

Introduction to Multi-Creditor Out-of-Court Restructuring

Experience from Austria and Bulgaria

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Agenda

The next 30 minutes

- ❖ Background and starting point
- ❖ Goals of stakeholders
- ❖ Need for coordination
- ❖ Similar problems faced in almost all restructurings
- ❖ The approach and the outcome AT
- ❖ The status and impediments BG
- ❖ Principles and guidelines applied to BG practice

Starting point : Austria and elsewhere

Issues are not at all unique to Austria

- ❖ Number of larger multi-creditor restructurings in the years 2009 - 2015
- ❖ Well-established work-out units in all major banks
- ❖ Well-established best practice (at least in some cases)
- ❖ Similar problems faced in almost all restructurings
- ❖ No common (Austrian) rulebook to give guidance on recurring questions
- ❖ No or only little knowledge of international rules such as INSOL Principles leading to no application of such international rules in practice

The goal

Austria, elsewhere, anywhere

- ❖ Avoid value destruction that often is caused by
 - Creditors working against each other rather than coordinating and collaborating
 - Debtors in distress approaching their creditors selectively – and, in particular in some jurisdictions, at times very late (or too late)
- ❖ Preserve value for all stakeholders (financial and trade creditors, management and also owners) in coordinated fashion
- ❖ Combat / disincentivize “first come – first serve” and hold-out strategies

Need for coordination ?

You always meet twice

- ❖ Cross-border cases, e.g. benchmark restructuring of a CEE-based retailer where we advised the coordination committee of creditors
- ❖ Large purely domestic financial restructurings
- ❖ Implementation of INSOL Principles or London Rules as guiding principles?
- ❖ Local restructuring communities and banking associations to decide whether additionally local rule books are desirable
- ❖ Some – very welcome – national initiatives for rules on restructuring, e.g. as promoted by Vienna Initiative 2.0

The approach

Austria 2012/2013

- ❖ Austria: Bottom up, i.e.
 - Major Austrian banking groups and Schoenherr teamed up to draft rulebook for restructurings
 - Rules build on practical experiences and look to international standards while at the same time taking into account local features
 - Rules deal with common issues arising in restructuring situations
 - Discuss and decide issues calmly and rationally, without any particular case in mind

The outcome

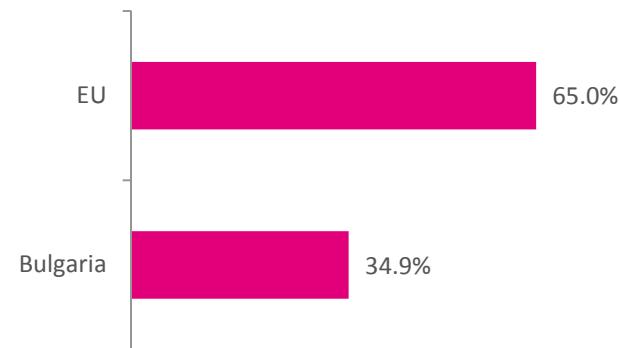
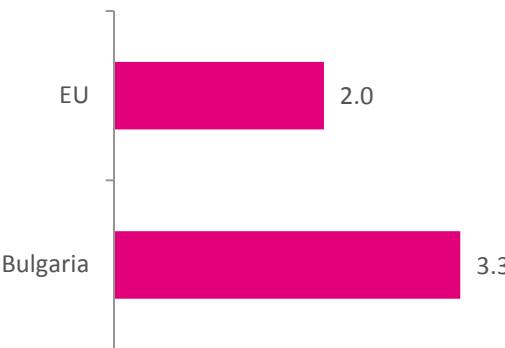
The results in Austria

- ❖ Restructuring Guidelines for Austria
 - Eight principles based on INSOL Principles but with reference to the Austrian market more detailed, thus giving more guidance
 - Guidelines developed in a very inclusive, cooperative process involving all major players, including credit insurers and leasing companies as well as debt(or) advisors
 - Non-binding but wide acceptance due to strong ownership feeling of individuals and involved financing institutions
 - Imminent acceptance and application by Austrian market participants

The status

Bulgaria 2017

- ❖ 2016: Recommendation by the World Bank Group to adopt series of principles and guidelines to operate as a code of conduct for work-outs, such as e.g. the INSOL Principles
- ❖ Alternative for creditors and debtors - formal insolvency proceeding:
 - av. length insolvency proceedings (years)*:
 - av. recovery rate (secured creditors)*:



* World Bank Report: Doing Business 2017 'Equal Opportunity for All'

