FACTSHEET ON CROSS BORDER INSOLVENCY

COOPERATION ON INSOLVENCY PROCEEDINGS IN THE BALKANS REGION

European Bank
for Reconstruction and Development

In partnership with the Serbian
Bankruptcy Law Association

BANKRUPTCY LAW
ASSOCIATION

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1. INTRODUCTION

1.1

Frameworks for cooperation on cross-border insolvency proceedings are of fundamental importance to trade. Trade is often cross-border, involving the import and export of goods and the manufacture of goods through international supply chains, as well as cross-border investments and the establishment of business operations abroad. In recent years, advances in technology and e-commerce have facilitated international trade and globalisation. As a result, the impact of business failure is often not limited to a single jurisdiction. An insolvency of a business or corporate group can affect stakeholders in multiple countries, economies, sectors, and supply chains. Well-known examples include multinational telecommunications and data networking equipment manufacturer, Nortel, and Balkans food distributor, Agrokor.

1.2

This factsheet has been prepared by the European Bank for Reconstruction and Development (EBRD) Legal Transition Programme (LTP), for a 2024 regional cross-border insolvency law conference hosted by the Serbian Bankruptcy Law Association (SBLA) and organised in partnership with the UNCITRAL and the EBRD. It summarises applicable insolvency legislation, and describes competent institutions, courts and insolvency practitioners in the Balkans region, including in Albania, Bosnia, and Herzegovina, Bulgaria, Croatia, Greece, Montenegro, North Macedonia, Romania, Serbia, and Slovenia. It covers essential points related to the enactment of UNCITRAL Model Laws on insolvency in the relevant jurisdictions; the existence of any legal provisions in domestic law governing cooperation in cross-border insolvency; and international treaties relevant to cross-border insolvency, including treaties on cooperation in civil proceedings and/or recognition of civil judgments. The factsheet also refers to recent cross-border insolvency cases decided by competent courts in certain jurisdictions where information is readily available.

1.3

In this factsheet, the term ‘insolvency’ and the term ‘bankruptcy’ are used interchangeably, depending on the jurisdiction.

1.4

The information in this factsheet is up to date as of June 2024. It has been prepared by Catherine Bridge Zoller, Senior Counsel (LTP) with support from Natalia Pagkou, Legal Consultant (LTP) and Snigdha Singh, Legal Consultant (LTP). Input and assistance has been received from Zsoka Koczan, Lead Economist, EBRD, Benjamin Herisset, Legal Officer, UNCITRAL secretariat, Dr Paul Omar, Senior Lecturer at De Montfort University, the EBRD Business Reorganisation Assessment partner law firms for the relevant jurisdictions, SBLA members Judge Marko Radović and Professor Vuk Radović, and SBLA contacts in the region.

1.5

The factsheet does not constitute legal advice of any kind. It should be read in conjunction with relevant national and European Union legislation, as well as UNCITRAL Model Laws and accompanying guides to enactment and interpretation.

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2. RATIONALE FOR COOPERATION AND COORDINATION ON CROSS BORDER INSOLVENCY

2.1

Cross-border legal issues feature frequently in international trade transactions.[1] Many businesses trade with foreign partners, have international customers or aspire to access new markets. Some businesses have factories, warehouses, or offices in other countries and may be part of corporate groups that span several jurisdictions. It is common for large companies headquartered in Organisation for Economic Co-operation and Development (OECD) member economies to have foreign subsidiaries where they hold a majority ownership stake.[2]

2.2

Cross-border insolvencies are collective insolvency proceedings that include all or a significant part of a debtor's creditors, where the insolvent debtor has assets or creditors in more than one jurisdiction or State and the insolvency laws of different jurisdictions come into play.

2.3

As trade volumes increase and economies become more integrated, there is a greater risk that business failure and insolvency proceedings will affect creditors in more than one jurisdiction. Investment is the main driver of development, and cross-border investment is particularly important in the Balkans region. What happens at exit is key to investment decisions and the value of harmonisation, e.g. of business practices and legal frameworks, is larger for smaller economies. The Balkans economies have diversified profiles in terms of the sectors and countries of origin of foreign direct investment inflows. While the fragmentation of supply chains and restoring and nearshoring supply chains to neighbouring countries present risks, they could also serve as opportunities to leverage new investment relationships, particularly if underpinned by the right frameworks. Investment, in general, is determined by factors such as governance, skills and infrastructure, and as economies develop, growth becomes increasingly reliant on governance.

[1] They may also feature in personal insolvencies where a debtor has assets located in a different jurisdiction to the jurisdiction of its primary residence or centre of main interests.

[2] Orbis data on the aggregation of company accounts reveal that more than 20% of large companies headquartered in OECD member economies have a foreign subsidiary where they are a majority owner (more than 50%).

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2.4

Notwithstanding increased geopolitical fragmentation, cross-border insolvencies, may therefore, become more common.[3] Data from the United Kingdom (UK) Office for National Statistics shows, for example, an increasing trend in the number of export firms in the UK.[4] The risks of cross-border insolvency may also increase for emerging economies experiencing higher levels of economic growth and rising incomes. Research suggests that income convergence may increase the level of international trade i.e., imports into, as well as exports from emerging economies, due to the increased purchasing power of the citizens and the competitiveness of the economies. Data from the United Nations Comtrade[5] and the International Monetary Fund show that trade integration in the European Union and the EBRD regions is strongly underpinned by income convergence.[6]

2.5

It is thus desirable for all national legal systems to envisage cooperation and coordination on cross-border insolvency. According to paragraph 211 of the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency:

> "Cross-border cooperation, is... a core element of the Model Law. Its objective is to enable courts and insolvency representatives from two or more countries to be efficient and achieve optimal results. Cooperation....is often the only realistic way....to prevent dissipation of assets, to maximize the value of assets (e.g. when items of production equipment located in two States are worth more if sold together than if sold separately) or to find the best solutions for the reorganization of the enterprise."[7]

2.6

International insolvencies are challenging due to the significant differences in national insolvency laws and practice. These include differences in applicable insolvency procedures and in the level of involvement and powers of the courts and insolvency practitioners, as well as in matters of public policy related to issues such as the treatment of different types of private and public creditors in an insolvency. Cooperation and coordination among States on insolvency helps to establish common principles and standards for addressing cross-border insolvency cases. However, for such cooperation and coordination to be effective, a measure of harmonisation of insolvency laws and practices across jurisdictions is necessary, while still respecting the sovereignty, legal cultures, and social fabrics of different States.

2.7

When a business enters an insolvency process, the insolvency practitioner and the court must determine whether there is a cross-border element to the proceedings. If such an element exists, further due diligence is necessary to understand whether - and to what extent - a court in a third state would recognise the insolvency process and its legal effects or consequences, and if any relief will be available. The approach taken by the court to recognition will depend on national legislation (and for UNCITRAL enacting states, the extent to which they have enacted UNCITRAL texts) as well as on matters of public policy. It will also depend on how the courts in the jurisdiction approach the principle of the 'universality' of insolvency proceedings i.e., the principle that proceedings initiated in the main jurisdiction should have universal effect, applying across borders to encompass all of the debtor's assets, regardless of their location.

2.8

Communication, cooperation and coordination among courts, judges and insolvency practitioners appointed in different national proceedings is critical for the outcome of insolvency proceedings. It is more efficient, both in terms of time and cost and helps to preserve value in the debtor's estate by avoiding the need for unnecessary, competing proceedings. Furthermore, cooperation and coordination maximise value by supporting international efforts aimed at safeguarding and recovering assets belonging to the insolvency estate. They provide greater legal certainty, which can stabilise the business and enable it to keep trading. This can support a going concern rescue or sale of the business. They also promote the fair treatment of creditors by ensuring a more equitable distribution of assets and avoiding a potentially 'opportunistic' choice of jurisdiction by a debtor or its creditors for the benefit of a limited number of interested parties.

2.9

A detailed explanation of the benefits of the cooperation and coordination of insolvency proceedings is set out in the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency. Further guidance on harmonisation measures is contained in the UNCITRAL Legislative Guide on Insolvency Law.

[3] World Trade Statistical Review 2023, available at: https://www.wto.org/english/res_e/publications_e/wtsr_2023_e.htm

[4] According to ONS data, the number of exporting firms in the UK increased from 28,100 in 2016 to 32,500 in 2021.

[5] The United Nations Comtrade is a database with detailed information and statistics for trade flows around the world, covering approximately 200 countries. The database can be searched by country, region, type of commodity, flow trade (import or export), and the respective year.

[6] EBRD Regional Economic Prospects 2024, available at: https://www.ebrd.com/what-we-do/economic-research-and-data/rep.html

[7] UNCITRAL Model Law on Cross-Border Insolvency, available at: https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

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3. UNCITRAL LEGISLATIVE GUIDE[8]

3.1

The Legislative Guide on Insolvency published by UNCITRAL provides a comprehensive statement of the key objectives and principles that should be reflected in a State's insolvency laws. It is intended to inform and assist insolvency law reform around the world, providing a reference tool for national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing laws and regulations. The advice provided aims at achieving a balance between the need to address a debtor's financial difficulty as quickly and efficiently as possible; the interests of the various parties directly concerned with that financial difficulty, principally creditors and other stakeholders in the debtor's business; and public policy concerns, such as employment and taxation.

The Legislative Guide is divided into five parts:

3.1.1

Part One discusses the key objectives of an insolvency law, structural issues such as the relationship between insolvency law and other law, the types of mechanisms available for resolving a debtor's financial difficulties and the institutional framework required to support an effective insolvency regime.

3.1.2

Part Two deals with the core features of an effective insolvency law, following as closely as possible the various stages of an insolvency proceeding from their commencement to the discharge of the debtor and closure of the proceedings. Key elements are identified as including: standardised commencement criteria; a stay to protect the assets of the insolvency estate that includes actions by secured creditors; post-commencement finance; participation of creditors; provision for expedited reorganisation proceedings; simplified requirements for submission and verification of claims; conversion of reorganisation to liquidation when reorganisation fails; and clear rules for discharge of the debtor and closure of insolvency proceedings.

3.1.3

Part Three addresses the treatment of enterprise groups in insolvency, both nationally and internationally. While many of the issues addressed in parts one and two of the Legislative Guide are equally applicable to enterprise groups, there are some that only apply in the enterprise group context. Part Three thus builds upon and supplements Parts One and Two of the Legislative Guide. At the domestic level, the commentary and recommendations of Part Three cover various mechanisms that can be used to streamline insolvency proceedings involving two or more members of the same enterprise group. These include procedural coordination of multiple proceedings concerning different debtors; issues concerning post-commencement and post-application finance in a group context; avoidance provisions; substantive consolidation of insolvency proceedings affecting two or more group members; appointment of a single or the same insolvency representative to all group members subject to insolvency; and coordinated reorganisation plans. In terms of the international treatment of groups, Part Three focuses on cooperation and coordination, extending provisions based upon the Model Law on Cross-Border Insolvency to the group context and, as appropriate, considering the applicability to the international context of the mechanisms proposed to address enterprise group insolvencies in the national context.

3.1.4

Part Four focuses on the obligations that might be imposed upon those responsible for making decisions with respect to the management of an enterprise when that enterprise faces imminent insolvency or insolvency becomes unavoidable. The aim of imposing such obligations, which are enforceable once insolvency proceedings commence, is to protect the legitimate interests of creditors and other stakeholders and to provide incentives for timely action to minimise the effects of financial distress experienced by the enterprise. In the second edition, an additional section has been included to address these issues in the context of enterprise group insolvency.

3.1.5

Part Five, finalised by UNCITRAL in 2021, is designed to take the unique characteristics of micro- and small enterprises (MSEs) into account and to respond to the specific needs and circumstances of their financial distress. MSEs often have intermingled business and personal debts and a centralised governance model in which ownership, control, and management overlap. Unlike larger enterprises, MSEs are often unsophisticated in financial, business management, legal and insolvency matters. In addition, they may have strong concerns over stigmatisation arising from insolvency, and this might affect their behaviour in the period approaching insolvency. They may also face more obstacles in resolving financial difficulties, particularly if their creditors are disengaged and disinterested in assisting, which is often the case because MSE creditors consider that the costs of their efforts may outweigh the benefits. Part Five is intended to supplement the advice given in other recommendations of the UNCITRAL Legislative Guide on Insolvency Law with a specific focus on how insolvency and preventing insolvency should be dealt with where MSEs are involved.

