rights or assets is not allowed.</p>

CZECH REPUBLIC

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Property taxes/taxes payable on enforcement	There may be tax issues relating to enforcement in connection with income tax on capital gains, real estate transfer tax, VAT and others. Insolvency may bring about the liability to file tax returns for a number of taxes and earlier payment of these taxes; tax periods including VAT periods may change. Enforcement may trigger income tax on capital gains. Real estate transfer tax has been abolished with retroactive effect as from 31 March 2020.
Impact of Covid-19 on the above described insolvency and restructuring processes	Various Covid-19-related measures have been enacted, including, (i) a suspension of the debtor's duty to file for insolvency without undue delay after the onset of insolvency and (ii) a new extraordinary moratorium for debtors who were not insolvent on 5 October 2020, but who have run into financial difficulties due to the Covid-19 outbreak.
Any imminent reforms which could impact the position outlined above	The transposition of Directive (EU) 2019/1023 on preventive restructuring may also impact the analysis above.



ENGLAND & WALES



ENGLAND & WALES



Insolvency Tests	Cash flow test and balance sheet test.
Types of insolvency proceedings	<ul style="list-style-type: none"> • Receivership and administrative receivership; • Administration; • Liquidation; • Company voluntary arrangements (CVAs); and • Creditor or member voluntary liquidation <p>Schemes of Arrangement, whereby a company can enter into a court-approved compromise or arrangement with its members or creditors (both secured and unsecured), are also available although these are not technically an insolvency proceeding but rather a corporate procedure for a court sanctioned “compromise” between creditors. The Corporate Insolvency and Governance Act (‘CIGA’), effective from 26 June 2020, also introduced a new Restructuring Plan modelled on schemes of arrangement, the Plan now forms Part 26A of the Companies Act 2006 and a standalone company moratorium which introduced a new Part A1 of the Insolvency Act 1986 (see further below).</p>
When does a moratorium apply?	<p>In administration, a moratorium applies for the duration of the proceedings and provides protection against claims including insolvency proceedings, security enforcement, repossession of hire-purchase and other legal proceedings. However, there are exceptions for secured creditors and landlords who may apply to enforce security or forfeit leases with the court’s permission or the consent of the administrator.</p> <p>The CIGA introduced a new company moratorium that directors can apply for to help business rescues. The effect of the moratorium is similar to an administration moratorium (see above). The moratorium initially lasts for 20 business days, extendable for a further 20 business days without court consent, or longer with creditor consent or court approval.</p> <p>Exceptions to the moratorium in both cases above apply in relation to financial collateral arrangements.</p> <p>There is also a stay that is applicable in liquidation which prevents the commencement or continuation of legal proceedings. This does not affect security enforcement.</p>

Contacts



MELISSA COAKLEY
PARTNER

T +44 20 7006 1963
E melissa.coakley@cliffordchance.com



ADRIAN COHEN
PARTNER

T +44 20 7006 1627
E adrian.cohen@cliffordchance.com



PHILIP HERTZ
GLOBAL HEAD OF
RESTRUCTURING AND
INSOLVENCY

T +44 20 7006 1666
E philip.hertz@cliffordchance.com



JOHN MACLENNAN
PARTNER

T +44 20 7006 1642
E john.maclennan@cliffordchance.com

ENGLAND & WALES

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Directors' duties to file	There is no express time limit for filing for insolvency but failure to do so which results in a loss may give rise to action against directors.
Average length of proceedings	Administration is initially for one year but can be extended. In a pre-pack administration the effective stage of the administration (when the business is sold to a new owner) would be much shorter and the sale would take place immediately. Complex administrations can last for longer than one year. For restructurings, either consensual or pursuant to a company voluntary arrangement, a scheme of arrangement or restructuring plan, the period is on average between 3 and 6 months, although it may be considerably longer for complex cases.
Are "Pre-packed" restructuring options available?	Yes. The principal risk is that aggrieved suppliers, landlords and other creditors allege that the Administrator did not obtain the best price reasonably available for the business.
Are "Credit Bids" available?	In principle yes, but there are technical issues in relation to credit bidding in the US sense of using debt claims to pay for assets and this is rarely seen in practice. Structures which involve "round tripping" of cash by lenders to achieve an equivalent economic result are more common.
Is "Cram down" possible?	Yes. For Schemes of arrangement the scheme needs to be approved by the majority in number representing 75% in value of claims of each class of creditors voting for the scheme and approved by the court. Yes. For CVAs the proposal for restructuring needs to be approved by more than half in value of the shareholders and more than 75% in value of the creditors. However, the proposal cannot affect the rights of secured creditors. There is no court involvement unless the CVA is challenged. Yes. For Restructuring Plans cram down it is possible across different classes. Approval requires at least one creditor or shareholder class affected by the Restructuring Plan to vote in favour with a 75% majority in value. As long as all dissenting creditors are no worse off under the Restructuring Plan than the relative alternative (e.g. liquidation) and the creditor class that is cramming down other classes would have a genuine economic interest in the event of the relevant alternative, the plan may be approved by the court.

Contacts



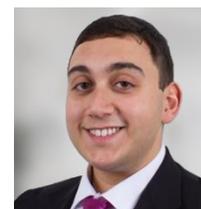
DAVID TOWERS
PARTNER

T +44 20 7006 8036
E david.towers@cliffordchance.com



IAIN WHITE
PARTNER

T +44 20 7006 2825
E iain.white@cliffordchance.com



MICHAEL PANAYI
ASSOCIATE

T +44 20 7006 1447
E michael.panayi@cliffordchance.com



GABRIELLE RUIZ
KNOWLEDGE DIRECTOR

T +44 20 7006 1615
E gabrielle.ruiz@cliffordchance.com

ENGLAND & WALES

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Debt/equity swaps possible?	Yes. There is a potential tax charge on the benefit of forgiveness of debt (and other potential tax issues), whether effected in exchange for shares or otherwise. However, with careful structuring in practice an exemption will in most cases be available.
Can creditors influence appointment of insolvency officeholder?	Yes, in the case of receivership and administrative receivership. Also in the case of administration if an administrator is appointed by the holder of a qualifying floating charge, likewise in the creditors' voluntary liquidation the creditors may appoint a liquidator.
Equitable subordination of shareholder loans?	No.
Effectiveness of subordination arrangements	In principle the English courts will recognise contractual subordination arrangements.
Share pledges	Share security is typically enforced through a receiver and both private sales and public auctions are possible.
Is debtor-in-possession finance possible?	Not in the sense in which it is available in the US, but new money facilities on a "super priority" basis are possible for companies in distress or which have entered insolvency proceedings if contractually agreed.
Set-off and netting on insolvency?	Netting and set-off on insolvency can be effective. In liquidation proceedings a mandatory set-off regime applies where the relevant obligations exist prior to the commencement of insolvency proceedings and are mutual (that is, they are owed by and to the same parties, beneficially). The mandatory set-off regime cannot be overridden or altered by contract (the same approach applies in an administration where an administrator is making a distribution to creditors).

ENGLAND & WALES

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Hardening periods	<p>Security is granted subject to the risk of a liquidator or administrator appointed to the security provider rendering it unenforceable if hardening periods are ongoing on or before insolvency. The length of the hardening periods varies:</p> <ul style="list-style-type: none">• For preferences: the risk period is six months ending on the onset of insolvency extended to two years for connected parties.• For transactions at an undervalue: the risk period is two years ending with the onset of insolvency.• For extortionate credit transactions: the risk period is three years prior to an administration order or the liquidation of the company.• For floating charges: the risk period is two years if granted to a “connected person”. In respect of any other person, the period is one year but only if the company was unable to pay its debts at the time the floating charge was granted or became unable to pay them as a result.
Preferences/transactions subject to challenge	Yes as detailed above.
Liability of directors	Yes. Directors, including shadow directors, can incur civil and criminal liability for the debts of an insolvent company. The principal areas of risk for directors are breach of duty, fraudulent trading and wrongful trading.

ENGLAND & WALES

(CONTINUED)



Priority of creditors	<p>Ranks by order of creation, although notice needs to be given and where relevant, a public registration effected. Broadly speaking in the context of insolvency, claims rank as follows:</p> <ol style="list-style-type: none">Secured creditors under a fixed charge;Expenses of the insolvency;Preferential creditors;Unsecured creditors up to a maximum of £800,000 if the company's net property is £10,000 or more (payable out of floating charge assets);Holder of floating charge;Unsecured creditors;Post administration interest on debts;Deferred creditors;Shareholders (if there is a surplus after all the debts are paid). <p>In an administration or liquidation which follows within 12 weeks of a standalone moratorium, any unpaid moratorium debts are prioritised above (b).</p>
Lender or Borrower friendly?	<p>Insolvency law has been lender friendly. Although, the CIGA introduces borrower friendly measures, such as the moratorium and restructuring plan.</p>
Enforcement: Property or shares?	<p>Many properties are owned and mortgaged by single purpose companies (SPEs or SPVs), established outside the UK, with the Lenders having security over the shares in the borrower and over the property. In theory, this means the lenders are able to enforce at share or asset level.</p> <p>Traditionally the security is enforced at asset level to avoid the purchasers inheriting the mortgagor's liabilities including any repayment obligations under shareholder loans and tax liabilities which may be unknown. In respect of any tax arising on the disposal, HMRC ranks behind the mortgagee in the application of the enforcement proceeds.</p> <p>There should be no material UK stamp duty or transfer tax payable on the transfer of shares in companies incorporated in a jurisdiction outside the UK, which makes the enforcement of share security more attractive from a tax perspective than enforcing at the asset level (see below in relation to SDLT/LBTT/LTT) but, in practice, many purchasers remain nervous of share purchases in view of the risks of inheriting unquantifiable loans or hidden liabilities.</p>

ENGLAND & WALES

(CONTINUED)



<p>“Loan to own” possible?</p>	<p>Yes, in principle. Although a mortgagee or, arguably, a receiver appointed by the mortgagee is not permitted to sell to the mortgagee itself, it is possible to sell to an affiliate of the mortgagee (such as an SPV established for this purpose). The techniques available will ultimately be based on enforcement against the property or shares, whether through receivership or administration. The key issue is likely to be demonstrating that a sale to an affiliate of the mortgagee was for the best price reasonably obtainable.</p> <p>Foreclosure, a remedy which requires a court order to transfer title to the property to the mortgagee, is now rarely used in practice as it is time consuming, expensive and the mortgagor keeps a potential clawback right in the property even after sale.</p>
<p>Tenants’ position on owner enforcement/insolvency proceedings</p>	<p>Leases remain in place notwithstanding enforcement or insolvency proceedings against the landlord. The tenant may have termination rights in particular circumstances, e.g. in relation to a development.</p>
<p>Forfeiture/termination right against insolvent tenant?</p>	<p>Likely, but ultimately dependent on the terms of the lease. Moratorium on administration prevents landlords from forfeiting a lease on tenant’s insolvency without administrator or court approval.</p> <p>The Coronavirus Act 2020 prohibits the forfeiture of commercial leases on the basis of non-payment of rent until 30 June 2021.</p>
<p>Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?</p>	<p>A mortgagee in possession will be liable for environmental and other potential liabilities in relation to the property. Therefore a receiver or administrator is typically appointed to effect any sale of the property to avoid the mortgagee taking possession of the property. Any person exercising a power of sale has a duty to obtain the best price reasonably obtainable.</p>
<p>Property taxes/taxes payable on enforcement</p>	<p>On an asset sale, SDLT/LBTT/LTT is payable by the purchaser of commercial property on the sale consideration (including any VAT).(SDLT/LBTT is payable at 5% and LTT is payable at 6%). The company may be taxed on any capital gain on the sale. On a share sale of a non-UK incorporated SPV owning the property, no SDLT or other stamp taxes should arise in practice for the purchaser. The seller may be taxed on any capital gain on the sale of the shares. The purchaser will need to consider the SPV’s own tax position, both historically and going forwards.</p>

ENGLAND & WALES

(CONTINUED)



Impact of Covid-19 on the above described insolvency and restructuring processes

As mentioned above, the CIGA introduced a Restructuring Plan allowing companies to enter into a compromise with their stakeholders and a standalone moratorium providing a short breathing space to allow companies to explore their restructuring options, which allows for a class of creditors to cram down dissenting creditors.

The CIGA also made the following changes:

- Prohibited suppliers in contracts for supply of goods and services from relying on 'ipso facto' termination clauses (termination of contract on the grounds that a company has entered into a formal insolvency procedure/ restructuring plan/ new moratorium). Termination is only allowed if the insolvency officeholder or the company consents to termination of contract. This termination prohibition is not applicable to certain types of financial products and services and is subject to certain exemptions, including a temporary exemption for small supplier companies;
- Statutory demands served between 1 March 2020 and 30 June 2021 are prohibited from forming the basis of a winding up petition against a company. Winding up petitions from 27 April 2020 to 30 June 2021 are also prohibited, unless the company's financial position has not been impacted by Covid-19; and
- Suspended director's personal liability for wrongful trading, from 1 March 2020 until 30 September 2020. This was further extended from 26 November 2020 to 30 June 2021.

Any imminent reforms which could impact the position outlined above

Not applicable.



