**INSOL EUROPE**

**HIGH LEVEL COURSE ON INSOLVENCY LAW IN EASTERN EUROPEAN JURISDICTIONS**

**ROMANIA, 2016/2017[[1]](#footnote-1)\***

**I. GENERAL DESCRIPTION**

The course will be separated into 3 different modules, each with a different -but complementary- component. The objective is: 1) to convey the main elements of international best practice; 2) to deepen into the knowledge and interpretation of the local system of a given country.

All the training will have a theoretical base but fundamentally a practical approach. The idea is to use a case-study methodology for each module. The classes must be seminar-based and fully interactive. The course would be designed for a maximum of 70/80 attendants. Target participants would be all professionals involved in the insolvency practice of the jurisdiction, with special focus on high level lawyers and IPs. Judges and state officials (of the relevant insolvency agency) would also be welcome. Insol Europe could consider waiving the fees for Judges attending the course. Their participation would be an additional incentive for top level private sector professionals to sign up for the course.

**II. CONTENT OF THE COURSE**

The course would be divided into 3 modules, 2 consisting of 3 half days each (Thursday/Friday second half of the day, Sat morning), and one on-line with an additional one-day workshop. The modules would take place within one calendar year, with a separation of approx. 5 months. Based on consultations with local experts, the suggested dates would be: Module I, 2-4 February 2017; Module II, 29 June-1 July 2017; Workshop for Module 24-25 November). The general content of each module would be as follows:

*Module I. International best practice and comparative examples*

This module would seek to provide attendants with a general overview of international standards and best comparative examples concerning the main elements of business restructuring and insolvency. The first 2 days would cover the analysis from a theoretical perspective, although always including the provision of comparative examples of the systems existing in different jurisdictions as well as practical examples of cases and judicial decisions. The final day of this module would consist of a case study.

Participants would be clustered in small groups to work through a hypothetical designed to test most of the aspects of insolvency law discussion over the first two days of the programme. In the discussion of the case, at least one local judge will be involved.

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|  | Thursday | Friday | Saturday |
| 8.30-9.00 |  |  | **Coffee** |
| 9.00-10.30 |  |  | **Business rescue inside formal proceedings**  Rescue through a reorganization plan. Enabling legal framework. Rescue through liquidation: the going concern sale of the business. Main regulatory elements |
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| 10.45-12.00 |  |  | **CASE STUDY I**  Designing Steering Committees. Drafting Standstill agreements |
| 12.15-2.00 |  |  | **CASE STUDY II** |
| 2-2.30 | **Coffee, Welcome and Introduction** | **Coffee** | **Q&A** |
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| 2.30-3.45 | **Why bankruptcy and who does what and why**  Justification, characteristics, objectives and goals of insolvency proceedings. The roles in insolvency proceedings of courts, insolvency professionals, parties and advisors; rationale | **Effects on creditors. Insolvency law treatment of contracts**  Treatment of claims and assets, particularly secured claims and encumbered assets. *Ipso facto*’ clauses; disclaimer; sett-off and netting; etc. |  |
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| 4-5.15 | **Who may go bankrupt and how**  Types of debtor; entry gate to proceedings; early access to bankruptcy: duties and incentives. Duty to file vs wrongful trading | **Informal workouts in the ‘shadow of the law’ I**  Theoretical framework of workouts and justification. Elements required. Stages: Pre-contractual; contract; implementation. Steering committees and standstill agreements  ‘ |  |
| 5.30-7 | **Effects on the debtor and the “build-up” of the estate**  Systems of management and continuation of business. Effects on creditors. General principles and avoidance actions | **Workouts II. Hybrid instruments and pre-packaged solutions**  Continued. Different types of hybrid instruments. Pre-packaged solutions and formal proceedings |  |

**Agenda for Module I**

*Module II. An analysis of the main elements of the local system*

This part of the course will be devoted to the analysis of a selected number of especially relevant topics of the local insolvency system. The specific topics are to be determined based on the special circumstances of the jurisdiction where the training takes place, to ensure a bespoke product is offered to attendants. The classes will take the form of a dialogue between a local and an international expert, similar to the dynamics speaker-discussant now already widespread in academic workshops. The degree of development of the jurisdiction would determine who acts as “speaker” and who as “discussant”. Hence, in the more developed Eastern European jurisdictions, the local expert shall take the lead and the international expert will make comments/provide international examples by way of comparison. The idea of this “dialogue” approach is to engage attendants and to ensure proper theoretical and practical elements are conveyed at a high level. I would suggest that, in Romania, the main speaker is the local expert and an international expert will act as discussant.

