



Debt Restructurings in CEE:  
The Key Issues  
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**C L I F F O R D**  
**C H A N C E**

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# Opportunities and Challenges

As CEE is slowly edging away from a period of uncertainty market participants anticipate that a certain level of financial distress will continue to prevail. A period of widely available liquidity, a diverse range of investors and the emergence of highly structured products resulted in a significant increase of indebtedness in companies and financial institutions in CEE.

The financial crisis has led to a reassessment of risk appetite amongst investors and a reduction in the use of complex structures. As a consequence, many borrowers and issuers in CEE are still finding it difficult to repay or refinance their existing indebtedness.

Although some restructurings have now been completed on a consensual basis or are in progress, the legal regimes for insolvency and restructuring in CEE remain in many respects, untested. In some jurisdictions (for example Russia and Ukraine) the legal framework changes on a regular basis. Lenders, borrowers and sponsors are all navigating a safe course under difficult trading conditions and in the face of uncertain valuations. Restructuring processes and eventual outcomes are and will be uncertain and are breaking new ground.

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

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

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

Clifford Chance offices in CEE and Western Europe



# Glossary

## ■ **Balance sheet test**

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

## ■ **Cash flow test**

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

## ■ **Cram Down**

The ability of majority creditors to force acceptance of a composition plan or scheme of arrangement in relation to their loans over the objections of dissenting creditors (or dissenting creditors within a given class) if certain tests are met. Cram down proceedings commonly require court approval.

## ■ **Credit bid**

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

## ■ **Debt/equity swap**

An arrangement whereby a company's creditors agree to cancel some or all of the company's debt in exchange for equity in the company.

## ■ **DIP finance**

Debtor-In-Possession financing. It is arranged by a company while under a US Chapter 11 bankruptcy process. Equivalent financing techniques are available in some other jurisdictions. DIP financing is distinct from other financing methods in that it usually has priority over existing debt (including secured debt) and other claims.

## ■ **Equitable subordination**

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

## ■ **Hardening period**

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

## ■ **Moratorium**

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

## ■ **Preference**

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

## ■ **Pre-pack**

Sale of a distressed business to a "newco", often set up by the existing shareholders, on a pre-agreed basis and free of residual liabilities which are left behind in the old structure. Pre-packs have been common in the UK and are typically effected through an administration (similar to Chapter 11 in the US) with the insolvency officeholder only in place for a short period of time. The rationale for pre-packs is that they preserve goodwill and avoid the consequences of a lengthy insolvency process. However, they have been criticised on the basis of valuation and as being unfairly prejudicial to unsecured creditors.

## ■ **Transaction at undervalue**

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



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# Czech Republic



Insolvency Tests	Cash flow test and balance sheet test.
Type of insolvency proceedings	Liquidation (bankruptcy): i.e. a sale of the estate (piecemeal or as a going concern) with satisfaction of creditors through distribution of the proceeds. Reorganisation: i.e. a non-liquidation reorganisation measure, typically a recapitalisation, based on a reorganisation plan approved by creditors and the court.
When does a moratorium apply?	An automatic stay commences as of the publication of the insolvency petition in the on-line insolvency register. Subject to approval of a majority of the creditors, a debtor may also ask for a court-ordered moratorium that grants further protective measures within 7 days of the filing of its own insolvency petition or within 15 days in case of an insolvency petition filed by a creditor. The debtor may also do so before the opening of the insolvency proceedings.
Directors' duties to file	Directors have a duty to file an insolvency petition without undue delay after they determine that the company is insolvent on the grounds of the cash flow test (or should have determined such insolvency had they exercised due care). A new amendment effective as of 20 July 2009 temporarily (until the end of 2011) removed the directors' duty to file on the grounds of the balance sheet test.
Average length of proceedings	One month (or up to 15 days in the case of the debtor's petition) for courts to determine insolvency. Up to 3 months for courts to decide on liquidation (bankruptcy) or reorganisation options. The average overall length of proceedings remains unclear due to a new insolvency law that came into effect 1 January 2008.
Are "Pre-packed" restructuring options available?	In principle, yes, where agreed upon by all creditor classes, but not yet tested in practice.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Yes, in reorganisation. The court may approve a plan which is not agreed by all creditors' classes but only if at least one affected class distinct from the shareholders votes in favour of the plan and the plan is fair. Such fairness is presumed if the plan (i) leaves the security interests of secured creditors substantially unaltered and any reduction of the net present value of their claims is not below the value of their collateral; and (ii) adheres to the "absolute priority rule" with respect to other classes of creditors.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	Yes, the creditors may remove the insolvency officeholder appointed by the court and appoint a new one at the creditors' meeting immediately following a court review of registered claims.
Equitable subordination of shareholder loans?	Not applicable.

