



INSOL International[™]

**CLAIM PRIORITIES IN RESCUE PROCEEDINGS
– A GLOBAL COMPENDIUM**



INSOL International[™]

International Association of Restructuring, Insolvency & Bankruptcy Professionals

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INSOL International™

International Association of Restructuring, Insolvency & Bankruptcy Professionals

It is my pleasure to introduce the latest publication from INSOL International. It provides a detailed overview of the restructuring and insolvency law governing claims in twenty-three key jurisdictions around the world. Thanks to the contributions of more than twenty leading restructuring and insolvency professionals this guide offers a thorough overview of priority and special issues relating to various classes of claims.

In all jurisdictions any restructuring or insolvency brings with it an examination and assessment of financing, secured claims, administrative expenses, priority expenses, general unsecured claims, preferred equity, common equity and a great number of special types of claims. Whilst between jurisdictions there is often similarity in the treatment of secured claims and general unsecured claims there is often significant divergence in dealing with claim types that have special rights or issues, such as inter-company claims, labour / employee claims, pension claims, government claims and DIP financing. For these reasons the information set forth in this publication offers a very useful and practical guide for all restructuring and insolvency professionals around the world.

On behalf of INSOL International and all of its members I thank the project leader David Eaton, Kirkland & Ellis LLP and Richard Mizak, *Fellow, INSOL International*, Patriarch Partners LLC for their support and everyone else whose hard work has gone into producing this excellent resource.

Mark Robinson
President
INSOL International

Foreword

Most INSOL International members practice regularly on cross-border matters and have familiarity with insolvency laws in a variety of jurisdictions. Understandably, though, few are conversant with the nuts and bolts of practice in many countries around the globe. A primary tool we have when a client inquires about a situation in a foreign jurisdiction is the relationship we have with fellow members. We can place a call or send an email to an INSOL friend in order to get the basic information a client needs. Through this publication, INSOL International provides another important tool for the toolbox – a compendium of claim priorities and commentary as to how they factor into the reorganization of a debtor in over 20 jurisdictions.

Our goal is to help practitioners answer what are often among the first questions a client asks when dealing with a foreign insolvency affecting their business, e.g. Where do I stand in the pecking order? Are there social costs that can affect my recovery? Are there special considerations for protecting my claim?

The publication will be iterative and scalable. Over time, country information can be added, updated and, indeed, corrected. We hope that it becomes a useful reference for all members of INSOL International.

I would like to thank the authors of each country chapter for their valuable contribution to this publication. Special thanks to Alexandra Schwarzman and Richard Mizak, *Fellow, INSOL International*, without whom this book would not exist. Finally, I want to express my deep appreciation to the team at INSOL International for their hard work and expert guidance and management that brought this publication (in accounting terms) from an intangible to a tangible asset.



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Argentina

Type of Claim	Description	Comments
'Prompt payment' of certain labour claims	<ul style="list-style-type: none"> • These claims include; <ul style="list-style-type: none"> - salaries; - compensation for labour accidents or labour diseases; - compensation for worker's deductions made by the employer not duly paid to the corresponding organisations, entities or agencies; - compensation for partial or total worker's incapacitation; - dismissal notice substitutive compensation; - compensation of salaries for the days remaining to complete the month of dismissal; and - severance payments; etc. 	<p>Within the ten days following the commencement of the reorganisation proceedings the receiver must prepare a report on the debtor's labour claims and labour claims subject to 'prompt payment.'</p> <p>In order to enjoy the 'prompt payment,' applicable labour claims are not required to file proof of claims nor have a judgment in a previous labour proceeding.</p> <p>The court may reject a labour claim 'prompt payment' if there are doubts as to the origin or cause of the claim or if the claim includes facts that are controverted.</p> <p>To the extent the debtor has liquid funds, the 'prompt payment' labour claims are paid in full. If not, an amount equal to 3% of the debtor's monthly gross income is applied to the satisfaction of these claims pursuant to a payment plan to be prepared by the receiver; provided that no individual payment may exceed the equivalent of four minimum salaries.</p>
General preferred claims	<ul style="list-style-type: none"> • Labour claims; <ul style="list-style-type: none"> - for 6 months' salaries; - compensation for labour accidents; - severance payments; - dismissal notice substitutive compensation; and - compensations for vacations and annual complementary salaries (in all cases, including interest accrued during the last 2 years since delinquency). • Principal owed to the national, provincial or municipal social security systems. • Principal of national, provincial and municipal taxes and duties. • Principal on credit bills accepted for each vendor or lessor up to AR\$ 20,000. 	<p>General preferred claims are not subject to the reorganisation plan, and any payment proposal different from payment on their original terms must be consented to by each general preferred creditor whose claim is proposed to be paid other than on its original terms.</p>