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[8] Reproduced from UNCITRAL's website with the approval of the UNCITRAL secretariat.

4. UNCITRAL MODEL LAWS ON INSOLVENCY AND THE BALKANS[9]

4.1

UNCITRAL has adopted the three model laws on insolvency described in this section (the UNCITRAL Insolvency Model Laws) which can be enacted by States to support greater coordination of international insolvency proceedings. The UNCITRAL Insolvency Model Laws are flexible instruments, which can be modified and tailored to the needs of the enacting State. All laws recognise the sovereignty of the State and expressly recognise the power of the court to refuse to take any action that would be manifestly contrary to the public policy of the relevant State. These include, in respect of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments, any fundamental principles of procedural fairness. The UNCITRAL Model Laws all respect the international obligations of the enacting State and contain a provision clarifying that the requirements of any treaty or agreement to which the State is party prevail in the event of a conflict between the relevant treaty or agreement and the Model Law(s).

4.2

UNCITRAL Model Law on Cross-Border Insolvency (1997) (MLCBI). Six Balkan countries have already enacted the MLCBI: three EU Member States Greece, Romania, and Slovenia and three non-EU Member States: Albania, Montenegro, and Serbia. Other Balkans countries, including Bosnia and Herzegovina (both the Federation and the Republika Srpska), Croatia, and North Macedonia, have yet to enact the Model Law.

4.3

The Model Law is designed to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency. It focuses on authorising and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws. For the purposes of the Model Law, a cross-border insolvency is where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

4.4

The Model Law focuses on four elements identified as key to the conduct of cross-border insolvency cases: access, recognition, relief (assistance), and cooperation.

4.4.1

Access: These provisions give representatives of foreign insolvency proceedings and creditors a right of access to the courts of an enacting State to seek assistance and authorise representatives of local proceedings being conducted in the enacting State to seek assistance elsewhere.

4.4.2

Recognition: One of the key objectives of the Model Law is to establish simplified procedures for recognition of qualifying foreign proceedings to avoid time-consuming legalisation or other processes that often apply and to provide certainty with respect to the decision to recognise. These core provisions accord recognition to orders issued by foreign courts commencing qualifying foreign proceedings and appointing the foreign representative of those proceedings. Provided it satisfies specified requirements, a qualifying foreign proceeding should be recognised as either a main proceeding, taking place where the debtor had its centre of main interests (COMI) at the date of commencement of the foreign proceeding, or a non-main proceeding, taking place where the debtor has an establishment. Recognition of foreign proceedings under the Model Law has several effects - principal amongst them is the relief accorded to assist the foreign proceeding.

4.4.3

Relief: A basic principle of the Model Law is that the relief considered necessary for the orderly and fair conduct of cross-border insolvencies should be available to assist foreign proceedings. By specifying the relief that is available, the Model Law neither imports the consequences of foreign law into the insolvency system of the enacting State nor applies to the foreign proceedings the relief that would be available under the law of the enacting State. Key elements of the relief available include interim relief at the discretion of the court between the making of an application for recognition and the decision on that application, an automatic stay upon recognition of main proceedings, and relief at the discretion of the court for both main and non-main proceedings following recognition.

4.4.4

Cooperation and coordination: These provisions address cooperation among the courts of States where the debtor's assets are located and coordination of concurrent proceedings concerning that debtor. The Model Law expressly empowers

[9] From section 4.2 onwards, reproduced from UNCITRAL's website with the approval of the UNCITRAL secretariat.

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courts to cooperate in the areas governed by the Model Law and to communicate directly with foreign counterparts. Cooperation between courts and foreign representatives and between representatives, both foreign and local, is also authorised. The provisions addressing the coordination of concurrent proceedings aim to foster decisions that would best achieve the objectives of both proceedings, whether local and foreign proceedings or multiple foreign proceedings.

4.5

The MLCBI is accompanied by a Guide to Enactment and Interpretation. This is directed primarily to executive branches of Government and legislators preparing the necessary enacting legislation, but it also provides useful insight for those charged with interpretation and application of the Model Law, such as judges, and other users of the text, such as practitioners and academics.

4.6

Additional resources include the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009). This provides information for practitioners and judges on practical aspects of cooperation and communication in cross-border insolvency cases. Further, the MLCBI: The Judicial Perspective, adopted in 2011 and updated in 2013 and more recently in 2022, offers general guidance on the issues a judge might need to consider, based on the intentions of those who crafted the MLCBI and the experiences of those who have used it in practice. Finally, a Digest of Case-Law on the MLCBI was published in 2021 to provide wider access to the judgments on the MLCBI, in a clear, concise, and objective manner and to assist in the uniform interpretation of the MLCBI for judges, arbitrators, practitioners, academics and government officials. The Digest does not constitute an independent authority on the interpretation to be given to individual provisions of the MLCBI, but rather serves as a reference tool for identifying relevant case law on interpretation and summarising those decisions for dissemination.

4.7

UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) (MLIJ). Few existing international instruments deal with the recognition and enforcement of judgments generally and those that do exist exclude from their scope matters relating to insolvency and thus recognition and enforcement of insolvency-related judgments. In addition, some uncertainty exists with respect to the interpretation of Articles 7 and 21 of the MLCBI in terms of providing the necessary authority for such recognition and enforcement as a form of relief available on recognition of a foreign insolvency proceeding. The MLIJ is designed to address those situations and provide States with a simple, straightforward, and harmonised procedure for recognition and enforcement of insolvency-related judgments, thus complementing the MLCBI to further assist the conduct of cross-border insolvency proceedings.

4.8

An insolvency-related judgment is defined in the MLIJ as a judgment that arises “as a consequence of or is materially associated with an insolvency proceeding” (whether or not that proceeding has closed) and was issued on or after the commencement of the insolvency proceeding. It does not include a judgment commencing an insolvency proceeding. The MLIJ addresses the relationship between the MLIJ and treaties that might address the same subject matter; the procedure for applying for recognition and enforcement, including the availability of provisional relief; grounds for refusing recognition and enforcement; the effect and enforceability of an insolvency-related judgment; the effect on recognition and enforcement of review of the judgment in the originating State; equivalent effect of a judgment in the recognising State; and severability of parts of the judgment for purposes of recognition and enforcement. Recognition of a judgment can be sought directly by way of an application under Article 11 or as part of a defence to a claim or as incidental to another question already before the court. The MLIJ also addresses its relationship to the MLCBI.

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4.9

The Model Law is accompanied by a Guide to Enactment, which provides information to assist States in enacting its provisions and to offer guidance to users of the text.

4.10

UNCITRAL Model Law on Enterprise Group Insolvency (2019) (MLEGI). This focuses on insolvency proceedings relating to multiple debtors that are members of the same enterprise group. It is designed to equip States with modern legislation addressing the domestic and cross-border insolvency of enterprise groups, complementing the MLCBI and Part Three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide, Part Three).

4.11

The MLEGI includes provisions on coordination and cooperation between courts, insolvency representatives and a group representative (where appointed), with respect to multiple insolvency proceedings concerning members of an enterprise group; development of a group insolvency solution for the whole or part of an enterprise group through a single insolvency proceeding commenced at the location where at least one group member has the COMI; voluntary participation of multiple group members in that single insolvency proceeding (a planning proceeding) for the purposes of coordinating a group insolvency solution for relevant enterprise group members and access to foreign courts for enterprise group members and representatives; appointment of a representative (a group representative) to coordinate the development of a group insolvency solution through a planning proceeding; approval of post-commencement finance arrangements in the enterprise group insolvency context and authorisation of the provision of funding under those arrangements, as required; the cross-border recognition of a planning proceeding to facilitate the development of the group insolvency solution, as well as measures to support the recognition and formulation of a group insolvency solution; measures designed to minimise the commencement of non-main insolvency proceedings relating to enterprise group members participating in the planning proceeding, including measures to facilitate the treatment of claims of creditors of those enterprise group members, including foreign claims, in a main proceeding; and the formulation and recognition of a group insolvency solution.

4.12

The MLEGI is accompanied by a Guide to Enactment, which provides information to assist States in enacting its provisions and to offer guidance to users of the text.

4.13

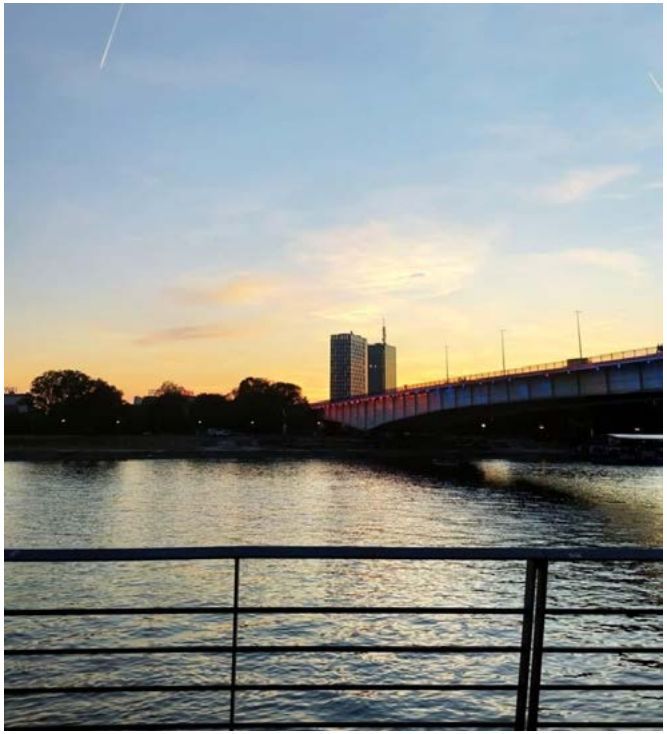
To date, no States have enacted the MLIJ (2018) and the MLEGI (2019).

4.14

To assist MLCBI-enacting States in enacting more recent UNCITRAL Insolvency Model Laws, and other States in enacting two or more UNCITRAL Insolvency Model Laws, the secretariat published a guidance note containing technical suggestions on the enactment of two or more of the three UNCITRAL Model Laws on insolvency as well as an illustrative text for those purposes (Consolidated Text of the UNCITRAL MLCBI,MLIJ, MLEGI (2021), Guidance Note on Enacting Two or More of the UNCITRAL Model Laws on Insolvency (2021)).[10]

4.15

Further information on cross-border insolvency cases can be found on CLOUT (Case Law on UNCITRAL Texts).11 This platform aims to provide a comprehensive database of court decisions and arbitral awards relating to UNCITRAL texts. It includes some summaries of significant judgments in respect of the Model Law on Cross-Border Insolvency, including for the Balkans region (as of now from Greece, Romania, and Serbia). It is searchable by State.



[10] Consolidated Text of the UNCITRAL Model Laws on Cross-Border Insolvency, Recognition and Enforcement of Insolvency-related Judgments and Enterprise Group Insolvency (2021), Guidance Note on Enacting Two or More of the UNCITRAL Model Laws on Insolvency (2021), available at: https://uncitral.un.org/en/consolidated-text-uncitral-model-laws-cross-border-insolvency-recognition-and-enforcement.

[11] Case Law on UNCITRAL Texts, available at: https://uncitral.un.org/en/case_law.

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5. THE EUROPEAN UNION

5.1

The European Commission has played a key role in facilitating the coordination of cross-border proceedings among European Union (EU) Member States, including cross-border insolvency proceedings, through the Regulation (EU) 2015/848 on Insolvency Proceedings (recast) (the Regulation), as well as more recently in harmonising EU Member State pre-insolvency legislation by means of the Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.[12]

5.2

The Regulation (originally published in 2000 and recast in 2015) is directly applicable in all EU Member States, except Denmark. With respect to the Balkans, the Regulation applies in Bulgaria, Croatia, Greece, Romania, and Slovenia. The Regulation deals with cross-border jurisdiction, cooperation, recognition, and enforcement of the national insolvency proceedings in the EU listed in Annex A to the Regulation. These encompass public collective proceedings, including interim proceedings, which are based on insolvency laws and where (for the purpose of rescue, adjustment of debt, reorganisation, or liquidation): a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed; the assets and affairs of a debtor are subject to control or supervision by a court; or a temporary stay of individual enforcement proceedings is granted by a court or by operation of law. The Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and collective investment undertakings.