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

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# Hungary



Insolvency Tests	Cash-flow test. This applies if a company: (i) failed to comply, within 15 days from the due date, with its contractual payment obligation; or (ii) failed to pay its debts based on a court order within the deadline; or (iii) failed to comply with its obligations set forth in a composition agreement concluded in a bankruptcy procedure; or (iv) the enforcement procedure against it was unsuccessful; or (v) the court has terminated the bankruptcy procedure of the company because the composition scheme was not agreed or not met the legal requirements; or (vi) the company has commenced the proceedings itself, and its assets worth less than its liabilities or it has failed to meet with its payment obligations when they became due or foresees that will fail to meet with its payment obligations when they will become due.
Type of insolvency proceedings	<p>Two types: (1) bankruptcy and (2) liquidation proceedings.</p> <p>In bankruptcy proceedings the debtor requests relief from its financial obligations temporarily to seek a composition agreement with its creditors. The goal of the bankruptcy procedure is to reorganise the debtor company in order to enable it to continue its business operations. The creditors may also initiate bankruptcy proceedings against the debtor.</p> <p>Liquidation proceedings are initiated by a creditor of the company or by the debtor company itself when the company is insolvent and unable to perform its financial obligations. The liquidation proceedings end by the dissolution of the debtor company.</p>
When does a moratorium apply?	<p>In bankruptcy proceedings an automatic 90 day statutory standstill period applies, extendable to 180/365 days with the consent of a certain proportion of creditors.</p> <p>In liquidation proceedings the court may grant a 30 days standstill period upon the request of the debtor company before the commencement date of the liquidation (being the date when the final and non-appealable order of the court on the commencement of liquidation proceedings is published in the Company Gazette).</p>
Directors' duties to file	There is no mandatory duty to file. The debtor company may file a petition for the commencement of insolvency proceedings if any of the above criteria of the insolvency test is satisfied. Further, in insolvency situations the directors have to convey a meeting of the shareholders to resolve the financial difficulties of the company, and in this case the shareholders may decide (amongst others) to wind down the company by commencing insolvency proceedings.
Average length of proceedings	<p>In liquidation proceedings the court has 60 days to decide on the commencement of the liquidation proceedings. The length of the proceedings is a maximum of two years, with a possible extension by one more year.</p> <p>In bankruptcy proceedings the statutory standstill period applies and therefore the length of the proceedings is 90 days, extendable to 180/365 days.</p>
Are "Pre-packed" restructuring options available?	Available in principle provided that a certain number of creditors grant their approval. Not regulated by law and not yet tested in practice.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	<p>Yes. If a composition agreement was concluded either in liquidation or bankruptcy proceedings, with the consent of the required proportion of creditors, the composition agreement shall also apply to non-consenting creditors. In bankruptcy proceedings secured and unsecured creditors vote in different classes and creditors have one vote for every HUF100,000 of debt. The composition scheme is agreed if it receives at least the simple majority of votes in both voting classes. The court has to approve the composition agreement.</p> <p>In insolvency proceedings the creditors have to vote in classes as well, but there are more voting classes than in bankruptcy proceedings and consent to the composition scheme shall be considered being granted if (1) more than half of the creditors (by number) in each class agrees, and (2) the aggregate of the claims of creditors giving consent is equal or exceeds (by value) half of all creditors' claims against the company.</p>