Type of Claim	Description	Comments
Special preferred claims	<ul style="list-style-type: none"> Expenses for the construction, improvement or maintenance of debtor's property, over the proceeds of the sale of such property. Labour claims; <ul style="list-style-type: none"> for 6 months' salaries; compensation for labour accidents; severance payments; and dismissal notice substitutive compensation (including interest accrued during the last 2 years since delinquency); over the proceeds of the sale of inventory; raw materials; and equipment located at the facilities where the employees rendered services. Taxes on property and assets, over the proceeds of the sale of such property or assets. Credits, debentures and bonds secured with mortgages or liens (including litigation costs and expenses, and interest accrued during the 2 years immediately preceding the commencement of the proceedings), over the proceeds from the sale of the collateral. The amounts owed to a creditor retaining property of the debtor, over the proceeds of such property. Naval and aeronautical mortgages, over the proceeds of the ships and airplanes mortgaged. 	<p>Special preferred claims have priority in payment over the proceeds of the assets attached or the collateral.</p> <p>Except as otherwise expressly described, the priority in payment extends only to the amount of principal.</p> <p>Special preferred claims are not subject to the reorganisation plan, and any payment proposal different from their payment under their original terms must be consented by each special preferred creditor whose claim is proposed to be paid other than on its original terms.</p> <p>Commencement of a reorganisation proceeding does not:-</p> <ol style="list-style-type: none"> suspend the accrual of compensatory interest on indebtedness secured with mortgage or pledge; provided that such interests may only be payable out of the proceeds from the enforcement of the collateral; result in the consolidation of mortgage or pledge foreclosure proceedings pending as of the commencement date, which will continue to be heard before the courts where filed; nor cause the stay of the foreclosure proceedings; provided that in case of manifest need or urgency (taking into consideration the convenience for the continuation of the business activities of the debtor and the protection of the creditor's rights) in any mortgage or pledge foreclosure proceedings, the court may order a temporary stay of the realisation of the collateral and a temporary suspension of any injunction enjoining the use of the collateral by the debtor, in both cases for a term of not more than ninety business days. Any compensatory interests accrued during the term of the stay or suspension not satisfied out of the proceeds of the realisation of the collateral will enjoy the preference of administrative expenses in liquidation. <p>Secured creditors will not be able to realise the collateral or obtain precautionary measures enjoining the debtor from using the collateral without having first filed proof of claims identifying amount and security interest.</p>

Type of Claim	Description	Comments
Unsecured claims	<ul style="list-style-type: none"> • Claims that do not have a general or special preference. • General or special preferred claims whose holders waived their preference on 30% or more of their original preferred claims; or which preferences were rejected by a final and definitive court decision. 	<p>Unsecured creditors are subject to the terms of the reorganisation plan accepted by the required majorities of unsecured creditors and confirmed by the court.</p> <p>In order to be confirmed by the court, the reorganisation plan must be consented to by the unsecured creditors (excluding those who are also controlling shareholders) representing within each category an absolute majority of creditors on a headcount basis, and not less than two thirds of the aggregate principal amount of the unsecured claims outstanding¹.</p>
Subordinated claims	<ul style="list-style-type: none"> • Claims that are subordinated in payment to other unsecured claims. 	Will constitute a separate category of creditors.
DIP financing	<ul style="list-style-type: none"> • Includes post-petition financing incurred by the debtor after the commencement of the reorganisation case. 	<p>The incurrence by the debtor of new unsecured post-petition financing within the ordinary course of business does not require the prior authorisation of the court and is not subject to the avoidance action.</p> <p>The incurrence by the debtor of new unsecured financing not within the ordinary course of business or secured financing requires the prior authorisation of the court, after a hearing with the receiver and the creditors' committee.</p> <p>Post-petition financings and claims are not subject to the approved and confirmed reorganisation plan.</p>

¹ Consent of unsecured creditors holding debt securities issued in series (i.e. notes) must be granted at a securities holders' meeting for each series duly called and convened with required minimum quorum (at least 60% or 30% of the aggregate principal amount of the applicable series, in first call or second call, respectively). Securities holders meetings are subject to the following rules: (i) for purposes of computing the headcount majority, all votes of each series consenting to the plan will be computed as given by one person and all votes rejecting the plan will be computed as given by one person, and (ii) the aggregate principal amount of the securities held by the holders consenting to the plan will be computed for determining the principal amount majority; provided that court precedents widely followed have construed that for purposes of calculating the principal majority within each series the principal amount of the notes not appearing at the meeting or otherwise not voted will not be computed.