5.3

The Regulation enables the opening of main insolvency proceedings in a Member State where the debtor has its "centre of its main interests" and the automatic recognition of such proceeding in other EU Member States. Main proceedings are designed to be universal in scope, and to encompass all the debtor's assets. However, the Regulation permits the opening of secondary insolvency proceedings in parallel with main insolvency proceedings in Member States where the debtor is carrying out an economic activity with human means and assets. Furthermore, it contains specific exceptions to the rule of automatic recognition and the governing law of the opening State for certain rights in rem that attach to property. Chapter V of the Regulation addresses the insolvency of members of a group of companies.

5.4

The Regulation and the UNCITRAL Insolvency Model Laws are complementary. Each supports the concept of a modified universal approach to insolvency proceedings for an insolvent debtor and the rejection of territoriality, as well as the procedural principles of efficiency, transparency, and legal certainty.[13] Like the MLEGI, the Regulation provides that insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, subject to applicable procedural rules. However, there are a few key differences between the two texts.

5.5

The Regulation is directly applicable in EU Member States and applies to only EU Member States, while the Model Laws are optional and need to be enacted in domestic legislation. There is no necessary limitation on the geographical scope of application of the Model Laws as they can benefit all States, even those which have not themselves adopted the Model Laws. In contrast, States which are not part of the EU cannot rely on the Regulation. They must adopt their own legal provisions or texts regulating any recognition of the effects of foreign insolvency proceedings. The recognition of insolvency proceedings opened in one EU Member State in other EU Member States is automatic by virtue of the Regulation. Insolvency proceedings have the same effect in other EU Member States as they have in the law of the insolvency forum, whereas, under the UNCITRAL Model Law for Cross Border Insolvency, the consequences of recognition depend on the law of the recognising State. Under the MLCBI, however, recognition is dependent upon an application to the court of the enacting State.

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5.6

The Regulation contains a requirement for EU Member States at Article 25 to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. It contains, moreover, a provision for the interconnection of such insolvency registers via the European e-Justice Portal. At present, access to individual Member State registers has been enabled from a page within the portal,[15] albeit each register has to be searched separately. However, thus far, some search functionality has been enabled, allowing for the gathering of basic data on insolvencies for 20 Member States. Once the interconnection has been completed and the register is fully operational, it will become easier to search for information on cross-border insolvency cases within the EU.

5.7

Other relevant EU texts include Council Regulation (EC) No. 593/2008 (Rome I) that applies to EU Member States and governs the law applicable to contractual obligations in civil and commercial matters resolving any conflict issues on the applicability of national legislation at the contractually agreed terms between parties.[17] Rome I establishes uniform rules within the EU for determining which country's laws apply to contractual disputes, regardless of the nationality or the location of the parties to a contract. This provides greater legal predictability and uniformity in cross-border transactions within the EU. It is relevant for any out-of-court settlements agreed between the debtor and its creditors, but it does not apply to insolvency.[18]

5.8

For all cross-border proceedings between EU and non-EU Member States, there is a general need for rules on cooperation in insolvency matters. While general provisions on cooperation in civil proceedings in national laws or as part of treaties with other states may be helpful, specific provisions on insolvency assist and guide the court and judge to navigate the complex area of insolvency and support efficient judicial decision-making. The enactment of separate national legislation on cooperation and coordination of cross-border insolvency proceedings by individual EU Member States is needed, in addition to the EU Insolvency Regulation, to facilitate cooperation on cross-border insolvency with non-EU Member States.

[12] The European Commission has published a proposal for a further harmonising Directive: Proposal for a Directive harmonising certain aspects of insolvency law, accessible at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/insolvency-proceedings_en.

[13] Reinhard Bork,'The European Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency' (2017), pg. 246-269, < https://onlinelibrary.wiley.com/doi/epdf/10.1002/iir.1282>, accessed on March 21, 2023.

[14] Gerard McCormack, 'Conflicts in Insolvency Jurisdiction', Journal of Private International Law (2023), pg. 186-207.

[15] See: https://e-justice.europa.eu/110/EN/bankruptcy_and_insolvency_registers.

[16] See: https://e-justice.europa.eu/contentPresentation.do?clang=en&idTaxonomy=246.

[17] However, even if the application of the Rome I results in a non-EU Member State law being the governing law of the agreement, courts in EU member state will still apply these rules to determine the law of the contact. This means that even if the contract is subject to a non-EU law, EU courts will still consider the Rome I Regulation when determining the legal framework for the contract. Moreover, EU member state courts will apply the Rome I Regulation even if some or all of the parties involved are non-EU. Rome I may therefore have a bearing on how courts in EU member states consider governing law provisions in agreements in an insolvency context where there is a non-EU element.

[18] Max Planck Institute for Procedural Law, Luxembourg, The implementation of the New Insolvency Regulation – Recommendations and Guidelines, available at: http://insreg.mpi.lu/Guidelines.pdf. The EU has also acceded to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Convention). An international treaty, the Convention establishes rules and procedures for the recognition and enforcement of judgments in civil or commercial matters. However, it does not apply to certain types of judgments and expressly carves out judgments related to "insolvency, composition, resolution of financial institutions, and analogous matters".

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6. ALBANIA

6.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Albania: Tonucci & Partners and Wolf Theiss. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

6.2 Relevant Insolvency Legislation

6.2.1

The main text governing insolvency is Law No. 110/2016 on Bankruptcy (Official Gazette No. 226 of the year 2016) (as amended) (the Insolvency Law), approved on 27 October 2016 and which entered into force on 22 May 2017. The Insolvency Law governs the insolvency of legal and natural persons. A few procedural aspects, such as the jurisdiction of insolvency cases, are regulated by the Civil Procedure Code, Law No. 8116 dated 29 March 1996 (as amended).

6.2.2

The UNCITRAL Model Law on Cross-Border Insolvency has been enacted through Part Eight of the Law No. 110/2016 on Bankruptcy.

6.2.3

The UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not yet been enacted.

6.3 Insolvency Courts, Regulatory Authorities, and Insolvency Practitioners

6.3.1

Insolvency courts are courts of general civil jurisdiction with commercial law divisions. The competency of the insolvency court is established based on the debtor's COMI.

6.3.2

The relevant government authority for insolvency proceedings is the Ministry of Justice. The National Bankruptcy Agency, a public entity under the Ministry of Justice, is the state authority entrusted with the supervision, training, and licensing of insolvency practitioners, also known as bankruptcy administrators.

6.3.3

The Ministry of Justice maintains a list of experts for all areas within its competence, including a register of authorised insolvency practitioners.

6.4 Relevant Treaties with Other States

6.4.1

Albania is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following countries: Bulgaria, Greece, Hungary, Kuwait, North Macedonia, Romania, Russia, and Türkiye.

6.5 Recent Cross-Border Insolvency Judgments

6.5.1

Local counsel are not aware of any cases with respect to the recognition of foreign insolvency proceedings before the Albanian courts.

CONTINUE ⟶

7. BOSNIA AND HERZEGOVINA

7.1

Bosnia and Herzegovina consists of two autonomous entities/jurisdictions: the Federation of Bosnia and Herzegovina and Republika Srpska. The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Bosnia and Herzegovina: CMS, Marić & Co Law Firm, and Schönherr. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here (Federation of Bosnia and Herzegovina) and here (Republika Srpska).

Federation of Bosnia and Herzegovina

7.2 Relevant Insolvency Legislation

7.2.1

The primary legislative text governing insolvency and restructuring proceedings of legal persons and individuals in the Federation of Bosnia and Herzegovina (FBiH) is the Insolvency Act, (the Insolvency Law) published in the Official Gazette of FBiH, No. 53/2021 on 7 July 2021. In the absence of relevant provisions in the Insolvency Act, the Law on Civil Proceedings, Official Gazette of the FBiH, No. 53/03, 19/06, 98/15, applies.

7.3 Insolvency Courts and Regulatory Authorities

7.3.1

Insolvency courts are courts of general civil jurisdiction (municipal courts), and the competency of the court is established based on the debtor's legal seat of operations in the case of legal entities or the residence of an individual (i.e., within the territorial jurisdiction of the relevant municipal court).

7.3.2

The regulatory authority for insolvency proceedings is the FBiH Ministry of Justice.

7.3.3

Insolvency practitioners, known as bankruptcy trustees, must be registered on a list maintained by the FBiH Ministry of Justice and published in the Official Gazette of the Federation and the Ministry's website. The bankruptcy trustee must have completed professional education and passed a specialised examination.

7.4 Enactment Status of UNCITRAL Insolvency Model Laws

7.4.1

The UNCITRAL Insolvency Model Laws have not been enacted. However, the Insolvency Law includes provisions regarding international insolvency and the recognition of foreign court decisions issued prior to or following a court decision of the Federation of Bosnia and Herzegovina, as well as cooperation with foreign insolvency practitioners.

7.5 Relevant Treaties with Other States

7.5.1

Bosnia and Herzegovina is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings. These treaties are applicable in the Federation of Bosnia and Herzegovina and cover the following countries: Algeria, Belarus, Czech Republic, China, Croatia, Cyprus, France, Great Britain, Iran, Italy, Macedonia, Montenegro, Morocco, Moldova, Mongolia, Poland, Russia, Slovak Republic, Serbia, Turkey, and Ukraine.

7.6 Recent Cross-Border Insolvency Judgments

7.6.1

Local counsel have confirmed their involvement in cross border insolvency issues and the existence of some cross border insolvency judgments issued by the courts of Bosnia and Herzegovina, however these are not publicly available.

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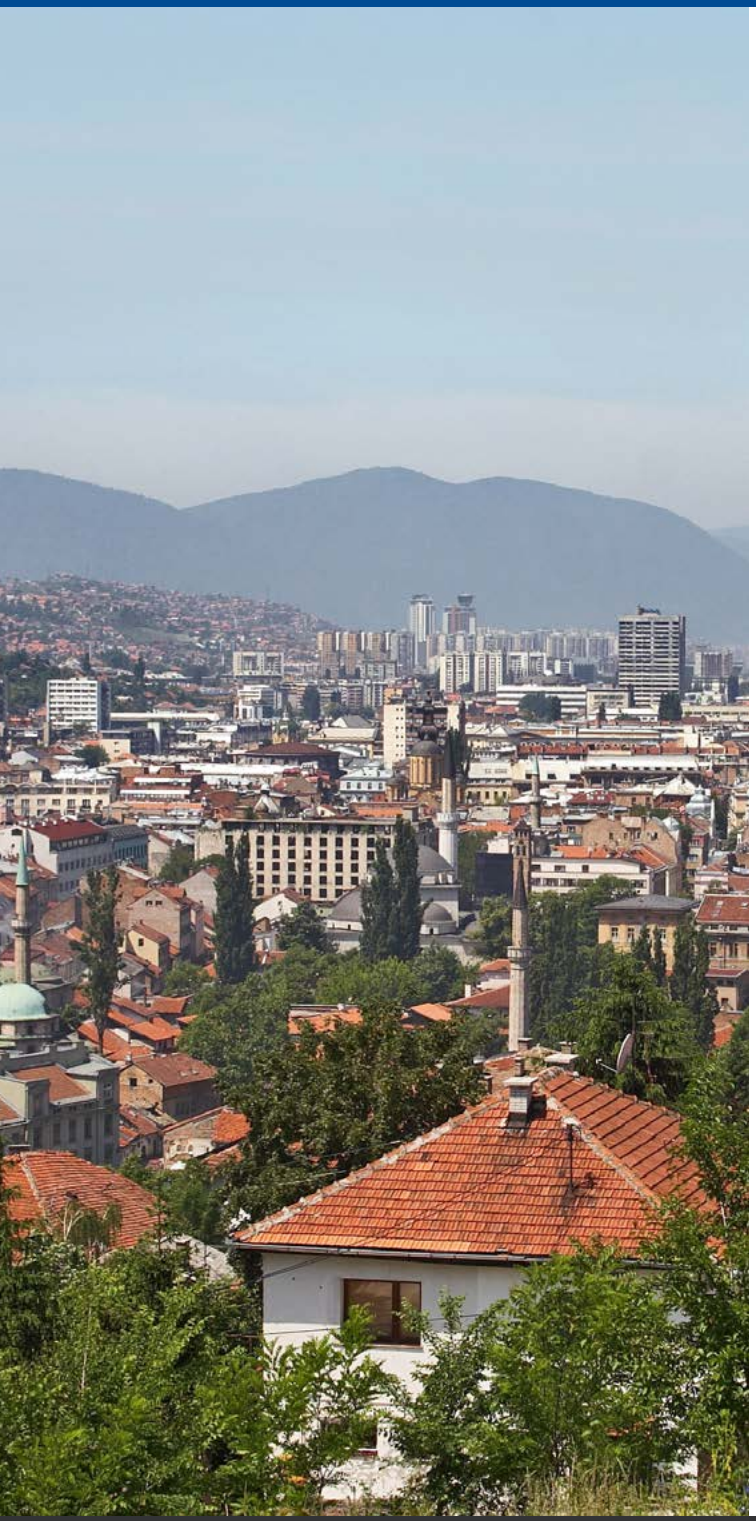

Republika Srpska

7.7 Relevant Insolvency Legislation

7.7.1

The primary legislative text governing insolvency and restructuring proceedings for legal persons and individuals in Republika Srpska (RS) is the Law on Bankruptcy (Official Gazette of RS, No.: 16/2016) (the Insolvency Law). In the absence of relevant provisions in the Insolvency Law, the Law on Civil Proceedings (Official Gazette of the RS, Nos. 58/2003, 85/2003, 74/2005, 63/2007, 105/2008, 45/2009, 49/2009 and 61/2013 and 109/2021) will apply.

