



Debt Restructurings in CEE
The Key Issues
September 2012

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



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Restructuring/Insolvency: Europe-wide,
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Opportunities and Challenges

The global financial crisis continues to affect CEE. Although there are some signs of recovery many borrowers in the region remain over-leveraged and restructurings are likely to remain a feature of the financial landscape for the foreseeable future.

The financial crisis has led to a reassessment of risk appetite amongst investors and a reduction in the use of complex structures. The continued uncertainty around the Eurozone is also playing its part, with new money coming at a premium in some sectors. As a consequence, many borrowers and issuers in CEE are still finding it difficult to repay or refinance their existing indebtedness.

Although some restructurings have now been completed on a consensual basis, others remain in progress and the legal regimes for insolvency and restructuring in CEE remain in many respects untested. In some jurisdictions the legal framework changes on a regular basis and new challenges arise.

Restructuring processes continue to break new ground, however. In particular, the last 12 to 18 months have seen a continued increase in the trend amongst European (including CEE) borrowers to use English law schemes of arrangement to restructure their indebtedness, without the consent of all of their creditors. Clifford Chance has been at the forefront of this development; recent examples include Rodenstock (Germany), Bulgaria Telecommunications/Vivacom, Tele Columbus (Germany) and SEAT (Italy).

Clifford Chance has produced this updated comparative overview of the key issues encountered in CEE countries: the Czech Republic, Slovakia, Poland, Romania, Ukraine and Russia.

The overview also considers some restructuring techniques available in other jurisdictions (such as the US and the UK) and addresses the extent to which they could be applied in CEE.

We hope you find this overview useful. Our specialists will be happy to elaborate on any of the issues covered in this overview and answer any queries you may have. Please note that this overview is provided for information purposes only and should not be treated as legal advice.

Clifford Chance offices in Europe



Glossary

■ **Balance sheet test**

Measures a debtor's solvency by comparing the total assets of the company to its total liabilities. A balance sheet test applies in some but not all jurisdictions.

■ **Cash flow test**

An insolvency test based on the inability of a company to pay its debts as they fall due. Almost all jurisdictions have some form of cash flow as a trigger for insolvency.

■ **Cram Down**

Any procedure through which a debtor and/or the majority of its creditors (or a class of creditors) can drive through the acceptance of a composition plan (for example by way of a scheme of arrangement) despite the objections of dissenting minority creditors. Cram down procedures usually, if not always, require certain tests to be met.

■ **Credit bid**

A concept that allows holders of debt claims against a company to use those claims as acquisition currency in an auction for the shares in or assets of that company.

■ **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, stemming from the US Chapter 11 bankruptcy process. Equivalent financing techniques are available in some other jurisdictions. DIP financing usually takes priority over existing debt (including secured debt) and other claims.

■ **Equitable subordination**

A concept found in some jurisdictions (such as Germany) whereby shareholder loans to a company are at risk of being re-characterised as subordinated loans or quasi-equity on an insolvency of the company.

■ **Hardening period**

Transactions concluded within a certain time period (the hardening period) preceding the onset of insolvency (such as transactions at an undervalue and preferential transactions) may, in certain circumstances, be liable to be set aside by an insolvency officeholder after the onset of insolvency. In some jurisdictions, longer hardening periods apply to transactions concluded by the insolvent entity with affiliates or other connected parties.

■ **Moratorium**

A prohibition or restriction on enforcement of claims or security imposed by the court, usually following the filing of an insolvency petition.

■ **Preference**

A company gives a preference to one of its creditors if the company does anything which puts that creditor into a better position than it would have been in otherwise in the event of insolvency. Preferences and similar transactions are often subject to challenge during applicable hardening periods.

■ **Pre-pack**

Sale of a distressed business to a "newco", often set up by the existing shareholders or lenders, on a pre-agreed basis and free of residual liabilities which are left behind in the old structure. Pre-packs have been used successfully particularly in the UK and are typically effected through an administration. The rationale for pre-packs is that they preserve goodwill and avoid the consequences of a lengthy insolvency process.

■ **Transaction at undervalue**

A company enters into a transaction at an undervalue with a person if the company makes a gift to that person or otherwise enters into a transaction with that person for no consideration or for consideration, the value of which is significantly less than the value of the consideration provided by the company. As with preferences, transactions at an undervalue and similar transactions are often subject to challenge during applicable hardening periods.



Czech Republic



Insolvency Tests	Cash flow test and balance sheet test
Type of insolvency proceedings ²	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 recapitalisation, based on a reorganisation plan approved by creditors and the court.
When does a moratorium apply?	An automatic stay commences as of the publication of the insolvency petition in the on-line insolvency register. Subject to approval of a majority of the creditors, a debtor may also ask for a court-ordered moratorium that grants further protective measures within 7 days of the filing of its own insolvency petition or within 15 days in case of an insolvency petition filed by a creditor. The debtor may also do so before the opening of the insolvency proceedings
Directors' duties to file ³	Directors have a duty to file an insolvency petition without undue delay after they determine that the company is insolvent (or should have determined such insolvency had they exercised due care).
Average length of proceedings	One month (or up to 15 days in the case of the debtor's petition) for courts to determine insolvency. Up to 3 months for courts to decide on liquidation (bankruptcy) or reorganisation options. However, since a new insolvency law came into effect as of 1 January 2008, the average overall length of proceedings remains unclear. The proceedings may indeed become longer following an amendment effective as of 1 April 2011 since not only the insolvency officeholder and the debtor, but also individual creditors have the right to challenge another creditor's claim.
Are "Pre-packed" restructuring options available? ⁴	In principle, yes, where agreed upon by all creditor classes, but not yet tested in practice.
Are "Credit Bids" available? ⁵	Not available.
Is "Cram down" possible? ⁶	Yes, in reorganisation. The court may approve a plan which is not agreed by all creditors' classes but only if at least one affected class distinct from the shareholders votes in favour of the plan and the plan is fair. Such fairness is presumed if the plan (i) leaves the security interests of secured creditors substantially unaltered and any reduction of the net present value of their claims is not below the value of their collateral; and (ii) adheres to the "absolute priority rule" with respect to other classes of creditors.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	Yes, the creditors may remove the insolvency officeholder appointed by the court and appoint a new one at the creditors' meeting immediately following a court review of registered claims.

