Austria

Rescue procedures in insolvency

Phase	Insolvency Act
Native name	Insolvenzordnung (IO)
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

167, 169, 171

Description

The Insolvency Act distinguishes between 'insolvency/bankruptcy' (Konkursverfahren) and ‘restructuring’ (Sanierungsverfahren) procedures. Whereas the first leads to selling the company to satisfy creditors, the second procedure aims to restructure business operations in order to continue the operations of the insolvent company (Business Service Portal). Companies can file for restructuring procedures in cases of indebtedness, bankruptcy or imminent insolvency.

Similar to insolvency procedures, companies first have to make an insolvency filing. Restructuring procedures require a restructuring plan that needs to be submitted before the opening of the insolvency procedures (§ 167). The restructuring plan needs to be approved by the majority of the creditors (which represent at least half of all due claims) within 90 days after the opening of insolvency procedures. After its approval the case will be continued as restructuring procedure. The debtor must offer the insolvency creditors in the payment plan at least a quota corresponding to his income situation in the following 3 years (instead of the previous 5 years).

The procedure can either be with or without self-administration (§ 169).

Procedure with self-administration: The court appoints a restructuring administrator while the debtor is able to dispose over assets and keeps legal authority. The restructuring

administrator examines whether the restructuring plans are feasible and monitors the company's expenditures. Dispositions by the debtor of the insolvency estate shall be effective only if the insolvency court consents thereto. Liabilities incurred by the debtor after the opening of insolvency proceedings shall only be claims of the insolvency estate if the insolvency court agrees. The debtor does not have the right to apply for the liquidation of the insolvency estate in accordance with the law (debt collection or auction via the court). Prerequisites for this procedure are:

- The restructuring plan was submitted before the opening of insolvency procedures.
- The plan includes detailed information on current debts, assets (including annual financial statements from the last three years) and how restructuring will be financed during the following 90 days.
- The company is able to pay at least 30% of liabilities within two years.

Procedure without self-administration: Authority is handed over to a liquidator until the court approves the plans for restructuring. After that, debtors get back full access to company assets. Prerequisites for this procedure are:

- The restructuring plan was submitted before the opening of insolvency procedures.
- The company is able to pay at least 20% of liabilities within two years.

If the restructuring plan fails or is withdrawn by the debtor, insolvency procedures and a liquidation of insolvency assets will be initiated.

If new financing or interim financing is provided in the course of restructuring within the meaning of the ReO, such financing or interim financing cannot be challenged if the insolvency was not known (to the opponent of the challenge). This applies to new financing or interim financing that is included in the confirmed restructuring plan or has been approved by the court.

Transactions during a restructuring are not voidable if they were approved by the court and the insolvency was not known (to the opposing party).

Commentary

The 2010 amendment of the insolvency regulation created a single insolvency proceeding which focused on making reorganisation easier and faster through a number of methods. An important aspect of the amendment was that it made the differentiation in terminology between 'restructuring' and 'insolvency/bankruptcy', thereby reducing the stigma surrounding insolvency procedures and especially 'forced settlement'. It also reduced the minimum required quotas of payable liabilities for entering self-administrated

restructuring procedures from 40% to 30% (see 'procedure with self-administration' in the description above). This legislation also increased the incentives to enter proceedings earlier than what was previously legislated for (Government policy paper, XXIV. GP). In 2021 a "short skimming procedure" with a repayment plan (3 years) - in addition to the "normal skimming procedure" with a skimming plan (5 years) - was added in order to implement the Restructuring and Insolvency Directive (RIRL, Directive (EU) 2019/1023).

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Other Court
Involvement (others)	Creditors, administrator, liquidator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Austria: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Belgium

Rescue procedures in insolvency

Phase	Book XX of the economic code 'Insolvency of Enterprises' of 11 August 2017; Act of 27 May 2013 to modify different laws with regards to the continuity of companies
Native name	Wet houdende invoeging van het Boek XX van economisch recht 'Insolventie van ondernemingen' 11 August 2017/Loi portant insertion du Livre XX dans le Code de droit économique 'Insolvabilité des entreprises', 11 August 2017; Loi relative à la continuité des entreprises; Wet van 27 mei 2013 - Wet tot wijziging van verschillende wetgevingen inzake de continuïteit van de ondernemingen/Loi de 27 Mai 2013 - Loi modifiant diverses législations en matière de continuité des entreprises
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

Whole law De Wet van 7 juni 2023 tot omzetting van Richtlijn (EU) 2019/1023 van het Europees Parlement en de Raad van 20 juni 2019 betreffende preventieve herstructureringsstelsels, betreffende kwijtschelding van schuld en beroepsverboden, en betreffende maatregelen ter verhoging van de efficiëntie van procedures inzake herstructurering, insolventie en kwijtschelding van schuld, en tot wijziging van Richtlijn(EU) 2017/1132 en houdende diverse bepalingen inzake insolvabiliteit.

Description

Book XX of the Economic Law Code, entered into force on 1 May 2018, replaced the Act of 8 August 1997 on Bankruptcies and the Act of 31 January 2009 on the Continuity of Undertakings. The scope of application of Book XX of the Economic Law Code has been extended to include all enterprises, the debtor being defined as:

- any individual who independently exercises a professional activity;
- any legal entity;
- any organisation without legal personality.

With these changes independent liberal professionals, farmers, not for profit organisations, foundations, and trusts, are included in the scope of the law. The law does not apply in cases where the legal person has a public law entity status or is a natural person.

The 'insolvency of enterprises law' also recognises the role of the 'chambers for companies facing economic difficulties' (chambres des entreprises en difficulté) which are in charge of monitoring the 'health' of the companies. They check whether companies:

- have not paid their bills;
- have not paid their social security contributions, VAT or have been withholding tax for two quarters;
- have not pay their contributions to the National Institute of Social Insurance for Self-Employed for a quarter;
- have any ongoing trial for non payment of debt;
- have received notices mentioning seizing of assets;
- has been subjected to the opening of insolvency proceedings in another Member State, this fact must now be communicated (article XX.202 CDE)

The aim of the chambers is threefold:

- Track businesses in difficulty;
- Enable them to become aware of the situation;
- Encourage them to react appropriately to ensure their recovery and their safeguarding.

The chamber can examine at-risk cases and, if deemed necessary, a representative of the company is called upon by the chamber to discuss the situation of the company. The discussions are confidential. If the company is deemed in difficulties, the company can file for reorganisation.

The law (Title III of book XX) allows a company in temporary difficulties to undertake certain restructuring measures under the supervision of the judicial authority in order to avoid bankruptcy. There are three main options for restructuring, characterised by their different degree of voluntarism (low involvement of courts) and impact on the business. From the most voluntary and least impactful to the most, the three main options for restructuring are:

- An out-of-court agreement (article XX.38 CDE) with all or at least two creditors, chosen by the debtor, with a view to restructuring the debtor's liabilities. The out of court agreement is protected by confidentiality and indivisibility of the company;
- The conclusion of a reorganisation plan, which must be approved by both the creditors and the national court; in this cases the CEO is replaced by an administrator appointed by the court;
- The sale of the business (or part thereof) as a going concern. This option is always overseen by the courts. If the application for insolvency has been filed less than two months before the agreed sale of assets seized to repay debt, the sales of assets should proceed unless the court decides otherwise. This is to avoid wasted costs of a sale where the filing of a petition is merely a procedural tactic to delay the process.

Another important feature introduced by book XX art. 2 paragraph 6, is the establishment of an online register where all the documents of the insolvency are kept; all communication is also via digital media (email) and has legal value.

On 25 May 2023, the House of Representatives adopted the draft law transposing Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring schemes, on debt write-offs and prohibitions on appeals, and on measures to increase the efficiency of restructuring, insolvency and debt cancellation procedures, and amending Directive (EU) 2017/1132 and containing various provisions on insolvency.

This law takes another step towards a more modern insolvency law and companies are given additional opportunities to restructure themselves in order to preserve the economic fabric. Its main objectives are:

- To give a company in financial difficulties access to an effective preventive restructuring system that allows it to avoid insolvency.
- To give a company natural person a second chance.
- Make procedures on restructuring, insolvency and debt cancellation more efficient and shorter.
- Achieve further harmonisation of insolvency proceedings in the European Union.

Commentary

Generally speaking, in most of the cases creditors are willing to participate, considering that if they refused to do so, the company would be declared bankrupt and they would lose their money altogether.

In the first half of 2019 a total of 5,602 companies declared bankruptcy in Belgium, which is an increase by 13.3% compared to the same period in 2018.

Year	Value
2000	**6.805**
2001	**7.094**
2002	**7.222**
2003	**7.593**
2004	**7.935**
2005	**7.878**
2006	**7.616**
2007	**7.680**
2008	**8.476**
2009	**9.420**
2010	**9.570**
2011	**10.224**
2012	**10.587**
2013	**11.740**
2014	**10.736**
2015	**9.762**
2016	**9.170**
2017	**9.968**
2018	**9.878**

2019	**10598**
2020	**7203**
2021	**6533**
2022	**9265**

Source: Statbel.be

Additional metadata

Cost covered by	National government
Involved actors other than national government	Other Court
Involvement (others)	Creditors, administrators, chambers for companies facing economic difficulties.
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Belgium: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Bulgaria

Rescue procedures in insolvency

Phase	Commerce act
Native name	Търговски закон
Type	Rescue procedures in insolvency
Added to database	07 December 2016
Access online	Click here to access online

Article

Part five, chapter 52'a': Insolvency of the entrepreneur; chapters 53-57: Merchant restructuring proceedings. Law for amending and supplementing the Commerce Act (adopted by the 49th National Assembly on July 20, 2023)

Description

Amendments to the commerce act introduced in 2017 provide for rescue procedures in case of insolvency (restructuring proceedings). The purpose of the merchant restructuring proceedings is to avoid initiation of bankruptcy proceedings by an agreement reached between the merchant and its creditors on the settlement of the merchant's payables, allowing the merchant's business to continue.

The restructuring procedure aims at preventing bankruptcy proceedings through an agreement between the company and its creditors in such a manner of settling the debt, which would allow the company to continue running its business.

Restructuring proceedings may be initiated for any company which is not bankrupt, but is in imminent danger of bankruptcy. An imminent danger of bankruptcy is defined as the risk of not being able to pay pending payables within 6 months. The rescue procedure is not applicable to any public entity exercising a state monopoly or created by a special law, as well as to a bank or to an insurer.

The application for initiating the rescue procedure is submitted by the company to the district court and notification of the application is recorded in the commercial register. The

application must include copies of balance sheets, history of past payments and forecast of future payments and all the information necessary for the court to judge on the situation of the company.

The district court of the registered office of the merchant at the time of filing of the restructuring application shall have jurisdiction over the restructuring proceedings. If requested by one of the parties, the court should rule on the case within 3 days. The court decision to accept the rescue application prompts the words 'under restructuring proceedings' to be added after the merchant's name in the commercial register.

Company's finances and asset cannot be used unless agreed by the court, exception is made for amounts necessary to pay outstanding taxes and social contributions.

An administrator or trustee is appointed by the court (according to certain criteria among which the fact that the person should not have been involved in bankruptcy) to assist and supervise operations and the company must collaborate with them. The trustee is in charge of drawing a creditors' list in collaboration with the company and the creditors, including employees with unpaid wages, and presenting it to the court for endorsement.

The restructuring proceedings include participation of all creditors in the creditors' list. Restructuring proceedings are heard by the court and end with the approval of a 'restructuring plan' which is voted by the creditors. This plan includes employees who were employed before the date of opening the restructuring proceedings.

The restructuring proceedings shall be terminated:

- if the merchant withdraws its proposal for a restructuring plan, before the creditors have voted on the plan;
- if a restructuring plan is not endorsed by the court within 4 months after the initiation of the proceedings, regardless of any suspensions thereof;
- if, after initiation of the proceedings, obstacles under article 762, paragraph 3 to conduct restructuring proceedings for the merchant are found (for example initiation of restructuring proceedings or bankruptcy in the previous three years, or if more than one fifth of the creditors have acquired, over the past three years, receivables from the merchant or its related parties) or if it is found that the details provided by the merchant are false;
- if the merchant fails to appear at the court hearing of the plan;
- upon violation of the restrictions on the merchant’s actions imposed by the court;
- if the merchant fails to cooperate with the trustee, the court appointed auditor or fails to submit to the court, within the set time limit, any requested information and

evidence, or fails to deposit the expenses set by the court for the remunerations of the trustee, the auditor or the forensic expert;
- if the proposed restructuring plan has not been adopted or endorsed;
- upon the endorsement of the restructuring plan.

The restructuring plan approved by the court is mandatory for the debtor and the creditors, including workers, and is not revocable.

The bankruptcy court is the district court at the seat of the merchant, registered no later than 6 months before the filing of the application to open bankruptcy proceedings.

This Law for amending and supplementing the Commerce Act introduces the requirements of Directive (EU) 2019/1023 of the European Parliament and of the Council of June 20, 2019 on the frameworks for preventive restructuring, on remission of obligations and the ban on carrying out an activity, on measures to increase efficiency of restructuring, bankruptcy and discharge proceedings and amending Directive (EU) 2017/1132 (OJ, L 172/18 of 26 June 2019). New Art. 693a (2023) is introducing a standardized samples of application for presenting the claims and for lists of accepted and rejected claims prepared by the receiver. In this connection, it is also foreseen to supplement Art. 685 of the current Commerce Act and creation of texts regarding the presentation of claims according to a model determined by an ordinance of the Minister of Justice.

Commentary

During the past 10 years some 1,200 insolvency cases per year were filed with the district courts. When hearing these cases the courts have three options to rule:

- The most unfavourable outcome, where the property of the merchant does not allow even to launch the proceedings, and the creditors are not able to collect any of their receivables, is the most frequent outcome nationwide.
- In stabilisation proceedings, in rare cases the creditors are able to collect some of their receivables.
- The most favourable outcome, the recovery plan, is also the rarest. For the entire period of existence of this legal provision (since 2000) until 2017 (latest available data) the recovery proceedings were merely 138 cases.

This Law for amending and supplementing the Commerce Act introduces the requirements of Directive (EU) 2019/1023 of the European Parliament and of the Council of June 20, 2019 on the frameworks for preventive restructuring, on remission of obligations and the ban on carrying out an activity, on measures to increase efficiency of restructuring, bankruptcy and discharge proceedings and amending Directive (EU) 2017/1132 (OJ, L

172/18 of 26 June 2019).

Pursuant to Directive (EU) 2019/1023 (on bankruptcy and restructuring), it is stipulated that the Minister of Justice together with Minister of Economy and Minister of Innovations (Art.770(9)) draw up and publish the practical guidelines for drawing up a recovery plan.

Due to duration (3.3 years compared to the EU average of 2 years) and costs, insolvency proceedings tend to result in very low recovery rates for creditors (35% compared to an EU average of 65% (World Bank, 2017c). Between 2010 and 2017, an average of 1,200 bankruptcy cases were filed in district courts per year (Institute for Market Economics, 2018). At the same time, approximately 900 cases remained unresolved each year. During the same period 49% of insolvency cases were closed within 3 months, while 51% of cases took longer (2019 European Commission Report on Bulgaria, including an in-depth review on the prevention and correction of macroeconomic imbalances). The ineffectiveness of the bankruptcy regulation slows down the deleveraging of private sector and restructuring of non-performing loans.

The latest changes at the Commerce Act (2023) aim to speed up and reduce costs in bankruptcy proceedings; to increase the efficiency of the process of cashing out the property; and to achieve more effective regulation of the activities of bankruptcy administrator. The introduction of standardized samples of the application for the presentation of claims and for lists of accepted and unaccepted claims drawn up by the bankruptcy trustee, introduction of sale by electronic public auction (using the electronic platform for open bidding under Civil Procedure Code) of the property from the bankruptcy estate, which does not require the actual physical presence of participants in the auction, reduces the administrative burden and facilitates access to justice.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Creditors, Insolvency Administrators, Bankruptcy attorneys, Ministry of Justice, Ministry of Finance, Ministry of Economy.

Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No exact number can be given for parties to bankruptcy proceedings as the number of parties to each case varies. As can be seen from the summarised statistical tables quoted by the Law assessment for the activity of the courts for 2019, the number of resolved cases is 1,469, and the number of cases received is 1,931.

Sources

Citation

Eurofound (2016), Bulgaria: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Croatia

Rescue procedures in insolvency

Phase	Bankruptcy Act 71/15, 104/17, 36/22; Act on Financial Operations and Pre-Bankruptcy Settlement 108/12, 144/12, 81/13, 112/13, 71/15, 78/15, 114/22; Civil Procedure Act 53/91, 89/14, 70/19, 80/22, 114/22; General Administrative Procedure Act 47/09, 110/21; Enforcement Act 112/12, 73/17, 131/20, 114/22; Act on Ensuring Employees' Claims in Case of Bankruptcy of the Employer 86/08, 80/13, 82/15; Companies Act 111/93, 40/19; 34/22, 114/22, 18/23; Civil Obligations Act 35/05, 29/18, 126/21, 114/22, 156/22; Law on the Executive Administration Procedure in Companies of Systemic Importance for the Republic of Croatia 32/17,
Native name	Stecajni zakon 71/15, 104/17, 36/22; Zakon o financijskom poslovanju i predstecajnoj nagodbi 108/12, 144/12, 81/13, 112/13, 71/15, 78/15, 114/22; Zakon o parnicnom postupku 53/91, 89/14, 70/19, 80/22, 114/22; Zakon o opcem upravnom postupku 47/09; Ovrsni zakon 112/12, 73/17, 131/20, 114/22; Zakon o osiguranju potrazivanja radnika u slucaju stecaja poslodavca 86/08, 80/13, 82/15; Zakon o trgovackim drustvima 111/93, 40/19, 34/22, 114/22, 18/23; Zakon o obveznim odnosima 35/05, 29/18, 126/21, 114/22, 156/22; Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku 32/17,
Type	Rescue procedures in insolvency
Added to database	08 December 2016
Access online	Click here to access online

Article

Bankruptcy Act: Article 2-20; Act on Financial Operations and Pre-Bankruptcy Settlement: Article 3, 17, 18; Civil Procedure Act: whole regulation; General Administrative Procedure Act: whole regulation; Enforcement Act: whole regulation; Act on Ensuring Employees'

Claims in Case of Bankruptcy of the Employer: whole regulation; Companies Act: whole regulation; Civil Obligations Act: whole regulation.