Debt/equity swaps possible?	Yes, in the framework of composition schemes, both in liquidation and bankruptcy proceedings, with the consent of the required proportion of the creditors.
Can creditors influence appointment of insolvency officeholder?	No. Liquidators and bankruptcy administrators are appointed by the court. The court designates a professional and independent liquidator or bankruptcy administrator from an official list. The creditors have no influence on the appointment.
Equitable subordination of shareholder loans?	Yes. Unsecured shareholders' loans rank last in the mandatory creditor waterfall in liquidation proceedings. However, if a shareholder loan (i) is secured by mortgage, pledge or security deposit, and (ii) was granted at such point in time at which the company was not insolvent and it was reasonably not foreseeable that insolvency could occur, such secured loan will be prioritised together with all other secured claims and rank before any other claims in the creditor waterfall.
Effectiveness of subordination arrangements	Subordination arrangements should be effective outside of liquidation proceedings. In liquidation proceedings a mandatory creditor waterfall applies. However, parties to such subordination arrangements shall honour their rights under such arrangements.
Share pledges	There are two major types of ownership interests in Hungarian companies: quotas in limited liability companies (in Hungarian: kft.) and shares in public or private companies (in Hungarian: zrt. or nyrt.). Shares can be encumbered by security deposit (in Hungarian: óvadék), and quotas by pledge (in Hungarian: zálog). In insolvency proceedings the shares/quotas held by the insolvent company will be sold by the liquidator through public auction or tender. Share security deposits can be enforced by the beneficiary directly within 3 months of the commencement of insolvency proceedings against the insolvent company.
Is DIP finance possible?	Theoretically possible both in liquidation or bankruptcy proceedings, if the required proportion of the creditors agrees in the composition agreement. Not regulated by law and not yet tested in practice.
Set-off and netting on insolvency?	Set-off is not possible in bankruptcy proceedings. In liquidation proceedings set-off is possible only in relation to claims which have been registered by the liquidator and have not been assigned after the commencement of the liquidation proceedings. In case of close-out netting agreements concluded prior to the commencement date of liquidation proceedings the creditor has to register the net value of its claim with the liquidator and the liquidator will enforce the net value of the claim.
Hardening periods	There are no security interest hardening periods, but security interest has to be granted before the commencement date of the liquidation proceedings in order to have preferential ranking. In liquidation proceedings a liquidator can challenge the following transactions: (i) fraud (a contract entered into up to 5 years prior to the liquidation with the intent to defraud creditors which resulted in the decrease of value of the company's assets); (ii) transactions at an undervalue (entered into up to 2 years prior to the liquidation involving a free asset transfer, no consideration or conferring a disproportionate benefit to the contracting party); and (iii) preference (a contract entered into up to 90 days prior to the liquidation with the effect of granting a preference to any creditor).

## Hungary continued

Preferences/transactions subject to challenge	The liquidator has the right to challenge such transactions, within 90 days from the date of becoming aware of the existence of such transactions, but in any event within one year from the date of publication of a court order relating to the commencement of the liquidation proceedings.
Liability of directors	Civil and criminal law liability. Shadow directors could also be held liable.
Priority of creditors	Creditors' claims will be satisfied in the following order: (i) secured creditors (including floating charge holders subject to the provisions below) (ii) costs of insolvency (e.g. unpaid wages, taxes liquidators' fees); (iii) claims secured by floating charges, if such security interests were created before the starting date of the insolvency procedure (if not included in the 50% proceeds' provision already - see below); (iv) alimonies, etc; (v) other claims from private individuals originating from non-economic activities; (vi) social insurance debts, etc.; (vii) other claims; (viii) default interest, etc.; (ix) unsecured claims of shareholders, claims of the manager of the company and other related parties, claims arising from contracts without a consideration.  In case of floating charges, 50% of the realisation proceeds shall be immediately transferred to the floating charge holders and the remaining half is paid proportionately to the floating charge holders at the end of the insolvency proceedings, after deduction of the costs of the liquidation proceedings.
Lender or Borrower friendly?	It can be considered "secured creditor friendly" regime. In general, liquidation proceedings are lengthy, formal and expensive with an uncertain outcome for unsecured creditors. Uncertainties also arise from the different practices of the liquidators. Enforcement of certain types of securities (e.g. pledge over rights and receivables) also has a degree of uncertainty.

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# Poland



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

## Poland continued

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

Preferences/transactions subject to challenge

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

Liability of directors

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

Priority of creditors

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

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

Lender or Borrower friendly?