Summary Chart of Claims Recognition in Liquidation

Type of Claim	Description	Comments
Special preferred claims	<ul style="list-style-type: none"> Expenses for the construction, improvement or maintenance of debtor's property, over the proceeds from the sale of such property. Labour claims <ul style="list-style-type: none"> for 6 months' salaries; compensation for labour accidents; severance payments; and dismissal notice substitutive compensation (including interest accrued during the last 2 years since delinquency); over the proceeds from the sale of inventory; raw materials; and equipment located at the facilities where the employees rendered services. Taxes on property and assets, over the proceeds from the sale of such property or assets. Credits, debentures and bonds secured with mortgage or liens (including litigation costs and expenses, and interest accrued during the 2 years immediately preceding the commencement of the proceedings), over the proceeds from the sale of the collateral. The amounts owed to a creditor retaining property of the debtor, over the proceeds from the sale of such property. 	<p>Special preferred claims have priority in payment over the proceeds from the sale of the assets attached or the proceeds from the sale of the collateral.</p> <p>Except as otherwise expressly described, the priority in payment extends only to the amount of principal.</p> <p>Secured creditors must file proof of claims identifying amount and security interest.</p> <p>Bankruptcy adjudication does not suspend the accrual of compensatory interest on indebtedness secured with mortgage or pledge; provided that such interests may only be payable out of the proceedings from the enforcement of the collateral after deduction of the payments of court costs (levied by the court approximately between 8% and 12%), preferred interest accrued before the bankruptcy adjudication date and principal.</p> <p>Upon bankruptcy adjudication all foreclosure proceedings on credits secured with real property are procedurally consolidated before the bankruptcy court; provided that all individual foreclosure proceedings continue with the intervention of the receiver, but realisation of the collateral is stayed. Upon the bankruptcy adjudication becoming final and non-appealable all individual foreclosure proceedings will be stayed.</p> <p>Provided that proof of the claim and privilege has been duly filed, creditors secured with mortgage or pledge may file a request with the court for realisation of the collateral and satisfaction of their secured claims at any time after verification of the security and the granting by the secured creditor of a guarantee of preferred creditor. After notice to the receiver, the court will admit or deny the request for realisation of the collateral which, if admitted, will proceed at an ancillary proceeding (<i>concurso especial</i> or special liquidation proceeding).</p> <p>Despite the foregoing, the receiver may request court authorisation to satisfy the secured credit in full with liquid funds available if maintaining the collateral is beneficial to the creditors. To this effect the court may authorise the receiver to grant other securities or sell other assets.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> Naval and aeronautical mortgages, over the proceeds from the sale of the ships and airplanes mortgaged. 	<p>Immediately upon bankruptcy adjudication, the receiver may continue with the business activities of the debtor to the extent that the interruption of the business activities may cause material harm to the creditor's interests or the estate, the continuation of the business activities is feasible or the debtor renders public services. Debtor's business may also be continued to preserve the source of employment. The continuation of the debtor's business activities must be confirmed or ordered by an express resolution of the court which, among other things, will fix the term of the continuation (for which purpose will take into consideration the debtor's economic cycle and the time required for selling the business). The term of the business continuation may be extended once.</p> <p>During the term of continuation, enforcement of collateral needed for the business exploitation is stayed when:-</p> <ul style="list-style-type: none"> (i) the secured credit is not due as of the bankruptcy adjudication date and the receiver performs the obligations due after such resolution in due time; (ii) the secured credits are due as of the bankruptcy adjudication date but the security is not admitted by a final and non-appealable resolution; or (iii) the secured creditor consented the stay of the enforcement. <p>In addition, in the case of continuation, the court may also order the stay of collateral enforcement proceedings at the request of an employees' cooperative (formed for purposes of acquiring the debtor's business) for a maximum term of two years.</p>
Administrative expenses	<ul style="list-style-type: none"> Debts incurred in connection with the administration of the case, and in connection with the maintenance, administration and liquidation of the property of the estate. 	Administrative expenses are paid when due without the need to file proof of claims.

Type of Claim	Description	Comments
General preferred claims	<ul style="list-style-type: none"> • Labour claims <ul style="list-style-type: none"> - for 6 months' salaries; - compensation for labour accidents; - severance payments; and - dismissal notice substitutive compensation; - compensations for vacations and annual complementary salaries (in all cases, including interest accrued during the last 2 years since delinquency). • Principal owed to the national, provincial or municipal social security systems. • Principal of national, provincial and municipal taxes and duties. • Principal on credit bills accepted for each vendor or lessor up to AR\$ 20,000. 	<p>General preferred claims have priority only on the amount equal to 50% of the proceeds of the estate property after payment of the claims with special preference, the administrative expenses and the principal amount of any labour claims described above.</p> <p>Distributions among general preferred creditors are made <i>pro rata</i> until their payment in full up to the maximum amount described above.</p> <p>In respect of any unpaid balance, the general preferred claims are paid <i>pari passu</i> with the unsecured claims.</p>
Unsecured claims	<ul style="list-style-type: none"> • Claims that do not have a general or special preference. 	Will receive payment <i>pro rata</i> on any remaining balance after payment of the special preferred claims, the administrative expenses and the general preferred claims.
Subordinated claims	<ul style="list-style-type: none"> • Claims that are subordinated in payment to other unsecured claims. 	Will receive payment on any remaining balance after payment of the special preferred claims, the administrative expenses, the general preferred claims and the unsecured claims in respect of which they are junior.
DIP financing	<ul style="list-style-type: none"> • Includes post-petition financing incurred by the debtor after commencement of a reorganisation case. 	Any unsecured post-petition financing, the proceeds of which were used for the payment of any costs and expenses relating to the maintenance and administration of the property of the debtor or the estate, may be accorded the priority of administrative expenses. As such, it will be paid before claims with general preference, general unsecured claims and subordinated claims, but after claims with special preference.

Type of Claim	Description	Comments
		<p>In re “Compañía Lactea del Sur S.A. (ex Parmalat S.A.) s/Concurso Preventivo” (First Instance Commercial Court No. 25, Secretariat No. 50, 03/09/2009) during the liquidation, the court admitted as administrative expense the amount of a post-petition unsecured financing extended after commencement of the reorganisation proceeding. However, in this case, the extension of the financing and the use of the proceeds thereof had been previously authorised by the court.</p>
Equity	<ul style="list-style-type: none"> • Holders of debtor’s equity. 	<p>After payment and satisfaction of all admitted claims, and all court and case costs and expenses, the court approves the final distribution report and declares the conclusion of the bankruptcy proceeding for full payment. Any remaining balance of the proceeds of the estate are applied to the payment and cancellation of all interest suspended upon commencement of the case, and if there is still any remaining balance, it will be released to the debtor.</p>