Description

The pre-bankruptcy proceedings shall be conducted in order to regulate the legal position of the debtor and his relation to creditors and to maintain his activity (bankruptcy act, article 2). Bankruptcy proceedings instead, aim primarily at repaying debts and may envisage the dissolution of the company and of its assets.

The debtor is required to prepare and submit an initial draft of the pre-bankruptcy restructuring plan (Bankruptcy Act, article 26). During the procedure, the debtor is required to adjust the plan in accordance with the accepted and challenged claims of the creditors. According to article 37 of the Bankruptcy Act, employees and previous employees of the debtor in pre-bankruptcy proceedings cannot file a claim for unpaid wages and salaries and severance payments up to the amount prescribed by law or collective agreements. That applies as well to claims on compensation for damages due to work injury or occupational disease.

The application for the restructuring plan must include information on liabilities and securities of the debtor as well as a list of the creditors and employees. If the court approves the plan, it is published on the official journal. From that moment on, assets of the company are protected against seizure and the company can carry on its operations, provided that the funds are used to satisfy the creditors' claims. The restructuring plan is monitored by a pre-bankruptcy trustee whose appointment can be revoked by the court (Bankruptcy Act, article 27).

The Law on the Executive Administration Procedure in Companies of Systemic Importance for the Republic of Croatia (article 4) applies if a company with at least 5,000 employees fails to secure agreements with creditors and suppliers and is intended to protect the economy in the event of future corporate failures. Under the law, devised for financially troubled companies with at least 5,000 employees and a debt of €1 billion, the state is able to appoint an executive to steer a restructuring plan at the request of the debtor as well as at the request of creditors with the company agreement. The law envisages a company reaching a restructuring deal within 15 months. The law prevents creditors from launching litigation, administrative and security procedures or procedures for out-of-court debt collection against the debtor, its subsidiaries, affiliated companies and suppliers during the period of extraordinary administration.

With this Act (OG 36/22), Directive (EU) 2019/1023 of the European Parliament and of the Council of June 20, 2019 on frameworks for preventive restructuring, debt relief and

prohibitions and on measures to increase the efficiency of procedures related to restructuring, insolvency and discharge is adopted into Croatian legislation. debt and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive) (OJ L 172/18).«.

According to the Act of Amendments of the Bankruptcy Act (OG 36/22), after Article 7, Article 7.a and the title above it are added, following title "Early warning of debtors and access to information" Article 7.a (1) The debtor is provided with access to a clear and transparent system of early warning of circumstances that could lead to a threatening inability to pay, especially in the case of his or her failure to make certain types of payments, and through which system the debtor is warned that it is necessary to act without delay. (2) The debtor may use consulting services provided by public or private organizations, in order to create a strategy based on which the imminent inability to pay would be avoided. (3) The employer is obliged to inform the workers at least once a year about the news regarding the early warning system, as well as procedures and measures related to restructuring and debt forgiveness (release from remaining obligations). (4) Debtors and the general public have available relevant and updated information on access to the early warning system, as well as procedures related to debt restructuring and discharge (release from remaining obligations) on the courts' e-Notice board website, where the information must be easily accessible and presented in a user-friendly way. (5) Information on the content and method of drawing up restructuring plans, especially adapted to the needs of micro, small and medium-sized enterprises, is publicly available on the e-Bulletin board of the courts, in Croatian and English. (6) The establishment of an early warning system for small business entities is ensured by the ministry responsible for entrepreneurship and trades. (7) The Minister responsible for judicial affairs, with the prior consent of the Minister responsible for entrepreneurship and trades and the Minister responsible for finance, will regulate the system from paragraph 1 of this article, the method of its use and the method of publishing information from paragraphs 4 and 5 of this article. Article 5. Article 12 is amended to read: »(1) Court documents shall be delivered by publishing the documents on the website of courts, unless otherwise stipulated by this Act. (2) As an exception to paragraph 1 of this article, delivery of documents between the court and the Financial Agency as a body that undertakes actions in accordance with the provisions of this Act and acts according to the decisions of the court is carried out through the unique information system. (3) The delivery referred to in paragraph 1 is deemed to have been made at the end of the eighth day from the day of the publication of the letter on the e-Bulletin Board of the Courts website. (4) The publication of a letter on the e-Notice Board of Courts website is considered proof that delivery has been made to all participants and those for whom this Act prescribes special delivery, except in the case of delivery to the Financial Agency from paragraph 2 of this Article. (5) In each court, a register of letters submitted via the e-Notice Board of courts website will be kept separately for each debtor in electronic form according to the order of publication. The witness's written record is public and must be available to interested persons during the entire working hours of the

court. (6) The register of documents referred to in paragraph 3 of this article shall contain information on the basis of which the identity of the debtor can be determined, the number of cases, the type of court document and the date of publication of the document on the e-Board of Courts website. (7) Documents that the Financial Agency, as a body that undertakes actions in accordance with the provisions of this Act, submits to the court through the e Notice Board unified information system shall be authenticated with the Financial Agency's electronic seal.

Commentary

Rescue procedure and bankruptcy

The Bankruptcy Act provides uniform procedures that serve the purpose of collective satisfaction of creditors by liquidation of the debtor's assets and distribution of the proceeds or by reaching an arrangement in a bankruptcy plan, particularly in order to maintain the enterprise alive. The law also provides personal management of the debtor as well as possible discharge of the residual debt of a natural person. The Bankruptcy Act also allows for an automatic initiation of bankruptcy proceedings against companies whose accounts have been blocked for more than 120 days (approximately 24,000 companies in Croatia (tportal.hr, 2018)). In these cases, the Financial Agency (FINA) has the duty to initiate bankruptcy proceedings within eight days from the expiry of this period.

The grounds for initiating bankruptcy proceedings are restricted to insolvency and over-indebtedness: lack of liquidity does not constitute sufficient ground. Insolvency of a debtor is presumed if a debtor has one or more due and unsettled obligations recorded in the register for more than 60 days or if a debtor has failed to pay three consecutive salaries to its employee(s). A company is deemed to be over-indebted when its liabilities exceed its assets. The Bankruptcy Act has reintroduced restructuring plans and the possibility of the debtor to continue operating its business during bankruptcy proceedings. The continuation of debtor's business operations is allowed for a maximum of one and a half year as of the day of the reporting hearing, unless the restructuring plan has been submitted to the court.

Executive administration procedure in companies of systemic importance for the Republic of Croatia

On 6 April 2017, the parliament passed an emergency law to shield the economy from big company failures after the country's largest private firm Agrokor piled up debts, leaving it struggling to pay creditors and suppliers. Food producer and retailer Agrokor with 60,000 employees built up debts of about HRK 45 billion (€6 billion), equivalent to six times its equity. The government wants to protect the Croatian financial system, economy,

employment, family businesses and all other stakeholders involved in developments around Croatia's biggest firms.

Bodul (2023) studies court jurisdiction in bankruptcy proceedings, i.e., in general execution proceedings with the aspiration to achieve justice regarding the achievement of the goal of bankruptcy proceedings, i.e., to consistently achieve the principle of creditor equality via the existence of payment queues. Nevertheless, there are wide historical variations in terms of the existence of today's professional standards in the scope of judicial work and judging. The goal is to analyse the justification of the existing solutions, which instead of striving for the bankruptcy (law) trial to become a procedure in which the court in an urgent procedure consolidates and sanctions civil law relations with the authority of its decisions, delegate to it non-judicial affairs that should be de-judicialized or delegated.

Additional metadata

Cost covered by	None
Involved actors other than national government	Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Croatia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Cyprus

Rescue procedures in insolvency

Phase	Companies Law (Chapter 113); The Department of Insolvency and Related Matters Law of 2020 (68(I)/2020)
Native name	Ο περι εταιρειών νόμος (κεφάλαιο 113); Ο περί του Τμήματος Αφερεγγυότητας και Συναφών Θεμάτων Νόμος του 2020 (68(I)/2020)
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

Companies Law (Chapter 113): Article 202A-202LH; Article 97, Articles 222-225 The Department of Insolvency and Related Matters Law of 2020 (68(I)/2020): Article 7 The Department of the Registrar of Companies and Intellectual Property Law of 2021 (133(I)/2021): Article 3

Description

An examinership procedure was introduced in 2015 with an amendment to Cyprus' Companies Law (Chapter 113). The Law 62(I)/2015 amending the Companies Law is adding Part IVA 'Appointment of Examiner'.

The examinership procedure allows a company risking insolvency, or a creditor or a contingent or a prospective creditor (including an employee) of that company, to apply for examinership. The application must be accompanied by a rescue plan.

An examinership procedure envisages the appointment of an examiner (an expert in insolvency), under the court's supervision, who is in charge of evaluating the rescue plan. If the rescue plan is considered viable the court allows for the start of rescue operations. For the plan to take effect, the creditors' committee must agree with the plan, too.

During examinership, which can last up to six months (including extension), the assets of the company are protected from the enforcement of individual claims. The examinership ends by order of the court when insolvency problems are resolved or when no rescue operation is deemed possible by the examiner. In the latter case the court may order the company to be wound up.

Another rescue procedure is receivership (Companies Law, article 97 and 222-225), which allows for a creditor to claim their due but also allows for the continuation of the operations of the company. The court decides to appoint a receiver when it deems necessary to protect the creditor's claims. The receivership procedure puts the company's operation in the hands of the receiver who can decide how to recover the amount of the claim by selling, in whole or in part, the company's assets. The receivership procedure ends when the debtor's claim is satisfied. The receivership procedure should allow a company to return to its regular business operations once the debt is paid.

On the 1st of January 2020, the Department of Insolvency began its operation, based on the new relevant legislation. The management of the affairs of the Official Receiver and the Insolvency Service (as described in the aforementioned Companies Law) were transferred to the Department of Insolvency (as a result, in 2021 the Department of the Registrar of Companies and Official Receiver was renamed into the Department of the Registrar of Companies and Intellectual Property).

According to the Insolvency Legal and Regulatory Framework, among the main purposes of the Department and its procedures is to formulate and cultivate a culture of survival and second chances (as opposed to bankruptcy and liquidation), to aid with the rescue and restoration of business activity and the reconstruction and preservation of viable businesses through the establishment of a corporate debt restructuring mechanism, and to safeguard the viability of natural and legal persons, through the provision of appropriate tools and framework for restructuring their loans.

Commentary

Examinership has many advantages to companies at risk of insolvency, as it provides them with some time in order to formulate a rescue plan.

Despite article 202IZ, which provided for the examiner to submit a notification on their appointment (formerly to the Department of the Registrar of Companies and Official Receiver, and presently to the Department of Insolvency) and the latter to publish such information on its websites, no such information was systematically administered and published from 2015 until now (2023), including statistics over outcomes of examinership procedures. Thorough inquiring and the interviewing of officers of the Department of

Insolvency, revealed that the reason behind this is simply that there are actually zero cases of companies that proceeded with the rescue procedures. Throughout the years there was a number of companies that initiated communication with the Department of the Registrar (and later with the Department of Insolvency) regarding the rescue procedures, and even proceeded with submitting applications; however they did not follow through, withdrew their applications and opted with settling their debts extrajudicially.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Cyprus: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Czechia

Rescue procedures in insolvency

Phase	Act No. 182/2006 Coll., on bankruptcy and settlement (insolvency act)
Native name	Zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení (insolvenční zákon) ve znění pozdějších předpisů
Type	Rescue procedures in insolvency
Added to database	07 December 2016
Access online	Click here to access online

Article

Section 316–364

Description

The application for insolvency can be made either by the insolvent company or by the creditors.

Three options are available in case of insolvency: reorganisation, debt relief and bankruptcy.

Reorganisation, according to the Act No. 182/2006 Coll., aims to satisfy creditors' claims while allowing the company to continue its business. Conditions for permission of reorganisation by the court are:

- the total annual net turnover of the debtor for the last accounting period preceding the insolvency petition has reached at least CZK 50,000,000 (about €1,850,000), or
- the debtor employs at least 50 employees, or
- the reorganisation plan has been adopted by at least half of all secured creditors counted according to their claims and at least half of all unsecured creditors.

Debt relief is another measure that must be agreed by the creditors (provided that creditors receive no less than 30% of the amounts due) and approved by the court.

If the two options above are not feasible, the court proceeds with bankruptcy measures.

The reorganisation can be done mainly through the following measures:

- Restructuring the claims of creditors, consisting in the remission of the debts of the debtor, including their accessories or delay their maturity;
- Selling the entire estate or part thereof, or sale of debtor's business;
- Issuance to creditors of the debtor's assets or transfer of these assets to a newly formed legal entity in which creditors have a stake;
- Merger of the borrower - legal entity with another person or transfer its assets to a partner to maintain or change the rights of third parties concede;
- Issuance of shares or other securities of the debtor or a new legal entity;
- Providing funding for the debtor's business;
- Change the founding document or statutes or other documents regulating the internal affairs of the debtor.

If the court approves the reorganisation, the insolvency administrator is also appointed by the court. The insolvency administrator shall exercise supervision over the activities of the debtor and perform tasks such as surveying of the estate and its inventory, leading incidental disputes, compiling and adding a list of creditors. In addition, the insolvency administrator shall regularly inform the bankruptcy court and creditors' committee about the results of his/her activities.

Commentary

This act regulates the resolution of insolvency of the debtor established by court procedures through one of the following procedures: restructuring, debt relief or bankruptcy. These procedures allow to achieve the highest possible proportional satisfaction of the debtor’s credit for all creditors.

Restructuring according to this act is used rarely in the Czech Republic. The number of approvals of reorganisation by the court are reported in the table below, as well as the number of approved reorganisation plans which have to be submitted to the court 120 days after the approval of reorganisation at the latest.

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021

Number of approvals of reorganisation	3	1	7	5	7	8	15	11	24	19	14
Number of approved reorganisation plans	3	1	7	3	7	6	12	8	18	15	12

Source: Overview of the progress of insolvency proceedings [Ministry of Justice of the Czech Republic / Ministerstvo spravedlnosti České republiky], https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: 50 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Czechia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Denmark

Rescue procedures in insolvency

Phase	Bankruptcy Act (Consolidation Act no. 1600 of 25/12/2022)
Native name	LBK nr 1600 af 25/12/2022
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

Part IV, chapters 25-28

Description

The Danish Bankruptcy Act (Konkursloven, LBK nr 11 af 06/01/2014) distinguishes between three different types of insolvency. These are bankruptcy, restructuring, and debt relief. Bankruptcy and restructuring are applicable to both legal and natural persons, while debt relief is reserved for natural persons. Aside from these judicially regulated insolvency proceedings, other non-judicial rescue procedures can be utilised, as long as the creditor agrees to it.

Restructuring proceedings can be opened through an application by either the debtor or a creditor, which then needs to be approved by the bankruptcy court. The requirement for opening restructuring proceedings is that the debtor is considered to be insolvent.

An administrator and an accountant are appointed by the bankruptcy court for the restructuring process. Although the debtor maintains control of his/her assets when entering into restructuring proceedings, he/she is required to obtain the approval of the administrator for certain large transactions. The administrator will propose a restructuring plan, which the creditors then vote on.

Restructuring proceedings generally end with one of three options:

1. The debtor recovers from the financial strains and is able to continue operating the business,
2. a compulsory composition is carried out, or
3. the debtor faces bankruptcy.

Compulsory composition (tvangsakkord) is a legally regulated restructuring procedure, in which either the amount of debt that the debtor has to pay to the creditors is reduced, or the debtor's property, or part of it, is distributed to the creditors, or the timeframe for repayment can simply be extended. A mixture of the aforementioned alternatives can also be utilised. The debtor can apply for the commencement of compulsory composition proceedings. The aim of a compulsory composition is either to enable the company to continue operating, or to free the debtor from the remaining company so that the debtor can set up a new company without the burden of the old one.

After several amendments to the bankrupcy law a new law was implemented 25. december 2022 (LBK nr 1600 af 25/12/2022). On 9 June 2022, the Danish Parliament adopted a number of amendments to the Bankruptcy Act, which entered into force on 17 July 2022. The amendments to the law are based on the Bankruptcy Council's two reports (no. 1578 and 1579 issued in 2022) and implement EU directive 2019/1023 of 20 June 2019.

There is a completely new section in the Bankruptcy Act on preventive reconstruction. A debtor can be taken under preventive restructuring if the debtor is either insolvent or is likely to become insolvent.

There is minor adjustments to the rules on reconstruction. Among other things, there have been changes in the rules on voting on a reconstruction proposal, and as something new, there are rules that overdue claims for B-tax and advance tax are covered by compulsory agreements.

The rules on debt restructuring have been changed, among other things with the aim of improving entrepreneurs' opportunities to start a new business after bankruptcy.

The Minister for Business has been authorized to lay down rules on early warning. The purpose of launching early warning measures is to help companies become aware "in time" that a company is in financial trouble. In this way, the company can act on the early financial problems and hopefully avoid bankruptcy.

Commentary

According to the Danish statistics database, in 2018, 2,019 companies with more than one employee faced bankruptcy, 111 of which had more than 20 employees.

According to the Danish statistics database, in 2019, 2,253 companies with more than one employee faced bankruptcy, 100 of which had more than 20 employees.

According to the Danish statistics database, in 2020, 1,937 companies with more than one employee faced bankruptcy, 96 of which had more than 20 employees.

According to the Danish statistics database, in 2021, 1,845 companies with more than one employee faced bankruptcy, 77 of which had more than 20 employees.

According to the Danish statistics database, in 2022, 2,475 companies with more than one employee faced bankruptcy, 124 of which had more than 20 employees.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Denmark: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Estonia

Rescue procedures in insolvency

Phase	Reorganisation Act
Native name	Saneerimisseadus
Type	Rescue procedures in insolvency
Added to database	07 December 2016
Access online	Click here to access online

Article

Reorganisation Act (Saneerimisseadus).

Description

The Estonian legal framework for insolvency envisages two options: liquidation or reorganisation. A debtor may file for both liquidation and reorganisation while a creditor for liquidation only.

The reorganisation act regulates the reorganisation proceedings for enterprises aiming at protecting the interest and the rights of the creditors of the company and of third parties in the course enterprise's reorganisation.

