



# Insolvency and Creditor/Debtor Regimes Report (ICR ROSC) **Romania**

Key challenges in the restructuring and insolvency  
framework

**REORGANIZATION**

# Restructuring – the preferred insolvency solution in the EU

“The European Commission has today set out a series of common principles for national insolvency procedures for businesses in financial difficulties. The objective is to shift the focus away from liquidation towards encouraging viable businesses to restructure at an early stage so as to prevent insolvency. With around 200,000 businesses across the EU facing insolvency and 1.7 million people losing their jobs each year as a result, the Commission wants to give viable enterprises the opportunity to restructure and stay in business. ... Reforming national insolvency rules would create a "win-win" scenario: it will help keep viable firms in business and safeguard jobs and at the same time improve the environment for creditors who will be able to recover a higher proportion of their investment than if the debtor had gone bust. Post-bankruptcy, honest entrepreneurs should swiftly get a second chance because evidence shows that they are more successful the second time around.”

Press Release, Brussels 12 March 2014

# The elements of restructuring

Restructuring is a means of resolving financial distress while preserving viable businesses, preserving investment costs, and preserving jobs

- Operational
  - Changing business lines
  - Adjusting cost structures
- Financial
  - Obtaining external capital
  - Converting short term debt to long term debt
  - Modifying long term debt terms

# RESTRUCTURING OPTIONS

1. Restructuring outside an insolvency proceeding
2. Restructuring under an insolvency proceeding

# Pre-insolvency options

## **Then**

- Informal Workouts
- Ad Hoc Mandates
- Schemes of Arrangement

## **Now**

- Informal Workouts
- Ad Hoc Mandates
- Preventive Concordats

# Informal workouts?

- A workout “culture” appears to be missing
- Lack of qualified workout specialists
- Some lenders lack the ability or willingness to enter into meaningful negotiations
- Regulatory rules regarding lenders do not support voluntary workouts of problem loans
- Lenders with better collateral have insufficient incentive to make deals
- Until recently, tax law did not support workouts
- Uncertainty regarding whether transfers done in a workout could be vulnerable to avoidance in a later bankruptcy proceeding

# Pre-insolvency remedies – a more balanced approach to negotiated workouts

1. Flexible settlement options under the Ad Hoc Mandate or the Preventive Concordat
2. Skillful leadership by insolvency professionals
3. Predictable procedures, deadlines, and court involvement



# ... But will they be used?

- Similar provisions were available under the prior law, but were seldom used.
  - A lack of belief in the process?
  - Structural problems?
- The new law addressed many issues highlighted in the Report
  - More predictable deadlines
  - Better information
  - Somewhat easier to bind dissenters
  - Dealing with budgetary claims



# Reorganization under the Code – Preparation

## Then

- Special administrator
- Reorganization had to be specified
- No post-petition operational financing
- No asset sales in the observation period

## Now

- Special administrator
- Reorganization still has to be specified
- Post-petition operational financing
- Asset sales possible in observation period

# Reorganization under the Code -- Process

## Then

- Vote by pre-set classes (5 classes)
- Only undisputed claims on the final claims list
- Fair & equitable standard for dissenters
- Majority within each class carries class
- Flexible options for restructuring
- Plan term of one year plus 6 months
- Special administrator supervision

# Reorganization under the Code -- Process

## Now

- Vote by pre-set classes (5 classes)
- Final creditor list can include disputed claims
- Fair & equitable standard
- Majority within each class
- Flexible options for restructuring
- Allow for long term debt to be paid long term
- Global vote of at least 30%
- Priority for exit financing
- Plan term of 3 years plus one
- Special administrator

# Challenges to reorganization

- **Legal rigidity** – pre-defined classes, tight deadlines, and limits on long term debt are still a problem
- **Practice barriers** – still a need for capacity building among administrators and judges
- **Financing barriers** – an unknown: is there lending capacity for debtors in financial distress?

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## THANK YOU

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