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Distressed Financing In-Between Regulatory Regimes

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Introduction

Key Principles

- Equality and Best Interests of Creditors

Dilemma

- Balancing equality and best interests when privileging certain creditors

Importance

- Impact on debtor's restructuring and creditor interests



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The Role of Financing in Restructuring

Vital Role of Financing

- Saving the debtor through restructuring

Financing Reluctance

- Challenges of financing a near-insolvent debtor

Bridging the Gap

- The need for regulatory intervention to align debtor's needs and market conditions



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Regulatory Protections for Distressed Financing

Article 17 PRD

- Member States' obligations for protecting interim and new financing

Protection Measures

- Exemption from transaction avoidance and superpriority for financiers

Ensuring Adequate Protection

- Balancing the interests of all creditors



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Moral Hazard and Regulatory Inequality

Moral Hazard Conundrum

- Regulatory inequality leading to debtor or financier manipulation

Debtor's Advantage

- Choosing favored financiers during preventive restructuring

Financier's Advantage

- Refusing financing until privileged position secured



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Inclusive Approach

Flexible Approach

- Extending PRD protection to all financiers and creditors

Broader Scope

- Financing available from the onset of financial difficulties

Wide Definition:

- Interim financing covering any assistance for debtor's benefit



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Gradual Transition

Prudent Transition

- A gradual shift towards preventive restructuring

Varying Needs

- Linking financing usefulness to debtor's financial problems

Superpriority Challenge

- The impact of superpriority on all creditors



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Exclusive Approach

Distinct Treatment

- Differentiating earlier and preventive restructuring financing

Addressing Inequality

- Ensuring no creditor is worse off with such financing

Control Mechanism

- Introduction of effective ex ante control, court involvement



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Trade-offs of the Exclusive Approach

Slower and Less Flexible

- Downsides of an exclusive approach

Reduced Control

- Implications for the debtor's decision-making

Justification for Superpriority

- Balancing creditor interests



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Conclusion

Balancing Act

- Navigating the complexities of distressed financing

Regulatory Considerations

- Implications for debtor, financiers, and creditors

Ongoing Debate

- Striking the right balance in regulatory regimes



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Thank you for your attention!

We'll see you in

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