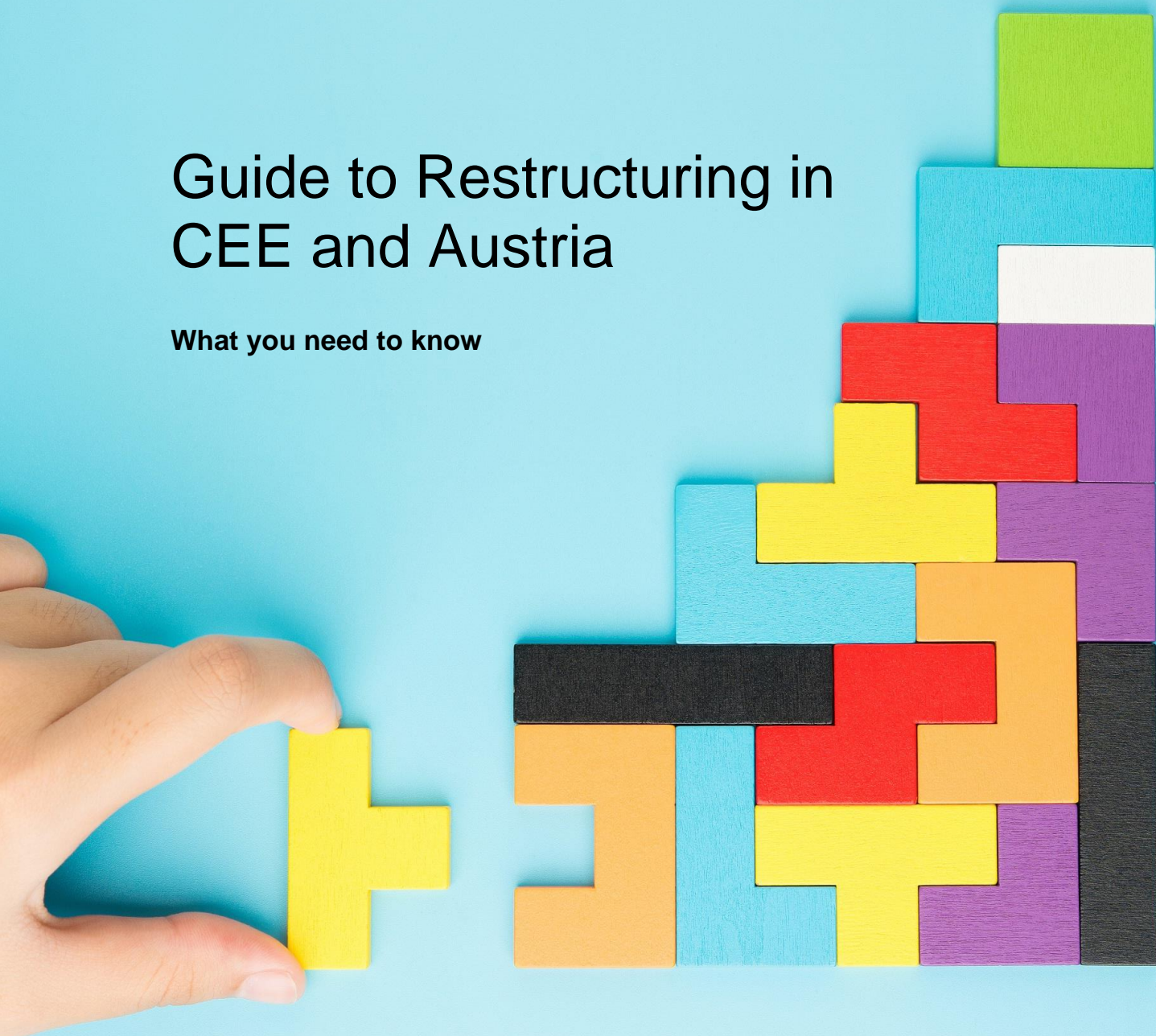


Guide to Restructuring in CEE and Austria

What you need to know



In this publication, we invite you to learn more about the basics of how financial restructurings work in eight CEE countries and Austria.

Our experts answer seven important practical questions to help you navigate through each jurisdiction's restructuring framework.

We are looking forward to hearing from you and supporting you with any additional questions you might have. Please find contact details at the end of this brochure.



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Austria

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

There is currently no statutory regime under Austrian law for an out-of-court restructuring of financial obligations. The Austrian implementation of the Directive (EU) 2019/1023 on preventive restructuring frameworks must be enacted by July 2021. So far, there is no draft law proposal available.

All large financial restructurings in the Austrian market over the last couple of years were therefore based on bilateral or multi-party efforts between borrowers and lenders. Such processes are feasible in situations where the financial situation of the debtor has not yet crossed into formal insolvency (over-indebtedness without positive going concern prognosis or inability to pay its debt).

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

This will depend heavily on the terms of the existing legal documentation and the changes and actions / transactions actually envisaged in the course of the restructuring process.

One key aspect will be the definition of the “secured liabilities” and its interpretation under Austrian law. If properly drafted, security agreements will usually have some flexibility in terms of continued security interests following financial restructurings – which is key to avoid triggering new clawback periods (should the restructuring be unsuccessful and insolvency proceedings subsequently opened).

However, where restructurings involve fresh funds (e.g. in form of bridge financings), careful structuring will be required to best preserve or make use of existing security interests.

Are there any clawback periods which should be taken into consideration when agreeing on debt restructuring? What are the conditions for triggering such clawback periods?

Austrian law provides for customary clawback proceedings in insolvency (avoidance) and, to a more limited extent, also outside insolvency proceedings. Such proceedings are aimed at reversing certain legal transactions subject to avoidance.

In insolvency, the following conditions must be met for the insolvency administrator to successfully claw back transactions:

- the avoidance proceedings must be commenced by the insolvency administrator within 1 year following the opening of formal insolvency proceedings;
- any successful avoidance action must, from an ex ante perspective, be capable of increasing the insolvency estate; and
- any avoidance action requires that the challenged action or transaction has resulted in a direct or indirect discrimination of the other creditors of the insolvent debtor.

In insolvency, the reasons for taking avoidance action are regulated in the Austrian Insolvency Code (*Insolvenzordnung* – “IO”), and each clawback period is calculated as of the moment the insolvency proceeding commenced, whereas the periods vary and depend on the exact reasons enabling such a clawback. Reasons for taking avoidance action include:

- Avoidance due to the intent to discriminate (1, 2 or 10 years depending on the exact situation);
- Avoidance of this position with no considerations an analogous transaction (2 years);
- Avoidance due to preferential treatment (1 year);

- Avoidance due to knowledge of insolvency (6 months).

In terms of financial restructurings, avoidance due to knowledge of insolvency is very relevant in practice. Creditors must ensure that any restructuring plan they are operating with is not “obviously unsuitable”. In this respect, the positive going-concern prognosis of the insolvent debtor is of utmost importance and needs to be considered carefully.

Are there any court driven proceedings for companies in distress besides bankruptcy proceedings?

The following requirements must be satisfied for the debtor to file for reorganisation proceedings (*Sanierungsverfahren*):

- The debtors themselves must file for commencement of restructuring proceedings. No creditor can do so.
- Along with the filing, the debtor must submit a comprehensive restructuring plan, which should include all relevant elements pursuant to the law, including a repayment plan that provides for a quota of at least 20% to be paid to the creditors within a period not be longer than 2 years.

The reorganisation proceedings (*Sanierungsverfahren*) can be in the form of self-administration (*Sanierungsverfahren mit Eigenverwaltung*), however only if additional conditions provided by the law are met.

Before the restructuring plan is implemented, the creditors must vote on the plan. For a successful vote (i) the majority of creditors and (ii) the majority of the total amount of the claims must be in favour of the plan. Once the plan is approved by the creditors, the court must also approve the plan.

Unlike a bankruptcy proceeding, the objective of a reorganisation proceeding (*Sanierungsverfahren*) is to ensure the continuation of the debtor's business while avoiding the sale of its assets. The insolvency administrator (*Sanierungsverwalter*) is prohibited from liquidating the business for the time being. Upon successful restructuring, i.e., the debtor fulfils its payment obligations by the time and in the amount agreed in the restructuring plan, the insolvency proceeding is completed.

Who can initiate such proceedings?

Only the debtor can apply to open reorganisation proceedings (*Sanierungsverfahren*) under the IO.

Is it possible to restructure the debtor's financial obligations in such a proceeding?

The reorganisation proceedings (*Sanierungsverfahren*) are based on the debtor's debt being subject to write-off by the creditors in accordance with the terms of the restructuring plan.

A reorganisation proceeding (*Sanierungsverfahren*) is not aimed at achieving the same results as an out-of-court financial restructuring process – and does not offer the necessary flexibility to do so. Hence, market practice in Austria prefers to conduct out-of-court restructurings to the extent that the insolvent debtor is able to present a positive going-concern prognosis.