1. Cash flow test, balance sheet test, others.

2. What proceedings are available, their objective, how initiated.

3. Directors have a duty to file on or in expectation of, insolvency or other financial difficulties, mandatory periods within which to apply.

4. Sale of a business to a "newco" often set up by the existing shareholders on an agreed basis often with an insolvency officeholder - ie without going through a lengthy insolvency or enforcement process.

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

6. 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.

Czech Republic continued

Equitable subordination of shareholder loans?	Not applicable.
Effectiveness of subordination arrangements	Yes, subordinated claims will be paid subject to the terms of contractual subordination.
Share pledges ⁷	Shares are generally sold “subject to debt” unless a “debt free” basis is agreed. Non-cash consideration is generally not possible on enforcement.
Is DIP finance possible? ⁸	Yes, DIP finance arranged in liquidation (bankruptcy) will have priority over general creditors but not secured creditors. In a reorganisation, secured creditors may, under certain circumstances, have to suffer a dilution by DIP finance.
Set-off and netting on insolvency?	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 determination of the relevant insolvency proceedings. Ban on set-off after a court order declaring a moratorium and after the filing of an application for reorganisation (the insolvency court is entitled to grant an exemption). In specific cases and for specified periods of time and upon the application by a party in interest, the insolvency court has the power to ban set-off in other procedural phases (but only where it is not contrary to the common interest of creditors). Insolvency proceedings do not prejudice close-out netting.
Security hardening periods/other transactions subject to challenge	No specific security hardening periods, but transactions at undervalue and preferential transactions are subject to challenge within 1 year (or 3 years if made with connected parties) and fraudulent transactions are subject to challenge within 5 years.
Preferences/transactions at undervalue	Yes, preferential transactions or transactions at undervalue are subject to challenge (within the periods mentioned above) if the debtor was either insolvent or became insolvent as a result of such transactions.
Liability of directors	Directors who were in breach of the duty to file an insolvency petition will be liable to creditors for damages equal to the difference between the proven claims of creditors and the amounts recovered in an insolvency.
Priority 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.
Lender or Borrower friendly	Friendlier to creditors than previous insolvency legislation effective until 31 December 2007. However aims to facilitate non-liquidation resolution of insolvency at the same time.

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7. Can shares be sold “subject to debt” or only “debt free” and is non-cash consideration possible on enforcement? Can shares be sold by private sale or only through the auction process?

8. Debtor-In-Possession financing is arranged by a company while under the US Chapter 11 bankruptcy 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.

Poland



Insolvency Tests	Cash flow test and balance sheet test apply to bankruptcy proceedings. “Threat of insolvency” test applies to recovery (rehabilitation) proceedings.
Type of insolvency proceedings	Bankruptcy leading to liquidation, bankruptcy leading to composition with creditors and recovery (rehabilitation) proceedings.
When does a moratorium apply?	Applies to each type of proceedings (but in a bankruptcy leading to composition, enforcement actions by secured creditors relating to their collateral is optional and may be stayed only for 3 months and in recovery proceedings, the stay of actions is subject to certain exceptions).
Directors’ duties to file	Yes, not later than within two weeks of the date the bankruptcy tests are objectively met (the awareness of directors test does not apply).
Average length of proceedings	2-3 months to put a company into bankruptcy proceedings, and 12-36 months to complete the bankruptcy proceedings; recovery proceedings must be preceded with a 2-weeks’ waiting period (court verification) and then the debtor has up to 4 months to negotiate with creditors a composition and submit it to the creditors’ vote.
Are “Pre-packed” restructuring options available?	Yes, but in practice quite difficult to accomplish. Enforcement of a share pledge over the debtor’s shares by “seizure” offers an interesting alternative to a classic pre-pack.
Are “Credit Bids” available?	Not available in liquidation bankruptcy proceedings. Possible for compositions in bankruptcy proceedings comprising the sale of assets or the business to a creditor.
Is “Cram down” possible?	<p>Yes.</p> <p>The judge-commissioner decides whether the creditors will vote in a single group (in which case the proposed composition is concluded if accepted by the majority of creditors entitled to vote who hold in aggregate at least 2/3 of the total sum of claims authorising to vote), or whether they will be split into separate groups based on the criteria of “common economic interests”, in which case the composition is concluded if accepted in each group by a majority of creditors in the group whose claims in aggregate amount to at least two-thirds of the total amount of claims authorising to vote. But even if there is no required majority in one or more of the groups of creditors, the composition will still be deemed concluded if (1) a majority of creditors from the other groups holding in aggregate at least 2/3 of the total sum of claims authorising to vote have accepted the composition, and (2) the creditors from the dissenting group or groups would be satisfied through the composition to an extent which is not less favourable than in the case of liquidation.</p> <p>The composition, if accepted, is subject to court verification and approval. The court will refuse to grant its approval if the composition is contrary to law or it is obvious that it will not be adhered to. In addition, the court may (at its discretion) apply a “fairness” test and refuse to grant the approval if the composition is manifestly detrimental to creditors who voted against it and filed pleas.</p>
Debt/equity swaps possible?	Yes.