Reorganisation can occur if:

- the company is likely to become insolvent in the future;
- the enterprise requires reorganisation;
- the sustainable management of the enterprise is likely after the reorganisation.

The court shall commence reorganisation proceedings by a ruling within seven days after the receipt of the reorganisation application. The ruling must contain:

- information on the person who has been designated as a reorganisation adviser;
- the deadline for the acceptance of the reorganisation plan;

- the deadline by which the reorganisation plan must be submitted to the court for approval;
- the amount which the company must pay to cover the remuneration of and expenses relating to the reorganisation adviser as a deposit to the account prescribed for that purpose;
- the date by which the company must pay the amount specified in clause 4).

The court also appoints a reorganisation adviser. The duty of a reorganisation adviser is to inform the obligees and the court of the economic situation and reorganisation possibilities of the enterprise in an impartial and competent manner, to advise and assist the company in the course of reorganisation proceedings and to verify the lawfulness of the claims of the creditors and the purposefulness of the transactions of the company.

Reorganisation proceedings stop upon revocation of the reorganisation plan, implementation of the reorganisation plan before the due date or upon expiry of the term for implementation of the reorganisation plan which is set out in the reorganisation plan.

Commentary

In 2020, 341 companies went bankrupt (0.15% of all the registered companies), and in 2019 the number was 271. 273 companies went bankrupt in 2018, out of which 260 were private companies and 13 were joint-stock corporations. In 2017, 343 businesses filed for insolvency.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Estonia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Finland

Rescue procedures in insolvency

Phase	Bankruptcy act (120/2004); Restructuring of enterprises act (47/1993); Act on the adjustment of the debts of a private individual (57/1993)
Native name	Konkurssilaki (120/2004); Laki yrityksen saneerauksesta (47/1993); Laki yksityishenkilön velkajärjestelystä (57/1993)
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

Whole regulations (Bankruptcy act (120/2004); Restructuring of enterprises act (47/1993); Act on the adjustment of the debts of a private individual (57/1993))

Description

The Finnish judicial system recognises three types of insolvency. These are bankruptcy (konkurssi), reorganisation of an undertaking (yrityssaneeraus), and adjustment of the debts of a private individual (yksityishenkilön velkajärjestely). For companies and other legal entities attempting to avoid bankruptcy, the proceeding known as reorganisation is the only option, as the adjustment of debts proceeding is reserved for natural persons.

The general requirement for being able to apply for reorganisation proceedings is, as of May 2022, not for the debtor to be insolvent but threatened with insolvency (maksukyvytön). Reorganisation can also be initiated through a joint application submitted by the debtor and two creditors, who together have a claim on a minimum of 20% of the debtor's debts.

Reorganisation is generally available to any kind of company, except for certain companies subject to stricter regulation, such as financial institutions. Both the debtor and the creditor have the authority to apply for the commencement of the proceedings. If it is clear that a reorganisation will not be enough to save the company, or if it is

considered that the debtor will not be able to cover the costs resulting from the proceedings, the application for reorganisation can be rejected.

A liquidator is appointed by the court to supervise the debtor's business operations and compose a proposal for the planned reorganisation, which is then approved by the court. The debtor has the right to make suggestions about the reorganisation programme. The court can also appoint a committee of creditors to assist the liquidator, which also have a right to comment on the programme. However, the committee of creditors is only appointed if there is an explicit need for one. If the company regularly employs 50 people or more, the employment authorities may appoint a representative as a non-voting member to the committee of creditors.

The liquidator's remuneration is paid by the company (employer) being reorganised. The company is also responsible for any costs incurred during the reorganisation. Members of the committee of creditors are remunerated by the creditors in question, unless otherwise agreed.

The reorganisation programme can cover things such as the adjustment of debts and a transfer of the undertaking, as well as changes to staff arrangements, management, and operational activities. There is no set expiry date for a reorganisation programme: the programme is in effect until the obligations have been met. The debtor is freed from paying any debts that exceed the amount specified in the programme if he/she fulfils his/her obligations. If the debtor significantly fails to comply with the programme, or if the debtor is declared bankrupt, the reorganisation proceedings are terminated.

Commentary

The following numbers of reorganisation proceedings were filed since 2014, according to Statistics Finland and The Office of Bankruptcy Ombudsman:

- 2022: 339
- 2021: 331
- 2020: 336
- 2019: 366
- 2018: 408
- 2017: 427
- 2016: 440
- 2015: 494
- 2014: 511

According to an expert estimate, companies generally seek reorganisation too late, submit inadequate applications, and expect too much from the procedure. Approximately one-third of the applications are approved by the court, and only around half of the approved companies succeed in the reorganisation.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Finland: Rescue procedures in insolvency, Restructuring legislation database, Dublin

France

Rescue procedures in insolvency

Phase	Companies' rescues law, Commercial Code
Native name	Sauvegarde des entreprises , Code Du Commerce
Type	Rescue procedures in insolvency
Added to database	02 December 2016
Access online	Click here to access online

Article

Commercial code, article L611-3 (ad-hoc procedure); Commercial code, article L611-1 to L611-16 (procédure de conciliation); Commercial code, articles L628-1 à L628-8 (procédure de sauvegarde accélérée); Commercial code, articles L620-1 to L627-4 (procédure de sauvegarde); Commercial code, articles L631-1 to L631-22 (redressement judiciaire).

Description

There are 4 possible paths that can be followed if a company is in financial difficulty: mandat ad-hoc, sauvegarde, conciliation and redressement judiciaire. The choice depends on the financial situation the company is facing.

Procedure de mandat ad-hoc (ad-hoc procedure): This is open to companies where there are some financial difficulties but still fully operational. The court appoints a legal representative who assists the company's CEO but does not take its place. The procedure can be stopped at any moment if the company thinks the procedure reached its goal.

Safeguard procedures (procédure de sauvegarde): This is open to companies approaching a situation where they will have to stop payments. The safeguard procedure can be triggered by the CEO upon reaching the first serious set of difficulties. Unlike conciliation, it is a real judicial procedure that is publicised: the opening judgement is mentioned in the commercial register or in the trades directory and published in the Official Bulletin of Civil and Commercial Announcements (Bodacc) and in a legal notice journal. It lasts 6 months at the maximum. Once there is a plan in place, the tribunal can stop the safeguard procedure and ask the company to enact the plan. The plan might entail the closure or sale of certain

activities. The duration of the plan cannot exceed a 10 years' timeline. Moreover, if the company has more than 150 workers and/or a total turnover of more than €20 million, creditors are represented by two committees: one which represents the credit institutes and one that represents the suppliers.

Conciliation: If a company is in a situation where payments have stopped for less than 45 days, the tribunal can start a conciliation procedure upon request of the CEO. The company has to present a full report on its credits and debts, its securities and obligations, its annual reports for the past 3 years, a presentation of the financial situation highlighting difficulties and financial support needs. The company must also present a document containing reflections and an initial assessment on the situation and a way forward to improve the situation. The conciliation procedure aims at reaching a friendly agreement between the company and its creditors. The tribunal can proceed with a 'simple order' to stamp the agreement and its details are kept confidential by the parties. Otherwise an 'approval' procedure can be enacted by the tribunal and in this case the case is made public (with the aim of offering more guaranties to the creditors).

Judicial reorganisation proceeding (redressement judiciaire): this is the final step that can be taken to rescue a company. It includes cases where the criteria for the previous steps are not applicable and the company has stopped its payments for longer than 45 days. Under the law, the call for a 'redressement judiciare' can be done by the company or by a creditor. In this case the tribunal announces the opening of reorganisation and liquidation. Then, the CEO is assisted by a legal representative whose mandate is to make sure that creditors' demands are satisfied. The court may also appoint a judicial administrator (required if the company has more than 20 employees and more than €3 million of revenues), whose mission is to assist the CEO for some or all acts of management. The procedure can last for a maximum of 18 months after which there are two possible solutions: repay the debts and implement a continuation of activities plan; or, if debt cannot be repaid, an external buyer can be sought or liquidation of assets can be implemented.

Commentary

According the last data (Ministry of justice, 2022), after a sharp fall in 2020 (-22%), mainly due to the health situation, the number of requests to initiate prevention procedures (5,400) rose in 2021 (+17%). In 2021, 2,300 decisions relating to prevention procedures 18% more than in 2020.

More than eight out of ten decisions relate to requests for ad hoc mandates. Of these requests, nearly six out of ten resulted in the appointment of an agent, on average 25 days after the matter was referred to the court. 430 decisions concerned conciliations. These

were handed down on average 7.0 months after the case was opened. An agreement was reached in almost half the cases. The conciliation procedure ended without an agreement in 35% of cases and was rejected in 12% of cases. The average duration of conciliation proceedings in the case of an agreement between the parties was 5.5 months in 2021, an increase of 2 months compared with 2020, while the average duration without an agreement was 8.2 months, an increase of 81 days.

The number of applications to open insolvency proceedings fell by 5.1% in 2021 to 33,200. 61% of these applications concern judicial liquidation proceedings, 30% judicial reorganisation proceedings and 2.7% safeguard proceedings. Slightly more than one in ten applications is lodged with the courts.

In 2021, commercial courts handed down 26,200 decisions to open collective proceedings, of which just under three-quarters were immediate judicial liquidations, one-quarter judicial reorganisations and 2.0% accelerated and/or financial safeguard procedures. In 2020, 24% of companies that were the subject of insolvency proceedings belonged to the automotive trade and repair sector, 21% to the construction sector and the same proportion to the business services sector.

In 2021, 3,000 businesses benefited from a recovery plan and 515 from a safeguard plan. The latter figure is 20% higher than in 2020, after four consecutive years of sharp decline (-54% between 2016 and 2020), which followed a period of steady growth since 2006, when the safeguard procedure was created.

For companies benefiting from a safeguard plan, the opening phase lasted 14 days on average and the solution phase 16.4 months. For companies benefiting from a recovery plan, the opening phase lasted 56 days on average and the solution phase 17.1 months. 5,000 companies were the subject of a judicial liquidation procedure upon conversion of another procedure: judicial recovery (4,860), safeguard (140) or professional recovery (40). On average, liquidations take place 6 months after the opening of receivership proceedings and 8 months after the opening of safeguard proceedings. Lastly, there were 1,000 judicial liquidations ordered following the resolution of a reorganisation plan (950) or safeguard plan (50). These liquidations liquidations take place within an average period of 8.7 months.

Additional metadata

Cost covered by Employer

Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), France: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Germany

Rescue procedures in insolvency

Phase	Insolvency statute; Act to further facilitate the restructuring of companies; Act to facilitate the insolvency procedure of large companies (holdings); Act on the advancement of restructuring and insolvency law
Native name	Insolvenzordnung (InsO); Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen (ESUG); Gesetz zur weiteren Erleichterung von Konzerninsolvenzen; Gesetz zur Fortentwicklung des Sanierungs- und Insolvenzrechts (SanInsFoG)
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

270, 270a-b Insolvency statute; 67 (2) ESUG; Act to facilitate the insolvency procedure of large companies (holdings) whole regulation; 5 SanInsFoG

Description

Under certain conditions, a company which can no longer pay its creditors and is deemed illiquid can be granted three months' time for developing a restructuring plan. During these three months the company does not have to pay its creditors; rather the creditors shall be involved in the process leading up to the restructuring plan.

The legal requirements are:

- the company makes its request for the opening of insolvency proceedings with the insolvency court on grounds of imminent insolvency or over-indebtedness,
- it requests debtor-in-possession management which implies that the management of the insolvency process is not handled by a foreign agency or consultant,

- the company provides certification by a tax advisor, accountant or lawyer with experience in insolvency matters or a person with comparable qualifications which gives evidence of the imminent insolvency or over indebtedness but also shows that the debtor is not already insolvent and that the intended restructuring does not manifestly lack the prospect of success.

The insolvency court, without external inputs from the creditors, takes a decision depending on the prospect of success to save the business. A positive decision implies the allowance not to pay the creditors' demands for three months and to develop a plan on how to restructure the business. The insolvency court appoints an insolvency observer, an independent expert who monitors the process of developing the plan. The debtor as well as the creditors have a right to suggest a person to take the position of the insolvency observer.

Under the act on the further facilitation of the insolvency procedure (ESUG), communication and cooperation between the debtor and the creditors shall be improved by the establishment of a committee gathering all creditors. Better communication between the two sides and the insolvency monitor shall speed up the drafting of a plan aimed at rescuing the business. The insolvency ordinance (article 67.2), stipulates with respect to ESUG that a worker representative shall be member of the creditors' committee (Gläubigerausschuss). In case a works council is in place, the worker representative typically is a works council member. There is no legal provision on how the worker representative shall be appointed in other cases.

The law also institutes a 'debt-to-equity-swap' whereby liabilities can be transformed into company shares. Early assessments have largely shown that the new measures are successful.

On 1 January 2021, the Act on the advancement of restructuring and insolvency law (SanInsFoG) came into force, including several amendments to the Insolvency Code. In particular, the SanInsFoG has tightened the requirements for court approval of self-administration (270a InsO). Thus, the application must provide for:

- a financial plan for six months for the continuation of business operations and the costs of restructuring,
- a concept for the implementation of the insolvency proceedings in self-administration,
- a description of the status of negotiations with creditors,
- a description of the measures to ensure compliance with the obligations under insolvency law,
- a description of additional or reduced costs in comparison to the standard insolvency proceedings.

With the corporate stabilisation and restructuring act (StaRUG), the SanInsFoG also provides for an independent restructuring procedure to avoid insolvency (implementation of EU Directive 2019/1023).

Commentary

The ESUG has been in force since 1 December 2012; in spring 2017 another act for facilitating the insolvency procedures of large companies ('Gesetz zur Bewältigung von Konzerninsolvenzen') was passed, stipulating also the establishment of a joint committee of creditors for large companies (holdings).

In August 2018, the federal government released its report on the usage of the ESUG based on an evaluation conducted at Bielefeld University (Jacoby et al., 2018). The evaluation is positive but finds that the establishment of the committee of creditors and the debt-to-equity-swaps are less often used than expected. The ESUG has no negative impact neither on companies nor on workers (Jacoby et al., 2018).

Consultant group Roland Berger together with HgGUR, a non-profit group of consultants, runs non-representative surveys on ESUG on a regular basis. In 2018, the ESUG study was published based on about 2,300 responses by management and insolvency experts. It finds that ESUG is by now widely known and accepted. In 2022, the ESUG was in effect for ten years and still judged to be widely accepted (Hielscher, 2022).

Insolvency and COVID-19:

In the wake of the COVID-19 crisis, the insolvency notification requirement was temporarily suspended from March 2020 to July 2021. The Federal Statistical Office (2021) reported on 15,841 corporate insolvencies in 2020. The figure was 15.5% lower when compared to 2019 and represented the lowest level since the introduction of the Insolvency Code in 1999. This all time low was also attributed to the suspended obligation to file for insolvency.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council Court Other

Involvement (others)	Creditors; consultants; insolvency monitor
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Germany: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Greece

Rescue procedures in insolvency

Phase

-Law 4738/2020 (Official Government Gazette A' 207/27.10.2020). "Debt Settlement and Facilitation of a Second Chance", as amended by Law 4818/2021 (Official Government Gazette A 124/18.07.2021) "a) Incorporation into Greek legislation of provisions of Directives (EU) 2017/2455, (EU) 2019/1995 and (EU) 2018/1910 regarding obligations arising from value added tax for the provision of services and distance sales of goods and related arrangements; b) Amendments to Law 4649/2019 "Programme for the provision of guarantees in securitizations of credit institutions" (A΄ 206), based on the approval decision of the European Commission under documents C(2021) 2545/9.4.2021 (2021/N) for the extension of the program " HERAKLIS" c) Provisions for the settlement of debts and the provision of a second chance -Amendments to Law 4738/2020 and other provisions d) Other urgent provisions of the competence of the Ministries of Development and Investments, National Defence, Culture and Sports, Infrastructure and Transport, & Law 5043/2023 (Official Government Gazette A' 91/13.04.2023), "Regulations concerning Local Government Organizations of the first and second degree; Provisions for the well-being of companion animals; Provisions for the human resources of the public sector; Other regulations of the Ministry of the Interior and other urgent provisions" -Circular 1027/2018: Amendment of the bankruptcy code (Law 3588/2007 - OJHR A-153) by Law 4446/2016 (OJHR A-240), Law 4472/2017 (OJHR A-74), Law 4491/2017 (OJHR A-152), and Law 4512/2018 (OJHR A-5): Indication of critical changes in bankruptcy proceedings and provision of instructions; Law 3588/2007 Bankruptcy cde; Law 4013/2011 "Establishment of a single idependent public procurement authority and central electronic public procurement registry - Substitution of the sixth chapter of Law 3588/2007 (bankruptcy code) - Procuring process of consolidation and other provisions"