What are the conditions for initiation of bankruptcy proceeding?

Opening insolvency proceedings requires that the debtor is insolvent. Insolvent within this context means:

- The debtor is unable to pay its debt when due; or
- The debtor is over-indebted (= the liabilities exceed its assets).

Is it possible to restructure the debtor within the bankruptcy proceedings?

As bankruptcy proceedings under the IO are aimed at disposing of the insolvent estate's assets with a view to maximizing profits for the creditors, these proceedings are not *per se* suited to an attempt at financial restructuring.

Notwithstanding the foregoing, bankruptcy proceedings can, of course, be used as a tool in a broader meaning of restructuring – where, e.g. an investor is willing to take over parts of an insolvent business in an acquisition from the insolvency administrator.

How is directors' responsibility regulated while the company is in distress?

The managing directors are subject to ongoing duty of care obligations vis-à-vis the company, its shareholders and its creditors.

Such duties are set out in both the IO as well as general Austrian corporate law. Also, certain actions are subject to criminal sanctions.

Which actions are mandatory for directors in case a company is in distress?

If a company is insolvent or overindebted, the opening of insolvency proceedings must be requested by the debtor (i.e. in case of a legal person, its managing director(s)) without undue delay, but no later than 60 days after the onset of illiquidity. As a measure against the impact of the COVID-19 crisis on companies, the Austrian legislator has extended this period to 120 days in case of pandemics and epidemics.

A request is not culpably delayed if the management of the company has carefully pursued the opening of reorganisation proceedings with self-administration.

Under the general executive body liability, a managing director may become liable to the company for the damage caused by a delayed filing for insolvency. Any increased operating loss (and hence increase in solvency claims) can be claimed by the insolvency administrator in insolvency proceedings and any compensation paid by the managing directors would increase the insolvency estate.

In addition, Austrian corporate law provides for a payment blocker that is triggered when a company becomes insolvent or overindebted. Managing directors are therefore well advised to avail themselves of professional legal counsel in such instances to help guide them through the situation of distress. However, the business judgement rule is applicable. Under the business judgement rule, certain payments conducted with the care of a diligent businessperson will be permitted.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

Depending on a case-by-case analysis, managing directors may be subject to criminal and / or civil claims in case of a breach of their duties.

Are there any other points relevant to director's positions in case a company is in distress?

The exact scope of the duties of the managing directors will depend on a case-by-case analysis of all relevant circumstances.

Generally, while company reorganisation procedures under the URG are of little practical relevance, it should be noted that the managing directors may be liable to the legal entity in full, but only up to EUR 100 000 per person, for liabilities not covered by the insolvency estate if the managing directors, within the last 2 years prior to the request to open insolvency proceedings:

- have received a report from the auditor stating that the equity ratio is less than 8% and the notional debt repayment period is more than 15 years

(presumption of need for reorganisation), and have not immediately applied for reorganisation proceedings or have not properly continued them; or

- have not prepared annual financial statements or have not done so in good time or have not immediately commissioned the auditor to audit the annual financial statements.

How are shareholder loans treated while a company is in distress (before formal initiation of bankruptcy proceedings)?

Pursuant to the Austrian Act on Equity Substitution (*Eigenkapitalersatz-Gesetz – EKEG*), a loan granted by a shareholder of a company in crisis is a substitute for equity (equity substitute loan).

A company is considered to be in crisis, if:

- the company is insolvent or overindebted (as defined under Q.5.1); or
- the company's equity ratio is less than 8% and the notional debt repayment period is more than 15 years unless the company does not require reorganisation.

The following loans are excluded from treatment as substitute equity:

- a cash loan for not more than 60 days; or
- a loan in kind (non-cash loan) or other credit is made available for not more than 6 months; or
- a loan granted before the crisis is extended or its repayment deferred; or
- As a temporary measure against the impact of the COVID-19 crisis: a cash loan granted and disbursed between 5 April 2020 and 30 June 2020 for no more than 120 days and for which the company has not provided a pledge or comparable security from its assets.

A shareholder may not reclaim an equity substitute loan together with the interest thereon as long as the company is not restructured and, if the insolvency proceedings have been cancelled according to a confirmed restructuring plan, to the extent that the repayment claim exceeds the restructuring plan quota.

A company is not restructured as long as it is insolvent or overindebted or in need of reorganisation or if one of these circumstances would occur through the repayment of the equity substitute loan.

The shareholder must nevertheless reimburse the company for any payments made. The same applies if the shareholder obtains satisfaction by offsetting, realisation of a pledge or in any other way.

How are shareholder loans treated in bankruptcy proceedings?

Upon the opening of insolvency proceedings, shareholder claims resulting from equity substituting loans are treated as equity and subordinated to all senior secured or unsecured claims of other creditors.

Subordinated claims are to be enforced in the same way as insolvency claims. However, they are only to be registered if the insolvency court specifically requests the registration of these claims. The insolvency court must issue such a request as soon as it is to be expected that subordinated claims will be satisfied, even if only partially.

Rights of separation or segregation acquired from the debtor's assets as collateral for equity substituting loans expire when insolvency proceedings are opened.

Bosnia and Herzegovina

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

The out-of-court restructuring of financial obligations is not governed by any special law or regulation in Bosnia and Herzegovina¹, so it is a result of negotiations and agreement between the parties.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

Although highly dependent on the agreed restructuring elements, in practice existing security documents are often updated and/or changed to reflect the contemplated restructuring of the financial obligations. Depending on the type of security and the elements that are subject to change, registration of such changes in the relevant securities registries is also often necessary. Even more so, any changes to the creditor party (e.g. due to assignment, merger, or any other affected legal succession), level of indebtedness, applicable interest, borrower's guarantor, maturity etc., would be reflected in changes to the underlying security documents.

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

Yes, clawback periods are regulated under the applicable bankruptcy regulations and refer to the relevant periods prior to submission of a petition for initiation of bankruptcy proceedings. These periods can amount to 90 days, 12 months, 3 years, or 5 years depending on the legal action concerned/challenged. In the context of debt restructuring, in order for such actions to be challenged within the relevant timeframes, further conditions would need to be satisfied – e.g., the creditor benefiting from the concerned transaction is aware of the debtor's bankruptcy or was not aware due to gross negligence (12 month period applies), the transaction undertaken is without consideration or is done with the intention to damage another bankruptcy creditor (5 year period applies), etc.

Other triggers involve a legal action undertaken by the bankruptcy debtor through which the creditor has been allowed an unusual insurance or settlement (90 day period applies), legal action undertaken before submission of the bankruptcy application and the debtor was insolvent at the time (six month period applies), legal action providing security (collateral) for the claim of a company member (shareholder) for repayment of a shareholder loan substituting equity (5 year period applies), and legal action that secures settlement of a claim from a company member for repayment of a loan substituting equity (3 year period applies).

Under the general contract law rules, a creditor may submit a court claim to dispute a debtor's legal actions that are damaging to the creditors' interests within a timeframe of 1 year for disposals with considerations where the debtor and the involved third party knew or could have known such disposal was damaging the interests of the debtor's creditors. For other instances, the generally applicable time period is 3 years.

¹ Bosnia and Herzegovina consists of two separate administrative entities, the Federation of Bosnia and Herzegovina ("FBiH") and Republika Srpska ("RS") as well as a condominium – a jointly owned unit Brcko District of Bosnia and Herzegovina. The rules that apply to restructuring of financial obligations are in general regulated at entity level, therefore, the responses below indicate the differences in applicable rules where relevant by referring to the relevant administrative unit.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Court driven company restructuring proceedings were introduced in RS in 2016. Although regulated under the bankruptcy legislation, these are specific and separate legal proceedings implementable prior to the initiation of bankruptcy proceedings in order to achieve financial and operational restructuring of the debtor.

The aforementioned restructuring proceedings are specific for RS only, which means they are not applicable in FBiH.

Please list conditions for such proceedings and please give short explanation of such proceeding?

Restructuring proceedings can be initiated in RS if:

- the debtor's ability to meet its obligations is threatened (i.e. debtor will not be able to meet due obligations for the period of the following 12 months according to its due obligation repayment plans) and
- the debtor has been in default in settling its monetary obligations for a period of 60 days.

In brief, the proceedings are led by the competent court which examines the restructuring proposal once submitted and decides whether to reject such a proposal or issue a resolution on commencing of the restructuring proceeding. Creditors are required to register their claims in respect of the company, whilst the court appoints the restructuring administrator.

Thereafter, the procedure is administered by the court through examination hearings, classification of creditors and voting regarding the financial and operative restructuring plan. Assuming the plan has been accepted by the relevant threshold of creditors, the court will issue the resolution on acceptance of the restructuring plan and confirm the settlement of creditors' claims through the restructuring.

Who can initiate such proceedings?