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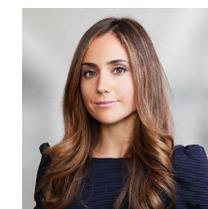
Insolvency Tests	Inability of the debtor to pay its debts as and when they fall due (cash-flow solvency test).
Types of insolvency proceedings	<ul style="list-style-type: none"> • Safeguard proceedings: debtor not insolvent but confronted with serious difficulties it cannot overcome; • Accelerated safeguard proceedings: used to cram down dissenting creditors following a failed conciliation proceeding (being a confidential out of court insolvency or a pre-insolvency process intended to avoid a formal insolvency); • Accelerated financial safeguard proceedings: used to cram down dissenting financial creditors and bondholders following a failed conciliation proceeding; • Rehabilitation proceedings: debtor insolvent, but possibility to rescue/restructure/rehabilitate the business and the indebtedness; • Liquidation: debtor insolvent and no possibility to rehabilitate or preserve the business as a going concern.
When does a moratorium apply (security enforcement)?	In all five procedures, there is a general stay on individual claims by creditors for pre-judgment debts, subject only to limited exceptions.
Directors' duties to file	<p>Safeguard proceedings, accelerated safeguard proceedings or accelerated financial safeguard proceedings: no duty to file as the process is voluntary.</p> <p>Rehabilitation and liquidation: the directors must file for rehabilitation or liquidation within 45 days of the debtor having become insolvent, unless the debtor has applied for conciliation proceedings (i.e. confidential negotiation with main creditors with the assistance of a Court-appointed conciliator).</p>
Average length of proceedings	<p>In theory, safeguard and rehabilitation proceedings can last up to 12, or even 18 months in exceptional cases. In practice, the proceedings last between three and six months.</p> <p>1 month for financial accelerated safeguard proceedings and 3 months for accelerated safeguard proceedings.</p> <p>Liquidation can take years (unless it features a sale of a going concern, which will as a general rule be completed within a few months).</p>

Contacts



DELPHINE CARAMALLI
PARTNER

T +33 1 4405 5240
E delphine.caramalli@cliffordchance.com



MARIE CRUMIÈRE
COUNSEL

T +33 1 4405 5461
E marie.crumiere@cliffordchance.com

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Are “Pre-packed” restructuring options available?	Yes, but, if there are creditors’ committees, it may take in practice a few weeks to implement the restructuring.
Are “Credit Bids” available?	French law does not contemplate rules to provide for credit bids.
Is “Cram down” possible?	Yes, if proposed within the framework of a safeguard or rehabilitation plan, and approved by a two-thirds majority of the relevant creditors’ committees and, where applicable, of the bondholders’ assembly.
Debt/equity swaps possible?	Yes, if approved by the requisite majority of creditors’ committees and, where applicable, bondholders’ assembly, and also if approved by shareholders’ assembly.
Can creditors influence appointment of insolvency officeholder?	No.
Equitable subordination of shareholder loans?	No.
Effectiveness of subordination arrangements	The plan (in both safeguard and rehabilitation proceedings) presented to the creditors’ committees must take into account contractual subordination provisions between creditors entered into prior to the opening judgment.
Share pledges	All individual pre-judgment claims by creditors are stayed as well as the right to enforce any security, including financial collateral, from the opening judgment to the judgment ruling on a restructuring plan, the sale of the ongoing business or the piecemeal liquidation.
Is debtor-in-possession finance possible?	Debt incurred after the commencement of the insolvency proceedings for the purposes of the insolvency proceedings (including safeguard proceedings) or for the post insolvency operations of the debtor must be paid in priority to all pre-judgment debts, other than preferential debts including debts to employees, certain legal costs (including officeholders’ fees), repayment of any new funds advanced pursuant to a Court approved conciliation agreement. In the event of liquidation, new debt will not take priority over certain security (mortgages, etc.).

FRANCE

(CONTINUED)



Set-off and netting on insolvency?	<p>Set-off is possible provided debts are mutual and have a common “nexus” (e.g. arise from a same contract or group of contracts). Insolvency proceedings are not an obstacle to closing out or netting financial instruments.</p>
Hardening periods	<p>An 18 month look back period from the date of the opening of the rehabilitation or liquidation proceedings. Exceptionally, 24 months for transfer of property without consideration and non-transfer statement made by the debtor for commercial real estate.</p>
Preferences/transactions subject to challenge	<p>A number of preferences/transactions are voidable if they were transacted during the hardening period, including transactions made without consideration, unbalanced transactions, pre-payments, and security given in relation to pre-existing debt.</p> <p>In addition, any payment or transaction for consideration made or entered into after the date of effective cessation of payments may be nullified by the Court if the creditor was aware that the debtor was in a state of cessation of payments.</p>
Liability of directors	<p>Liability for contributing to the deficiency of assets. Civil sanctions/ disqualification possible in certain circumstances, e.g. fraud, trading whilst insolvent. Fraudulent mismanagement or embezzlement of assets may also attract criminal liability.</p>
Priority of creditors	<p>Certain salary payments, court fees, new-money financing (provided during the course of conciliation proceedings if approved by the Court), post-judgment debts (see above) are paid in priority to all other debts whether secured or unsecured. Unpaid salaries or certain employment related claims originating prior to the opening of the procedure have preference over all other creditors (whether secured or not). Preferred creditors rank ahead of pledges unless the secured creditors request attribution of ownership of the pledged assets.</p>
Lender or Borrower friendly?	<p>As a general rule, borrower friendly but rights of creditors have improved markedly over the years.</p>

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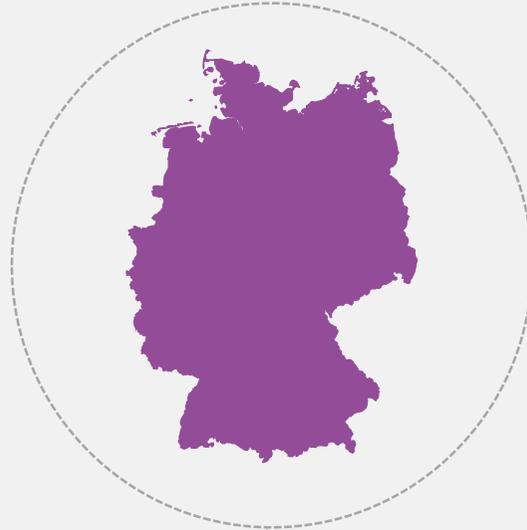
Enforcement: Property or shares?	<p>Enforcement is stayed during most insolvency/reorganisation proceedings unless the liquidator has undertaken the realisation of assets within six months of his/her appointment.</p> <ul style="list-style-type: none"> • Share security: choice of having shares sold by public auction or asking the Court for attribution of ownership; • Commissory pact: pre-agreement to have ownership automatically transferred on default, but not enforceable after the commencement of insolvency proceedings; • Enforcement of mortgaged property is a long and complex process, and some creditors are preferred. Mortgage enforcement is conducted through the Court; and • “Fiducie”: the opening of insolvency procedures against the grantor (constituent) or the trustee has no incidence on the trust assets. The mechanism of the security trust also offers creditors a security which will be preserved.
“Loan to own” possible?	<p>May be agreed in context of consensual restructuring (i.e. absent formal insolvency proceedings). Otherwise, Court likely to auction the assets.</p>
Tenants’ position on owner enforcement/insolvency proceedings	<p>Insolvency of the owner does not enable it (or the administrator/liquidator) to terminate ongoing leases.</p>
Forfeiture/termination right against insolvent tenant?	<p>Contractual clauses allowing termination of contract (e.g. a lease) in case of insolvency proceedings or pre-insolvency proceedings are deemed to be void. Failure to pay rent, utilities, etc. prior to the opening of insolvency proceedings can only give right to a claim in the insolvency, unless the lease is terminated (pursuant to a condition subsequent or a final court order) prior to the opening of the proceedings.</p> <p>An owner may only take action to terminate a lease due to failure to pay rent if he can demonstrate non-payment over a period of 3 months following the date that proceedings commence. Otherwise, the lease cannot be terminated.</p>
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	<p>Shares: as a general rule none, except in the marginal case of proven abuse of rights as shareholder to the detriment of the company. Certain tax obligations /liabilities re dividends and/or if assets of company are predominantly real estate assets.</p>

FRANCE

(CONTINUED)



Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have? (continued)	<p>Real estate: compliance with laws, regulations and existing contracts (e.g. leases), payment of taxes due in relation to ownership and/or possession or income derived from property, potential liability as owner/lessor/manager vis-à-vis third parties in relation to safety, environmental issues, etc.</p>
Property taxes/taxes payable on enforcement	<p>Value added tax or transfer duty, depending on circumstances.</p>
Impact of Covid-19 on the above described insolvency and restructuring processes	<p>A series of measures were taken by French government. The following main provisions continue to apply until 31 December 2021:</p> <ul style="list-style-type: none"> • possibility for the debtor in conciliation proceedings (in principle consensual and confidential) to apply for a stay and/or a rescheduling against a dissenting creditor (either by express refusal or lack of response) to grant a voluntary moratorium requested by the conciliator; and • possibility to request the extension of a safeguard or rehabilitation plan (up to a maximum of two years) at the request of the public prosecutor or the supervisor of the plan.
Any imminent reforms which could impact the position outlined above	<p>Directive (EU) 2019/1023 of 20 June 2019 (“Insolvency Restructuring Directive”) is meant to be transposed into French law before 17 July 2021. The “PACTE” law dated 22 May 2019 authorized the government to transpose the Insolvency Restructuring Directive by ordinance.</p> <ul style="list-style-type: none"> • Law dated n° 2020-1525 dated 7 December 2020 provides for the extension of the following provisions until 31st December 2021: • possibility for the debtor in conciliation proceedings to apply for a stay that can last up to 10 months; • new super French privilege for new money contributed after the opening of bankruptcy proceedings; and • if a bankruptcy is commenced, creditors have 15 days to accept/reject the plan proposed by the company (compared to usual 30 days) and debt can be stretched out for up to 12 years (compared to usual 10 years).



GERMANY





Insolvency Tests	(i) Cash flow test and (ii) balance sheet test sits alongside a going concern analysis.
Types of insolvency proceedings	<ul style="list-style-type: none"> • Regular insolvency proceedings (typically involve a realisation/sale of the core assets, followed by a subsequent winding-up/liquidation of the entity); • Insolvency plan proceedings (typically used for reorganisation, sales transactions or debt to equity swaps); • Self-administration (debtor-in-possession proceedings) allowing the management to remain operational under the supervision of a court appointed trustee; and • Protective shield proceedings allowing the debtor to prepare an insolvency plan whilst enforcement actions are limited (often used in combination with the proceedings outlined above). <p>The type of proceeding is chosen by the debtor at the time of the insolvency filing but may change over the course of the proceedings.</p> <p>Since 1 January 2021, German law also provides for a pre-insolvency restructuring tool (“German Scheme”) whereby a company can enter into a court-approved compromise or arrangement with its members or creditors.</p>
When does a moratorium apply?	During preliminary insolvency proceedings, a provisional stay of execution can be ordered by the insolvency court, unless immovables are concerned. In protective shield proceedings, a three-month stay of enforcement is mandatory upon request of the debtor, unless it would be to the detriment of the creditors. The court order opening insolvency proceedings will result in a general stay of execution, but enforcement of security will remain possible (with a few exceptions).
Directors’ duties to file	There is an obligation to file a petition for the opening of insolvency proceedings without undue delay and within a maximum period of three weeks after the debtor has become illiquid (i.e. unable to meet its due payment obligations), or within a maximum period of six weeks after the debtor has become over-indebted.
Average length of proceedings	Preliminary insolvency proceedings generally last for three months. Actual insolvency proceedings can take up to five years or even longer.

Contacts



STEFAN SAX
PARTNER

T +49 69 7199 1549
E stefan.sax@cliffordchance.com



CRISTINA WEIDNER
PARTNER

T +49 69 7199 3145
E cristina.weidner@cliffordchance.com

GERMANY

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Are “Pre-packed” restructuring options available?	Pre-agreed deals are possible to a certain extent under protective shield or other forms of proceedings but cannot be implemented at a pace comparable with other jurisdictions.
Are “Credit Bids” available?	Yes, a pledged asset can be acquired by the pledgee at a public auction and be paid for with its claim. The same is true for the acquisition of encumbered immovable assets.
Is “Cram down” possible?	Yes, in insolvency plan proceedings and in German Schemes, the “plan” must in principle be approved by a majority of creditors in each group. The insolvency court can cram down a non-consenting group if the court establishes that (i) the dissenting creditors would not be worse off under the plan in comparison with a possible liquidation scenario, (ii) the dissenting creditors have a reasonable share of the economic benefits of the plan, and (iii) the majority of the voting groups have consented.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	Yes.
Equitable subordination of shareholder loans?	Yes, any loan (other than restructuring loans) granted by a shareholder holding more than 10% of the company’s equity is statutorily subordinated within insolvency proceedings.
Effectiveness of subordination arrangements	In case of an absolute subordination arrangement (as opposed to a relative intercreditor subordination), subordinated claims are only settled after the claims of all secured and unsecured creditors have been settled.
Share pledges	Pledged shares held by the insolvent entity can be enforced by way of a public auction or, if the shares have a market price, by way of a private sale (provided the secured obligations have become due and payable). Subject to contractual agreement, the pledged shares can be enforced without a prior court ruling.