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

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# Romania



Insolvency Tests	Cash flow test based on availability of sufficient monetary funds to pay all due debts. Insolvency is either actual (where the debtor cannot pay its debts towards one or more creditors as they fall due) or imminent (where it is demonstrated that upon maturity, the debtor will not be able to pay its debts out of its then available monetary funds).
Type of insolvency proceedings	General insolvency proceedings entered into by the company after an observation period followed by (i) judicial reorganisation and/or (ii) liquidation (with a view to the winding-up of the insolvent debtor).
When does a moratorium apply?	Following the opening of the proceedings, all judicial and extra-judicial actions (including enforcement of security) against the debtor or its assets are suspended.
Directors' duties to file	The insolvent debtor is compelled by law to file a petition for insolvency within 30 days from the date it becomes aware that it is or will become insolvent. A debtor whose insolvency is imminent may file a petition for the opening of insolvency proceedings.
Average length of proceedings	Up to 45 days for the opening of proceedings (provided that the petition for opening the proceedings is not challenged), 1-2 years to complete straightforward proceedings. Complex proceedings can take much longer.
Are "Pre-packed" restructuring options available?	There are no legal obstacles for out of court restructuring if practical obstacles can be overcome. Judicial reorganization is possible but rarely used because the mechanism can be quite inflexible and the actions of the judicial administrator may be open to challenge from disgruntled creditors.
Are "Credit Bids" available?	Credit bids are possible with consent of other creditors but can be difficult to apply in practice due to a need to observe priority rules for distribution of proceeds.
Is "Cram down" possible?	Except where the law requires a special majority, creditors' meetings can be held by creditors holding at least 30% of the total value of receivables and decisions can be made by majority vote (in terms of value of receivables represented by creditors in the meeting). Any decision made in the creditors' meeting which is non-compliant with the relevant legal requirements may be invalidated by the court. Moreover, a reorganisation plan needs to be confirmed by the court and for this purpose it should meet certain tests (e.g. no classes of dissenting claims shall receive less under the plan than under bankruptcy).
Debt/equity swaps possible?	Yes, in relation to all debt except debt owed to public bodies. There are, however, restrictions on Romanian financial institutions holding equity in a non-financial business which can affect the feasibility of a debt to equity swap by a financial institution. Alternative structures including fronting structures and convertible bonds are being investigated on the market.

Can creditors influence appointment of insolvency officeholder?	<p>The creditors' meeting can approve the appointment of a judicial administrator or liquidator, as the case may be, by a vote of creditors holding at least 50% of the total value of claims.</p> <p>After its appointment, the judicial administrator or liquidator can be replaced by the judge ex officio or upon the request of the creditors' committee.</p>
Equitable subordination of shareholder loans?	Loans granted by shareholders holding at least 10% of the share capital or the voting rights in a shareholders meeting respectively are statutorily subordinated and rank last in the creditors' waterfall.
Effectiveness of subordination arrangements	Contractual subordination of claims under a subordination agreement/intercreditor agreement might not be recognised by an insolvency officer, who will be bound by the statutory order of payments and ranking of claims.
Share pledges	Pledged shares in an insolvent company may be sold in (i) an auction process or (ii) a private sale/appropriation, depending on the procedure elected by the creditor and provided for under the relevant pledge agreement.
Is DIP finance possible?	DIP finance is possible, but is rarely available in practice. Normally, claims deriving from DIP financing granted by credit institutions should rank after administrative expenses and salary claims, but before budgetary claims and other unsecured claims and do not benefit from the proceeds of assets that are subject to security (unless such new money is applied to preservation or maintenance of that secured asset in which case the related claims would have priority over the secured claims as well).
Set-off and netting on insolvency?	<p>Only legal set-off is possible when certain legal conditions are met (i.e. claims are certain, liquid, due and relate to moneys or other fungible assets).</p> <p>Netting agreements are valid and enforceable against insolvent counterparties in relation to payment obligations or other obligations resulting from financial derivative transactions save for cases where intention to defraud the debtor is evidenced.</p>
Hardening periods	The insolvency official (or the creditors' committee where the insolvency official remains inactive) may apply to court for the annulment of certain contracts or acts of the insolvent debtor such as: acts and contracts attempting to defraud the creditors; those executed three years prior to the opening of the insolvency proceedings; acts granting or perfecting a security interest for an unsecured receivable within 120 days prior to the opening of the insolvency proceedings; debts maturing after the date of opening of insolvency proceedings but prepaid within 120 days prior to the opening of proceedings.