Poland continued

Can creditors influence appointment of insolvency officeholder?	The officeholder is appointed by the court as part of the court's decision on the declaration of bankruptcy. If the court has convened a preliminary meeting of creditors such meeting may issue an opinion on the election of the trustee but cannot directly influence the trustee's identity. The creditors' committee or a member of the creditors' committee may issue a recommendation (not binding on the judge) that the trustee should be removed.
Equitable subordination of shareholder loans?	Yes, with respect to loans under loan agreements concluded within 2 years prior to the declaration of bankruptcy.
Effectiveness of subordination arrangements	Not binding on the trustee, but still effective as between the parties (other than the bankrupt company).
Share pledges	<p>In relation to pledged shares of subsidiaries which are part of the bankrupt's estate the shares will be sold in a public auction or, subject to the judge-commissioner's approval, in an unrestricted sale. The proceeds will be applied first against the costs of sale and then in satisfaction of secured debt.</p> <p>In relation to a registered pledge or a financial pledge with a seizure option, the seizure option survives a declaration of bankruptcy and can be exercised thereafter. The court may set a deadline for the creditor to exercise the seizure option failing which it will expire.</p> <p>A share pledge survives the composition and claims secured by the pledge are not affected by it, to the extent the value of the claim is covered by the value of the pledged shares, unless the secured creditor expressly consents to subjecting its claim to the composition.</p> <p>In relation to pledged shares held in the bankrupt entity, the pledgee, depending on the type of the pledge and contractual options, may: (i) seize the shares; (ii) sell the shares in a private sale; and (iii) initiate court enforcement proceedings having first obtained a judgment or submission to execution.</p>
Is DIP finance possible?	Yes but not common. In composition proceedings more favourable conditions may be offered to creditors who provide finance at that time.
Set-off and netting on insolvency?	Yes. Certain limitations apply to set-off in bankruptcy leading to composition with creditors. Netting of "term financial operations" and collateral relating to term financial operations is recognized.
Hardening periods	<ul style="list-style-type: none">■ Payment of unmatured debt and granting of security securing an unmatured debt within two months before the date of the bankruptcy filing;■ Disposals at undervalue made within the year before the date of the bankruptcy filing (this applies also to a court settlement, a claim acknowledgement and waiver of a claim);■ Transactions with related parties (relatives or dominant companies), even if made at arms' length and on fair market terms, within 6 months before the date of the bankruptcy filing;■ Granting of security for third party's debts within 1 year before the date of the bankruptcy filing; and■ Transactions having a detrimental effect on creditors and resulting in insolvency, within five years before the date of declaration of bankruptcy.

Preferences/transactions subject to challenge

Transactions subject to challenge are: gratuitous transactions, transactions at undervalue, transactions with related parties (relatives or affiliated companies) even if made at arms' length and on fair market terms and transactions having a detrimental effect on creditors. In addition, it is prohibited to pay or grant security in respect of selected debts if there is a threat of insolvency and not all creditors can be satisfied. Please refer to the section above for the applicable hardening periods.

Liability of directors

Civil and criminal liability for failure to apply for bankruptcy within two weeks from the date on which the bankruptcy test was met.

Priority of creditors

Statutory priority of selected unsecured claims: (1) costs of proceedings; claims originated by the acts of the insolvency officer; claims under executory contracts assumed by the insolvency officer; (2) pre-petition social insurance contribution and employees' claims (for 2 years preceding bankruptcy); (3) tax liabilities and other social insurance contribution; (4) other claims that do not fall into the fifth category, together with interest for the year preceding the declaration of bankruptcy; and (5) interest that does not fall into the higher categories (to be paid out in the order in which the principal sums should be satisfied). Secured claims to be satisfied out of the proceeds of sale of the collateral, after costs of sale and certain other items.

Contractual priority of claims is not recognized by the trustee but is still effective as between the parties (other than the bankrupt entity).

Lender or Borrower friendly?

Creditor-friendly for secured creditors but otherwise debtor-friendly (especially in proceedings leading to composition).

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Romania



Insolvency Tests ¹	Cash flow test based on availability of sufficient monetary 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 imminent (where it is demonstrated that upon maturity, the debtor will not be able to pay its debts out of its then available monetary funds).
Type of insolvency proceedings ²	<p>General insolvency proceedings whereby, after an observation period, the company enters into (i) judicial reorganisation and/or (ii) liquidation (with a view to the winding-up of the insolvent debtor).</p> <p>Simplified insolvency proceedings whereby, upon opening of the proceedings or after an observation period, the company enters directly into liquidation.</p>
When does a moratorium apply?	Following the opening of the proceedings, all judicial and extra-judicial actions (including enforcement of security) against the debtor or its assets are suspended.
Directors' duties to file ³	<p>The insolvent debtor is compelled by law to file a petition for insolvency within 30 days from the date it becomes aware that it is or will become insolvent. A debtor whose insolvency is imminent may file a petition for the opening of insolvency proceedings.</p> <p>The debtor may disregard this rule if: (i) he is engaged in out-of-court negotiations to restructure its debts; or (ii) insolvency occurs during negotiations conducted in the context of an ad-hoc mandate or judicial moratorium (concordat preventiv) procedure, provided that there are strong indications that the results of the negotiations could be capitalized in a short period of time by the conclusion of an agreement out-of-court.</p> <p>Under these two circumstances the debtor acting in good faith should file for insolvency within 5 days from the moment negotiations fail.</p>
Average length of proceedings	Up to 45 days for the opening of proceedings (provided that the petition for opening the proceedings is not challenged), 1-2 years to complete straightforward proceedings. Complex proceedings can take much longer.
Are "Pre-packed" restructuring options available? ⁴	<p>There are no legal obstacles for out of court restructuring if practical obstacles can be overcome.</p> <p>Judicial reorganization is possible but the mechanism can be quite inflexible and the actions of the judicial administrator may be open to challenge from disgruntled creditors.</p>
Are "Credit Bids" available? ⁵	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? ⁶	<p>Except where the law requires a special majority, creditors' meetings can be held by creditors holding at least 30% of the total value of receivables and decisions can be made by majority vote (in terms of value of receivables represented by creditors in the meeting).</p> <p>Any decision made in the creditors' meeting which is non-compliant with the relevant legal requirements may be invalidated by the court. Moreover, a reorganisation plan needs to be confirmed by the court and for this purpose it should meet certain tests (e.g. no classes of dissenting claims shall receive less under the plan than under bankruptcy). Categories of claims that are not disfavoured by the reorganisation plan are assumed to vote in favour of such plan.</p>

1. Cash flow test, balance sheet test, others.

2. What proceedings are available, their objective, how initiated.

3. Directors have a duty to file on or in expectation of, insolvency or other financial difficulties, mandatory periods within which to apply.

4. Sale of a business to a "newco" often set up by the existing shareholders on an agreed basis often with an insolvency officeholder - ie without going through a lengthy insolvency or enforcement process.

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

6. 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.

