Delegate Lunch

Kindly Sponsored By

McSTAY LUBY
Chartered Accountants

Technical Session Sponsors

AlixPartners

DENTONS

HOCHE
AVOCATS

LUMON
CORPORATE

INSOL EUROPE

ANNUAL CONGRESS SORRENTO 3-6 OCTOBER 2024

SUSTAINABILITY IN DISTRESS

MAIN SPONSOR NETBID Auction & Valuation

Recognition of Cross-Border Restructuring and Insolvency Proceedings

Panel leader:
Justice Caterina Macchi
Civil Court of Milan, Italy

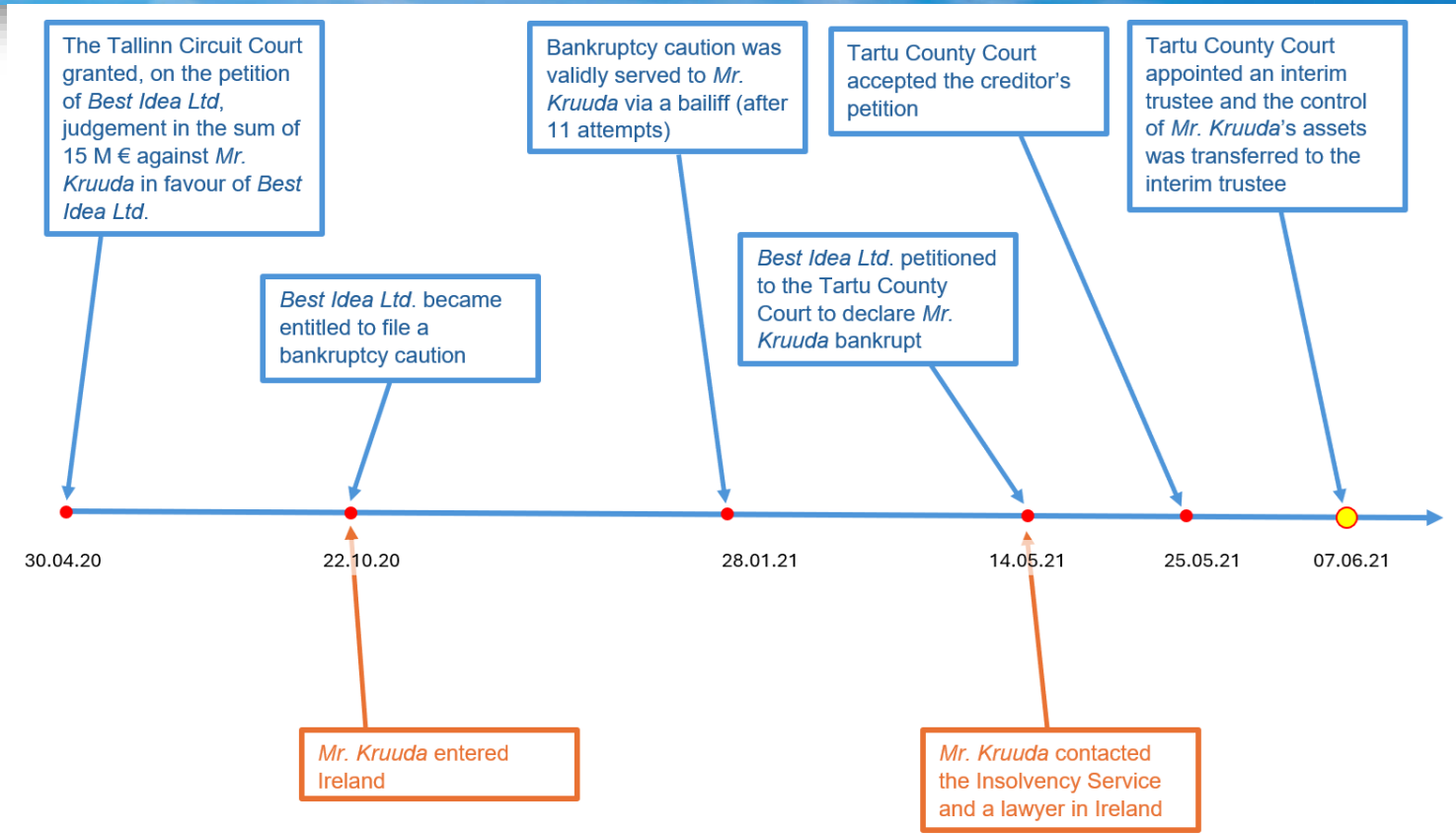
Lord Justice Richard Snowden
Court of Appeal, UK

Justice Karin Sonntak
Harju County Court, Estonia

Justice Elsbeth de Vos
District Court of Amsterdam, The Netherlands / INSOL Europe Judicial Wing Co-Chair