The selected issues to be analyzed under the new Romanian system are the following:

1. *General assessment of the new system against the benchmark of the international standard*. This part will allow attendants to identify the main problems of the system and will constitute an introduction to the rest of the course.
2. *The functioning of access to proceedings.* A combined analysis of the entry gate to pre-insolvency and insolvency proceedings with alternatives outside insolvency. The class will go in depth on the incentives and duties to access proceedings at an early stage. The analysis will be conducted both from the perspective of a company lawyer and the legal advisor of banks and other creditors. Liability of directors will be specially considered.
3. *Effects of the opening of proceedings*. In depth analysis of the effects of proceedings on the debtor; creditors (especially the practical elements of the stay over actions and executions); contracts (with special reference to financial contracts –the real design of ipso facto clauses in the jurisdiction-, public contracts and financial contracts); and antecedent transactions (and the relationship between avoidance actions and pure out of court contractual arrangements).
4. *The institutional and procedural framework*. Analysis of the main actors in the proceedings. Insolvency practitioners, lawyers, and the bodies of creditors. Analysis of the shortcomings of the procedural framework.
5. *The rescue of viable businesses through out of court proceedings*.
6. *The rescue of viable businesses through in-court reorganization proceedings.*
7. *The rescue of viable businesses through liquidation.*

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|  | Thursday | Friday | Saturday |
| 8.30-9.00 |  |  | **Coffee** |
| 9.00-10.30 |  |  | **Business rescue in liquidation**  Going concern sale in liquidation. Moment of the sale. Enabling framework: effect on contracts, tax, etc. Institutional setting. |
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| 10.45-12.00 |  |  | **CASE STUDY I**  Out of Court Reorganization with an international element |
| 12.15-2.00 |  |  | **CASE STUDY II**  Liability of directors and responsibility of shareholders. How to react. |
| 2-2.30 | **Coffee, Welcome and Introduction** | **Coffee** | **Q&A** |
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| 2.30-3.45 | **The context. The reform process and main features of the Romanian Insolvency system**  Main characteristics of Romanian system against benchmark of international standard. Other elements outside insolvency that hinder business rescue: the institutional setting; enforcement of judicial decisions, etc. | **An analysis of the institutional framework**  Strengths and weaknesses of the institutional framework. IPs, lawyers, bailiffs, experts. Problems of the procedural system. How to avoid delaying and other dishonest tactics. |  |
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| 4-5.15 | **The functioning of the access to proceedings**  Entry gate to insolvency. Incentives for early filing. Relationship with legal alternatives (enforcement, etc.). Liability of directors. | **Business Rescue in out of court proceedings**  How to work out an agreement. Protection for the agreement. Protection for new financing facilities. Possibilities to restructure the business. Limits to financial restructuring. |  |
| 5.30-7 | **Effects of the opening of proceedings**  Effects on the debtor, on creditors (stay), on contracts and in avoidance actions. | **Business rescue in formal reorganization proceedings**  Limits to the content of the plan. Problems posed by the context. Advantages over out of court. Examples from practice |  |

**Agenda for Module II**

*Module III. On line follow-up and case/paper submission*

This final part of the course would consist of an on-line distant training. Participants will be provided with questionnaires, decisions and cases to solve during a period of 3 months. Correction and occasional on-line tutoring should be made available to participants during the said period. Each participant will then choose a topic of analysis, to be selected among a list of options provided by the Course organisers. They will have to write an essay of about 10.000 words on the topic. A committee appointed ad hoc will review the papers and choose the best for each topic. The committee will be composed of 4 members, 2 international and 2 national.

Those selected will present the paper at the final workshop of the course, to be delivered at the end of the year. A national expert will act as discussant of the paper and an international expert will chair the panels. We shall consider publication by (or with the support of) Insol Europe of the best papers, to the extent they are worthy of publication.

* Location: Hotel Caro Bucuresti, Eminescu Room

Module I. on Thursday 2, Friday 3 (14.00 to 19.00) & Saturday 4 February 2017 (9.00 to 14.30)

Module II. on Thursday 29 June, Friday 30 June (14.00 to 19.00) & Saturday 1 July 2017 (9.00 to 14.30)

Module III. on Friday 24 & Saturday 25 November 2017

* International Expert Team

1) Prof. Ignacio Tirado (Univ. Autonoma de Madrid, Spain) CONFIRMED

2) Prof. Irit Mevorach (Univ. Nottingham, UK) CONFIRMED

3) Prof. Riz Mokal (University College London, UK) CONFIRMED

4) Prof. Janis Sarra (University of British Columbia, Canada) CONFIRMED

5) Prof. Christoph Paulus (Humboldt University Berlin, Germany) CONFIRMED

6) Michael Veder (Radboud University Nijmegen, Resor, The Netherlands) CONFIRMED

1. \* Draft prepared for discussion by Prof. Ignacio Tirado, Universidad Autónoma de Madrid. [↑](#footnote-ref-1)