Restructuring proceedings in RS may be initiated either by the debtor or the creditor, provided the respective debtor consents to the creditor's proposal to initiate the proceedings.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

The condition for initiating a bankruptcy proceeding is the debtor's inability to make payments, i.e. if the debtor is unable to meet its accrued and outstanding monetary liabilities for a period of 30 days (FBiH) or 60 days (RS). Furthermore, in RS it is deemed that the debtor is unable to make payments if the debtor's account has been blocked for 60 days continuously.

In addition, a bankruptcy proceeding may also be commenced due to a debtor's threatened inability to make payments. However, in this case only the debtor may file a petition to initiate bankruptcy proceedings.

Is there possibility of restructuring of debtor within bankruptcy proceeding?

Yes, but as an exception to the general rule, based on which the bankruptcy estate is liquidated and distributed, it is possible to restructure a debtor within bankruptcy proceedings in both FBiH and RS by adopting a reorganization plan.

How is responsibility of directors regulated at the time of distress of the company?

In general, a director is always required to act in accordance with the company's best interests and in case a director violates this obligation, the company is entitled to sue the director for damages. In FBiH, fines ranging from BAM 1,500 to 3,000 (approx. EUR 767 to 1534) may be imposed on directors if a director of an illiquid company makes any payments other than those necessary for the ordinary course of business.

Which actions are mandatory for directors in case of distress of a company?

A director is obliged to take all necessary measures to ensure its liquidity and to manage assets and liabilities of the company so that it can perform all its due obligations. Please note that the mentioned measures and actions are explicitly regulated only in FBiH, and not in RS.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

In FBiH, a fine ranging from BAM 500 to 1,700 (approx. EUR 250 to 870) may be imposed on a director if he/she fails to submit a proposal for initiation of the bankruptcy proceedings within 30 days of the insolvency occurring. Similarly, in RS fines range from BAM 10,000 to 20,000 (approx. EUR 5113 to 10226) if the company, i.e. the body authorized to represent the company does not submit a proposal for opening bankruptcy proceedings within 60 days from the day insolvency occurred.

Any other point which is relevant for director's positions in case of distress of a company?

N/A

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

Giving priority to repayment of shareholder loans may trigger liability of the shareholder as the controlling entity if it can be proven that such conduct is damaging to the company or indirectly to its other creditors.

How are shareholder loans treated in bankruptcy proceedings?

Shareholder loans are considered as capital replacements if such a loan is granted at a time of crisis, instead of procuring fresh capital.

Such loans have the lowest priority in settlement since they are treated as capital contribution. Which loan would qualify as shareholder loan replacing capital also depends on the specific circumstances under which such a loan was granted.

Bulgaria

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

There are no special out-of-court restructuring regulations for financial debts in Bulgaria. The only available general instrument could be the civil mediation for the settlement of all kinds of disputes. However, we are not aware of case law where banks and borrowers have ever used the opportunity to appoint a mediator. Hence, out-of-court restructuring is a result of negotiations and agreement between the parties.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

Changes in the security documents and their perfection (registration) are required in case of assignment (cession), substitution in debt or novation of the restructured debt. In cases of standstill, prolongations, changes in the interest rates or waivers, there is no need for amendment of the security package or new perfection requirements.

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

Clawback periods are regulated by the civil, insolvency and tax law.

Under the civil law, transactions that valuate or avoid mandatory law provisions are not in good faith, including contracts for non-existent inheritance, are void.

Further, contracts which are concluded by mistake, fraud, threat or under extreme financial need and obviously unfavourable conditions can be challenged within one to three years, depending on the specific case. A creditor may challenge a transaction between the debtor and third party in case this transaction has damaged the creditor and debtor, and the third party acted in bad faith.

In case of bankruptcy of the debtor, there are clawback periods which are applicable for transactions and actions signed or undertaken within certain periods prior to filing the bankruptcy application. For the period prior to filing the bankruptcy application, such actions and transactions are payment of debt, establishment of securities, donations, transaction under extremely unfavourable conditions. For financial transactions, the most relevant periods are:

- six months for matured payments made by the debtor to the creditors;
- one year for new securities granted by the debtor;
- two years for transactions with parties related to the debtor.

Under the tax law, the tax authorities may challenge transactions and actions performed after the tax obligations have been established. Such transactions and actions are donations, transaction under extreme unfavourable conditions, contributions in-kind, transactions or actions made to damage the tax authority.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, since 2017, initiating a stabilisation court procedure (*процедура по стабилизация*) has been possible.

Please list conditions for such proceedings and please give short explanation of such proceeding?

For stabilisation proceedings to be commenced the following conditions need to be met:

- imminent threat for illiquidity of the debtor (*непосредствена опасност от неплатежеспособност*);

- the debtor is not subject to pending bankruptcy procedure;
- the debtor's liabilities towards related parties may not be more than 20% of the overall debt; and
- financial statements for the last three years must be disclosed in the commercial register in accordance with the statutory requirements.

Who can initiate such proceedings?

The stabilisation procedure may only be initiated by the debtor.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

The conditions for filing of bankruptcy application are:

- the inability of the debtor to pay its due debt (*неплатежеспособност*) and/or
- its over-indebtedness (*свърхзадлъжнялост*).

Is there possibility of restructuring of debtor within bankruptcy proceeding?

There are two possibilities for restructuring during bankruptcy proceedings:

- by filing of restructuring plan, which has to be approved by the court; or
- through out-of-court agreement with all creditors who have admitted receivables in the bankruptcy proceeding. This agreement must be approved by a court decision which terminates the bankruptcy proceeding.

How is responsibility of directors regulated at the time of distress of the company?

The responsibility of the directors towards third parties is regulated in case of insolvency by civil and criminal laws. The obligation of the directors is to file the application for bankruptcy on time (see below).

The managers are further liable towards the company for the damages caused to the company by mismanagement. There is also a criminal liability for mismanagement.

Which actions are mandatory for directors in case of distress of a company?

The legal representatives of the debtor (the registered directors) are obliged to file for bankruptcy within 30 days of the bankruptcy event (inability to pay or/and over-indebtedness).

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

If the directors fail to file for bankruptcy, they are jointly liable to the creditors for the damages caused by the delayed filing. The directors are also criminally liable if they do not file for bankruptcy within 30 days as of payment cessation. The penalty is imprisonment of up to three years or a fine of up to BGN 5,000 (EUR 2,556).

Any other point which is relevant for director's positions in case of distress of a company?

In order to avoid personal liability, the directors must organise a process for having up-to-date information of the condition of the enterprise. Periodical valuations of the assets, proper cash management and engaging external consultants (auditors) are the usual instruments for mitigating the risk of personal liability of directors.

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

There is no special regulation of shareholder loans provided from the shareholders to the debtor for the period before filing bankruptcy. The case law has not yet developed different treatment of shareholder loans. Under capital maintenance rules, the debtor may not provide shareholder loans or securities for the acquisition of its shares by a third party. Such loans and securities are void.

How are shareholder loans treated in bankruptcy proceedings?

The shareholder loans are in last place in the privilege waterfall when distributing income from the bankruptcy property to the creditors. Further, the clawback period is longer for transactions with and payment to related parties, including shareholder loans. In the creditors meeting, the votes of related creditors and the votes of creditors who have acquired receivables from related parties in the past 3 years are not counted.

Croatia

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

Out-of-court restructuring of financial obligations is not governed by any special law or regulation in Croatia, it occurs as a result of negotiations and agreement between the parties.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

Existing security documents should be amended in cases of material changes to pledged assets or secured liabilities (e.g. principal amount increase, interest rates, prolongation of maturity date). In some cases, change of either debtor or creditor may require the execution of additional documents for security or even amending the existing security documents, however each case should be checked on an individual basis.

It is common that parties agree on amending existing security documents, even though amendments are not strictly required by the law, in order to reflect all changes made in their relationship and maintain corporate hygiene and clear positions in the security documents.

Amendments of security documents should be registered with the relevant security registry (Land Registry, FINA Registry etc.); however, depending on the type of the security registry and depending on type of the amendments, registration may not always be required. Each case should be checked on an individual basis.

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

In general, the action of a debtor resulting in a lack of funds to fulfil a creditor's claim may be challenged by such creditor:

- within a year from the moment of the respective action, if the debtor received a consideration for such an action; or
- within three years from the moment of the respective action, if no consideration was received by the debtor for such an action.

Only a creditor whose claim is due and payable (regardless of the moment when it became due and payable) and whose claim cannot be fulfilled by a debtor because of its actions, may challenge a debtor's actions.