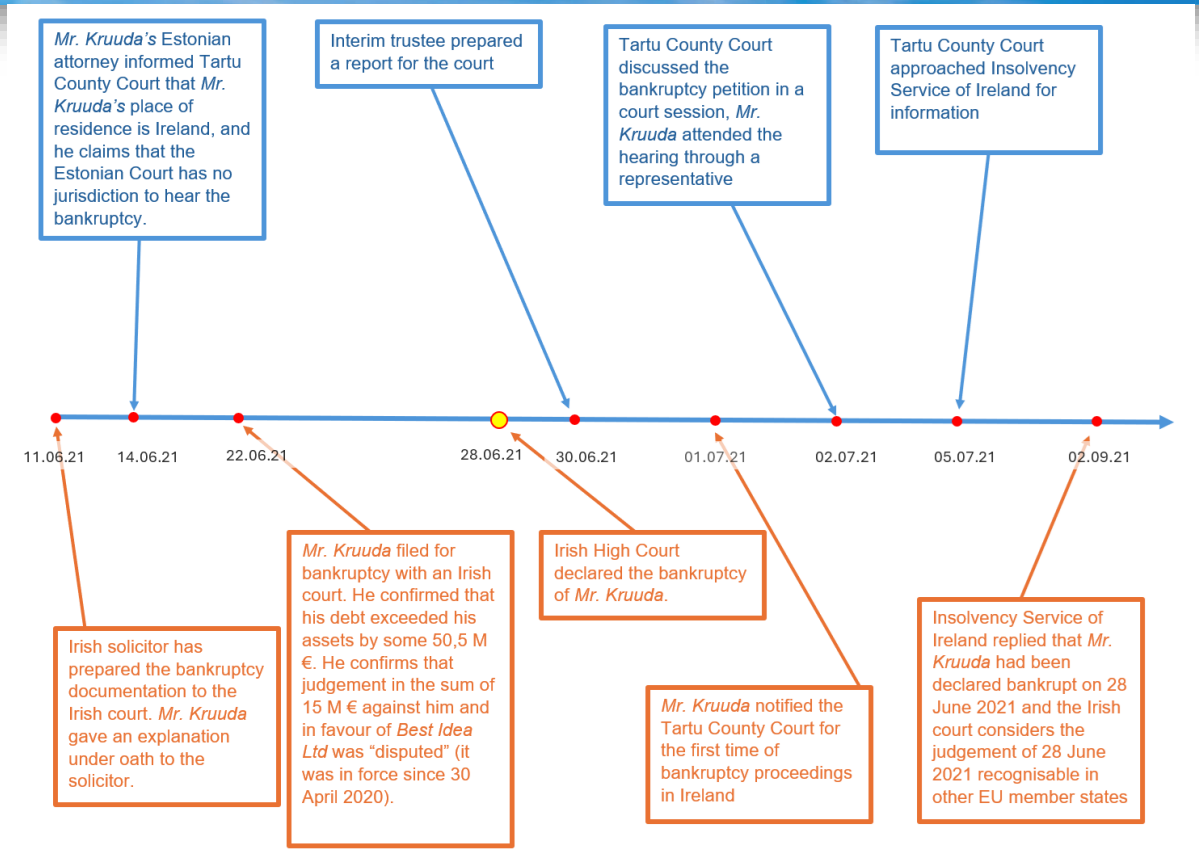
Recognition of Cross-Border Restructuring and Insolvency Proceedings

Justice Karin Sonntak
Harju County Court,
Estonia


The Tallinn Circuit Court granted, on the petition of *Best Idea Ltd*, judgement in the sum of 15 M € against *Mr. Kruuda* in favour of *Best Idea Ltd*.
Best Idea Ltd. became entitled to file a bankruptcy caution
Bankruptcy caution was validly served to *Mr. Kruuda* via a bailiff (after 11 attempts)
Best Idea Ltd. petitioned to the Tartu County Court to declare *Mr. Kruuda* bankrupt
Tartu County Court accepted the creditor's petition
Tartu County Court appointed an interim trustee and the control of *Mr. Kruuda*'s assets was transferred to the interim trustee
30.04.20
22.10.20
28.01.21
14.05.21
25.05.21
07.06.21
Mr. Kruuda entered Ireland
Mr. Kruuda contacted the Insolvency Service and a lawyer in Ireland

