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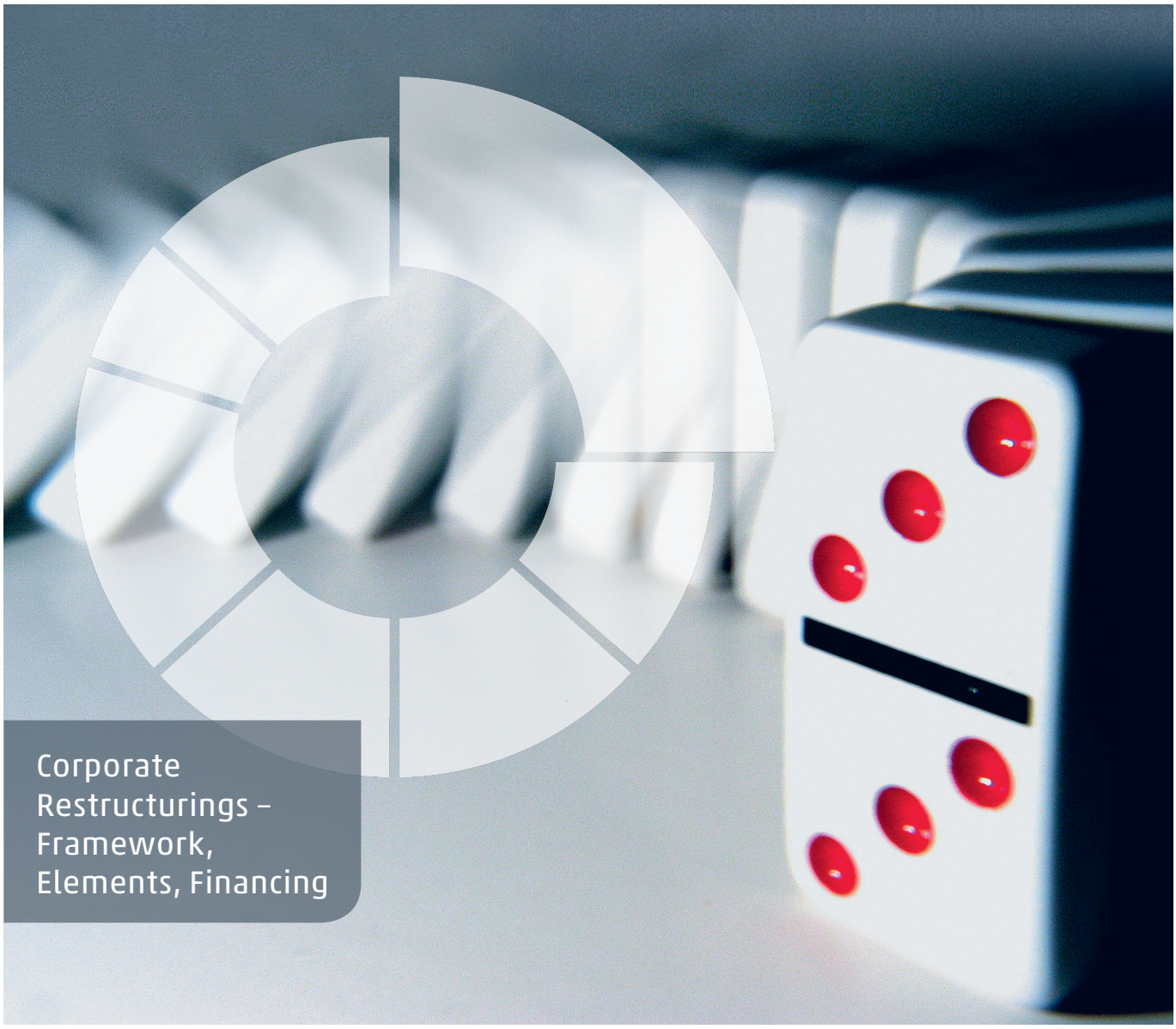

Corporate Restructurings – Framework, Elements, Financing

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Corporate Restructurings – Framework, Elements, Financing


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Since the start of the financial crisis in 2008, companies in Europe and the US had to overcome challenging times. After the Lehmann bankruptcy in 2008, banks became highly risk averse triggering the often quoted "credit crunch". The subsequent European sovereign debt crisis additionally increased the challenges for many corporations not only in Europe. Corporations were faced with reduced subsidies, decreased government contracts and a diminished private purchasing power. These factors created an environment for many corporations which carried and still carries significant risks.

As direct results of the world financial crisis, central bank interventions and a new capital adequacy framework for banks, termed Basel III, affected monetary and financial markets in a significant way. Both aspects have opposite effects on corporations. In order to avoid a domino effect of bank failures and to reverse the economic downturn, major central banks initiated massive monetary market interventions which are still ongoing. These interventions indirectly helped corporations in their struggle of maintaining their financial balance. On the other hand, banks are now confronted with new liquidity and capitalization requirements (Basel III). Especially the update of the Capital Requirements Directive (CRD) is considered to be important. It demands amongst others an increase of a bank's „Common Equity" in order to strengthen the bank's resilience. This in return could under certain conditions limit such bank's ability to provide corporate loans.

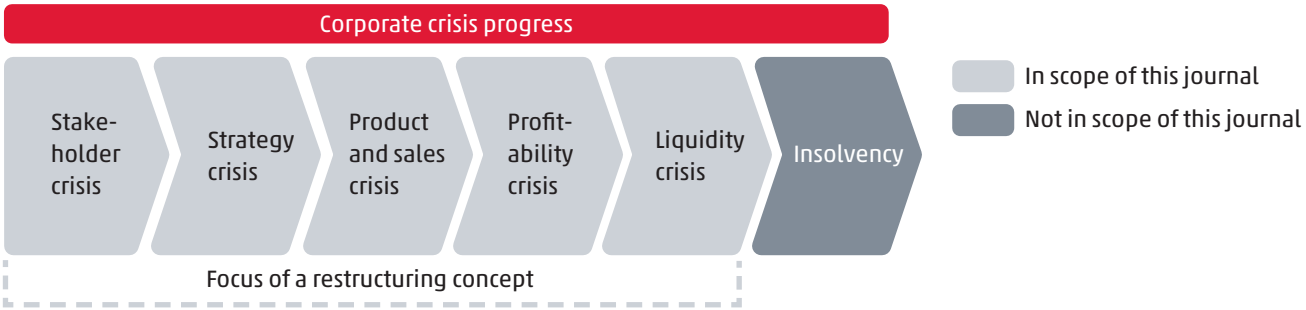
Recent surveys show a new development regarding corporate insolvencies in Europe[1]: Corporate insolvencies in Western Europe (incl. Norway, Switzerland) rose on a year-to-year basis (2011/12) by +2.6%, from 173,219 to 177,685. Selected peripheral states experience a sharp increase of corporate insolvencies (e.g. Portugal +41.6%; Spain +32.0%; Italy +13.5%). A remarkable observation is that even healthy European core countries are affected by increasing corporate insolvencies figures, such as the Netherlands with +19.4%.