7.8 Insolvency Courts and Regulatory Authorities

7.8.1

Insolvency courts are commercial courts (commercial district courts) and the competency of the court is established based on the debtor's legal seat of operations in the case of legal entities or the residence of an individual (i.e., within the territorial jurisdiction of the relevant commercial district court).

7.8.2

The regulatory authority for insolvency proceedings is the RS Ministry of Justice.

7.8.3

Insolvency practitioners, also known as bankruptcy trustees, are required to be registered on a list maintained by the Ministry of Justice published in the Official Gazette of RS and on the Ministry's website. Only natural persons who have appropriate professional qualifications and business experience and who have passed a specialised examination may be appointed as insolvency practitioners.

7.9 Enactment Status of UNCITRAL Insolvency Model Laws

7.9.1

The UNCITRAL Insolvency Model Laws have not been enacted. However, the Insolvency Law includes provisions regarding international insolvency and the recognition of foreign court decisions issued prior to or following a court decision of Republika Srpska, as well as cooperation with foreign insolvency practitioners.

7.10 Relevant Treaties with Other States

7.10.1

Bosnia and Herzegovina is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings. These treaties are applicable in the Republika Srpska and cover the following countries: Algeria, Belarus, Czech Republic, China, Croatia, Cyprus, France, Great Britain, Iran, Italy, Macedonia, Montenegro, Morocco, Moldova, Mongolia, Poland, Russia, Slovak Republic, Serbia, Turkey, and Ukraine.

7.11 Recent Cross-Border Insolvency Judgments

7.11.1

Counsel have confirmed their involvement in cross border insolvency issues and the existence of some cross border insolvency judgments issued by the courts of Bosnia and Herzegovina, however these are not publicly available.

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8. BULGARIA

8.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Bulgaria: CMS Sofia Lawyers Partnership; Dimitrov, Petrov & Co.; and Slavcheva & Kacharova Law Firm. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

8.2 Relevant Insolvency Legislation

8.2.1

The primary law governing the insolvency of (non-bank) legal entities and entrepreneurs (merchants) in Bulgaria is contained in Parts IV and V of the Commercial Act (the Insolvency Law) adopted 18 June 1991 (Official Gazette No. 48/1991) as amended on 8 December 2020 (Official Gazette No. 104) and on 1 August 2023 transposing the EU Restructuring Directive.

8.3 Insolvency Courts and Regulatory Authorities

8.3.1

Insolvency cases in Bulgaria are overseen by general district courts. Jurisdiction is determined by the location of the seat of the debtor, as at the time at least six months prior to the submission of the petition to commence bankruptcy proceedings.

8.3.2

The Ministry of Justice is the main governmental regulatory authority for insolvency matters. The Ministry of Justice organises the examinations for insolvency practitioners, maintains the lists of insolvency practitioners, and may initiate checks on insolvency practitioners in a particular insolvency proceeding of its own initiative or at the request of an interested party.

8.3.3

Insolvency practitioners are also known as trustees. The Ministry of Justice organises the examinations for insolvency practitioners, maintains the lists of insolvency practitioners, and may initiate checks on insolvency practitioners in a particular insolvency proceeding at its own initiative or at the request of an interested party. Details as to admission criteria, qualification, and supervision of the activities of the persons appointed as insolvency practitioners are set out in the Insolvency Practitioner Regulation No. 3 dated 27 June 2005.

8.4 Enactment Status of UNCITRAL Insolvency Model Laws

The UNCITRAL Insolvency Model Laws have not been enacted. However, as a member of the EU, Bulgaria is subject to Regulation (EU) 2015/848 on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

8.5 Relevant Treaties with Other States

8.5.1

Bulgaria is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following third (non-EU) countries: Albania, Algeria, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, China, Cuba, Democratic People's Republic of Korea, Georgia, Kuwait, Lebanon, Libya, Mongolia, Montenegro, North Macedonia, Russia, Serbia, Syria, Ukraine, Uzbekistan, Vietnam and Yemen.

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8.6 Recent Cross-Border Insolvency Judgments

8.6.1

Recent cross-border insolvency judgments on the recognition of foreign insolvency proceedings in Bulgaria include the following:

a. Case No.34/2024 of the Court of Appeal, Veliko Tarnovo dated 23 February 2024: This case concerned the recognition of compulsory liquidation proceedings against Olympic Limited S.A., an insurance company with a registered branch in Bulgaria, initiated in Cyprus where the company had its COMI. The Court of Appeal upheld the recognition of the liquidation proceedings initiated in Cyprus, affirming that proceedings in Bulgaria against the company could not continue without authorisation from the Cypriot court. This case addressed the application and interpretation of Article 220 and Article 624 of the Companies Law of Cyprus;

b. Case No.45/2020, Supreme Cassation Court, Second Section dated 3 December 2020: This case concerned the precondition for initiating secondary insolvency proceedings against a natural person conducting commercial activity in another EU Member State. The Supreme Court of Cassation analysed the criteria for initiating secondary insolvency proceedings under EU law, concluding that such proceedings could be initiated against a natural person if they conducted commercial activities in another Member State, thereby supporting the cross-border applicability of EU insolvency regulations. This case addressed the application and interpretation of Article 757 in conjunction with Article 759(1) of the Civil Code and Article 3(3) in conjunction with Article 27 of Regulation (EC) No. 1346/2000, as amended by Regulation (EC) No. 848/2015;

c. Case No.15463/2019, Sofia City Court, dated 5 March 2020: This case concerned the appeal by M.R.R. against the refusal to suspend enforcement proceedings initiated based on a judgment from the High Court of England and Wales. The appeal was dismissed on the grounds that the bankruptcy order had not entered into force. The decision underscores the necessity for the enforceability of foreign insolvency judgments for the suspension of domestic enforcement actions. This case addressed the application and interpretation of Regulation (EU) 2015/848 on insolvency proceedings and Council Regulation (EC) No. 1346/2000;

d. Case No. 2241/2019, Court of Appeal, Sofia dated 26 July 2019: This case concerned the recognition of insolvency proceedings against M. D. N., initiated by the District Court of Central London, and appointment of Ms. L. –ú. B. as trustee in bankruptcy. The Court of Appeal found that ancillary insolvency proceedings could not be opened under Bulgarian law as the debtor did not qualify as a trader. The judgment highlights the criteria under national law for recognising foreign insolvency proceedings and the interplay with EU regulations. This case addressed the application and interpretation of Council Regulation (EC) No. 1346/2000 and Regulation (EU) 2015/848;

e. Case No.3609/2015, Supreme Cassation Court, First Section dated 2 April 2019: This case concerned the preliminary ruling on the exclusive jurisdiction of Member State courts in insolvency proceedings in the case of Wiemer & Trachte GmbH v. Zhan Oved Tadzher. The Supreme Court of Cassation clarified the principle of exclusive jurisdiction in insolvency matters, affirming that only the courts of the Member State where insolvency proceedings are initiated have jurisdiction to adjudicate related disputes. This decision supports the harmonisation of cross-border insolvency laws within the EU. This case addressed the application and interpretation of Regulation (EC) No. 1346/2000 - Article 3(1);

f. Case No.3703/2018, Court of Appeal-Sofia, dated 1 October 2018: This case concerned the contesting of a European payment order based on an investment loan agreement, and interim measures granted by the Athens Court of First Instance and the Athens Regional Court. The Court of Appeal affirmed the applicability of Bulgarian law to the effects of insolvency proceedings on pending disputes. The decision emphasised that stabilisation proceedings do not suspend all legal actions against the debtor, only enforcement actions, thus acknowledging the interim measures ordered by foreign courts and the specific application of national laws in cross-border insolvency cases. This case addressed the application and interpretation of Regulation (EC) No. 1346/2000, and Regulation (EU) 2015/848; and

g. Case No.5921/2013, Supreme Court of Cassation, Fourth Civil Division, dated 8 May 2014: This case concerned the recognition and enforcement of a foreign judgment for a monetary claim against a debtor declared insolvent in another EU Member State. The Supreme Court of Cassation held that the opening of primary insolvency proceedings pursuant to Article 3(1) of Regulation (EC) No 1346/2000 in one EU Member State precludes the initiation of individual enforcement actions against the insolvent debtor in another EU Member State. However, this does not prevent the recognition and enforcement of a monetary judgment rendered by a court of another EU Member State under Article 34(1) of Regulation (EC) No. 44/2001 in an exequatur proceeding. This case addressed the application and interpretation of Regulation (EC) No. 1346/2000 - Articles 3(1), 3(2), and 20(1); Regulation (EC) No. 44/2001.

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9. CROATIA

9.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Croatia: Law Office Lehki; Mamić Perić Reberski Rimac Law Firm; and Schönherr Rechtsanwälte. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

9.2 Relevant Insolvency Legislation

9.2.1

The primary legislative text governing pre-insolvency (pre-bankruptcy) and insolvency (bankruptcy) proceedings of non-bank legal entities and entrepreneurs (natural persons) in Croatia is the Insolvency Law (Official Gazette No. 71/2015) as amended in 2017 (Official Gazette No. 104/2017, 2022 (Official Gazette No. 36/2022), and 2024 (Official Gazette No. 27/2024) transposing the EU Restructuring Directive (the Insolvency Law). In addition, for large companies meeting the requirements of systemic importance, the Act on Extraordinary Administration Procedure in Companies of Systemic Importance for the Republic of Croatia (Official Gazette No. 32/2107 applies.

9.3 Insolvency Courts and Regulatory Authorities

9.3.1

Insolvency (bankruptcy) proceedings fall within the competence and exclusive jurisdiction of commercial courts as first-instance courts. The courts in Zagreb, Split, Rijeka and Osijek have judges with more experience in insolvency cases and are allocated most cases. As a rule, the jurisdiction of the court is determined based on the registered seat of operations of the debtor as at the date of submission of the petition for the commencement of insolvency proceedings.

9.3.2

The main government authority responsible for the regulation of insolvency practitioners, also known as bankruptcy administrators, is the Ministry of Justice and Public Administration (the Ministry).