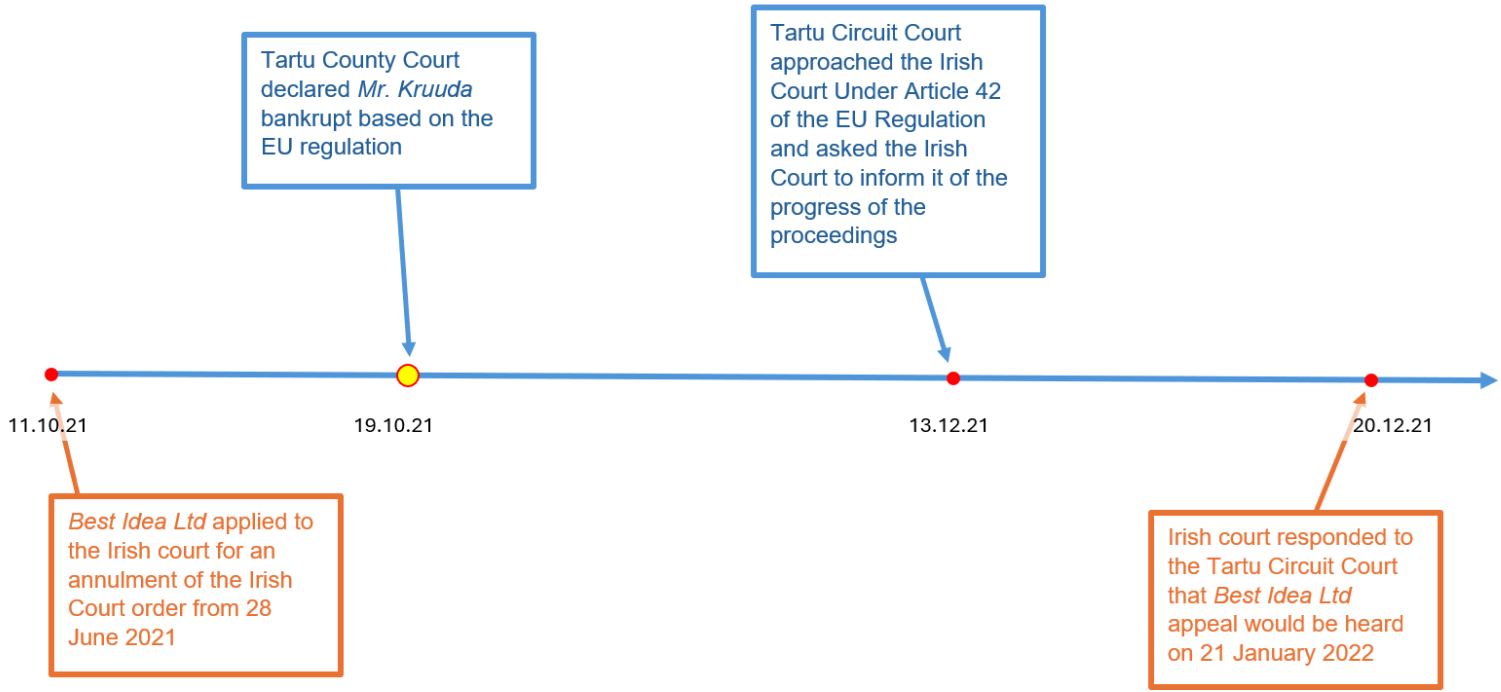
COMI

- Debtor: As the debtor has been domiciled in Ireland for over eight months, his COMI is in Ireland.
- Tartu County Court: the debtor's actions indicated that the debtor sought a favourable jurisdiction of his choosing for proceedings and settled in Ireland for that purpose.
- Tartu Circuit Court: the matter referred to in Recital 30 of the EU Regulation 2015/848 (recast) occurs to rebut the presumption made in Article 3 (1) of the EU Regulation that the debtor's centre main interests is their place of residence.
- Irish High Court (Sanfey J): Mr Kruuda's COMI was in Estonia.


Mr. Kruuda's Estonian attorney informed Tartu County Court that *Mr. Kruuda's* place of residence is Ireland, and he claims that the Estonian Court has no jurisdiction to hear the bankruptcy.
Interim trustee prepared a report for the court
Tartu County Court discussed the bankruptcy petition in a court session, *Mr. Kruuda* attended the hearing through a representative
Tartu County Court approached Insolvency Service of Ireland for information
11.06.21
14.06.21
22.06.21
28.06.21
30.06.21
01.07.21
02.07.21
05.07.21
02.09.21
Irish solicitor has prepared the bankruptcy documentation to the Irish court. *Mr. Kruuda* gave an explanation under oath to the solicitor.
Mr. Kruuda filed for bankruptcy with an Irish court. He confirmed that his debt exceeded his assets by some 50,5 M €. He confirms that judgement in the sum of 15 M € against him and in favour of *Best Idea Ltd* was "disputed" (it was in force since 30 April 2020).
Irish High Court declared the bankruptcy of *Mr. Kruuda*.
Mr. Kruuda notified the Tartu County Court for the first time of bankruptcy proceedings in Ireland
Insolvency Service of Ireland replied that *Mr. Kruuda* had been declared bankrupt on 28 June 2021 and the Irish court considers the judgement of 28 June 2021 recognisable in other EU member states