Given this economic background, the emergence of corporate crisis will remain a permanent phenomenon over the next years. Accordingly, an effective crisis management must address the main challenges faced by companies, shareholders and creditors. The restructuring advisor has to cope with growing complexity: Not only touches the restructuring process a maximum variety of corporate functions along the value chain and requires a comprehensive resolution of all crisis causes. It is also embedded into local laws and regulations. Reorganization strategies have to reflect these national legal frameworks and conventions of corporate restructuring. Especially in case of multinational business activities or financing structures the consideration of different national approaches can be a critical factor of success.

This journal intends

- To give an overview of typical situations that require a restructuring opinion
- To outline different national regulatory frameworks regarding the preparation of restructuring concepts
- To describe structure and elements of restructuring concepts
- To discuss typical forms of corporate financing related to corporate restructuring and distressed situations

In doing so, this journal focuses on out-of-court restructurings and the management of corporate crisis situations as described:



1 Source: "Corporate insolvencies in Western Europe"; Creditreform study 2012/13

1. Restructuring Concepts

Despite the fact that a restructuring concept usually describes a significant modification made to the debt, operations or structure of a company, in Austria the term *„restructuring"* is not defined by law in its legal system, it is only mentioned in the Austrian Postal Law. However, there are many legal provisions in various laws in force which require restructuring measures in the context of a reorganization process or insolvency.

Managing directors are required to set up and maintain accounting and controlling systems capable of meeting the needs of their company. The Austrian Company Reorganization Act (CRA) provides a legally regulated restructuring aiming at improving the net assets, financial position and results of operations of the endangered enterprise and making possible a sustainable development. Only on the condition that an enterprise requires reorganization and at the same time is not bankrupt (insolvent), the above-mentioned procedure may be opened. Such need for reorganization is particularly deemed to exist if the equity ratio is less that 8% and the (debt) payback period will exceed 15 years.

In case of a reorganization need, the entrepreneur is entitled to submit an application to the Court in order to open a reorganization procedure, in which he has to provide a declaration that he is not insolvent and the enterprise concerned requires the reorganization. This application for reorganization has to be substantiated by using for example annual accounts. Under the (non-public) procedure laid down in the Austrian CRA, the Court is entitled to request a reorganization plan within 60 days. The objective of such plan is to report the various reasons for the reorganization need as well as to specify such measures that ensure improvement of the net assets, financial position and results of operations of the particular enterprise. The plan shall also cover the consent of the persons included in the reorganization with regard to the specified measures applicable to them individually.

With regard to timing, the total period for implementing of reorganization measures shall not exceed two years.

The Court appoints an auditor for the reorganization process. His obligation is to immediately obtain all information concerning the net assets, financial position and results of operations of the particular enterprise within 30 days and to report back to the Court whether the enterprise concerned is insolvent. The entrepreneur is obliged to provide all information required by the auditor and to enable him to gain insight into the business documentation.

The auditor for the reorganization process is also responsible for producing and presenting an expert opinion on the entrepreneur's reorganization plan to the Court.

In case of a negative expert opinion due to the fact that the reorganization plan concerned is not useful or has no chance of success, the Court has to close the proceedings. Otherwise the Court has to withdraw its decision about the proceedings thus enabling the execution of the reorganization plan.

It has to be mentioned that in addition to the legal regulations there are also numerous other possibilities to restructure assets and/or debts and/or operations and/or a structure of an enterprise, for example debt reduction or out-of-court settlements. In these cases, the regulations of the Austrian law on the right of avoidance have to be taken into account (creditor discrimination or (single) creditor preferential treatments).

Restructurings have to be taken into account also for tax purposes, especially to make use of tax advantages, for example the tax-privileged restructuring gain or the possibility of the use of loss-carry-forwards which will otherwise expire.

2. Regulatory Framework

Besides the legal framework for insolvency (addressing the event of bankruptcy of an enterprise and its development to continue), particularly the rules and regulations of the Austrian CRA already mentioned and disclosed above are essential.

The joint-stock companies/corporations have to check if they meet or do not meet the criteria (at least 8% equity ratio and (debt) payback period less than 15 years).

Since 2013, this obligation is also valid for small limited liability companies (in Austria so-called "kleine" GmbH) and their managers.

In case the decisive criteria are not met, the managing directors have to call an extraordinary general meeting and disclose the decisions taken in the Austrian Commercial Register.

In this case it is advisable for managing directors to ask for a professional advice on time with regard to a potential/actual reorganization need in order to avoid any publication duties.

Within the scope of a reorganization process, medium-sized and large joint-stock companies/corporations are subject to the rules and regulations of the Austrian CRA. This is mandatory for them to possibly avoid liabilities. The reorganization process for medium-sized and large joint-stock companies/corporations is official and accessible to the public (publicity due to Austrian Commercial Register). On that background creditors and, among others, especially credit protective associations are alerted.

In case the shareholders will make contributions to the company concerned in order to make the restructuring/rehabilitation possible, the rules and regulations of the equity replacement law have to be taken into account, particularly in case of repayments and amortizations of shareholder loans etc.

3. Content of a Restructuring Concept

It has to be mentioned that in the course of an execution of restructuring concepts out of scope of the Austrian CRA, the methodology stipulated in the Austrian CRA and the practice developed so far are used analogously. Furthermore, the principles developed in Germany in accordance with IDW S 6-standard are also used analogously.

The IDW S 6-standard offers the possibility of splitting up an overall concept into a multi-level system of synchronized partial concepts.

As a rule, the gradual procedure (dependent from the crisis stage applicable) is common practice in the course of advice on rehabilitation/restructuring measures. This is why increasing complexity of the business world requires adequate need for action, but the sense of urgency requires timesaving simplifications in this regard.

The IDW S 6-standard shall ensure the overall picture while handling only subtasks, as such leading to a coordinated overall result.

4. Financing

On a case by case basis, the financing needs and financing possibilities have to be chosen carefully. Regularly, a mixture of different measures (true sale of assets, realization of hidden reserves, shut-down of unprofitable parts, raising equity, debt instruments and hybrid capital) is a very common strategy to refinance the restructuring costs and to put the enterprise on a sound economic basis.

The different consequences also have to be taken into account for the future (e.g. Austrian equity replacement law, tax consequences of sale and lease-back transactions, capital support, discounts, any waivers of claims etc).

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1. Restructuring Concepts

The Belgian legal system provides different instruments to companies experiencing financial difficulties.

In general, restructuring can take place with or without the court's intervention. However, there is no general, complete legal framework for out-of-court restructuring in Belgium.

The Belgian legal system provides a specific court-supervised restructuring procedure during which the company is protected against its creditors' claims. However, as this procedure historically has a bad reputation and is generally perceived as a precursor to bankruptcy, companies tend to attempt to solve their financial difficulties out of court. This can lead to a significant loss of time.

Notwithstanding its bad reputation, if applied in a timely and correct manner, the Belgian court-supervised procedures offer good opportunities for companies to safeguard their financial positions and business.

2. Regulatory Framework

The Business Continuity Act of 31 January 2009 was amended by the Act of 27 May 2013 ("BCA"). The amendment extended creditor protection and slightly restricted the freedom of the restructuring companies.

Legal provisions regarding securities, netting, mortgages, ... as provided for in the Belgian Bankruptcy Act of 8 August 1997 and in separate legislation can also come into play in the context of the restructuring procedure.

3. Content of a Restructuring Concept

The BCA's main objective is to protect the company in need of (financial) restructuring and to allow it to reorganise itself. In general, the BCA provides two different approaches to restructuring: (i) collecting information and taking conservatory measures, and (ii) the actual reorganisation.