Native name	-Νόμος 4738/2020 (ΦΕΚ 207/A/27.10.2020), Ρύθμιση οφειλών και παροχή δεύτερης ευκαιρίας και άλλες διατάξεις όπως τροποποιήθηκε από το Ν. 4818/2021 (ΦΕΚ Α' 124/18.07.2021), "α) Ενσωμάτωση στην ελληνική νομοθεσία διατάξεων των Οδηγιών (ΕΕ) 2017/2455, (ΕΕ) 2019/1995 και (ΕΕ) 2018/1910 όσον αφορά υποχρεώσεις που απορρέουν από τον φόρο προστιθέμενης αξίας για παροχές υπηρεσιών και πωλήσεις αγαθών εξ αποστάσεως και σχετικές ρυθμίσεις β) Τροποποιήσεις του ν. 4649/2019 «Πρόγραμμα παροχής εγγύησης σε τιτλοποιήσεις πιστωτικών ιδρυμάτων» (Α΄ 206), βάσει της υπό στοιχεία C(2021) 2545/9.4.2021 (2021/Ν) εγκριτικής απόφασης της Ευρωπαϊκής Επιτροπής για παράταση του προγράμματος «ΗΡΑΚΛΗΣ» γ) Διατάξεις για τη ρύθμιση οφειλών και την παροχή δεύτερης ευκαιρίας -Τροποποιήσεις του ν. 4738/2020 και λοιπές διατάξεις δ) Λοιπές επείγουσες διατάξεις αρμοδιότητας Υπουργείων Ανάπτυξης και Επενδύσεων, Εθνικής Άμυνας, Πολιτισμού και Αθλητισμού, Υποδομών και Μεταφορών", και το Ν. 5043/2023 (ΦΕΚ 91/Α/13.04.2023), "Ρυθμίσεις σχετικά με τους Οργανισμούς Τοπικής Αυτοδιοίκησης α’ και β’ βαθμού; Διατάξεις για την ευζωία των ζώων συντροφιάς; Διατάξεις για το ανθρώπινο δυναμικό του δημοσίου τομέα; Λοιπές ρυθμίσεις του Υπουργείου Εσωτερικών και άλλες επείγουσες διατάξεις" - ΠΟΛ.1027/2018 -Τροποποίηση του Πτωχευτικού Κώδικα (ν. 3588/2007 - Α' 153) με τους ν. 4446/2016 (Α'240), ν. 4472/2017 (Α' 74), ν. 4491/2017 (Α' 152) και ν. 4512/2018 (Α'5): Επισήμανση βασικών μεταβολών στη διαδικασία της πτώχευσης και παροχή οδηγιών; Νόμος 3588/2007 Πτωχευτικός Κώδικας; Νόμος 4013/2011 Σύσταση ενιαίας Ανεξάρτητης Αρχής Δημοσίων Συμβάσεων και Κεντρικού Ηλεκτρονικού Μητρώου Δημοσίων Συμβάσεων - Αντικατάσταση του έκτου κεφαλαίου του ν. 3588/2007 (πτωχευτικός κώδικας) - Προπτωχευτική διαδικασία εξυγίανσης και άλλες διατάξεις
Type	Rescue procedures in insolvency
Added to database	05 December 2016
Access online	Click here to access online

Article

-Law 4738/2020, Book One: 'Prevention of Insolvency', Articles: 1-64, Book Two: 'Bankruptcy', Articles: 75-211, Book Three: 'Enhancement of Effectiveness and Monitoring Clauses - Vulnerable Debtors', Articles: 212-226, as amended by Law 4818/2021, Part III: 'Provisions for the Debt Settlement and Facilitation of Second Chance - Amendments to Law 4738/2020 and other provisions', Articles: 34-56, and Law 5043/2023, Part VIII: 'Other Urgent Provisions', Article: 75 -Article 7, 107 et seq. BC, 108 BC, 109 BC, 115, 118, 120, and 120a BC, 124 BD, 128 BC of Law 4446/2016; Articles 14 and 15 of Law 4491/2017; Articles 107-131 of Law 3588/2007; Article 12 of Law 4013/2011

Description

-Law 4738/2020 (as amended by Law 4818/2021) abolishes Law 3588/2007 (known as Bankruptcy Code) and integrates into the national legislation the EU Directive 2019/1023 on preventive restructuring frameworks, discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt (the EU Restructuring Directive). The new Law can be categorised in two sections:

Preventive (pre-insolvency) restructuring

This includes:

*early warning of debtors (both individuals and legal entities) via an electronic mechanism supervised by the Special Secretariat for Private Debt Management, as well as advisory practices provided by Borrower Service Centres and Professional Bodies (i.e.Chambers or Professional Associations). Debtors are classified in three levels of insolvency risk -low, moderate, high. The mechanism is activated upon a request of the interested party and not automatically on the initiative of a third party;

extrajudicial settlement of (natural persons and/or legal entities) monetary liabilities to the Greek State, the Financial Institutions (including servicers), and to the Social Security Institutions. The procedure is initiated, either at the request of the debtor through the Special Secretariat for Private Debt Management e-platform, or at the initiative of the creditors by notifying the debtor by a letter. For the restructuring agreement consent criteria, besides the debtor's consent, require the 60% of financial institutions and, at least, the 40% of secured creditors. Upon submitting the restructuring application and during negotiation procedures, financial institutions stay any Code of Conduct action, or any enforcement action (s).State and Social Security Institutions can restructure and write- off debts to them and, most importantly, debtors who have settled, or who have not delayed,

for a period exceeding three months, their debts are eligible to a subsidy to repay their loans secured by their main residence, for five years from the date of application. For a debtor to receive the grant, the total amount of debt must be at least €20,000 and the balance of debt not to exceed €135,000 for a single-person household, increased by €20,000 for each additional member, and up to a maximum of €215,000 per debtor. Debtors with >90% to one financial institution are excluded while, debts towards third parties are not restructured under this process; pre-insolvency business recovery process concerning persons with a business activity and providing for debt restructuring, with or without business transfer. The process recognises two categories of creditors -those under a special privilege, and all others (unsecured creditors and creditors with general privileges) affected by the rehabilitation agreement, the conclusion of which, requires a 50% consent (even via electronic voting) of each category, with the possibility of bypassing these majorities under certain conditions.The principle of non-deterioration of the position of creditors is explicitly stated, as it, is the deemed consent under clear conditions of the State and the Social Security Institutions. In cases not covered by the provision on deemed consent, discharge of liability for employees (for public or private bodies), who consent to the rehabilitation agreement, is provided. The rehabilitation process, contrary to bankruptcy, does not constitute grounds for termination of the debtor's outstanding contracts and as such, it should specify its consequences on employees' employment and earnings, and should not entail employees' claims in precautionary measures except, for a good reason and for a specified time.

Bankruptcy proceedings

Insolvency capacity, for the first time, is granted to all natural persons regardless of whether they have a commercial status, as well as to legal persons pursuing an economic purpose; the cessation of payments term is defined, as quantitative criteria are provided addressing the debtor categories based on the size of the bankruptcy estate and not on legal capacity – form. As such, large scale insolvencies follow the ordinary insolvency process ending, either in the liquidation of the debtor's business or parts of it as a "going concern" or in "piecemeal liquidation" using the e-auction mechanism; *the Bankruptcy Officer is nominated in the application for the declaration of bankruptcy, and the Court is provided with the written statement of acceptance of such nomination;

- the Electronic Insolvency Registry is established, the data of which (announcements of creditors' claims, decisions and acts, etc.) are publicly available;
- the declaration of bankruptcy causes the automatic and without cost termination of all pending and permanent contracts of the debtor within 60 days; the creditors' Assembly role is enhanced especially in the context of the tender process ratification, while limiting Court intervention; insolvency proceedings are accelerated, while insolvency is automatically terminated within five years of its declaration; *a simplified and faster

process for addressing small-scale insolvencies as the application is submitted electronically through the Electronic Insolvency Registry and run by lower courts (District Civil Court -"Eirinodikio"). Targeted debtor audience consists of consumers/natural persons (with assets up to €350,000), entrepreneurs and smaller enterprises (with total assets: €350,000, net turnover: €700,000, average number of employees during the period: 10 persons).

-The bankruptcy code provides for two proceedings that are relevant to the restoration of a failed enterprise to financial health; the recovery procedure that precedes bankruptcy and the reorganisation plan, which is considered after the declaration of bankruptcy.

Pre-bankruptcy recovery procedure

A debtor either in cessation of payments or in a situation of imminent cessation of payments may file for the ratification of recovery agreement already reached with the qualified majority of creditors (60% of the total claims, 40% of which should be secured). In addition, any debtor that is not in cessation of payments or in a situation of imminent cessation of payments can be subject to the recovery procedure, provided that the court considers it probable that the debtor will become insolvent, and insolvency can be lifted through implementation of the recovery procedure.

The agreement may consists of a prepack sale of all or part of the business, a disposition of assets, a debt-equity swap, or a change of the term of existing obligations, such as a write-down of the debt, extension of the repayment date, alteration of the interest rate or replacement of the obligation to pay interest by the obligation to provide the creditor with a share of the profits; such changes to liabilities may also be accomplished through a refinancing of existing debt or through the issue of a bond loan that may also include a convertibility feature. From the submission of the recovery agreement to the Bankruptcy Court until its decision there is an automatic uphold for a four-month period on all individual and collective enforcement measures against the debtor. Such automatic moratorium is granted to the debtor only once. In case the court's decision is not published within the four-month period, the court may grant a suspension on all individual and collective enforcement measures against the debtor or any other preventive measure.

Before the submission of the recovery agreement, a moratorium may also be granted - at the request of the debtor or the creditors - if a creditors' declaration in writing of 20% of the total claims is submitted, provided that there is an imminent danger. Such uphold can be granted by the court only once and for a maximum period of four months. There are three main criteria for the ratification of an agreement reached by the debtor and the qualified majority of creditors as set out above. First, it must result in a viable business and lift the debtor out of cessation of payments (or prevent it from reaching this state). Second,

it must not leave any non-consenting creditors in a less favourable position than they would be in bankruptcy liquidation. Third, each non-consenting creditor may not be treated less favourably than any other creditor of the same rank or priority.

The Bankruptcy Court will not examine the debtor's viability if the following conditions are met:

- contracting creditors agree with the content of the business plan;
- the recovery agreement contains listing of contracting and non-contracting creditors,
- the claims of which are expected to be effected from the materialisation of the recovery agreement; and the recovery agreement along with the business plan were served to all non-contracting creditors;
- the claims of which are effected from the recovery agreement, as for instance, when the recovery agreement, as for instance, when the recovery agreement provides for their write-off or for an extension of the repayment date.

A pre-bankruptcy recovery agreement will be judicially ratified if:

- it is signed by creditors representing a majority of 60% of the total claims, 40% of which should be secured; it renders the debtor viable;
- non-signatory creditors receive at least as much as they would receive through bankruptcy liquidation;
- it does not violate any mandatory legislation, such as competition law, or is the result of fraud conducted by the debtor or any creditor or any third party;
- creditors of the same class are treated equally and any exceptions are justifiable by important business or social reasons;
- and it lifts the debtor out of cessation of payments.

The reorganisation plan

Any debtor may propose a reorganisation plan either along with its bankruptcy petition or within three months of being declared bankrupt. The three-month period may be extended by the reporting judge only once and up to one additional month if it is proved that the extension is not detrimental to creditors' interests and the plan will be accepted by the creditors. The proposed reorganisation plan must include:

- information relating to the current financial situation of the debtor;
- at least one proposed form of reorganisation; and information relating to payments to creditors. The latter is subject to one restriction: the proposed debt settlement must not prejudice creditors' classification.

The plan must mandatorily provide for secured creditors, general preferential creditors, unsecured creditors and subordinated creditors. Employee claims constitute a particular class. Claims of unsecured creditors that are of diminished value may be classified separately. Within a particular class, more than one group of creditors may be provided. The plan must provide equal treatment among creditors of the same class, or among creditors of the same group.

The plan shall be approved by a majority of creditors representing 60% of the debtor's debt, at least 40% of which represent secured debt. With respect to a recovery agreement, pursuant to the provisions of the GBC (Greek Bankruptcy Code), a guarantor's or co-debtor's liability is limited to the value of the claim against the debtor, as such claim was reduced in accordance with the ratified agreement and provided that the relevant creditor consented to the reduction. There is a similar provision with respect to a reorganisation plan.

Commentary

-Law 4738/2020 is described as reforming profoundly the insolvency legislation currently applicable in Greece. According to analysts the new Code simplifies existing procedures, digitizes through the establishment of the Electronic Insolvency Register, maintains viable enterprises through the extra-judicial debt settlement mechanism and the rehabilitation process, and provides for the most vulnerable debtors. It sets more favourable conditions for companies that have the potential to become viable and have the support of their creditors (banks and suppliers), while on the other hand it gives creditors the ability to more quickly "close" pending cases with companies that have no possibility of recovery. The Law does not provide for fundamental changes in terms of rehabilitation since this procedure is considered as a successful regulation widely implemented in practice; on the contrary the bankruptcy reform in bankruptcy is significant for becoming more attractive to both creditors and debtors. The Law's main provisions and innovations are: a consolidated approach that replaces a multitude of provisions and consolidates them into a single legal text; an early warning preventive mechanism (articles 1 to 4) is introduced for the first time; the "second chance" seeking to contribute to the debtor's ability to "close" quickly, definitively (and at the lowest possible cost) the issue of their over-indebtedness which will not be transferred to their heirs and so on; the extra-judicial debt settlement mechanism for individuals and legal entities through an electronic platform, with the possibility of debt restructuring and/or "haircut"; a business resolution process that becomes unified and modernized; the new introduction-regulation of the possibility of bankruptcy for natural persons-non-traders' the quick discharge of responsibility of the members of the management of legal entities that go bankrupt; The negative comments about the bankruptcy code are attributed to: the violation of the principles of good

governance, given the multitude of empowering provisions (in deviation from Article 3 §2 Law 4048/2012 "Regulatory Governance: Principles, Procedures and Means of Good Legislation"); the several questions on the incompleteness of the arrangements for the early warning mechanism, the lack of functional connection with the other tools and provisions of the legislation, the lack of establishing incentives for inclusion in its arrangements and/or sanctions for avoiding it, the real possibility of early activation, etc.; the question of exemption from debts due to the issuance of post-dated checks remains pending, in the context of “second chance” with the debts to the State; *the fact that, although the out-of-court mechanism is a tool meeting the conditions to become efficient, needs to find the necessary support from the creditors –mainly the banking institutions. The example of the pre-existing-corresponding extra-judicial mechanism, which did not yield the desired results due to digitized bureaucracy, public agencies’ audacity, and reluctance mostly from the part of the banks, is quite recent.

-The reorganisation plan process has hardly been tested in practice. The statute seems to permit the development of a debtor-in-possession insolvency proceeding, as the court, upon receiving a voluntary insolvency application and a plan that provides for the continuation of the debtor’s business, may decide to allow the debtor to maintain control of the business along with the bankruptcy administrator’s cooperation. Upon filing for declaration of bankruptcy and until the grant of the relative order, a moratorium against all enforcement actions (including the involuntary grant of security over assets) may be provided by the competent court as a preliminary measure. The declaration of bankruptcy puts into immediate effect a moratorium on all enforcement actions by unsecured creditors. Secured creditors cannot continue pursuing their claims against the secured assets that are closely connected to the debtor’s business or production unit or enterprise until the reorganisation plan is approved. Any enforcement procedures attempted during the suspension are null and void. The ratified reorganisation plan is binding towards all the parties involved (such cramdown includes the dissenting and non-participating creditors).

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Other National government Court

Involvement (others)	State, Financial (including Servicers), and Social Security Institutions, Special Secretariat for Private Debt Management, Borrower Service Centres and Professional Bodies, Creditors, Debtors (natural persons and legal entities)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information:

Sources

Citation

Eurofound (2016), Greece: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Hungary

Rescue procedures in insolvency

Phase	Act 49 of 1991 on bankruptcy and liquidation proceedings; Act 64 of 2021 on restructuring and the amendment of certain laws for law harmonisation purposes
Native name	1991. évi XLIX. törvény a Csődeljárásról és a Felszámolási eljárásról; 2021. évi LXIV. Törvény a szerkezetátalakításról és egyes törvények jogharmonizációs célú módosításáró
Type	Rescue procedures in insolvency
Added to database	07 December 2016
Access online	Click here to access online

Article

Act 49/1991 Articles 6, 7, 8, 9, 25, 26, 27, 40, 57, 65 Act 64/2021 whole law

Description

In 2021, Act 64 of 2021 on restructuring was enacted in order to harmonise with EU law. A company can also apply for bankruptcy or liquidation under Act 49/1991 with provisions in the law for voluntary reorganisation. A company facing financial difficulties might apply for voluntary reorganisation. The reorganisation agreement must include the following (Act 49/1991, Articles 19-21):

- a list of creditors participating in the reorganisation agreement, their classification, the sums of their registered claims recognised or uncontested and the size of their voting rights;
- the settlement and restructuring programme approved by the creditors and the method of implementation and supervision;
- any modification of performance deadlines, any waiver or assumption of claims and all other factors deemed necessary for the purpose of restoring or preserving the debtors' solvency; and

- the name and mailing address of each creditor, and regarding creditors' committees and creditors' representatives, the specifics of their scope of representation.

If the court, taking into account the creditors' claims, agrees with the reorganisation plan, the company can continue its preparations under the supervision of an appointed administrator. The creditors do not have a say in this decision. Employees must be notified and the announcement published in the Official Companies' Gazette (Cégközlöny). If the voluntary reorganisation plan is not concluded within 120 days from the date of this publication, the court proceeds with the regular bankruptcy proceedings. Under a change from August 2020 in Act 49/1991, Article 84/A (1)b-c, the state is authorised to practice pre-emption rights in the purchase of companies it recognises as strategically important.

Commentary

The number of bankruptcy cases filed in Hungary has been falling steadily from 190 in 2010, to 50 in 2016 and 15 in 2018. Researchers suggest procedures should be simplified and more assistance from the bankruptcy officer should be provided to improve the situation (Barta, 2018). The number of bankruptcy cases went up slightly to 22 in 2019, stayed at 22 in 2021, rose to 30 in 2022, according to court records cited by penzcentrum.hu.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Other Court
Involvement (others)	Administrator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Hungary: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Ireland

Rescue procedures in insolvency

Phase	Companies Act 2014
Native name	Companies Act 2014
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

Articles 508-558

Description

A company may enter examinership once its director(s) can prove that the company can no longer pay its debts. Successful applicants then have 100 days during which they are protected from creditors. This gives time for the company to try to obtain new forms of funding, or to make agreements with their creditors about alternative forms of repayment or new repayment schemes, which are not as hard on the company. Examinership differs from receivership in that the company itself applies for such restructuring measures. Under receivership protocol, the creditors apply to have a receiver appointed, which can lead to liquidation and redundancies as its primary focus is to recoup money for the creditors.

A temporary arrangement was introduced in 2020 as a result of the COVID-19 pandemic, which permits an extension of time from 100 days to 150 days. This remained in effect until 31 December 2022.

Commentary

Examinership is often a successful means by which to restructure a company, without having to resort to large-scale job losses. It has worked for several significant employers, particularly in the retail industry, such as B&Q and Debenhams. In 2017, approximately

1,000 jobs were saved through companies availing of examinership. Jobs are protected during both the examinership and receivership process: a 2017 Court of Appeal judgement in Brennan v Irish Pride Bakeries [2017 IECA 107] reiterated that employment contracts cannot be repudiated on account of the company being in receivership, i.e. a receiver cannot do what an employer cannot do in terms of adhering to an employment contract.