In addition to the general clawback regime, a special regime is envisaged within the bankruptcy proceedings making it possible to challenge actions that damaged certain creditors or put certain creditors in a better position. Bankruptcy proceedings clawback periods are determined going back to the moment the motion to initiate bankruptcy proceedings was filed. Time periods vary depending on the specific situation and range from:

- one month for actions providing one single creditor with security or debt settlement to which it has no entitlement,
- two to three months for actions providing one single creditor with security or debt settlement to which it has no entitlement if the debtor was at that time unable to fulfill its existing and due obligations or the creditor knew that such an action would damage other creditors;

- three months for actions providing one single creditor with a security or debt settlement in accordance with its entitlement provided the debtor was insolvent at the time the action was taken and the creditor knew about it;
- three months for actions directly damaging other creditors if the debtor was unable to pay its debts at the time of the action and the other party knew about it;
- ten years for actions taken with the intention of damaging other creditors if the other contracting party was aware that the debtor intended the damage.

Any actions of a debtor taken after a motion to initiate bankruptcy proceedings have been filed but before the bankruptcy proceedings have been formally opened can be challenged under certain conditions.

The debtor's actions may be challenged within bankruptcy proceedings either by a bankruptcy administrator within a year and a half from the moment the bankruptcy proceedings commenced, or by bankruptcy creditors if the bankruptcy administrator did not pursue the challenge and within three months of the moment the bankruptcy administrator's deadline expired.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, pre-bankruptcy proceedings (*Predstečajni postupak*).

In addition, extraordinary administration proceedings (*Postupak izvanredne uprave*) is also worth mentioning, even though its applicability is limited to the restructuring of big joint-stock companies of systematic importance for Croatia.

Please list conditions for such proceedings and please give short explanation of such proceeding?

The court will commence pre-bankruptcy proceedings upon a debtor's proposal if it determines that debtor's ability to fulfil its due obligations is threatened (*Prijeteća nesposobnost za plaćanje*).

As for the commencement of extraordinary administration proceedings, either one of the following conditions must be met:

- the debtor's ability to fulfil its due obligations is threatened (*Prijeteća nesposobnost za plaćanje*); or
- the debtor is unable to fulfil its due obligations (*Nesposobnost za plaćanje*); or
- the debtor is over-indebted (*Prezaduženost*).

Unlike bankruptcy proceedings, the general purpose of which is to liquidate a debtor and all its assets to settle its debts, the main goal of pre-bankruptcy proceedings and extraordinary administration proceedings is to newly regulate the position of a debtor and its relationship with its creditors, whilst maintaining its business activities. Consequently, unless pre-bankruptcy proceedings or extraordinary administration proceedings fail, the expected result is the restructuring of a debtor and its debts.

Who can initiate such proceedings?

Both pre-bankruptcy proceedings, and extraordinary administration proceedings may be initiated by a debtor, or by a creditor, but only with the respective debtor's consent.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

Bankruptcy proceedings can be initiated either by a debtor, creditors or the Croatian Financial Agency. The court will commence bankruptcy proceedings if it determines that any one of the following conditions are met:

- the debtor's ability to fulfil its due obligations is threatened (*Prijetuća nesposobnost za plaćanje*), however only upon the debtor's proposal; or
- the debtor is unable to fulfil its due obligations (*Nesposobnost za plaćanje*); or
- the debtor is over-indebted (*Prezaduženost*).

Is there possibility of restructuring of debtor within bankruptcy proceeding?

Yes. Instead of liquidating all the assets of a debtor, which leads to its cessation, it is possible to restructure a debtor by adopting a bankruptcy plan (*Stečajni plan*).

How is responsibility of directors regulated at the time of distress of the company?

Illiquid companies must refrain from making any payments other than those necessary for its ordinary course of business and must not take actions which could result in damaging creditors or placing them in a disadvantaged position. In addition, from the moment illiquidity begins, each company is required to take financial restructuring measures to restore its liquidity.

Which actions are mandatory for directors in case of distress of a company?

In addition to what is stated above, directors of each company are required to initiate bankruptcy proceedings within 21 days of the conditions for its initiation being met.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

Failing to initiate bankruptcy proceedings when required is considered a criminal offence under Croatian law, and such a director may be fined or even imprisoned for a maximum of 2 years.

In addition, if a director fails to initiate bankruptcy proceeding before the given deadline, he or she will be personally liable for any damages caused to creditors by failing to fulfil his or her duty.

Furthermore, the directors may be fined up to HRK 50,000 (approx. EUR 6,600) for failing to comply with their responsibilities while the company is in distress, as described above, whereas the company itself may be fined up to HRK 1,000,000 (approx. EUR 132,000) for the same reason.

Any other point which is relevant for director's positions in case of distress of a company?

As a rule, each director must act with the due care and diligence of a prudent businessperson. Directors who breach this standard are jointly and severally liable to the company. In certain, rather exceptional, cases, a director may be liable to the shareholders and/or the company's creditors.

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

A loan granted by a shareholder while a company is in distress, instead of procuring fresh capital, is considered to be an equity substitute (*Zajam kojim se nadomješta temeljni kapital*). In order to protect the company's creditors, such loans are treated as equity and the company's most junior debt in case of bankruptcy proceedings. Certain exceptions to this rule exist.

How are shareholder loans treated in bankruptcy proceedings?

Shareholder loans, if given while a company is in distress, instead of procuring fresh capital are treated as the company's most junior debt in a bankruptcy

proceeding, therefore they may be settled only after settling all the company's other debts. Certain exceptions from this rule are allowed.

In addition to what is mentioned above regarding the clawback period, providing security for the repayment of a shareholder loan may be challenged in bankruptcy proceedings, under the assumption such a security was provided five years before the moment the bankruptcy proceedings were initiated. The same applies if a debtor guaranteed to pay its shareholder back, but only under the assumption such an action was taken less than a year before the bankruptcy proceedings was initiated.

Serbia

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

The parties may freely agree on the restructuring of financial obligations at their own discretion. However, there is also a Law on Consensual Financial Restructuring envisaging the ways and conditions for consensual financial restructuring of the obligations of companies and entrepreneurs in financial distress (i.e. illiquidity, over-indebtedness and similar). This type of financial restructuring is performed on a voluntary basis only and it assumes the mutual consent of debtors and interested creditors. The participation of at least two banks, as creditors, is necessary (unless the debtor is an entrepreneur (*preduzetnik*), when the involvement of one bank suffices). When participating in such a restructuring, the parties are often motivated by the fact that they might benefit from tax and other applicable incentives.

The financial restructuring procedure usually assumes a debt standstill period and the postponement of enforcement-related activities, whereas - if successful - it results in the parties entering into an agreement on financial restructuring.

An institutional mediator which mandatorily assists in this type of restructuring is the Serbian Chamber of Commerce.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

As the security package needs to reflect the underlying financial arrangement and especially to provide accurate details on secured obligation, the consensual financial restructuring regularly calls for changes in existing security documents and, accordingly, changes in the competent securities registries (e.g. pledge registry and the real estate cadastre).

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

Under the general rules on contracts and torts, each creditor may challenge the detrimental debtor's legal transaction, i.e. the transaction resulting in the debtor lacking sufficient assets to satisfy the due claims of the creditor. If onerous, the detrimental transaction may be challenged if the debtor and the third counterparty knew or could have known that the respective transaction was detrimental to the creditors. If the transaction was not onerous, it is presumed that the debtor was aware of the above and awareness of the third party is not needed. A clawback suit is to be filed within one year for an onerous transaction or within three years for non-onerous one.

Furthermore, clawback is also possible within the bankruptcy proceedings for transactions which are hindering equal settlement of the bankruptcy creditors or damaging or favouring certain creditors. Such transactions may be challenged until the day of the hearing on the main distribution of the bankruptcy estate. Bankruptcy proceedings clawback periods are determined going back to the moment the motion to initiate bankruptcy proceedings was submitted or such proceedings commenced, and each deadline varies depending on the exact situation from:

- 6 months for a transaction resulting in a regular settlement/security to a creditor, if the debtor was insolvent at the time of the transaction and the creditor knew or must have known about it, or 12 months for transactions resulting in a settlement/security the creditor was not ordinarily entitled to seek; to
- 5 years for transaction/activity intentionally detrimental to the creditors if the debtor's counterparty knew of the intent of such debtor;
- The security for a loan or (or loan-alike arrangement) provided by the bankruptcy debtor to the related party (except to one engaged in lending as its regular business activity) will not be legally effective in bankruptcy

proceedings, if provided at the time when the bankruptcy debtor was permanently insolvent or within one year before the bankruptcy procedure opened. Moreover, if the bankruptcy debtor repaid a loan to its related party (which is not regularly engaged in lending operations) within the last year before opening of the bankruptcy, such repayment would be deemed as intentional damage to creditors, which is subject to challenge;

- In addition, the secured claims acquired through enforcement or provision of security instruments within sixty days before the bankruptcy proceedings are opened will cease to be valid (whereas the respective security would be deleted from the public registries pursuant to the decision of the bankruptcy judge).

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, pre-bankruptcy proceedings (*prethodni stečajni postupak*).