GERMANY

(CONTINUED)



Is debtor-in-possession finance possible?	Financing granted after the opening of insolvency proceedings must be paid back on a priority basis from the insolvency estate but does not have priority over existing security.
Set-off and netting on insolvency?	As a general rule, set-off and netting are permissible and protected if triggered prior to insolvency proceedings.
Hardening periods	The granting of security or the settlement of claims in general is vulnerable for three months (clawback is subject to further preconditions). Incongruent transactions are subject to challenge for three months, repayment of shareholder loans for one year, gratuitous transactions and wilful prejudice for four years (and in some cases longer), and ten years for shareholder loan security.
Preferences/transactions subject to challenge	Transactions subject to claw-back: congruent and incongruent transactions, transactions at undervalue, transactions wilfully prejudicing other creditors, gratuitous transactions, and the repayment and granting of security for shareholder loans/equivalent claims.
Liability of directors	Civil and criminal liability.
Priority of creditors	Secured claims are settled preferentially from the proceeds of the realisation of the security. <ul style="list-style-type: none"> a. Liabilities of the insolvency estate, court fees and administrator's costs, liabilities incurred by the insolvency administrator (e.g. from executory contracts that were assumed). b. Other unsecured insolvency claims (including tax liabilities, social insurance contributions and employee claims) rank pari passu with unsecured claims of financial creditors. c. Subordinated claims (i.e. shareholder loans and equivalent claims).
Lender or Borrower friendly?	Generally creditor friendly (includes all other creditors of the debtor).
Enforcement: Property or shares?	Both options are available, depending on the individual circumstances.

GERMANY

(CONTINUED)



“Loan to own” possible?	Possible through debt to equity or consensual sale/realisation agreement.
Tenants’ position on owner enforcement/insolvency proceedings	Contracts for the tenancy or lease of immovables or premises continue to exist in an insolvency of the landlord.
Forfeiture/termination right against insolvent tenant?	Generally, the same termination rights apply inside insolvency proceedings as outside insolvency proceedings subject to restrictions on termination. However, once a petition to open insolvency proceedings has been filed, the landlord may not terminate the lease or tenancy on the grounds of (i) a default in tenancy or lease payments arising before the petition was filed; or (ii) a deterioration of the tenant’s financial situation.
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	An officeholder is personally liable for any breach of his obligations. A lender will not be able to assume possession prior to the legal transfer of the property.
Property taxes/taxes payable on enforcement	Real estate transfer tax is payable on enforcement. If immovables are acquired by way of a credit bid and the purchase price is less than 70% of the value of the real estate property, real estate transfer tax is still payable on the lower of (i) the amount of the claim and (ii) 70% of the value of the property.
Impact of Covid-19 on the above described insolvency and restructuring processes	Mitigation of the balance sheet test for businesses affected by Covid-19 until 31 December 2021 by shortening the forecast period from 12 to 4 months; facilitation of protective shield proceedings and suspension of obligation to file for insolvency under limited circumstances.
Any imminent reforms which could impact the position outlined above	<p>Germany implemented the EU directive ((EU) 2019/1023) for a preventive restructuring framework as of 1 January 2021. This new German Scheme provides for the restructuring of debtors by means of a restructuring plan outside of formal insolvency proceedings for debtors in a state of “impending illiquidity”.</p> <p>The new German Scheme provides for: a procedure for cramming down dissenting creditors and shareholders; a mechanism for a pre-enforcement and realisation ban to facilitate negotiations for a restructuring plan; and, once the restructuring plan is accepted and confirmed, a restructuring plan that is binding on all stakeholders involved (excluding employees).</p>



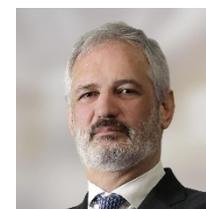
ITALY





Insolvency Tests	A company will be declared bankrupt if it is no longer able to meet its payment obligations on a regular basis when they fall due. When the company's share capital falls below the minimum threshold required by law, directors have a duty to require the shareholders to recapitalise the company, failing which the company must enter into forced liquidation.
Types of insolvency proceedings	<ul style="list-style-type: none"> • Bankruptcy leading to liquidation, bankruptcy leading to composition with creditors (<i>concordato fallimentare</i>); • Pre-bankruptcy restructuring proceedings (i.e. out-of-court reorganisation plans, debt restructuring agreements and pre-bankruptcy composition with creditors); and • Extraordinary administration.
When does a moratorium apply?	An automatic stay commences upon the declaration of bankruptcy of the company. The moratorium does not apply to financial collateral arrangements granted pursuant to Decree 170/2004 and mortgages granted in connection with a " <i>mutuo fondiario</i> " pursuant to Articles 38 <i>et seq.</i> of the Italian Banking Act. Priority conferred by security is not generally affected by the moratorium.
Directors' duties to file	Duty to file a petition for declaration of bankruptcy of a company when it is insolvent otherwise they may face personal criminal and/or civil liabilities.
Average length of proceedings	On average, in-court bankruptcy proceedings may be quite lengthy when compared to other European jurisdictions (approx. 7 years), though recent reforms have helped to speed up the entire proceedings.
Are "Pre-packed" restructuring options available?	Pre-packed restructuring options are available only within insolvency proceedings or in pre-bankruptcy composition with creditors.
Are "Credit Bids" available?	No significant local law precedent.
Is "Cram down" possible?	Yes, within (i) a post-bankruptcy composition with creditors; (ii) an extraordinary administration; or (iii) a pre-bankruptcy composition with creditors.
Debt/equity swaps possible?	Yes, in the framework of pre-bankruptcy composition with creditors or debt restructuring agreements.

Contacts



CHARLES ADAMS
PARTNER

T +39 02 8063 4544
E charles.adams@cliffordchance.com



GIUSEPPE DE PALMA
PARTNER

T +39 02 8063 4507
E giuseppe.depalma@cliffordchance.com



CAROLINA PIOVANO
SENIOR ASSOCIATE

T +39 02 8063 4277
E carolina.piovano@cliffordchance.com



PASQUALE BIFULCO
ASSOCIATE

T +39 02 8063 4266
E pasquale.bifulco@cliffordchance.com

ITALY

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Can creditors influence appointment of insolvency officeholder?	No, bankruptcy receivers are appointed by the court. However, a creditors' committee may request the court to revoke their appointment, in case of subsequent conflict of interest or failure to comply with his/her duties.
Equitable subordination of shareholder loans?	Yes, shareholder loans may be subordinated by operation of law if they are repaid within one year prior to the company's bankruptcy and the company was significantly undercapitalised.
Effectiveness of subordination arrangements	In liquidation proceedings a mandatory creditor waterfall applies (although creditors remain free amongst themselves to allocate recoveries on a contractual basis).
Share pledges	Pledged shares of the insolvent company may be sold in (i) an auction process, or (ii) a private sale as provided for in the pledge agreement.
Is debtor-in-possession finance possible?	No. Financing provided during an insolvency is granted priority over pre-insolvency claims.
Set-off and netting on insolvency?	Set-off permissible if triggered prior to insolvency proceedings. Close-out netting unaffected if guaranteed by way of financial collateral arrangements.
Hardening periods	Claw-back may occur if within: (i) one year, with respect to transactions at an undervalue, or involving unusual means of payment (e.g. payment in kind) or security taken after the creation of the secured obligations; (ii) six months with respect to security granted in order to secure a debt due and payable, security taken simultaneously to creating secured obligations or any payments of due and payable obligations.
Preferences/transactions subject to challenge	Preferential transactions may be challenged by the bankruptcy receiver.
Liability of directors	Directors are jointly and severally liable for breach of their duties. Criminal and civil liability for actions taken in respect of the company's assets prior to the bankruptcy.
Priority of creditors	In general, claims secured by a pledge or mortgage rank prior to unsecured claims, but could rank behind bankruptcy proceeding expenses and costs, some employment claims and certain tax claims.

ITALY

(CONTINUED)



Lender or Borrower friendly?	Borrower friendly
Enforcement: Property or shares?	When a company becomes subject to in-court insolvency proceedings, security over real estate generally cannot be enforced independently of the general liquidation of the assets. The sale of the relevant real estate is made by the receiver, although the secured creditor has a priority right over the sale proceeds. The pledged shares of the insolvent company may be sold in accordance with the relevant pledge agreement.
“Loan to own” possible?	Yes, to minimise negative effects on the value of a real estate asset which may derive from an auction or another sale process in an enforcement or insolvency process.
Tenants’ position on owner enforcement/insolvency proceedings	Tenants retain their rights arising from the provisions of the lease agreement, if the agreement is registered with the tax authority.
Forfeiture/termination right against insolvent tenant?	Yes. Termination clauses triggered by the opening of bankruptcy proceedings are null and void.
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	In bankruptcy, property is generally sold through an auction procedure supervised by the court rather than the lender possessing property. However, “ <i>Patto Marciano</i> ” if commenced pre-bankruptcy proceeding, allows banks and other entities authorised to grant credit facilities to obtain the transfer in their favour of the property of the borrower (or third-party guarantor) granted as security of the loan once the borrower is declared bankrupt.
Property taxes/taxes payable on enforcement	Registration taxes may be due.
Impact of Covid-19 on the above described insolvency and restructuring processes	<p>Covid-19 legislation contains measures to relieve enterprises from certain obligations or procedures that could trigger adverse effects due to the Covid-19 pandemic and the associated restrictions. One set of measures is aimed at “relaxing” directors’ duties in connection with insolvency/pre-insolvency scenarios.</p> <p>Other measures include extensions of timelines for court proceedings, compositions and reorganisation proceedings.</p>

ITALY

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Any imminent reforms which could impact the position outlined above

Yes, the new Italian legislative framework applicable to business crises and insolvency, Legislative Decree No. 14/2019 “*Codice della crisi di impresa e dell’insolvenza*” (the “Code”) has been published in the Italian Official Gazette and except for few provisions which have been effective since 16 March 2019, will enter into force on 1 September 2021. The Code sets out a comprehensive reform of Italian insolvency proceedings and the rules governing business crises.



LUXEMBOURG



LUXEMBOURG



Insolvency Tests	Cessation of payments (“ <i>cessation de paiement</i> ”) and loss of commercial creditworthiness (“ <i>ébranlement de crédit</i> ”). Cessation of payments is defined as the inability to pay debts as they fall due with normal means of payment. Loss of commercial creditworthiness implies the impossibility to obtain new credit or the refusal of creditors to extend payment periods or to renegotiate the existing indebtedness.
Types of insolvency proceedings	Bankruptcy proceedings (“ <i>faillite</i> ”) may be opened against any commercial debtor if it is in cessation of payments and if it has lost its commercial creditworthiness. Controlled management proceedings (“ <i>gestion contrôlée</i> ”) are pre-insolvency proceedings aimed to allow a reorganisation or orderly liquidation and may be opened at the sole request of the debtor.
When does a moratorium apply?	From the day of the opening judgment in a bankruptcy proceeding, certain enforcement measures are stayed with specific exceptions, such as for certain financial collateral arrangements. In controlled management proceedings, all enforcement actions against the debtor including actions by secured creditors with specific exceptions, such as financial collateral, are stayed until the proceedings end.
Directors’ duties to file	Within one (1) month of the cessation of payments for the opening of insolvency proceedings.
Average length of proceedings	Depends on the complexity and size of the company.
Are “Pre-packed” restructuring options available	Not prohibited but no significant local precedent.
Is “Cram down” possible?	Yes, in controlled management proceedings, a draft reorganisation plan or a draft liquidation plan must be accepted by a majority of creditors (by number and amount) and approved by the court.
Debt/equity swaps possible?	Not prohibited but no significant local precedent.

Contacts



STEFANIE FERRING
PARTNER

T +352 48 50 50 253
E stefanie.ferring@cliffordchance.com



STEVE JACOBY
PARTNER

T +352 48 50 50 219
E steve.jacoby@cliffordchance.com



MARC MEHLEN
PARTNER

T +352 48 50 50 305
E marc.mehlen@cliffordchance.com

LUXEMBOURG

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Can creditors influence appointment of insolvency officeholder?	Insolvency officeholders are appointed by the court.
Equitable subordination of shareholder loans?	No subordination by operation of law.
Effectiveness of subordination arrangements	Validity of contractual subordination provisions between parties generally recognised.
Share pledges	A share pledge falling under the Luxembourg law of 5 August 2005 on financial collateral arrangements (as amended) is valid and enforceable, notwithstanding the existence of reorganisation measures or bankruptcy proceedings.
Is debtor-in-possession finance possible?	Possible on the basis of the general law if loan made for continuation of activities (with court approval).
Set-off and netting on insolvency?	Contractual set-off of financial collateral is valid in case of bankruptcy or liquidation and binding on the bankruptcy receiver, commissioner or liquidator, if the contract was entered into before the opening judgment of such proceedings.
Hardening periods	Up to six months and ten days prior to opening of insolvency proceedings (depending on date of cessation of payments determined by court).
Preferences/transactions subject to challenge	Void transactions include: a contract for the transfer of movable or immovable property entered into for no sufficient consideration; a contractual or legal mortgage, pledge or charge on the debtor's assets for previously contracted debts; any act made with the fraudulent intent to deprive other creditors. Voidable transactions include payments for due debts during the suspect period in which the debtor may be declared void.
Liability of directors	Civil and criminal liability.

Contacts

LUXEMBOURG

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Priority of creditors	General rights of priority over all movables and immovables (subject to specific priorities) are: 1. Judicial fees incurred in the interest of all competing creditors, 2. Super-priority claims of employees, 3. Employees' social contributions, 4. Treasury claims, 5. Employer's social contributions, 6. Contributions to professional associations.
Lender or Borrower friendly?	Lender friendly (if secured).
Enforcement: Property or shares?	This depends on the location of the assets. Realisation of shares in a Luxembourg company facilitated to the extent that they constitute financial collateral.
“Loan to own” possible?	Not prohibited but no significant local law precedent.
Tenants' position on owner enforcement/insolvency proceedings	In case of insolvency of an owner, tenants are normally not affected.
Forfeiture/termination right against insolvent tenant?	As a general rule, the insolvency of a tenant does not terminate the tenancy agreement.
Officeholder's liability i.e. if the Lender goes into possession what liabilities if any would it have?	Liability as shadow or de jure director. Liability for abusive lending and abusive withdrawal of lending.
Property taxes/taxes payable on enforcement	Depends on type of security interest (for example, taxes are payable on enforcement of a mortgage).
Impact of Covid-19 on the above described insolvency and restructuring processes	Suspension of duty to file for insolvency until 30 June 2021.
Any imminent reforms which could impact the position outlined above	The bill of law n° 6539 on business preservation and modernisation of bankruptcy law aims at modernising bankruptcy law and at preventing bankruptcies through various reorganisation measures for businesses in difficulty. It is currently still unclear when the reformed regime will enter into force but significant progress on this matter is expected during the 2020/2021 legislative period in Luxembourg.