Debt/equity swaps possible?	Yes, in relation to all debt except debt owed to public bodies. There are, however, restrictions on Romanian financial institutions holding equity in a non-financial business which can affect the feasibility of a debt to equity swap by a financial institution. Alternative structures including fronting structures and convertible bonds are being investigated on the market.
Can creditors influence appointment of insolvency officeholder?	<p>The creditors' meeting can approve the appointment of a judicial administrator or liquidator, as the case may be, by a vote of creditors holding at least 50% of the value of the claims. A creditor holding at least 50% of the total value of the claims may appoint a judicial administrator or a liquidator without consulting the creditors' meeting.</p> <p>After its appointment, the judicial administrator or liquidator can be replaced by the judge ex officio or upon the request of the creditors' committee.</p>
Equitable subordination of shareholder loans?	Loans granted by shareholders holding at least 10% of the share capital or the voting rights in a shareholders meeting respectively are statutorily subordinated and rank last in the creditors' 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 ⁷	Mortgaged shares in an 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 mortgage agreement.
Is DIP finance possible? ⁸	<p>DIP finance is possible, but is rarely available in practice. Normally, claims deriving from DIP financing granted by credit institutions should rank after administrative expenses and salary claims, but before budgetary 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> <p>Secured claims related to new monies granted during the insolvency procedure, as part of the implementation of a reorganisation shall be paid with priority against the secured claims born before the proceedings have been opened.</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). However, the minimum claim (currently RON 45,000) on the basis of which a creditor could request the opening of insolvency proceedings should be the net value resulting from offsetting the creditor's and the debtor's claims against each other.</p> <p>Netting agreements are valid and enforceable against insolvent counterparties in relation to payment obligations or other obligations resulting from financial derivative transactions save for cases where intention to defraud the debtor is evidenced.</p>

7. Can shares be sold "subject to debt" or only "debt free" and is non-cash consideration possible on enforcement? Can shares be sold by private sale or only through the auction process?

8. Debtor-In-Possession financing is arranged by a company while under the US Chapter 11 bankruptcy 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.

Romania continued

Security hardening periods/other transactions subject to challenge	<p>The insolvency official (or the creditors' committee where 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; donations and transactions at an undervalue or intended to evade specific assets from other creditors or to harm the rights of other creditors, executed three years prior to the opening of the insolvency proceedings; acts granting or perfecting a security interest for an unsecured receivable within 120 days prior to the opening of the insolvency proceedings; debts maturing after the date of opening of insolvency proceedings but prepaid within 120 days prior to the opening of proceedings.</p> <p>However, certain suspect acts could not be annulled provided that: (a) they are entered into in good faith following an agreement with the creditors; (b) the agreement with the creditors is concluded as a result of out of court negotiations for the restructuring of the debtor's debts; and (c) the agreement should be of nature to lead, in a reasonable manner, to the financial reorganization of the debtor and should not have as purpose to discriminate other creditors.</p>
Preferences/transactions subject to challenges	<p>Preferences/transactions at an undervalue executed or entered into within a period of up to 3 years prior to the opening of insolvency proceedings may be challenged by the insolvency official (different periods apply to some specific actions, e.g. debt prepayments made within the 120 days prior to the opening of proceedings, if the original debt was to mature after the date of the opening of insolvency proceedings).</p>
Liability of directors	<p>Civil liability. Criminal liability only when the directors' acts meet the constitutive elements of a crime.</p>
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 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) employment claims; c) post-commencement financing costs; d) debts owed to the state (including taxes not related to the insolvency proceedings); e) (where applicable) amounts due pursuant to maintenance obligations, child support or subsistence receivables; f) (where applicable) certain amounts for the maintenance of the debtor and his family, when the debtor is an individual; g) claims by certain types of creditors such as banks, landlords, suppliers of goods and services debts; h) other general unsecured debts; (i) subordinated debts.</p>
Lender or Borrower friendly?	<p>Generally, creditor-friendly (but not necessarily senior creditor friendly). In practice, however, the bureaucratic procedures can work in favour of the debtor.</p>

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Russia



Insolvency Tests	A creditor who intends to initiate insolvency proceedings must have an unpaid monetary claim, under which: (i) the unpaid debt is equal to or exceeds 100,000 roubles; (ii) is overdue by at least 3 months; and (iii) is recognised by the court.
Type of insolvency proceedings	<p>Supervision (an assessment of whether the company should go into insolvency proceedings or be subject to financial recovery) initiated by the company itself or its creditors (including state authorities) by filing a bankruptcy petition to court. Financial rehabilitation (attempt to restore the solvency of a company) instigated by the court on the petition of the creditors or the company or at the sole decision of the court.</p> <p>External administration (attempt to restore the solvency of a company and repay certain debts) instigated by the court on the petition of the creditors or at the sole decision of the court. Winding-up/liquidation (liquidation of the company, repaying its debts) initiated by the creditors or the court. Voluntary arrangement - petition by either the insolvent company or its creditors at any stage of bankruptcy to enter into an amicable settlement by way of a voluntary arrangement. If approved by a majority of registered creditors and received the unanimous consent of any registered secured creditors, it terminates the relevant stage of bankruptcy proceedings and is compulsory for all creditors that signed an amicable settlement agreement.</p>
When does a moratorium apply?	At the stage of external administration, but certain restrictions on actions of a company are applied at earlier stages (for example payment of dividends, set-off, etc.).
Directors' duties to file	<p>The CEO of the insolvent company must petition the court for bankruptcy within one month of the following becoming evident or occurring:</p> <ul style="list-style-type: none"> (i) the satisfaction of claims of one or more creditors will lead to inability by the company to perform its payment obligations (including mandatory payments) to all creditors; (ii) the shareholders or those authorised by the shareholders decide to file such a petition; (iii) enforcement of claims against the company will make it more difficult or impossible for it to continue operations; or (iv) if the company ceases to pay any part of its debts as they fall due by virtue of the insufficiency of funds, (v) the amount of debtor's debts exceeds the value of its assets; or (vi) in the course of a solvent liquidation of the company, either of the tests referred to in (iv) and/or (v) is met (the bankruptcy petition must be filed with a court within 10 days of any of such tests being met).
Average length of proceedings	1-8 months for putting the company into insolvency proceedings (from filing a bankruptcy petition till the end of supervision), and 6-36 months (from the end of supervision to the end of liquidation) to complete the insolvency proceedings and liquidate the company although in practice may be considerably longer.
Are "Pre-packed" restructuring options available?	There is no equivalent concept in Russia. Sale of company's assets prior to instigation of insolvency proceedings may be challenged as a "suspicious" or "preferential" transaction. See below for details.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Generally, certain transactions of the company, actions of a court-appointed administrator, financial rehabilitation plan, external administration plan and voluntary arrangement are subject to creditors' approval. The decision of the majority creditors (generally - majority present at the meeting and in specific cases such as initiation of financial rehabilitation or external administration, approval of external administration plan and voluntary arrangement - majority by value) will be binding on the minority creditors. The company cannot influence any such decision.