Please list conditions for such proceedings and please give short explanation of such proceeding?

The pre-bankruptcy proceedings are initiated to determine the reasons for opening the bankruptcy proceedings and last up to 30 days (as of filing the petition for initiating the bankruptcy proceedings). It may encompass various security and temporary measures (e.g. prohibition of payments from the accounts of the bankruptcy debtor, prohibition of disposal of assets of the bankruptcy debtor, etc).

Who can initiate such proceedings?

Once the petition for initiating the bankruptcy proceedings is filed by the creditor, the debtor or the liquidator, the bankruptcy judge decides on whether to initiate pre-bankruptcy proceedings.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes, through the pre-prepared plan of reorganization.

What are the conditions for initiation of bankruptcy proceeding?

Bankruptcy proceedings may be opened on the following grounds for bankruptcy:

- permanent insolvency (*trajniya nesposobnost plaćanja*), i.e. the inability to pay the debt within 45 days as of due date or non-performance of any payments for 30 consecutive days;
- pending insolvency, i.e. when the bankruptcy debtor makes it apparent that it will not be able to pay its debts as they become due;
- over-indebtedness, i.e. the liabilities of the bankruptcy debtor exceed its assets;

Is there possibility of restructuring of debtor within bankruptcy proceeding?

Yes, the restructuring of a debtor may be achieved in bankruptcy proceedings as well under the reorganization plan - by redefining relations between the debtor and the creditor, through corporate changes of the debtor or in another manner provided for in the plan.

How is responsibility of directors regulated at the time of distress of the company?

Pursuant to the companies act and charter documents of a company, the director represents and manages the company and, in general, carries out all activities that are not vested in the shareholders meeting or the supervisory board of the company. Amongst other duties, he/she is obliged to inform the shareholders meeting about all facts relevant to the operation of the company, including extraordinary circumstances that may have a substantive effect on the business

Which actions are mandatory for directors in

case of distress of a company?

or standing of the company. The director is at all times obliged to act with due care and diligence on behalf of the company and in its best interests.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

The director is responsible to the company for any breach of duties or misuse/excess of authorizations. A court claim for breach of director's duties may be filed by a company or by a shareholder(s) (in their name but on behalf of the company) holding a minimum 5% of the share capital. Any shareholder may also file a claim for damage it suffered as a result of breach of director's duties.

Any other point which is relevant for director's positions in case of distress of a company?

That being said, the general liabilities of directors remain unchanged while the company is in distress. However, as there are restrictions in payments toward the shareholders in case of negative equity of the company (e.g. as referred to below), the director is directly liable for compliance with this rule.

There is no obligation for directors to file for bankruptcy. On another note, the directors may be criminally liable for causing a company's bankruptcy (e.g. by irrational expenses, undertaking disproportional obligations, etc.), causing a false bankruptcy (aiming for tax evasion) or damaging the creditors. The penalties vary depending on the crime and may result in, for example, up to five-years' imprisonment for causing bankruptcy or even up to ten-years' imprisonment for causing false bankruptcy resulting in serious consequences for the creditors.

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

Repayment of shareholder loans is at all times subject to the following restrictions:

- a shareholder loan must not be repaid to shareholders if the net assets of the company are lower than (or, as a result of such repayments, would fall below) the sum of: (i) the amount of the company's paid-up share capital and (ii) the company's statutory reserves (all per the latest annual financial statements);
- the aggregate amount of payments a company may make to its shareholders in any given financial year may not exceed: (i) the sum of the company's profit for the financial year, retained earnings from prior time periods and the amount of any reserves intended for distribution to shareholders, decreased by: (ii) the sum of any uncovered losses from prior time periods and the amount of the company's statutory reserves.

If a shareholder knew or must have known that it acted contrary to the above restrictions, the respective payment would have to be returned to the company, at the company's request (time-barred five years as of respective payment).

When it comes to the bankruptcy proceedings, the priority of bankruptcy claims to satisfaction varies. Namely, all unsecured claims under loans granted to the bankruptcy debtor by its related parties (not professionally involved in lending business activity), that arose two years before the opening of bankruptcy proceedings, are settled from the bankruptcy estate with the least priority, i.e. only after settlement of all expenses from bankruptcy proceedings, salaries of the employees of the bankruptcy debtor and their pension and disability insurance, public revenue claims and claims of other bankruptcy creditors.

How are shareholder loans treated in bankruptcy proceedings?

Slovakia

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

Out-of-court restructuring of financial obligations is not governed by a special law, it can be the result of negotiations and agreement between the parties. However, it is only possible if the debtor is in danger of bankruptcy, but not in bankruptcy.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

An out-of-court restructuring of financial obligations may require changes in existing security documents, if changes occurred in respect of the pledge itself or secured liabilities (e.g. principal amount increase).

A court restructuring of financial obligations does not require changes in existing security documents. The registration of changes in securities registries is required, but these are registered based on the restructuring plan approved by the court.

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

In Slovakia, the creditor has the right to challenge legal acts and transactions of the debtor within a clawback period of 1 year, i.e. the right to challenge the debtor's legal acts expires if it does not apply to the liable person or in court within one year of declaring bankruptcy.

It is possible to challenge the following debtor's legal acts:

- i) a legal act without proportionate consideration performed in the 1 year preceding the commencement of the bankruptcy proceedings; in case of a legal act made in favour of a person related to the debtor, it is also possible to challenge a legal act taken during the 3 years prior to the commencement of the bankruptcy proceedings;
- ii) legal acts favoured one of the debtor's creditors performed in the 1 year preceding the commencement of the bankruptcy proceedings; In case of a legal act made in favour of a person related to the debtor, it is also possible to challenge a legal act taken in the 3 years prior to the commencement of the bankruptcy proceedings;
- iii) legal acts by which the debtor has curtailed his creditors performed in the 5 years preceding the commencement of the bankruptcy proceedings.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, there are court-driven restructuring proceedings (*reštrukturalizácia*).

Please list conditions for such proceedings and please give short explanation of such proceeding?

There are two main prerequisites which need to be cumulatively fulfilled to open court-driven restructuring proceedings:

- bankruptcy or danger of bankruptcy of the debtor (*úpadok alebo hrozba úpadku*); and
- restructuring plan (*reštrukturalizačný plán*) drawn up by an administrator in which the administrator recommends restructuring.

Restructuring proceedings are a debtor-in-possession procedure, aimed at maintaining the business activities of the debtor by means of a restructuring plan agreed with a majority of creditors. Unlike bankruptcy proceedings, the general purpose of which is to liquidate the debtor by selling his assets and collectively

satisfying creditors' claims in the restructuring proceeding, the main goal of restructuring proceedings is proportional satisfaction of receivables in a manner agreed in the restructuring plan.

As a result, the debtor will not cease to exist at the end of the restructuring proceedings, i.e. after fulfilment of the restructuring plan the debtor may continue his business without debts.

Who can initiate such proceedings?

The restructuring proceedings can only be initiated by a debtor. It can also be initiated by a creditor provided the debtor has given its consent.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

Both debtor and creditors may initiate the bankruptcy proceedings, however bankruptcy proceedings may only be commenced if the following conditions are met:

- insolvency (debtor is not able to meet at least two payment obligations towards more than one creditor 30 days after respective maturity dates), or over-indebtedness of the debtor (the debtor has more than one creditor and the amount of obligations exceeds the amount of assets (negative equity), and
- the debtor's assets are sufficient to pay the costs of the bankruptcy proceedings.

Is there possibility of restructuring of debtor within bankruptcy proceeding?

The general purpose of bankruptcy proceedings is to liquidate the debtor by selling his assets and collectively satisfying creditors' claims. After the bankruptcy, the debtor will not have any assets to carry out further business activities and will be liquidated.

It is possible to start restructuring proceedings during a bankruptcy proceeding, i.e. even after the declaration of bankruptcy it is possible to file a proposal for debtor's restructuring (if the conditions for the restructuring proceeding are met).

How is responsibility of directors regulated at the time of distress of the company?

The executive director is required to monitor the company's current and future financial status, assets and liabilities so as to be able to take timely measures to avert a bankruptcy threat. The executive director is required to undertake all measures a reasonable and diligent person in a similar position would undertake to overcome the crisis.

Which actions are mandatory for directors in case of distress of a company?

An executive director of an over-indebted company is required to file a proposal for bankruptcy proceedings within 30 days of learning about the company's over-indebtedness or, while maintaining professional care, could have learned about the over-indebtedness.

There is no obligation, only the possibility, to file a bankruptcy initiation proposal if the debtor is insolvent, i.e. if he is not able to meet at least two payment obligations towards more than one creditor within 30 days after respective maturity dates.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

In case the executive director breaches the obligation to initiate bankruptcy, he/she is required to pay to the company a contractual penalty (*zmluvná pokuta*) amounting to EUR 12,500. This contractual penalty cannot be waived or circumvented via internal documents. If the petition for bankruptcy was not filed in time, the executive director will be liable towards the creditors of the company for the damage and only limited possibilities for exculpation of such an executive director are envisaged.