Contacts



THE NETHERLANDS



THE NETHERLANDS



Insolvency Tests	Any debtor can be declared bankrupt by the court where (i) there is more than one creditor and (ii) at least one matured debt remains unpaid. A debtor can also request suspension of payments at the court, although its creditors can object if they have well-founded reasons that the debtor will infringe their position.
Types of insolvency proceedings	<ul style="list-style-type: none"> • Bankruptcy (<i>faillissement</i>); • Suspension of payments (<i>surseance van betaling</i>); and • Debt reorganisation for natural persons (<i>schuldsanering natuurlijke personen</i>). <p>Bankruptcy is a general attachment on (practically) all of the assets of a debtor and distributes the proceeds for the benefit of the insolvent debtor's creditors to achieve an equitable liquidation. In practice, bankruptcy proceedings can serve as an instrument for the reorganisation of businesses in financial distress.</p> <p>The suspension of payment is a court ordered general suspension of a debtor's payment obligations; its objective is to provide an instrument for the reorganisation and continuation of viable businesses in financial distress.</p>
When does a moratorium apply?	Both in bankruptcy and suspension of payments proceedings, although neither bind secured creditors. Instead, the court (and in case of a bankruptcy proceeding: also the supervisory judge) may grant a "cooling down" or "freezing" period and during such period, creditors with security rights cannot foreclose without prior approval by the court or the supervisory judge. Such freeze period can only be granted for a maximum period of two months, which can be extended once by a maximum period of two months.
Directors' duties to file	There is generally no strict legal duty to file for bankruptcy or to apply for suspension of payments. However, there is a directors' liability risk for continuing to trade in certain circumstances and a duty to notify the tax authorities as soon as the directors anticipate that certain taxes cannot be paid.

Contacts



ILSE VAN GASTEREN
PARTNER

T +31 20 711 9272
E ilse.vangasteren@cliffordchance.com



JELLE HOFLAND
PARTNER

T +31 20 711 9256
E jelle.hofland@cliffordchance.com



JEROEN KOLTHOF
ASSOCIATE

T +31 20 711 9490
E jeroen.kolthof@cliffordchance.com

THE NETHERLANDS

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Average length of proceedings	The suspension of payments may be granted by the court for a maximum period of one and a half years and may be prolonged at the request of the debtor (if necessary more than once) for a maximum of one and a half years. The lengths of bankruptcy proceedings depend on the size of the bankruptcy/estate and can vary from a period of a number of months to multiple years.
Are “Pre-packed” restructuring options available?	Not the same way as it exists in UK/US style, but there are certain “Dutch” pre-pack options, depending on documents, facts and the cooperation of the Dutch courts.
Are “Credit Bids” available?	Yes, depending on circumstances.
Is “Cram down” possible?	Yes. A cram down in bankruptcy or suspension of payments would only bind creditors with non-preferential claims (ordinary, non-secured and non-preferred creditors) and not creditors with secured or preferential claims. Furthermore, a Dutch scheme is available since 1 January 2021, which provides a cram down possibility outside of insolvency with a 2/3 majority (see below).
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	In general no. An independent and professional liquidator or receiver is appointed by the court on the declaration of bankruptcy or suspension of payment. The creditors have no formal influence on the appointment but in some specific cases, courts have appointed specific people if so requested (informally) by the debtor.
Equitable subordination of shareholder loans?	Not applicable (only on contractual or structural basis).
Effectiveness of subordination arrangements	Creditors can generally agree a lower ranking of their claims. A contract between the creditor and the debtor may stipulate that the claim of the creditor is subordinated to all or to certain other claims of other creditors.

THE NETHERLANDS

(CONTINUED)



Share pledges	<p>If the grantor of the share pledge is insolvent, pledged shares can be sold by the pledgee either through public auction or, subject to the court's approval or approval by the pledgor in payment default, in a private sale.</p> <p>Note that there is a possibility to (conditionally) transfer voting rights and rights to dividend as part of a share pledge.</p>
Is debtor-in-possession finance possible?	<p>In practice, estate financings are granted. Strictly speaking however, these are not the same as debtor-in-possession ('DIP') financings as used in e.g. the US.</p>
Set-off and netting on insolvency?	<p>As a general rule, the creditor of an insolvent debtor may invoke its right of set-off provided that his claim and his debt: (i) date from before the date of the insolvency; or (ii) result from (one or more) transactions entered into with the insolvent debtor prior to the date of insolvency.</p>
Hardening periods	<p>There is no strict "hardening period" for relevant transactions.</p> <p>Voidable preferences have a limitation period of three years from the date on which the bankruptcy receiver discovered the detrimental effect of the transaction. A reversal of the burden of proof can apply (in relation to the knowledge that a transaction puts other creditors at a disadvantage) for certain suspect transactions made one year prior to the date of the transaction if challenged or the company is declared bankrupt.</p> <p>The power to invoke the <i>Actio Pauliana</i> (see below) is not limited to transactions executed within a certain period before the commencement of the bankruptcy proceedings.</p>
Preferences/transactions subject to challenge	<p>If certain requirements are met, the bankruptcy receiver has the right to nullify a transaction entered into by the insolvent debtor with a third party on the basis of voidable preference doctrine (<i>Actio Pauliana</i>), which allows the receiver to take recourse against the relevant assets as if the voided transaction had not taken place for an amount equivalent to the actual disadvantage to other creditors.</p>

THE NETHERLANDS

(CONTINUED)



Liability of directors	A director can be held liable, based on civil law (i) towards the company in case of “mismanagement” a seriously imputable failure to perform the task entrusted to the managing director(s); or (ii) towards third parties: managing directors are jointly and severally liable for loss suffered by third parties as a result of inter alia misrepresentation concerning the company’s condition in the annual accounts or in tort.
Priority of creditors	In a bankruptcy, creditors are entitled to the proceeds of the realisation of the debtor’s assets after payment of estate costs and estate claims. There are various types of claims that have a priority (e.g. rights in rem, certain taxes, estate debts etc.).
Lender or Borrower friendly?	On balance, more (secured) lender friendly.
Enforcement: Property or shares?	<p>The rules applicable to the enforcement of the right of pledge and the right of mortgage are much alike. Although, share pledge enforcement has the benefit of being able to sell the entire business (with contracts) whereas a real estate sale would ensure that you eliminate other creditors (and a lease will under certain circumstances stay in place).</p> <p>In principle, security can be taken over rental claims. However, as these are generally considered “future assets”, rental payments falling due after the pledgor’s insolvency will not be subject to such security.</p>
“Loan to own” possible?	Yes, either by way of (consensual) debt for equity swap, enforcement of security or by a Dutch scheme (see below). Dutch law prohibits a secured creditor to appropriate the secured assets.
Tenants’ position on owner enforcement/insolvency proceedings	When real estate is transferred as a consequence of enforcement by the mortgagee, generally speaking lease contracts remain unaffected.
Forfeiture/termination right against insolvent tenant?	The lessor has the right to terminate a lease contract with an insolvent tenant. The term of notice can vary, but cannot be longer than three months. If parties do not terminate the lease contract, the rent is considered a claim against the estate.

THE NETHERLANDS

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<p>Officeholder's liability i.e. if the Lender goes into possession what liabilities if any would it have?</p>	<p>Liability deriving from control by the mortgagee can generally only be based on tort.</p>
<p>Property taxes/taxes payable on enforcement</p>	<p>Transfer tax is due upon the transfer of real estate or of a company whose assets are mainly Dutch real estate, unless an exemption applies. In very specific circumstances, the transfer of real estate is subject to value added tax. The transfer of real property could give rise to a capital gains tax liability for the seller.</p>
<p>Impact of Covid-19 on the above described insolvency and restructuring processes</p>	<p>Directors of a Dutch company have a duty to act in the interest of such company and its joint stakeholders, including shareholders, employees and its creditors, as well as Dutch law and policy regulations. These requirements continue to apply and become even more important in a financially distressed position, for example because of Covid-19.</p>
<p>Any imminent reforms which could impact the position outlined above</p>	<p>The Dutch government introduced emergency legislation regarding a temporary suspension of enforcement in support of enterprises during the Covid-19 crisis. The legislation establishes a (temporary) moratorium for companies who, solely because of Covid-19, have not been able to continue their business as usual and as a result become unable to pay their debts when due. During the moratorium a possible bankruptcy decision by a bankruptcy court is stayed, payment obligations are suspended and conservatory and executory attachments will be suspended. It is a temporary law and is expected to terminate during the course of 2021.</p> <p>Legislation for a Dutch scheme entered into force on 1 January 2021. The Dutch scheme provides for: a cram down of creditors or shareholders with $\frac{2}{3}$ majority, possibilities for a cross-class cram down, debtor-in-possession, a court-ordered stay period, protection of DIP financing, and an ability to amend or terminate onerous contracts.</p>



POLAND





Insolvency Tests	Cash flow (liquidity) test and balance sheet tests apply to bankruptcy proceedings. Restructuring proceedings can be commenced with respect to a debtor who is already “insolvent” or is under a “threat of insolvency”.
Type of insolvency proceedings	<ul style="list-style-type: none"> • arrangement approval proceedings – an out-of-court procedure with no moratorium, where the debtor seeks the creditors’ votes under a proposed arrangement, and then the voted arrangement is subject to review and approval by the court; • simplified restructuring proceedings – based on the arrangement approval proceedings but with additional advantages to the debtors (such as a moratorium, stay of executions, and ability to restructure secured obligations); • “standard” arrangement proceedings – a court-supervised procedure with a stay of executions and a moratorium relating to pre-commencement debt (except labour and secured claims), where the business continues to be run by the debtor in possession, and the proposed arrangement is to be voted upon at a creditors’ meeting; • accelerated arrangement proceedings – a simplified alternative to the standard procedure, available if the sum of disputed claims does not exceed 15% of the total claims; and • remedial proceedings – offering the broadest restructuring options and the broadest scope of protection against creditors (including a stay of executions relating to pre-commencement secured claims, “cherry-picking” rights etc.), but with the highest level of formalities and supervision by the court (including, as a rule, the appointment of an administrator to run the debtor’s business).
When does a moratorium apply?	Applies to both bankruptcy proceedings and restructuring proceedings (except the arrangement approval proceedings).
Directors’ duties to file	Within thirty days of the date the bankruptcy tests are objectively met (unless restructuring proceedings were opened earlier).
Average length of proceedings	Bankruptcy proceedings: on average, one to three months to open the proceedings, and then 12-36 months to complete the proceedings. Restructuring proceedings: varies from 3-4 months to over a year.

Contacts



BARTOSZ KRUŻEWSKI
PARTNER

T +48 22429 9514
E bartosz.kruzewski@cliffordchance.com



ANDRZEJ STOSIO
PARTNER

T +48 22429 9469
E andrzej.stosio@cliffordchance.com



MIŁOSZ GOLAB
PARTNER

T +48 22429 9441
E milosz.golab@cliffordchance.com



JAN ZDZIENICKI
COUNSEL

T +48 22429 9451
E jan.zdzienicki@cliffordchance.com

POLAND

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Are “Pre-packed” restructuring options available?	Yes, within the framework of bankruptcy proceedings, or through appropriation of a share pledge.
Are “Credit Bids” available?	Not available, except where there is an arrangement comprising the sale of assets or the whole business to a creditor.
Is “Cram down” possible?	Yes, within a class and across classes, and subject to court sanction.
Debt/equity swaps possible?	Yes
Can creditors influence appointment of insolvency officeholder?	Yes, except for arrangement approval proceedings, simplified restructuring proceedings and accelerated restructuring proceedings (where the debtor appoints the arrangement supervisor based on a contract).
Equitable subordination of shareholder loans?	Yes. Claims under shareholder loans and under transactions having a similar effect made within five years preceding the declaration of bankruptcy, together with applicable interest, are to be satisfied after all other claims.
Effectiveness of subordination arrangements	Not binding on the trustee, but still effective as between the parties (other than the bankrupt entity).
Share pledges	<p>In bankruptcy proceedings: pledged shares held by the bankrupt entity will be sold in a public auction or, subject to the judge-commissioner’s approval, in an unrestricted sale. In relation to pledged shares held in the bankrupt entity, the pledgee, depending on the type of the pledge, may: (i) seize the shares; (ii) sell the shares in a private sale; or (iii) initiate court enforcement proceedings having first obtained a judgment or submission to execution.</p> <p>In restructuring proceedings: claims secured over property (including by way of a pledge) cannot be restructured or otherwise affected by the arrangement, except to the extent that the secured amounts exceed the value of collateral or are fully satisfied, or where the court so orders.</p>