With the onset of the 2020 COVID-19 pandemic, the government legislated to lengthen the duration of examinership to try and boost its chance of success. This stayed in place until 31 December 2022, with two COVID-era temporary changes extended to 31 December 2023: an increased threshold for winding up and the permission to hold annual, general and creditor meetings virtually.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Ireland: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Italy

Rescue procedures in insolvency

Phase	Royal Decree of 16 March 1942, no. 267, Discipline of bankruptcy and of insolvency proceedings (Bankruptcy law); Legislative decree of 9 January 2006, no. 5, Comprehensive reform of insolvency proceedings; Decree Law of 27 June 2015, no. 83, as converted into Law 6 August 2015 no. 132, Urgent measures concerning bankruptcy, the civil code, the civil procedure code and the organisation and functioning of judicial administration. Reform of the rules on corporate crisis and insolvency procedures; Law 19/10/2017 n. 155; Legislative decree 12 January 2019, n. 14, Code of business crisis and insolvency in implementation of the law of 19 October 2017, n. 155. Legislative decree 12 January 2019, n. 14, Law no. 83 of 17 June 2022
Native name	Regio Decreto 16 marzo 1942, n. 267, Disciplina del fallimento, del concordato preventivo, dell'amministrazione controllata e della liquidazione coatta amministrativa; Decreto legislativo 9 gennaio 2006, n. 5 Riforma organica della disciplina delle procedure concorsuali; Decreto legge 27 giugno 2015, n. 83, coordinato con la legge di conversione 6 agosto 2015, n. 132, 'Misure urgenti in materia fallimentare, civile e processuale civile e di organizzazione e funzionamento dell'amministrazione giudiziaria'; Decreto legislativo del 12 gennaio 2019, n. 14, Codice della crisi d'impresa e dell'insolvenza in attuazione della legge 19 ottobre 2017, n. 155. Decreto legislativo 12 gennaio 2019, n. 14, Decreto Legislativo del 17 giugno 2022 n. 83
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

Bankruptcy law, articles 1, 160-186 bis; Legislative Decree no. 5/2006, articles 141-146; Decree Law no. 83/2015, articles 1-4, 8; Law 19/10/2017 n. 155. article 13, Law no. 83 of 17 June 2022

Description

In September 2017, a new law covering bankruptcy and insolvency procedures was approved and put into force by Legislative decree 12 January 2019, n. 14.

The new law lists three indicators which should alert the company about an upcoming insolvency risk and prompt it to take action:

- lateness in paying workers' wages;
- lateness in paying suppliers;
- budget indexes not in line with the ones established by the national council of business consultants (Consiglio nazionale dei dottori commercialisti).

These alerts should prompt the company to take action and undergo negotiations with its creditors to enable the company to go back to normal. Only if these negotiations fail or if there is a clear evidence that the company is not willing to negotiate, the matter can be taken to court after 60 days. In this case the statutory auditors need to inform OCRI (Observatory for companies rescue).

A second system of alerts is external:

- Taxes: the revenue Agency is obliged to report those cases in which the VAT liability is equal to at least 30% of the turnover for the period in which the last liquidation refers
- Contribution and social security: National Institute of Pensions (INPS) has to report when there is failure to pay, for over 6 months, social security contributions amounting to more than half of those due in the previous year, and above the threshold of €50,000
- Credits: when the company has overdue credits exceeding the time limit of 90 days and exceeding the amount of € 500,000 for sole traders and €1 million for companies, an agent is nominated to rescue those credits

The entrepreneur needs to present a plan containing:

- causes of the crisis;
- strategies and actions planned to achieve a good financial standing again;
- list of creditors and amount of credits being renegotiated;
- new funding streams;
- timeline for the new plan.

An auditor can be called upon to certify that company's financial information is correct and that the plan is feasible from an economic and legal point of view.

An agreement must be reached with creditors representing at least 60% of the credits being renegotiated.

There is a possibility to agree with creditors which represent only 30% of the credits but the plan must not envisage:

- a suspension of other creditors' payments;
- the entrepreneur must not request protection of assets.

Changes to a plan can be made, but agreement from creditors must be reached.

Both the amended plan and the attestation must be published in the business register (article 58) and the debtor is charged by giving notice to creditors who, in turn, can lodge an opposition within the term of 30 days.

This set of operations is excluded from penal law consequences (except in cases where there is malevolent intent) and tends to favour solutions which can ensure business continuity as well as debts repayment.

The law no.75 of March 3, 2022, from the Ministry of Justice, established an electronic register for entities responsible for managing business crisis and insolvency procedures. The register, accessible online, is divided into ordinary and OCRI sections. Registrants must meet specific professionalism and integrity requirements. The registration application must be submitted to the Department for Judicial Affairs of the Ministry.

The Law no. 83 of 17 June 2022 integrated EU Directive 2019/1023 into Italian law, focusing on preventive restructuring, disqualification, and insolvency procedures as part of the National Recovery and Resilience Plan. This law amended existing decrees to enhance the framework for managing business crises and insolvencies. It introduced mandates for entrepreneurs to establish structures for early crisis detection and emphasized improved consultation processes with unions. Significant changes included a shift towards negotiated compositions for business crises, streamlined access to crisis and insolvency management tools, and enhanced creditor involvement in judicial liquidation processes. The law also prioritized business continuity over liquidation in corporate group insolvencies and aligned the roles of commissioner liquidators with curators. The second part of the law revised and revoked certain provisions from previous legislative decrees, updating the Code. The law was started to take effect on July 15, 2022.

The law no.103 of August 10, 2023, converted the decree-law of June 13, 2023, no. 69, which contains urgent provisions related to European Union obligations. A key provision, Art. 1-bis, introduces transitional measures on business crisis in line with the directive (EU) 2019/1023, aiming to ensure adequate protection for creditors and to ensure consistency with the objectives of the National Recovery and Resilience Plan.

Commentary

The law which entered into force in January 2019 eases the access to a pre-bankruptcy agreement, strengthens powers of the trustees, and promotes rescue proposals that address the crisis by ensuring business continuity.

With the enactment of the Law of 8 March 2019, n. 20, a new delegation has been assigned to the government for the promulgation of integrative and corrective dispositions of the reform of the discipline of the business crisis and insolvency. The reform contained in Legislative Decree of 12 January 2019, n. 14, could therefore undergo modifications or additions in the near future.

The Legislative Decree No. 83 of 2022, integrating the EU Directive 2019/1023, marked a pivotal change in Italy's approach to business crisis management. It merged past emergency measures, initiated a unified system for crisis handling, and highlighted the importance of business continuity. The decree also heralds a national digital platform for crisis management.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other
Involvement (others)	Creditors, auditors, Council of business consultants (Consiglio nazionale dei dottori commercialisti), OCRI (Observatory for companies rescue)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Italy: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Latvia

Rescue procedures in insolvency

Phase	Insolvency law
Native name	Maksātnespējas likums
Type	Rescue procedures in insolvency
Added to database	07 December 2016
Access online	Click here to access online

Article

Whole law

Description

The purpose of the insolvency law is to support a debtor in financial difficulties to fulfil the obligations and, where possible, to renew solvency. The law describes the insolvency process and the phases of the legal protection procedures. Three procedures are envisaged by the insolvency law if an enterprise or an individual is in financial difficulty: 1. legal protection procedures (LPP) and extrajudicial legal protection procedures - aimed at renewing the ability of a debtor to settle their debt obligations if a debtor has come into financial difficulties or expects to do so; 2. insolvency procedures of a legal person - the claims of creditors are settled from the property of a debtor in order to support the debtor to fulfil the obligations; 3. insolvency procedures of a natural person.

Legal protection procedures are applicable to debtors - legal persons, partnerships, individual merchants, persons registered in a foreign country who perform permanent economic activity in Latvia, and to the producers of agricultural products. They are not applicable to insurance companies, insurance brokerage companies, investment brokerage companies, investment management companies, credit unions, credit institutions, private pension funds and other legal persons as defined by law.

The law suggests several compliance methods to use during LPP; for example, postponement of payment settlement, the transfer of the ownership of property rights (alienation), increase of share capital, replacing claims with shares, and reorganisation. The

methods used in the LPP can be extended to an employee's wage claims if the employee agrees. Where an employees' trade union has been formed or employees' authorised representatives have been elected, and where the LPP involves the dismissal of at least 25 per cent of the employees, it is only applicable if the employees' representatives agree. LPP start when a debtor submits an application to a court and the court decides to initiate a case of the legal protection procedures. This decision has the following effects: * compulsory execution of other court decisions is suspended, except in cases concerning wage recovery and other employee claims arising out of or in connection with the employment relationship; * secured creditors are prohibited to claim sale of pledged property; * creditors are prohibited to submits an application to a court to initiate the debtor’s insolvency proceedings; * liquidation of the debtor is prohibited; * accumulation of contractual penalty, late payments and delayed tax claims are suspended; * accumulation of interest exceeding interest set by law is stayed.

The law specifically provides that the debtor is obliged to inform the employees' representatives, if an employees' trade union has been formed or employees' authorised representatives have been elected, of the initiation of the LPP.

The debtor then has to draw up the legal protection procedures plan. This plan should include: * all the payment and other obligations of the debtor; * schedule for payment settlement; * planned income and expenses; * LPP methods; * list of property needed during the LPP; * the time period for the implementation LPP; * procedures for informing and consulting employee representatives and the impact of the plan on the employment of the debtor's employees, such as information on redundancies or short-term employment; * other measures defined in section 40 of the law.

A forecast of the cash flow has to be attached to the plan. Approval of the LPP plan by creditors requires at least half of the unsecured creditors (from total of claims) and two thirds of secured creditors (from total of claims). The plan has to be drawn up, coordinated with all the creditors, and submitted for approval to the court not later than two months from the day when the court has initiated the LPP. The plan is in effect from the day when it has been approved by court. It is binding also to creditors who have not given their consent. The supervisor’s duty is to monitor the implementation of the plan. The plan may be amended if the majority of creditors agree and the court approves the amendments. The law defines that the time period for implementation of legal protection proceedings is two years, which may be extended by additional two years if the majority of the creditors agree. The person supervising the LPP may be either an administrator with a university degree in economics, management or finance, or a certified auditor, or a natural person who has the right to reside and be employed in Latvia for the duration of the LPP. An administrator who does not have a university degree in economics, management or finance may act as the person supervising the remedy proceedings if a financial

professional with a university degree in the relevant field is brought in. The law also sets limits for a natural person wishing to become the LPP supervisor (Section 12.3 of the Insolvency law). These exceptions include, but are not limited to: * people who has been convicted of an intentional criminal offence; * people who are involved in insolvency processes; * people who are suspended on the basis of the disciplinary decision from the post of general or specialised civil servant and similar (removed from the post of administrator, excluded from attorneys at law or their assistants etc.); * people who have previously been suspended from LPP by court; * people who, in accordance with the legal system of the home country, are deprived of the right to take up a post similar to that of a person responsible for legal protection; * people who are involved in the specific LPP.

The person supervising the LPP is chosen by the majority of creditors, and appointed by the court. If the candidate for the position of supervisor is indicated in the plan, the court immediately decide on his/her appointment as a supervisor. Section 166 of the insolvency law defines that the amount of the remuneration of the supervising person and the procedure for payment is determined by agreement between the person and the creditors. Since the insolvency law was introduced (2010) the insolvency register is maintained. The purpose of the insolvency register is to ensure public access to information about LPP, and legal and natural person insolvency proceedings. The current version of the law prescribes that the insolvency register records information about the administrator, the person supervising the LPP, and the progress of LPP or insolvency proceedings. The published information contains name or title of the subject of process, registration number, type of the process, and journal of events during the process. From May 2017 the information is also available on the e-Justice portal. On 1 July 2018, the electronic insolvency registration system was introduced. The goal of the system is to facilitate the performance of the tasks of the Insolvency Control Service, the preparation and publication of information specified in the law, the circulation of information between people and institutions involved in insolvency proceedings and the fulfilment of duties and rights of administrators and LPP supervisors. The information in the system is classified as restricted access information, but part of it is published in the website of the Insolvency Control Service. The insolvency law prescribes also an extrajudicial legal protection procedure (ELPP). ELPP is intended for the debtors with good perspective for reaching an agreement with a majority of creditors, and where there is no risk that individual creditors with individual treatment against the company could seriously jeopardise the implementation of the LPP plan. If a majority of creditors approves the LPP plan, the court decision allows it to become binding on minority creditors as well as to obtain protection under the LPP. As soon as the LPP plan is approved by the court, the general provisions of the insolvency law on LPP apply to its execution.

Commentary

According to the State Enterprise register, 1,774 legal protection procedures have been initiated since 2008. 128 of them in 2019, 109 in 2020, 91 in 2021, 130 in 2022, and 78 from January till October 2023.

Additional metadata

Cost covered by	None
Involved actors other than national government	Court Other
Involvement (others)	Creditors, administrator, Insolvency Control Service
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Latvia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Lithuania

Rescue procedures in insolvency

Phase	Law on insolvency of legal entities of the Republic of Lithuania No XIII-2221
Native name	LR juridinių asmenų nemokumo įstatymas Nr. XIII-2221
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

1, 2, 4, 10, 31, 78, 104, 105

Description

New Law No XIII-2221 on insolvency of legal entities of the Republic of Lithuania entered into force in Lithuania on 1 January 2020, amending and merging the previous Law on enterprise bankruptcy of the Republic of Lithuania and the Law on restructuring of enterprises of the Republic of Lithuania. The main purpose of the Law on insolvency of legal entities is to create conditions for an effective insolvency process of legal entities, while ensuring a balance of interests of creditors and legal entities (article 1).

The law defines the insolvency of a legal entity as the state of the legal entity when it is unable to discharge its property obligations in time or the obligations of the legal entity are in excess of the value of its assets (article 2). According to the law, the right to initiate insolvency proceedings (restructuring) is vested in the head of a legal entity and a creditor whose claims on the legal entity exceed 10 minimum monthly wages (MMWs) approved by the government of the Republic of Lithuania (article 4). In July 2021, the MMW was €642, in 2022 - €730, in 2023 - € 840 in Lithuania). With regard to the initiation of insolvency of a legal entity, article 10 of the law provides for the possibility for the legal entity to agree on assistance with creditors. The agreement on assistance is an agreement between a legal entity and a creditor(s) for the provision of assistance by the latter to the legal entity to overcome financial difficulties. Assistance for the legal entity in overcoming financial

difficulties may take a form of postponement of the term of discharge of obligations, waiver of claim to discharge obligations or any part thereof, replacement of one obligation with another one. It is important to note that the submission of a proposal for the conclusion of the agreement is a prerequisite before bringing insolvency to court (both for initiating bankruptcy and restructuring proceedings). This creates preconditions for the legal entity and its creditors to reach an agreement that would become a kind of 'lifeline' for the insolvent legal entity.

The process of restructuring of legal entities is regulated in chapter IV of the law. This process is defined as the totality of procedures which aim to overcome entity's financial difficulties, preserve its viability and avert bankruptcy by obtaining creditors' assistance to overcome financial difficulties through economic, technical, organisational and other means. A legal entity is considered to be in financial difficulties when it is insolvent or there is a substantial likelihood for it to become insolvent within the next three months (article 2).

In compliance with article 31 of the law, restructuring proceedings shall be initiated if all of the conditions below are met: * a legal entity is in financial difficulties; * a legal entity is viable; * a legal entity is not under liquidation due to bankruptcy (bankruptcy proceedings are initiated if a legal entity is insolvent and not subject to restructuring proceedings).

Legal concept of the probability of insolvency has been introduced together with Law No XIV-450 of June 29, 2021 (came into foce from 15 June, 2021) amending Law No XIII-2221 on insolvency of legal entities of the Republic of Lithuania. The probability of insolvency is understood as the situation of a legal entity in which there is a realistic probability that it will become insolvent in the next three months, and the law has been amended to provide for the right to initiate the insolvency proceedings in the event of the probability of the insolvency of the legal entity (Article 2(7-1)). Also rights of employee representatives are provided for, including information and consultation in the process of preparation and implementation of the restructuring plan. The restructuring plan must include, among other information (amendments to Article 104(2)): a description of the situation of the employees, the number of redundancies to be made; the general consequences of structural changes in the organisation of work, such as the application of short-time working, etc.; the procedure for providing information and consulting the employees' representatives, in accordance with the provisions of the Labour Code; and the information on the creditors affected by the restructuring plan and the creditors who are not, stating why these creditors are not affected by the restructuring plan.

The entity under restructuring shall prepare a restructuring plan in accordance with the requirements set out in article 104 of the law. The duration of the implementation of the restructuring plan shall not be longer than four years from the date of approval of the

restructuring plan by the court (article 105).

The Law on insolvency of legal entities also provides for the possibility for legal entities to transit from bankruptcy to restructuring proceedings, and vice versa. This requires a court ruling to discontinue bankruptcy proceedings on the grounds of initiating restructuring proceedings (article 78).

Government Resolution No 1125 of 14 October 2020 "On Amendments to Government Resolution No 924 of 4 September 2019 "On the Implementation of the Law on Insolvency of Legal Entities of the Republic of Lithuania" established the conditions for the operation of the early warning system in Lithuania. Such a system is designed to help businesses facing financial difficulties.

Commentary

The new Law No XIII-2221 on insolvency of legal entities of the Republic of Lithuania implements European Union legislation: Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p.19).

According to the Authority of Audit, Accounting, Property Valuation and Insolvency Management, from 1 July 2001 (when the Law on restructuring of enterprises was adopted) to 31 December 2022, restructuring proceedings were initiated in 572 entities, of which 70 entities were successfully restructured (12,2%). Meanwhile, restructuring proceedings were terminated in 437 entities (76.4%), and 52 entities are still in the process of being restructured in the end of 2022. In 2020, a total of 26 restructuring processes were initiated, which is by 21.2% less than the number in 2019 (33) and 9 restructuring proceedings have been opened 9 in 2022,, which is 69% less than in 2021 (29 proceedings).

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Other Court
Involvement (others)	Creditors, restructuring administrator

Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Lithuania: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Luxembourg

Rescue procedures in insolvency

Phase	Commercial Code
Native name	Code du Commerce
Type	Rescue procedures in insolvency
Added to database	28 September 2016
Access online	Click here to access online

Article

Concordat préventif de faillite/Scheme of composition with creditors and Sursis de paiement/Suspension of payments (Commercial code, articles 593 to 614); Labour Code, Art.L.414-4 (3); Gestion contrôlée /Controlled management (Loi du 27 mai 2016).