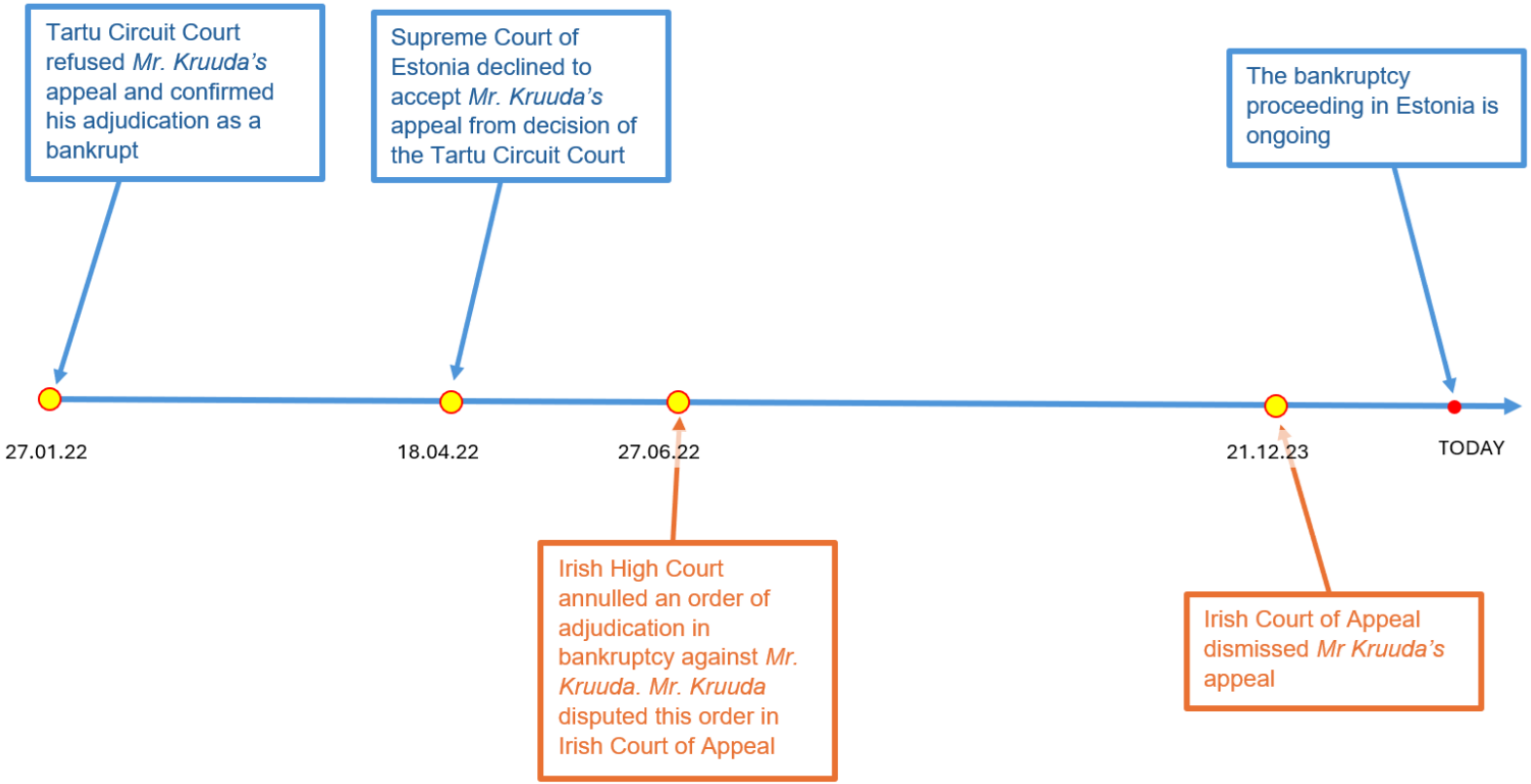
Jurisdiction

- Debtor: On 28 June 2021 the Irish High Court issued a bankruptcy order, which is binding on the Tartu County Court under Article 19 (1) of the EU Regulation. That is the main insolvency procedure.
- Tartu Circuit Court: County Court's ruling of 7 June 2021 on the appointment of an interim trustee can be considered as a decision to open insolvency proceedings under Article 3 (1) of the EU Regulation on cross-border insolvency proceedings. The debtor's COMI is located in Estonia and Tartu County Court has jurisdiction to conduct the debtor's main insolvency proceedings.
- Irish High Court (Sanfey J): that it is not, applying the Recast Regulation, for this member State to now consider or examine the correctness of the decision of the Estonian Courts on 7 June 2021. That would be entirely contrary to the Regulation of automatic recognition of jurisdiction.


Tartu County Court declared *Mr. Kruuda* bankrupt based on the EU regulation
Tartu Circuit Court approached the Irish Court Under Article 42 of the EU Regulation and asked the Irish Court to inform it of the progress of the proceedings
11.10.21
19.10.21
13.12.21
20.12.21
Best Idea Ltd applied to the Irish court for an annulment of the Irish Court order from 28 June 2021
Irish court responded to the Tartu Circuit Court that *Best Idea Ltd* appeal would be heard on 21 January 2022

Material non-disclosure 1

- Creditor: the issue of non-disclosure is an objective test, with that test being applied to the materiality of the matters that have not been disclosed. Estonian bankruptcy proceedings were not disclosed at all in the debtor's application before Humphreys J (i.e. Irish Court).
- Debtor: it was not relevant or material or was an innocent omission which was of insufficient importance.
- Tartu County Court: the debtor left Estonia with a definite purpose to hide from the creditors. The debtor also withheld the information about his whereabouts in various ongoing court proceedings.
- Irish High Court (Sanfey J): there was an established jurisdiction in the court to review orders on the grounds of material- disclosure.


Tartu Circuit Court refused *Mr. Kruuda's* appeal and confirmed his adjudication as a bankrupt
Supreme Court of Estonia declined to accept *Mr. Kruuda's* appeal from decision of the Tartu Circuit Court
The bankruptcy proceeding in Estonia is ongoing
27.01.22
18.04.22
27.06.22
21.12.23
TODAY
Irish High Court annulled an order of adjudication in bankruptcy against *Mr. Kruuda*. *Mr. Kruuda* disputed this order in Irish Court of Appeal
Irish Court of Appeal dismissed *Mr Kruuda's* appeal

Material non-disclosure 2

- Tartu Circuit Court: the debtor applied to the court for the arrangement of a hearing on 14 June 2021 but failed to mention that he had filed for bankruptcy in Ireland. The debtor has violated the obligation under Recital 28 of the EU Regulation to inform creditors, in order to conceal his location.
- Irish High Court (Sanfey J): on 14 June 2021 Mr. Kruuda was undoubtedly aware of the appointment of the interim trustee by the Estonian Court. His failure to apprise the Irish court of the Estonian proceedings was not „an innocent omission“. Mr. Kruuda is significantly culpable in failing to bring the Estonian bankruptcy to the Court’s attention.
- Irish Court of Appeal: the failure to advert to the Estonian bankruptcy proceeding within the self-adjudication was enough to justify a recission of the Bankruptcy Order.

Material non-disclosure 3

- Irish Court of Appeal: there had been material non-disclosure in Mr. Kruuda's application before Humphreys J.
- Any *ex parte* application for self-adjudication requires that the debtor apprise the Court of the full facts and circumstances so as to make an informed decision.
- Mr. Kruuda should have disclosed information relating to is Estonian bankruptcy proceedings to Humphreys J. in order that he could properly consider the application and the exercise of his discretion.
- Mr. Kruuda failure to disclose the existence of the Estonian bankruptcy proceedings was not an innocent omission. It was anything other than material non-disclosure.
- The findings of material non-disclosure provide sufficient basis for Appeal Court to uphold the judgement of High Court and dismiss Mr. Kruuda's appeal.

Coffee Break

Kindly Sponsored By

HORTEN

INSOL EUROPE

ANNUAL CONGRESS SORRENTO 3-6 OCTOBER 2024

SUSTAINABILITY IN DISTRESS

MAIN SPONSOR NETBID Auction & Valuation

Preventive Restructuring: New Challenges in voting plans

Panel leader:
Prof. Renato Mangano
University of Palermo, Italy

Tomáš Richter
JŠK, advokátní kancelář / INSOL Europe Honorary member,
The Czech Republic

Christel Dumont
Dentons, Luxembourg / INSOL Europe Country Coordinator

Alexandra Szekely
Le 16 Law,
France

Panel bios

Renato Mangano - Moderator

Palermo University – Palermo

A Full Professor of Commercial law and a visitor of various Universities, including Cambridge, Hamburg, Oxford, and University of International Business and Economics, Beijing, he has published extensively in insolvency law, company law, and the legal aspects of digital assets. He co-authored «European Cross-border Insolvency Law », 2nd edn, OUP 2022, and «The Anatomy of Corporate Insolvency Law», OUP 2024.