Contacts



ANNA MIERNIK
ASSOCIATE

T +48 22429 9534
E anna.miernik@cliffordchance.com

POLAND

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Is debtor-in-possession finance possible?	Yes, subject to consent from the creditors' committee or the judge commissioner.
Set-off and netting on insolvency?	Set-off is permitted if both debts existed prior to the insolvency. Close-out netting under a master agreement is expressly permitted.
Hardening periods	<p>In bankruptcy proceedings, transactions with affiliates or related parties, and assignment of future receivables, within six months of the proceedings for payment of unmatured debt or creation of security of an unmatured debt, and within one year of the proceedings for creating of security for third party's debts.</p> <p>In remedial proceedings for certain guarantees and security, within a year of the proceedings.</p> <p>In remedial and bankruptcy proceedings for transactions at an undervalue, within a year and for having a detrimental effect on creditors and resulting in insolvency or worsening pre-existing insolvency, within two to five years.</p>
Preferences/transactions subject to challenge	If there is a threat of insolvency and not all creditors can be satisfied, it is prohibited to pay or grant security in respect of selected debts only. Transactions subject to challenge include: gratuitous transactions, transactions at undervalue, transactions with related parties (relatives or affiliated companies) even if made at arm's length and on fair market terms and transactions having a detrimental effect on creditors.
Liability of directors	Civil and criminal liability for failure to apply for bankruptcy within the specified time period.
Priority of creditors	As a rule, secured creditors are to be satisfied from the proceeds of liquidation of relevant encumbered assets. Unsecured creditors are allocated to five categories, to be satisfied as follows: (i) the costs of proceedings and post-petition claims, (ii) preferred claims, such as pre-commencement labour claims, (iii) principal amounts of any non-preferred unsecured claims (including taxes), (iv) interest, and (v) shareholder loans and transactions having similar effect.
Lender or Borrower friendly?	<p>Rather creditor-friendly for secured creditors, except in simplified restructuring proceedings, remedial proceedings or partial arrangements where secured claims may become subject to arrangement (without creditor's consent) and/or affected by a stay of executions.</p> <p>For unsecured creditors, rather debtor-friendly (especially in simplified restructuring proceedings).</p>

POLAND

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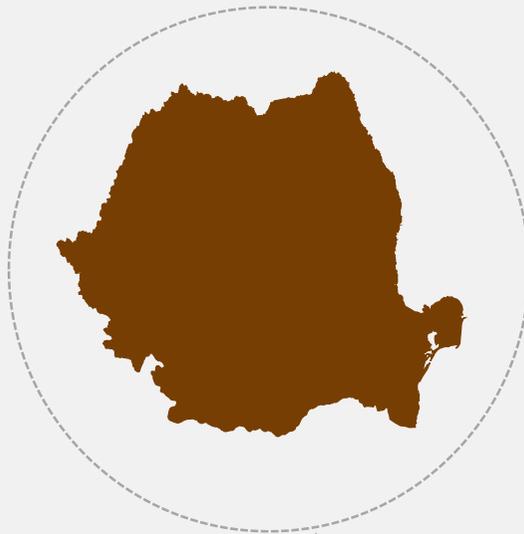
Enforcement: Property or shares?	<p>Shares: can be quickly seized if encumbered with a registered pledge with a seizure option.</p> <p>Real estate: cannot be seized. A mortgage only ensures priority of payment, following an auction sale or a fast-track sale, except where the creditor acquires title to real estate by way of a liquidation plan. Out-of-insolvency, enforcement against real estate is a complex and time-consuming process supervised by the court.</p>
“Loan to own” possible?	<p>In theory, possible as part of an arrangement comprising a liquidation of a part or the whole business, but not as a means of enforcement. However, an investor who acquires debt post-commencement will not be entitled to exercise voting rights.</p>
Tenants’ position on owner enforcement/ insolvency proceedings	<p>Enforcement or insolvency proceedings against the owner does not result in the termination of a lease.</p> <p>The commencement of or filing for insolvency proceedings itself is not a legitimate termination event (any contractual provisions to the contrary are void). However, in bankruptcy proceedings, where the continuation of the lease makes it difficult to liquidate the bankrupt estate or if the rent differs from the average market rent, the court may permit the trustee to terminate the lease.</p>
Forfeiture/termination right against insolvent tenant?	<p>The commencement of or filing for insolvency proceedings itself is not a legitimate termination event (any contractual provisions to the contrary are void). In restructuring proceedings (other than the arrangement approval proceedings), termination is permitted if the tenant fails to pay post-commencement rent, subject to contractual terms. In bankruptcy proceedings, where the property has not yet been handed over to the tenant prior to the declaration of bankruptcy, each party can terminate the agreement.</p>
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	<p>Shares: no additional obligations other than general shareholder’s obligations (including tax). RE: no specific obligations other than typical duties of the real estate owner (including tax, environmental, etc.).</p>
Property taxes/taxes payable on enforcement	<p>VAT (23% rate) or transfer tax (2%), depending on a number of circumstances.</p>

POLAND

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Impact of Covid-19 on the above described insolvency and restructuring processes	<p>Legislative measures, subsidies and programmes aimed at preserving jobs and improving liquidity and financial stability of businesses affected by the pandemic, also in the sphere of tax, social insurance, employment, certain contractual relationships, and administrative and court procedures, etc.</p> <p>Insolvency-related measures include a relaxation of directors' duty to make a bankruptcy filing for the duration of the pandemic, and the introduction of the simplified restructuring proceeding available until 30 June 2021.</p>
Any imminent reforms which could impact the position outlined above	<p>No further reforms have been announced, but they may emerge as the situation develops.</p> <p>As a rule, EU Member States, including Poland, are obliged to implement the EU Restructuring Directive (2019/1023) by 17 July 2021 (subject to certain exceptions). Due to the Covid-19 pandemic, Poland has applied for an extension option to postpone the July 2021 deadline. Potentially, the simplified restructuring proceedings (introduced as a temporary measure in response to the Covid-19 pandemic, available only until 30 June 2021) may, subject to certain changes, be converted to a permanent component of the Polish insolvency system because in fact, certain features of this procedure implement the EU Restructuring Directive. The position of secured creditors is also currently being discussed. The draft (at a very early stage though) looks to ensure that secured claims may, subject to certain conditions, be covered by an arrangement in all types of restructuring proceedings.</p>



ROMANIA

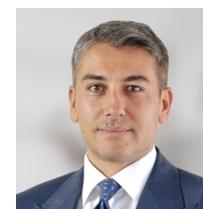


ROMANIA



Insolvency Tests	Cash flow test (sufficient funds to pay all due debts). Insolvency is either actual (where the debtor cannot pay its debts towards one or more creditors as they fall due) or is imminent (where it is demonstrated that upon maturity, the debtor will not be able to pay its debts out of its then available financial funds).
Type of insolvency proceedings	General insolvency proceedings entered by the company after an observation period followed by (i) judicial reorganisation and/or (ii) liquidation (aiming to the winding-up of the insolvent debtor).
When does a moratorium apply?	Following the opening of the insolvency proceedings, all judicial and extra-judicial actions (including enforcement of security) against the debtor or its assets are suspended.
Directors' duties to file	<p>The insolvent debtor <u>is compelled</u> by law to file a petition for insolvency within 30 days from the date it becomes aware that it is or will become insolvent. The debtor, whose insolvency is imminent may file a petition for the opening of the insolvency proceedings.</p> <p>If upon the expiry of the 30 day term the debtor, acting in good faith, is involved in extrajudicial debt restructuring negotiations, it has the obligation to file a petition of insolvency only within 5 days from the moment such negotiations failed. Also, if during the negotiations conducted within special pre-insolvency negotiation proceedings (i.e. judicial moratorium or ad-hoc mandate proceedings) the debtor becomes insolvent but there is a reasonable assumption based on grounded indications that the result of such negotiations could be promptly put in place by entering into an extrajudicial agreement, the debtor, acting in good faith, may file the insolvency petition within 5 days from the failure of such negotiations. Otherwise, the general 30 day rule applies.</p>
Average length of proceedings	Up to 45 days for the opening of proceedings upon creditors' request (provided that the petition for opening the proceedings is not challenged), one-two years to complete straight forward proceedings. Complex proceedings can take much longer.
Are "Pre-packed" restructuring options available?	<p>There are no legal obstacles for out of court restructuring if practical obstacles can be overcome.</p> <p>"Pre-packed" type restructuring options would be possible also in the context of judicial reorganisation.</p>

Contacts



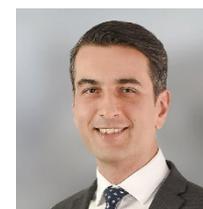
DANIEL BADEA
PARTNER

T +40 216666 101
E daniel.badea@cliffordchance.com



MADALINA RACHIERU-POSTOLACHE
PARTNER

T +40 216666 120
E madalina.rachieru@cliffordchance.com



COSMIN ANGHIEL
COUNSEL

T +40 216666 124
E cosmin.anghel@cliffordchance.com



RADU ROPOTA
COUNSEL

T +40 216666 135
E radu.ropota@cliffordchance.com

ROMANIA

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Are “Credit Bids” available?.	Credit bids are possible with consent of other creditors but can be difficult to apply in practice due to a need to observe priority rules for distribution of proceeds.
Is “Cram down” possible?	Yes, cram down is possible in the context of a judicial reorganisation provided that each class of creditors for which a haircut or a decrease in security interest levels is provided shall be treated fairly. Fair treatment is met provided that: (i) none of the classes of creditors rejecting the reorganisation plan and none of the claims rejecting the plan would receive less than in liquidation; (ii) none of the classes of creditors or claim in a class does not receive more than what is due; (iii) if a class of creditors for which a haircut or a decrease in security interest levels is provided rejects the reorganisation plan, no inferior ranking class of creditors would receive more than in liquidation; (iv) the reorganisation plan provides for the same treatment for each claim within a specific class of creditors except for secured claims or where a creditor consents to a less favourable treatment for its claim.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	The creditors’ meeting can approve the appointment of a judicial administrator or liquidator, as the case may be, by the vote of creditors holding at least 50% of the total value of receivables. After its appointment, the judicial administrator or liquidator can be replaced by the judge ex officio or following a decision taken by the creditor’s meeting.
Equitable subordination of shareholder loans?	Loans granted by shareholders holding at least 10% of the share capital or the voting rights in the shareholders meeting are statutorily subordinated and rank last in the creditor’s waterfall.
Effectiveness of subordination arrangements	Contractual subordination of claims under a subordination agreement/intercreditor agreement might not be recognised by an insolvency officer, who will be bound by the statutory order of payments and ranking of claims.
Share pledges	Pledged shares in the insolvent company may be sold in (i) an auction process or (ii) a private sale/appropriation, depending on the procedure elected by the creditor and provided for under the relevant pledge agreement.

Contacts



SABINA CRANGASU
ASSOCIATE

T +40 216666 274
E sabina.crangasu@cliffordchance.com

ROMANIA

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Is debtor-in-possession finance possible?	<p>DIP finance is possible, but is rarely available in practice. Normally, claims deriving from DIP financing granted by credit institutions should rank after the administrative expenses, but before budgetary claims, salary claims and other unsecured claims and do not benefit from the proceeds of assets that are subject to security (unless such new money is applied to preservation or maintenance of that secured asset, in which case the related claims would have priority over the secured claims as well).</p>
Set-off and netting on insolvency?	<p>Only legal set-off is possible when certain legal conditions are met (i.e. claims are certain, liquid, due, and relate to moneys or other fungible assets).</p> <p>Netting agreements are valid, enforceable and/or opposable to insolvent counterparties in relation to payment obligations or other obligations resulting from one or several financial derivative transactions save for the cases where the intention to fraud of the debtor is evidenced.</p>
Hardening periods	<p>The insolvency official (or the creditors' committee, in case the insolvency official remains inactive) may apply to court for the annulment of certain contracts or acts of the insolvent debtor such as: acts and contracts attempting to defraud the creditors; gratuitous transfer agreements concluded in the 2 years prior to the opening of the insolvency proceedings; business operations in which the performance of the debtor manifestly exceeds the performance of the creditor, performed in the 6 months prior to the opening of the proceedings; acts granting or perfecting a security interest for an unsecured receivable within the 6 months prior to the opening of the insolvency proceedings; debts maturing after the date of opening of insolvency proceedings but prepaid within 6 months prior to the opening of proceedings.</p>
Preferences/transactions subject to challenge	<p>Preferences/transactions at an undervalue executed or entered into during a specific period prior to the opening of insolvency proceedings may be challenged by the insolvency official.</p>
Liability of directors	<p>Civil liability. Criminal liability only when the directors' acts meet the constitutive elements of a crime.</p>

ROMANIA

(CONTINUED)



Priority of creditors	<p>The proceeds of realisation of secured assets are to be distributed to secured creditors (towards repayment of the principal amount, interest, penalties and any other costs) after payment of taxes, stamp duties and other expenses determined by the sale of such assets. If the proceeds are insufficient for the full repayment of secured debt, such creditors will be treated as unsecured for the remaining part of the debt and will be satisfied according to the general order applicable for the other types of claim. In liquidation, the general order of payment of unsecured debts is as follows:</p> <p>(a) taxes, stamp duties and other expenses incurred in connection with the insolvency proceedings; (b) post-commencement financing costs; (c) employment claims; (d) amounts due pursuant to the continuation of the debtor's activity; (e) debts owed to the state (including taxes not related to the insolvency proceedings); (f) (where applicable) amounts due pursuant to maintenance obligations, child support or subsistence receivables; (g) (where applicable) certain amounts for the maintenance of the debtor and his family, when the debtor is an individual; (h) claims by certain types of creditors such as banks, landlords, suppliers of goods and services debts; (i) other general debts; (j) subordinated debts.</p>
Lender or Borrower friendly?	<p>Creditor-friendly (but not necessarily senior creditor friendly).</p>
Enforcement: Property or shares?	<p>Enforcement over shares – although desirable – is not common in practice. Additional rules apply to enforcement of security over listed shares.</p> <p>A secured creditor may:</p> <ul style="list-style-type: none"> (i) peacefully appropriate the secured shares (without the involvement of a court bailiff). This would involve registration of the secured creditor as shareholder with the trade register (and with the register of members of the company) and would require the co-operation/acquiescence of the shareholder and the company; (ii) require the sale of the shares by a court bailiff. The shares are sold in auction by the court bailiff and the proceeds applied towards the secured obligations; and (iii) acquisition of shares during enforcement proceedings. It is also possible for the debtor and secured creditor to agree upon a transfer of the shares to the secured creditor against certain of the secured obligations. In order for this to be performed, a court approved valuer will need to attribute a value to the shares.