Australia

Corporate Insolvency¹

Type of Claim	Description	Comments
Lien for certain fees and expenses of receivers, administrators and liquidators	<ul style="list-style-type: none"> An equitable lien over specific assets of the company (including funds realised) to cover the fees and expenses incurred by an administrator, liquidator or receiver in identifying, preserving and realising those assets. 	Ranks in priority to all other secured and unsecured claims.
Administrators' statutory lien (s 443F Corporations Act 2001 (Cth) (CA))	<ul style="list-style-type: none"> A lien over the company's assets for debts for which the administrator is personally liable (being those incurred by the administrator when carrying out his or her duties) and the respective remuneration. 	<p>For liabilities incurred by the administrator before a circulating security interest is enforced by a secured creditor (except for liabilities for money borrowed, borrowing costs and interest), the lien has priority over claims of secured creditors under circulating security interests (s 443E CA).</p> <p>[Note: 'Circulating security interest' is defined in s 51C of the CA (also see s 340 of the Personal Property Securities Act 2009 (Cth)) and is akin to what was previously known as a floating charge.]</p> <p>The lien does not have priority over claims of secured creditors under non-circulating (i.e. fixed) security interests.</p>
Secured claims	<ul style="list-style-type: none"> Claims by creditors who hold a mortgage, charge or lien on property of the debtor as security for a debt or obligation. 	<p>Employee entitlements must be paid first from the proceeds of circulating security assets, before the balance, if any, is paid to the secured creditor (ss 433 and 561 CA).</p> <p>Subject to the payment of employee entitlements from the proceeds of circulating security assets, secured creditors who enforce their security are entitled to recover their entire debt, including post appointment interest and costs, from the proceeds of realisation of the secured assets.</p> <p>Priority between secured creditors is governed by timing of registration of secured claims under state laws (for mortgages over real property) and federal laws (for personal property) or by priority agreements between secured creditors.</p>

¹ Corporate Insolvency is primarily governed by the Corporations Act (Cth) 2001

Type of Claim	Description	Comments
		<p>A secured creditor who holds security over the whole or substantially the whole of the assets of a company (major secured creditor) may enforce its security (as long as it enforces all its security) within 13 business days of receiving written notice of the appointment of an administrator (s 441A CA).</p> <p>Secured creditors who are not major secured creditors cannot enforce their security during administration (s 440B CA). There is no restriction on secured creditors enforcing their security in liquidation.</p> <p>Secured creditors can vote for their full debt during administration without jeopardising their security. In liquidation, they can only vote for any unsecured portion of their debt, unless they surrender their security.</p>
<p>Unsecured claims (The order set out below is the order of payment of priority with respect to unsecured claims in liquidation. Within each class, claims are paid <i>pari passu</i>. When a company enters a deed of company administration (DOCA) after being in administration, the DOCA can set out a different order of payment of unsecured claims, however all classes of unsecured creditors must get more than they would in liquidation and employees must receive at least the priority they would receive in liquidation).</p>		
<ul style="list-style-type: none"> • Preservation and realisation expenses 	<ul style="list-style-type: none"> • Expenses incurred by an administrator or liquidator in preserving, realising or getting in property of the company, or carrying on the company's business (s 556(1)(a) CA). 	<p>Only relevant for expenses incurred which have not otherwise been paid pursuant to a lien that an administrator or liquidator has to secure the claims (discussed above under secured claims).</p>

Type of Claim	Description	Comments
• Costs of winding up application	• Costs associated with filing an application for, and obtaining, orders to wind up a company (i.e. to place it into liquidation) (CA s 556(1)(b)).	Only applies in court ordered winding up (s 466 CA).
• Outstanding employee wages and superannuation	• All outstanding wages and superannuation payable by the company in respect of services rendered to the company by employees before the insolvency appointment (CA s 556(1)(e)).	<p>Must be paid from the proceeds of circulating security assets, before the balance, if any, is paid to the secured creditor (CA ss 433 and 561).</p> <p>The priority for 'excluded employees', (being any employee who held the position of director, or is the spouse or relative of an employee who held the position of director, in the 12 months prior to the appointment or at any time after the appointment) is capped at \$2,000.</p> <p>Loans to the company for the purpose of paying, and used to pay, employee entitlements, obtain the same priority as the employee entitlements would have.</p>
• Outstanding employee leave entitlements	• All leave entitlements (annual leave, sick leave, long service leave) due and owing to employees (CA s 556(1)(g)).	<p>Must be paid from the proceeds of circulating security assets, before the balance, if any, is paid to the secured creditor (CA ss 433 and 561).</p> <p>The priority for 'excluded employees', (being any employee who held the position of director, or is the spouse or relative of an employee who held the position of director, in the 12 months prior to the appointment or at any time after the appointment) is capped at \$1,500.</p> <p>Loans to the company for the purpose of paying, and used to pay, employee entitlements, obtain the same priority as the employee entitlements would have.</p>
• Employee retrenchment pay	• Any entitlements (e.g. redundancy payments) owing to an employee pursuant to an industrial instrument resulting from the company's termination of the employee's employment.	Applies to any termination of an employee's employment, be it before or after the date of the insolvency appointment.
• General unsecured claims	• Claims that are unsecured and not afforded any unsecured priority status (e.g. claims by trade creditors, breach of contract claimants, unsecured finance).	General unsecured claims rank pari passu as between themselves.

Type of Claim	Description	Comments
• Shareholders	• Owners of share of stock in a company.	Shareholders will only receive a return after all creditors are paid in full, including post insolvency appointment interest.

Personal Insolvency²

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Claims by creditors who hold a mortgage, charge or lien on property of the debtor as security for a debt or obligation. 	<p>There is no restriction on secured creditors enforcing their security in bankruptcy (s 58(5) Bankruptcy Act 1966 (Cth) (BA)).</p> <p>After enforcement of their security, a secured creditor must remit any amount received in excess of the secured amount to the trustee of the bankrupt estate (trustee).</p> <p>A secured creditor is entitled to:</p> <ul style="list-style-type: none"> - surrender its security to the trustee and submit a proof of debt for the full amount due and owing to it; or - submit a proof of debt in the bankruptcy for any portion of the secured debt owed to them that exceeds the value of the security (shortfall). <p>Priority between secured creditors is governed by timing of registration of secured claims under state laws (for mortgages over real property) and federal laws (for personal property) or by priority agreements between the secured creditors.</p>
Specific expenses reasonably incurred by the trustee	<ul style="list-style-type: none"> All expenses reasonably incurred by a trustee in protecting all or part of the bankrupt's assets and in carrying on the business of a bankrupt. Advances made to the trustee for any proper purpose other than remuneration. (Schedule 3 Bankruptcy Regulations 1996 (Cth) (BR)) 	