The first part of the BCA requires information regarding companies in financial difficulties to be kept at the registry office of the Commercial Court (e.g. information regarding attachments, social security and tax debts, pending proceedings, claims by third parties, etc.) and that a division of the Commercial Court (the Chambers of Commercial Enquiry) reviews the information and follows it up as required. The Chambers can invite the (directors of a) company to explain the situation and can suggest specific measures.

The BCA also includes conservatory measures. The reorganising company can, for example, request the Court to appoint a mediator to facilitate the discussions between the company and its creditors or relevant third parties (e.g. employees). If serious mistakes committed by the company's directors threaten its continuity, the President of the Commercial Court can, at the request of any interested party, appoint a (provisional) administrator.

Finally, Article 15 of the BCA makes it possible to file out-of-court arrangements entered into with at least two of the company's creditors with the Commercial Court. The content of such agreements must remain secret and, if the company becomes insolvent, they can in principle not be challenged by the bankruptcy receiver.

The second part of the BCA aims to offer companies (court-)protection. If a company claims that the continuity of its business is threatened, it can file a request with the Court to be protected from its creditors.

Protection is granted if the company's continuity is threatened and the request (supported by specific documents) has been filed. As a result, the company is protected from its creditors, who can no longer attach its assets or commence bankruptcy proceedings based on claims that existed prior to the request for protection.

In most cases, courts limit the initial protection period to three months. If the company requires more time, it must apply for a prolongation, which can be granted for up to 24 months.

During the reorganisation process, the company's management team continues to run the business and has to implement one of three options: (i) an amicable agreement with some of its creditors, (ii) a collective agreement with all of its creditors or (iii) a (partial) sale of assets as a going concern.

1) The company can opt for an amicable, binding agreement with some of its creditors about the reimbursement of their claims.

2) The company can submit a reorganisation plan, proposing inter alia a reimbursement schedule for all of its creditors, aiming at preserving and continuing its activities. In the framework of this plan, the company can propose to pay its debts in part only or to convert claims into capital (although this option is almost never used in practice).

Companies often group their creditors into categories, and offer different levels of payment to each category, although some special secured claims cannot be reduced.

The reorganisation plan must also contain an overview of the measures the company will implement to redress its situation, profitability, solvency and its social situation.

If the reorganisation plan is accepted by the majority of the regular and unsecured creditors, who together hold a majority of the company's debt, and if all the procedural requirements have been met, the Court will accept it and declare it binding on all of the creditors, even those who voted against it or did not participate in the vote.

When dividing its creditors into categories, the company must ensure that it does not unfairly discriminate against any of them, as this would be a breach of the Belgian Constitution. Furthermore, in principle, at least 15% of every debt must be paid.

In practice, companies tend to offer the lowest payments to their "weakest" creditors (i.e. those with the least economic power or creditors that are not essential to the company's survival).

3) In general, only if a collective agreement fails will an attempt to sell all or part of the business – the third option – be considered. This option aims to transfer the company's activities (or some of them) as a going concern to a third party, together with the required employees and assets (e.g. buildings). Only the price paid for these assets can, in principle, be used to (partially) repay (some of) the creditors.

4. Financing and Securities

Notwithstanding the BCA protection, creditors can undertake certain measures against the debtor.

Firstly, BCA protection does not protect companies from the recovery of debts incurred after the BCA protection came into effect, meaning that debtors can enforce "new claims".

Secondly, during the reorganisation process, creditors can suspend the delivery of goods and services until the company pays its outstanding (including "old") debt "voluntarily". Provided that the general principles of contract law are respected, creditors can terminate (e.g. for cause) contracts with companies under BCA protection and recover goods that have not been paid for.

Thirdly, compensation between mutual claims is possible when these claims are connected, or, if certain conditions are met, on the basis of a specific netting agreement entered into prior to the reorganisation process.

In addition, a construction sub-contractor with a claim on a court-protected main contractor, can, pending the court protection, rely on its direct claim vis-à-vis the principal of the works.

The debt reduction in the reorganisation plan may improve the company's financial status, but the company may still require additional funding, either from its shareholders or from third parties. In that regard, it is important to point out that the BCA protection only applies to the debtor concerned and (in principle) not to the co-debtors or guarantors of old or new loans.

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1. Restructuring Concepts

The need for a restructuring concept frequently arises when a creditor intends to support the restructuring process of its debtor. In this situation the creditor could be willing to maintain the line of credit or to provide additional loans or bridge financing to the distressed debtor. However, creditors face special requirements with regard to distressed credits and the general involvement in restructuring activities: the "Mindestanforderungen an das Risikomanagement" (MaRisk) are administrative directives which are issued to concretize existing law procedures as well as regulatory settings like Basel III. According to MaRisk, creditors intending to accompany the debtor during the turnaround process have to request for a restructuring concept. In order to fulfil the MaRisk requirements, the creditor usually nominates three qualified independent restructuring advisors. Based on its own decision the debtor engages one of these advisors to conduct an analysis of the company's financial status, the causes of financial distress and the restructuring activities to be implemented.

Furthermore, the need for a detailed restructuring concept regularly occurs in Germany when tax authorities are requested to contribute to the company's restructuring activities. According to the "Sanierungserlass" 2003, gains from certain capital measures aiming to strengthen the company's equity position can enjoy tax privileges under certain conditions. One condition is to verify the company's prospects to overcome financial difficulties.

Restructuring concepts are not only relevant in case of out-of-court restructuring but also in the context of in-court restructuring proceedings. If there are realistic prospects of restructuring the insolvent business debtors and creditors can set up an insolvency plan. Similar to US chapter 11, the insolvency plan aims to preserve more value by continuing the company's activities than by liquidation or by sale as a going concern. The insolvency plan is regularly based on a detailed restructuring concept.

2. Regulatory Framework

In Germany, central requirements to the design of restructuring concepts can be derived from the pronouncements of the German Federal Court of Justice. The Federal Court of Justice has clarified that a restructuring concept has to reflect actual conditions; furthermore the implementation of restructuring measures has to be set up. Initiated activities should lead to substantial prospects of successful restructuring. The German Federal Court of Justice has referred to these requirements in the course of various court decisions. The German Institute of Public Auditors (IDW) has also issued principles on the preparation of restructuring concepts. These standards shall cover and concretize the requirements postulated by the Federal Court of Justice.

3. Content of a Restructuring Concept

The IDW S 6 standard, recently updated on August 20th 2013, is considered the German standard on restructuring concepts. The main intention of a restructuring concept pursuant to IDW S 6 is to provide a reliable statement regarding a company's capability of continuing business. The term capability of continuing business is twofold:

- Step1 – Positive Going-Concern Prognosis ("positive Fortführungsprognose"): A company's short-term capability of continuing business is presumed if neither legal (e.g. opening of insolvency proceedings) nor actual facts (e.g. illiquidity or over-indebtedness) stand against a company's going concern in terms of section 252 (1) 2 HGB (German Commercial Code).

- Step 2 – Sustainable capability of continuing business ("nachhaltige Fortführungsfähigkeit"): A company's sustainable capability of continuing business is presumed if the company's competitiveness is regained or regaining its competitiveness is more likely than not, and an industry average rate of return could be realized.