ROMANIA

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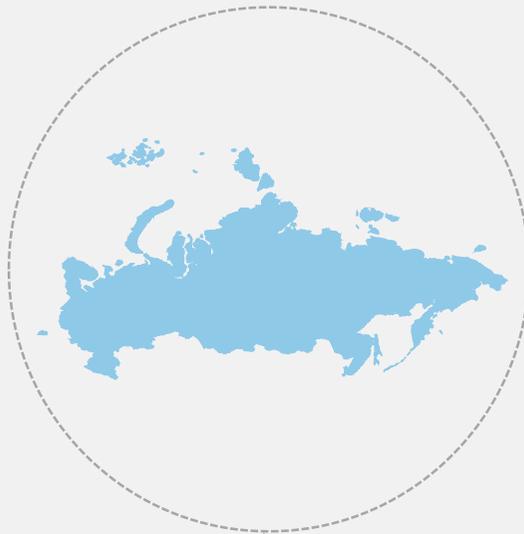
<p>Enforcement: Property or shares? (continued)</p>	<p>Enforcement over real property is common in practice. A secured creditor may:</p> <ul style="list-style-type: none"> (i) agree with the debtor on the acquisition of the secured property by the secured creditor (without the involvement of a court bailiff) in consideration for the reduction or forgiveness of the secured obligation. It is advisable to seek a valuation of such a transfer to mitigate the risk of challenge from other creditors upon an insolvency of the debtor; (ii) require the sale of the property by a court bailiff, following certain formalities (including the issue of a payment demand to the debtor) the property may be sold in auction by the court bailiff and the proceeds applied towards the secured obligations; and (iii) acquisition of property during enforcement proceedings. It is also possible for the debtor and secured creditor to agree upon a transfer of the secured property to the secured creditor in consideration for the forgiveness of certain of the secured obligations. Any such transfer would be subject to specific rules on the minimum value attributed to the property transferred. <p>Enforcement proceedings can be challenged by a number of interested parties (such as the debtor, its creditors or insolvency practitioners).</p>
<p>“Loan to own” possible?</p>	<p>No significant local precedent.</p>
<p>Tenants’ position on owner enforcement/ insolvency proceedings</p>	<p>If the lease has been registered in the Land Register, the lease will bind any new owner of the property for the term of the lease. An insolvency practitioner also has certain rights to disclaim “onerous” contracts entered into by the insolvent company: this right should not affect the rights of a tenant renting property on normal commercial terms.</p>
<p>Forfeiture/termination right against insolvent tenant?</p>	<p>Any clause that provides the insolvency of the tenant as a termination event is considered void. An insolvency practitioner has the option to terminate certain contracts necessary for the preservation of value in the insolvent company. The insolvency practitioner must exercise this option within three months from the opening of the procedure. The Landlord should make a claim against the tenant for unpaid sums within the period specified by the Insolvency legislation.</p>
<p>Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?</p>	<p>Shares: no additional obligations other than general shareholders obligations (including tax). RE: no specific obligations other than typical duties of the RE owner (including tax).</p>

ROMANIA

(CONTINUED)



<p>Property taxes/taxes payable on enforcement</p>	<p>(a) Enforcement fees</p> <p>Court enforcement fees are minimal, but the secured creditor will have to pay additional fees to the court bailiff based on the value of the debt (where the debt exceeds RON100,000 (approx EUR 20,700) such bailiff fees may not exceed 1% of the debt. As described above, valuation fees may also need to be paid.</p> <p>(b) VAT</p> <p>Where the debtor is registered for VAT in Romania, VAT (at 19%) may be payable on the value of the property or shares transferred through enforcement (except where the transfer of property is specifically VAT exempt).</p> <p>(c) Registration fees</p> <p>Registration fees are also payable in relation to the registration of title by a new owner following enforcement of real property. For legal persons this represents 0.5% of the value of the property being transferred.</p>
<p>Impact of Covid-19 on the above described insolvency and restructuring processes</p>	<p>The application of certain legal provisions has been suspended during the state of alert. For example, the director of the company has the obligation to file a petition of insolvency within 30 days from the end of the state of alert, not from the date it becomes aware that the company is or will become insolvent.</p>
<p>Any imminent reforms which could impact the position outlined above</p>	<p>No significant reform of the insolvency legislation pending that would affect the position outlined above.</p> <p>However, the Ministry of Justice has published a draft law amending the Romanian Insolvency Law (no. 85/2014) for the purpose of transposing Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132.</p>



RUSSIA





Insolvency Tests	<p>Cash flow and balance sheet tests. Creditors can petition for a debtor's insolvency if unpaid debts meet certain thresholds and timing conditions, and in most cases (when a creditor is not a bank) must be confirmed by a court decision.</p>
Type of insolvency proceedings	<ul style="list-style-type: none"> • Supervision: the first compulsory stage of insolvency proceedings initiated by the company itself or its creditors by filing a bankruptcy petition to court. It is aimed at an assessment of whether the company should go into insolvency proceedings or be subject to financial recovery. • Financial rehabilitation, initiated by either creditors or the company, is not a compulsory stage of insolvency proceedings. It is aimed at restoring the solvency of a company and satisfying creditors' claims in accordance with a newly drawn up debt repayment schedule. • External administration, initiated by either creditors or at the reasonable discretion of court, is not a compulsory stage of insolvency proceedings. This stage may succeed the financial rehabilitation stage or be introduced immediately after the supervisions stage. It is aimed at restoring the solvency of a company and repaying certain debts in accordance with a plan for restoring solvency. • Winding-up/liquidation, initiated by the creditors or the court, and may follow any of the above stages if the court determines that the company is insolvent. It involves liquidation of the company, realisation of the company's assets and the repayment of its debts. • Voluntary arrangement may be entered into at any stage of insolvency proceedings on the petition by either the insolvent company or its creditors. If approved by the court, it terminates the relevant stage of bankruptcy proceedings and is compulsory for all creditors whose claims were included in the register of creditors' claims during the insolvency proceedings.
When does a moratorium apply?	<p>Formally at the stage of external administration, but certain restrictions are applied at earlier stages (such as a prohibition on payment of dividends, set-offs in breach of the statutory order of priority, non-accrual of contractually agreed fines, penalties and other financial sanctions, various limitations on enforcement of security).</p>

Contacts



TORSTEN SYRBE
PARTNER

T +7 495 725 6400
E torsten.syrbe@cliffordchance.com



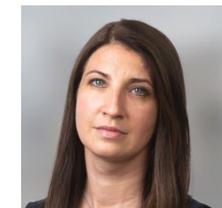
VICTORIA BORTKEVICHA
PARTNER

T +7 495 725 6406
E victoria.bortkevicha@cliffordchance.com



VLADIMIR BARBOLIN
PARTNER

T +7 495 258 5071
E vladimir.barbolin@cliffordchance.com



MARINA KIZENKOVA
SENIOR ASSOCIATE

T +7 495 725 6401
E marina.kizenkova@cliffordchance.com

RUSSIA

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Directors' duties to file	The CEO of the insolvent company must petition the court for bankruptcy within one month of the company being imminently or actually insolvent, or being unable to pay certain statutory debts.
Average length of proceedings	One to eight months for putting the company into insolvency proceedings, up to 24 months for financial rehabilitation and/or external administration and up to one year for liquidation. However, in practice, these periods are often extended and proceedings can take much longer.
Are "Pre-packed" restructuring options available?	There is no specific "prepacked insolvency option" under Russian law.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	<p>Creditors can approve plans on financial rehabilitation (provided there is a majority present and voting for financial rehabilitation at the meeting) and external administration (provided that the majority of all registered creditors is present and voting for external administration), which will be binding on the minority creditors.</p> <p>An amicable agreement can be entered into at any stage of insolvency proceedings (if approved by a majority of creditors whose claims are included in the register of creditors' claims and the unanimous consent of those creditors whose claims are secured by pledge or mortgage over the company's assets), which will bind all creditors whose claims are included in the register of creditors' claims.</p>
Debt/equity swaps possible?	Not available in the course of insolvency proceedings.

RUSSIA

(CONTINUED)



Can creditors influence appointment of insolvency officeholder?	Yes, an administrator can be appointed by the court from the nominees suggested by a creditor petitioning for insolvency or at the creditors' meeting to decide whether to commence each stage of the insolvency proceedings.
Equitable subordination of shareholder loans?	Generally, shareholder loans are treated as any other third-party creditor loans. However, they can be treated as quasi-equity claims if loans were provided when the company is in financial crisis or if the loans are proved to be detrimental to the interests of other non-affiliated creditors, commercially unreasonable or in bad faith, in which case they are paid out only after all creditors' claims are paid in full, but before the satisfaction of existing equity claims.
Effectiveness of subordination arrangements	Binding amongst contracting creditors, not binding on the debtor in insolvency.
Share pledges	A pledge of shares granted by an insolvent company as security can be enforced during any stage of insolvency (other than at the stage of supervision), with court approval. Out of court enforcement of a pledge is not available. At the liquidation stage pledged shares are sold with the involvement of relevant secured creditors via public auction. Shares in an insolvent company can be enforced without restrictions.
Is debtor-in-possession finance possible?	Financing of an insolvent company is generally possible at early stages of insolvency subject to consent of the administrator or the creditors' committee. Creditors financing at early stages of insolvency (unless they are secured creditors) will not get any priority. Shareholders are also allowed to repay debts of a company at earlier stages of insolvency upon approval of the court, but claims obtained by such shareholders as a result of the repayment of creditors' debt will not give priority to the shareholders.
Set-off and netting on insolvency?	Not possible if set-off/ netting lead to the breach of a statutory order of priority, including within classes of priority.

RUSSIA

(CONTINUED)



Hardening periods	<p>Suspicious transactions: 1 year for those at an undervalue or 3 years for those causing detriment to creditors' rights.</p> <p>Preferential transactions 6 months.</p>
Preferences/transactions subject to challenge	<p>Yes, see hardening period above.</p>
Liability of directors	<p>Yes, criminal and civil.</p>
Priority of creditors	<p>There are three tiers of creditors:</p> <ul style="list-style-type: none"> (a) those with claims for harm inflicted to health or life, and claims for moral damages; (b) those with employment claims and royalty claims under copyright agreements; and (c) those with all other claims. <p>Court costs, utilities, fees of persons involved in insolvency, etc. rank ahead of the order of priorities set out above. Claims of secured creditors (e.g. by Russian law pledge or mortgage) are settled separately from claims of other creditors. Proceeds of sale of the secured property are forwarded to satisfy claims of the respective secured creditors (only principal and interest) up to a certain percentage set by law. The remaining proceeds are shared among unsecured creditors of first and second priority and to discharge court and bankruptcy costs. Claims of secured creditors that have not been satisfied in full from the sale of pledged/mortgaged property fall into tier (c) category.</p>
Lender or Borrower friendly?	<p>Secured creditor friendly.</p>

RUSSIA

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Enforcement: Property or shares?	A property or share pledge can provide the right for a pledgee to retain property on enforcement. If bankruptcy proceedings have been initiated, enforcement is only possible by the court through sale at public auction. If two consecutive auctions fail, the secured creditor can retain the property.
Enforcement: tax issues?	Sale of secured property at a public auction potentially gives rise to capital gains tax and VAT liability. A secured creditor taking ownership of a secured asset could expose such creditor to liability for asset taxes or taxes upon subsequent disposal of the asset.
“Loan to own” possible?	Not available.
Tenants’ position on owner enforcement/insolvency proceedings	Not affected as change of owner is not itself a ground for an amendment to or termination of a lease contract (unless this is specifically agreed in a lease contract). In insolvency a tenant has no right to terminate a lease contract unless otherwise provided in that contract.
Forfeiture/termination right against insolvent tenant?	Not stipulated by law, but it is common practice that such a provision is specifically agreed in a lease contract. If a tenant fails to pay rent more than twice in a row the landlord has the right to apply to court for termination of a lease contract.
Officeholder’s liability i.e. if the Lender goes into possession what liabilities if any would it have?	Obtaining possession over the mortgaged real estate by the Lender is only possible through obtaining a title to it, following which the Lender will have standard liabilities as a real estate owner.
Property taxes/taxes payable on enforcement	If a secured creditor acquires title to the secured property following enforcement, such creditor may potentially be exposed to the following property taxes: up to 2.2% property tax on the value of fixed assets and buildings, or up to 1.5% land tax, if the secured property is a land plot. Upon disposal of the asset a secured creditor may be exposed to 20% capital gains tax (subject to the provisions of the relevant DTT if the creditor is a non-resident) and 20% VAT (unless asset is a land plot, the sale of which is VAT exempt).