Christel Dumont

Dentons Luxembourg

Senior counsel at Dentons' Luxembourg office. With sound experience in European Insolvency law, Christel focuses on workouts and turnarounds, corporate and debt restructurings, pre-insolvency issues, directors' liability, bankruptcy proceedings, COMI questions, and complex cross-border insolvencies. She has advised equity investors, secured lenders, unsecured creditors, and renowned real estate groups.

Panel bios

Alexandra Szekely

Le 16 Law – Paris

With more than 20 years of experience as a litigation lawyer, Alexandra has worked on numerous cross-border cases for clients across a broad range of sectors. She regularly advises clients in distressed situations, representing clients on both the debtor and creditor sides. She has most recently represented a large group of bondholders in the restructuring of the Casino group.

Tomas Richter

JSK - Prague

A lawyer at the Prague law firm JSK where he specializes in insolvencies, restructurings and arbitration and dispute resolution. He served on the group of private experts which advised the European Commission on its proposal of the Recast of the European Insolvency Regulation and of Directive 2019/1023 and co-authored, among a number of other publications, the Beck/Hart/Nomos commentary on that Directive. He served as the Chair of INSOL Europe's Academic Forum.

New challenges in voting plans

- **First challenge**: multiple plans: the risk of arbitrage within the same jurisdiction
- **Second challenge**: the division of creditors into classes: perils and pitfalls when the relevant jurisdiction implemented only the minima
- **Third challenge**: the division of creditors into classes: the hurdles of the *Casino* case
- **Fourth challenge**: financial innovation: the example of CDSs and securitization

Formal & informal negotiation asap!

Panel leader:
Justice Luciano Panzani
INSOL Europe Judicial Wing member, Italy

Christina Fitzgerald
Isadore Goldman, UK

Daniel Lowenthal
Patterson Belknap Webb & Tyler, US

Nicolas Partouche
Peltier Juvigny Marpeau et Associes, France

Negotiated composition: a new experience in Italy

Panel leader:
Justice Luciano Panzani
INSOL Europe Judicial Wing member, Italy

- Negotiated crisis composition (NC): not a formal procedure, but rather a negotiation process.
- NC allows the debtor to request the appointment of an **expert** by Chamber of Commerce.
- The expert, third party and independent, facilitates and manages negotiations with the creditors.
- The debtor’s crisis or insolvency must be anticipated as early as possible, and the company's recovery must be feasible.
- The negotiation may lead to an agreement with the creditors, or in some cases, provide access to restructuring procedures and a simplified liquidation agreement on more favorable terms than usual.
- Debtor and creditors have the duty to **negotiate in good faith**. Creditors, especially banks, must negotiate actively. Debtor must expose the enterprise situation to creditors. Creditors are required to keep the company's information confidential

- Recently, the negotiated composition has been modified to permit the debtor to reach an agreement with the Tax Agency regarding previously accrued tax debts.
- This change is crucial because in the past, many Italian companies have self-financed by not paying their debt to the Tax Agency, relying on the slow collection process of the Administration for their credits.
- To start the negotiation process, the debtor must prepare a restructuring program and submit it to the expert for assessment, along with an evaluation of the financial situation using a checklist provided by the Ministry of Justice and disposable on line.
- The expert determines if conditions are met to initiate negotiations and oversees their progress

- The debtor with the request to start the negotiated composition can request the stay to facilitate the negotiations.
- The debtor has free administration of his assets.
- He must communicate the acts of extraordinary administration to the expert, who can have his dissent noted in the register of companies. The act, despite the dissent of the expert, remains valid.
- The transfer of a business during the negotiated composition can be subject to authorization by the Court, after consulting the expert.
- The act performed without authorization remains valid, but the authorization excludes that, except for work claims, the buyer is responsible for previous debts.

- Negotiations must be concluded in 180 days, except the Expert agrees with debtor and creditors to continue.
- The stay must be approved by the court and can be extended or revoked.
- In any moment the Expert may decide to close the negotiations if he thinks that it is not profitable.

THE DATA

- The recent Unioncamere report* provides data on the progress of the C.N. from 2021 to the first half of 2024. The data is compared with the overall progress of all restructuring and liquidation procedures.

- The table displays the number of ongoing procedures for each type, from 2021 to the first half of 2024, along with the percentage relative to the total number of ongoing procedures in the respective year. Unfortunately, the table is in Italian

* Unioncamere, Osservatorio Crisi d'impresa, 2 Settembre 2024

THE DATA IN COMPARISON

	2021		2022		2023		I sem. 2024		Totale	
	N. procedure aperte	%su totale	N. procedure aperte	%su totale	N. procedure aperte	%su totale	N. procedure aperte	%su totale	Totale	%su totale
Composizione negoziata	39	0,4%	499	5,7%	594	6,2%	476	8,6%	**1.608**	**4,7%**
Concordato semplificato	-	-	25	0,3%	69	0,7%	71	1,3%	**165**	**0,5%**
Accordi di ristrutturazione dei debiti	307	2,9%	339	3,8%	335	3,5%	163	2,9%	**1.144**	**3,3%**
Concordato preventivo	1.067	10,2%	870	9,9%	678	7,1%	490	8,9%	**3.105**	**9,0%**
Liquidazione giudiziale	8.720	83,0%	6.888	78,0%	7.685	80,2%	4.222	76,3%	**27.515**	**79,9%**
Liquidazione coatta amministrativa	372	3,5%	207	2,3%	222	2,3%	111	2,0%	**912**	**2,6%**
Totale	**10.505**	**100%**	**8.828**	**100%**	**9.583**	**100%**	**5.533**	**100%**	**34.449**	**100%**