## Romania continued

Preferences/transactions subject to challenges	Preferences/transactions at an undervalue executed or entered into within a period of up to 3 years prior to the opening of insolvency proceedings may be challenged by the insolvency official (different periods apply to some specific actions, e.g. debt prepayments made within the 120 days prior to the opening of proceedings, if the original debt was to mature after the date of the opening of insolvency proceedings).
Liability of directors	Civil liability. Criminal liability only when the directors' acts meet the constitutive elements of a crime.
Priority of creditors	The proceeds of realisation of secured assets are to be distributed to secured creditors (towards repayment of the principal amount, interest, penalties and any other costs) after payment of taxes, stamp duties and other expenses determined by the sale of such assets. If the proceeds are insufficient for the full repayment of secured debt, such creditors will be treated as unsecured for the remaining part of the debt and will be satisfied according to the general order applicable for other types of claim. In liquidation, the general order of payment of unsecured debts is as follows: a) taxes, stamp duties and other expenses incurred in connection with the insolvency proceedings; b) employment claims; c) post-commencement financing costs; d) debts owed to the state (including taxes not related to the insolvency proceedings); e) (where applicable) amounts due pursuant to maintenance obligations, child support or subsistence receivables; f) (where applicable) certain amounts for the maintenance of the debtor and his family, when the debtor is an individual; g) claims by certain types of creditors such as banks, landlords, suppliers of goods and services debts; h) other general unsecured debts; (i) subordinated debts.
Lender or Borrower friendly?	Generally, creditor-friendly (but not necessarily senior creditor friendly). In practice, however, the bureaucratic procedures can work in favour of the debtor.

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# Russia



Insolvency Tests	A creditor who intends to initiate insolvency proceedings must have an unpaid monetary claim, under which: (i) the unpaid debt is equal to or exceeds 100,000 roubles; (ii) is overdue by at least 3 months; and (iii) is recognised by the court. Proposed amendments to legislation are expected to exclude criteria (ii) and (iii) from the test, unless otherwise provided by law or contract.
Type of insolvency proceedings	<p>Supervision (an assessment of whether the company should go into insolvency proceedings or be subject to financial recovery) initiated by the company itself or its creditors (including state authorities) by filing a bankruptcy petition to court. Financial rehabilitation (attempt to restore the solvency of a company) initiated by the court on the petition of the creditors or the company or at the sole decision of the court.</p> <p>External administration (attempt to restore the solvency of a company and repay certain debts) initiated by the court on the petition of the creditors or at the sole decision of the court. Winding-up/liquidation (liquidation of the company, repaying its debts) initiated by the creditors or the court. Voluntary arrangement - petition by either the insolvent company or its creditors at any stage of bankruptcy to enter into an amicable settlement by way of a voluntary arrangement. If approved, it terminates the relevant stage of bankruptcy proceedings and is compulsory for all creditors that signed an amicable settlement agreement.</p>
When does a moratorium apply?	At the stage of external administration, but certain restrictions on actions of a company are applied at earlier stages (for example payment of dividends, set-off, etc.).
Directors' duties to file	<p>The CEO of the insolvent company must petition the court for bankruptcy within one month of the following becoming evident or occurring:</p> <ul style="list-style-type: none"><li>(i) the satisfaction of claims of one or more creditors will lead to inability by the company to perform its payment obligations (including mandatory payments) to all creditors;</li><li>(ii) the shareholders or those authorised by the shareholders decide to file such a petition;</li><li>(iii) enforcement of claims against the company will make it more difficult or impossible for it to continue operations; or</li><li>(iv) if the company does not have sufficient funds to make payments,</li><li>(v) the amount of debtor's debts exceeds the value of its assets; or</li><li>(vi) in the course of a solvent liquidation of the company, it emerges that the company has insufficient assets to satisfy its creditors' claims in full.</li></ul>
Average length of proceedings	1-8 months for putting the company into insolvency proceedings (from filing a bankruptcy petition till the end of supervision), and 12-42 months (from supervision to liquidation) to complete the insolvency proceedings and liquidate the company although in practice may be considerably longer.
Are "Pre-packed" restructuring options available?	There is no equivalent concept in Russia. Sale of company's assets prior to instigation of insolvency proceedings may be challenged as a "suspicious" or "preferential" transaction. See below for details.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Generally, certain transactions of the company, actions of a court-appointed administrator, financial rehabilitation plan and external administration plan are subject to creditors' approval. The decision of the majority creditors (in financial rehabilitation - majority present at the meeting and in external administration - majority by value) will be binding on the minority creditors. The company cannot influence any such decision.

