25 March 2015

Mr Mark Hayden
European Commission
M059 07/004
B-1049 Brussels
Belgium

Dear Mr Hayden

The high yield division (the "High Yield Division") of the Association for Financial Markets in Europe ("AFME") and a number of its members are very interested in developments related to European insolvency laws. In this respect we have reviewed the "Commission Recommendation of 12.3.2014 on a new approach to business failure and insolvency" (the "Recommendations"). We appreciate the opportunity to share with you a brief response to the matters raised in the Recommendations, as well as our general views on European insolvency reform.

This letter provides:

(1) an overview of the negative effects of disparities amongst European insolvency regimes;

(2) a brief response to the Recommendations;

(3) our views regarding the most important features and deficiencies resulting from disparities between national insolvency and restructuring laws within the European Union;

(4) additional considerations with respect to European insolvency;

(5) a discussion of the role of court and administrative officials, and

(6) certain practical issues related to European insolvency.

With respect to the matters mentioned above, we have also attached as Appendix A a chart which summarises the relevant differences between European national insolvency regimes.

The views expressed in this letter do not relate to smaller businesses or trade creditors.
I. Overview of Important Negative Effects of Disparate European Insolvency and Restructuring Laws

As reflected in the Recommendations, national European insolvency laws vary in many respects, both procedurally and substantively. These differences are summarised in the table attached as Appendix A to this letter.

The following are of particular importance to the European high yield market:

- the opening of insolvency proceedings;
- interpretation and application of insolvency rules and regulations;
- the length of and process for a general stay of creditor rights;
- management of insolvency proceedings;
- ranking of creditors;
- the role and level of participation of creditors in insolvency proceedings;
- filing and verification of claims;
- responsibility for proposing and approving reorganisation plans;
- annulment of transactions entered into before the start of insolvency proceedings;
- liability of directors, shareholders and management and
- availability of post-petition financing.

We believe that the differences between national insolvency and restructuring regimes:

(a) increase uncertainty amongst issuers, investors and other stakeholders with respect to creditor recovery rates;

(b) discourage cross-border investment (particularly with respect to multinational companies or those with complicated financing structures) and reduce the overall efficiency, attractiveness and innovation of European capital markets generally;

(c) discourage the timely restructuring of viable companies in financial difficulties, and often lead to liquidation rather than providing an opportunity to restructure as an ongoing concern; and

(d) result in small and medium sized companies being at a disadvantage as they are generally unable to cope with high restructuring costs or take advantage of more efficient restructuring procedures in other member states.
II. Response to the Recommendations

We are generally in agreement with the Recommendations, and are particularly supportive of the recommendations for preventative restructuring frameworks, a strong and effective stay of individual enforcement actions (where appropriate), court confirmation of restructuring plans and generally providing a second chance for entrepreneurs.

We note that a number of jurisdictions have recently reformed their insolvency and restructuring regimes (see Appendix A). While these reforms have been welcomed by the markets, we do not believe that they go far enough in addressing the shortfalls in national regimes, nor in reducing the need for a more uniform approach to insolvency and restructuring laws.

We cannot expect the disparities in national insolvency and restructuring laws to be resolved or determined by market forces. Stakeholders approach each restructuring with their own agenda and strategy, often looking for positions of control and influence to gain leverage, and not always seeking common ground and consensus. In addition, policymakers in various national jurisdictions often cite political considerations, or historical and cultural practices, as serious impediments to insolvency reform and harmonisation. In spite of this, and as highlighted above, the absence of a consistent, predictable and well supervised European restructuring regime creates a considerable layer of uncertainty, increases costs and can alter the economics of a capital markets transaction. Fashioning ad hoc restructuring frameworks around national or market driven influences results in greater transaction risks and higher costs of capital.

Further harmonisation of European insolvency regimes would help to facilitate more predictable and orderly outcomes for corporate restructurings. Accordingly, we believe that certain key aspects highlighted below, when enacted properly and supported by the relevant jurisdiction’s legal, judicial and regulatory frameworks, would greatly increase the effectiveness of European insolvency and restructuring laws and, where appropriate, would positively enhance a company’s ability to effectively restructure rather than end up in liquidation.

III. Key Features and Deficiencies in existing European insolvency legislation

We consider the following to be the most important matters to be considered as we attempt to enhance efficiency of European insolvency practices and increase the likelihood that a company with its centre of main interest in Europe that is experiencing financial difficulties will be given a real opportunity to successfully restructure using European restructuring tools rather than ending up in liquidation or opting to use international restructuring tools such as US Chapter 11.

(A) Stay

It is critical to the successful rescue of a failing business that precipitate action by creditors be prevented. In other words, a stay of enforcement action is required, otherwise assets that have been secured would be subject to seizure by creditors, and as the company defaults on its obligations its creditors would seek to obtain and enforce judgments. Although in most cases some form of stay has been introduced as part of certain court-supervised insolvency and restructuring procedures throughout Europe, it is arguable that the precise
forms of stay deployed by certain European jurisdictions do not go far enough. See Appendix A – “Stay on Proceedings” for an overview of stay of enforcement practices in various European jurisdictions.

Under English law, for example, contractual termination provisions triggered by insolvency are permitted and remain exercisable by the counterparty notwithstanding any stay. Furthermore, the English scheme of arrangement, an increasingly popular restructuring tool, does not trigger a stay. Spanish insolvency law includes a time limited moratorium on creditor action, but such time limits are generally much shorter than the time required to adequately restructure an otherwise viable business.

Such arguably inadequate stay provisions often allow customers and suppliers to walk away, or demand punitive amendments, just when their continued commitment is most crucial to the company’s rescue. As noted above, this contributes to the value destruction seen as an inevitable consequence of filing in certain European jurisdictions.

By contrast, contractual termination provisions are not enforceable in many other jurisdictions, notably France and the USA. See Appendix A – “Creditor’s ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings”. It is our firm belief that a properly defined stay on actions prejudicial to the survival of the business is a crucial element of any useful rescue procedure.

(B) Valuation

The valuation issue arises because Europe does not have a consistent and clearly established method for valuing companies in a restructuring process. At issue is the determination of stakeholders’ relative participation in a restructured enterprise. The fact that a restructuring is being proposed at all, rather than a liquidation, suggests that there is some excess value over and above the liquidation value that is worth preserving. However, dramatically different allocations of value arise if a liquidation basis of valuation is used as opposed to various alternative “going concern” bases. There is currently no consistent method or platform for resolving stakeholders’ disputes as to the basis of valuation, short of a company entering formal insolvency proceedings. See Appendix A – “Valuation method for purposes of determining creditors’ entitlement to vote on a court-sanctioned reorganisation plan” for an overview of valuation proceedings in the most relevant European jurisdictions.