² Personal insolvency is primarily governed by the Bankruptcy Act 1966 (Cth)

Type of Claim	Description	Comments
The remainder of a trustee's reasonably incurred expenses	<ul style="list-style-type: none"> All fees, costs charges and expenses reasonably incurred by the trustee in administering the bankrupt's estate (Schedule 3 BR) 	
Payment of petitioning creditor's costs	<ul style="list-style-type: none"> Costs incurred by a creditor who takes legal steps to apply to court to bankrupt a debtor (Schedule 3 BR) 	These costs are normally determined at the hearing where bankruptcy orders are made.
Trustee's remuneration	<ul style="list-style-type: none"> The fees charged by a trustee during the course of administering the debtor's estate (Schedule 3 BR). 	The trustee's remuneration ranks separately to the fees and charges incurred by the trustee in administering an estate.
Costs for which a controlling trustee is indemnified (s 109(1)(b) BA)	<ul style="list-style-type: none"> Remuneration and any costs, charges or expenses properly and reasonably incurred by a controlling trustee whilst the debtor's property was within the controlling trustee's control (s 189AC BA). 	An insolvent debtor can appoint a controlling trustee to take control of their assets and call a meeting of creditors for the purpose of creditors deciding whether to agree to a 'personal insolvency agreement' (PIA) proposed by the debtor (s 188 BA). Bankruptcy of the debtor may follow if the PIA is not approved by creditors.
Costs incurred in a PIA which is set aside or terminated within two months prior to bankruptcy (s 109(1)(c) BA)	<ul style="list-style-type: none"> Any unpaid liabilities incurred, or commitments entered into, in good faith together with any expenses reasonably incurred and (subject to creditor approval) a proportionate part of the unpaid remuneration of the trustee with respect to the terminated PIA. 	

Type of Claim	Description	Comments
General unsecured claims	<ul style="list-style-type: none"> Claims that are unsecured and not afforded any unsecured priority status (e.g. claims by trade creditors, breach of contract claimants, unsecured finance). 	General unsecured claims rank <i>pari passu</i> as between themselves.

Notes

1. In both corporate and personal insolvency, each category of creditor is paid in full before a lower ranking category. If there are insufficient funds to pay all claims within a certain category, the creditors within that category will be paid on a pro-rata basis and the next category, if any, will be paid nothing.
2. The Fair Entitlements Guarantee Act 2012 (Cth) (FEG) operates to assist employees of insolvent corporate or individual debtors. In the event of an employer's liquidation or bankruptcy, the FEG guarantees payment of the following employee entitlements (capped at the FEG maximum weekly wage, currently \$2,451), namely:
 - a. up to 13 weeks of unpaid wages;
 - b. annual leave;
 - c. long service leave;
 - d. up to a maximum of 5 weeks payment in lieu of notice;
 - e. redundancy pay up to a maximum of 4 weeks per full year of service (and pro-rata for less than a full year of service) up to a maximum of 16 weeks if the terms and conditions of employment provide for such an entitlement.
 Upon payment to an employee, FEG can subrogate to the employee's claims in the liquidation or bankruptcy.
3. If a debtor is deceased, the Bankruptcy Act makes provision for the payment of proper funeral and testamentary expenses – (s 109(1)(d) BA).

Brazil

Recuperação Judicial - Judicial Reorganisation

Type of Claim	Description	Comments
Claims not subject to judicial reorganisation	• Post-petition credits and obligations, including DIP lenders.	Credits not subject to judicial reorganisation must be paid according to their original provisions.
	• Tax credits.	Holder of credits not subject to judicial reorganisation do not vote on the plan and (absent consent) are not affected by the plan confirmation.
	• Credits secured by fiduciary lien or fiduciary assignment.	Tax collection claims are not affected by the automatic stay.
	• Advance on foreign exchange agreements.	Creditors are prevented from foreclosing on collateral not subject to the judicial reorganisation for 180 days if the underlying asset is deemed as essential to the debtor's activities.
	• Sale and purchase agreements that provide for retention of title.	
	• Leasing agreements.	
	• Lease agreements of aircrafts and aircraft parts.	
	• Expenses.	
Labour claims	• Claims arising from the labour laws (e.g. severance payments, benefits, unpaid vacation days).	Prepetition labour claims should be paid within a year counted from the date of approval.
	• Claims arising from damages associated with work accidents.	Wage-related labour claims up to the amount equivalent to five Brazilian minimum wages overdue for the 3 months prior to the filing should be paid in 30 days. Creditors with labour claims can vote on the plan and are affected by plan confirmation.

