

Question Report			
INSOL Europe: Academic Forum Conference	Question	Asker Name	
1	What about statutory discharges or bail-ins for viable Covid-19 businesses? A clean slate? Maybe limited to public debt?	Stephan Madaus	
2	in more continental approach rather than to refer to implied partnership, we would rely on negotiations till a "standstill agreement" is signed, failure of which would result in "culpa in contrahendo" - any views on that ?	Michal Barlowski	
3	If there is a global deep down turn, should we move from value allocation to loss sharing and (don't quote me on that one) slightly away from APR. We can think about farmers where we need to keep the shareholder on board. E.g. a sector wide debt for equity regime: every 10% haircut could lead to a 5% shareholding position.	Rolef de Weijs	Thank you, Rolef. This is an important point. We are very open to solutions like this for the allocation of unavoidable COVID-19 revenue losses. Even outside pandemic conditions there will be some businesses for which this is the value-maximising solution.
4	do you give meaning to the relative majority that is willing to cooperate?	Reinout Vriesendorp	Cooperation duties would depend on substantive standards rather than majority requirements. Hence, as discussed on one slide, fairness criteria and issues of proportionality would determine whether a certain creditor is subject to a duty to cooperate and what the content of the duty is.
5	So many questions: To whom is the duty owed? Each individual creditor? or the Debtor? Who can enforce? To what end:- damages for economic loss? How is the supposed damage caused by a failed or delayed restructuring to be valued leading to damages, leaving aside Kirsten's scepticism regarding tort and economic loss. If damages are not the remedy a mandatory injunction to cooperate? Hardly...and have you considered the relevant laws of Fincos? In Europe NL, Lux and IRL. How do we decide whether the duty has been absolved?	Irene Lynch Fannon	these are excellent questions for which many thanks, Irene. to whom it is owed: depends on whether we went with a direct or indirect model. remedy for breach: excellent question, I think we have in mind compensation for loss associated with a scuppered restructuring. we have not yet discussed injunctions: I think the idea would be to promote cooperation through the threat of exposure to a compensation order, but there will be potentially difficult causation questions.
6	Could similar results be indirectly achieved through the threat of a court-ordered term-out of uncooperative creditors, even within out-of-court restructurings? I'm thinking about the French conciliation for instance (which is purely amicable but the court is somewhat involved); under the new Covid measures, debtor can request that a creditor unwilling to grant a standstill be termed out for the duration of the proceedings or for a maximum of 24 months. To my mind, this might force creditors to negotiate.	Vasile Rotaru	If I understand this correctly, it would amount to an indirect derivation of cooperation duties (using our analytical framework). That is one possible route. I do not consider it to be ideal. I think deriving cooperation duties directly from the relationship between the creditors is better/more straightforward.
7	Am involved in government project for restructuring for small businesses to add to our existing restructuring processes so all v interesting. The danger I see in the bold model suggested is creating a model leading to multiple, possibly vexatious litigation, reducing value for all.	Irene Lynch Fannon	We are very aware of this risk. The rationale for the workout is to avoid the direct and indirect costs of using the state-supplied procedure. Clearly, the introduction of rules to govern conduct in the workout could introduce new costs, which eliminate the gain associated with the workout. It all depends on the scope of the duty and the institutional framework within which it will be enforced. Thanks Irene for these valuable comments.
8	FOr restructuring to be effective, the moratorium should be as short as possible: does interim assessment of viability during moratorium not burden the procedure and the chances of succes?	Louis Verstraeten	
9	That's a good point Tomas about the UK, here in Australia we are this week worrying about how a lesser category of 'monitor' (not a licensed IP) will be able to certify viability	David Brown	
10	How do UK courts safeguard that creditors have sufficient information to raise the issues you mentioned?	Reinout Vriesendorp	
11	Just to echo Tomas' point, in MMSS like mine, where a court decision on the viability of a firm may take months, I imagine that the only feasible alternative would be to postpone the viability test to the end of the process, ie when the court has to confirm the plan.	Francisco Garcimartin	