Hence, somewhat crudely, the dynamic that emerges is that often stakeholders are in effect given a choice – accept a particular basis of valuation (and it may be a liquidation valuation, which ignores going concern surplus arising from a successful restructuring) or see the enterprise go into an administration or liquidation proceeding. Ideally, a consistent and harmonised framework should be created for fast judicial resolution of valuation disputes in restructurings, short of administration proceedings. This will enable practice and precedent to develop in restructuring valuations, providing stakeholders relative certainty of outcome, whilst avoiding the value loss that arises through administration and/or liquidation.

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1 See “The Valuation of Distressed Companies — A Conceptual Framework” by Michael Crystal QC and Rizwaan Jameel Mokal, in particular the discussion at p14 et seq.
(C) Cramdown

Having established a valuation of the enterprise to be restructured, it generally then emerges that some lower ranking stakeholders – shareholders and perhaps subordinated creditors - no longer have an "economic interest" in the enterprise. In other words there is insufficient value arising to satisfy the claims of more senior stakeholders in full. Traditionally, however, the agreement of these "out-of-the-money" junior creditors and/or shareholders would nevertheless be required before an "out-of-court" restructuring could be implemented. In recent times, parties have realised that making a restructuring dependent upon consents from stakeholders with no economic interest in an enterprise, properly valued, is not conducive to an efficient restructuring. However, practice has differed in the resolution of this issue. See Appendix A – "Court approved cram down on creditors?", and "Court approved cram down on shareholders?".

Our view is that the question of whether shareholder or junior creditor consents should be conditions to restructurings (which, if not met, would lead to formal insolvency proceedings) will become increasingly important as more complex capital structures predominate. The present position is that practice varies. This ad hoc approach leads to greater uncertainty concerning stakeholders' rights and, ultimately, make restructurings outside administration more difficult. This issue is too important to be left subject to the vagaries of each individual case. As a policy matter, we do not consider that creditors or shareholders with (on a proper valuation basis) no economic interest in the enterprise should be in a position where their "veto" forces full insolvency proceedings or delays otherwise viable restructurings. In other words, a judicially supervised process is required to allow a restructuring to proceed without the necessity of extracting consent from a class of creditors or shareholders with no economic interest.

With respect to cramdown procedures, English Courts apply a "fairness test" prior to sanctioning an English Scheme of Arrangement. This can be contrasted with the position in Spain where creditors suffering a "disproportionate sacrifice" (which term is not defined under Spanish law nor has any guidance been developed by Spanish courts) may only challenge a scheme after it has been sanctioned the court. To create a robust and readily available cramdown regime that effectively binds out-of-the-money stakeholders and minority dissidents, there should be more consistency and improvement in minimum requirements and protections for those affected stakeholders dissidents to ensure that this tool is being used fairly.

(D) Creditors' ability to propose a restructuring plan

A key positive development in insolvency law in recent years has been the receptiveness of lender-led restructuring proposals. In fact, a number of jurisdictions now grant the ability for creditors to propose their own restructuring plan (or a counter-proposal to a debtor's plan), notably France and Spain. See Appendix A – "Creditors able to propose restructuring plan?".
Where a debtor is not obliged to put a creditor’s restructuring proposal to a vote, creditors are often left with little other choice than to approve the debtor’s plan or force the company into liquidation.

In court-supervised pre-insolvency proceedings, creditors and, potentially, interested third parties in general (as opposed to debtors only) should, therefore, be granted the right to submit a restructuring plan to a debtor, which should be put to creditor vote. This would allow credit-bids and, more generally, create an incentive on the debtor to ‘stay honest’ and present more achievable restructuring proposals.

Summary

Of course, the four points set out above are inter-related, and amount to a call for a court supervised restructuring process, which would stay enforcement action for the duration of the process, whilst enabling fast resolution of valuation and allocation disputes and with a process to avoid hold up from financial stakeholders without an economic interest.

IV. Additional Features

We would also like to emphasise three further points.

(A) Funding

In an ideal world, steps should also be taken to address the issue of ongoing funding for distressed companies. In the US, the Bankruptcy Code provides a super priority status for post petition Debtor-in-Possession, or “DIP”, lending. As a result, a specialised market has evolved in the US for this sort of rescue funding. In contrast, in Europe, no such market exists because there are few legislative provisions to prioritise rescue finance (although we note that a number of European jurisdictions have recently implemented reforms providing for the priority status of post-petition financing e.g. France, Italy and Spain). See Appendix A – “Priority status of post-petition financing/DIP financing” for more information regarding DIP financing in Europe.

Consequently, a distressed company has to rely on existing creditors to meet the interim funding requirements whilst a restructuring plan is devised. Whether this is possible and, if so, how it is organised, depends on the support of existing lenders and the nature of the facilities already in place. The procedure can be complicated by the increasing number of financial institutions involved in the process, and their range of different investment and exit strategies. Whilst a majority of senior lenders may initially find a way to provide interim finance to the debtor, priority status cannot be assured and these lenders are then further exposed to the vagaries and uncertainties of the restructuring process (as outlined above), in particular the potential blocking risk by stakeholders with no economic interest.

For court-supervised restructurings, we are therefore of the view that there should be no regulatory restrictions on the provision of interim financing to debtors and there should be automatic priority status for new financing. In particular, the market should be open to alternative sources of finance, such as hedge funds, and any usury thresholds should be removed. This would greatly increase the sources of financing and encourage the development of a US-style DIP financing market. Court supervision would ensure that the terms of the
interim financing (including any priority status over existing financing) are warranted in the context of a particular situation.

(B) Pensions and Employees

An efficient restructuring process, maximising the prospect that an enterprise will survive, is of great importance to employees. British Energy was a good example where the company’s pensioners and employees had significant interests – there were over 5,000 employees whose interests needed to be safeguarded. Pensions were also of significant importance in the Polestar restructuring, with both the pensions regulator and the fund trustee being involved in negotiations.

We believe that a more streamlined and certain restructuring process is entirely consistent with a policy to promote the interests of non-financial stakeholders such as employees.

(C) Trade Creditors

We also stress that our views are principally designed to streamline restructuring of the claims of financial stakeholders – by which we mean “structural” investor debt and shareholder claims, as opposed to “trade” creditors, whose claims arise out of the day-to-day operation of the business.

Invariably restructurings outside of a formal court-led process do not compromise the claims of trade creditors and leave operating companies intact, although often freed from guarantee liabilities in respect of the holding company debt having been adjusted. We are not advocating a court process to impair or cram down the claims of trade creditors. There are numerous examples of financial creditors receiving different statutory treatment to “ordinary” creditors (for example, the preferential status of certain employee and pension claims, and the setting aside of the “prescribed part” under English insolvency laws, intended to benefit trade creditors).