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Claims collateralised by the debtor's individual items of personal or real property. The types of guarantees that qualify for the status of secured claims are the pledge, the mortgage and the antichresis. 	<p>Creditors with secured claims can vote on the plan and are affected by plan confirmation.</p> <p>Secured claims are capped by the value of the collateral; deficiency claims are bifurcated and classified as unsecured claims.</p> <p>Sale of collateral depends on secured creditor's consent.</p>
Unsecured claims	<ul style="list-style-type: none"> Unsecured claims are claims that are not secured by any personal or real property collateral. Such claims include trade credit, unsecured debt, supply credits, contractual claims and credits, commercial credits, prepetition utilities, judicial and arbitration awards. 	<p>Creditors with unsecured claims can vote on the plan and are affected by plan confirmation.</p>
Claims held by micro and small companies (ME/EPP)	<ul style="list-style-type: none"> Unsecured credits qualified by the tax treatment of its holder. A company qualifies as a micro or small company if it meets specific tax criteria provided for in Brazilian tax law. 	<p>ME/EPP claims vote on the plan and are affected by plan confirmation.</p>

APPENDIX – Liquidation Proceeding ("*Falência*")

Type of Claim	Description	Comments
General framework	<ul style="list-style-type: none"> Liquidation proceedings follow priority rules stated in the Brazilian bankruptcy law. 	<p>Payments and distributions to creditors should follow priority rules.</p> <p>There is no priority rule within a same class.</p> <p>If funds are insufficient to cover the full amount of the claims, distributions should be made on a <i>pro rata</i> basis.</p>
Claims out of the scope of the liquidation proceeding (<i>créditos extraconcursais</i>)	<ul style="list-style-type: none"> Court appointed trustee's fees. Post petition labour claims. Amounts delivered to the estate by creditors. Expenses with the collection, management and sale of assets, payment to the creditors and court expenses related to the liquidation proceeding. Court expenses that the estate is required to pay by virtue of being defeated in any lawsuit to which the estate is a party. Credits that were not subject to the reorganisation proceeding in case the reorganisation proceeding is converted into liquidation. Advance on foreign exchange contracts. 	<p>Claims out of the scope of the liquidation have priority over any other claim and should be paid prior to any distribution to creditors.</p>
Labour claims	<ul style="list-style-type: none"> Claims arising from the labour law (e.g. severance payments, benefits, unpaid vacation days). Claims arising from damages associated with work accidents. 	<p>Priority is capped at 150 Brazilian minimum wages.</p> <p>Labour claims are the first in the priority line within the claims in the scope of the liquidation proceeding.</p>

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Claims collateralised by the debtor's individual items of personal or real property. The types of guarantees that qualify for the status of secured claims are the pledge, the mortgage and the antichresis. 	<p>Secured claims are capped by the value of the collateral; deficiency claims are bifurcated and classified as unsecured claims.</p> <p>Secured claims are junior to labour law, but senior to other claims within the scope of the liquidation proceeding.</p>
Tax claims	<ul style="list-style-type: none"> Tax claims arising from taxes due to any governmental entity / body / agency. Fines imposed by tax authorities do not qualify as tax claims. 	<p>Tax claims are junior to labour and secured claims, but senior to other claims within the scope of the liquidation proceeding.</p>
Privileged claims	<ul style="list-style-type: none"> Specific credits provided for in sections 964 and 965 of the Brazilian Civil Code. Credits held by micro and small companies. Credits held by suppliers who had supplied good and services for the debtor while the debtor was undergoing a judicial reorganisation proceeding. 	<p>Privileged claims are junior to labour, secured and tax claims, but senior to other claims within the scope of the liquidation proceeding.</p>
Unsecured claims	<ul style="list-style-type: none"> Unsecured claims are claims that are not secured by any personal or real property collateral. Deficiency claims of labour claims. Deficiency claims of secured claims. Contractual fines and penalties related to criminal, administrative and tax law. 	<p>Unsecured claims are junior to labour, tax, secured and privileged claims, but senior to subordinated claims.</p>

Type of Claim	Description	Comments
Subordinated claims	<ul style="list-style-type: none"> • Claims held by partners, shareholders or officers who were not employees of the debtor. • Other claims that qualify as subordinated pursuant to the law or contractual provisions agreed upon by the contracting parties. 	<p>Subordination may be created by contract.</p> <p>Estate is not required to pay up the equity to partners and shareholders.</p>

Annexure – Summary Chart of Select Confirmation Standards

Judicial Reorganisation

Section	Standard	Comments
Classification of claims	<ul style="list-style-type: none"> • Classification of claims is statutory. • Debtors do not have the ability to create different classes of claims. • The classes of claims are; <ul style="list-style-type: none"> (i) labour claims; (ii) secured claims; (iii) unsecured claims; and (iv) micro and small companies claims. 	<p>Creditors not subject to the judicial reorganisation do not vote on the plan and (absent consent) are not affected by plan confirmation.</p> <p>Creditors with subordinated claims do not vote on the plan.</p>
Impaired claims	<ul style="list-style-type: none"> • Claims that have their amount and/or payment conditions modified by the reorganisation plan. 	<p>Impaired claimants vote on the plan and are affected by plan confirmation.</p> <p>Unimpaired claimants do not vote on the plan and (absent consent) are not affected by plan confirmation.</p> <p>Within classes of labour and micro and small companies claims, acceptance requires holders of more than one-half in number of claims voting to accept the plan.</p>
Acceptance of plan	<ul style="list-style-type: none"> • Either class of claims must either accept the reorganisation or be unimpaired thereunder. • Voting takes place at the general creditors' meeting. 	<p>Within the classes of secured and unsecured claims, acceptance requires holders of more than one-half in real amount and in number of claims voting to accept the plan.</p> <p>Voting quorum is verified according to the holders of claims (number of claims and corresponding real amounts) that attend the general creditors' meeting.</p>
Cramdown	<ul style="list-style-type: none"> • Court may approve plan that has not been accepted by all classes of creditors provided that plan meets certain voting standards and does not discriminate against creditors within the dissenting class. 	<p><i>Voting standards</i></p> <p>Acceptance of more than one-half of claims in real amount regardless of the classes of creditors.</p>