Any other point which is relevant for director's positions in case of distress of a company?

The executive director has special liabilities in case the company is in crisis. Pursuant to Slovak law, a company is in crisis if:

- it is in bankruptcy, i.e. insolvent or overindebted; or
- it is threatened by bankruptcy, i.e. the ratio between its equity capital and its debts is below 8:100.

If the executive director determines or, considering all circumstances, should have determined that the company is in crisis, he/she is required to take all measures that a reasonable and diligent person in a similar position would take to overcome the crisis.

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

If the company is in crisis (before formal initiation of bankruptcy proceeding), it is not entitled to repay the loan (in a very broad sense defined by law) granted to the company by a certain group of persons, in particular direct or indirect shareholders, executive directors, proxies, supervisory board members, company management, silent partners and related persons.

Should such loan be repaid despite the abovementioned prohibition, the executive director will be personally liable to the:

- company to return the repaid amount; and
- company's creditors for damage caused.

How are shareholder loans treated in bankruptcy proceedings?

Receivables of the shareholders who provided the company with the loan will be paid last, i.e. the claims of all other creditors take precedence over shareholder loans.

Slovenia

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

There is no special law or regulation governing out-of-court restructuring of financial obligations. There are only informal guidelines.

After the start of the financial crisis in 2008 there was a period when a number of financial restructurings took place in Slovenia, and based on that experience and know-how the Managers' Association of Slovenia adopted Principles on Restructuring of Corporate Debt in 2011, and the Bank Association, in cooperation with the Bank of Slovenia and the Ministry of Finance, prepared the Slovenian Principles for the Financial Restructuring of Corporate Debt in 2014.

Out-of-court financial restructuring agreement is purely a result of negotiations and agreement between the parties.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

Whether changes to existing security documents and registrations in securities registries are required depends largely on:

- the specifics of the financial restructuring (e.g. changes to security documents are usually necessary if maturity date is prolonged and/or a higher interest rate is agreed);
- type of existing security; and
- the form of security document (regular form or directly enforceable notarial deed).

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

A contract executed by a debtor may be challenged if it was executed 12 months before the initiation of bankruptcy proceedings if:

- (i) the net value of company's assets was reduced, and other creditors receive less, or (ii) the creditor received more beneficial conditions compared to other creditors for the repayment of its claim (i.e. security);
- but only (iii) if the creditor knew or should have known that the company was insolvent at the time such contract was executed.

The condition under (i) and (ii) is deemed to be fulfilled, if (a) a creditor fulfilled its obligation prior to company's obligation, or (b) obtained a right to separate satisfaction (i.e. security) for a claim that existed prior to executing such a contract, unless a creditor proves otherwise.

The condition under (iii) is deemed to be fulfilled, if (a) creditor received payment prior to its maturity or in unusual way or (b) the contract was executed within 3 months before bankruptcy was initiated.

The claw back period is longer (i.e. 3 years) when the contract is executed without a debtor receiving any counter-fulfilment or one of a low value, even if the creditor did not know or should have known that the company was insolvent at the time such contract was executed.

The deadlines for clawback action by a creditor against debtors outside of a bankruptcy proceeding are the same, i.e. one year and in case of a debtor receiving no counter-fulfilment or such of a low value, three years, since the concluded agreement.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Court driven proceedings for companies in distress are:

- Court sponsored financial restructuring proceeding (*postopek preventivnega prestrukturiranja*);
- Compulsory settlement proceeding (*postopek prisilne poravnave*); and

- Simplified compulsory settlement proceeding (*poenostavljena prisilna poravnava*) intended for micro-companies and individual entrepreneurs.

Please list conditions for such proceedings and please give short explanation of such proceeding?

Court sponsored financial restructuring proceedings are available only to debtors who are not insolvent but are likely to become insolvent within one year. These proceedings are driven by the company itself, whereas a court supervision is limited only to checking whether formal conditions have been satisfied. The proceeding is intended for restructuring financial claims (secured and unsecured) only, and if the proceeding is successful it will result in a restructuring agreement containing various restructuring measures.

Compulsory settlement proceedings are proceedings available to already insolvent companies and the respective proceeding is driven by an insolvency administrator with oversight from a court. Within these proceedings both financial and operational restructuring may be done.

Simplified compulsory settlement proceedings are basic compulsory settlement proceedings, which allow companies classified as micro and certain sole entrepreneurs to restructure at a lesser cost. In a simplified compulsory settlement proceeding, no administrator is appointed, claims are not registered by creditors, there is no creditors' committee and there is only a limited involvement of a court.

Who can initiate such proceedings?

Compulsory settlement proceedings and simplified compulsory settlement proceedings may be initiated by a debtor. In certain cases, compulsory settlement proceedings may be proposed by creditors holding more than 20% of the value of all claims against the debtor.

Court sponsored financial restructuring proceeding may only be initiated by a debtor.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

Bankruptcy proceedings are initiated against insolvent debtors. Under the Slovenian Insolvency Code (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*) the company is considered insolvent for the following reasons:

- long-term illiquidity (*trajnejša nelikvidnost*), i.e. the company is not able to pay its obligations due over a longer period; and/or
- the company is over-indebted (*dolgoročna plačilna nesposobnost*).

Is there possibility of restructuring of debtor within bankruptcy proceeding?

No. When the court issues a decision on the start of a bankruptcy proceeding, restructuring is no longer possible. If certain parts of business are still viable, they can be sold in bankruptcy proceedings to investors and preserved.

If the bankruptcy proceeding is only initiated, the debtor can propose postponing the court decision on the start of the proceedings for 2 months to implement a financial restructuring plan which will eliminate its insolvency (e.g. by proposing a compulsory settlement or a court sponsored financial restructuring proceeding).

How is responsibility of directors regulated at the time of distress of the company?

Pursuant to the rules of the Slovenian Insolvency Code, management board members have a duty to:

- follow the financial business rules when managing the company;
- strive to ensure that the company is financially sound at all times (able to pay its debt in the short- and long-term);
- manage credit, market, operational and liquidity risks with due care; and
- carry out the duties and tasks defined by Slovenian Insolvency Code when a company becomes insolvent.

Directors of a company are jointly and severally liable to the company for any damage caused pursuant to the rules of the Slovenian Insolvency Code, unless they can prove they acted with due care and in line with the business and financial rules and rules of management.

Which actions are mandatory for directors in case of distress of a company?

When a company becomes insolvent, there are certain duties defined by the Slovenian Insolvency Code that need to be followed such as:

- equal treatment of creditors;
- no new obligations should be taken on by the company or payments made, except for those that are necessary for regular business operations;
- submitting a report on financial restructuring measures to the supervisory board within 1 month of the company becoming insolvent (if there is no supervisory board, the obligations are the same, with exception of preparing the report, meaning that the management still needs to analyse whether successful restructuring is possible).
- Filing for bankruptcy within 3 business days after the 1 month deadline for submitting a report on financial restructuring expires, if the management is of the view that the probability of a successful financial restructuring is less than 50% or the shareholders do not approve the capital injection (the deadline starts running when the shareholder's meeting is concluded) or when approved, all the shares have not been registered or paid on time (the deadline starts running when the term for registration and payment of shares expires).

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

Members of the management board are jointly and severally liable to the company for damages arising from a breach of their obligations, unless they prove that they have acted with the diligence of a conscientious and fair manager.

Furthermore, members of the management board are jointly and severally liable to creditors whose claims are not fully repaid in the bankruptcy proceeding if they failed to comply with their duties (e.g. they failed to prepare a financial restructuring plan or file for a bankruptcy proceeding within the prescribed time period).

Management board members of a company can be criminally liable for the criminal act of "causing damage to the creditors", but only if they were aware that the company was insolvent and were acting with direct intent when causing damage to creditors by paying certain claims of other creditors or ensuring a beneficial position to certain creditors.

Any other point which is relevant for director's positions in case of distress of a company?

Generally, members of the management board have a duty to act for the benefit of the company with the diligence of a conscientious and fair-minded businessman or -woman. They are jointly and severally liable to the company for any damage caused pursuant to the rules of Slovenian Companies Act, unless they can prove they acted with due care. Damage claims against the management board members can be exercised by creditors in case the company cannot pay their claims and by a bankruptcy administrator for the benefit of creditors in bankruptcy proceedings.

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

Shareholder loans given during financial distress are generally not an issue before the formal initiation of an insolvency proceeding.

How are shareholder loans treated in bankruptcy proceedings?

Shareholder loans (or economic equivalents) in a limited liability company (single shareholder – no threshold) or joint stock company (single shareholder or shareholder acting in concert holding more than 25% of share capital) at the time of financial distress of the respective company are subject to equitable subordination (resulting in such loans being treated as the company's equity) in the event of insolvency (bankruptcy or compulsory settlement).