9.3.3

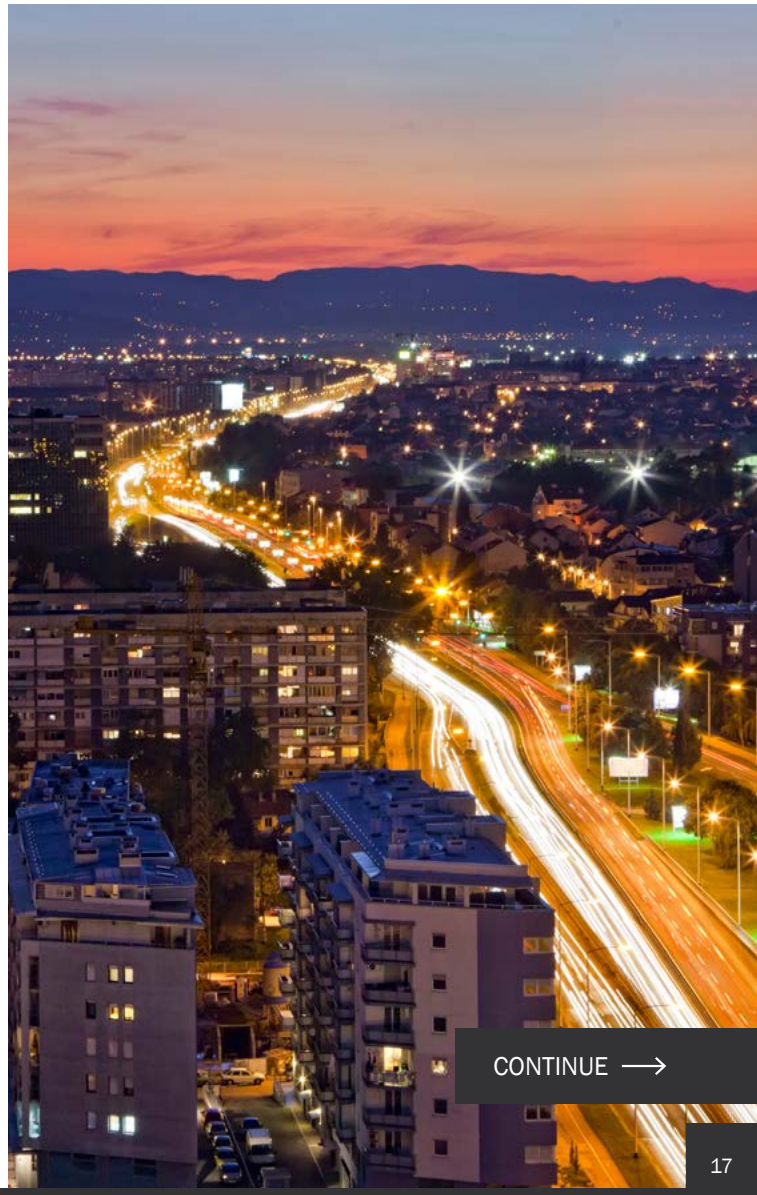
The Ministry is responsible for the licensing and supervision of insolvency practitioners. They are registered on two lists: the regular list and the list of highly qualified insolvency practitioners. Insolvency practitioners who meet certain criteria having: i) at least seven years of registration on the list of insolvency practitioners; ii) completed at least two bankruptcy reorganisation proceedings involving debtors classified as medium- and large-sized entrepreneurs in terms of accounting regulations; and iii) completed at least two bankruptcy reorganisation proceedings with confirmed bankruptcy plans) may be registered on the highly qualified list insolvency practitioners' list.

9.3.4

The Ministry is also responsible for delivering any training to insolvency practitioners, which is regulated by a separate Ordinance on the passing of the professional examination, training, and professional development of bankruptcy administrators of 28 April 2022 (Official Gazette No. 51/2022).

9.3.5

A list of insolvency practitioners and the cases to which they are appointed is published on the website: e-Oglasna ploča.



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9.4 Enactment Status of UNCITRAL Insolvency Model Laws

9.4.1

The UNCITRAL Insolvency Model Laws have not been enacted. However, cross-border insolvency is regulated by Title XI of the Insolvency Law. Croatia has jurisdiction over debtors that have a centre of business in Croatia. Article 403 of the Insolvency Law regulates the requirements on how foreign decisions are to be recognised under Croatian Law.

9.4.2

As a member of the EU, Croatia is subject to Regulation (EU) 2015/848 on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

9.5 Relevant Treaties with Other States

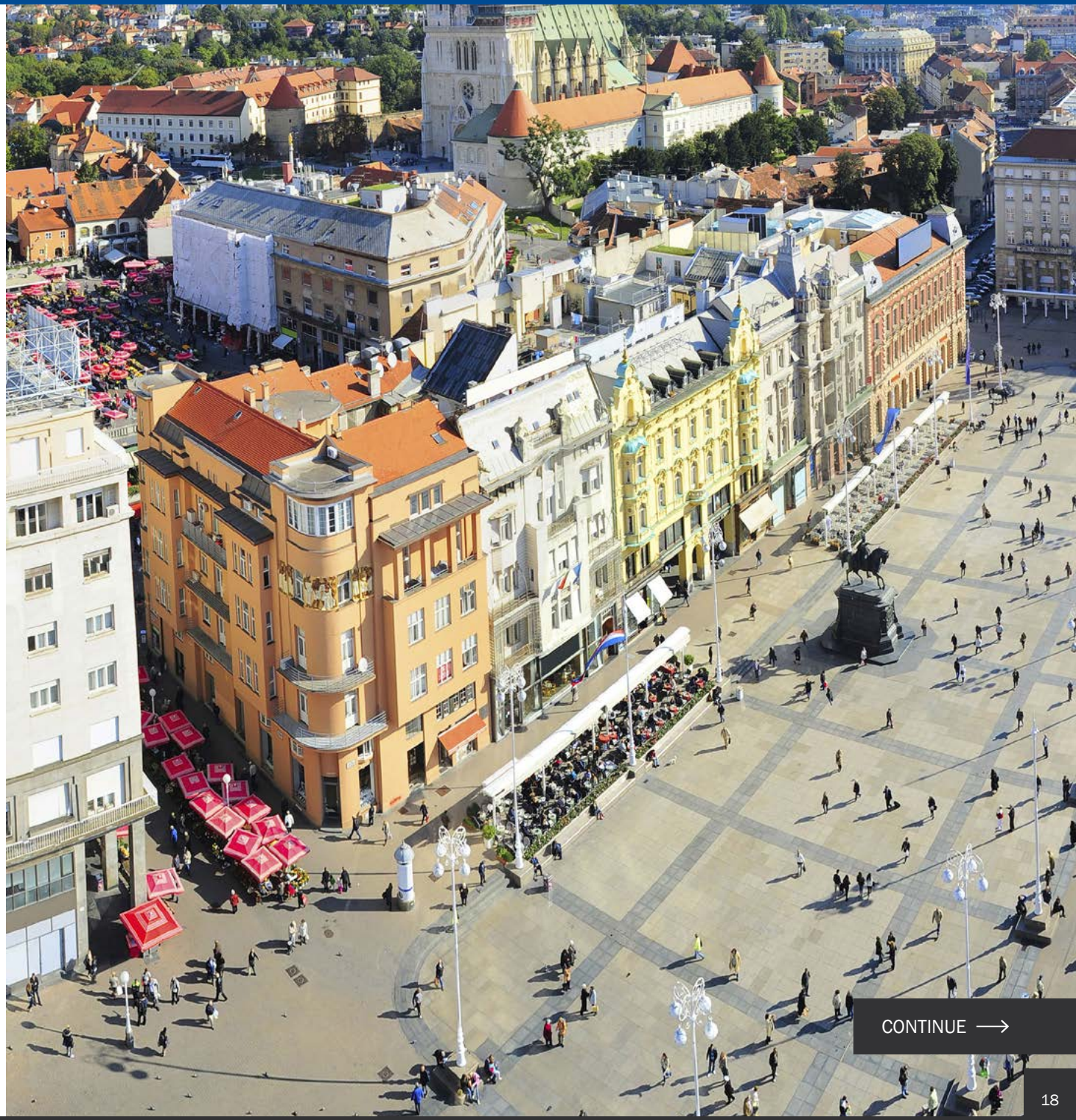
9.5.1

Croatia is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following third (non-EU) countries: Australia, Bosnia and Herzegovina, Canada, Czech Republic, New Zealand, North Macedonia, Russia, Serbia, Türkiye, and the United Kingdom. Croatia also has a bilateral treaty with Denmark.

9.6 Recent Cross-Border Insolvency Judgments

9.6.1

Recent cross-border insolvency judgments on recognition of foreign insolvency proceedings in Croatia include Pž 2162/2022-2, High Commercial Court Republic of Croatia (24 May 2022). In this decision, the Court rejected the petition by a creditor for recognising a foreign bankruptcy proceeding as a main proceeding, because the creditor did not submit a certificate from the competent authority on the enforceability of the decision, and did not provide a list of the debtor's known assets in the Republic of Croatia nor a list of its creditors with appropriate accompanying evidence.



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10. GREECE

10.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Greece: Bazinas Law Firm; Potamitis Vekris Law Firm; and Zepos & Yannopoulos Law Firm and (with respect to cross-border insolvency judgments) on contributions also provided by Professor Moustaira. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

10.2 Relevant Insolvency Legislation

10.2.1

The primary legislative text governing insolvency and restructuring proceedings for legal entities, entrepreneurs, and consumers in Greece is the Debt Settlement and Facilitation of a Second Chance Law No. 4738/2020, published in the Official Gazette 207/A/27-10-2020 and amended, which transposed the EU Restructuring Directive (the Insolvency Law). The Insolvency Law came into force on 1 March 2021, however, the provisions concerning early warning tools, the out-of-court debt settlement procedure and small-scale bankruptcies were only effective from 1 June 2021.

10.3 Insolvency Courts and Regulatory Authorities

10.3.1

Insolvency courts are courts of general jurisdiction (first instance district courts and, until 16 September 2024, magistrate courts). The competency of the court is established based on the location of the debtor's COMI in the case of legal entities, or the main residence in the case of individuals without commercial capacity (i.e., non-merchant debtors). Insolvency cases before the courts of general jurisdiction follow a special procedure under the Code of Civil Procedure.

10.3.2

The joint regulatory authorities for insolvency proceedings are the Ministry of Justice and the Ministry of Finance. In addition to the courts, the Special Secretariat for Private Debt Management, an independent public service operating under the Government's Council for Private Debt Management and supervised by the Ministry of Finance, oversees an out-of-court debt settlement procedure.

10.3.3

All insolvency practitioners should be certified by the Insolvency Management Committee, which operates under the supervision of the Secretariat. Such practitioners can be either certified natural persons or a law firm, audit firm, or consulting firm that engages at least one certified individual or an association of certified individuals. Insolvency practitioners must be registered on a list maintained by the Ministry of Justice and published on the Ministry's website.

10.4 Enactment Status of UNCITRAL Insolvency Model Laws

10.4.1

The UNCITRAL Model Law on Cross-Border Insolvency (1997) has been enacted, by virtue of Law No. 3858/2010 (Official Gazette 102/A/1-7-2010). However, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not been enacted.

10.4.2

As a member of the EU, Greece is subject to Regulation (EU) 2015/848 on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

10.5 Relevant Treaties with Other States

10.5.1

Greece is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following third (non-EU) countries: Albania, Armenia, China, Georgia, Lebanon, Montenegro, Russia, Serbia, Switzerland, Syria, Tunisia, Ukraine and the United Kingdom.

10.6 Recent Cross-Border Insolvency Judgments

10.6.1

Recent cross-border insolvency judgments on recognition of foreign insolvency proceedings in Greece include the following:

a. Court of First Instance of Athens [Polimeles Protodikeio Athinon], Case No. 569/2023 (22 December 2023). This case concerned the dismissal of third party objections filed by third party beneficiaries of real estate dispositions against the previous judgment;

b. Piraeus Court of Appeal [Trimeles Efeteio Peiraios], Decision No. 429/2022 (23 June 2022). This case was an appeal against decision No. 3821/2020 of the Court of First Instance of Piraeus (see paragraph b. below). The court decided that the appeal was admissible and partly well-founded. It was clear that an administrator (trustee) had been appointed in the foreign main proceeding and the first instance court had erroneously ruled to the contrary. The foreign insolvency proceedings did not concern all members of the group. Separate proceedings were opened for each company and thereafter consolidated to facilitate the proceeding before the foreign court. Thus, the first instance judgment

