

# **EU BUSINESS INSOLVENCY**

How to contribute?

10 October 2017

## **HIGHLIGHTS**

On 10 October Accountancy Europe held a roundtable discussion on business restructuring and insolvency in Europe. The event attracted representatives from the European Commission, the EU Council Presidency and Permanent Representations to the EU, and associations representing interests of banks, investors, accountants.

### **BUSINESS INSOLVENCY: CASES IN PRACTICE**

Pol Vermoere, representing Dyzo, shared experience of entrepreneurs who went through insolvency, that can take from two months to two years. Going through bankruptcy can change behaviour of others towards entrepreneurs. For example, entrepreneurs become “persona non-grata” at banks, having difficulties even with opening a bank account. Pol stressed that all businesses and especially the smaller entities need support by an expert to deal with restructuring procedures. He added that entrepreneurs who went through insolvency need ‘training’ to re-enter the market successfully.

### **PROPOSED DIRECTIVE AND ITS BENEFITS FOR CURRENT INSOLVENCY REGIMES**

Ondrej Vondracek, Policy and Legal Officer at the European Commission, presented the European Commission’s perspective on business insolvency. He explained that the proposed Directive focuses on companies’ restructuring rather than insolvency procedures. Entrepreneurs are often afraid to come forward when in financial distress due to fear of insolvency. Ondrej highlighted that we should not neglect the addressee of the Directive which is the business. Its voice should be heard. He advised entrepreneurs to engage in early warning mechanisms and start negotiations with creditors as early as possible. Securing interim and new financing is the crucial factor for a successful restructuring.

### **PRESIDENCY’S PROGRESS ON RESTRUCTURING AND INSOLVENCY PROCEEDINGS**

Triin Tõnisson, Chair of Civil Law Working Party, provided an overview of the Estonian’s Presidency progress on the Business Insolvency Directive. Member States should have the option to whether or not involve the court in the procedures. She stressed the importance of striking a fair balance between swiftness and effectiveness when considering involvement of the court. The period of ‘stay of individual enforcement actions’ (the ‘stay’) varies from zero to unlimited duration across Member States. The ‘stay’ can well depend on the complexity of a case and in such cases preserving flexibility is crucial.

### **NATIONAL PERSPECTIVE: CASE OF ITALY**

Stefania Chiaruttini, Certified Public Accountant, gave an overview of the Italian business insolvency framework where an accountant (Dottore Commercialista) plays a key role in restructuring and insolvency procedures. They can be hired by the debtor or appointed by the court to coordinate restructuring, under no conflict of interest clause. Restructuring can also be done out of the court, but with creditors agreement only. The Italian Parliament

is expected to pass a new law on business insolvency which will strengthen early warning mechanisms. The law aims at ensuring that the entrepreneur can seek for help as early as possible.

## ACCOUNTANCY EUROPE POSITIONS

Professional accountants can play a key role in business restructuring and identifying early warning mechanisms for insolvency. Preventing insolvency or granting second chances to honest entrepreneurs improves the business environment and stimulates growth and jobs.

Accountancy Europe published a position paper on the most contentious matters in the EU Business Insolvency Directive and stressed the role to play by the professional accountants. You can read our full publication [here](#).

### THE ACCOUNTANCY PROFESSION SUPPORTS:

1. measures aimed at further specialisation of insolvency practitioners. The profession can assist the entrepreneur at all stages:
  - o preventing financial distress
  - o assisting the proceedings
  - o achieving a new start after the insolvency has been completed
2. reducing the cost and length of insolvency proceedings. Communicating from the beginning the expected cost and time of the proceedings can work as an incentive to reduce the length.
3. early access to help. Member States need to raise awareness on availability of expert advice and to encourage entrepreneurs to seek help at an early stage and subsequently.
4. directors being incentivised to take early and appropriate action when there is a warning of financial distress.
5. cross-border proceedings: simplification of cross-border proceedings and introduction of further measures at EU level eventually leading to a harmonised environment. International networks of professional accountants and multi-disciplinary practices can also contribute to smoother and more effective cross-border cooperation.

### ADDITIONALLY:

- Hiring a practitioner is an investment worth-considering, as their advice may save the business from insolvency or provide an entrepreneur with a second chance. Losing the business altogether will accumulate much higher costs for the debtor and other affected parties. Regional and national initiatives can facilitate access to a practitioner's advice and possibly reduce costs.
- A period of 'stay of enforcement actions' lasting four months can be a good basis to preserve the balance between the creditors' and the debtor's rights. If specific cases require more time and the right evidence is provided, flexibility should be shown, taking into account the complexity of the debtor's business.
- We consider Commission's proposal for a maximum duration of three years for the discharge period an optimal solution, keeping in mind that in several cases duration depends on the leverage of business and its cash flow generation. The proposed discharge period is appropriate for over-indebted entrepreneurs to fulfil their obligations towards creditors in insolvency, considering that they have the means to pay their debts back.
- There should be open and fair access to the market guaranteed to all holders of the right expertise. Practitioners working on a case should be able to exchange information and consult each other, even if from different backgrounds. Member States should allow for enough flexibility to the practitioner to identify the best solutions.