Module 1 – Company description and analysis
Module 1 defines requirements regarding the presentation of a company's as-is situation. In order to initially describe the target company, essential information such as legal and organizational background (e.g. majority and minority shareholders) as well as financial, operations-related and HR-related information is to be provided.

Module 2 – Identification of crisis stage and analysis of crisis causes
As a next requirement, the company's crisis stage has to be identified and its causes to be analysed. IDW S 6 distinguishes between stakeholder crisis, strategy crisis, product and sales crisis, profitability crisis, liquidity crisis and insolvency. In practice, such stages are not necessarily sequenced one after the other but can appear also in parallel, isolated or overlapping. The IDW-standard lists several parameters based on which each of the crisis stages could be identified.

Module 3 – Definition of the company's future setup
Each restructuring concept includes a description of the future setup of the restructured company. This description outlines the company's future setup in order to regain a competitive position within the market and how to realize a sustainable industry average rate of return. Besides others, the concept has to include information about the company's future business model, its unique selling proposition (USP) and its go-to-market strategy.

Module 4 – Stage-related crisis management
IDW S 6 claims the guiding principle after which crisis stages have to be solved subsequently in reverse order. Measures to avoid insolvency (e.g. financial "haircut") and measures to overcome a liquidity crisis (e.g. working capital management measures) have highest priority.

Module 5 – Integrated business planning
As a final step an integrated business planning is required by IDW S 6 comprising balance sheet, profit & loss statement and a cash flow statement. Effects of restructuring measures are to be integrated into the planning and alternative scenario calculations are highly recommended by IDW S 6 in order to identify possible effects on covenants.

4. Financing

In many cases the financing of restructuring programs in Germany is a mix of different financing forms. These can include equity capital, mezzanine capital and bank loans as well as special funding arrangements such as leasing and factoring. The financing concept has to ensure liquidity in the course of the restructuring plan. Furthermore, the financing concept frequently must lead to higher equity ratios. In this context, debt-to-equity as well as debt-to-mezzanine swaps regularly become an element of the restructuring concept. In general, restructuring financings are often organized as syndicated credit structure. The (syndicated) loan agreement typically contains central milestones of the restructuring program e.g. in form of financial covenants and offers a certain degree of financial security to the company.

The financing concept can be complemented by public guarantees. According to the state specific directives, the German federal states furnish guarantees to ensure financing of projects and businesses that are eligible and economically reasonable. Guarantees can amongst others be requested for management buy outs/buy ins, for expansion of business activities, for certain investments but also in the case of a restructuring plan. Guarantees can be furnished with respect to various forms of debt including investment as well as working capital financing. Usually there is a maximum part of credit volume guaranteed by the state; the residual risk is to be taken by the creditor respectively the pool of creditors.

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1. Restructuring Concepts

Demand for restructuring concepts is usually raised by the management of the company in case some significant key performance indicators reveal some financial difficulties, which, in case of an escalation, might prevent the company from operating as a going concern. A prompt response from management's side ensures access to a wider range of methods for recovery. In case management does not detect the difficulties and does not start to recover the situation in a timely manner, creditors might start a forced liquidation procedure against the company. Management needs to make prompt decisions to get out of the wind-up procedure, which does not allow them to evaluate the different scenarios and choose the best practice available to overcome the financial difficulties. Furthermore, the wind-up procedure has an accelerating effect as further creditors might join the procedure since they do not want to be the only ones who finance a company in a difficult financial situation. This can easily lead to a financial turmoil resulting in a more difficult bargaining position to overcome the financial crisis.

In certain cases the need for restructuring arises from the side of the suppliers or customers. This might be the case in the rare situation of a significant dependency between the counterparties, as in this case the threat of insolvency would not only affect the company itself but the supplier or customer as well.

In Hungary, tax authorities do not indicate the need for the restructuring concept. Neither do they have the proper authorization right, nor the adequate tools to support restructuring. Nevertheless, tax liabilities are on a high rank when a settlement plan is made. Furthermore, tax authorities generally collect overdue outstanding taxes by directly accessing the company's bank accounts, thus further contributing to the financial crises of the companies.

2. Regulatory Framework

Restructuring concept in Hungary is governed by the act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings. The aim of the act is to ensure the legal background for the debtor and its creditors to prepare and to implement an insolvency plan. The act emphasizes that the preferred outcome of the insolvency plan would be to preserve the ability of the company to operate as a going concern rather than the sale of the assets or the final liquidation of the company. According to the act, bankruptcy proceedings have a very strict timeline allowing a period of only approximately 100 days (which can be prolonged up to 1 year) to conclude an agreement with debtors. In case of complex issues, this timeframe may not be sufficient. In case the agreement has not been concluded within the period as stated above, the wind-up procedure will start automatically.

Despite the fact that the aforementioned act only deals with in-court restructurings in case of insolvency, it can be considered as common practice and a useful norm for out-of-court restructuring concepts as well, especially when taking into account that out-of-court restructuring concepts are not covered by any standards or acts in Hungary. Hereafter we have highlighted the main differences of bankruptcy proceedings and out-of-court restructurings.

3. Content of a Restructuring Concept

When applying the restructuring concept, management has to convince its creditors that an appropriate restructuring process will help the company to overcome the prevailing difficulties and will enable it to operate as a going concern without the threat of insolvency. The main tool of persuasion is the reorganization plan, for which the frames are set by the relevant act. The most important phases of the restructuring concept are the following:

Phase 1 –
Due Diligence procedure and analysis
A due diligence procedure has to be performed in order to evaluate the factors that prevent the company to operate in an efficient way. A detailed inventory has to be prepared where liquidity, maturity and profitability have to be assigned to all assets and liabilities of the company. An objective analysis on the current financial position and profitability of the company should be made. With regard to form and content, all of the above should be prepared in a manner that enables the management to prepare a proper reorganization plan.

Phase 2 –
Preparation of the reorganization plan
Based on the above, the management has to prepare a reorganization plan. Such plan usually includes a comparative period which is considered as the "normal operation" without any financial difficulties. First signs and reasons for the existing difficulties and the need for restructuring have to be specified in the plan. The events leading to the current stage are to be discussed in appropriate details and with due care. The plan shall also include steps considered as necessary for the elimination of the negative factors and the concepts for the settlement of the financial difficulties.

Phase 3 –
Strategy management
Considering the expected environmental changes and market position of the company, a growth strategy for the next 3-5 years is to be prepared by the management. The aim of the strategy is to achieve the objectives as set out in the reorganization plan. Several scenarios should be investigated by evaluating the possible outcomes and built in into the strategy.

We have to mention that the relevant act prescribes only the frames, but not the content of the reorganization plan.

4. Financing

The financing of the restructuring concept depends solely on the decisions and opportunities of the management. The management of the company has to conclude an agreement with its creditors on the terms of the settlement of the outstanding debts. The agreement could cover in particular, but not limited to, debt allowances, payment eases, relief of other debts, warranties or even quota transfer. Furthermore, management has the option to involve additional funds for example in the form of bank loans, factoring or even capital issue. Within the scope of bankruptcy proceedings, it is more difficult to involve additional financing in the process as the act does not prescribe priority to the new sources in case the process turns into a forced liquidation.

When negotiating the reorganization plan, creditors usually claim the right to monitor fulfillment of the plan and insist on including certain milestones in the process.