(D) Holding/Operating Companies

There should be a uniform manner of dealing with affiliate group insolvencies to retain efficiencies. This is becoming more critical as corporate structures encompass numerous jurisdictions and otherwise become more complex. In this regard, we note the EU Insolvency Regulation reforms which, among other things, provide a framework for group insolvency proceedings.

V. Court and Administrative Officials

It is important that there is an adequate judicial and professional framework in place to successfully administer any European insolvency reform. For example there should be consistency among the courts in the application of insolvency laws, rules and regulations. In some countries the outcome of an insolvency proceeding may be completely different depending on where in that country the case is heard, or depending on which judge hears the case.

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3 In Schedule 6 to the Insolvency Act 1986
4 See section 176A of the Insolvency Act 1986
It is also important that judicial, administrative and regulatory officials charged with interpreting and administering insolvency rules and regulations are sufficiently knowledgeable about, and experienced in, insolvency to be able to apply such rules and regulations in a consistent and reasoned manner. It would be helpful if the Commission were to encourage the development of a network of dedicated, knowledgeable and independent court and administrative officials across Europe to interpret and administer its insolvency rules and regulations.

VI. Practical Issues

- **Public/private Issues.** European insolvency procedures sometimes have awkward or unintended securities law implications. Information regarding proceedings under European insolvency regimes (even in-court proceedings) is, generally, not publicly available, and any relevant information is usually distributed on a confidential basis and made available only to creditors. In this situation, trading on a public basis in the relevant securities can become difficult or problematic. For example, under UK market abuse rules, trading on information not available to the public and shareholders, even if available to all creditors including your trading counterparty, might make one vulnerable to accusations of market abuse. Any European insolvency reform should address this issue and make it clear when and how securities of an insolvent company may be publicly traded during insolvency proceedings.

- **Capital Market harmonisation.** The European Union is working very hard to harmonise capital market rules and practices across Europe, as evidenced by initiatives such as the European banking union and the proposed capital markets union. In addition, the European Commission is seeking to establish a “single rulebook” through legislation on markets in financial instruments (MiFID II), market abuse (MAR/MAD), alternative investment fund managers (AIFMD) and central securities depositories (CSDR), among others. Each of these initiatives and regulations support and encourage deeper and stronger markets and are intended to increase harmonisation across Europe. While we generally support these initiatives and regulations we believe, for the reasons stated above, that they will not be optimally effective without a similar and corresponding focus on reform and harmonisation of European insolvency rules. Any consistency or certainty provided to market participants by these initiatives and regulations will likely be undermined if market participants ultimately remain subject to the uncertainties and inconsistencies inherent in 28 different European insolvency and restructuring regimes.

- **Disclosure.** Many European countries are currently reforming and revising their insolvency laws, as illustrated by the information contained in Appendix A. In addition, many debtors are able to take advantage of COMI shifts and other mechanisms to tailor where and how their insolvency or restructuring proceedings are conducted. As mentioned above, the location and participants in an insolvency or restructuring proceeding can sometimes have a significant effect on the outcome of such proceedings. This situation increases investor

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uncertainty regarding the treatment of debt in an insolvency or restructuring and, in a worst case scenario, might result in such treatment being very different from the insolvency considerations described in the relevant offering document. Reform and harmonisation of European insolvency regimes would help to reduce this uncertainty.

VII. Conclusion

A predictable, consistent and radically superior restructuring process is singularly lacking across Europe. There is no doubt in our minds that the limited alterations to European insolvency laws described in this letter would help to increase the efficiency of, and confidence in, European capital markets.

We would very much like to have the opportunity to discuss with you further the issues we have raised and we look forward to hearing from you. Please contact Gary Simmons at +44 207 743 9508 in the first instance to arrange a convenient time to meet with you.
Appendix A
Key Differences in EU Insolvency and Restructuring Law
24 March 2015

1. This jurisdictional chart (the “Chart”) has been prepared by Weil Gotshal & Manges, together with input from Loyens & Loeff as to matters of Luxembourg law, Garrigues as to matters of Spanish law, Houthoff Buruma as to matters of Dutch law and Paul Hastings as to matters of Italian law (together, the “Law Firms”) and the Association for Finance Markets in Europe (“AFME”) in response to the European Commission’s “Commission Recommendation of 12.3.2014 on a new approach to business failure and insolvency”.

2. This Chart summarises certain key aspects of insolvency and restructuring law in force in England and Wales, France, Germany, Italy, Spain, the Netherlands and Luxembourg (the “Jurisdictions”) as at 24 March 2015.

3. This Chart is provided to the European Commission for general information purposes only in respect of, and is not intended to cover every aspect of, insolvency or restructuring law in the Jurisdictions. The information in this Chart does not constitute the legal or other professional advice of AFME or the Law Firms.

4. The views expressed in this document reflect those of the authors in respect of each Jurisdiction to which they have contributed and are not necessarily the views of the Law Firms (or of their clients) or AFME (or its members).

5. If you would like to discuss further, contact details for AFME and the Law Firms are set out on the final page.
### Key Differences in EU Insolvency and Restructuring Law