- The CN, launched on November 15, 2021, after a year of initial testing, has shown significant increases. There were nearly 600 applications in 2023 and over 470 in the first half of 2024 alone.
- During the same period, the number of preventive composition with creditors procedures decreased from 1,067 in 2021 to 678 in 2023.
- Judicial liquidations (Bankruptcy), remain of course the most common, dropping from 8,720 in 2021 to 4,222 in the first half of 2024. The annual figure is approximately the same as that of 2021.
- The majority of companies using the CN are joint-stock and limited liability companies (80.3%) and have 2 to 50 employees (71.2%). About 33.3% of them have a production value between 1 million and 5 million euros.

- As of 1 September 2024 since 2021, there were a total of 1,759 requests for NC.
- The largest number comes from the regions of Lombardy, Lazio, Emilia Romagna and Veneto (over 53% of the total applications).
- Out of the 1,015 requests that were closed since the start of CN, 191 requests were closed with a favorable outcome. This means that the success rate of negotiated settlements, which is defined as the ratio between requests closed with a favorable outcome and the total number of closed requests, is 19%.
- The data regarding the number of employees at the 191 restructured companies is highly significant. The jobs preserved through the CN have increased to over 8,700.

Informal negotiation

Christina Fitzgerald
Isadore Goldman,
UK

- R3's Back to Business Campaign.
- Template advice for directors dealing with corporate financial distress.
- Stressing the importance of seeking professional advice as soon as possible.

How can an Insolvency Practitioner help to find a solution?

- Review assets and liabilities and prepare up to date balance sheet.
- Review of cash flow forecasts.
- Conversations with suppliers and landlords about payment terms.
- Can and how should the business be re-sized?
- Conversations with the bank and HMRC.
- Preparing a business plan.

Informal arrangements with creditors

Repayment plan.

- Debt refinancing.
- Debt consolidation.
- Factoring and invoice discounting.
- Capital Venture Funding.

Repayment plan cont.

- Personal loan from company directors.
- Injection of funds by a third party in exchange for equity.
- Sale of part of the business or assets.
- Time to pay arrangements.

Informal negotiation

Daniel Lowenthal
Patterson Belknap
Webb & Tyler, US

Pre-Bankruptcy Workouts

— Negotiated workouts and debt restructurings are cheaper than formal court proceedings.

— Capital structure

Secured debt

Unsecured debt

Pre-Bankruptcy Workouts

Bondholders — secured and unsecured (ad hoc committees)

Customers

Vendors

Governmental issues — taxes, pensions, environment

Corporate Directors and Officers Duties

If a corporation is not insolvent, duties are owed to the shareholders (equity).

If a corporation is insolvent, duties are owed to creditors. Assets are held in trust for them.

Directors have duties of care, loyalty, and good faith.

Key Considerations

Retention of professionals — lawyers and financial advisors

Preparation of 13-week cash flow statements

Understanding of financial and other documents

Defaults and cross-defaults — notice, waivers, and extensions

Acceleration of debt — Forbearance — Milestones for future performance

Key Considerations

Amendment of existing agreements — debt restructurings

Subordination agreements — know the rights of the junior creditors

Informal negotiation

PARIS 2024

Vive la France!

Nicolas Partouche
Peltier Juvigny Marpeau
et Associes, France

Amicable proceedings: the best tools to achieve a restructuring through a fair negotiation

- Mandat ad hoc / conciliation are designed to provide the stakeholders with a fair negotiation process, facilitated by an insolvency practitioner (IP), with a debtor who remains in possession
- Amicable proceedings = confidential = no additional harm to the debtor company
- ≠ no automatic stay: the company can still be sued by its creditors
- But it is usual to benefit from a standstill granted by the creditors called to the proceeding + individual stay possible (2 years max), subject to the Judge's approval
- Set to be fast: 5 months max for the conciliation / no mandatory cap for the mandat ad hoc but limited by the Judge's order

Amicable proceedings: the preparations (1/2)

- A debtor's initiative: to be requested by the debtor to the President of the Commercial Court through a confidential process
- Available to solvent companies or to companies which have been cash flow insolvent for less than 45 days
- A matter of people: the debtor will choose the IP to be appointed in its filing which will be confirmed by the Court in 99% of all cases
- In practical, a proceeding can be opened in 1 to 2 weeks

Amicable proceedings: the opening ceremony (2/4)

- The IP invites the stakeholders who need to be around the table to solve the company's difficulties = some stakeholders can remain outside the amicable proceeding, if it is better for the company (e.g., suppliers)
- Freezing the situation and preserve the cash: a standstill request for the duration of the proceeding or from one meeting to the other to:

  → the financial creditors = no payment of principal/payments limited to the interests,
  → tax and social institutions (standstill up to 3 months in general),

- An independent business review (IBR) is conducted by an independent audit firm to understand the origin of the difficulties, to confirm the restructuring to be implemented and to review the business plan and cash-flow forecasts drafted by the management= a global "money need" is identified

Amicable proceedings: a team sport rather than a competition among individuals (3/4)

- Key principles of the negotiation:

  → transparency on data and facts about the company and its perspectives

  → confidentiality

  → to make concessions: the efforts must be shared among the stakeholders

  → the right of each stakeholder to the allocation of value shall be respected (who is in the money or not?who is secured or not? …)

  → if a stakeholder refuses to make the efforts required by the situation, its position must be affected

  → it is a matter of consensus

- Incentive to provide new money to the debtor company, thanks to the special new money seniority granted to funds' providers

Amicable proceedings: the gold medal (4/4)