Russia continued

Debt/equity swaps possible?	Latest amendments to companies legislation allow general debt to equity swaps outside bankruptcy by way of private placement upon the shareholders' approval. Such arrangement prior to instigation of insolvency proceedings may be challenged. Further amendments to legislation are being considered to permit debt/equity swaps during financial rehabilitation.
Can creditors influence appointment of insolvency officeholder?	Administrator is appointed by the court from the nominees suggested by a person filing for insolvency or at the creditors' meeting as part of its decision to commence each stage of the insolvency proceedings. Administrator is a member of a self-regulating organisation and its rights/appointment/actions are heavily regulated by Russian law. Removal of the administrator is time consuming and the proceedings are not suspended during the removal process.
Equitable subordination of shareholder loans?	Position of shareholders as creditors under loans is generally the same as any other third party creditor i.e. their claims rank together with other creditors' claims.
Effectiveness of subordination arrangements	Not effective, however may potentially work as part of financial rehabilitation of a credit organisation.
Share pledges	Shares of an insolvent company can be sold at any time. Shares pledged by an insolvent company can be sold at any time (other than at the stage of supervision) with a consent of the court and creditor whose claims are secured by such share pledge only. Any sale must be carried out via public auction under supervision of the court. Sale proceeds are used to discharge such secured creditor's claim and claims of some other creditors. Security falls away after such sale.
Is DIP finance possible?	<p>Not possible. Prior to insolvency it is possible to have bankruptcy prevention whereby the shareholders of an insolvent company inject funds into it. Also it is possible to re-organise the company's affairs during financial rehabilitation but this does not put the creditors of an insolvent company into a privileged position.</p> <p>Financing of an insolvent company is generally possible at early stages of insolvency subject to consent of the court-appointed administrator or creditors' committee (depending on the stage of insolvency, type of transaction and the amount). Creditors financing at early stages of insolvency (unless they are secured creditors) will not get any priority.</p>
Set-off and netting on insolvency?	Set-off is not possible if leads to preferential satisfaction. In practice this will be the case in almost any situation. According to recent amendments, a liquidation (close-out) netting is now acknowledged in insolvency subject to certain restrictions and rules for calculation close-out amounts. Set-off of creditors' claims on close-out amounts is prohibited and is subject to satisfaction along with other third priority creditors' claims.
Security hardening periods/other transactions subject to challenge	The court can declare void following a petition by the court appointed administrator (at its own discretion or when instructed by a creditors' meeting or committee): (i) suspicious transactions (i.e. "undervalue" transactions entered into or performed in the 1 year period prior to commencement of the insolvency proceedings or anytime thereafter and transactions which cause "detriment to creditors rights" entered into or performed in the 3 year period prior to the commencement of the insolvency proceedings or any time thereafter); or (ii) transactions entered into or performed in the up to six month period to the commencement of the insolvency proceedings or any time thereafter, if the transaction results or may result in a preference of claims of one creditor against other. As a general rule the term for invalidating the above transactions is one year from the date on which the administrator knew or should have known of the circumstances serving as grounds for invalidating the transaction.

Preferences/transactions at undervalue	“Preferential” and “suspicious” transactions can be contested by the court-appointed administrator in court. See above for details.
Liability of directors	Yes, criminal, administrative and civil.
Priority creditors	<p>Currently there are 3 tiers of creditors:</p> <p>(i) first, claims for harm inflicted to health or life, and claims for moral damages (mental suffering);</p> <p>(ii) second, employment claims (wages and severance payments), and royalty claims under copyright agreements; and</p> <p>(iii) third, all other claims. Current claims: court costs, utilities, fees of persons involved in insolvency, etc. rank ahead of the order of priorities set out above.</p> <p>Claims of creditors secured by Russian law pledge or mortgage are settled separately from claims of other creditors as set out below. Claims of secured creditors that have not been satisfied in full from the sale of pledged/mortgaged property fall into tier III category.</p> <p>Proceeds of sale of the secured property are allocated as follows: 80% (under a credit agreement) or 70% (in all other cases) of the proceeds, but in an amount not more than the aggregate amount of principal and interest is applied towards claims of creditors secured by such pledge/mortgage; and the remaining 20% or 30% respectively is deposited in a “special account” to be further applied as follows: (a) 15% or 20% respectively - for the satisfaction of unsecured claims of registered first and second priority creditors if the non-encumbered property of the debtor is insufficient to settle these claims; and (b) the balance respectively - for satisfaction of court and bankruptcy costs, payments of fees of the court-appointed administrator and persons retained by such court-appointed administrator for the purposes of administration.</p> <p>Balance (if any) is applied to discharge an outstanding secured claim. Intercreditor arrangements with an insolvent company that is not a banking organisation are most likely to be unenforceable in insolvency.</p>
Lender or Borrower friendly?	Generally the insolvency law is debtor-friendly however in some ways may benefit the lender (secured creditors have special rights of settling their claims, rights to prepay debts at any stage of insolvency to state authorities). During the financial crisis a draft law was considered providing for a pre-insolvency restructuring and a new procedure of financial rehabilitation that would allow the debtor to apply for a moratorium of up to 5 years as protection from almost all classes of creditors without creditors’ consent, however currently there seem to be no active discussions to substantially change current bankruptcy legislation.