As the agreement cannot be considered as a binding agreement for all creditors, it is of highest interest for the company to involve as many creditors in the negotiation process as possible. The main advantage of bankruptcy proceedings compared to out-of-court restructuring is that in case the agreement covers more than 50% of outstanding debts the agreement becomes a binding agreement for all creditors, excluding tax authorities. In case the company cannot come to an agreement with its creditors as regards the approval of the restructuring plan or if the company cannot meet the requirements as set out in the restructuring agreement after a certain grace period, the company will not to be able to avoid the forced liquidation.

Without central regulations, the management cannot expect any state relief from the central government or any other public guarantees in the restructuring. The Hungarian Tax Authority is only entitled to ease tax payments, subject to a formal request on behalf of the company and fulfillment of certain criteria. The company can neither be excused from the tax liability nor can any other tax privileges be given to the company.

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1. Restructuring Concepts

The deep economic crisis which still affects Italy suggested the introduction of tools to allow businesses in crisis to adequately organize corporate restructuring transactions, without incurring in standard bankruptcy procedures.

The Italian bankruptcy law (RD, March 16th 1942 no. 267, and following amendments) acknowledges the possibility of adopting specific measures to sustain the recovery of economic and financial stability of a company and to subsequently prevent the opening of a standard bankruptcy procedure.

Usually, depending on the severity of the economic situation, a company "in crisis" can access two legal solutions:

- the Recovery Plan ex article 67, paragraph 3, letter d) or,
- the Restructuring Agreement ex article 182-bis.

In general, the Recovery Plan ex art. 67 is applicable in situations of medium severity of crisis; the main difference between the two solutions is that the former is an unilateral act of the concerned company, whilst the latter requires the subscription of an agreement with creditors representing at least 60% of the overall debt exposure.

2. Regulatory Framework

General aspects of the Certified Recovery Plan

The Recovery Plan ex art. 67 does not determine the occurrence of a procedure against insolvency; it refers to the context of private law and is aimed at negotiating a settlement of the crisis of the company. For the enterprise in crisis, the advantages of the Recovery Plan ex art. 67 are twofold:

1) any action for revocation of acts, payments and guarantees on assets of the company in crisis, put in place for the implementation of the Plan shall be excluded;

2) the entrepreneur in crisis is exempted from criminal liability for payments and transactions made during the implementation of the Recovery Plan.

The Plan is approved by the administrative body of the company; if required by the company by-laws, the Plan is approved also by shareholders. In order to become valid and effective, the Plan must be validated by a certified professional who is requested to assess its "reasonableness and reliability" (Certified Recovery Plan).

The Plan is therefore a unilateral act of the company and the agreement of creditors is not required for the plan to become effective, unlike what happens under the restructuring agreement of debt and under the legal composition arrangements with creditors (*"concordato preventivo"*). It is however appropriate to share the Plan with the main creditors concerned.

Even in absence of specific legal obligations of publication, it is appropriate to file the Plan in the relevant Register for general purposes of transparency and, more recently, for possible tax benefits in case of income from dismissals (TUIR, Art. 88, paragraph 4).

3. Content of a Restructuring Concept

Contents of the Plan

No standard principles for the preparation of the Plan have been issued to date. The Plan must have the following formal characteristics:

1) it must be in writing;
2) it must bear a certain date;
3) it must be formally approved by the administrative body of the company (and/or by the Shareholders)

The standard content of the Plan may include the following topics:

a) an outline of the reasons for the crisis;
b) a detailed description of the patrimonial, economic, financial, organizational, market situation of the company, at the time of preparation of the Recovery Plan;
c) identification of strength as well as weakness factors;
d) a detailed description of the intermediate and final objectives to be pursued and achieved;
e) a list of KPIs that allow the monitoring of the evolution trends of the situation and the achievement of the objectives;
f) a detailed description of the measures or actions to be taken;

g) a detailed description of acts, guarantees and payments to be excluded from revocation and put in place to implement the Plan.

To better support the assumptions of the Plan, the following topics should be indicated clearly and precisely:
1) conditions, or circumstances, precedents, out of the company, of the Plan, such as decisions of the creditors, market trend, predictable behavior of suppliers, employees, customers, financial institutions etc.;
2) a sensitivity analysis to apply to changes in assumptions;
3) an indication of the sources of information;
4) the adopted evaluation criteria;
5) the used calculation methods.

Even in absence of legal forecasts and standards, the duration of the Plan represents a very important factor in the assessment. Direct experience suggests that a period of 3-5 years is generally expected for the realization of the turnaround; longer durations should be motivated adequately.

Assessment of the Plan
In order to come into effect (i.e. exclusion of the revocation action referred to acts accomplished to enforce the Plan and exception from consequent criminal liability), the Plan must be assessed by a certified third Party professional. Such third Party professional is requested to:
- validate the correctness of company data;
- assess the feasibility of the Plan.

Civil law does not detail the characteristics of the Plan and therefore not even the operational aspects required for its assessment and validation. The professional judgment must be focused on:
→ the overall consistency of the Plan
→ its sustainability
→ its compatibility with market/industry trends

The assessor is thus requested to give an opinion on:
→ the validity of the methods adopted by whoever prepared the Plan, concerning the identification of the causes of the crisis
→ the correctness of the "diagnosis"
→ profiles of discontinuity of the Plan with respect to previous management
→ likelihood of the evaluation of industry growth
→ the actual existence of conditions suitable for the company's recovery.

One of the tasks of the professional is to point out any uncertainty factor, any unexpected development, and the effects of delays in the implementation/execution of the program, in order to appropriately assess existing risks and to allow the recipients of the report to take decisions in an informed and responsible way. The work of the assessor must end with a final judgment about the Plan. With respect to the judgment of reasonableness and reliability of the Plan, the National Council of Chartered Accountants reports that:
→ the assessor is requested to *"rule critically and prospectively on the correct evaluation of corporate data contained in the negotiated Plan ,..., thus addressing the problems related to the practical implementation of the Plan, ..., "*;
→ the assessor should therefore highlight the *"profiles of discontinuity"* of the Plan with respect to the past management of the business ;
→ the assessor must *"motivate clearly and precisely the reasons which led him to express a positive judgment with regard to the likely success of the Plan."*

Therefore, the validation report should contain:
1) an explanation of the methods used;
2) data and most important calculations for the validation, including their mathematical re-execution;
3) the reasons for the validation.

Should the validation be issued, it shall enforce its effects, provided by law with respect to the procedure of the recovery plan, i.e. the exemption from revocation actions for acts accomplished during the execution of the Plan and the exclusion from criminal liabilities for having participated to the Recovery Plan.

Finally it should be noted that the professional could be pursued with criminal personal sanctions, if, in his Report a) he exposes false information and/or b) he fails to report material information.

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The Local Framework

While the financial institutions in Mauritius were not directly embroiled with the financial crisis which surfaced in 2008, the economy, being highly dependent on external trade, experienced difficulties on account of the state of the trading partner economies.

The Mauritian government, through successive budgets, tried to mitigate the impact on the economic sectors, including tourism, manufacturing, and non-banking financial services, by introducing measures to help businesses adapt to the prevailing circumstances and thus augment their resilience. These include debt restructuring, equity funding, promoting equipment leasing schemes, facilitating access to capital and reinforcing fiscal incentives. Where such boosts turned out to be inadequate or inappropriate, businesses in turn resorted to corporate restructuring in an attempt to restore financial stability, achieve business efficiency and stimulate growth.