<table>
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<th>Jurisdiction</th>
<th>Corporate Insolvency and Restructuring Procedur</th>
<th>Recent Legislative Reforms?</th>
<th>Time Limits for Filing</th>
<th>Creditors able to propose restructuring plan?</th>
<th>Court approved cram down on creditors?</th>
<th>Court approved cram down on shareholders?</th>
<th>Valuation method for the purposes of determining creditors’ entitlement to vote on a court-sanctioned reorganisation plan</th>
<th>Position of management (insolvency and restructuring proceedings)</th>
<th>May a sale proceed?</th>
<th>Pre-pack sale available?</th>
<th>Avoiding Transactions</th>
<th>Priority status of post-petition financing / DIP financing</th>
<th>Creditors’ ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings</th>
<th>Future Reforms?</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK (England and Wales)</td>
<td>Pre-insolvency</td>
<td>(i) Scheme of Administration</td>
<td>No, although there has not been a significant body of case law</td>
<td>No prescribed time limit but risk of directors’ liability</td>
<td>Administration: one or more creditors may apply for an administration order. A qualifying floating charge holder has the power to choose the identity of the administrator</td>
<td>CVA: creditors cannot propose a CVA</td>
<td>Scheme of Administration: can be used to cram-down secured and unsecured creditors if approved by at least a majority in number and 75% in value of each class of the members or creditors who vote on the scheme. There is no obligation to consult any creditor whose rights are not affected by the scheme or who has no “economic interest” in the scheme. The Court will only consider the scheme if the “proposals are such that an intelligent and honest man, a member of the class concerned, acting in respect of his interests might reasonably approve”.</td>
<td>Administration: directors will be bound by scheme if approved by a majority in number representing 75% in value of members in that class.</td>
<td>CVA: the company’s shareholders can approve the proposals by a simple majority in value, although, if creditors do not agree, the CVA will still be implemented. Dissenting shareholders can challenge the CVA on the basis of unfair prejudice or procedural irregularity.</td>
<td>Scheme of Administration: directors remain in place.</td>
<td>CVA: directors remain in place, however CVA is implemented under the supervision of a licensed insolvency practitioner.</td>
<td>Liquidation: directors dismissed</td>
<td>Administration / Liquidation: an administrator or liquidator may apply to the court for an order to commence an insolvency or a restructuring proceedings.</td>
<td>Yes (the sale of all or part of a company’s business or assets can be negotiated with a purchaser prior to the appointment of an administrator and executed immediately upon his appointment. The company’s creditors are not consulted prior to the sale. However, the administrator must comply with Statement of Insolvency Practice (SIP) 16 on “Creditor’s ability to exercise contractual termination rights following commencement of restructuring”).</td>
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<tr>
<td>Post-insolvency</td>
<td>(v) Scheme of Administration</td>
<td>(vi) Administration</td>
<td>(vii) Liquidation</td>
<td>(viii) Administration / Liquidator</td>
<td>(ix) Administration / Liquidator</td>
<td>(x) Pre-pack</td>
<td>(xi) Administration / Liquidator</td>
<td>(xii) Administration / Liquidator</td>
<td>(xiii) Administration / Liquidator</td>
<td>(xiv) Administration / Liquidator</td>
<td>(xv) Administration / Liquidator</td>
<td>(xvi) Administration / Liquidator</td>
<td>(xvii) Administration / Liquidator</td>
<td>(xviii) Administration / Liquidator</td>
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1. Administrative Receivership may be available to a holder of a floating charge over all or substantially all of the company’s assets. Pursuant to the Enterprise Act 2002, this out-of-court enforcement mechanism is no longer available for charges created after 15 September 2003 (unless a specific exception applies e.g. capital markets exception) and is rarely used in practice.

2. Unlike U.S. Chapter 11 proceedings and the German Insolvency Plan, a UK scheme cannot be used to cram down an entire dissenting class. “Roll over schemes” which combine a scheme (to bypass consent thresholds to roll-over senior debt to a Newco) and a pre-pack sale, where assets are transferred to a Newco and junior debt is left behind in the Oldco, have therefore become common in the UK (e.g. BHS Creditor’s Moratorium).


4. In practice, a “rollover scheme and pre-pack” (see footnote 2 above) is often used to take control of a distressed company without shareholder consent.

5. The moratorium is often used in conjunction with a Scheme of Arrangement – a lock-up arrangement is entered into with creditors. A moratorium can be available for a moratorium of up to 3 months when proposed by the company’s directors. For companies not entitled to a moratorium, a CVA may be used in conjunction with Administration to take advantage of the moratorium.

6. The anti-deprivation rule has been construed very narrowly (e.g. *Reliance Pack Investments Pre-Pack*, [2012] BPIR Corporate Trustee 795). The UK Government considered amending legislation when consulting on the Enterprise Act 2002 and concluded that “the matter was one of two great complexity which required a wider consultation, particularly if it were intended that the UK courts would have a role in approving the grant of super-priority funding on a case by case basis”.

7. See INSOL article “Repair or Recycle? Some thoughts on DIP Financing and Pre-Packs” (http://www.insol.org/_files/Fellowship%202013/Literature/Session%206/Repair%20or%20Recycle.pdf) and “Financing Corporate Recesses, Where Does the UK Stand?” by Alekpera Sotirova (http://www.name-print.com.uk:5001/2008-03-02%20-SM.pdf)
CVA: may be used to cram down creditors if approved by a majority of creditors comprising 75% in value of the company's creditors present and voting at the creditors' meeting called to consider the CVA. (50% voting in favour must be unconnected with the company). A CVA cannot affect the rights of a secured or preferential creditor, except with their consent

A CVA may be challenged on the grounds of unfair prejudice or material irregularity (subject to time limits).

### Jurisdiction

<table>
<thead>
<tr>
<th>France</th>
<th>Pre-insolvency</th>
<th>Post-insolvency</th>
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<tbody>
<tr>
<td>12 March 2014 Ordonnance to reform French insolvency law, effective 1 July 2014,</td>
<td>12 March 2014 Ordonnance to reform French insolvency law, effective 1 July 2014,</td>
<td>12 March 2014 Ordonnance to reform French insolvency law, effective 1 July 2014,</td>
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<tr>
<td>(i) Mandat ad hoc proceedings</td>
<td>(i) Conciliation proceedings</td>
<td>(i) Conciliation proceedings, AFS and AS –</td>
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<td>(ii) Conciliation proceedings</td>
<td>(ii) Conciliation proceedings</td>
<td>(ii) Conciliation proceedings, AFS and AS –</td>
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<tr>
<td>(iii) Safeguard Proceedings (S)</td>
<td>(iii) Safeguard Proceedings (S)</td>
<td>(iii) Safeguard Proceedings (S)</td>
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<td>(iv) Accelerated Financial Safeguard (AFS)</td>
<td>(iv) Accelerated Financial Safeguard (AFS)</td>
<td>(iv) Accelerated Financial Safeguard (AFS)</td>
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<td>(v) Accelerated Safeguard (AS)</td>
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<td>Post-insolvency</td>
<td>Post-insolvency</td>
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| Obligation to file for either Judicial Reorganisation or Liquidation proceedings within 45 days following the date on which the company became cash-flow insolvent (except if the proceeding of the conciliation or liquidation proceedings has been filed within these 45 days) | Directors face a management ban if they fail to file | }

**Judicial Liquidation proceedings**
- creditors can submit a takeover offer
- Mandat ad hoc / Conciliation Proceedings: no – an agreement can only be adopted with the unanimous approval of every creditor.