= A global agreement, among all the stakeholders involved, that: solves cash flows issues, saves the business, and is not detrimental to the creditors who are not party to the agreement

= a successful conciliation proceeding, approved by the court with (a) a higher level of security for directors and creditors liability if the company becomes finally insolvent in the future, and (b) senior rank for new money providers

Examples of undertakings of stakeholders:

Financial liabilities: amend & extend, undertaking to maintain short terms financing, new long term financings, interim financings, allocation of PIK/cash interests, waivers to event of defaults, debt to equity swap, new waterfall etc

Tax and social security liabilities: repayment plans

Other creditors: to maintain longer terms of payment or a certain level of credit, to continue to supply the debtor,,,

Debtor : operational restructuring, costs reduction, CAPEX limitation, termination of loss-making activities, sales of non-core assets, sales & lease back, hiring/dismissals…

Equity: new money providing, research of new equity providers, undertaking to accept dilution, change in management, sales process etc

But what if dissenting stakeholders invade the stadium?

- **Pre-pack reorganisation** = a conciliation agreement, approved by a majority of – but not all – the stakeholders

  → followed by a safeguard proceeding (collective) to implement the reorganisation plan, against the dissenting creditors, thanks to the classes of affected parties regime, driven by the IP and under the authority of the Court

- **Pre-pack sale** = purchasers of the business (clean of liabilities) searched during a conciliation proceeding, followed by a reorganisation (collective) proceeding to implement the sale in a "fast-track" mode without new publicity

Formal negotiation

Christina Fitzgerald
Isadore Goldman,
UK

Formal Options – Rescue Procedures
Moratorium

- Short breathing space from creditor actions.
- Initially, 20 days.
- Can be extended for up to 12 months.
- Able to buy even more time with consent of the Court.
- Role of the Monitor (IP).

Moratorium cont.

- Must remain likely that the company can be rescued as a going concern.
- Monitor must reach a decision about the company's future viability.
- Payments such as a mortgage must continue to be paid.
- Other debts frozen.
- No enforcement action can be taken.

Administration

- Intended to support business rescue.
- Needs to be insolvent.
- Directors can apply, as can certain qualified lenders.
- Creditors can apply to Court.
- Creditors cannot take action without leave of the Court.
- Usually lasts 12 months.

Company Voluntary Arrangement ("CVA")

- A binding agreement between a company and its creditors.
- Many involve delayed or reduced payment of debts over a set period of time (usually 3 to 5 years).
- Directors remain in charge.
- Creditors vote on the proposals before they are implemented.
- Overseen by an IP, acting as Nominee then Supervisor.

Schemes of Arrangement

- Court sanctioned agreement.
- Flexible and long established Companies Act procedure.
- Two Court applications

  (a) to convene meetings to approve the scheme

  (b) sanction the scheme.
- If approved, binding on all creditors and shareholders.

Restructuring Plan – Part 26A

- Compromise or agreement between the company and its members and creditors, overseen by the Court.
- Only available to companies that have experienced or are likely to experience financial difficulties.
- Introduction of cross-class cram down.

Role of HMRC

- R3 campaigned for HMRC to take a more proactive approach to rescue proposals.
- R3 lobbied the Business Secretary.
- HMRC changed its approach and announced they would be more proactive in the use of their voting rights in CVAs.
- RP of Houst - bound even though it voted against the scheme.
- 2023 HMRC issued guidance on Schemes and RPs.

Limitations on the use of RPs in the UK

- 2022 -5, 2023 -11 RPs.
- They are disproportionately expensive, so they are rarely a viable solution for SMEs.
- Suggestion to reduce fees such as the convening stage being dealt with on paper or with one single hearing.
- Great Annual Savings Co. and Nasmyth RPs involved HMRC but the Court refused to sanction them.
- SMEs will need to reach consensual restructuring with its secured lenders without needing to use a formal process.
- The mere threat of a formal RP and the cost is often a driving factor in negotiations.

Impact of BREXIT on UK-EU cross border restructuring

- UK no longer part of EU Regulation and will not benefit from the Recast Insolvency Regulation that had automatically recognised UK insolvency proceedings across the EU (except Denmark).
- Lugano Convention / Brussels Convention no longer applies which provided automatic recognition of UK Schemes of Arrangement.
- The UK's recognition of foreign proceedings on a non-reciprocal basis continues due to our application of UNCITRAL model law – CBIR 2006.

Recognition of Insolvency Proceedings – Outgoing

- From 1 January 2021, UK insolvency proceedings no longer benefit from automatic recognition in the EU.
- An Insolvency Officeholder may be able to seek recognition under:
  1. The domestic laws of Member States. 25 of 27 Member States have some form of domestic recognition regime with the UK benefitting from various degrees of automatic recognition such as Germany and the Netherlands on the basis that the company's COMI is in England.
  2. The Model Law adopted by Greece, Poland, Romania and Slovenia.

Recognition of Insolvency Proceedings by the UK – Incoming

- From 1 January 2021, EU insolvency procedures no longer benefit from automatic recognition.
- A foreign Insolvency Officeholder may be able to seek recognition under:

1. The Cross Border Insolvency Regulations 2006 (“CBIR”) – Court application required.
2. Common law under comity principles.
3. Section 426 Insolvency Act 1986 (Republic of Ireland and some Commonwealth countries).

Recognition of Schemes and Restructuring Plans ("RPs") in the EU – Outgoing

- Schemes were never "insolvency proceedings" for the purposes of the Recast Insolvency Regulation.
- It was accepted that sanctioned Schemes would benefit from recognition by EU Member States under the Brussels Regulation.
- From 1 January 2021, the Brussels Regulation no longer applies to Schemes.
- The recent decision in Gategroup proved that RPs are "insolvency proceedings".