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was overruled, and the appeal court kept and tried the initial application. The appeal court rejected it, because it considered that the applicant company did not have its centre of main interests in the United States of America, nor in Liberia, where the company had its registered office, but in Greece;

c. Court of First Instance of Athens [Polimeles Protodikeio Athinon], Case No. 183/2021 (13 January 2021). This case concerned the granting of post-recognition relief in the form of the recognition of certain avoidance judgments issued by the US Bankruptcy Court for the Middle District of Florida, which avoided the transfer of real estate by the debtor and its direct beneficiaries to third parties. This case concerned a US resident with multiple real estate assets in Greece, who had been declared bankrupt pursuant to a decision of the Bankruptcy Court of the Middle District of Florida. Greece recognised the foreign bankruptcy proceedings, pursuant to Article 15 of Law 3858/2010. All the assets of the US debtor were managed by the US insolvency administrator. The application directed the court to the decisions of the Florida bankruptcy court, which revoked transfers and charges of the debtor's real estate in Greece, which the latter had made within the relevant period both to his direct beneficiaries and to third parties, to whom the beneficiaries had transferred the assets. The Greek Court, after examining the legal basis for such recognition, decided that the US bankruptcy court had correctly applied US bankruptcy law, in all the above sub-cases (revocation actions against debtor, beneficiaries and third parties). Consequently, and given that those decisions were not contrary to the Greek public order, the Greek Court proceeded to recognise the avoidance judgments in Greece, which the insolvency administrator would register with the competent Land Registries;

d. Court of First Instance of Piraeus [Polimeles Protodikeio Peiraios], Division for Maritime Disputes, Case No. 1798/2020 (14 January 2020) CLOUT Case 1999. In this case, the applicant, arguing that he was the insolvency administrator of a Russian maritime company against which insolvency proceedings had been opened on 19 November 2018 by a Russian arbitral court, asked the Greek court to recognise the Russian insolvency proceedings, with all the consequences that the law 3858/2010 foresees (Articles. 15, 19, 20, etc.). The court considered the application as admissible, but since temporary orders had been issued in 2019 by the Greek Court of First Instance, concerning a tanker of the insolvent company, and since there were serious doubts as to whether there were Russian insolvency proceedings and a supervising court, as well as whether the COMI of the maritime company was in Russia, the court postponed the issuance of a judgment until the applicant brought the needed evidence;

e. Court of First Instance of Piraeus [Polimeles Protodikeio Peiraios], Division for Maritime Disputes, Case No. 3821/2020 (11 December 2020) (CLOUT case 2000). This case concerned the application by a company for the recognition of a foreign court judgment (USA – New York Bankruptcy Court for the Southern District), by which the foreign court, on 29 March 2019, had confirmed the joint plan of restructuring submitted by companies belonging to a group, after having applied for US Chapter 11 protection. The Greek court decided that the application was inadmissible, on the grounds that it had not been submitted by a foreign insolvency practitioner (according to Articles. 9 and 15 paragraph 1 of the Law 3858/2010) and the court had not received a certified copy of the foreign court's order or confirmation or other evidence about the appointment of an insolvency administrator. According to the Greek court, even if the application would be considered admissible, the foreign insolvency proceedings could not be recognised in Greece, because they were proceedings concerning a group of companies and Greek law does not recognise a group of companies to have legal personality. Thus, a recognition of such proceedings would be contrary to the public order (Article 6 of the Law 3858/2010);

f. Supreme Court [Areios Pagos], Case No. 798/2020: This court decision concerned a bankruptcy initiated and declared in Greece. The bankruptcy estate included, among other matters, shares of a foreign (Cypriot) entity. The bankruptcy trustee requested the bankruptcy court to allow the sale of the shares in such entity in accordance with the relevant provisions of Cypriot law. However, the Supreme Court ruled that since the shares were located in Greece, the trustee should follow mandatory Greek law provisions governing the liquidation of the shares, which formed part of the bankruptcy estate, since the laws of Greece, being the law of the opening of proceedings, should be applicable (lex fori concursus);

g. Court of First Instance of Piraeus [Monomeles Protodikeio Peiraios], Division of Maritime Disputes, Case No. 1964/2020 (3 December 2019). This case concerned the opposition by a foreign company against a payment order issued by a Greek court. Among the grounds for opposition was the fact that the payment order was issued after the declaration of the company's bankruptcy by a foreign arbitral court. As a result of bankruptcy, all individual actions against the company were stayed. The Greek court rejected this argument, on the grounds that according to Article 20 of the law 3858/2010 the stay of the individual actions commences after the recognition in Greece of the foreign insolvency proceeding (according to Article 15 of the same law). Furthermore, it ruled that in any case the stay of the individual actions does not prevent the issuance of a payment order, because the latter does not constitute an aggressive act, like the filing of a suit, but simply aims to obtain an enforcement order;

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h. Court of First Instance of Thessaloniki [Polimeles Protodikeio Thessalonikis], Case No. 3531/2019: With the aforementioned court decision, and on the grounds of the EU Insolvency Regulation, two insolvency court judgments of a German court (the Magistrate's Court of Hanover) were recognised in Greece as final judgments (res judicata). As a result, a Greek citizen residing in Germany and active in Germany and in Greece entered bankruptcy and was granted a discharge from his remaining debts in accordance with Article 300 of the German Insolvenzordnung; and

i. Thessaloniki Court of Appeals [Efeteio Thessalonikis], Case No. 1367/2018: This case concerned a Greek citizen who maintained a business in the city of Bitburg, Germany and was declared bankrupt by virtue of the competent German court. Following the declaration of the Greek citizen as bankrupt, the latter returned to Greece and proceeded with the sale of a real estate asset in ownership. The German bankruptcy trustee requested the Greek courts to recognise that the sale was null and void due to the fact that the bankrupt did not have the power to proceed with the sale of assets forming part of the bankruptcy estate, following the declaration of bankruptcy. However, the Greek court ruled that the third party purchaser/acquirer of the property was in good faith and was not in a position to know that the seller was declared bankrupt, since the bankruptcy trustee had not proceeded with registering the bankruptcy status to the Greek land registries.

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11. MONTENEGRO

11.1

The contents of this section are based on the contributions provided local EBRD Assessment partner law firms in Montenegro: BDK Advokati; Karanovic & Partners; Stankovic & Partners Law Firm; and Schoenherr. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

11.2 Relevant Insolvency Legislation

11.2.1

The primary legislative text governing insolvency and restructuring proceedings for non-bank legal entities and entrepreneurs in Montenegro is the Bankruptcy Law (the Insolvency Law) (published in the Official Gazette of Montenegro, Nos. 1/2011, 53/2016, 32/2018, 62/2018 and 001/22).

11.2.2

Additionally, the Law on Consensual Financial Restructuring of Debts towards Financial Institutions (the Consensual Financial Restructuring Law) as published in the Official Gazette of Montenegro, Nos. 20/2015, 37/2017, and 43/2018 provides a debtor in financial difficulty with the possibility of reaching an out-of-court agreement with its creditors through the process of mediation supervised by the Centre of Mediation.

11.3 Insolvency Courts and Regulatory Authorities

11.3.1

The Commercial Court of Montenegro in Podgorica is the competent first-instance court for hearing insolvency cases, while the Court of Appeal of Montenegro is the competent second-instance court.

11.3.2

The Ministry of Justice of Montenegro is the main official authority for insolvency and for the regulation of insolvency practitioners, also known as bankruptcy administrators.

11.3.3

The Ministry is responsible for establishing the programme, terms, and conditions of the professional entrance examination for insolvency practitioners and registration and removal of insolvency practitioners from a list of authorised practitioners. The Ministry maintains a list of authorised insolvency practitioners, which is available here.

11.4 Enactment Status of UNCITRAL Insolvency Model Laws

11.4.1

The UNCITRAL Model Law on Cross Border Insolvency (1997) was enacted, by virtue of the earlier Law on Insolvency of Companies and is part of the current Insolvency Law. Consequently, foreign insolvency proceedings are eligible for recognition in Montenegro if certain criteria are met.

11.4.2

Effects of recognition of foreign proceedings may include the prohibition of initiation of new and termination of ongoing procedures related to property, rights, obligations, or responsibilities of the debtor; the prohibition of enforcement actions over the property of the debtor; and the prohibition of transfer, disposal or creating of a lien of the property of the debtor.

11.4.3

However, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not been enacted.

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11.5 Relevant Treaties with Other States

11.5.1

Montenegro is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following countries: Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Iraq, Italy, Mongolia, North Macedonia, Poland, Romania, Russia, Serbia, and the Slovak Republic.

11.6 Recent Cross-Border Insolvency Judgments

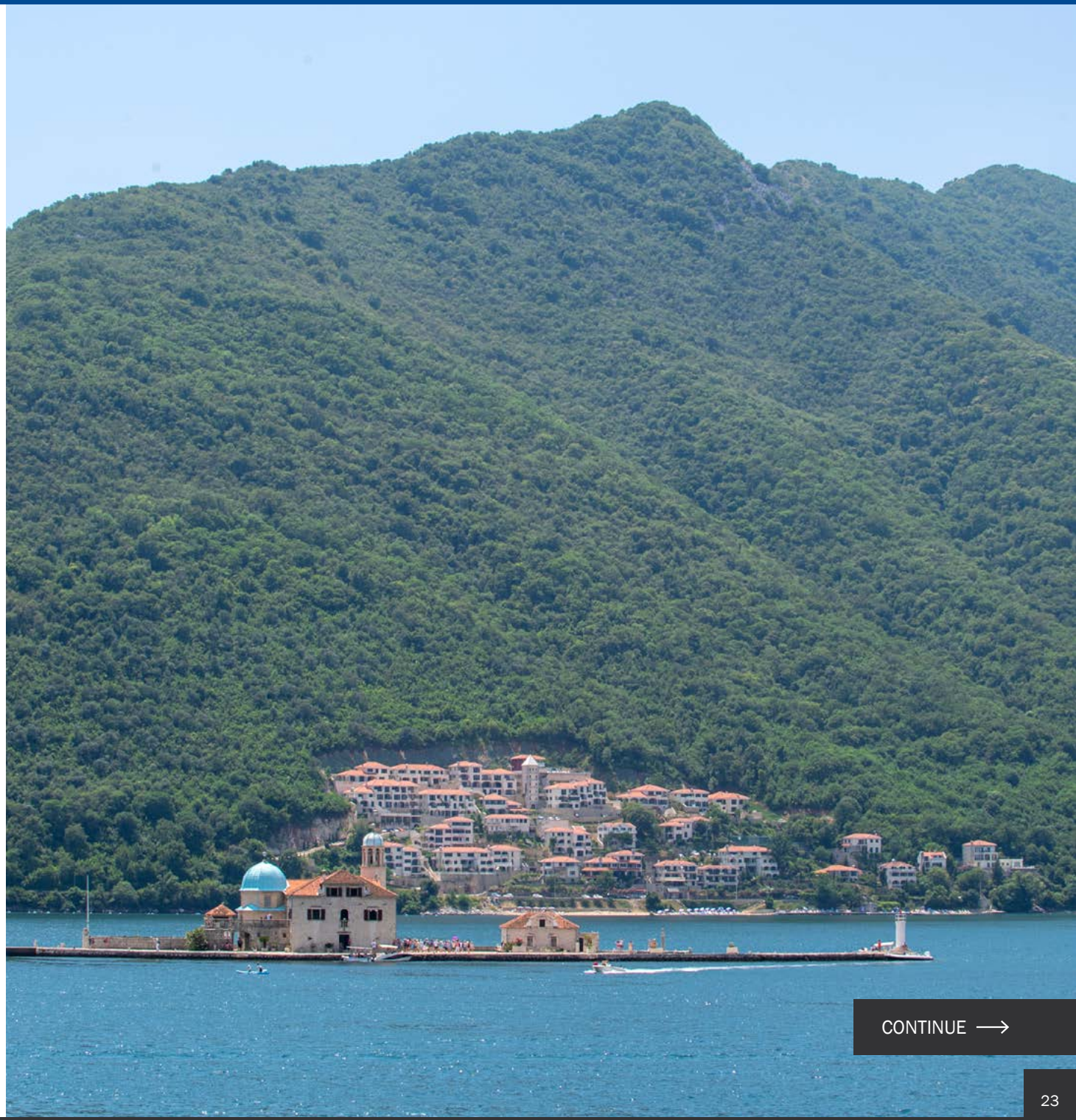
11.6.1

Recent cross-border insolvency judgments on the recognition of foreign insolvency proceedings in Montenegro include the following:

a. Court of Appeal of Montenegro, number Pž. br. 125/24 (13 March 2024), available in Montenegrin language here. In this case, the Court of Appeal of Montenegro confirmed the Decision of Commercial Court of Montenegro in case No. St.br.220/22 of 6 December 2023 and thereby recognised the main foreign proceedings before a foreign District Court, Decision No. 36982-05-21 from 22 June 2021, case No. 15599-05-21;

b. Commercial Court of Montenegro, number St. br. 28/22 of 20 December 2022, available in Montenegrin language here. In this case, the Commercial Court of Montenegro recognised the foreign proceedings as the main foreign bankruptcy proceedings, initiated on the basis of the Decision of the District Court in Lausanne No. FF11.041432/JMR/msu from 1 December 2011; and

c. Commercial Court of Montenegro, number St. br. 156/22 (4 July 2022), available in Montenegrin language here. In this case, the Commercial Court of Montenegro recognised the foreign proceedings as main bankruptcy proceedings, initiated based on the Decision of the Commercial Court in Belgrade 6, Republic of Serbia No. St. 123/2021 from 29 July 2021, against the debtor “BOMEX EXPORT-IMPORT DOO” in bankruptcy, from Belgrade, Republic of Serbia.