**Safeguard / AFS / AS / Judicial Reorganisation proceedings**
- may be used to cram down creditors
- The safeguard or reorganisation plan must be submitted to:
  - The financial establishments and issuers, commissioning (i) in the financial establishments, (ii) in applicable, a single bondholders’ meeting

**N/A – the test is whether the plan affects the pre-existing contractual arrangement between the debtor and creditor.**

**Mandat ad hoc / Conciliation Proceedings: management remains in place but is assisted by a court-appointed officer**

**Mandat ad hoc / Conciliation Proceedings: no automatic stay, however directors may apply to the Court for an up to 2 year grace period on obligations to creditors (deferred/reschedul ing of payment obligations)**

**Safeguard / AFS / AS / Judicial Reorganisation proceedings**
- directors face a management ban if they fail to file

<table>
<thead>
<tr>
<th>Mandat ad hoc / Conciliation Proceedings</th>
<th>Referee is to convene the creditors’ committee to vote on a court-appointed reorganisation plan</th>
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<tbody>
<tr>
<td>12 March 2014 Ordonnance to reform French insolvency law, effective 1 July 2014,</td>
<td>The “Macron” Bill contains provisions to authorize the “squeezing-out” of business creditors, subject to the Parliament’s approval which may occur in the second quarter of 2015</td>
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**The suspension of (ipso facto) clauses in administration was considered during the Standing Committee of the Enterprise Act 2002 and was rejected for interfering with freedom of contract.**

**Credits’ committees, namely, the financial institutions creditors’ committee and the trade creditors’ committee, must be formed if the debtor has more than a 20 M€ turnover or 150 employees. As the case may be, a general meeting of bondholders is held to vote on the draft plan as approved by the committees.**

**In the restructuring of the French fashion retailer, France, the Vivarte Group failed to receive the support of 66.6% of creditors for a covenant standstill due to the opposition of certain funds, seeking higher fees to approve the request. The company was, nevertheless, able to implement a fully consensual work out plan involving France’s largest ever debt-for-equity swap through Mandat ad Hoc and, ultimately, conciliation proceedings to implement the work-out plan.”**

<p>| Jurisdiction | Corporate Insolvency and Restructuring Proceedings | Recent Legislative Reform? | Time limits for filing | Creditors able to propose a restructuring plan? | Court-approved cram down on creditors? | Court-approved cram down on shareholders? | Valuation method for the purposes of determining creditors’ entitlement to vote on a court-approved reorganisation plan | Position of management (insolvency and restructuring proceedings) | Stay on proceedings | Prepacksale available? | Avoiding Transactions | Priority status of pre-petition financing / ISP financing | Creditors’ ability to exercise contractual termination rights following commencement of restructuring/inolvency proceedings | Future Reforms? |
|--------------|--------------------------------------------------|--------------------------|----------------------|-----------------------------------------------|--------------------------------------|----------------------------------------|-------------------------------------------------|-----------------------------------------------|----------------|----------------|----------------|-----------------------------------------------|-------------------------------------------------|-----------------------------------------------|----------------|
| France       | Pre-insolvency                                   |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (i) Mandat ad hoc proceedings                     |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (ii) Conciliation proceedings                     |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (iii) Safeguard Proceedings                       |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (iv) Accelerated Financial Safeguard (AFS)       |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (v) Accelerated Safeguard (AS)                    |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | Post-insolvency                                  |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |
|              | (vi) Conciliation Proceedings, AFS and AS –      |                          |                      |                                               |                                      |                                        |                                                                 |                                               |                |               |                |                                                                 |                                                 |                |               |</p>
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Pre-pack or Pre-petition Proceeding</th>
<th>Liquidation Proceeding</th>
<th>Reorganisation Proceeding</th>
<th>Sale Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td><img src="image" alt="Preliminary Proceedings" /></td>
<td><img src="image" alt="Liquidation" /></td>
<td><img src="image" alt="Reorganisation" /></td>
<td><img src="image" alt="Sale" /></td>
</tr>
</tbody>
</table>

10 Similar to a UK-style pre-pack, the fact that the company is in financial difficulty is kept confidential, until implemented through a subsequent insolvency proceeding. This can help preserve value in the company.

11 German law does not provide for a pre-insolvency proceeding. Due to the absence of a pre-insolvency proceeding and the short deadlines obliging the directors to file, it can be difficult for German companies to arrange a rescue deal or sale, without the risk of insolvency becoming public knowledge. This can, arguably, have a negative impact on value of the company.

12 The Protective Shield Proceeding is a new type of proceeding where the debtor, if not yet illiquid, is granted 3 months to develop a restructuring plan as a debtor-in-possession under the supervision of a court appointed official who may be suggested by the debtor.

13 As a result of the lack of a German-style pre-pack sale, there are examples of German companies taking advantage of a UK pre-pack. See for example [Christopher & Co Limited](http://www.christopher-com.co.uk), whereby ATU, the German automotive group, implemented a restructuring via a UK administration and pre-pack sale. Despite the group having almost no connection with the UK, it incorporated an English company to purchase the assets of the Group in order to obtain a UK administration order and sell its assets to a new group structure.

"WEIL / 0851517654/0998311.114"
Italy

Pre-insolvency

(i) Interim petition for concordato (concordato)

Several reforms have been enacted since 2003. The most recent ones are:

- No prescribed time limit but risk of directors’ liability in case of late filing
- Settlement with Creditors: no – only the debtor may file the petition. Competing creditors may propose
- Settlement with Creditors: may be used to cram down secured and unsecured creditors (requires approval by more than 50% of creditors (by nominal value of their holdings)
- No

Jurisdiction

Corporate Insolvency and Restructuring Proceedings

Recent Legislative Reforms?

Time limits for filing

Creditors able to propose restructuring plan?

Court approved cram down on creditors?

Court approved cram down on shareholders?

Value method for the purposes of determining creditors’ entitlement to vote on a court-sanctioned reorganisation plan

Position of management (insolvency and restructuring proceedings)

Stay on proceedings

Prepack available?

Avoiding Transactions

Priority status of post-petition financing (DIP financing)

Creditor’s ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings

Future Reforms?

Bundestag
| Jurisdiction | Corporate Insolvency and Restructuring Proceedings | Recent Legislative Reform? | Time limits for filing | Creditors able to propose restructuring plan? | Court approved cram down on creditors? | Court approved cram down on shareholders? | Valuation method for purposes of determining creditors’ entitlement to vote on a court sanctioned reorganisation plan | Position of management (insolvency and restructuring proceedings) | Stay on proceedings | Prepacks available? | Avoiding Transactions | Priority status of post-petition financing & ISP financing | Creditors’ ability to exercise contractual termination rights following commencement of restructuring/orderly proceedings | Future Reforms? |
|--------------|-------------------------------------------------|--------------------------|------------------------|-----------------------------------------------|-----------------------------------|-------------------------------------------|-----------------------------------------------|-----------------------------------------------|----------------|----------------|----------------|----------------|-----------------|-------------------------------|------------------|
| **Post-bankruptcy** | | | | | | | | | | | | | | |
| (v) Extraordinary administration (Ordinanza 1199 of 21 February 2011) | Law Decree No. 60 of 21 February 2011 | | | Competing plans to show the Court that they would recover a greater amount under available alternatives | Yes, within 1 month | within 2 months | within 3 months | Ordinary resolution by creditors | | | | | | | | |
| (vi) Extraordinary administration for large insolvent companies (Decreto 1199 of 21 February 2011) | Law Decree No. 60 of 21 February 2011 | | | Competing plans to show the Court that they would recover a greater amount under available alternatives | Yes, within 1 month | within 2 months | within 3 months | Ordinary resolution by creditors | | | | | | | | |
| (vii) Bankruptcy creditors’ composition | Ordinance No. 1199 of 21 February 2011 | | | Competing plans to show the Court that they would recover a greater amount under available alternatives | Yes, within 1 month | within 2 months | within 3 months | Ordinary resolution by creditors | | | | | | | | |
| (viii) Post-bankruptcy creditors’ composition | Ordinance No. 1199 of 21 February 2011 | | | Competing plans to show the Court that they would recover a greater amount under available alternatives | Yes, within 1 month | within 2 months | within 3 months | Ordinary resolution by creditors | | | | | | | | |