Section	Standard	Comments
		<p>Acceptance by two classes of creditors or one class if there are only two classes of creditors.</p> <p>Within the dissenting class, the plan must have been accepted by one-third of the claims, in real amount and number of claims if the dissenting class is either the unsecured or secured claims or in number of claims if the dissenting class is either the labour or the micro and small companies claims.</p> <p>Voting quorum is verified according to the holders of claims (number of claims and corresponding real amounts) that attend the general creditors' meeting.</p> <p><i>Discrimination</i></p> <p>Plan must not discriminate (i.e. provide different treatment to) creditors within the dissenting class.</p>

British Virgin Islands (BVI)

Type of Claim	Description	Comments
Set off of mutual debts and credits, etc. Sections 150 and 435 Insolvency Act 2003 (IA)	<ul style="list-style-type: none"> Where, before the 'relevant time'¹, there have been mutual credits, mutual debts, or other mutual dealings between a debtor and a creditor claiming or intending to claim in the insolvency proceeding, an account is taken, and if there is a balance owing to the creditor, they may prove in the liquidation for that balance as an unsecured debt². The creditor is not entitled to offset the claim against any sum that the creditor owes the debtor if at that time they gave or received the credit or otherwise acquired a claim against the debtor and the creditor knew that the debtor was insolvent³. Nothing in the IA affects the enforceability of provisions in netting agreements concerning set off, save in the cases of fraud or misrepresentation or any similar ground, or where the netting agreement may be vitiated on such grounds⁴. 	<p>The effect of this in relation to unsecured claims is that the creditor is able to satisfy a portion of the claim from the amount that is owed to the debtor. In that respect, the debtor is in the position of a secured creditor: and can look directly to the funds for satisfaction, and those funds cannot be touched by the liquidator in normal circumstances.</p> <p>If, however, the creditor has knowledge of the debtor's insolvency (and in most cases this is likely to be the debtor's cash-flow insolvency rather than non-compliance with a court order or statutory demand), the debtor is taken to have entered into the transaction on that basis. Consequently, the debtor will not be entitled to protection in the circumstances, because to do so would unjustly deprive the rest of the debtor's unsecured creditors of funds that should be available generally.</p>
Secured creditors Sections 211 to 214 IA	<ul style="list-style-type: none"> A creditor is a 'secured creditor' if he has an enforceable security interest over an asset of the debtor in respect of his claim⁵. The secured liability includes interest on the liability up to the time of the satisfaction of the claim⁶. 	<p>There is no moratorium on enforcement of security upon the appointment of a liquidator.</p> <p>It not mandatory in the BVI for a security interest in a company's assets to be registered, though it is usually advisable.</p>

¹ The term 'relevant time' in the case of a company is defined as the commencement of its liquidation: section 149(1)(c) IA.

² Section 150(1) IA.

³ Section 150(2) IA. In this context, a company is 'insolvent' if it fails to comply with a statutory demand or judgment or order of the court, or if it is unable to pay its debts as they fall due; knowledge of balance sheet insolvency is not sufficient: sections 8(2) and 150(2) IA.

⁴ Section 435 IA.

⁵ Section 9(2) IA.

⁶ Section 213(3) IA.

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> The commencement of liquidation does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest⁷. The secured creditor may (but is not obliged to) value the assets subject to the security interest and assert a claim in the liquidation as an unsecured creditor for the anticipated balance⁸. If the secured creditor does not value the assets, but the claim is not satisfied in full after a sale of the asset, the creditor is still entitled to claim for the actual balance as an unsecured creditor⁹. If the secured creditor has valued the asset as above and asserted a claim for the balance due (if any), the liquidator may give not less than 28 days' notice of an intention to redeem the security¹⁰. If the secured creditor sells the asset in which the creditor has a security interest and there is a surplus remaining after discharging the interest, the creditor must account to the liquidator for the surplus¹¹. If a secured creditor omits to disclose the security interest to the liquidator, the creditor loses it; however, a secured creditor in this position may apply to the court for relief on the grounds that the omission was inadvertent or the result of an honest mistake.¹² 	<p>Creditors with the benefit of a floating charge should be aware that if the assets of the company that are not subject to any security interest are insufficient to pay the liquidator's costs and expenses <i>and</i> the preferential claims, those claims take priority over the floating charge and will be paid out of the assets subject to the floating charge. Any remaining assets may be applied towards satisfying the floating-charge-holder's claim¹³.</p>

⁷ Section 175(2) IA; see also *In re Portbase Clothing Ltd* [1993] Ch 388 at 405G (Chadwick J), cited as authoritative in the BVI in Riegels, C. and others (eds), *British Virgin Islands Commercial Law*, 3rd edn (London: Sweet & Maxwell, 2015) p 383, [7.092], n176.

⁸ Section 211(1) IA. If the liquidator disagrees with the value placed on the security interest, he may require the assets to be offered for sale: Section 211 IA.

⁹ Section 213(2) IA.

¹⁰ Section 212(1) and (2) IA. If the creditor disagrees either with the value placed on the interest, he may apply to the liquidator and (if that does not resolve the issue) to the court for amendment of the value.

¹¹ Section 213(1) IA.

¹² Section 208 IA.

¹³ Section 214 IA.