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12. NORTH MACEDONIA

12.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in North Macedonia: CAKMAKOVA Advocates; Debarliev, Dameski & Kelesoska; and Polenak Law Firm. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

12.2 Relevant Insolvency Legislation

12.1.1

The primary legislative texts governing insolvency and restructuring proceedings of legal entities and natural persons (including entrepreneurs) in North Macedonia are the Law on Bankruptcy (Official Gazette of the Republic of North Macedonia Nos. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015), and the Law on Out-of-Court Settlement (Official Gazette of the Republic of North Macedonia No. 12/2014).

12.3 Insolvency Courts and Regulatory Authorities

12.3.1

Insolvency and restructuring proceedings are overseen by first-instance courts as listed in the Judicial Portal. The jurisdiction of the court in relation to legal entities is determined by the location of the registered office of the company, and in relation to natural persons, by the place of main residence.

12.3.2

The Ministry of Economy is the main authority responsible for insolvency proceedings. With respect to the out-of-court settlement procedure, a settlement board is appointed on a case-by-case basis by the Ministry of Economy to act as an approving authority in lieu of the court for an out-of-court settlement agreement. Members of the settlement board must have a degree in either law or economics.

12.3.3

The Ministry of Economy is the main authority responsible for insolvency proceedings and supervision, licensing, and examination of insolvency practitioners, also known as administrators or trustees. Insolvency practitioners are members of a Chamber of Insolvency Practitioners. The Chamber organises, in cooperation with the Ministry of Economy, special expert training for insolvency practitioners and participates in the examination committee for prospective insolvency practitioners.

12.4 Enactment Status of UNCITRAL Insolvency Model Laws

12.4.1

The UNCITRAL Insolvency Model Laws have not been enacted. However, the Insolvency Law contains provisions for the international jurisdiction of the courts of North Macedonia and international cooperation of insolvency practitioners in the case of multinational insolvency proceedings.

12.5 Relevant Treaties with Other States

12.5.1

North Macedonia is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following countries: Albania, Bulgaria, Bosnia and Hercegovina, Croatia, Kosovo, Montenegro, Romania, Serbia, Slovenia, Turkey and Ukraine.

12.6 Recent Cross-Border Insolvency Judgments

12.6.1

A recent cross-border insolvency judgment on the recognition of foreign insolvency proceedings in North Macedonia was issued by the Principal Court Skopje II in Skopje, as a first instance court: V ST 1176/13 (10 September 2013). Upon the decision no 5 S 80/13 v 3 adopted by the Vienna Commercial Court on 19 June 2013 by virtue of which bankruptcy proceedings were opened against the company Alpine Bau GMBH Austria, domestic bankruptcy proceedings was initiated against the North Macedonian branch office: Alpine Bau GMBH Branch in Skopje.

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13. ROMANIA

13.1

The contents of this section are based on the contributions provided by local EBRD Assessment partner law firms in Romania: CITR; CMS; and STRIDE. Details of cross-border insolvency judgments have been provided by former judge, Nicoleta Nastasie. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

13.2 Relevant Insolvency Legislation

13.2.1

The primary legislative act governing insolvency and restructuring of companies and entrepreneurs (excluding persons practising 'liberal professions' on the basis of relevant professional qualifications) in Romania is the Law on Insolvency Prevention and Insolvency Proceedings (Official Bulletin No. 466) (the Insolvency Law) adopted on 25 June 2014 (as amended including by Law No. 216/2022 which transposed the EU Restructuring Directive).

13.2.2

Further, Ordinance 06/2019 (Official Gazette 648/2019) on Establishment of Fiscal Facilities (the Ordinance), applicable to natural persons, legal entities, and entrepreneurs, introduces an out-of-court restructuring procedure available only for budgetary claims outstanding on 31 December 2021. The Code of Civil Procedure contains certain provisions with respect to procedural issues relevant to insolvency proceedings.

13.3 Insolvency Courts and Regulatory Authorities

13.3.1

Insolvency proceedings fall within the competence and exclusive jurisdiction of commercial district courts (the Tribunal). These are specialised courts or special sections of the courts that deal mainly with insolvency cases.

13.3.2

As a rule, the jurisdiction of the court is determined based on the debtor's registered office (or professional establishment in the case of entrepreneurs), as at the date of submission of the petition for commencement of insolvency proceedings. If the debtor's registered office changed fewer than six months before the application for the opening of insolvency proceedings was lodged, the debtor's registered office or business address is deemed to be the address where the debtor was registered previously.

13.3.3

Authorities involved in insolvency proceedings are the Ministry of Justice (through the insolvency courts) and relevant tax authorities (when tax claims are registered in the creditors' table). The Official National Trade Register Office under the Ministry of Justice manages the company register and the insolvency register. It is responsible for insolvency regulations, which are subsequently approved by Ministerial Order or by Government Decision or included in amendments to the law.

13.3.4

Insolvency practitioners, also known as judicial administrators and judicial liquidators, must be enrolled in a register administered by the National Union of Insolvency Practitioners. To be listed in the register, certain requirements, such as an entry examination and practical experience (a minimum of three years), along with a degree in law or economics must be met. The purpose of the registration process is to guarantee high professional standards. The register of insolvency practitioners is available on the website of UNPIR, the self-governing association of insolvency practitioners: www.unpir.ro/tablou.

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13.4 Enactment Status of UNCITRAL Insolvency Model Laws

13.4.1

The UNCITRAL Law on Cross Border Insolvency (1997) has been enacted and is regulated by Title III of the Insolvency Law. However, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not yet been enacted.

13.4.2

As a member of the EU, Romania is subject to Regulation (EU) 2015/848 on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

13.5 Relevant Treaties with Other States

13.5.1

Romania is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following third (non-EU) countries: Albania, Algeria, China, Egypt, Montenegro, Moldova, Mongolia, Russia, Serbia, South Korea, Syria, Turkey, and Ukraine.

13.6 Recent Cross-Border Insolvency Judgments

13.6.1

Recent cross-border insolvency judgments on the recognition of foreign insolvency proceedings in Romania include the following:

a. Iasi Court of Appeal, 2023. An application for the opening of insolvency proceedings was filed by a creditor established in Ukraine against a company with its main office in Romania. The Court of Appeal found the Romanian courts had jurisdiction over the opening of insolvency proceedings and that the existence of an arbitration agreement in a contract of sale could not determine the jurisdiction for the opening of insolvency proceedings. Application and interpretation of Article 274(1)(d) and Article 285(1) of Law No. 85/2014 (Article 13, Article 14 of the UNCITRAL Model Law on Cross-Border Insolvency 1997), Article 2580(1) of the Civil Code, Article 1.066 and Article 1.072(1) of the Civil Procedure Code;

b. Bucharest Court of Appeal, 2023. In this case, the foreign creditor requested the recognition in Romania of two arbitral decisions of the UK Court of Commercial Maritime Arbitration against a debtor with a COMI and subject to insolvency proceedings in the Russian Federation. Incidence of Article 292(1) of the Law No. 85/2014. The appellant considered that the dispute could no longer be settled by arbitration, taking in consideration Articles II and IV of the New York Convention of 10 June 1958. The violation of the principles governing cross-border insolvency through a recognition of arbitral decisions is likely to violate the public order of Romanian private international law. The Court of Appeal, however, rejected the appeal as unfounded;

c. Constanța Tribunal, 2022. This case concerned the recognition in Romania of Russian insolvency proceedings of a company with headquarters in the Russian Federation. The debtor's foreign representative applied to the Tribunal for the unilateral termination of a security deposit agreement, which was admitted by the syndic judge. The case addressed the application and interpretation of the Article 292 (1) of Law No. 85/2014 (Article 20 of the UNCITRAL Model Law on Cross-Border Insolvency 1997);

d. Constanta Court of Appeal, 2022. This concerned the suspension of the continuation of a creditor's action in Romania against a company with a COMI and subject to main insolvency proceedings in the Russian Federation. Such proceedings were recognised in Romania which triggered a stay (moratorium) of individual judicial proceedings. A UK based creditor appealed against the judgment on the basis that it was a secured creditor with a preferential claim, but this was rejected by the Court of Appeal. The case addressed the application and interpretation of Article 292(1) and (2) of Law No. 85/2014 (Article 20 of the UNCITRAL Model Law on Cross-Border Insolvency 1997);

e. Bucharest Court of Appeal, 2021. An action for the rejection of a contract was brought in Romania by the foreign representative of a company with a COMI and subject to insolvency proceedings in the Russian Federation, based on the rights conferred by Article 295 of Law No. 85/2014. This case addressed the application and interpretation of Article 274(1)(a), Article 281 of Law 85/2014. (Articles 1 and 9 of the UNCITRAL Model Law on Cross-Border Insolvency 1997);

f. Craiova Court of Appeal, 2020. This case concerned main insolvency proceedings in Romania and the requirements for the notification of a creditor established in Serbia. The court held that once the foreign creditor has chosen a place and a person for communication of procedural acts in Romania, the provisions of Article 42 of Law 85/2014 on the service, communication, notification, and publication of procedural documents would become applicable to the foreign creditor. Once the foreign creditor has been recognised as a party to the insolvency proceedings, he will take over the proceedings from the stage they are at, and the provisions of Law 85/2014 will apply to him in the same way as to the other creditors and participants in the proceedings, including regarding the calculation of procedural time limits. The case addressed the application and interpretation of Article 274(1)(d), Article 285(1), Article 286 of Law No. 85/2014 (Articles 13 and 14 of the UNCITRAL Model Law on Cross-Border Insolvency 1997);

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g. Bucharest Court of Appeal, 2020. The case involved an application in 2019 for the recognition of Swiss insolvency proceedings as main proceedings for a company with a registered office in Switzerland. The application was rejected by the court due to the failure to fulfil the condition provided by Article 289 paragraph (1) of Law no 85/2014 on reciprocity (between Romania and Switzerland) regarding the effects of foreign insolvency procedures/judgments. The case analysed the concept of "de facto reciprocity" as a basis for the recognition of foreign insolvency proceedings;

h. Bucharest Court of Appeal, 2020. This case concerned an application for the recognition of insolvency proceedings pending in Russian Federation, based on Article 289(1) of the Romanian Act No.85/2014 (Article 17 of the UNCITRAL Model Law on Cross-Border Insolvency 1997), admitted by the Court. The condition of reciprocity for recognition of the Russian proceedings was fulfilled based on a bilateral treaty between Romania and Russia in 1958. Such treaty provides for the recognition of judgments given in civil cases, without specific derogations, and was thus found to apply to all judgments which have been given in cases which are of a civil nature at that time, including judgments given in disputes with professionals. As disputes with professionals in insolvency proceedings, are civil litigation in both Romanian and Russian laws, it results that the Treaty also applies to insolvency judgments. The court held that bankruptcy cases fall in the Russian Federation within the jurisdiction of the arbitral tribunals and that the judgments handed down by such tribunals are court decisions;

i. Bucharest Tribunal, 2019. This case concerned the recognition in Romania of the insolvency proceedings of a joint-stock company incorporated in Italy, which had a branch in Romania. The debtor had commenced reorganisation proceedings in Italy, while a group of Romanian creditors requested the commencement of insolvency proceedings in Romania relying on Article 3 of the recast EU Insolvency Regulation. The debtor objected, arguing that the proceedings should remain in Italy. Noting from the outset that recast Regulation applied to the case, the Tribunal had to determine the location of the debtor's COMI and whether the debtor had an establishment in Romania. The Tribunal found that the debtor's COMI was in Italy because the presumption of the COMI being at the registered office was not rebutted. The presence of customers and creditors in Romania did not establish COMI in Romania, as these factors did not outweigh the location of the debtor's main creditors, assets, and management in Italy. Additionally, the Romanian creditors did not constitute the majority of the debtor's creditors, and the Romanian business operations were only part of the company's international activities;

However, the Tribunal determined that the debtor did have an establishment in Romania. The Court noted that the debtor's economic activities in Romania were non-transitory, had a perceptible effect on the local market, and were managed through representatives designated by the debtor's management in Italy. These activities included offering goods and services on the Romanian market and conducting regular business operations with Romanian creditors. The Tribunal determined that the debtor did have an establishment in Romania. The Court noted that the debtor's economic activities in Romania were non-transitory, had a perceptible effect on the local market, and were managed through representatives designated by the debtor's management in Italy. These activities included offering goods and services on the Romanian market and conducting regular business operations with Romanian creditors;

Based on these findings, the Tribunal concluded that the debtor's COMI was in Italy, thus excluding the general jurisdiction of Romanian courts to open the main insolvency proceedings. However, the debtor's establishment in Romania allowed for the opening of secondary insolvency proceedings. The objection to the admissibility of the applications for secondary insolvency proceedings in Romania was dismissed. This case addressed the application and interpretation of Article 3(1) of the recast Regulation (Article 2(b) (f); 16(3) of the UNCITRAL Model Law on Cross-Border Insolvency 1997); and

j. Bucharest Tribunal, 2018. This case concerned the recognition in Romania of the New Zealand insolvency proceedings of an insurance company registered in New Zealand. The provisional judicial liquidator, appointed by the New Zealand High Court of Justice to manage the insolvency procedure of the insurance company, sought recognition of the New Zealand court order as a foreign main proceeding in Romania. The request for recognition was opposed mainly on the ground that Article 274 of the Romanian Law, which enacts Article 1(2) of the MLCBI, excluded insurance companies from the recognition procedure. The Tribunal agreed with the argument and confirmed that the Romanian legal framework for cross-border insolvency recognition does not apply to special insolvency regimes, such as those for insurance companies. On appeal, the Bucharest Court of Appeal, Civil Section VI, upheld the initial ruling of the Bucharest Tribunal (civil decision No. 2269A, file No. 3682/3/2018, 15 November 2018). This case addressed the application and interpretation of Article 274, paragraph 2 of Law No. 85/2014 (Article 1(2) of the UNCITRAL Model Law on Cross-Border Insolvency 1997).