## Russia continued

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

Liability of directors	Yes, criminal and civil.
Priority of creditors	<p>Currently there are 3 tiers of creditors:</p> <ul style="list-style-type: none"> <li>(i) first, claims for harm inflicted to health or life, and claims for moral damages;</li> <li>(ii) second, employment claims (wages and severance payments), and royalty claims under copyright agreements; and</li> <li>(iii) third, all other claims.</li> </ul> <p>Current claims: court costs, utilities, fees of persons involved in insolvency, etc. rank ahead of the order of priorities set out above.</p> <p>Claims of creditors secured by Russian law pledge or mortgage are settled separately from claims of other creditors as set out below. Claims of secured creditors that have not been satisfied in full from the sale of pledged/mortgaged property fall into tier III category.</p> <p>Proceeds of sale of the secured property are allocated as follows: 80% (under a credit agreement) or 70% (in all other cases) of the proceeds, but in an amount not more than the aggregate amount of principal and interest is applied towards claims of creditors secured by such pledge/mortgage; and the remaining 20% or 30% respectively is deposited in a "special account" to be further applied as follows: (a) 15% or 20% respectively - for the satisfaction of unsecured claims of registered first and second priority creditors if the non-encumbered property of the debtor is insufficient to settle these claims; and (b) the balance respectively - for satisfaction of court and bankruptcy costs, payments of fees of the court-appointed administrator and persons retained by such court-appointed administrator for the purposes of administration. Balance (if any) is applied to discharge an outstanding secured claim.</p> <p>Intercreditor arrangements with an insolvent company that is not a banking organisation are most likely to be unenforceable on insolvency.</p>
Lender or Borrower friendly?	Generally the insolvency law is debtor-friendly however in some ways may benefit the lender (secured creditors have special rights of settling their claims, rights to prepay debts at any stage of insolvency to state authorities). There is a draft law providing for a pre-insolvency restructuring and a new procedure of financial rehabilitation that would allow the debtor to apply for a moratorium of up to 5 years as protection from almost all classes of creditors without creditors' consent.

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# Slovakia



Insolvency Tests	Cash flow test and balance sheet test.
Type of insolvency proceedings	Bankruptcy (a sale of the estate (piecemeal or as a going concern) with satisfaction of creditors through distribution of the proceeds). Reorganisation (a reorganisation measure, typically a recapitalisation, based on a reorganisation plan approved by the creditors and the court).
When does a moratorium apply?	N/A
Directors' duties to file	Directors have a duty to file a bankruptcy petition within 30 days after they determine that the company is insolvent (or should have determined such insolvency had they exercised due care)
Average length of proceedings	Up to 20 days in case of the debtor's insolvency petition to court and up to 30-50 days in case of the creditor's insolvency petition to court. An average of 3-5 years to complete bankruptcy proceedings. Restructuring commences within 45 days of filing of a petition. Proceedings can take approx. 7-10 months, but may be longer depending on complexity.
Are "Pre-packed" restructuring options available?	In principle yes where agreed upon by all creditor classes, but not yet tested in practice.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Yes, in reorganisation.
Debt/equity swaps possible?	Yes.
Can creditors influence appointment of insolvency officeholder?	If it can be proven that the insolvency officeholder repeatedly or materially violated its obligations, the creditors can decide on its removal. The court then recalls him and appoints a new insolvency officeholder.
Equitable subordination of shareholder loans?	No.
Effectiveness of subordination arrangements	Yes, subordinated claims will be paid subject to the terms of contractual subordination. However, the pre-bankruptcy subordinated claims of the debtor, which relate to the property subject to bankruptcy are considered to become due for the purposes of bankruptcy as of the day of the winding up of the debtor's business by the trustee upon declaration of bankruptcy.
Share pledges	Shares are generally sold "subject to debt" unless a "debt free" basis is agreed with the purchaser and non-cash consideration is possible on enforcement, provided that the agreement regarding such consideration has been put in place after the relevant receivables became due. Shares can be sold through an investment firm. Insolvency proceedings do not prejudice enforcement of financial collateral.