14 Extraordinary administration is available under Italian insolvency law for large companies that employ at least 200 employees during the previous year (including those admitted to the redundancy fund). The overall debts of the company must be at least 2/3 of the assets on the balance sheet and of profits deriving from sales and provision of services during the previous financial year. When a company subject to the extraordinary administration procedure is part of a corporate group, the procedure extends to the other insolvent companies within the group.

15 Extraordinary administration of large enterprises is only available under Italian insolvency law to insolvent companies with at least 500 employees in the last year and an overall debt of €300m. If the company subject to the procedure is part of a group of companies, the extraordinary commissioner may ask the minister for economic development to admit other insolvent companies in the group to the procedure by submitting the application for insolvency to the relevant court.

16 The procedures that arise out of bankruptcy are insolvency, arrangements with creditors and liquidation (for entities of public interest which are not allowed to go bankrupt).
### Jurisdiction: Spain

<table>
<thead>
<tr>
<th>Pre-insolvency</th>
<th>Post-insolvency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
<td><strong>Type</strong></td>
</tr>
<tr>
<td>Out of Court Payments Agreement**</td>
<td>Insolvency proceedings (concursos)</td>
</tr>
<tr>
<td>Protected Refinancing Agreements**</td>
<td>Agreement approved or cram-down to be effective</td>
</tr>
<tr>
<td>Spanish Scheme of Arrangement for financial claims (homologación judicial)</td>
<td>Agreement is replaced by the insolvency manager appointed by Court</td>
</tr>
</tbody>
</table>

**Pre-insolvency**

- **Out of Court Payments Agreement**: Any creditor is able to propose a restructuring plan when negotiating a refinancing agreement. The debtor is then required to propose a plan that entails the consent of the majority of creditors but which may, if certain criteria are met (the refinancing agreement clearly improves the debtor’s financial position), be protected from claw-back risk.

- **Refinancing Agreement** (i) A refinancing agreement can be used to cram-down secured and unsecured creditors. The court will then approve the agreement if the majority of creditors agree to it. (ii) An individual refinancing agreement “safe harbour” which is not supported by a majority of creditors but which may, if certain criteria are met (the refinancing agreement clearly improves the debtor’s financial position), is protected from claw-back risk.

**Post-insolvency**

- **Insolvency proceedings (concursos)**: The debtor must file a proposal within 2 months of when the company has or should have become aware of its insolvency (cash flow only – there is no concept of balance sheet insolvency in Spain). An insolvent company can apply to the Court to obtain an additional 3 months to negotiate a settlement or refinancing plan. Within concursos, creditors exceeding 20% of total liabilities may submit a restructuring plan proposal. Any creditor is able to propose a restructuring plan when negotiating a refinancing agreement. A financial creditor supporting a Spanish Scheme of Arrangement may apply for its homologation. Within concursos, creditors exceeding 20% of total liabilities may submit a restructuring plan proposal.

**Pre-insolvency**

- **Out of Court Payments Agreement**: Any creditor is eligible to vote on a refinancing agreement even if they are “out of the money”.

**Pre-insolvency**

- **Insolvency proceedings**: General rule: management remains in place until the communication to the Court of the start of negotiations. When a Pre-insolvency Agreement is reached and is filed before the Court, the Court approves the refinancing agreement even if it is not in the interest of the insolvent debtor. The Insolvency Law includes certain presumptions of acts to be harmful to the insolvency estate. In addition, there is the possibility to rescind those acts and contracts that the debtor has entered into in the 4 previous years in order to incorporate in the Insolvency Law the wording of the RDL 11/2014 and introduce several new amendments.

**Post-insolvency**

- **Insolvency proceedings (concursos)**: The Court homologation is needed for the cram-down to be effective. The N.A. Subordinated creditors are eligible to vote on a refinancing agreement even if they are “out of the money”.

**Pre-insolvency**

- **Insolvency proceedings**: General rule: management remains in place until the communication to the Court of the start of negotiations. When a Pre-insolvency Agreement is reached and is filed before the Court, the Court approves the refinancing agreement even if it is not in the interest of the insolvent debtor. The Insolvency Law includes certain presumptions of acts to be harmful to the insolvency estate. In addition, there is the possibility to rescind those acts and contracts that the debtor has entered into in the 4 previous years in order to incorporate in the Insolvency Law the wording of the RDL 11/2014 and introduce several new amendments.

- **Insolvency proceedings**: General rule: management remains in place until the communication to the Court of the start of negotiations. When a Pre-insolvency Agreement is reached and is filed before the Court, the Court approves the refinancing agreement even if it is not in the interest of the insolvent debtor. The Insolvency Law includes certain presumptions of acts to be harmful to the insolvency estate. In addition, there is the possibility to rescind those acts and contracts that the debtor has entered into in the 4 previous years in order to incorporate in the Insolvency Law the wording of the RDL 11/2014 and introduce several new amendments.

**Future Reforms?**

- A new law is being proposed in the parliament in order to incorporate in the Insolvency Law the wording of the RDL 11/2014 and introduce several new amendments.

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17 An out-of-court payments agreement under Spanish insolvency law can be reached by (i) an entrepreneur (an individual) in a position of current or imminent technical insolvency with liabilities below €5 million, provided that the costs of the agreement can be met and the expected assets and revenues will be sufficient to allow a viable agreement. An insolvency mediator is appointed and the payment plan must achieve the consent of at least 60% of liabilities affected by the agreement. If agreement cannot be reached or the terms are breached, a consecutive insolvency proceeding will be declared in order to directly liquidate the assets. Therefore, an out-of-court Payments Agreement is very rarely used.