Recognition of Schemes and Restructuring Plans ("RPs") in the EU – Outgoing cont.

- The Hague Convention was ratified by the UK and came into effect on 1 July 2024. However, insolvency proceedings are expressly excluded.
- All roads lead to Rome, so Rome 1 Regulation will apply to the recognition of both Schemes and RPs by EU Members States.
- Parties will have chosen English law to govern their contracts so the Courts in EU states are bound to apply that law.
- United States- automatic recognition as a "foreign main proceedings" likely to be available if the company has its COMI in the UK. The Virgin Atlantic RP was recognised as a foreign proceeding under Chapter 15.

Note: The position is different where it is alleged that a foreign insolvency proceeding has compromised an English law debt.

- Then the English law debt remains undischarged.
- The rule in Gibbs.

Recognition of Schemes and RPs in the UK – Incoming

- The 2023 cases suggest that there remains an appetite to have an RP for a foreign company (eg Adler).
- Use of English company SPVs that assume the primary obligation for the debts that are being restructured.
- Widespread reach of English law finance documents to establish a sufficient connection.
- Several UK RPs involve the use of a plan in parallel with an overseas process such as the Hong Kong Airlines case and Cimolai.
- United States- automatic recognition as a “foreign main proceedings” likely to be available if the company has its COMI in the UK. The Virgin Atlantic RP was recognised as a foreign proceeding under Chapter 15.

Formal negotiation

Daniel Lowenthal
Patterson Belknap
Webb & Tyler, US

Bankruptcy

Common Reasons Corporations file for Bankruptcy in the U.S:

Massive fraud — Madoff, FTX

Potential massive tort liability — Asbestos, Dow Corning, Purdue

Balance sheet problems — cash flow issues, too much leverage, poor product performance and more

Two Possible Types of Corporate Bankruptcies under the U.S. Bankruptcy Code

Chapter 7 — Liquidation

Trustee is always appointed to take over the corporation

Chapter 11 — Reorganization (although corporations can liquidate in chapter 11)

Debtor-in-possession. Goal is to continue as a going concern

Key Issues/Goals in Chapter 11

Automatic Stay

DIP Loans

Cash Collateral and other First Day Motions

Asset Sales

Proofs of Claim

Assumption/Rejection of Executory Contracts and Unexpired Leases

Chapter 11 Continued

Disclosure Statement

Plan

Absolute Priority Rule

Confirmation

Post-Confirmation Liquidating Trusts — Adversary Proceedings

Chapter 15 — Cross Border Proceedings

Petition

Recognition as Main or Foreign Main

Recognition of Administrators

Not a Full Plenary Proceeding

Formal negotiation

PARIS 2024

Vive la France!

Nicolas Partouche
Peltier Juvigny Marpeau et Associes, France

Reorganisation proceeding: is there still a room for negotiation?

- When the debtor is cash flow insolvent, the Court shall open a reorganisation or a liquidation proceeding
- If a reorganisation plan can be prepared, regime classes of affected parties will apply as in the safeguard proceeding

  → Debtor's goal is then to obtain a positive vote of all of/or a majority of classes of affected parties = it implies negotiations with main creditors
- But the court can still impose a plan on the dissenting parties/classes if:
  - The plan has been approved by each class of affected parties, despite negative votes inside a class, or
  - The plan has been approved by a majority of classes of affected parties including 1) positive vote of a class of parties with securities on assets or 2) positive vote of a class of parties senior to unsecured creditors, or
  - The plan has been approved by at least one class of affected parties who is in the money and who is not equity holders
  - And: compliance with "best interest" test + absolute priority rules (with possible exceptions)

Some statistics (1/2): collective proceedings opened in 2023

© Altarès + dun&bradstreet

	2023	2022	Trend
Safeguard	1,529	1125	+35,9%
Réorganisation	15,115	10,132	+49,2%
Liquidation	41,085	31,257	+31,4%
TOTAL	**57,729**	**42,514**	**+35,8%**
≥ 50 employees	420	286	+134
Number of employees at risk	243,000	143,500	+99,500

Some statistics (2/2): amicable proceedings opened in 2023 © CNAJMJ

	2023	2022	Trend
Mandat ad hoc	4,546	4,998	-9%
Conciliation	3,276	2,489	+31,6%
TOTAL	**7,822**	**7,487**	**+4,5%**
≥ 50 employees	6,8%	5%	+36%

Bank liquidation proceedings

Carlo Lanfranchi
Bank of Italy

Prof. Ignacio Tirado
UNIDROIT

Closing remarks of the day

Andri Antoniou
CRI Group, Cyprus /
INSOL Europe Country
Coordinator

Incoronata Cruciano
Schiebe und Collegen, Germany /
INSOL Europe Council member
& Country Coordinator

Thanks go to our 2024 Annual Congress Sponsors

Congress Main Sponsor

NETBID Auction & Valuation

Congress General Sponsors

ADVANT
HOWDEN
KROLL
McDermott Will & Emery
RESOR

Event Sponsors

AZETS
ANCHOR Avoid Crises – Overcome Crises.
DLA PIPER
McSTAY LUBY Chartered Accountants
HEUKING
AlixPartners
DENTONS
HOCHE AVOCATS
LUMON CORPORATE
EdwinCoe LLP
SCHIEBE UND COLLEGEN
GIANNI ORIGONI
mha An independent member of bakertilly INTERNATIONAL
bnt attorneys in CEE
HORTEN
Brattle
Grant Thornton
icra systems. integrated cloud restructuring application

Congress Supporters:

Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili
GRR Global Restructuring Review

Young Members' Group Reception

Kindly Sponsored By

SCHIEBE UND COLLEGEN

CORPORATE RECOVERY | INSOLVENCY | RESTRUCTURING