Is DIP finance possible?	Insolvency law does not specifically deal with new money lending in case of bankruptcy proceedings. The new loans made to the debtor during restructuring proceedings, will have priority over general creditors but not the secured creditors.
Set-off and netting on insolvency?	It is not possible to set off claims that arose pre-bankruptcy against those that arose post-bankruptcy. In addition, a claim not proven in the bankruptcy in accordance with law, a proven claim acquired by transfer post-bankruptcy, and a claim acquired by an antecedent legal act cannot be set off against the debtor's claims. Set-off of any other claims is allowed in bankruptcy. Monetary claims arising prior to the commencement of restructuring proceedings cannot be set off against the debtor after the commencement of the restructuring proceedings. Insolvency proceedings do not generally prejudice close-out netting.
Security hardening periods/other transactions subject to challenge	No specific security hardening periods, but transactions at undervalue and preferential transactions are subject to challenge within 1 year (or 3 years if made with connected parties) and fraudulent transactions are subject to challenge within 5 years.
Preferences/transactions at undervalue	Yes, preferential transactions or transactions at under-value are subject to challenge if the debtor was either insolvent or became insolvent as the result of such transactions.
Liability of directors	Directors who are in breach of the duty to file a bankruptcy petition will be liable to creditors for damages in an amount presumed to equal the sum of claims unsatisfied after the termination or stay of bankruptcy proceedings unless proven otherwise.
Priority creditors	The ranking of claims under pre-insolvency law (i.e. the priority of secured claims and the subordination of junior claims) is respected subject to certain exceptions.
Lender or Borrower friendly	Current legislation is more creditor-friendly compared to the regime previously in force.

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Insolvency Tests	A creditor intending to initiate insolvency proceedings must have an unpaid monetary claim which is: (i) equal to or exceeds the equivalent of UAH 265,200 (approximately USD 33,150); (ii) indisputable (a claim will be deemed to be indisputable if it is supported by official enforcement documentation (e.g. a court order) or settlement documents pursuant to which the debtor's money must be debited by law); and (iii) not satisfied within 3 months from the date when the obligation became due and payable.
Type of insolvency proceedings	<p>Property administration: to prevent the debtor's assets from disposal and establish control over them before the creditors' committee decides (with the court's subsequent approval) the debtor's fate (e.g. whether to rehabilitate or liquidate the debtor).</p> <p>Rehabilitation: a system of measures with a view to reinstating the debtor's solvency under a rehabilitation plan.</p> <p>Liquidation: compulsory winding up of the debtor, sale of its assets and satisfaction of creditors' claims when there is no opportunity to reinstate the debtor's solvency.</p> <p>Each type of proceedings is initiated by the court and may result in amicable settlement subject to court's approval.</p>
When does a moratorium apply?	<p>Upon the initiation of insolvency proceedings (although on rare occasions, the moratorium is imposed at a later stage).</p> <p>The moratorium does not apply to: (i) payments which become due after the initiation of bankruptcy proceedings; (ii) payments to creditors approved under a rehabilitation plan; (iii) payments made as part of liquidation proceedings in relation to the debtor; (iv) payments of salary, alimony, authors' remuneration and compensation for damages to health or life of individuals; and (v) enforcement of mortgage over the debtor's assets.</p>
Directors' duties to file	The debtor must file an insolvency petition with the court within one month of any of the following occurring: (i) if fulfilment by the debtor of its obligations to one or more creditors would result in the debtor being unable to satisfy the claims of its other creditors; (ii) if an authorised governing body (in most cases the shareholders' meeting) of the debtor decides to file for an insolvency proceeding; or (iii) if during a liquidation procedure which has been initiated outside insolvency proceedings (i.e. voluntary liquidation) the debtor is unable to satisfy the claims of all of its creditors.
Average length of proceedings	Property administration - 7 months, rehabilitation and liquidation - 18 months each.
Are "Pre-packed" restructuring options available?	Not available.
Are "Credit Bids" available?	Not available.
Is "Cram down" possible?	Each decision of a creditors' committee is made by a simple majority of votes based on the amount of claims; thus the position of creditors which voted against certain issues may be ignored. However, claims of a secured creditor may not be reduced or forgiven by a decision of a majority of the creditors' committee members without the consent of the secured creditor. Court approval would be necessary for any of the foregoing.
Debt/equity swaps possible?	Generally allowed for joint stock companies subject to the consent of the debtor's shareholders but remain untested in practice. Debt/equity swaps are not allowed where the debtor is a limited liability company.
Can creditors influence appointment of insolvency officeholder?	Creditors are entitled to propose the candidate for the insolvency officeholder (insolvency manager) to be appointed by the court.