Turkey

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

Yes, restructuring the debtor's financial obligations owed to financial institutions is subject to the Regulation on the Restructuring of the Obligations Owed to the Financial Sector ("**Regulation**"). Pursuant to Article 3 of the Regulation; financial obligations towards the following entities would be deemed to fall under the scope of the Regulation:

- (i) Deposit and participation banks and development and investment banks;
- (ii) Leasing, factoring, and financing companies residing in Turkey;
- (iii) Non-resident banks or financial institutions directly exceeded loans to the debtors,
- (iv) Multilateral banks or institutions directly investing in Turkey;
- (v) Special-purpose companies established by creditors to recover their loans and investment funds launched in accordance with the Capital Markets Law No. 6362 ("**CPL**").

Moreover, the financial obligations of all companies residing in Turkey benefit from the restructuring methods stipulated under the Regulation, unless such companies are subject to the following legislation:

- (i) Insurance Law No. 5684;
- (ii) Law on Leasing, Factoring and Financing Companies No. 6361;
- (iii) Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions No. 6493; and
- (iv) Article 35 (including investment institutions, portfolio management companies) of the CPL except for investment trusts.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

If a consortium of credit institutions ("**CCI**") - which would be constituted of credit institutions, foreign credit institutions, international institutions and other creditors (subject to acceptance of the CCI) - requires the company's shareholders and their family members to provide security to the benefit of the members of the CCI on a pro rata basis, the existing securities provided to the credit institutions would be terminated (Clause VII (7) of the Framework Agreement the form of which is prepared by the Turkish Association of Banks in accordance with the Regulation and published ("**Framework Agreement**"). Otherwise, the principle adopted by the Framework Agreement is to preserve the existing security (Clause VII (6) of the Framework Agreement).

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

Turkish Enforcement and Bankruptcy Law No. 2004 ("**EBL**") enables creditors of a debtor, who is either incapable of paying its debts or insolvent, to challenge the transactions of the debtor and request the competent court to render the transactions in question void.

Accordingly, the transactions undertaken within 2 years before debtor's incapability to pay its debts or its insolvency, for which the debtor received no consideration, may be declared void by the competent court upon creditors' request.

Furthermore, unless the beneficiary did not know about the debtor's distress, the following transactions are considered void if they were concluded within 1 year before the debtor's inability to pay its debts or its insolvency:

- providing security for an existing obligation (unless the relevant commitment to provide security has been made beforehand);

- payments made via a method other than payment of money or other accustomed methods;
- early payments made for debts which were not due and payable; and
- affixing an addendum to the title deed to secure rights in personam.

Finally, fraudulent transactions may be rendered void if it is established that the debtor was acting to the detriment of its creditors when executing the relevant transaction.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, the concordat (*konkordato*) and restructuring by settlement (*uzlaşma* yoluyla *yeniden yapılandırma*) are also regulated under the EBL for companies in distress.

Please list conditions for such proceedings and please give short explanation of such proceeding?

The concordat is a restructuring method for any debtor who is unable or will likely become unable to pay its debts as they become due and payable. In this regard, the concordat proceeding provides such a debtor with an opportunity to pay its debts or avoid a possible bankruptcy by an extension term or abatement.

Please kindly note that Turkish law also regulates the possibility of concordat after bankruptcy and concordat by way of abandonment of assets; however, this guide focuses on ordinary concordat.

Restructuring by settlement, on the other hand, is a restructuring method reserved for stock companies and cooperatives that are unable to pay their debts as they become due and payable or the receivables of which are insufficient to cover its debts or in case of any indication that the relevant company may be considered to be in any of these conditions.

Accordingly, the relevant company should apply to a competent commercial court for the respective proceedings by filling a pre-negotiated restructuring plan, which is approved beforehand by a simple majority of creditors affected by the plan and whose receivables constitute at least 2/3 of the debts of the relevant company subject to restructuring.

Who can initiate such proceedings?

A concordat proceeding may be initiated either by the creditors or the debtors. With respect to restructuring by way of settlement, such proceedings can only be initiated by a debtor.

Is it possible to restructure financial obligations of the debtor in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

As a matter of general principle, bankruptcy proceedings may be initiated against a debtor by its creditor in case of non-performance of its financial obligations (either by way of ordinary proceedings or proceedings based on negotiable instruments). However, there are also specific conditions, which need to be met, as listed below:

- in case a stock company has more liabilities than assets;
- in case half of the assets of a debtor have been confiscated hence the remaining assets are insufficient to cover other debts;
- in case the inheritance estate is insufficient to cover outstanding debts; and
- in case a debtor requests its bankruptcy by notifying the court of its incapability to pay its debts.

Is there possibility of restructuring of debtor within bankruptcy proceeding?

A debtor can apply for concordat after bankruptcy. However, it is not possible to apply for a restructuring process under the Framework Agreement (Clause V (b)).

How is responsibility of directors regulated at the time of distress of the company?

In case the company is in financial difficulties, the directors are required to take the necessary precautions in order to secure the company's sustainability and the assets of the companies' creditors.

Which actions are mandatory for directors in case of distress of a company?

Turkish law envisages 2 different phases for directors:

- If 1/2 of the total and legally-spared capital of the company is uncovered according to the latest annual balance sheet, the board of directors must convene the general assembly meeting immediately and present reformatory measures for the company aiming to cover the short term losses and secure the company's sustainability;
- If any indications of company's over-indebtedness are present, the board of directors must prepare an interim balance sheet of the active assets over the sustainability of the enterprise and their possible sale prices. In case the interim balance sheet demonstrates that the active assets of the company are not adequate to cover the debts of the creditors of the company, the board of directors must make a legal notice to a commercial court of first instance where the company is headquartered and requests the company's bankruptcy.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

Yes, in general, directors may be held liable towards the creditors of the relevant company and/or its shareholders in case of non-performance of their statutory duties. Further, failure by the directors to take necessary precautions would also trigger criminal liability.

In addition, if the executives (including directors), who are authorised to manage and represent the company, fail to request the bankruptcy of the company despite the relevant conditions being met, they may receive imprisonment of between 10 days to 3 months upon request of one of the company's creditors.

Any other point which is relevant for director's positions in case of distress of a company?

The board of directors are liable to take necessary actions to ensure the continuity of the company and its operations under the obligations of "duty of care" and "loyalty". Accordingly, directors should exercise all diligence to manage the relevant financial setbacks and secure the financial position of the company, and directors are expected to come up with reformatory solutions in line with the principle of "good faith" (e.g. crisis management plans).

How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

As shareholders of stock companies are considered to be third parties vis-a-vis the transactions they enter into with it, shareholder loans are not treated differently than an ordinary third-party loan, unless such shareholder loans are contractually or structurally subordinated to the credits of unaffiliated third parties.

How are shareholder loans treated in bankruptcy proceedings?

Please refer to the answer provided above.

Ukraine

Is the out-of-court restructuring of financial obligations governed by any special law or regulation in your jurisdiction or is it the result of negotiations and agreement between the parties?

Yes, Ukrainian Law on Financial Restructuring envisages out-of-court restructuring of financial obligations through financial restructuring proceedings (*фінансова реструктуризація*). The respective proceedings enable restructuring of companies' obligations towards banks and/or other financial institutions.

When does consensual financial restructuring require changes in existing security documents and changes in securities registries?

For financial restructuring, changes in existing security documents and securities registries may be required if set forth by the respective restructuring plan. In particular, the restructuring plan may introduce foreclosure procedures, amendments to security documents or waivers of certain securities by lenders.

If the restructuring plan foresees amendments to any security documents, the company and the respective creditor must execute the respective amendments within 10 business days after execution of the restructuring, and then file applications for introduction of changes in securities registers.

Are there any claw back periods which should be taken into consideration when agreeing on debt restructuring? What are conditions for triggering such claw back periods?

There are no clawback periods during financial restructuring procedure, however they are regulated within court driven bankruptcy proceedings and out-of-court rehabilitation procedure as a part of bankruptcy proceedings.

Under the Ukrainian Bankruptcy Code, agreements concluded by the company after initiation of bankruptcy proceedings or during a period of up to 3 years preceding initiation of the bankruptcy proceedings may be challenged by the bankruptcy trustee or creditors if such agreements caused damages to the company or creditors:

- if the company fulfilled its contractual obligations before the due date;
- if the company had undertaken obligations that caused the company's bankruptcy or made the performance of the company's obligations to other creditors impossible (fully or partially);
- if the company sold or acquired assets at prices, which were respectively lower or higher in comparison with market prices if at the moment of acceptance of an obligation or at the moment of its fulfilment the company's assets were (or became) insufficient for the satisfaction of creditors' claims;
- if the company had paid the creditor or had accepted the property against monetary claims on the day, when the total amount of creditors' claims exceeded the total value of the company's assets; and
- if the company had undertaken pledge obligations to secure monetary claims.