18 There are two types of refinancing agreement under Spanish law which are protected from claw-back risk: (i) a collective refinancing agreement, being an agreement entered into at least by 60% of liabilities and made in response to a viability plan; and (ii) an individual financing agreement “safe harbour” which is not supported by a majority of creditors but which may, if certain criteria are met (the refinancing agreement clearly improves the debtor’s financial position), be protected from claw-back risk.
A key element of the RDL 11/14 was the introduction of a new section 3 in article 90 of Law 22/2003 (the Spanish Insolvency Law) that part of a secured claim not exceeding the value of its security. Valuation criteria for valuing security were set out, a key element of which is the determination of “fair value” of the secured asset.

A key element of the RDL 11/14 was the introduction of a new section 3 in article 90 of Law 22/2003 (the Spanish Insolvency Law) which provides that special privilege to secured claims shall only apply to that part of a secured claim not exceeding the value of its security. Valuation criteria for valuing security were set out, a key element of which is the determination of “fair value” of the secured asset.

To avoid debtors objecting unreasonably to reaching agreements setting out debt for equity terms, a new presumption of non-burdensome measures (e.g. write-offs or deferrals up to 5 years); the approval by creditors holding 65% of financial liabilities for more onerous measures (like write-offs etc.) is opened if it was their negative vote at the company’s shareholders’ meeting that prevented the exchange of debt for equity.

 Jurisdiction | Corporate Insolvency and Restructuring Proceedings | Recent Legislative Reforms? | Time limits for filing | Creditors able to propose restructuring plan? | Court approved cram down on creditors? | Court approved cram down on shareholders? | Valuation method for the purposes of determining creditors’ entitlement to vote on a court-sanctioned reorganisation plan | Position of management (insolvency and restructuring proceedings) | Stay on proceedings | Prepack sale available? | Avoiding Transactions | Priority status of post-petition financing / DIP financing | Creditors’ ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings | Future Reforms?
--- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | ---
Spain | with a going concern (by way of a creditors’ arrangement supported by a viability plan) or liquidation (in which case sale of business as a going concern is also available) | Law 17/2014 (effective on October 2, 2014). It incorporates in the Insolvency Law contents of the latest RD1 with some minor amendments | additional month to file for insolvency in relation to imminent insolvency, there is no duty to file, but debtor may decide to do so | Creditors may, following approval of the Spanish Scheme of Arrangement by the Court, challenge it on the basis of “disproportionate sacrifice.”

Creditors Agreement in insolvency proceedings: the Absolute Priority Rule does not apply. an acceptance of at least 50% of the ordinary liabilities is required for non-burdensome measures (like write-offs up to 30% or deferrals up to 3 years), b) acceptance of a superior proportion of the liabilities than those voting against the proposal will be sufficient for the less onerous measures of full payment within 5 years or immediate payment with a write-off of less than 20% at acceptance of at least 60% of the ordinary liabilities is required for the more onerous measures (higher bailouts, conversion into equity etc.)

Cram down on privileged creditors and Court, save that shareholder consent is required for any debt-for-equity swap

The debtor has a veto right on a proposed plan (even if accepted by creditors). The debtor may prefer liquidation and, if he so decides, no proposal should be approved by the Court.

is opened homologation, single enforcement proceedings are stayed by the Court until the homologation is awarded

Insolvency proceedings: upon the issuance of the insolvency order, the general rule is that enforcement actions against the debtor are stayed.

With regards to secured creditors, only enforcement actions over certain debtor’s assets (and other than financial collateral) are temporarily stayed included in the production unit is lower than the value of the security

fraud of creditors A Refinancing Agreement which meets the legal requirements is immune to claw-back

insolvency proceeding that occurs within the following 2 year period

After expiry of the 2 year period the ordinary rule will apply again

20 In very simplified terms, the regime for the homologation/cram down on ordinary unsecured creditors requires: (a) the approval by creditors holding 60% of financial liabilities for non-burdensome measures (e.g. deferrals for up to 5 years); (b) the approval by creditors holding 75% of financial liabilities for more onerous measures (e.g. write-offs etc.).

21 “disproportionate sacrifice” is not defined under Spanish law and there is no set of guidelines developed by the Courts. The Spanish Court has, to date, only admitted challenges on this basis in a very limited number of cases. Furthermore, any potential challenge to a resolution validating a refinancing agreement is heard by the same court that issued the resolution (not by a higher court).

22 To avoid debtors objecting unreasonably to reaching agreements setting out debt for equity terms, a new presumption of serious wilful misconduct or fault by the debtor or the debtor’s legal representatives, directors or liquidators, in generating or aggravating the debtor’s technical insolvency, has been added where they object to a refinancing agreement and an insolvency order is later issued on the debtor (and, most importantly, this presumption can apply even to the shareholders or members if it was their negative vote at the company’s shareholders’ meeting that prevented the exchange of debt for equity).

23 Note, however, that for formal Spanish Court proceedings, subordinated creditors do not formally have voting rights.

24 See footnote 20. The Spanish Scheme of Arrangement may also resist claw back upon its homologation by the Court.
If the required majority do not vote in favour of the plan, the supervisory judge may, upon request, approve the plan if it is provided that the rejection of the proposal is due to one or more creditors who could not reasonably vote on the plan.

The trend of using the English scheme for the implementation of the transaction has continued, e.g., when Magyar Telecom B.V. (2014) went bankrupt and a Dutch 'pre-pack' bankruptcy process was utilised. Currently, all Dutch courts except for two, are accustomed to approving the appointment of "silent administrators" to effect a Dutch pre-pack sale. Depending on the context, the court may for a period of up to 1 1/2 years and may be extended, during which time the business is managed jointly by the company and the appointed administrators.

Informal composition outside insolvency is an agreement between the company and its creditors, that provides for partial payment in full satisfaction of the creditors’ claims. The company is free to negotiate terms with its creditors, however it is only allowed to put forward one proposal plan. Once agreed and approved by the court, the company avoids liquidation and its debts are discharged. Only parties to the agreement are bound by its terms.