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Slovakia



Insolvency Tests ¹	Cash flow test and balance sheet test.
Type of insolvency proceedings ²	Bankruptcy (a sale of the estate (piecemeal or as a going concern) with satisfaction of creditors through distribution of the proceeds). Restructuring (a reorganisation measure, typically a recapitalisation, based on a restructuring plan approved by the creditors and the court.)
When does a moratorium apply?	Not available.
Directors' duties to file ³	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). As of 1 January 2013, directors will only have the duty to file on the grounds of the balance sheet test.
Average length of proceedings	Up to 20 days in case of the debtor's bankruptcy petition to court and up to 50-90 days in case of the creditor's bankruptcy petition to court. An average of 3-5 years to complete bankruptcy proceedings. Restructuring commences within 45 days of filing of a petition. Proceedings can take approx. 7-10 months, but may be longer depending on complexity.
Are "Pre-packed" restructuring options available? ⁴	In principle yes where agreed upon by all creditor classes, but not yet tested in practice.
Are "Credit Bids" available? ⁵	Not available.
Is "Cram down" possible? ⁶	Yes, in restructuring.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	If it can be proven that the insolvency officeholder repeatedly or materially violated its obligations, the creditors can decide on its removal by simple majority. In addition, the creditors can decide on removal of the insolvency officeholder anytime by qualified majority. The court then recalls him and appoints a new insolvency officeholder.
Equitable subordination of shareholder loans?	Statutory subordination of any claims, which are or used to be owned by a person, which is or used to be related to the debtor (e.g. persons, which hold or held at least 5% direct or indirect interest in the debtor; persons in which the debtor holds or held at least 5% direct or indirect interest, etc.). Any security established over such subordinated claims will be deemed ineffective.

1. Cash flow test, balance sheet test, others.

2. What proceedings are available, their objective, how initiated.

3. have a duty to file on or in expectation of, insolvency or other financial difficulties, mandatory periods within which to apply.

4. Sale of a business to a "newco" often set up by the existing shareholders on an agreed basis often with an insolvency officeholder - ie without going through a lengthy insolvency or enforcement process.

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

6. 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.

Effectiveness of subordination arrangements	Yes, subordinated claims will be paid subject to the terms of contractual subordination (provided the contract meets the requirements set by law). However, the pre-bankruptcy subordinated claims of the debtor, which relate to the property subject to bankruptcy are considered to become due for the purposes of bankruptcy as of the day of the winding up of the debtor's business by the trustee upon declaration of bankruptcy.
Share pledges ⁷	Shares are generally sold "subject to debt" unless a "debt free" basis is agreed and non-cash consideration is possible on enforcement, provided that the agreement regarding such consideration has been put in place after the relevant receivables became due.
Is DIP finance possible? ⁸	Insolvency law does not specifically deal with new money lending in case of bankruptcy proceedings. The 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?	<p>It is not possible to set off claims that arose pre-bankruptcy against those that arose post-bankruptcy. In addition, a claim not filed in the bankruptcy in accordance with law, a properly filed claim acquired by transfer post-bankruptcy, and a claim acquired by a challengeable legal act cannot be set off against any of debtor's claims. Furthermore, no claims can be set off against claims arising from the liability of directors for breach of their duty to file a bankruptcy petition. Set-off of any other claims is allowed in bankruptcy.</p> <p>Monetary claims arising prior to the commencement of restructuring proceedings cannot be set off against the debtor after the commencement of the restructuring proceedings.</p> <p>Insolvency proceedings do not generally prejudice close-out netting.</p>
Security hardening periods/other transactions subject to challenge	No specific security hardening periods, but transactions at undervalue and preferential transactions are subject to challenge within 1 year (or 3 years if made with connected parties) and fraudulent transactions are subject to challenge within 5 years.
Preferences/transactions at undervalue	Yes, preferential transactions or transactions at under-value are subject to challenge if the debtor was either insolvent or became insolvent as the result of such transactions.
Liability of directors	<p>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.</p> <p>As of 1 January 2013, directors who were in breach of the duty to file a bankruptcy petition during the four years preceding the commencement of bankruptcy proceedings will be, upon declaration of bankruptcy, obliged to pay to the bankruptcy estate a sum equal to the registered capital of the company as of the violation of the duty to file, but no more than double the statutory share capital of the company.</p>

7. Can shares be sold "subject to debt" or only "debt free" and is non-cash consideration possible on enforcement? Can shares be sold by private sale or only through the auction process?

8. Debtor-In-Possession financing is arranged by a company while under the US Chapter 11 bankruptcy 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.

Slovakia continued

Priority 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.

Lender or Borrower friendly

Current legislation is more creditor-friendly compared to the regime previously in force.

Please note due to an amendment to Slovak Act No. 7/2005 Coll, on Bankruptcy and Restructuring, passed by the Slovak parliament on 13 September 2011, some of the above information might be amended with the effect as of 1 January 2012. The amendment is yet to be signed by the President of the Slovak Republic with the right of veto, which can, however, be overruled by a simple majority of the parliament. We are happy to provide further information on such amendments upon request.

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Insolvency Tests ¹	Balance sheet test
Type of insolvency proceedings ²	<p>Insolvency: Insolvency is the situation where the debtor is unable to pay its debts or the assets of the debtor fail to satisfy the claims of its creditors. An insolvent debtor may go into bankrupt and liquidation or apply for a court for postponement of its bankruptcy, or apply for a composition or a reorganization.</p> <p>Bankruptcy: A creditor may file a bankruptcy action before the court by satisfying certain conditions set under the law. An insolvent debtor may only go into bankrupt by the decision of the court and the liquidation procedure commences accordingly.</p> <p>Postponement of bankruptcy: The debtor may prepare a recovery project and submit to the court and the court may decide on postponement of bankruptcy for a term of one year. The court may declare bankruptcy if it is understood that recovery of such debtor is not possible.</p> <p>Composition: The debtor may apply to the court for a composition before or after its bankruptcy. The court grants a period of three months for composition with its creditors. The court approves the composition if it satisfies all the conditions set under the law. If rejected, a creditor may apply to the court for the bankruptcy of the debtor. If the debtor had applied for composition after the declaration of its bankruptcy and is rejected, the liquidation process continues.</p> <p>Reorganisation: The debtor unable to pay its debts or under threat of bankruptcy may apply to a court for reorganization of its debts with some of its creditors by submitting a reorganisation project to the court.</p>
When does a moratorium apply?	<p>Proceedings may stay and no new proceedings may be initiated against the debtor in some circumstances.</p> <p>Following the declaration of the bankruptcy by the court and postponement of bankruptcy, all proceedings initiated against the debtor automatically stay and no new proceedings can be initiated.</p> <p>Foreclosure proceedings are the exception.</p> <p>In composition, all proceedings initiated against the debtor automatically stay for a term of three months.</p>
Directors' duties to file ³	Directors have a duty to notify the court promptly in the event that the assets of the company fail to satisfy the claims of its creditors.
Average length of proceedings	It takes one to two years to complete bankruptcy. In some cases, the proceedings may last longer depending on the liquidation and the creditors of the debtor.
Are "Pre-packed" restructuring options available? ⁴	No.
Are "Credit Bids" available? ⁵	Credit bids are available. A secured creditor may buy the collateral securing his own receivable in auction in return of his receivable. However, if the creditor buys a collateral in the auction which has a higher value than his receivable, he shall pay the excess amount in cash. The purchase value of the collateral shall be equal to the market value; otherwise a lawsuit may be filed for the annulment of the auction.