Equitable subordination of shareholder loans?	Shareholders of the debtor that are also its lenders are treated similarly to third party creditors. Please note, however, a risk of invalidation of certain type of transactions with affiliated parties.
Effectiveness of subordination arrangements	The court and insolvency manager will most likely ignore intercreditor arrangements that change the statutory rankings.
Share pledges	Shares are always sold “debt free”. In an out-of-court enforcement procedure the pledgee has a right to: (i) obtain ownership rights to the collateral (shares) against discharge of the secured obligations, or (ii) organize a private sale. When pledged shares are publicly traded, they must be sold in the stock market.
Is DIP finance possible?	Possible but is normally subject to approval by the insolvency manager or creditors’ committee.
Set-off and netting on insolvency?	Insolvency set-off is not expressly allowed. However there are a number of rulings of Ukrainian courts, including the High Commercial Court, which, although only of persuasive authority, confirm that set-off by creditors is allowed in the course of insolvency proceedings and it is not prohibited by the moratorium. Therefore, we believe that the moratorium would not prevent a creditor from using a set-off in the course of insolvency proceedings provided the debt has matured.
Hardening periods	<p>The following groups of transactions may be invalidated by the court: (i) preferential transactions entered into 6 months prior to commencement of rehabilitation proceedings and (ii) related party transactions which caused (or may cause) a loss to the debtor or the creditor. There is no specific hardening period for (ii) above.</p> <p>A general 3-year statutory limitation period may apply to such transactions.</p> <p>Within three months of the commencement of the debtor’s rehabilitation, the rehabilitation manager may rescind the debtor’s contracts entered into before the date of commencement of insolvency proceedings provided that: (i) the performance of such contract would cause a loss to the debtor; (ii) the contract is a long-term contract (i.e. exceeds one year) or provides long-term benefits to the debtor; or (iii) performance of the contract would prevent the restoration of the debtor’s solvency.</p>
Preferences/transactions subject to challenge	A court may invalidate transactions that establish preferences or undervalue assets, as described above.
Liability of directors	Criminal, administrative, civil and disciplinary liability.

## Ukraine continued

Priority of creditors	<p>There are 6 rankings of creditors:</p> <ul style="list-style-type: none"><li>(i) secured claims;</li><li>(ii) claims for employees' salaries for a 3 months period before insolvency proceedings were initiated by the court, other payments due to employees and expenses incurred in connection with insolvency proceedings;</li><li>(iii) tax claims;</li><li>(iv) unsecured creditors' claims;</li><li>(v) claims of employees to receive contributions to the share capital of the debtor; and</li><li>(vi) any other claims.</li></ul>
Lender or Borrower friendly?	Generally debtor-friendly but may be regarded as the creditor-friendly with respect to secured creditors.

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# Recent Awards

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**Chambers Europe Awards for Excellence 2009**

International Law Firm of the Year

**IFLR European Awards 2009**

International Law Firm of the Year

**PLC which lawyer? Awards 2009**

Global Banking Law Firm of the Year (and has been recognised in this manner every year since the awards' inception in 2005)

Russia Law Firm of the Year (for the second consecutive time)

**Who's Who Legal Awards 2009**

Central & Eastern Europe Law Firm of the Year

**Chambers Europe Awards for Excellence 2008**

Global Law Firm of the Year (for the second consecutive time)

Global Banking Law Firm of the Year

Russia Law Firm of the Year

**Who's Who Legal Awards 2008**

Most Innovative Law Firm

**Financial Times Innovative Lawyers Awards 2008**

Restructuring Deal of the Year

Structured Products Deal of the Year

**ILFR European Awards 2008**

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