Agreements concluded may also be challenged during a period of up to 3 years preceding the initiation of bankruptcy proceedings:

- if the company disposed any assets free of charge, or undertook any disproportionate obligations as compared to the obligations of its counterparty, or waived its claims;
- between the company and an affiliate of the company;
- if the company gifted any of its assets.

Are there any court driven proceedings for companies in distress besides bankruptcy proceeding?

Yes, restructuring a company's obligations is also possible within an out-of-court rehabilitation procedure (*процедура санації боржника*) regulated by the Ukrainian Bankruptcy Code. Despite its name, the respective proceeding is partially court driven.

Please list conditions for such proceedings and please give short explanation of such proceeding?

To initiate the out-of-court rehabilitation procedure, the following conditions have to be met:

- the written consent of the company's shareholder(s) or an agency authorized to administer the company's assets;
- the written consent of the creditors whose total claims exceed 50 % of the company's claims payable according to the company's accounts and records;
- out-of-court rehabilitation plan agreed upon by all secured creditors and approved by the creditors' meeting.

The out-of-court rehabilitation (*процедура санації боржника*) is implemented according to the out-of-court rehabilitation plan prepared by the company and approved by the creditors. Following the approval of the out-of-court rehabilitation plan by the creditors, the company must, within 5 days, file the respective plan to the competent commercial court for an approval. The court is required either to approve or reject the proposed plan within 1 month. Once the rehabilitation plan is approved, it is mandatory for each creditor whose claims are included in it.

Who can initiate such proceedings?

Only the company.

Is it possible to restructure financial obligations of the company in such proceeding?

Yes.

What are the conditions for initiation of bankruptcy proceeding?

In accordance with the Bankruptcy Code, bankruptcy proceedings may be initiated either by a debtor or creditor. The two main conditions for initiating the proceedings are:

- the debtor cannot and does not fulfil its due monetary obligations (*грошові зобов'язання, строк виконання яких настає*);
- there is a threat of debtor's insolvency, i.e. fulfilling the debtor's obligation before one creditor triggers its inability to fulfil its obligations before other creditors.

Bankruptcy proceedings under the second condition may be initiated by the debtor only. The Bankruptcy Code prescribes that if the second condition is met, the debtor is obliged to file an application to initiate bankruptcy proceedings within a month. The debtor must provide the court with its balance sheet and documents confirming the existence of due monetary obligations.

Under the first condition the bankruptcy proceedings may be initiated either by the debtor or by the creditor (a group of creditors) and the requirements are as follows:

- existence of due monetary claims (*грошові вимоги, строк виконання яких настає*) against the company;
- the debtor's inability to fulfil its due monetary obligations (*грошові зобов'язання, строк виконання яких настає*);

- a claimant has presented evidence to the court confirming that the creditor's claims are undisputable, i.e. sufficient documentation confirming the existence of the debt and a statement that the debt and its amount are not challenged by the debtor;
- a claimant has presented to the court evidence confirming that the debtor is incapable of satisfying its overdue monetary claims beyond the bankruptcy proceedings.

Is there possibility of restructuring of company within bankruptcy proceeding?

Yes.

How is responsibility of directors regulated at the time of distress of the company? Which actions are mandatory for directors in case of distress of a company?

The company's directors must inform its shareholders upon any signs or threats of imminent bankruptcy. In addition, directors must convene a shareholders meeting within 60 days of the date on which the company's net assets decrease by more than 50% compared to the net assets at the end of the previous year.

If the satisfaction of claims of one or several creditors causes the company to become unable to perform its monetary obligations to other creditors (risk of bankruptcy), the company must file a bankruptcy application within 1 month following the occurrence of the risk of bankruptcy. The company's directors are responsible for filing such application.

Are there any sanctions for directors for not initiating bankruptcy or other court proceedings available to companies in distress?

Directors failing to fulfil the above requirements are jointly liable for the company's obligations towards its creditors.

In addition, directors and shareholders may be held criminally liable for destructive intervention (i.e. intentional actions for selfish motives that lead to company's insolvency) in a company's business or its management, which cause its bankruptcy. In addition, directors and shareholders may also be liable for the debtor's obligations before its creditors.

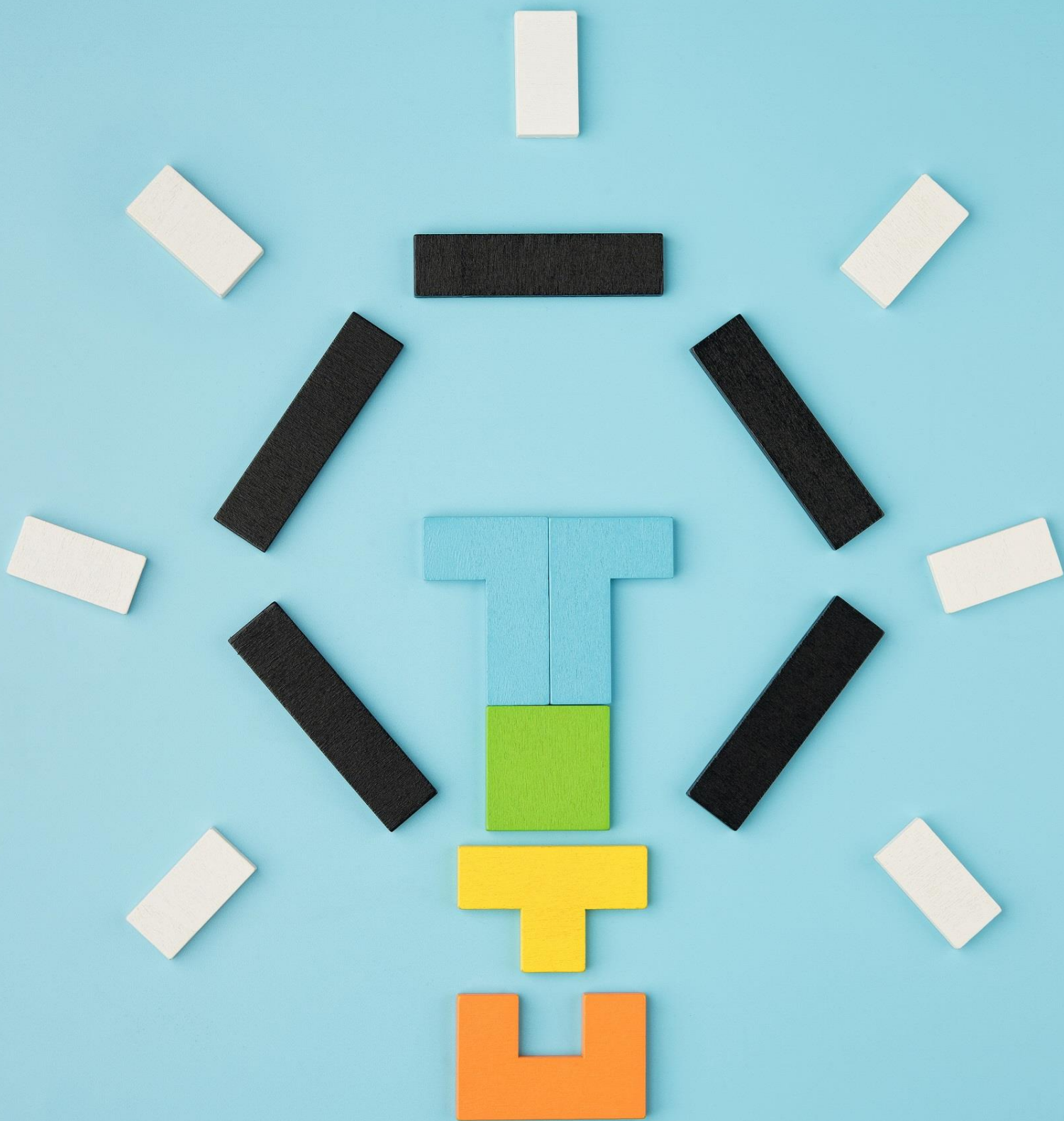
How are shareholder loans treated at the time of distress of a company (before formal initiation of bankruptcy proceeding)?

Shareholder loans are not subject to any special treatment and are considered as regular obligations of the company. Shareholders who have provided such loans are equal to other creditors participating in the restructuring.

How are shareholder loans treated in bankruptcy proceedings?

Shareholder loans are of lower priority in relation to claims of other creditors. Unsecured shareholder loans are ranked fourth in priority, together with claims of regular creditors (i.e., unsecured creditors, whose claims became due prior to initiation of bankruptcy proceedings).

However, under the Bankruptcy Code shareholder loans (and any security documents pertaining to such loans) are considered as interested party transactions, and therefore may face the risk of being declared invalid after initiation of bankruptcy proceedings within the clawback period as described under the third question above.



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