1. Cash flow test, balance sheet test, others.

2. What proceedings are available, their objective, how initiated.

3. Directors have a duty to file on or in expectation of, insolvency or other financial difficulties, mandatory periods within which to apply.

4. Sale of a business to a "newco" often set up by the existing shareholders on an agreed basis often with an insolvency officeholder - ie without going through a lengthy insolvency or enforcement process.

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

Turkey continued

Is “Cram down” possible? ⁶	Yes. The composition plan should be accepted by the majority of the creditors who hold at least two thirds of the total sum of the claims. Accordingly, the court evaluates the composition plan and approves it as per the conditions required by the law. Approved composition plan is binding on all non-privileged creditors (including the ones who had voted negatively), but not binding on secured and privileged creditors.
Debt/equity swaps possible?	Possible in the event of insolvency but not possible after the declaration of the bankruptcy by the court.
xCan creditors influence appointment of insolvency officeholder?	In bankruptcy, the liquidators are appointed by the court among the nominees of the creditors. In composition before bankruptcy, the commissioner is appointed by the court.
Equitable subordination of shareholder loans?	Shareholder loans which are not secured will rank last with the claims of the other third party unsecured claims.
Effectiveness of subordination arrangements	As a contractual undertaking subordination may be valid but subordination arrangements will not be upheld by the liquidators during the bankruptcy/liquidation. It would therefore be recommendable to obtain an assignment of subordinated claims in favour of the senior lenders to give effect to subordination.
Share pledges ⁷	<p>Regarding the pledged shares, principally, the pledgee may initiate a foreclosure proceeding and the pledged share will be sold via execution proceeding. However, if the debtor company is bankrupt and under liquidation, the pledgee may be entitled to a consideration which the pledgor shareholder may be entitled to receive after the liquidation is completed and there is amounts left to pay to the shareholders. To the extent the relevant security interest has been perfected in accordance with applicable perfection requirements and such security interest was not voided by an avoidance action, pursuant to Article 206 of the Enforcement and Bankruptcy Code, proceeds of pledged assets collateralising a Turkish Counterparty’s secured debts shall be paid to such secured creditor after deduction of foreclosure costs. However, a creditor which has a security interest on cash could set-off that cash against its receivables after issuance of a bankruptcy judgment. Additionally, in the case of a creditor which has security interest on treasury bills or securities traded on an exchange market, it can sell such securities for satisfaction of its claims on the price prevailing at the relevant exchange market provided that such creditor is authorised contractually under the pledge agreement to foreclosure such securities by way of private sale</p> <p>However, please note that if composition, restructuring or postponement of bankruptcy will be adjudicated for a Turkish Counterparty, secured creditors of that Turkish Counterparty will not be able to foreclose relevant securities during the composition, restructuring or postponement of bankruptcy period. Composition (restructuring) or postponement of bankruptcy, amongst others, are statutory remedies to recover an insolvent debtor.</p>
Is DIP finance possible? ⁸	No

6. 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.

7. Can shares be sold “subject to debt” or only “debt free” and is non-cash consideration possible on enforcement? Can shares be sold by private sale or only through the auction process?

8. Debtor-In-Possession financing is arranged by a company while under the US Chapter 11 bankruptcy 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.

Set-off and netting on insolvency?	Principally, set-off is possible in bankruptcy but there are some restrictions.
Security hardening periods/other transactions subject to challenge	<ul style="list-style-type: none"> (a) Transactions without a consideration including donations within two year period before the date of the declaration of the bankruptcy may be challenged, and (b) Some transactions made within one year period before the declaration of the bankruptcy are void; such as payments made for undue claims, and (c) Transactions having intentional acts against the interest of the creditors may be challenged provided that the other party is aware of the financial condition and bad faith of the debtor. Such challenge should be made within five years after the date of such transaction by way of an attachment or a bankruptcy proceeding.
Preferences/transactions subject to challenge	Transactions at undervalue may be challenged if they are concluded within the two year period before the date of the bankruptcy.
Liability of directors	Civil and criminal liability.
Priority of creditors	<p>During liquidation, the priority is:</p> <ul style="list-style-type: none"> 1) Public claims: Arising from the estate. 2) Secured claims 3) Unsecured claims: First, second and third ranks are privileged claims where as the fourth rank is an unprivileged claim. <p>First Rank: Employee claims, family law alimonies, Second Rank: Curatorship claims, Third Rank: Other claims defined as privileged under the special laws, Fourth Rank: All other unprivileged claims of any other third parties including public claims. (<i>i.e income tax claim</i>)</p>
Lender or Borrower friendly?	Creditor friendly for secured claims and debtor friendly in composition, reorganisation or postponement of bankruptcy.