The impediments

For work-outs under Bulgarian law

- ❖ Directors' obligations and liability in pre-insolvency phase
 - poor legal basis, poorer implementation, not incentivised to pursue out-of-court solutions
- ❖ Claw-back claims
 - voluntary payments subject to avoidance claims in potential insolvency
- ❖ Refinancing / new debt:
 - new security rather safe from claw-back but no priority of debt in potential insolvency
- ❖ Waivers / haircuts subject to tax (~15%)
- ❖ Claims may become time barred while negotiating

The principles and guidelines

Applied to Bulgarian practice

- ❖ Setting:
 - creditors : debtor
- Standstill (AT principle 1)
- Pari passu (AT principle 2)
- No adverse action by debtor (AT principle 3)
- Coordinating body (AT principle 4)
- Information (AT principle 5)
- Applicable law and relative positions (AT principle 6)
- Confidentiality (AT principle 7)
- New money (AT principle 8)

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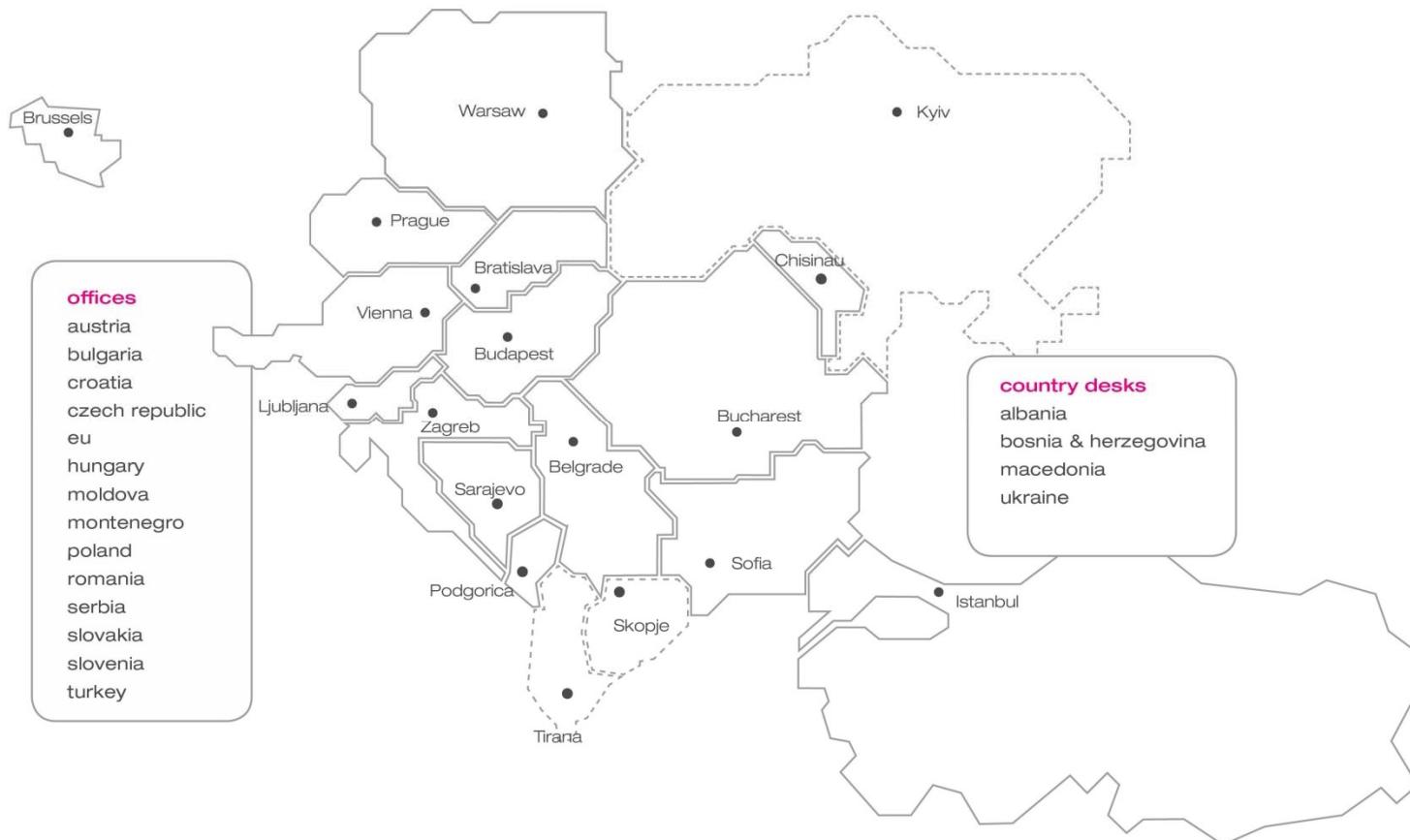
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Real Estate
Regulatory
Tax

Thank you!

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