The Netherlands

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Pre-insolvency</th>
<th>Post-insolvency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) Informal composition outside of insolvency</td>
<td>(ii) Composition proposed pursuant to bankruptcy</td>
</tr>
<tr>
<td></td>
<td>(iii) Bankruptcy</td>
<td>(iv) Suspension of payments (stay on certain utilities)</td>
</tr>
<tr>
<td></td>
<td>Legislative proposals have been circulated for consultation purposes and proposed legislation is expected to come into effect in 2016</td>
<td>Legislative proposals have been circulated that include a cram down of creditors within a certain class or of an entire class of creditors, provided that creditors do not vote in favour of a restructuring proposal on improper grounds</td>
</tr>
<tr>
<td></td>
<td>No prescribed time limit but risk of directors’ liability</td>
<td>No prescribed time limit but risk of directors’ liability</td>
</tr>
<tr>
<td></td>
<td>No, but the current legislative proposals include a restructuring plan presented by the creditors, provided that the company does not take the first initiative to propose a restructuring plan itself</td>
<td>No Legislative proposals have been circulated that allow for a restriction of shareholders’ rights and the imposition of a debt for equity swap</td>
</tr>
<tr>
<td></td>
<td>Informal composition outside insolvency not (except in very exceptional circumstances)</td>
<td>No Informal composition outside insolvency not</td>
</tr>
<tr>
<td></td>
<td>Composition proposed pursuant to bankruptcy: yes, however it will only be binding on ordinary creditors (not secured or preferential creditors without their consent) Requires majority in number and value</td>
<td>Suspension of payments: management remains in place, supervised by a Court-appointed administrator and a supervisory judge. The administrator’s approval is required to bind the company and dispose of assets</td>
</tr>
<tr>
<td></td>
<td>Legislative proposals have been circulated that include a cram down of creditors within a certain class or of an entire class of creditors, provided that creditors do not vote in favour of a restructuring proposal on improper grounds</td>
<td>Suspension of Payments: limited stay (which does not prevent the commencement of proceedings by creditors) unless cooling-off period is ordered by the Court</td>
</tr>
<tr>
<td></td>
<td>There have been a number of successful pre-pack restructurings in the Netherlands despite the fact that the pre-pack lacks a statutory basis. Typically this procedure is achieved by the Dutch court appointing a so-called ‘silent trustee’, who can participate in negotiations with the relevant stakeholders</td>
<td></td>
</tr>
</tbody>
</table>

25 An informal composition outside insolvency is an agreement between the company and its creditors, that provides for partial payment in full satisfaction of the creditors’ claims. The company is free to negotiate terms with its creditors, however it is only allowed to put forward one proposal plan. Once agreed and approved by the court, the company avoids liquidation and its debts are discharged. Only parties to the agreement are bound by its terms.

26 Under a suspension of payments, a debtor is given temporary relief against its unsecured creditors and any creditors are prevented from taking enforcement proceedings against the company. The court’s power to suspend payments is exercisable in certain limited circumstances when, for example, provision is made for the company to repay its creditors, or the company is forced to pay its debts and creditors are protected from participating in the enforcement of claims against the company.

27 A notable example of an English scheme of arrangement being used to restructure a Dutch company is the restructuring of Mannesmann Telecom B.V. (2014), where an English scheme of arrangement was used to compromise New York governed notes issued by a Dutch incorporated company. Mannesmann embarked on a number of measures (such as opening of a UK office, notices to creditors, negotiation meetings with creditors in London, appointment of UK based directors) to ensure that COMI-shielded from the Netherlands to the UK. The other relevant jurisdictions (the Netherlands, Hungary and the United States) did not provide any attractive alternatives to the English scheme for the implementation of the transaction. The trend of using an English scheme of arrangement to restructure NY high yield bonds issued by European corporates has continued e.g. "Flemings International Finance S.A. (2014)."

28 If the required majority do not vote in favour of the plan, the supervisory judge may, upon request, approve the plan if at least 75% of the present ordinary creditors vote in favour, provided the rejection of the proposal is due to one or more creditors who could not reasonably vote on the plan.
| Jurisdiction | Corporate Insolvency and Restructuring Proceedings | Recent Legislative Reforms? | Time limits for filing | Creditors able to propose restructuring plan? | Court-approved cram down on creditors? | Court approved cram down on shareholders? | Valuation method for the purposes of determining creditors’ entitlement to vote on a court-sanctioned reorganisation plan | Position of management (insolvency and restructuring proceedings) | Stay on proceedings | Prepack sale available? | Avoiding Transactions | Priority status of post-petition financing / DIP financing | Creditors’ ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings | Future Reforms?
---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
<p>| Luxembourg | Pre-insolvency | No | No | Composition with Creditors: approval of the majority of creditors representing at least 75% in value required to approve composition | No | N/A | Suspension of payments: management remains in place, monitored by a court appointed administrator | Controlled Management: management remains in place during first phase of controlled management but actions supervised by court appointed magistrate. A committee is appointed to supervise management in the second phase | Bankruptcy / Compulsory Liquidation: management | Suspension of payments: moratorium on payment of creditor claims | Controlled management: creditors’ rights (including secured creditors except where specific laws provide differently) are stayed until a final court decision on reorganisation/liquidation plan is taken. | Bankruptcy / Compulsory Liquidation: certain security interests and transactions may be challenged by the receiver in bankruptcy if they are granted during the hardening period (a maximum of 6 months, plus 10 days in certain circumstances) from the date of the filing of the petition. Where a transaction is made with the purpose of defrauding creditors’ rights, such transaction may be challenged irrespective of the | Draft legislation on business preservation and modernisation of bankruptcy law was introduced in the Luxembourg Parliament on 1 February 2013. The draft legislation provides for the introduction of out-of-court procedures to avoid formal insolvency proceedings. The legislation is intended to replace the existing restructuring procedures due to practical challenges associated with them in a modern business context |</p>
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Corporate Insolvency and Restructuring Proceedings</th>
<th>Recent Legislative Reforms?</th>
<th>Time limits for filing</th>
<th>Creditors able to propose restructuring plan?</th>
<th>Court approved cram down on creditors?</th>
<th>Court approved cram down on shareholders?</th>
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<th>Position of management (insolvency and restructuring proceedings)</th>
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<th>Creditors’ ability to exercise contractual termination rights following commencement of restructuring/insolvency proceedings</th>
<th>Future Reforms?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(liquidation judiciaire)</td>
<td>used.</td>
<td>Controlled Management; reorganisation plan must be approved by majority in number and value of creditors</td>
<td>displaced by court appointed receiver (curateur)</td>
<td>Composition with creditors (concordat préventif de faillite)</td>
<td>Management remains in place. Supervisory judge supervises the composition process. If the composition is specifically to realise the company’s assets, liquidators are appointed by the court and are supervised by the supervisory judge.</td>
<td>financial collateral arrangements remain enforceable Composition with creditors (concordat préventif de faillite) If the composition is approved, it applies to all creditors (except the tax authorities, claims guaranteed by security or mortgage and claims due in respect of maintenance (aliments)). The composition only applies to contracts signed/debts contracted before the composition was obtained</td>
<td>financial collateral arrangements remain enforceable Composition with creditors (concordat préventif de faillite) If the composition is approved, it applies to all creditors (except the tax authorities, claims guaranteed by security or mortgage and claims due in respect of maintenance (aliments)). The composition only applies to contracts signed/debts contracted before the composition was obtained</td>
<td>date the transaction took place</td>
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</tr>
</tbody>
</table>

39 Financial Collateral Arrangements include: transfers of ownership for security purposes, repurchase agreements relating to financial instruments (including securities, shares, etc.) and claims (including receivables and bank account balances).
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