The legal framework in Mauritius contains general provisions setting out the scope and procedures for corporations to restructure their businesses. For instance, a company, or any of its shareholder or creditor (in specific circumstances), may apply to the Court for an amalgamation, or any other business arrangement, to be made effective. Such business arrangement includes reorganization or reduction of capital along with transfer of assets, obligations, or control, as well as liquidation. A company, or any of its shareholders or creditors, may also seek the leave of the Court to propose a compromise which may, for instance, entail cancellation of debts or variation of rights or terms of debts and obligations. In certain cases, amalgamations, mergers and de-mergers, can be implemented through contractual agreements, without having recourse to the Court.

Corporate Restructuring: an International Perspective

Beyond the domestic provisions for corporate restructuring, Mauritius, as an international financial centre of excellence, offers unique opportunities for multinationals aiming at cost reduction and operational efficiency to reorganize their businesses. The company law allows companies to migrate, as going concerns, to Mauritius. A relocation of business into Mauritius brings the opportunity to operate in a tax competitive jurisdiction, internationally recognized for its business facilitation environment, and well situated geographically to serve Asian and African markets. Mauritius ranks 1st in Africa on World Bank's *Ease of Doing Business report* and *Mo Ibrahim's Index of Corporate Governance*. It is rated by the OECD as a largely compliant jurisdiction in respect of its regulatory framework regarding transparency and exchange of information. It also has a good network of tax treaties and investment protection agreements.

Protected Cell Companies

The use of Mauritian Protected Cell Companies (PCCs) as part of a corporate restructuring can provide an efficient means of cost containment. A PCC operates as one single legal entity, thus requiring a single Board and enabling streamlined headquarter expenses. It however has the ability to house several business segments under its umbrella, each within a particular cell. Each cell can carry out business virtually as a separate venture, ring-fencing liabilities but with ability to transfer assets across cells and declare dividend at cell level.

PCCs are also eligible for a one-time election for their financial and fiscal reporting to be either on a cell basis or a consolidated basis. While tax consolidation does not feature in domestic tax law, this specific structure allows multinationals to leverage on loss-making operations, unrelieved capital allowances from specific businesses, or excess foreign tax credit within a particular business segment to rationalize the tax bill of the group.

Mauritius Freeport
Manufacturing companies operating in high cost jurisdictions may consider to transfer part of their activities to Mauritius and benefit from the special regime in place within the Mauritian Freeport. The Freeport provides excellent warehousing, logistics and transshipment facilities for businesses to access Africa and Asia. Companies operating in the Freeport sector can carry out activities such as breaking bulk, sorting, grading, mixing, assembly, packaging and minor processing.

Companies holding a Freeport licence are eligible to import raw materials and equipment duty-free, and enjoy complete income tax exemption on profits from exports. In addition, products exported to the SADC and COMESA member states (regional groupings comprising some 27 African countries) benefit from either preferential access or complete exemption of customs tariff in the importer country provided the value-addition criteria are fulfilled.

Freeport operators also have the flexibility to access the local market for up to 50% of the re-exported value. Profit from domestic business is taxable at 15%.

Headquarter & Treasury Operations
Corporate restructurings often entail improving efficiency in the management of headquarter and treasury operations. Consolidating all such group activities under one roof may often result in significant savings. Mauritius, with its appropriately skilled and trained manpower, modern infrastructure, well established banking sector, and good international connectivity, offers a cost effective and convenient location for multinationals to establish their global treasury and/or headquarter activities.

When a company proposes to carry out at least three global headquarter activities or global treasury activities (these are listed in the relevant legislation) to at least three related corporations based outside Mauritius, it becomes eligible for a Category 1 Global Business Licence (GBL1). In addition to the flexible regulatory, operational and compliance framework in place, GBL1 companies qualify for a preferential income tax regime which brings the effective rate to a maximum of 3%. Dividends and other distributions are not subject to any withholding tax or exchange control on repatriation.

Captive Insurance
Following the financial crisis and due to the ever-increasing need for risk mitigation and compliance, insurance costs constitute a significant expense for multinationals, with each business in the group having different coverage needs and limit requirements. Mauritius offers the opportunity for such multinationals to restructure their insurances by setting up a captive insurance company to insure the risks of the group companies. Captives can be set up as limited liability companies or protected cell companies with each cell handling a particular risk and coverage profile. The use of a captive carries multiple benefits. It enables significant cost reductions with more cost effective policies compared to commercial insurance premiums, on account of savings on broker commissions, claim administration costs, and insurance company profits. It may also fetch better negotiation power with reinsurance companies and be in a position to provide coverage to risks which could otherwise not be insurable at reasonable costs. While insurance premiums paid by the companies in the group would still be tax deductible as business expenses, the profits made by the captive, if structured as a GBL1 company, would be subject to tax at an effective rate of 3%.

The above summarises a few areas in which Mauritius can be used as a platform by multinationals to reorganize their business model, operate within internationally recognised governance norms and optimize returns.

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1. Restructuring Concepts

The idea of a "restructuring concept" is almost new to the Mexican Legal System, as we explain below:

In year 2000, the Mexican Government issued a new Insolvency Law that had as one of its goals the establishment of a procedure that would guarantee the company´s capability of continuing business so that bankruptcy can be avoided[1].

Such goal, however, has not been achieved by the final wording, since such procedure was focused on obtaining a payment agreement between the creditor and the debtor, and not an insolvency plan based on restructuring measures. This means that, in reality, the approved wording only focused on obtaining payment for due credits throughout the celebration of an agreement between the involved parties before a judge. If such agreement was not reached by the parties, the bankruptcy procedure would start.

However, on January 10, 2014, an amendment was made to the Insolvency Law, which develops the initially intended 2000 objective.

Since this amendment, insolvent companies can file a restructuring plan before the judge. This plan must be endorsed by the majority of the creditors. The acceptance of the proposal means that the creditors agree with the terms of the restructuring and that they have reached a settlement regarding due payments (this does not necessarily mean that bankruptcy will be avoided).

Further, these amendments open the possibility for an insolvent company to ask for financing during the insolvency trial (either as a cautionary measure or as part of the restructuring process), in order to obtain enough liquidity to ensure the continuation of business.

The Law does not contain any kind of administrative rules or dispositions regarding the restructuring concepts, the restructuring plan or the financing forms that can be adopted by the company and its creditors.

Therefore, if a creditor is willing to participate in such a restructuring procedure, there are no special compliance parameters beyond the general contracting provisions established by the Civil and Commercial Law. This means that the involved parties (in particular the debtor, who would have to demonstrate the viability of continuing his business) must agree and define content or purpose of a restructuring concept.

In terms of the income Tax Law, insolvent companies are allowed to decrease from their accruable income the amount of the debts released or removed by the creditors as a tax benefit.

Because of the novelty of these amendments, some aspects are left to be regulated and interpreted. We suppose that domestic precedents and International Law will be very important to define those aspects that, as we mentioned, are not covered by Law, e.g. if a tax authority can be considered as a creditor in order to start an insolvency procedure.

