



Workshop on European Corporate and Household Insolvency International Monetary Fund

JVI, Vienna (Austria), May 9 – 11, 2017

Updated Agenda

May 9, 2017

7:00 pm *Welcome Reception*

Venue: Palmenhaus

Burggarten 1
1010 Wien
Austria

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Website: <http://www.palmenhaus.at/>

May 10, 2017 Day 1

8:50 – 9:00 am Registration and Welcome from JVI

9:00 – 9:15 am Opening remarks – Sean Hagan, General Counsel and Director
of the Legal Department, IMF

Introductory Session: Macro-economic importance of insolvency regimes and recent developments in European insolvency law

After a series of crises, the situation in many European countries is characterized by high levels of indebtedness in the private sector and high levels of non-performing loans (NPLs) burdening the financial sector. An effective insolvency framework, comprising personal and corporate insolvency, with enhanced possibilities for debt restructuring, is a key element of a comprehensive strategy to achieve the reduction in debt overhang and in the levels of NPLs. The session will provide the economic background for the European situation, followed by a description of recent insolvency reforms adopted or projected in European countries, and an overview of the Proposal

for a Directive on insolvency, restructuring and second chance, which represents a key development in the European Union. A preliminary discussion will introduce recent reforms, and challenges and opportunities experienced by European countries.

9:15 – 9:30 am *The situation in Europe: non-performing loans, over-indebtedness and the macro-critical impact of insolvency and debt restructuring regimes* – presentation by Hanni Schoelermann, Economist, IMF Europe Office

9:30 – 10:30 am *Recent experiences in insolvency and debt restructuring reforms in Europe* (15 min) – presentation by Jose Garrido, Senior Counsel, IMF Legal Department & P. Michael Veder, IMF Expert

Proposal of the European Commission on Restructuring, Second Chance, and Efficiency of Insolvency Procedures – presentation by Mr. Ondrej Vondracek, Legal Officer, European Commission (15 min)

Opening discussion: recent reforms and current challenges in European countries

10:30 – 11:00 am ***Group Photo and Coffee Break***

Session 1: Preventive Restructuring Frameworks in the Corporate Context

11:00 – 1:00 pm ***How to facilitate restructuring? Moderated by P. Michael Veder, IMF Expert***

There is wide consensus about the importance of taking timely actions before companies become hopelessly insolvent. Many policymakers are familiar with the *timing problem*, i.e. the delay in the commencement of insolvency cases. The recent EC Directive Proposal includes provisions for the establishment of early warning systems and places special importance on preventive procedures. The traditional separation of out-of-court debt restructuring and formal insolvency has been blurred with the introduction of hybrid procedures, with limited court intervention. The debate hinges upon what types of court intervention are required to support an effective restructuring. The discussion on the facilitation of restructuring will consider the benefits -and risks- of allowing the debtor to remain in possession of the business; how and when to use a mediator or insolvency practitioner; the stay of creditor actions (including the scope and length of stay, the conditions for renewal, and the requirements to lift of stay) and the potential effects of a restructuring procedure on executory contracts. The session will also consider the need for tax and regulatory incentives to promote restructuring.

1:00 pm – 2:00 pm ***Lunch (to be provided at JVI)***

2:00 pm – 3:45 pm ***The Role of Restructuring Plans*** – Moderated by Manfred Balz, IMF Expert

The restructuring plan is the key to the reorganization of viable businesses, both in preventive restructuring procedures and in formal reorganization procedures. The discussion will focus on the elements that plans should include, and, more specifically, on the disclosure of the plan to participants and the assessment of viability. The discussion will also consider the need to operate a classification of claims and the key legal question of the approval of the plan: the EC Directive Proposal recommends an approach based on a majority decision within each class, reinforced by a cross-class cramdown. The binding effects on creditor minorities rely on the confirmation by the court, provided that substantive and procedural safeguards are respected. In particular, the session will consider the role of the best interests of creditors' test and the absolute priority rule, and the corresponding valuation issues. Another important topic is the obstruction of shareholders to restructuring plans, particularly when the company is balance-sheet insolvent and the plan is based on a capital increase. Finally, the success of restructuring plans frequently depends on the availability of financial support: the protections for new and interim financing will be discussed.

3:45 pm – 4:00 pm ***Coffee Break***

4:00 pm – 5:30 pm ***Key Actors in the Insolvency Process*** – Moderated by Amira Rasekh, Counsel, IMF Legal Department

Insolvency reforms are particularly complex because of the interaction of multiple actors and stakeholders. This session will cover the role of the courts in insolvency and restructuring processes, including the need for specialization of the judiciary and adequate resources. Insolvency professionals are a crucial part of the institutional framework and perform multiple functions in the insolvency process: the supervision and regulation of these professionals, including their qualifications and selection, and their disciplinary regime, are aspects worthy of consideration. The analysis of the key actors in the insolvency process includes the creditors, in particular, financial creditors and public creditors. The behavior of financial creditors in insolvency is connected to their own status as regulated and supervised entities. Public creditors face a peculiar set of circumstances, in particular the special status of tax and social security claims and the risk of liability for public officials participating in the insolvency process. Last, but not least, the session will study the role of company directors in the insolvency process, and in the period immediately before insolvency (the “twilight zone”), with a special emphasis on the incentives and the risk of liability for directors' actions.

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7:00 – 9:00 pm **Reception and Official Dinner**

Venue: Restaurant Beim Novak

Richtergasse 12

1070 Wien

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May 11, 2017 Day 2

Session 2: Household Insolvency: A Second Chance for Over-Indebted Persons – Moderated by Jose Garrido, Senior Counsel, IMF Legal Department

9:00 – 10:30 am

Second chance is one of the most prominent topics in European insolvency policy. Although the concept has been used more in the context of the insolvency of individual entrepreneurs, its application to household insolvency is undisputable. The session will discuss measures to facilitate the discharge of debts for honest debtors, and their application to both consumers and entrepreneurs. The session will debate the limits on the discharge period for liquidation procedures and repayment schemes, the prevention of lengthy or unfair disqualification periods, and the question of the claims excluded from the discharge. Another important topic is the consolidation of personal and business debt in a single insolvency procedure, and the possibility of addressing individual debt and the debt of closely held companies by means of coordinated restructuring plans. The session will conclude with an analysis of the treatment of mortgages over primary residences (including mortgages denominated in foreign currency) in insolvency law; and the position of guarantors in the insolvency of individuals and small businesses.

10:30 – 10:45 am **Coffee Break**

Session 3: Monitoring the Efficiency of the Insolvency System through Data – Moderated by Juliet Johnson, Senior Counsel, IMF Legal Department

10:45 – 12:00 pm

Most insolvency reforms are designed without the support of empirical data. This session will examine how to develop mechanisms to monitor the efficiency of the insolvency system based on the collection of data. The discussion will revolve around the selection of key indicators, the design of reliable and consistent insolvency statistics, and the challenges in collecting data. There is progress in the compilation of

national insolvency statistics, judicial statistics, and even in the use of surveys to capture the use of restructuring and insolvency solution. However, it is possible to take a step forward and establish specific, tailor-made systems that can capture the relevant data to assess the efficiency of the insolvency system and assist in the design of legal reforms.

12:00 – 12:30 pm Summing Up & Closing Remarks – Jose Garrido