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14. SERBIA

14.1

The contents of this section are based on the contributions provided by EBRD Assessment partner law firms in Serbia: ANDRIĆ Attorneys-at-law; Karanovic & Partners; and Schoenherr. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

14.2 Relevant Insolvency Legislation

14.2.1

The primary legislative text governing insolvency and restructuring proceedings of legal entities is the Bankruptcy Law, (Official Gazette of the Republic of Serbia Nos. 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018 and 95/2018), as amended. There is also a voluntary framework for restructuring overseen by the Serbian Chamber of Commerce and enshrined in the Law on Consensual Financial Restructuring of Companies (Official Gazette of the Republic of Serbia, No. 89/2015).

14.2.2

There is no law on the insolvency of natural persons, although the government authorities have made efforts in recent years to formulate reform proposals.

14.3 Insolvency Courts and Regulatory Authorities

14.3.1

Insolvency courts are commercial courts. The competency of the insolvency court is established based on the location of the debtor's registered address (i.e., the territorial jurisdiction of the relevant commercial court). Specialised judges oversee insolvency cases.

14.3.2

The Law on Bankruptcy Supervision Agency (Official Gazette of the Republic of Serbia Nos. 84/2004, 104/2009, 18/2005, and 89/2015), effective as of 1 August 2004, introduced the Bankruptcy Supervision Agency (BSA), as the main regulatory body for insolvency practitioners. The BSA is overseen by the Ministry of Economy, which is responsible for the broader insolvency framework.

14.3.3

Insolvency practitioners, also known as bankruptcy administrators, are licensed by the BSA, which supervises and regularly monitors (at least once every three years) bankruptcy administrators to ensure high professional competency, quality, and standards. The Agency conducts the exams that are required to qualify as an insolvency practitioner. It also maintains an up-to-date list of all qualified and registered insolvency practitioners in Serbia.

14.4 Enactment Status of UNCITRAL Insolvency Model Laws

14.4.1

The UNCITRAL Model Law on Cross-Border Insolvency (1997) was enacted in 2004 by means of the Law on Bankruptcy Procedure (repealed by the Bankruptcy Law in 2009, which kept the section with the provisions of the Model Law). Consequently, foreign insolvency proceedings are eligible for recognition in Serbia if certain criteria are met (Article 174b).

14.4.2

The effects of recognition of foreign insolvency proceedings may include the commencement or discontinuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities; or prohibition against such compulsory execution against the debtor's assets; and the right to transfer, encumber, or prohibition of such right of transfer, encumbrance or disposal of any assets of the debtor.

14.4.3

The UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not yet been enacted.

14.5 Relevant Treaties with Other States

14.5.1

Serbia is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following countries: Algeria, Austria, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Iraq, Italy, Montenegro, North Macedonia, Mongolia, Poland, Romania, Russia, Slovak Republic, Slovenia, Türkiye, United Kingdom and United Arab Emirates.

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14.6 Recent Cross-Border Insolvency Judgments

14.6.1

Recent cross-border insolvency judgments on the recognition of foreign insolvency proceedings in Serbia include the following:

a. Case 2067: MLCBI 2(a); 17(1)(a) – Serbia: Commercial Court of Belgrade, Case No. St. 157/2017, Agrokor (28 August 2017);

b. St 36/2021 (Aktor Anonimi Tehniki Eteria, Greece), Commercial Court in Belgrade dated 26 February 2021; and

c. Pvž 111/2021 (Aktor Anonimi Tehniki Eteria, Greece), Commercial Appellate Court, dated 15 September 2021.

14.6.2

In the decisions, mentioned in points a. and b. above, the Commercial Court in Belgrade rejected the proposal to open bankruptcy proceedings against the branch of a foreign company registered in Serbia. The court reasoned that secondary proceedings against the branch could not be opened if the main bankruptcy proceedings against the parent company had not yet been opened. The Commercial Appellate Court accepted the reasons of the first instance court, rejected the appeal and confirmed the first-instance decision.

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15. SLOVENIA

15.1

The contents of this section are based on contributions provided by EBRD Assessment partner law firms in Slovenia: Ketler & Partners (member of Karanovic); Odvetniki Šelih & partnerji; and Schoenherr. Further details are set out in the EBRD Business Reorganisation Economy Profile, accessible here.

15.2 Relevant Insolvency Legislation

15.2.1

The primary legislative text governing business reorganisation proceedings of legal persons and entrepreneurs in Slovenia is the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act, as published in the Official Gazette of the Republic of Slovenia No. 126/2007, as amended, including on 1 November 2023, to transpose the EU Restructuring Directive and the EU Directive on the reorganisation and winding up of credit institutions.

15.2.2

The Companies Act, as published in the Official Gazette of the Republic of Slovenia No. 65/09, as amended, includes provisions applicable to the voluntary liquidation of companies. The Code of Obligations (as published in the Official Gazette of the Republic of Slovenia 97/07, as amended) contains provisions relevant to the potential transfer of claims and other generally applicable civil law provisions.

15.4 Insolvency Courts and Regulatory Authorities

15.4.1

General district courts act as first-instance insolvency courts, and their territorial jurisdiction is established based on the location of the debtor's headquarters (i.e. whether this lies within the territorial jurisdiction of the relevant district court) in the case of legal entities or the debtor's main residence in the case of natural persons and entrepreneurs.

15.4.2

The main regulatory authority for insolvency proceedings is the Ministry of Justice. The other authority involved in insolvency proceedings is the Chamber of Insolvency Administrators of Slovenia. The Chamber oversees insolvency practitioners, known as administrators, and maintains an official list of insolvency practitioners.

15.4.3

Insolvency practitioners in Slovenia are required to pass an examination conducted by the Ministry of Justice to be admitted to the profession.

15.5 Enactment Status of UNCITRAL Insolvency Model Laws

15.5.1

The UNCITRAL Model Law on Cross-Border Insolvency (1997) has been enacted.

15.5.2

The UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not yet been enacted.

15.5.3

As a member of the EU, Slovenia is subject to Regulation (EU) 2015/848 on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

15.6 Relevant Treaties with Other State

15.6.1

Slovenia is a party to bilateral treaties on judicial cooperation in civil proceedings, which may cover insolvency proceedings, with the following countries: Algeria, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Iraq, Italy, Mongolia, North Macedonia, Poland, Romania, Russia, Serbia, Slovak Republic, Turkey, United Kingdom and United States of America.

15.7 Recent Cross-Border Insolvency Judgments

15.7.1

Recent cross-border insolvency judgments on the recognition of foreign insolvency proceedings in Slovenia include the following:

a. Supreme Court, Commercial Law Department, Case No. Cpg 2/2018-3 (14 March 2018) (Agrokor). This case concerned the recognition of the legal effects of the foreign (Croatian) Law on the Procedure of Extraordinary Administration in Companies of Systemic Importance for the Republic of Croatia (ZPIUTD). It included assessing whether the ZPIUTD procedure complied with the fundamental legal principles of insolvency proceedings according to Slovenian law, particularly regarding the adherence to the principle of the equal treatment of creditors. The jurisdiction of the foreign bankruptcy proceeding was the Commercial Court in Zagreb (Trgovački sud u Zagrebu), Croatia. It was a business insolvency, specifically concerning the economic entity AGROKOR d.d., a conglomerate managing companies, production, and trade of agricultural products, along with related and dependent companies;

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b. High Court in Koper, Commercial Law Department, Case No. Cpg 188/2018 (8 November 2018). This case involved the recognition of the legal effects of the foreign ZPIUTD procedure initiated under Croatian law (referred to at paragraph a. above). This procedure affected the debtor's legal rights by transferring the management and disposition rights of the debtor's assets to the extraordinary administrator of AGROKOR d.d.. Although the Slovenian court did not recognise the ZPIUTD procedure, this did not imply that the procedure was unlawful or inconsistent with Croatian law. The main focus was on whether the legal effects of this procedure should be recognised in Slovenia and whether the principle of equal treatment of creditors was maintained;

c. High Court in Ljubljana, Commercial Law Department, Case No. Cpg 440/2020 (18 November 2020). This case involved the consideration of whether the claim of the plaintiff (a business legal entity) met the criteria of Article 6(1) of the Insolvency Regulation (EU) 2015/848, meaning whether it arose directly from insolvency proceedings and was closely linked to them. The lawsuit was filed to establish the right of exclusion and to recognise ownership rights on a property in Croatia. The court assessed whether this was a civil and commercial matter, for which jurisdiction is determined by the Brussels I Regulation, or a claim directly linked to insolvency proceedings, for which jurisdiction is determined by Insolvency Regulation. Based on the legal basis of the lawsuit, the court decided that it was a civil and commercial matter, thus the competent court was in Croatia, where the property was located. The jurisdiction of the foreign bankruptcy proceeding was determined by the Insolvency Regulation (EU) 2015/848, in respect of which the court decided that the competent court was in Croatia, where the property was located;

d. High Court in Ljubljana, Commercial Law Department, Case No. Cst 42/2021 (23 February 2021).This case involved the determination of the remuneration for the insolvency administrator on a business insolvency case. Specifically, the appeal was about the increase of fees for the insolvency administrator in a bankruptcy proceeding with an international element. The higher court had to determine whether the limitations on maximum fees specified in Articles 5 to 7 of the relevant regulation applied, and whether an additional 20% fee could be awarded for the complexity associated with international bankruptcy proceedings. determination of the remuneration for the insolvency administrator;

e. High Court in Ljubljana, Commercial Law Department, Case No. Cst 502/2021 (5 January 2022). This case concerned the procedure for notifying foreign creditors and the late submission of a foreign creditor's claim in a Slovenian bankruptcy proceeding. According to the Slovenian Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (ZFPPIPP), the trustee is required to notify known foreign creditors about the commencement of insolvency proceedings. This notification can be sent either by regular mail or electronically. In the case, the creditor, H., d. o. o., submitted their claim after the deadline established by the court as it argued that it did not receive proper notification from the trustee about the bankruptcy proceedings (notification was received via regular mail, but the creditor claimed that it should have been received it via email); and

f. Supreme Court, Commercial Law Department, Case No. Cpg 375/2022 (1 March 2023). This case concerned the determination of the timing and recognition of claims in the context of secondary bankruptcy proceedings in Slovenia with respect to a business under foreign main bankruptcy proceedings in Austria. The court had to assess whether the claims for damages and costs related to the correction of defects in the work performed under the contract arose before or after the commencement of the secondary proceedings. The plaintiff argued that its claims should be recognised and compensated, while the defendant argued that the damages arose due to defects that occurred during the contract's execution but were only claimed and quantified after the secondary bankruptcy began. The court also had to consider the application of Article 486 of the ZFPPIPP, which deals with the recognition of insolvency proceedings in EU Member States and their effects in Slovenia.

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