RUSSIA

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Impact of Covid-19 on the above described insolvency and restructuring processes

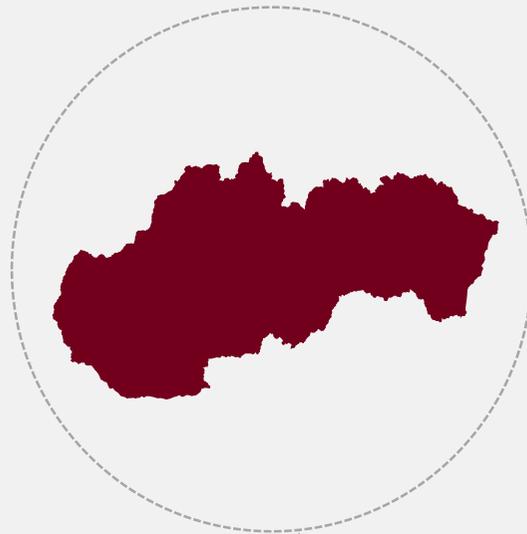
Prohibition for creditors to file for insolvency of certain companies and for such companies to file for its own insolvency applied until 7 January 2021.

Other measures which also applied until 7 January 2021 include a prohibition of set-off against the companies claims if it would breach the statutory order of priority, non-accrual of penalties and other financial sanctions on overdue payments, a prohibition on enforcement of pledges and mortgages over the company's assets, a prohibition on the payment of dividends, the suspension of debt recovery proceedings on claims which arose before the introduction of the moratorium, and an extension of hardening periods generally for the period during which the above measures were applicable.

Further, rent deferral and reduction measures were introduced that applied until 1 October 2020.

Any imminent reforms which could impact the position outlined above

There is a legislative initiative to limit landlords' termination rights in 2021 due to non-payment by tenants, but it is at a very early stage.



SLOVAKIA



SLOVAKIA



Insolvency Tests	Cash flow test and balance sheet test.
Type of insolvency proceedings	<ul style="list-style-type: none"> • Bankruptcy: a sale of the estate (piecemeal or as a going concern) with satisfaction of creditors through distribution of the proceeds; or • Restructuring: a reorganisation measure based on a reorganisation plan approved by the creditors and the court.
When does a moratorium apply?	An automatic stay commences from the time of the publication of the initiation of the bankruptcy proceedings in the Commercial Gazette.
Directors' duties to file	Directors have a duty to file a bankruptcy petition within 30 days after they determine that the company is insolvent (or should have determined such insolvency had they exercised due care).
Average length of proceedings	<p>Bankruptcy: The court shall decide on the commencement of bankruptcy proceedings within 15 days upon receipt of the petition. An average of 9 months to complete bankruptcy proceedings. More robust and complex bankruptcy proceedings may however extend to up to 5 years.</p> <p>Restructuring: The court shall also decide on the commencement of restructuring proceedings within 15 days upon receipt of the petition. The Ministry of Justice does not publish official data for the average length of the restructuring proceedings.</p>
Are "Pre-packed" restructuring options available?	Yes, in principle, where agreed upon by all creditor classes, but not yet tested in practice.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Yes, in restructuring.
Debt/equity swaps possible?	Yes.

Contacts



STANISLAV HOLEC
SENIOR ASSOCIATE

T +420 222 55 5251
E stanislav.holec@cliffordchance.com



ANDREJ HAVKO
ASSOCIATE

T +420 222 55 5246
E andrej.havko@cliffordchance.com

SLOVAKIA

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Can creditors influence appointment of insolvency officeholder?	The creditors' meeting may decide to appoint a different bankruptcy trustee, inter alia, if approved by the 3/4 majority. If it can be proven that the insolvency officeholder (bankruptcy trustee) repeatedly or materially violated its obligations, the creditors can decide on its removal. The court then removes him and appoints a new insolvency officeholder.
Equitable subordination of shareholder loans?	No.
Effectiveness of subordination arrangements	Yes, subordinated claims will be paid subject to the terms of contractual subordination.
Share pledges	A pledge over shares which belong to the insolvent debtor's estate will be caught by the automatic stay and can only be enforced inside the insolvency proceedings.
Is debtor-in-possession finance possible?	Insolvency law does not specifically deal with new money lending in case of bankruptcy proceedings. Any new loans made to the debtor during restructuring proceedings will have priority over general creditors but not the secured creditors.
Set-off and netting on insolvency?	Set-off is allowed, except that it is not possible to set-off claims that arose pre-bankruptcy against those that arose post-bankruptcy. A claim not proven in the bankruptcy in accordance with law, a proven claim acquired by transfer post-bankruptcy, and a claim acquired by an antecedent legal act also cannot be set-off against the debtor's claims. Insolvency proceedings do not generally prejudice close-out netting.
Hardening periods	No specific security hardening periods, but transactions at undervalue and preferential transactions are subject to challenge within one year (or three years if made with connected parties) and fraudulent transactions are subject to challenge within five years.
Preferences/transactions subject to challenge	Yes, preferential transactions or transactions at undervalue are subject to challenge if the debtor was either insolvent or became insolvent as the result of such transactions.
Liability of directors	Directors who are in breach of the duty to file a bankruptcy petition will be liable to creditors for damages in an amount presumed to equal the sum of claims unsatisfied after the termination or stay of bankruptcy proceedings, unless proven otherwise.

SLOVAKIA

(CONTINUED)



Priority of creditors	The ranking of claims under pre-insolvency law (i.e. the priority of secured claims and the subordination of junior claims) is respected, subject to certain exceptions. Insolvency law also awards priority to certain types of pre-commencement claims over pre-commencement unsecured claims. Such preferred claims include employment-related claims.
Lender or Borrower friendly?	Mostly neutral.
Enforcement: Property or shares?	Forfeiture of assets to a creditor is not allowed in the Slovak Republic. The bankruptcy trustee makes, subject to the creditors committee's approval, a decision on the method of realisation of the debtor's property. According to law an acquirer of real estate may benefit from a "clean" title to real estate acquired through liquidation (bankruptcy), although acquiring real estate through a share deal will not impact any existing defects in title (if any).
"Loan to own" possible?	No significant local law precedent. A debt/equity swap may be permissible in a restructuring proceeding.
Tenants' position on owner enforcement/ insolvency proceedings	The insolvency trustee of an insolvent landlord has a statutory right to terminate (at its discretion) a lease or sub-lease agreement after insolvency is declared, with a termination period of two months (unless a shorter period is stipulated in the relevant agreement). The same applies to agreements concluded for a definite term. Statutory protection of residential tenants remains unaffected by the declaration of insolvency of the landlord.
Forfeiture/termination right against insolvent tenant?	Similar terms to those described above apply. The insolvency trustee of an insolvent tenant has a statutory right to terminate (at its discretion) a lease or sub-lease agreement after insolvency is declared, with the termination period of two months (unless a shorter period is stipulated in the relevant agreement). The same applies to agreements concluded for a definite term.
Officeholder's liability i.e. if the Lender goes into possession what liabilities if any would it have?	Inside bankruptcy or restructuring, forfeiture of rights or assets is not allowed in Slovakia.

SLOVAKIA

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Impact of Covid-19 on the above described insolvency and restructuring processes

Slovakia has adopted numerous measures that relate to bankruptcy and insolvency to mitigate the impact of the Covid-19 pandemic on the Slovak economy. The measures included an opt-in based temporary protection period for businesses with its registered seat or place of business in the Slovak Republic. The temporary protection includes the following:

- a moratorium on bankruptcy proceedings on petitions filed by creditors relating to debtors under temporary protection;
- a suspension of the duty of the debtor under temporary protection to file for bankruptcy;
- a moratorium on enforcement of claims relating to business activity for businesses under temporary protection; and
- a moratorium on enforcement of pledges of collaterals relating to business for businesses under temporary protection.

Any imminent reforms which could impact the position outlined above

Not applicable.



SPAIN



SPAIN



Insolvency Tests	Cash flow test: (a) a debtor is to file for insolvency if he becomes unable, on a regular basis, to pay his debts as they fall due; (b) a debtor may file for insolvency if he foresees that he will shortly become unable, on a regular basis, to pay his debts as they fall due. Also, when losses make net equity fall below half the amount of share capital, directors have the duty to promote an out-of-court winding-up or take measures to overcome this situation within a two-month period.
Type of insolvency proceedings	There is only one type of insolvency proceeding available (“concurso de acreedores”), which may lead to either (a) the restoration of the business; or (b) the winding-up of the company. Within the “concurso de acreedores” we can distinguish between the voluntary insolvency proceeding, when it is the debtor who files for insolvency; and the compulsory insolvency proceeding, when it is a creditor or third party who files for the insolvency of the debtor.
When does a moratorium apply?	With regard to security enforcement in respect of assets necessary for the debtor’s business, there is a moratorium of one year (or, if earlier, until the approval of an arrangement or the initiation of the winding-up). Enforcement of security under the scope of the Financial Collateral Directive (as implemented by Royal Decree-law 5/2005) is not subject to this restriction.
Directors’ duties to file	Directors have a duty to file for insolvency within two months following the moment that they knew or should have known of the situation of insolvency of the company. This obligation can be postponed for four additional months if the debtor files the communication foreseen under article 5 bis (583 of the Consolidated text of the Spanish Insolvency Law that has entered into force on 1 September 2020) whereby it informs the court that it is undergoing negotiations with its creditors to avoid having to file for insolvency.
Average length of proceedings	The length of proceedings depends on the size of the company, as well as on the workload of the court, among other factors. Generally speaking, an average duration would be of 18-24 months, if an arrangement is reached with creditors or the company is wound up or shorter if the proceeding is terminated due to the lack of assets to pay post insolvency debts.
Are “Pre-packed” restructuring options available?	A “pre-packed” restructuring option would be available within the context of a voluntary insolvency arrangement, and with the approval of creditors.

Contacts



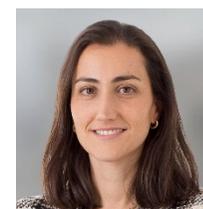
RODRIGO URÍA
PARTNER

T +34 91 590 9408
E rodrigo.uria@cliffordchance.com



IÑIGO VILLORIA
PARTNER

T +34 91 590 9403
E inigo.villoria@cliffordchance.com



ALEXANDRA BORRALLO
ASSOCIATE

T +34 91 590 9406
E alexandra.borrallo@cliffordchance.com



FELIPE FONT
ASSOCIATE

T +34 91 590 7567
E felipe.font@cliffordchance.com

SPAIN

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Are “Credit Bids” available?	Yes, for secured lenders.
Is “Cram down” possible?	Yes. In the context of an arrangement with creditors, if certain thresholds are met. In the context of a refinancing agreement, the thresholds that have to be met are those foreseen under Additional Disposition 4 of the Spanish Insolvency Law (arts. 609-617 of the Consolidated Text that has recently entered into force).
Debt/equity swaps possible?	Yes, but it would require consent from shareholders and creditors.
Can creditors influence appointment of insolvency officeholder?	No. The insolvency court appoints the insolvency receiver.
Equitable subordination of shareholder loans?	Creditor rights (deriving from loans or otherwise) held by shareholders with 5% of the share capital, if the company is listed, or 10% of the share capital, if it is not listed, are subordinated. The threshold must be met at the time when the rights are acquired.
Effectiveness of subordination arrangements	Subordination arrangements between the debtor and the creditor are valid and effective in the insolvency proceedings. If these arrangements are made between creditors, then they would be effective inter partes, and would not affect the insolvency proceedings unless the creditor requests to be subordinated.
Share pledges	Pledged shares of an insolvent company are not affected by the insolvency proceedings, and may be sold if appropriate. Pledged shares by an insolvent company are subject to the legal moratorium although they may be sold with the consent of the court and the creditor whose claims are secured by such share pledge. The proceeds will be applied first to repay the correspondent secured debt.
Is debtor-in-possession finance possible?	50% of the new money granted to the debtor within a refinancing agreement will be considered as post-insolvency debt. The remaining 50% will be considered as generally privileged debt. Therefore, it will have priority over general creditors, but it will not affect secured creditors.

SPAIN

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Set-off and netting on insolvency?	<p>A creditor may set-off its mutual claims vis-à-vis the debtor provided that the substantive conditions for the set-off were met prior to the date of the court resolution declaring the insolvency of the company.</p>
Hardening periods	<p>Transactions that are deemed as detrimental to a debtor's interests concluded within two years prior to the declaration of insolvency may be challenged by the Receiver.</p>
Preferences/transactions subject to challenge	<p>Transactions that are detrimental to a debtor's interests may be subject to some challenge. There are certain presumptions of detrimental acts: (i) as non-rebuttable acts, gifts and pre-payment of obligations becoming due and payable after the declaration of insolvency; (ii) as rebuttable presumptions, rights over property that have been created in order to protect existing obligations, or new ones that substitute the former ones. When presumptions do not apply, the Receiver would bear the burden of the proof. Ordinary transactions should not be subject to claw back actions.</p>
Liability of directors	<p>Directors may incur civil liability if: they breach their duty to file for insolvency; their performance contributes to the creation or aggravation of the insolvency; there is gross or wilful misconduct; they do not take the necessary actions to wind-up the company or if they fail to preserve the company's value and that failure results in damage to the company or its creditors.</p> <p>Criminal liability attaches to directors where they have, inter alia: (i) distracted, disguised or voluntarily lost the assets; (ii) taken imprudent actions to delay the declaration of bankruptcy; (iii) disguised the company's financial distress or its insolvency in order to obtain financing; or (iv) made payments or created security interest by fraud in favour of certain of its creditors to the detriment of the others.</p>
Priority of creditors	<ul style="list-style-type: none"> • Creditors benefiting from special privileges, representing attachments on certain assets. In the event of liquidation, they shall be the first to collect payment with the proceeds of the attached assets (the remaining debt would be deemed as ordinary or subordinated, as applicable).