Description

Three main options exist in Luxembourg other than bankruptcy to govern restructuring: controlled management, suspension of payments, and a 'scheme of composition' with creditors to avoid bankruptcy.

- A scheme of composition (concordat préventif de faillite) is a protective measure that enables employers or commercial companies in financial difficulty to come to an arrangement with their creditors and to avoid being declared bankrupt. The scheme of composition must be accepted by the court and the creditors. As is the case for a suspension of payments, seeking a composition is a long and complex procedure involving a large number of parties (tribunal, judge, creditors).
- By requesting to be placed under controlled management (mise sous gestion contrôlée), an employer who is temporarily in difficulty can avoid bankruptcy or an immediate cessation of business and also avoid the drawbacks of a suspension of payments or a scheme of composition with creditors. The employer places the management of the assets under the control of one or more administrators (commissaires) in order to restructure the business or sell the assets under the best possible conditions. However, this procedure is not used often in practice.

- The suspension of payments represents an alternative to bankruptcy. It enables an employer to deal with temporary financial difficulties by authorising the employer to suspend his payments to creditors for a given period of time. However, it does not rule out a declaration of bankruptcy in the event that the business meets the conditions for bankruptcy.

The new 2023 legal framework is based on a series of changes to the insolvency procedure. Among these figures for example the creation of a new "detection cell" at the level of the Ministry of the Economy whose aim it is to evaluate company risks and contact the employer to obtain information about the state of affairs of the company. The law also stipulates the creation of an inter-ministerial unit to evaluate companies in difficulties.

The employee representatives must be informed if the employer intends to opt for such options, in the framework of the general obligation to information and consult the staff delegation, on the situation, structure and probable development of employment within the company as well as any anticipatory measures envisaged, in particular in the event of a threat to employment.

Commentary

According to the latest STATEC data (https://statistiques.public.lu/fr/actualites/2023/stn22-faillites-02.html), the number of insolvencies in Luxembourg has increased by 5% (287) in the three first months of 2023 if compared to the same period in 2022 (273). The construction (58) and commerce (55) sectors have witnessed the highest number of insolvencies.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Trade union Works council National government Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Luxembourg: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Malta

Rescue procedures in insolvency

Phase	Companies act
Native name	Att dwar il-Kumpanniji
Type	Rescue procedures in insolvency
Added to database	08 December 2016
Access online	Click here to access online

Article

Articles 327 to 329B - Companies Act Companies Act (company reconstructions fund) regulations, 2020. Legal notice 192 of 2020

Description

Maltese law allows for rescue operations under the Companies act. The company, or the board of directors, or more than half of the creditors, can file for an insolvency procedure. During the insolvency procedure the court, taking into account the specific case, may decide to appoint an administrator who looks after the business operations until the court decides to dissolve the company or to dismiss the insolvency procedure and let the company return to normal operation.

The Company Recovery Procedure (CRP), detailed in regulation 329B of the Companies act, provides ailing companies with the opportunity for recovery and rescue, rather than proceeding towards liquidation. A court of justice may accept an application for CRP if it is satisfied that:

- the company is unable to pay its debts (or is likely to become so) and
- the order will favour the survival of the company (in whole or in part), or would achieve a compromise or arrangement between the company and its creditors or members.

The company recovery application may be made:

- by the company following an extraordinary resolution;

- by the directors following a decision of the board of directors whenever, following a notice to convene a general meeting in terms of article 329A, the general meeting does not convene, or a quorum is not present at the said meeting, or a resolution with regard to the filing of a recovery application is not passed due to an unresolved tie following a vote; or
- by creditors of the company representing more than half in value of the company's creditors; or
- by creditors forming part of a class of creditors if such creditors represent more than half in value of the company's creditors in that class.

In the hearing of an application, the court may, after examining all the circumstances and the options that are available, either dismiss the application or issue a company recovery order, placing the company under the company recovery procedure.

The court shall accede to the application, and accordingly place the company under the company recovery procedure and issue an order, only if:

- it is satisfied that the company is, or is imminently likely to become, unable to pay its debts; and
- if it considers that the making of the order would be likely to achieve one of the following purposes:
  - the survival of the company as a viable going concern in part or in whole; or
  - the sanctioning under article 327 of a compromise or arrangement between the company and any of its creditors or members.

In making an order, the court shall take into account:

- the best interests of the creditors, regard being taken to the different classes of creditors, of the shareholders and of the company itself, and the possibility of safeguarding employment as appears to be reasonably and financially possible in the circumstances; and
- the cost that would have to be incurred by adopting the company recovery procedure, particularly the arising fees and charges.

Where the company is in possession of a licence or other authorisation under the laws regulating banking, insurance, investment services, financial institutions or listing of securities on a Maltese regulated market, the court shall not proceed to make an order without first having consulted with the relevant competent authority responsible for supervising that company or any of its activities.

The court shall take its decision whether to dismiss the application or to make a company recovery order within not more than 40 working days from the filing of the application.

Under the CRP, a special controller is appointed. Special controllers are court appointed, following a due diligence exercise which includes verifying that applicants were not involved in financial crimes and that they have relevant management experience. The list of eligible special controllers is held by an official receiver.

The responsibilities of the special controller include, but are not limited to, an examination of the company's finances, the control of the property of the company and the assumption of the powers of the company's directors. The CRP leads to a number of mechanisms meant to safeguard the company until it regains financial health, such as the staying of any winding up application; any resolution for the dissolution and consequential winding up of the company; and the execution of claims of a monetary nature against the company. In addition to the functions and powers entrusted to the special controller by the court, the special controller shall have the power:

- to remove any director of the company and to appoint any individual to serve as a manager;
- to engage persons for the provision of professional or administrative services, and commit the company to the payment of their respective fees or charges; or
- to call any meeting of the members or creditors of the company.

A the end of the original period of appointment or at the end of each extension, the special controller shall submit to the court a comprehensive report in writing on the proceedings of his administration and of his proposals regarding the prospects for the recovery of the company as a viable going concern in whole or in part.

The special controller may, if deemed reasonably necessary, together with the said report, present an application to the court for a one-time extension of his appointment for a further period of four months up to a maximum period of appointment not exceeding 12 months. Any creditor or member or the registrar or the official receiver may at any time apply to the court for a declaration of the termination of the recovery procedure.

Legal notice 192 of 2020 entitled 'Companies act company reconstructions fund regulations', 2020, was published to create and regulate the administration of a fund known as the company recovery fund (CRF). This fund totalling €500,000 annually is financed by the Malta Business Registry and is intended to facilitate and compliment the aforementioned company recovery procedures.

The CRF shall cover the remuneration and expenses of the special controller for the period of their appointments as stipulated in article 329B. The CRF will also cover other expenses

which are deemed necessary for the continuation of the company recovery procedure up to a maximum of €5,000. The maximum cumulative amount claimed from the CRF for each recovery procedure should not exceed ten thousand euro. However, the limits mentioned in this paragraph may be increased by the official receiver acting upon a recommendation of the court, in complex cases, or cases involving cross-border elements.

Where the court issues an order for the termination of the company recovery procedure on the grounds that the company has no reasonable prospect of continuing as a viable going concern and will not be in a position to pay its debts regularly in the future, it shall order that the company be wound up by the court.

Commentary

Regulation 329B, which was inserted in the Companies act in 2003 (which was amended by L.N. 425 of 2007; IX. 2008.32; XXXI. 2015.20; XI. 2017.15) has rarely been used. In a couple of recent cases, court sentences have turned down requests for rescue operations under regulation 329B, quoting Prof. Andrew Muscat, who wrote in 'Principles of Maltese company law' that 'the primary aim of this far-reaching procedure is to allow, if practicable, companies in financial difficulty to recover rather than to put them into liquidation. The procedure is intended to be an alternative to the liquidation of a troubled business. It is not, however, intended to make effective insolvency or to merely postpone the inevitable crash'.

While the government ensured to provide assistance to entities facing challenges as a direct result of the COVID-19 pandemic, there are currently no public statistics which show how many companies have availed themselves of both the CRP and the CRF. The permanency of this recovery procedure and its complimentary fund is very likely for the foreseeable future. Malta, like many of its European counterparts, is still on the path of recovery from the economic ramifications of COVID-19. This will probably make this instrument a mainstay for companies to avoid insolvency.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Ceditors

Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Malta: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Netherlands

Rescue procedures in insolvency

Phase	Bankruptcy act; Continuity of enterprises act I; Bankruptcy procedure modernisation act
Native name	Faillissementswet; Wet Continuiteit Ondernemingen I; Wet modernisering faillissementsprocedure
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

Article 40 and 213 of the Bankruptcy act; whole Continuity of enterprises act I; whole Bankruptcy procedure modernisation act

Description

Three different types of insolvency proceedings are defined in the Dutch Bankruptcy act (Faillissementswet). These are bankruptcy (faillissement), moratorium (surseance van betaling), and debt restructuring (schuldsanering).

- Bankruptcy proceedings require that the debtor is in a situation where he/she is no longer making payments to creditors because he/she is unable to do so. In this case, the debtor's assets are liquidated and used to pay off the creditors. Bankruptcy is applicable both to legal and natural persons.
- Debt restructuring requires that the debtor is in a situation where he/she can either anticipate not being able to make sufficient payments to creditors in the future, or he/she is no longer making payments to creditors. The debtor's assets are liquidated while at the same time the debtor is required to do his/her utmost in order to generate funds to repay the creditors. Debt restructuring, which is only applicable to natural persons, is seen as a way of giving the debtor an opportunity to start over.
- For moratorium, the aim of the measure is to help an enterprise to survive by weathering current but temporary financial difficulties. In essence, the measure entails

a delay in payment by the enterprise to their creditors. A criteria for this type of procedure is that the financial difficulties are short term, and that the enterprise will be able to address these difficulties in the short term. A debtor must make the request to court to enter the moratorium procedure, while a creditor cannot do so. While an enterprise is within the moratorium procedure, they are also assigned a receiver (bewindsvoerder) who governs the finances of the enterprise and has a mandate to negotiate with creditors regarding payments on behalf of the enterprise. Moratorium is not applicable to natural persons, unless they are acting as entrepreneurs. As debt restructuring is not an option for legal persons, moratorium is the only rescue procedure defined in the Bankruptcy act that is available to corporations. The aim of moratorium is to restructure the business and temporarily ease the pressure of outstanding payments so that the company can continue operating. The debtor, in this case the company, applies for moratorium proceedings to be initiated. Creditors do not have the authority to initiate moratorium. A judge and a receiver are then appointed by the court. The judge oversees the case, while the receiver is tasked with supervising the debtor, ensuring his/her compliance, and managing the estate together with the debtor. Moratorium is limited to a maximum period of 18 months, though an extension can be granted under certain situations. Moratorium proceedings can be terminated either at the request of the debtor or through an agreement approved by the court.

Dutch companies and policy makers expected another option to become available to businesses when facing insolvency, as the Netherlands' House of Representatives adopted the Continuity of enterprises act I (Wet Continuiteit Ondernemingen I, WCO I) in June 2016. Initially, the expectation was that this law would enter into force in 2017. However, formal parliamentary questions and responses from social partners delayed the acceptance of this law. The senate intends to examine and consult further on this proposed law after a pending ECJ ruling (see more information below), together with the proposal for the law on transferring an enterprise during bankruptcy (Wet overgang van onderneming in faillissement). The act outlines an insolvency rescue procedure known as pre-pack, or 'silent administration', which has already been utilised to varying degrees in the Netherlands. The act would give the practice a statutory basis and ensure uniform implementation across the country.

Pre-pack and Continuity of enterprises act I (Wet Continuiteit Ondernemingen I, WCO I)

Pre-pack, short for pre-packaged insolvency, is an insolvency proceeding where a restructuring plan is set prior to a company declaring itself bankrupt. A trustee, the silent administrator, is appointed to ensure the creditors are repaid as much as possible of the funds they are owed through, for example, the sale of assets or parts of the company considered viable, before the formal insolvency proceedings are initiated. The act includes

stipulations for employee safeguarding, as it requires the works council or staff representation to be involved in the pre-pack proceedings. However, the creditors' interests always take precedence, as the works council or staff representation can be excluded from the proceedings on the basis of this being contrary to the interests of the company and, thereby, the creditors. The act also outlines the inclusion of the employees' voices in the formal bankruptcy proceedings, as it states that a representative from the works council or staff representation is to be included in the creditors' committee, should the court decide to form such a committee.

The discussion of WCO I has been postponed by the senate because another bill, the 'Law on transfer of undertaking in bankruptcy' (WOVOF), is in preparation. The bill regulates the position of employees in the event of such a restart. The senators have pointed out that the bills are interrelated and therefore want to discuss them jointly. At the moment, there is only a preliminary ruling procedure pending before the Court of Justice of the European Union. The outcome of that procedure may influence how the WOVOF should ultimately look like. Employer organisations are generally in favour of the WCO I, with the following caveats

- The court should shortly but thoroughly examine whether a pre-pack would be beneficial to creditors, the company and its employees;
- The pre-pack should only be applicable if this is the case;
- It should not be an exclusionary condition if the company filing for a pre-pack is not able to pay current creditors, as this would render the pre-pack obsolete.

Ruling of the European Court of Justice (ECJ)

On 22 June 2017, the European Court of Justice (ECJ) made the long-awaited verdict in the Estro case. Questions were raised to the ECJ for a preliminary ruling on the applicability of the labour law rules of transition of company to the pre-pack that has been applied by most Dutch courts since 2011. The Estro case is a well-known example, in which a former childcare company (Estro) with approximately 3,600 employees whose activities were taken over by Smallsteps in 2014 through a pre-pack sales transaction. Smallsteps offered 2,600 employees a contract of employment. Four workers who did not receive a contract of employment, as well as the Federation of Dutch Trade Unions (FNV), have subsequently appealed against Smallsteps, invoking the protection provisions of Directive 2001/23/EC (hereinafter 'Directive').

In summary, the ECJ held that the labour rules of transfer of company apply to pre-pack prepared prior to bankruptcy that is a pre-pack arrangement made prior to bankruptcy with the 'aim' to be declared bankrupt and ensure a restart (including conditions).

The ECJ hereby explains article 5 (1) of the directive in such a way that both the 'bankruptcy procedure' and the 'similar procedure' must comply with the conditions of

- the liquidation of assets and
- authorised supervision.

The ECJ then finds that the transaction prepared prior to the bankruptcy implies in fact bankruptcy so that the transaction may fall under the term 'bankruptcy proceedings' within the meaning of the directive. However, according to the ECJ, the other two conditions for applicability of article 5 (1) are not met.

The ECJ does not rule out the existence of a certain overlap between the liquidation and continuity objective, but considers that if the main purpose of a proceeding is the maintenance of the undertaking concerned, that proceeding seeks to pursue the activity of the company.

Businesses entering pre-pack deals must keep in mind that they will not be able to choose which employees they would like to take, but that all the employees involved in the company are to be included in the transfer. This could make a restart less attractive to a new buyer.

After the judgement in the Estro case, the use of pre-packs became very limited, however it is expected to change after the new ECJ-ruling on preliminary questions in that matter, that was given on 28 April 2022. Contrary to Estro case, in the Heiploeg case the pre-pack was instituted for the purpose of liquidating of the assets of the company and was conducted under the supervision of competent authorities. According to the ECJ's judgement, pre-packs should be allowed if they meet the above-mentioned criteria. The ECJ held that national courts need to adopt a case by case analysis while deciding whether the use of pre-packs is carried out with a view of insolvency proceedings. Based on that, the ECJ judgement clarified that it is possible to apply insolvency exceptions to pre-packs, but it also emphasised that pre-pack procedures needs to be regulated in statutory law. This supports the initiative of adopting WCO and WOVOF which will facilitate inscribing pre-packs into Dutch insolvency law, however the amendment procedure was even further delayed by this case.

Consequences

Currently in 2021, a draft law is being developed and consulted upon, regarding the transition of an enterprise into bankruptcy (Wet overgang van onderneming in faillissement). This would be an adjustment to Continuity of enterprises act I (Wet Continuiteit Ondernemingen I).

Some more general changes include the establishment of a central, national insolvency register for enterprises. This central register replaces locally held registers in an effort to make the information collection by courts across the country more efficient.

In April 2022 the Insolvency Law Committee gave advise on the preliminary draft of the amendment of Continuity of Enterprises Act I. The Committee suggested limiting the scope of the amendment to promote controlled resolution of bankruptcies of companies with activities of social importance.

Commentary

The Bankruptcy law has been modernised since 1 January 2019. In terms of the main provisions of the law, not much has changed, and the different types of bankruptcy procedures are still in place. However, the process has been made more efficient through the introduction of, for instance, a central register for bankruptcies. Furthermore, curators are allowed slightly more influence and decision-making power when it comes to the order of paying off debts to different claimants, and in selling assets of below €2,000 in value to help a debtor to pay off their debts. Additionally, the modernisation includes a time limit for creditors to register their claim: if the creditor has not registered their claim within the time frame decided upon by the examining magistrate (rechter-commissaris), the creditor loses their right to claim payments. The idea behind this change is to make the bankruptcy procedure quicker.

In 2021, two laws are still in development and are being consulted upon. These concern the position and protection of workers during the transition of an enterprise into bankruptcy (Wet overgang van onderneming in faillissement). This would be an adjustment to Continuity of enterprises act I (Wet Continuiteit Ondernemingen I).

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council Other Court
Involvement (others)	Creditors, staff representative

Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Netherlands: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Norway

Rescue procedures in insolvency

Phase	Bankruptcy act; Debt recovery act
Native name	Konkursloven; Dekningsloven
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

1-59 (Bankruptcy act); 1-1 – 2-14, 7-1 – 7-9, 7-12 – 7-13, 9-2 (Debt recovery act)

Description

The Norwegian regulatory system distinguishes between voluntary debt settlement proceedings ('frivillig gjeldsordning') and compulsory debt settlement proceedings ('tvangsakkord'). These are governed by the bankruptcy act ('konkursloven') and the debt recovery act ('dekningsloven'), both enacted in 1984. The aim of these statutes is to make sure that a company that is (or might become) insolvent reaches a debt settlement scheme with the creditors.