With regard to the novelty of this concept, we assume that the Mexican tax authorities will have to change certain criteria; one must understand that an insolvency process is established in order to protect private companies and the stability of the industry, as well as the competitiveness of our country in a Global Economy. Today, in an insolvency process (and, in general, all kind of activities), the tax authorities´ priority is to obtain the payment of due taxes, and not to ensure the continuity of a business or its viability. The viability of some tax procedures, such as the seizing of bank accounts because of unpaid taxes, which is a common practice, will have to be revised as those measures were not designed with the intention to ensure business continuity.

1 For context and clarification purposes, we briefly explain the applicable rules for initiating an insolvency process: the procedures are always held before a Federal Judge and it is always required that the judge declares a company as insolvent so that procedures can be initiated; the petition for declaring a company as insolvent can be filed by the company itself or by two or more of its creditors.

2. Regulatory Framework

Neither the Insolvency Law nor the accounting regulations contain any directive regarding the content of a restructuring concept.

Because of that, there is no regulatory framework involved (beyond general Commercial and Civil Law, as we stated above) that has to be taken into account when a creditor is willing to support a debtor in financial distress.

The Law and its amendments are vague as they only contain formal regulations on how a restructuring process can be initiated and developed, but no regulation exists regarding the content or the substance of the restructuring agreement, as we will explain in point 3.

It is important to point out that the credits obtained by an insolvent company during the trial to ensure business continuation, are considered as especially preferential. This means that such credits must be paid before paying other kinds of credit, even those related to taxes or those guaranteed with mortgage (due salaries are the only exception and have to be paid in first place).

Because of the novelty of this legal structure, our Courts have not issued any precedent in this matter yet. Nonetheless, we anticipate that the Courts will stay out of making any statement about the content of a restructuring concept, since the Mexican Judicial System has historically stayed out of issuing an opinion regarding financial and economic subjects.

3. Content of a Restructuring Concept

As we stated above, no regulation exists in connection with the content of a restructuring concept. Therefore, no parameters apply under the Mexican Regulatory System in order to determine what kind of business/financial decisions have to be taken in order to reassure the capability of a company continuing business, or what kind of information has to be known in order to take a specific decision.

The regulation for insolvency only contains formal dispositions for the restructuring procedure. The Law only states that an independent agent, designated by the judge, is granted with the attribution of authorizing the financing form proposed by the parties, but no parameters or goals are especially established for those purposes.

This means that the involved parties have complete discretion about what kind of measures should be taken in order to overcome the financial crisis.

4. Financing

Mexican companies have access to all kind of financing forms. The chosen financing form will depend: on the business model adopted; on the goal of the financing as well as the creditor´s commercial conditions, among other factors.

It is common practice for companies to seek for bank loans, inter-company loans (within large groups), share holder´s capital increases, leasing and factoring, as well as syndicated loans when it is needed.

As we stated before, this kind of financing has to comply with Civil and Commercial Law standards, but the financing does not have to ensure liquidity and/or stability of the company. Creditors will grant financing as long as the proper guarantees are set up. Bridge loans are common in our market, where fixed assets act as the primary guarantee within a Trust.

It is important to mention that, as of January 1, 2013, the Mexican banks have to comply with most of Basel III principles and requirements. This means that in financing operations, banks will ask possible debtors to file all of the information, guarantees, and applicable requirements, in order to fulfil the international standards contained in Basel III.

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1. Freedom to Choose the Method of Debt Restructuring

Polish legal system does not offer prescriptive regulations that govern debt restructuring methods applicable to enterprises. Business transactions enjoy a relatively high degree of freedom in this regard. The creditor and debtor may come to a variety of arrangements that lead to restructuring of liabilities, as a result of which the debtor regains financial liquidity, and is able to continue as a going concern. Generally, such agreements may be made in any form, including ordinary written documents. In practical terms, however, in order to ensure better security, particularly for the creditor, the parties often turn to two relatively simple statutory instruments regulated in the Polish Civil Procedure Code (CPC). Under the first instrument, the debtor is summoned to a conciliation court hearing (Article 185 of the CPC), whereas the second instrument consists in the debtor's voluntary submission to enforcement under a notarial deed (Article 777 of the CPC).

To summon the entrepreneur in debt to a conciliation hearing, the creditor drafts a relatively simple application to a competent court with local jurisdiction over the registered office of the debtor. In the said application, the creditor provides account of the business relationship between the two entrepreneurs, specifies the amount of debt, and recommends the debt restructuring method. Usually, the proposal refers to paying the debt off in installments, or partially reducing the debt (e.g. through forgiveness of default interest). Once the court receives the application, a hearing is set to which both entrepreneurs are summoned, and the court proposes that the parties enter into a judge-mediated settlement. The settlement may be reached on the terms proposed by the creditor, or with modifications put forward by the debtor. If the settlement is approved, it is recorded in the court minutes, and it has an effect of a court judgment. Consequently, if the debtor fails to fulfill the settlement, the creditor will be able to pursue enforcement of the settlement by law enforcement authorities.

On the other hand, under the procedure of debtor's voluntary submission to enforcement set forth in Article 777 of the CPC, the debtor with specific liabilities toward the creditor issues a statement in the form of a notarial deed, whereby the debtor undertakes to repay the debt in question by a specified deadline, often by installments or after the debt is partially reduced. The debtor submits to enforcement with regard to payment of that debt. This means that if the debtor fails to pay the receivables in time, the creditor may pursue enforcement of debt against debtor's property pursuant to the said notarial deed. In practical terms, the creditor will only need to apply to court to append the enforcement clause to the notarial deed, which is a court-issued confirmation that the deed authorizes enforcement of debt referred to in the notarial deed. With this legal instrument, an entrepreneur in debt is able to restructure the debt by reducing it partially and extending the repayment date, according to the arrangement made with the creditor. On the other hand, if the debtor fails to perform his obligation, the creditor is granted the shortest possible debt recovery time, and substantial decrease of collection costs.

Both of the above-mentioned arrangements commonly made between businesses in Poland are highly deformalized. These settlement forms are commonly resorted to due to their simplified procedure and the fact that they offer both parties an opportunity to secure maximum benefits. The creditor is able to effectively secure his claim, whereas the debtor attains restructuring of his debt.

2. The Procedure of Restructuring in Case of Large Number of Creditors

In situations where the entrepreneur has multiple creditors, and his financial situation becomes a threat to the going concern of the business, Polish law stipulates a specific procedure that facilitates overcoming such difficulties by means of comprehensive debt restructuring. It is achieved by way of the so-called composition bankruptcy proceedings with creditors. The detailed procedure of the composition proceedings is set forth in the Bankruptcy and Reorganization Law.

3. Content of a Restructuring Concept

According to the provisions of the said Law, if the debtor defaults on payment of its liabilities to creditors but has developed a reorganization plan that, if adopted, would allow the debtor to restore its financial liquidity and continue as a going concern, the debtor may apply to court for commencement of composition proceedings. Such proceedings consist of several stages. The first step is to submit the actual application, which is extremely formalized. The application must contain a detailed identification of the debtor entrepreneur, list its assets, provide financial documentation, describe status of the liabilities, and identify causes of the financial trouble. First and foremost, however, the application must offer a proposal of how to relieve the financial distress (e.g. through reduction of operating costs, modification of production profile), along with a debt restructuring plan. The proposals may be supported by detailed financial and business analyses, as well as opinions of auditors and other experts. Once the court examines the above-mentioned data, the proceedings move on to the second step, where all creditors are called to provide written notification of their claims. The notification is published in a special journal - Monitor Sądowy i Gospodarczy [Court and Business Gazette] and in press. As part of stage three, the court verifies the received data and develops the so-called list of debt claims. The fourth and most important step of the proceedings consists in convening a meeting of creditors, where the creditors vote on the settlement with the debtor. Detailed terms of the arrangement are based on the proposal of the debtor, which may be subject to modifications. They include extending debt repayment dates, partial reduction of debt, or debt for equity swaps.