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Insolvency Tests ¹	A creditor intending to initiate insolvency proceedings must have an unpaid monetary claim which is: (i) equal to or exceeds the equivalent of UAH 330,600 (approximately USD 41,000); (ii) indisputable (a claim will be deemed to be indisputable if it is supported by official enforcement documentation (e.g. a court order) or settlement documents pursuant to which the debtor's money must be debited by law); and (iii) not satisfied within 3 months from the date when the obligation became due and payable.
Type of insolvency proceedings ²	<p>Property administration: to prevent the debtor's assets from disposal and establish control over them before the creditors' committee decides (with the court's subsequent approval) the debtor's fate (e.g. whether to rehabilitate or liquidate the debtor).</p> <p>Rehabilitation: a system of measures with a view to reinstating the debtor's solvency under a rehabilitation plan.</p> <p>Liquidation: compulsory winding up of the debtor, sale of its assets and satisfaction of creditors' claims when there is no opportunity to reinstate the debtor's solvency.</p> <p>Each type of proceedings is initiated by the court and may result in amicable settlement subject to court's approval.</p>
When does a moratorium apply?	<p>Upon the initiation of insolvency proceedings (although on rare occasions, the moratorium is imposed at a later stage).</p> <p>The moratorium does not apply to: (i) payments which become due after the initiation of bankruptcy proceedings; (ii) payments to creditors approved under a rehabilitation plan; (iii) payments made as part of liquidation proceedings in relation to the debtor; (iv) payments of salary, alimony, authors' remuneration and compensation for damages to health or life of individuals; and (v) enforcement of security over the debtor's assets.</p>
Directors' duties to file ³	The debtor must file an insolvency petition with the court within one month of any of the following occurring: (i) if fulfilment by the debtor of its obligations to one or more creditors would result in the debtor being unable to satisfy the claims of its other creditors; (ii) if an authorised governing body (in most cases the shareholders' meeting) of the debtor decides to file for an insolvency proceeding; or (iii) if during a liquidation procedure which has been initiated outside insolvency proceedings (i.e. voluntary liquidation) the debtor is unable to satisfy the claims of all of its creditors.
Average length of proceedings	Property administration - 7 months, rehabilitation and liquidation - 18 months each.
Are "Pre-packed" restructuring options available? ⁴	Not available.
Are "Credit Bids" available? ⁵	Not available.

1. Cash flow test, balance sheet test, others.

2. What proceedings are available, their objective, how initiated.

3. Directors have a duty to file on or in expectation of, insolvency or other financial difficulties, mandatory periods within which to apply.

4. Sale of a business to a "newco" often set up by the existing shareholders on an agreed basis often with an insolvency officeholder - ie without going through a lengthy insolvency or enforcement process.

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

Is “Cram down” possible? ⁶	Each decision of a creditors’ committee is made by a simple majority of votes based on the amount of claims; thus the position of creditors which voted against certain issues may be ignored. However, claims of a secured creditor may not be reduced or forgiven by a decision of a majority of the creditors’ committee members without the consent of the secured creditor. Court approval would be necessary for any of the foregoing.
Debt/equity swaps possible?	Generally allowed for joint stock companies subject to the consent of the debtor’s shareholders but remain untested in practice. Debt/equity swaps are not allowed where the debtor is a limited liability company.
Can creditors influence appointment of insolvency officeholder?	Creditors are entitled to propose the candidate for the insolvency officeholder (insolvency manager) to be appointed by the court.
Equitable subordination of shareholder loans?	Shareholders of the debtor that are also its lenders are treated similarly to third party creditors. Please note, however, a risk of invalidation of certain type of transactions with affiliated parties.
Effectiveness of subordination arrangements	The court and insolvency manager will most likely ignore intercreditor arrangements that change the statutory rankings.
Share pledges ⁷	Shares are always sold “debt free”. In an out-of-court enforcement procedure the pledgee has a right to: (i) obtain ownership rights to the collateral (shares) against discharge of the secured obligations, or (ii) organize a private sale. When pledged shares are publicly traded, They must be sold in the stock market.
Is DIP finance possible? ⁸	Possible but is normally subject to approval by the insolvency manager or creditors’ committee.
Set-off and netting on insolvency?	Insolvency set-off is not expressly allowed. However there are a number of rulings of Ukrainian courts, including the High Commercial Court, which, although only of persuasive authority, confirm that set-off by creditors is allowed in the course of insolvency proceedings and it is not prohibited by the moratorium. Therefore, we believe that the moratorium would not prevent a creditor from using a set-off in the course of insolvency proceedings provided the debt has matured.

6. 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.

7. Can shares be sold “subject to debt” or only “debt free” and is non-cash consideration possible on enforcement? Can shares be sold by private sale or only through the auction process?

8. Debtor-In-Possession financing is arranged by a company while under the US Chapter 11 bankruptcy 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.

Ukraine continued

Security hardening periods/other transactions subject to challenge

The following groups of transactions may be invalidated by the court: (i) preferential transactions entered into 6 months prior to commencement of rehabilitation proceedings and (ii) related party transactions which caused (or may cause) a loss to the debtor or the creditor. There is no specific hardening period for (ii) above.

A general 3-year statutory limitation period may apply to such transactions.

Within three months of the commencement of the debtor's rehabilitation, the rehabilitation manager may rescind the debtor's contracts entered into before the date of commencement of insolvency proceedings provided that: (i) the performance of such contract would cause a loss to the debtor; (ii) the contract is a long-term contract (i.e. exceeds one year) or provides long-term benefits to the debtor; or (iii) performance of the contract would prevent the restoration of the debtor's solvency.

Preferences/transactions subject to challenge

A court may invalidate transactions that establish preferences or undervalue assets, as described above.

Liability of directors

Criminal, administrative, civil and disciplinary liability.

Priority of creditors

There are 6 rankings of creditors:

- (i) secured claims;
- (ii) claims for employees' salaries for a 3 months period before insolvency proceedings were initiated by the court, other payments due to employees and expenses incurred in connection with insolvency proceedings;
- (iii) tax claims;
- (iv) unsecured creditors' claims;
- (v) claims of employees to receive contributions to the share capital of the debtor; and
- (vi) any other claims.

Lender or Borrower friendly?

Generally debtor-friendly but may be regarded as the creditor-friendly with respect to secured creditors.

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Recent Awards

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<p>Equity Deal of the Year (<i>Glencore IPO</i>) High-yield Deal of the Year (<i>Kabel BW Group</i>) Project Finance Deal of the Year (<i>Nord Stream Pipeline: Phase II</i>) Restructuring Deal of the Year (<i>KCA Deutag</i>)</p> <p>IFLR Europe Awards 2012</p>	<p>Restructuring Team of the Year Securitisation and Structured Finance Team of the Year</p> <p>IFLR Europe Awards 2012</p>
<p>Restructuring Team of the Year</p> <p>Legal Business Awards 2012</p>	<p>Pan-European Legal Advisor of the Year</p> <p>Real Deals Private Equity Awards 2012</p>
<p>Law Firm of the Year (transactions)</p> <p>Private Equity International Awards 2011</p>	<p>Infrastructure Law Firm of the Year in Europe</p> <p>Infrastructure Investor 2011</p>

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Banking & Finance: Europe-wide, Chambers Global 2012

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