The debtor presents a petition to the court to initiate debt settlement proceedings. The petition is to include the following:

- a statement regarding the reasons behind the financial difficulties, and how the debt is to be settled;
- an inventory of the debtor's assets, debts, creditors and security as well as the name and address of the creditor;
- a statement regarding the registration and documentation of the debtor's accounts.

In addition, the debtor has to supply the court with any supplementary documentation the court asks for. Once the court approves the petition, a public announcement of this will be made.

In order for the permission to be granted, the debtor must be unable to pay its obligations as they fall due, and the court must judge it likely that either voluntary or compulsory debt settlement will prove to be successful in the debtor's case.

In the event of a voluntary debt settlement, all unsecured creditors must consent to the debt settlement proposal being put forward. The proposal is only binding for those creditors who have voted for it or are not affected by it.

In the event of a compulsory debt settlement, at least 75% of the creditors who are holding at least 75% of the outstanding debt must approve the proposal if the proposal consists of paying less than 50% of the debt. If at least 50% is being paid, a 3/5 majority is sufficient. Compulsory debt settlement proceedings are binding for all creditors except for creditors with priority claims, secured claims (as long as the claims do not surpass the secured asset's expected value), and claims that can be used as a set-off against the company's counterclaim (as long as the claims do not surpass the counterclaim).

During debt settlement proceedings, the court supervises the company through a creditor committee, which is elected by the court. The creditor committee consists of a lawyer (who acts as head of the committee), one to three creditors, and an employee representative (if a request for this is made by a majority of the employees). The creditor committee aides the debtor in coming up with the debt settlement proposal.

The aim of debt settlement proceedings is to reach an agreement between the debtor and the creditors regarding the reduction of debts so that the debt can be paid without the company defaulting. If no agreement is reached within six months, or if the court decides not to implement the proposal, the court will initiate insolvency proceedings.

Commentary

In practice, debt settlement proceedings are only used in a limited set of circumstances and there is no data available on settlements that have been successful in reaching their objectives. According to KPMG in a 2020 report, one reason for the limited use is that the economy in most companies, at the time of such proceedings, is too pressed, making it difficult to find a solution with the creditors. This is due to the entry conditions for entering into such proceedings being that the company is illiquid. However, some settlements are reached outside the courtrooms, especially if few creditors are involved.

Additional metadata

Cost covered by None

Involved actors other than national government	Other Court
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Norway: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Poland

Rescue procedures in insolvency

Phase	Act of 15.05.2015 - Restructuring Law; Act of 28.02.2003 - Bankruptcy Law (until 31.12.2003 under the name - Bankruptcy and Reorganisation Law)
Native name	Ustawa z dnia 15.05.2015 r. - Prawo restrukturyzacyjne; Ustawa z dnia 28.02.2003 r. - Prawo upadłościowe (do 31.12.2015 r. pod nazwą - Prawo upadłościowe i naprawcze)
Type	Rescue procedures in insolvency
Added to database	08 December 2016
Access online	Click here to access online

Article

Article 9, 11, 150, 180 - Act of 15.05.2015 - Restructuring Law; Article 342, 347 - Act of 28.02.2003 - Bankruptcy Law

Description

Since the beginning of 2016, the government has been implementing the New Opportunity (Nowa Szansa) policy. The legal framework is set out in the new Restructuring Act and the substantially amended Bankruptcy Act. Both laws entered into force on 1 January 2016 and regulate the situation of insolvent entrepreneurs - both at an early stage of insolvency (the threat of liquidity loss) and at an advanced stage (so-called bankruptcy). This has brought about a significant change in the way companies in financial difficulties are dealt with. The legislator considered that the preferred form of solving insolvency problems is restructuring, the purpose of which is to reach an agreement with creditors and, consequently, the survival of the entrepreneur on the market.

Four restructuring procedures have been introduced:

- arrangement procedure * (postępowanie o zatwierdzenie układu)*; accelerated procedure (fast track)

- accelerated (fast-track) arrangement procedures (przyspieszone postępowanie układowe);.
- (ordinary) arrangement procedures (postępowanie układowe); (postępowanie układowe)
- sanation procedure (postępowanie sanacyjne).

An employer may choose the most appropriate procedure for its situation. The Restructuring Act establishes the priority of restructuring over bankruptcy. If a restructuring petition and a bankruptcy petition are filed at the same time, the court will grant the restructuring petition first. The Restructuring Law also contains provisions allowing the employer to obtain public aid. Public aid may be granted for the purposes of the restructuring plan. According to the Restructuring Act, public aid cannot be the sole instrument enabling the debtor to restore its long-term competitiveness on the market. Public aid may be used for the repayment of public debts (social security contributions, taxes) and for the purchase of necessary fixed assets.

Arrangement approval procedure (postępowanie o zatwierdzenie układu)

This procedure is available to debtors who are able to reach an out-of-court agreement with the majority of their creditors. Under this procedure, the debtor continues to manage its business, but with the involvement of a licensed supervisor (administrator or nadzorca układu), whose role is limited to certain activities related to the procedure, including

- preparing a restructuring plan;
- working with the debtor to prepare composition proposals;
- preparing a list of claims;
- assisting in the voting of the plan;
- Preparing a report on the feasibility of the proposed arrangement.

Accelerated arrangement procedure (przyspieszone postępowanie układowe)

This procedure is available to debtors whose disputed claims do not exceed 15% of the total claims. Enforcement proceedings relating to the claims to be covered by the arrangement are suspended by operation of law. The court is more involved in this procedure than in the previous procedure and is obliged to organise a meeting with the creditors. The creditors cast their votes at the meeting (rather than in writing as in the arrangement approval procedure). In general, the debtor continues to manage its affairs throughout the procedure. However, the procedure involves the appointment of a court supervisor (nadzorca sądowy), who is given supervision over the management of the debtor's affairs. In exceptional cases, an external manager (zarządca) may be appointed to take over the entire administration of the debtor's estate.

Settlement procedure (postępowanie układowe)

This option applies in cases where the disputed claims exceed 15% of the total claims. Although more formal, this procedure is similar to the accelerated arrangement procedure in terms of its impact on the debtor's management rights and protection from creditors.

Sanation procedure (postępowanie sanacyjne)

This is the most advanced restructuring procedure. It provides the debtor with a relatively high level of protection from creditors and includes more tools for restoring the company's stability. Typically, in such procedures, the debtor's business is managed by an administrator (zarządca), although in exceptional cases where the debtor's involvement is necessary and only if the debtor guarantees proper management, the court may leave the management to the debtor-in-possession. This procedure corresponds to the former bankruptcy with the possibility of a composition.

The Law on Restructuring provides for the establishment of a central register for restructuring and bankruptcy. It will contain a search engine for restructuring and bankruptcy cases, a list of syndicates, restructuring advisors, experts and model forms required for the procedures. The main purpose of the register is to centralise information on all insolvency and restructuring cases. The registry will be operational from February 2018.

Commentary

Although it is too early to assess the effects of the new legislation, some preliminary data is available. In 2016, fewer bankruptcies were filed than in the previous year. More than 200 restructuring proceedings were opened (data as at the end of November 2016). A comparatively large number of proceedings relate to the accelerated arrangement procedure (134 by the end of November 2016). On a national scale, these may not seem large figures, but they are significant when taking into account historical data. In the whole implementation period of the previous Bankruptcy and Reorganisation Law (2003-2015) only about 50 corrective procedures (restructuring of businesses threatened by insolvency) were initiated.

The opinions of the social partners in relation to the newly introduced procedures are diverse. While most employers regard the new legislation favourably, trade unions fear that new arrangements and sanation procedures may not sufficiently take into account the interests of the employees

Additional metadata

Cost covered by	Employer National government
Involved actors other than national government	Other Court
Involvement (others)	Creditors, administrators
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Poland: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Portugal

Rescue procedures in insolvency

Phase	Insolvency and business recovery code; Decree Law 53/2004 of 18 March, amended by Law 6/2018 of 22 February - establishes the business recovery mediator and by Law 8/2018 of 2 March - Extrajudicial recovery procedure
Native name	Código da Insolvência e da Recuperação de Empresas (CIRE); Decreto-Lei 53/2004 de 18 de março, alterado pela Lei 6/2018 de 22 de Fevereiro - estabelece o estatuto do mediador de recuperação de empresas e pela Lei 8/2018 de 2 de Março - Regime Extrajudicial de Recuperação de Empresas
Type	Rescue procedures in insolvency
Added to database	23 December 2016
Access online	Click here to access online

Article

17, 215 and 216 of CIRE; Law 6/2018 of 22 February - whole regulation; Law 8/2018 of 2 March - whole regulation

Description

The special process of revitalisation (PER) can be started by a company in financial difficulties or facing imminent insolvency. The special revitalisation process is intended to allow the debtor to prove that, even if in a difficult economic situation or imminent insolvency, there are ways in which the business could be recovered. If permission is given, the company can establish negotiations with its creditors in order to plan a restructuring process.

The special process of revitalisation begins with a written declaration to enter into negotiations with at least one creditor, leading to the adoption of a recovery plan.

The debtor must immediately report to the court that the company wants to start restructuring negotiations. The debtor must make available a list of its creditors, its

accounts' documents and remaining information and documentation as required under the relevant provisions of the insolvency and business recovery code (CIRE).

Once the rescue procedure starts, the enforcement and insolvency proceedings that may have been brought against the debtor are suspended (insofar as no decision of insolvency has been declared by the court). In addition, it is not possible to bring enforcement and insolvency proceedings against the debtor for as long as the rescue procedure is running.

Once the application is received, the court immediately appoints a provisional judicial administrator and issues a judicial order which is published in the litigation portal run by the government which is known as 'Citius', and, by registered letter, notified to the debtor and to the creditors. The creditors who did not sign the negotiation agreement initially submitted to the court are granted 20 days as of the publication of the said judicial order to claim their credits and the provisional judicial administrator must prepare a provisory list of credits within 5 days. This list is published in Citius and may be challenged within 5 business days, after which the judge has another 5 business days to decide on the challenges submitted.

Once the term for challenging the credits elapses, the debtor and the creditors have two months to conclude the negotiations. This deadline may be extended for an additional one month by prior written agreement between the appointed provisional judicial administrator and the debtor. The provisional judicial administrator participates in the negotiations, guiding and supervising the works and their adequacy, and must ensure that the parties do not adopt any actions that delay the negotiation process or that are useless or prejudicial for its progression.

The recovery plan must be approved by the same majority required for the approval of the insolvency plan: the creditors who represent at least 1/3 of the total receivables with voting rights must participate in the approval and the approval votes must represent more than 2/3 of the total of the votes cast and more than 1/2 of the votes cast corresponding to non subordinated credits, abstentions not being considered.

The judge must validate the approval of the plan within 10 days as of receiving the documentation evidencing the respective approval. The validation of the approval may be refused in accordance to the same rules applicable to the insolvency procedure.

Extrajudicial Recovery Procedure (Law 8/2018 of 2 March)

If creditors represent at least 15% of the debtor non-subordinated debt, they may, together with the debtor, subject negotiations to a extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas - RERE), signing for this purpose a memorandum of negotiation. With RERE, the intervention of IAPMEI in the

negotiation process is no longer required. The negotiations may now take place between the debtor and the creditors. However, a business recovery mediator (Law 6/2018 of 22 February) can be appointed to provide assistance to the debtor, particularly in the negotiations with the creditor. A declaration from a statutory auditor certifying that the debtor is not the subject of insolvency proceedings, on the date the agreement is executed, and confirming the total liabilities of the debtor, has to be attached to the restructuring agreement. If the restructuring agreement is currently or eventually subscribed by creditors that represent the majorities required by the special revitalisation procedure, the debtor has the possibility of initiating this proceedings in order to obtain the restructuring agreement's approval by the court.

The extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas, RERE) is a mechanism that replaces the out-of-court business recovery system (Sistema de Recuperação de Empresas por Via Extrajudicial, SIREVE) and seeks to enable entities in a difficult financial situation or that are in a situation of imminent insolvency to negotiate a restructuring agreement with their creditors, in order to guarantee their economic recovery. This procedure is part of the 'Capitalizar Programme'.

RERE applies to all entities that may be subject to insolvency procedures (with the exception of natural persons who are not holders of companies), thus having a wider scope of application than SIREVE, which only applied to companies and to sole traders with organised accounts. Exceptionally, and only during the first 18 months of RERE implementation, entities that are already in a situation of insolvency may also make use of these legal regime.

Commentary

Revitalisation processes have been available since 2012. From 2015, there was decrease in the number of special revitalisations, due to the creation of the special process for payment agreement. In the first quarter 2023, there were 145 pending processes (around 75.5% less than in the first quarter of 2013).

In the first quarter of 2023 there was 2,809 requests for special revitalisation process (PER), representing an increase of 16.5% compared with the first quarter of 2022.

In the first quarter of 2023, the sectors more affected by revitalisation process are: 'Manufacturing' (25.8%) and 'Wholesale and retail trade; repair of motor vehicles and motorcycles' (20.6%).

The RERE procedure allows the negotiations to take place between the debtor and the creditors, since the intervention of the Agency for Competitiveness and

Innovation (IAPMEI) in the negotiation process is no longer required.

Considering the period from the second quarter of 2007 and the second quarter of 2022 the number of processes of bankruptcy, insolvency and recovery of companies increased by 229,6%, corresponding to a total of 3,270 processes in 2019.

In 2013, there was a decrease in the number of processes involved (44 less than in 2012).

From the third quarter of 2007 to the third quarter of 2012, the number of bankruptcy, insolvency and recovery cases of companies entered in the courts of first instance increased significantly (from 992 in 2007 to 5,472 in 2012).

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Other Court
Involvement (others)	Court or business recovery mediator, creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Portugal: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Romania

Rescue procedures in insolvency

Phase	Law no. 85/2014 on insolvency and insolvency prevention procedures, published in the Romanian Official Gazette no. 466 of 25 June 2014
Native name	Legea nr. 85/2014 privind procedurile de prevenire a insolvenţei şi de insolvenţă, publicată în Monitorul oficial al României nr. 466 din 25 iunie 2014
Type	Rescue procedures in insolvency
Added to database	22 March 2017
Access online	Click here to access online

Article

Law no. 85/2014 - insolvency prevention and insolvency proceedings [Legea nr. 85/2014 - procedurile de prevenire a insolventei si de insolventa] - 5, 16-37 Law no 216 of 14 July 2022 for amending and supplementing the Law no. 85/2014 on insolvency prevention and insolvency proceedings and other normative acts [Lege nr. 216 din 14 iulie 2022 pentru modificarea și completarea Legii nr. 85/2014 privind procedurile de prevenire a insolvenței și de insolvență și a altor acte normative] - 5, 6, 9, 15.

Description

Companies in financial difficulty may be subject to a process of economic recovery and insolvency prevention. Thus, the debtor in difficulty may request the court to designate them an ad hoc administrator, the purpose of which is to achieve, within 90 days of designation, an agreement between the debtor and one or more of the creditors, in order to overcome the state of financial difficulty the debtor is in, to safeguard him/her, to keep jobs and to cover debts against the debtor.

Another possible recovery attempt is the use of a scheme of arrangement, which is a court-approved agreement between the company in financial difficulty and creditors holding at least 75% of the claims in terms of value. The scheme of arrangement offer

made by the company in difficulty to its creditors (who can either accept or reject the offer) includes: 1. a list of the company's assets and liabilities, certified by an accounting expert or, as the case may be, audited by an auditor authorised by law; 2. the causes of the financial difficulty and, if necessary, the measures taken by the debtor to overcome it until now; 3. projection of the financial and accounting evolution over the next 24 months.

Based on this information, the company will follow a recovery plan, which shall include at least the following measures:

- the reorganisation of the debtor's activity through measures such as restructuring of the debtor's management, modification of the organisational structure (organisation chart of staff), staff reduction or any other measures deemed necessary;
- the ways in which the debtor tries to overcome the financial difficulty, such as increase of the share capital, conversion of some claims into shares, bank loans, loans of the shareholders, establishment or dissolution of some branches or work places, sale of assets, etc.

If the recovery fails, insolvency proceeding will take place. According to article 5 (29) of Law no. 85/2014, insolvency is characterised by insufficient funds available for the payment of certain debts. The debtor is presumed insolvent if, after 60 days from date of payment, the debtor has not paid their debt to the creditor (this presumption is relative, i.e. it is a rebuttable presumption). Insolvency is considered imminent if it is proved that the debtor will not be able to pay the due debts with the available funds.

In case of an employer's insolvency, salary claims are privileged in comparison to other claims, being covered with priority. In addition, as any creditors, employees whose salary was not paid may trigger insolvency procedures. Employees can apply for the opening of insolvency procedures of the employing company if each individual's claim is higher than six gross average monthly salaries in the economy.

At the creditors' meeting, the employees of the debtor company may delegate a representative who will vote for the full value of the claims representing the salaries and other monetary rights to which they are entitled.

After the opening of the insolvency procedures, dismissal of the debtor's staff will be done in a speedy manner by the judicial administrator/liquidator. The judicial administrator/liquidator will only give dismissed personnel the legal notice (and no other entitlements, such as compensatory payments). In collective redundancies (at least 10 employees, if the employer has more than 20 employees and fewer than 100 employees; at least 10% of the employees, if the employer has at least 100 employees and fewer than 300 employees; and at least 30 employees, if the employer has at least 300 employees),

the length of the information and consultation procedure provided by the Labour Code is cut down by half.

Law no 216 /14 July 2022 amends and supplements Law no. 85/2014 on insolvency prevention and insolvency proceedings. The new amendments are a restructuring of Law 85/2014 and a long-awaited regulation of insolvency proceedings in view of EU Directive 2019/1023.One of the important changes is the abolition of the ad hoc mandate and its replacement by the restructuring agreement procedure. Other amendments regards the redefinition of the scope of the law, the main beneficiaries of the previsions of the law (in the case of the liberal professions, the procedures laid down in the law concern their undertaking and not their professional status) and new concepts are introduced. In addition, certain terms specific to insolvency proceedings are redefined, early warning procedure is introduced. The procedure specified that certain professionals are alerted by the tax authority to non-fulfilment of obligations and are provided with information on the remedies free of charge via a website. The aim is to give companies an early warning of a situation which, perpetuated in the absence of remedial measures, would have the potential to lead to default. The previsions from the law concerning the insolvency prevention procedure are modified.