SPAIN

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Priority of creditors (continued)	<ul style="list-style-type: none"> • Creditors benefiting from general privileges, including certain labour and tax claims. For half their amount, and the creditor applying for the corresponding insolvency proceedings, up to 50% of its credit. In the event of liquidation, they shall be the first to collect payment, in the order established under law. • Ordinary creditors (non-secured creditors). This includes most trade creditors, regardless of whether they have their rights recorded in a public deed or not. It is a residual category of debt. • Subordinated creditors, classified as such by virtue of an agreement or pursuant to the law. They do not hold voting rights in an arrangement and have very limited chances of recovery. This category includes, amongst others, specially related parties such as directors, group companies or shareholders holding more than 5% (for listed companies) or 10% (for non-listed companies) of the share capital at the time when the debt was originated. If a non-related creditor becomes a shareholder later (as a result of the enforcement of a pledge or a debt to equity swap), subordination would not apply.
Lender or Borrower friendly?	<p>Borrower friendly. The Consolidated Text of the Spanish insolvency law encourages refinancing agreements, and the continuation of the debtor's business.</p>
Enforcement: Property or shares?	<p>Enforcement of real property is subject to the one-year moratorium mentioned above, if the asset is considered to be "necessary" to the debtor's activity, which could include shares. In this regard, the Consolidated Text of the Spanish Insolvency Law establishes that the shares of a company whose only purpose is to hold an asset and the liabilities for its financing are not "necessary", unless the enforcement entails the termination or modification of the contractual terms of the agreements that allow the insolvent party to carry out its activity.</p>
Enforcement: tax issues? "Loan to own" possible?	<p>"Loan to own" may be possible with lenders with secured claims if the court is satisfied that this solution (rather than the enforcement) will benefit the insolvency proceedings. This would not be possible, however, with unsecured lenders (such lenders cannot even approve a voluntary arrangement by which creditors acquire assets in exchange of their rights).</p>

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Tenants' position on owner enforcement/insolvency proceedings	Tenant's position is protected by law although the owner's insolvency or enforcement may be used for renegotiating the rents.
Forfeiture/termination right against insolvent tenant?	Tenant insolvency cannot be an event of default. If there were a default by the insolvent tenant, the agreement may be terminated. However, the insolvency receivers may cure the default by means of payment of the outstanding debts. Please note that the Consolidated Text of the Spanish Insolvency Law also provides for the possibility for the receiver with the ability to request the termination of the agreement based on the "best interest" of the estate.
Officeholder's liability i.e. if the Lender goes into possession what liabilities if any would it have?	Officeholders may be liable to the insolvent company and to the creditors for the damages caused by their acts or omissions in breach of the law or against their duties. However, such liability is rarely pursued.
Property taxes/taxes payable on enforcement	<p>Mortgage enforcement: VAT or Transfer Tax would be payable on the transfer resulting from the enforcement, depending on the nature of the transaction. General VAT rate is currently 21%. Reduced tax rate applies on housing premises (10% and 4%). VAT is payable by the acquirer, being deductible, under certain circumstances, against its output VAT. Transfer Tax rate ranges between 6% and 11%. Transfer Tax is not refundable, so it should be considered as a final transaction cost. Stamp Duty (0.5% to 3%) may also be levied on transfers where VAT applies. Other local property taxes may also apply.</p> <p>Pledge of shares enforcement: VAT, Transfer Tax and/or Stamp Duty may be payable in certain circumstances on the enforcement of shares when the shares transferred represent all or part of the capital stock or equity of companies, funds, associations and other entities. When at least 50% of their assets consist of real estate located in Spain, or whose assets include securities that allow it to exercise control in another entity whose assets are made up of properties of which at least 50% are located in Spain, provided that as the result of the said transfer or acquisition, the acquirer obtains full title to such capital or is at least is able to exercise control over such entities, or once such control is obtained, the acquirer increases its share in them.</p>

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Impact of Covid-19 on the above described insolvency and restructuring processes

Initially, Royal Decree-Law 8/2020, of 17 March 2020, on urgent extraordinary measures to address the economic and social impact of Covid-19 (“RDL 8/2020”) allowed the debtor to defer its duty to apply for insolvency while the State of Emergency was in force and, as a consequence of this rule, provided protection for the debtor against an application for insolvency filed by the its creditors, until two months after the State of Emergency ends.

Royal Decree-Law 16/2020, of 28 April 2020, on procedural and organisational measures to address Covid-19 as it affects Justice Administration (“RDL 16/2020”), which entered into force on 30 April 2020, introduced a series of measures relating to insolvency to maintain economic activity whilst also attempt to expedite the process of insolvency proceedings already underway.

Measures to avoid insolvencies:

- RDL 16/2020 put in place a series of measures designed to avoid insolvencies. To do so, it necessarily relaxed the directors’ obligation to apply for insolvency, extending the term available to them until 31 December 2020, facilitating access to financing granted by connected parties and facilitating compliance with any refinancing agreements in force.
- Debtors facing insolvency would not be required to file for insolvency until 31 December 2020, regardless of whether or not they had filed the notification of pre-insolvency at court established under Article 5 bis of the Spanish Insolvency Act (Ley Concursal) (the “5 bis Notification”), now foreseen under article 583 of the Consolidated Text of the Spanish Insolvency Act).
- Any applications for insolvency filed by creditors during the State of Emergency (which ended on 21 June 2020) would not be given leave to proceed until after that date either. In the meantime, those applications for insolvency filed by the debtor itself would be given preference, even if dated later.
- If the 5 bis Notification was filed prior to 30 September 2020, the general regime of the Spanish Insolvency Act would apply, meaning that the debtor would have to file for insolvency prior to 30 January 2021, if it has not succeeded in remedying its insolvency situation.

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Impact of Covid-19 on the above described insolvency and restructuring processes (continued)

The treatment of financing granted by connected persons:

- Financing granted by a connected party within a period of two years following the declaration of the State of Emergency would be considered as an ordinary loan.
- It was not clear from the wording of RDL 16/2020 whether such regulation sought to avoid the subordination of these claims, or alternatively, to classify them in any case as ordinary claims. The main uncertainty was whether the credit granted by a connected person which included a guarantee over property (and which would be cancelled pursuant to Article 97.2 of the Insolvency Act) would be deemed a preferential claim. The wording of Article 12.2 of RDL 16/2020 seemed to indicate that the system for the cancellation of guarantees remained in force.

Refinancing agreements:

- RDL 16/2020 introduced certain measures addressed to those debtors that have already entered into a refinancing agreement.
- During the one-year period following the declaration of the State of Emergency (i.e. until 14 March 2021), these debtors could request the homologation (i.e. court approval) of a new refinancing arrangement or file the 5 bis Notification, even if a year had not elapsed since the previous homologation request.
- During the six-month period following the declaration of the State of Emergency (i.e. until 14 September 2020), the judge would not give leave to proceed to any requests submitted by creditors for refinancing agreements to be declared in default, but rather would merely notify such requests to the debtor. The debtor would be granted a period of one month (i.e. until 14 October 2020) to file the 5 bis Notification or to reach a new agreement, even if a year had not elapsed since the previous request for homologation. If the debtor failed to reach an agreement within the three months after filing its 5 bis Notification at court, the judge would give leave to proceed to the creditors' requests for the refinancing agreements to be declared in default.

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Impact of Covid-19 on the above described insolvency and restructuring processes (continued)

Measures related to ongoing insolvency proceedings:

- Amendment of the insolvency arrangement and out-of-court payment agreements.
- Deferral of the duty to apply for the commencement of the liquidation stage.
- Consideration of claims against the insolvency estate arising from any type of financing or guarantee provided to the insolvent party and included in the approved or amended arrangement.
- Preference for the extrajudicial sale of assets, except for sales of production units.
- Expedited approval of liquidation plans.

More recently, **Law 3/2020** entered into force, which includes the following measures:

- For insolvency proceedings that are declared prior to or on 14 March 2022, any new money injected by a specially related party to the debtor by means of a loan or credit facility, or any debt paid by a specially related party on behalf of the debtor will be considered as an ordinary credit, or even as a specially privileged credit, if an in rem guarantee were to be granted.
- In case of breach of a creditors' arrangement that is approved or modified within the next two years as from 14 March 2020, any loan or credit granted to the debtor by a specially related party or a third party will be considered as post insolvency debt, as long as the arrangement included the identity of the obliged party and the maximum sum to be financed or to be guaranteed.

Finally, Royal Decree **Law 34/2020** has entered into force, which includes the following measures:

- The obligation to file for insolvency has been extended until 14 March 2021.
- No applications for compulsory insolvency proceedings will be admitted until after 14 March 2021. Any application for the voluntary insolvency proceeding that is filed prior to 14 March 2021 will be processed with priority, even if filed after than the applications for compulsory proceedings.

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Impact of Covid-19 on the above described insolvency and restructuring processes (continued)

- Any request to declare the breach of a creditors' arrangement that is filed prior to or on 31 October 2020 will not be admitted until 31 January 2021. During such period, the debtor will be able to modify the arrangement proposal or an out of court payment agreement.
- Any request to declare the breach of a creditors' arrangement that had been filed between 31 October and 19 November 2020 and that had already been admitted by the court will stay on hold for a period of three months. If during those three months the debtor filed a proposal to modify the creditors' arrangement or the out of court payment proposal, it will be processed by the court and the application to declare the breach of the proposal will be concluded.
- Any request to declare the breach of a creditors' arrangement that is filed between 31 October 2020 and 31 January 2021 will be notified to the debtor and will not be admitted by the court until 30 April 2021. The debtor will be granted with such term to file a modification of its arrangement proposal or its out of court payment agreement.
- Any debtor who had already homologated a refinancing agreement will be able to modify such agreement or sign a new one. Any request to declare the breach of a homologated refinancing agreement filed until 31 October 2020 will not be processed until 30 November 2020. During which, the debtor will have to inform the court that it is going to/has already started new negotiations with its creditors. Requests to declare the breach of a homologated refinancing agreement filed between 31 October 2020 and 31 January 2021 will be served to the debtor but will not be admitted by the court until 28 February 2021. If, until 30 April 2021, the debtor does not inform the court that it has reached a new agreement, the court will continue processing the requests to declare the breach of the homologated agreement filed by the creditors.

Finally, **Royal Decree-Law 5/2021**, dated 12 March 2021, has extended the aforementioned deadlines until 31 December 2021.



Impact of Covid-19 on the above described insolvency and restructuring processes (continued)

- The obligation to file for insolvency has been suspended until 31 December 2021.
- No applications for compulsory insolvency proceedings will be admitted until after 31 December 2021. Any application for the voluntary insolvency proceeding filed prior to 31 December 2021 will be processed with priority, even if filed after than the applications for compulsory proceedings.
- Creditors' arrangements or out of court payment proposals may be negotiated until 31 December 2021. Modifications to such proposals may be filed until 31 December 2021.
- Any request to declare the breach of a creditors' arrangement filed between 31 October and 31 January 2021 will not be admitted until 30 April 2021. Until such date, the debtor will be able to file a modification to the arrangement proposal or out of court payment proposal.
- Requests seeking to declare the breach of such proposals filed between 31 January 2021 and 13 March 2021, and that had already been admitted by the court will stay on hold until 31 December 2021. If during the three months prior to such deadline the debtor files a proposal to modify the creditors' arrangement or the out of court payment proposal, it will be processed by the court and the application to declare the breach of the proposal will be concluded.
- Any request to declare the breach of a creditors' arrangement filed between 31 January 2021 and 30 September 2021 will be notified to the debtor and will not be admitted by the court until 31 December 2021. The debtor will be granted with such term to file a modification of its arrangement proposal or its out of court payment agreement.
- Any debtor who had already homologated a refinancing agreement will be able to modify such agreement or sign a new one until 31 December 2021. Any request to declare the breach of a homologated refinancing agreement filed between 31 October 2020 and 31 January 2021 will be notified to the debtor but will not be processed until 28 February 2021. Requests to declare the breach of a homologated refinancing agreement filed between 31 January 2021 and 13 March 2021 that had been admitted will not be processed. Requests to declare the breach of a homologated refinancing agreement filed between 31 January and 30 September 2021 will be served to the debtor but will not be processed until 31 October 2021. During the referred suspension of the terms, the debtor will have to inform the court that it is going to/has already started new negotiations with its creditors. If no agreement is reached, the said suspension will be lifted.

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Any imminent reforms which could impact the position outlined above

Further to the measures that have been implemented as a consequence of the Covid-19 crisis, on 7 May 2020 the Spanish Official Gazette published Royal Decree-Law 1/2020, of 5 May 2020, which approves the consolidated text of the Spanish Insolvency Act (the “Consolidated Insolvency Act”).

The approval of the Consolidated Insolvency Act is a first step towards implementing European insolvency legislation, in particular Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on restructuring and insolvency, which must take place before 17 July 2021.

There are no major changes, but the following may be highlighted:

- Generally speaking interest stops accruing once insolvency proceedings are opened, but as an exception to this general rule secured ordinary interest may accrue up to the value of the security.
- The Consolidated Insolvency Act expressly indicates that for the priority to apply, the security must have been created prior to the insolvency declaration. Specifically:
 - In respect of pledges: the pledge must be granted in a document with an effective date prior to the date of insolvency declaration; and
 - In respect of pledges over future claims derived from the termination of concession contracts: the pledge must have been constituted, authorized by the contracting authority and published in the Spanish Official Gazette before the date of the insolvency declaration.
- It is confirmed that the specially privileged claim limitation to the fair value of the security asset applies solely for the purposes of the creditors’ and refinancing agreements, but not with regards to the right of recovery with the proceeds obtained from the sale of the secured asset.
- It expressly confirms the subordination of profit participation loans.

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