4. Financing and Implementation of the Composition Agreement

An essential component of the composition arrangement is that the adopted debt restructuring must allow the entrepreneur to overcome the crisis, and continue as a going concern, thereby avoiding liquidation. To this end, if the composition settlement so provides, the debtor may also secure third party financing for a specific period of time in the form of bank credit facilities or even funds extended by creditors. In order to assess the economic potential of the debtor and the feasibility of the composition settlement, the court may seek opinion from experts in various fields, including but not limited to finance, accounting or economics of enterprise. The settlement is reached provided that creditors holding at least two thirds of the total amount of debts vote in its favor. Once the composition settlement is approved, the court appoints an official receiver to oversee that the terms of the settlement are adhered to. With respect to court findings, the entrepreneur performing the settlement may be obliged to seek consent of the receiver to enter into transactions in excess of a specified value, or specific types of transactions, such as e.g. purchase of real estate or other property rights.

To sum up, it should be noted that the settlement proceedings described above are available to businesses who find themselves in such financial distress that without debt restructuring they would not be able to independently restore solvency, and come out of crisis.

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1. Restructuring Concepts

According to official data[1], approximately 30,000 Romanian companies have started an insolvency procedure in 2013, a 10% increase as compared to the same period of 2012, cumulating 1.3 billion EUR in debt. At the same time, the size of the companies is growing larger compared to previous years, showing a tendency of more mature companies to reach this stage. This phenomenon requires a very solid and an even more complex restructuring process in order to facilitate the evolution of the companies with restructuring needs, as well as a support of companies in early restructuring stages starting even before their entrance into an official insolvency procedure.

For this purpose, the Romanian legislator, together with official bodies, has developed restructuring concepts targeted to meet the observed needs of the Romanian economy. The restructuring concepts available in Romania relate mainly to two types of procedures:

- Extra-judiciary restructuring (out-of-court) proposed and promoted by official bodies in order to support companies in distress before reaching the more complex stage of insolvency. These measures represent alternatives to the classical insolvency procedure and include the ad-hoc mandate and the preventive concordat
- The standard judiciary restructuring (in-court) in its general and simplified forms

2. Regulatory Framework

The regulatory framework related to restructuring in Romania was implemented by the Romanian Legislative System. The governing regulation is represented by Law no. 85/2006 concerning the insolvency procedure, as amended in 2010, supplemented with regulations related to the insolvency preventive procedures (Law no. 381 from 2009). The overall restructuring process is also covered by the Insolvency Code, prepared in 2013 but still under discussion.

In Romania, the main official body related to restructuring processes is the National Trade Register Office (under the jurisdiction of the Ministry of Justice), managing the Insolvency Proceedings Bulletin and the National Union of Insolvency Practitioners.

3. Content of a Restructuring Concept

The extra-judiciary restructuring or, also called, insolvency preventive procedures were introduced in order to provide a more flexible alternative to the formal and restrictive judiciary insolvency procedure. The main advantages of these alternative procedures refer to the confidentiality of the entire process, as well as to its short duration. A company in distress can voluntarily and with higher confidence start an accelerated restructuring process in order to reestablish the balance of its funds and of its due debt.

Thus, by utilizing the procedure of ad-hoc mandate, the company can follow a restructuring process in less than 3 months. The parties involved, the company in financial difficulties, its creditors and the representatives of an ad-hoc named agent will attempt, in full confidentiality, to reach an amicable agreement on the planning of debt repayment in order not to hinder the activity of the company, while ensuring an acceptable debt repayment schedule.

While the ad-hoc mandate provides a flexible support for confidentially mediating the restructuring aspects, the preventive concordat is generated by the agreement between creditors to name a Conciliator to lead the reorganization planning.

The preventive concordat can extend over up to 18 months and is run by the Conciliator. Together with the company in financial difficulty he will develop a recovery plan as well as the concordat project. This agreement between creditors leads to the suspension of their individual prosecution rights. The calculation and tracking of interest and penalties resulting from debt is also suspended during this procedure. If the Conciliator finds it necessary, he may

1 ONRC – Oficiul National al Registrului de Comert/National Trade Register Office, 2014

ratify the concordat, transforming it into a document opposable to all creditors.

The standard judiciary restructuring, in its general forms, is restricted to a maximum duration of 3 years and includes 3 major phases/modules:

Phase 1: Observation period – represents the first actions taken after instituting the insolvency procedure and refers to the activities undertaken by the judiciary administrator, in taking over the allocated managerial tasks. These activities refer to the identification of the company's assets, the evaluation of the company's debt, the identification of creditors and the legal prioritization of debt repayment by debt category. This phase also includes a concrete assessment of the feasibility related to the company recovery during a reorganization/restructuring period. If this recovery is feasible according to the initial assessment, the restructuring process will move to phase 2, the actual reorganization planning.

Phase 2: Reorganization planning – this phase refers to the actual reorganization of the company in order to sustainably cover its debt, while continuing its activities. The reorganization of the company must necessarily include 3 steps:

- Operational restructuring – including activity and working capital optimization in order to increase liquidity, cost reduction initiatives, supplier negotiation and other operationally liaised measures
- Corporate restructuring – representing the reassessment and design of the company's equity in order to cover parts of the due debt, the planning and activities meant for attracting additional equity, etc.
- Activity reducing – referring mainly to asset liquidation in order to cover, as well, parts of the debt.

Phase 3: Bankruptcy – represents the final stage of the restructuring process and includes the company's final assets liquidation, covering its remaining debts according to the legal debt prioritization by category and guarantee type and legally closing down the company.

In some cases, as exhaustively presented in the regulatory framework, only the simplified insolvency procedure applies, resulting in starting the insolvency procedure directly with the bankruptcy procedure.

Initiating a procedure that involves the company's reorganization has the advantage of providing the company with tools for further sustainable development. Thus, beyond capitalizing on the company's assets and sustainable debt repayment, business processes can also be optimized and the company can develop strategies and tools to ensure its long-term survival and recovery.

4. Financing

In terms of financing a company in restructuring process, the classical utilized measures refer to:

- The decrease of debt-to-equity ratio, by increasing the share of equity within the company's capital. This measure can be a direct result of attracting strategic partners
- Optimizing working capital in order to release liquidity
- Syndicated loans among the pool of creditors

In recent periods of time, the regulatory framework was built for allowing more complex measures of improving the financing of an insolvent company, like cleaning the company's financing records by transferring the banking debt into equity. This measure, although efficient, is not feasible for future equity shares of more than 30%. Another proposed measure refers to instituting an investment fund with state capital, meant to conduct the investment into companies by buying-out bad debt.

At the same time, regulatory measures were taken in order to further promote bank crediting to insolvent companies. In this case, a higher recovery priority is allocated to credits marked with guarantees and granted for financing during the insolvency procedure.

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