Commentary

According to the previous Insolvency Law (no. 86/2006), collective redundancy procedures were not applicable if the employer was in a state of insolvency. By decision no. 64/2015 (published in the Romanian Official Gazette no. 286 from 28 April 2015), the Constitutional Court declared the unconstitutionality of these provisions. Even in the case of a speedy procedure due to the employer's insolvency, the employer/liquidator/judicial administrator has to respect the workers' rights associated with collective redundancies. As a result, the current law provides that the right to information and consultation of employees will indeed be observed, but the length of the procedure will be shortened.

Threshold value — this represents the minimum amount of the claim in order to enable the application to open insolvency proceedings to be filed. The threshold value is 50,000 lei (approx. €10,000) for both creditors and debtors, including requests made by the liquidator appointed in the liquidation procedure under the law for claims other than wage claims and for employee’s six gross average salaries per economy/employee. Under the old provision, the threshold value was 40,000 lei (approx. €8,000) for both creditors and debtors, including requests made by the liquidator appointed in the liquidation procedure for claims other than wage claims, and for employees it was also six gross average salaries per economy/employee. A new term (article 5) - “Payment Agreement” is introduced in insolvency proceedings, i.e. the understanding between the debtor and the creditor of the extinguishing in one or more instalments of liabilities at times other than those due under

contractual or legal terms.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Ad hoc administrator; liquidator/judicial administrator
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2017), Romania: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Slovakia

Rescue procedures in insolvency

Phase	Act No. 7/2005 Coll. on bankruptcy and restructuring and on changes and supplements to some laws
Native name	Zákon č. 7/2005 Z.z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov
Type	Rescue procedures in insolvency
Added to database	08 December 2016
Access online	Click here to access online

Article

3, 10a, 11, 108-120, 129-135, 143-148, 151-156

Description

According to the Act, a company at risk of insolvency, or a creditor of a company at risk of insolvency, may decide to file for reorganisation or for bankruptcy if the insolvency is considered imminent.

If there is a filing for reorganisation, the company has to submit a reorganisation plan to the court and the court will appoint a trustee who is in charge of inspecting the plan and giving an opinion to the court. If the opinion is positive, i.e. the company has reasonable probabilities of getting out of insolvency, the court authorises the start of restructuring no later than 15 days after the presentation of the plan. The company's assets are then protected from individual claims to allow for normal continuation of operations. During the restructuring, it is not allowed to carry out organisational changes at the debtor such as a merger, fusion or split off.

If the opinion is negative, the court orders the termination of the reorganisation proceedings. Creditors have a role too, as the reorganisation plan must be approved by the majority of each group of secured and unsecured creditors within 90 days of the start of the proceedings. If the creditors' committee rejects the plan, the reorganisation is converted into a bankruptcy procedure.

The reorganisation proceedings are terminated by order of the court on indication of the trustee. The reorganisation might have a positive outcome, i.e. the company is able to return to normal business operations, or a negative one where further bankruptcy procedures will follow. Once the reorganisation plan is completed a notice is published in the Official Business Journal.

On 1 January 2016, amendments to the Act No. 7/2005 (Article 10a) introduced a new tool that may mitigate the work of bankruptcy trustees. This is the public Insolvency Register (Register úpadcov) - an information system providing comprehensive information on all ongoing bankruptcies in the country.

Commentary

The option to rescue the company through the restructuring procedure was applied in about 10% of recorded cases of insolvency in 2014-2016.

According to the experts, the number of companies using restructuring is long-term low. In 2020, during the COVID-19 pandemic, the number of insolvency cases increased. Nevertheless, the number of companies using restructuring was low. In total 22 cases were recorded. It is assumed that after the COVID-19 crisis the number of restructuring will increase. According to available information, the restructuring took place mainly in commerce, the manufacturing industry and construction and rather in small than medium and large companies.

A list of companies that requested for re-organization or filed for bankruptcy is available at The public Insolvency Register, which is run by Ministry of Justice. In October 2023, the register recorded 3356 cases of bankruptcy, 57 re-organizations and 379 other proceedings, totaling 3792 ongoing cases.

The following chart shows the number of bankruptcy petitions for the last period (2021, 2022, 2023(Q3 data)) as well as number of approved re-organizations for each year.

Year 2021 2022 2023(until Q3) Bankruptcy 213 241 278 Re-reorganizations 23 26 11 Sources: Register úpadcov, INSOLVENCY REPORT za rok 2022

'Until mid-year of 2022, companies were safeguarded against bankruptcy by governmental protection measures, to mitigate effects of COVID pandemic, for example temporary protection against creditors, companies' financial reserves etc.. In 2nd half of 2022 effects of the pandemic, energetic crisis and war in Ukraine were on display in larger strength, therefore these companies would otherwise had gone bankrupt in 2020 already. In general, hospitality sector was mostly affected by the pandemic, however last year showed

that companies in bankruptcy and reorganization were retail and wholesale companies. In 2022, Slovakia experienced the highest number of b. and r. since 2017.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Other Court National government
Involvement (others)	Creditors, Ministry of Justice
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Slovakia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Slovenia

Rescue procedures in insolvency

Phase	Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (ZFPPIPP)
Native name	Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (ZFPPIPP)
Type	Rescue procedures in insolvency
Added to database	08 December 2016
Access online	Click here to access online

Article

44a-44z

Description

The process of preventive restructuring can be applied to debtors – small, medium and large companies (i.e. to companies with more than 10 employees) which are deemed at risk of becoming insolvent within a one year timeframe. The intention of the preventive restructuring procedure is to enable the debtor who may become insolvent within a period of one year to carry out appropriate measures aimed at restructuring its financial liabilities and other part of its business necessary to eliminate the causes of eventual future insolvency. The procedure can only be started by the company on the basis of a restructuring plan, agreed on by at least 30% of the creditors (holding at least 30% aggregate value of financial claims listed in the debtor's list of financial claims and certified by an auditor).

The restructuring plan has to include:

- restructuring measures, timetable and other conditions for restructuring the company's financial liabilities and other parts of the business to avert insolvency,
- other mutual rights and obligations regarding the financial restructuring,
- debtor's list of financial claims, certified by an auditor.

At least 30% of the creditors can demand the refusal of a restructuring plan. The court decides upon the commencement of a preventive restructuring proceeding within eight days. There is no appointed administrator in this process. During the preventive restructuring proceeding a standstill applies for the claims of creditors.

The procedure of preventive restructuring is not allowed:

1. if it is filed before the expiration of two years from the date when the earlier preventive restructuring was concluded,
2. if the debtor is a subject of a compulsory settlement proceeding,
3. if it is filed before the expiration of two years from the date when the debtor fulfilled all obligations from the previous compulsory settlement, or
4. if the debtor is a subject of a bankruptcy proceeding.

However, exceptions apply to cases 1 and 3 if 75% of creditors agree to join the preventive restructuring procedure.

The company has to present an 'master restructuring agreement' within three months (for small and medium-sized companies) or five months (for large companies) agreed on by at least 75% of all creditors unless the restructuring plan stipulates a higher quota. This period can be extended for two or three months respectively. Debtor and creditors may freely agree on whatever measures enacted in the agreement, but finally the agreement must be approved by a certified auditor. The court's confirmation of the 'master restructuring agreement' simultaneously extends the validity of the agreement to the financial claims of those creditors who have not given their consent to the agreement. However, the mandatory effects of the court-confirmed agreement only extend to the restructuring measures.

Commentary

Preventive restructuring proceeding is a relatively new measure, introduced in 2013 (ZFPPIPP-F, Official Gazette of the RS, No. 100/2013), but there are already several high-profile cases. Ulčar and Prinčič (2017) describe some master restructuring agreements reached between debtors and their creditors, for example; ACH, a Slovenian holding company in the tourism, mobile homes production and car dealership sectors, and TUŠ Holding, a food retailer. Both companies succeeded in obtaining the 'master restructuring agreement' by agreeing to sell non-core assets of their companies. ACH successfully disinvested and managed to pay its liabilities much before the deadline, while TUŠ agreed to significant disinvestment by 2021. However, two other prominent companies Sava, a major hotel business, and Thermana Laško, a wellness operator, were not able to convince a sufficient number of creditors and both ended up facing compulsory

settlement procedures.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Creditors, auditor
Thresholds	Affected employees: No, applicable in all circumstances Company size: 11 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Slovenia: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Spain

Rescue procedures in insolvency

Phase	Law on urgent measures on insolvency proceeding (Law 9/2015 of 25 May 2015); Insolvency Law (Legislative Royal Decree Law 1/2020); Law 16/2022, of 5 September, on the reform of the revised text of the Insolvency Law
Native name	Ley 9/2015, de 25 de mayo, de medidas urgentes en materia concursal; Ley Concursal (Real Decreto Legislativo 1/2020); Ley 16/2022, de 5 de septiembre, de reforma del texto refundido de la Ley Concursal
Type	Rescue procedures in insolvency
Added to database	02 December 2016
Access online	Click here to access online

Article

Article 1 Law 9/2015 of 25 May 2015; Art 3,4,5,6,7,8, Legislative Royal Decree Law 1/2020; Ley 16/2022

Description

A company or an individual person may apply for insolvency procedures before reaching the stage of insolvency ('concurso voluntario'). If the company is already insolvent, the procedure before the court can be started by the company, a creditor or a shareholder ('concurso necesario').

The court responsible for the judgement is the court of the district ('juzgado mercantil') where the debtor is registered (not applicable if the debtor has moved its residency/registration in the previous six months). A company must file for insolvency within two months from reaching insolvency, that is, the condition of being not able to pay creditors.

The company must present a set of documents to the court:

- declaration stating that the claimant has the right to appeal to the court;
- balance sheets and financial report;
- inventory of the debtor's assets;
- a list of the creditors.

Once the procedure is open, the judge appoints an administrator who must ensure collaboration with the judge, protection of the creditors' interests and, where possible, the return of the company to a normal activity regime.

There are two possible solutions to an insolvency procedure: agreement or liquidation. If the company reaches an agreement with the creditors, the debt reduction must be no more than 50% and the timeline no longer than five years. If the agreement is not fulfilled, the company can be wound up. The second solution is liquidation which may imply sale of assets, winding up, or acquisition by third parties.

The insolvency declaration must be published in the Official state journal ('Boletín Oficial del Estado') and registered with the Registry for insolvency procedures ('Registro de Procedimientos de Insolvencia').

The Insolvency Law (Law 22/2003 of 9 July 2003) was reformed in 2015 (Law 9/2015), introducing clauses aiming to make the transmission of the business activity, or part of it, of the company that is under insolvency procedure more flexible. The goal of these clauses is to facilitate viable companies to maintain their activity or at least some sections, after the insolvency agreement.

In May 2020, the Royal Decree 1/2020 repealed chapters 1 and 2 of Insolvency Law (Law 22/2003 of 9 July 2003) and the Law on urgent measures on insolvency proceeding (Law 9/2015 of 25 May 2015) in order to establish the new insolvency law. This new regulation introduces modifications on appeals against the rejection of the insolvency application, extension of the judge's powers and the possibility of modifying the judicially approved liquidation plan (as well as a description of the necessary formalities).

In 2022, Law 16/2022, of 5 September, on the reform of the consolidated text of the Insolvency Act, transposed Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 into Spanish law, on preventive restructuring frameworks, debt waivers and disqualifications, and on measures to increase the efficiency of restructuring, insolvency and debt waiver proceedings. Among the most noteworthy innovations are: the introduction of restructuring plans and the abolition of refinancing agreements and out-of-court settlements; the reform of insolvency proceedings through a single insolvency procedure (to increase efficiency and facilitate the approval of an agreement); and the reform of the second chance procedure.

Commentary

In 2016, there were 4,080 companies applying for insolvency procedures. This means a drop of 20% compared to 2015. Moreover, it is the lowest figure recorded since the onset of the financial crisis in 2008. Some experts note that the causes behind insolvency procedures have recently changed. While during the crisis these were mostly associated with the construction crisis and the lack of loans provided by the financial institutions, recently they are more closely linked to the business evolution (competence among companies, lack of innovation of the products, etc.).

The number of companies in undergoing insolvency in 2017 was 4,261, while in 2018 it was 4,332, and 4,789 in 2019. In 2020, the number of companies undergoing insolvency procedure was 4,097, most of them in the commercial sector (23%) as a result of the COVID-19 pandemic.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Court Other
Involvement (others)	Creditors
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Spain: Rescue procedures in insolvency, Restructuring legislation database, Dublin

Sweden

Rescue procedures in insolvency

Phase	The Bankruptcy act (1987:672), Company reorganisation act (2022:964)
Native name	Konkurslag (1987:672), Lag (2022:964) om företagsrekonstruktion
Type	Rescue procedures in insolvency
Added to database	06 December 2016
Access online	Click here to access online

Article

The Bankruptcy act (1987:672), chap. 10, All chapters in the Company reorganisation act (2022:964)

Description

The Bankruptcy act (1987:672) defines insolvency as a situation where the debtor is not able to duly pay his or her debts, and this inability is not of a temporary nature. Both natural and legal persons who are insolvent can be declared bankrupt. Both natural and legal persons are also able to enter into voluntary arrangements with creditors with the intention of reducing their debts and in this way avoiding bankruptcy.

In addition to bankruptcy, legal persons can apply for reorganisation, which is regulated in the Company reorganisation act (2022:964), while natural persons can only apply for debt restructuring. Reorganisation is an option for companies which are under a severe financial strain, but for which continuing operations is still considered a feasible option. Either the debtor, that is the company, or a creditor can apply for reorganisation proceedings. An administrator is appointed by the court to review the company's situation, to determine whether continuing operations is a viable option, and to determine whether an agreement could be reached between the debtor and the creditors.

The administrator supervises the company during the reorganisation period and must give the debtor permission for certain activities, such as payment of debts or transfer of any

substantial assets. The debtor retains the rights of disposition of his/her assets under the reorganisation procedure. However, the disposition of assets cannot be used to pay debts, to make new commitments or to transfer ownership of assets of substantial importance without the administrator's consent. No distribution to creditors may take place while the procedure is ongoing. The goal of the reorganisation proceedings is to come to an agreement with the creditors on how much of the outstanding debts it would be feasible for the debtor to pay while avoiding bankruptcy. An agreement can be reached both through voluntary and compulsory means. If a voluntary settlement is not achieved, the court can enforce a public settlement.

Reorganisation proceedings take place over a three-month period, after which the proceedings can be extended for another three months at a time. However, reorganisation proceedings are limited to a maximum period of one year. As long as proceedings are ongoing, the debtor cannot be declared bankrupt. However, if there is a reason to believe that the creditors' rights are being threatened to a substantial degree, this may warrant declaring the debtor bankrupt in the midst of reorganisation proceedings.

Workers employed by an employer undergoing business restructuring are sometimes eligible for wage guarantee. The maximum amount per employee for 2021 amounts to around €18,600 (SEK 190,400). The administrator determines if the company is able to pay wages. If it is, employees are not entitled to wage guarantee.

The new Company reorganisation act (2022:964) was instituted in order to comply with the EU Directive on restructuring and insolvency. In order to avoid, among other things, that company reorganisation is decided without justification, the new law contains a stricter requirement that the company must have viability. The court is to examine the application for company reorganisation on the basis of a viability test, which focuses partly on the prospects of achieving a successful company reorganisation and partly on the possibility for the company to survive even after the reorganisation has been carried out.

In practical terms, this means that greater demands are placed on the content of the application for company reorganisation, which, in order to be granted, should contain, among other things, circumstances that mean that the viability of the business can be secured, a description of how the reorganisation will succeed and concrete proposals on how the company will overcome its financial problems.

The application should also show that the company applying for reorganisation can pay at least 25% of the total amount of its debts (if the reorganisation requires a debt settlement with the creditors to be successful). The company must also be able to prove that its accounts are in order.

Another new feature is that the reorganisation company can terminate certain contracts (but not employment contracts) with three months' notice. In this way, the reorganisation company can "get out" of unprofitable contracts with long contractual periods, e.g., in cases where there is a need to close parts of the business, which may mean that some existing contracts become redundant.

Additionally, the new law also means that not only a financial settlement, but also the other measures needed to address a company's financial problems can be set out in a reorganisation plan with binding effect. Examples of reorganisation measures that can be included in a reorganisation plan are debt settlement, which can also include non-priority creditors (as opposed to composition under the previous law, which only included non-priority creditors), conversion of a creditor's debt into shares and increase or decrease of the share capital. The plan may also propose measures to change the board of directors or the managing director.

Commentary

The Swedish Agency for Growth Policy Analysis publishes monthly statistics on the number of bankruptcies in Sweden. In September 2023, insolvency proceedings were initiated for 651 companies in Sweden (increased by 22% from September 2022). The number of employees in the companies affected amounted to 1 347 in September 2023 (increased from 1 070 from September 2022). During the period January to September 2023, a total of 6,101 companies with 13,670 employees went bankrupt. In the corresponding period in 2022, a total of 4,516 companies with 11,342 employees went bankrupt. (Tillväxtanalys, 2023).

During 2020, 310 Swedish companies with around 9,200 employees were granted reorganisation (increased by 50% from the previous year) (Ekonomifakta, 2021). Between 2011 and 2015, 1,045 companies applied for reorganisation proceedings, of which 48% were successful, meaning that the company was not declared bankrupt and was instead reorganised (Creditsafe, 2019).

Due to the EU Directive on restructuring and insolvency, an inquiry was commissioned in 2021 in order to analyse how Swedish law on company reorganisation relates to the provisions in the Directive and to propose the amendments that are necessary or otherwise appropriate so as to implement the Directive in Swedish law. The proposal includes substantial changes to the regulations that govern how company restructuring is carried out. The principal new feature is that not only the financial settlement but also necessary measures to address a company’s financial problems can be confirmed in a restructuring plan, whereby they become binding. A series of additional changes are also proposed concerning, for example, who is to have access to the procedure, what rules are

to apply to debtor contracts during the procedure, and what requirements are to be placed on administrators. The proposed changes are deemed so extensive that the inquiry thinks the current company restructuring act should be repealed and replaced by a new act. The proposal has been sent out for consultation. If it is adapted into a legal proposal that passes through the Parliament, the new law would enter into force on 22 July 2022.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Creditors, court-appointed administrator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Sweden: Rescue procedures in insolvency, Restructuring legislation database, Dublin