Type of Claim	Description	Comments
Costs and expenses properly incurred in the liquidation Section 207(1)(a) IA	<ul style="list-style-type: none"> • Administrative claims include, among others: <ul style="list-style-type: none"> - expenses of operating the company; and - professional fees (sanctioned if necessary). 	
Preferential claims Section 207(1)(b) IA	<ul style="list-style-type: none"> • Preferential claims are defined as being any of the following¹⁴: <ul style="list-style-type: none"> - wages and salary of present and past employees earned in the six months immediately preceeding commencement of the liquidation up to US \$10,000; - holiday pay accrued prior to the commencement of liquidation up to US \$10,000; - any amount due by the debtor to the BVI Social Security Board in respect of employees' contributions deducted from the employee and in respect of employers' contributions payable for six months immediately before the commencement of the liquidation; - any amount due in respect of pension contributions or medical-insurance contributions payable in the period of twelve months immediately before the commencement of the liquidation, including amounts deducted from employees, up to the amount of US \$5,000 per employee; - sums due to the government of the Virgin Islands in respect of any tax, duty (including stamp duty), licence fee, or permit, up to the total amount of US \$50,000; and 	<p>These costs and expenses are the actual, necessary costs and expenses of preserving and gathering in the estate during the process of liquidation.</p> <p>These expenses are paid without the need for consent of the creditors as and when they become due.</p>

¹⁴ Where the IR specify a maximum amount, any amount by which the creditor's claim exceeds that amount is not regarded as preferential and will be treated in the same way as any general unsecured claim.

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> - sums due to the Financial Services Commission in respect of any fee or penalty up to the total amount of US \$20,000¹⁵. • Preferential claims rank equally between themselves, and if the assets of the company are insufficient to pay them all in full, they are paid rateably.¹⁶ 	
All other claims Section 207(1)(c) IA	<ul style="list-style-type: none"> • This class includes claims of unsecured trade creditors, the unsecured portions of claims of secured creditors, and claims for damages based either on judgments or compromises entered into with the company or the liquidator. • The term ‘unsecured creditor’ is defined as being any creditor who is not a secured creditor¹⁷. 	
Subordinated claims Section 151 IA	<ul style="list-style-type: none"> • If, before the company enters liquidation, a creditor acknowledges or agrees that in the event of a shortfall of assets the creditor will accept a lower priority in respect of a debt than that which the creditor would otherwise have under the IA, that acknowledgment or agreement takes effect. 	<p>It is open to a creditor to agree that its claim will rank lower than it otherwise would in the liquidation.</p> <p>Where the creditor in question is an unsecured creditor, the result is that its claim ranks behind that of all the other creditors and it will only be paid in the unlikely event that there is a surplus in assets after distribution to the general body of unsecured creditors.</p> <p>If a higher-priority creditor agrees to subordinate its claim, the terms of the agreement are likely to specify to what degree this affects its entitlement to be repaid.</p>

¹⁵ Section 2(1) IA and the Insolvency Rules 2005 (IR), Rules 2(2) and Schedule 2, paragraph 2.

¹⁶ Schedule 2, paragraph 3, IR.

¹⁷ Section 9(2) IA.

Type of Claim	Description	Comments
Post-commencement interest Sections 207(1)(d) and 215 IA	<ul style="list-style-type: none"> Any creditor in a liquidation is entitled to claim interest on its debt in respect of the period after the commencement of the liquidation. Payment of post-commencement interest will be made out of any surplus that remains after all claims in the liquidation have been paid in full before being applied for any other purpose. 	<p>Only if there are funds remaining after the payment in full of the capital of all debts including unsecured and subordinated claims will interest be payable on creditors' claims.</p> <p>This does not apply to interest on secured creditors' claims, which, as stated above, accrues to the security.</p> <p>It appears that any surplus owed to a secured creditor (including sums in respect of interest) are treated as unsecured claims not claims to interest under Section 207(1)(d).</p>
Members Section 207(3) IA	<ul style="list-style-type: none"> Any surplus remaining after paying the costs and expenses of liquidation and the claims and interest must be distributed among the members of the company in accordance with their rights under the company's memorandum and articles of association. 	<p>If the company has preferential shares and ordinary shares, distribution among members will reflect this.</p>

Canada¹

Type of Claim	Description	Comments
Administrative charge	<ul style="list-style-type: none"> Discretionary court ordered charge to pay for professional costs of various parties (including but not limited to the court appointed insolvency professional and various counsels). 	<p>Priority granted under court order, which can vary.</p> <p>Available in proceedings under Companies' Creditors Arrangement Act ("CCAA"), proposal proceedings under Bankruptcy and Insolvency Act ("BIA") and receiverships.</p> <p>Fees must be approved by the court.</p>
DIP interim financing charge	<ul style="list-style-type: none"> Discretionary court ordered charge granted to secure financing provided to the debtor during insolvency proceedings (BIA s. 50.6; CCAA s. 11.2). In considering whether to grant interim financing, court is to consider: <ul style="list-style-type: none"> the period during which the debtor is expected to be subject to proceedings; how the debtor's business and financial affairs are to be managed; whether the debtor has the confidence of its major creditors; whether the loan would enhance the prospects of a viable arrangement; the nature and value of the company's property; whether any creditor would be materially prejudiced as a result of the security or charge; and the views of the Monitor (CCAA, s. 11.2(4)). 	<p>Cannot secure any pre-filing obligations.</p> <p>Absent consent of the DIP lender, DIP financing must be paid in cash in full as a requirement to emerge from insolvency proceedings.</p> <p>In view of full payment requirement, DIP lenders are unaffected and (absent consent) are not affected by plan / proposal.</p> <p>Priority granted under court order, which can vary.</p> <p>Granted in CCAA, BIA proposal proceedings and in receiverships in a modified form.</p>

¹ This chart does not consider any provincial priority claims that may be applicable, due to the wide variety of such claims and the variety of such claims across Canadian jurisdictions. Rather, this chart focuses upon the most commonly asserted federal claims.

Type of Claim	Description	Comments
Directors charge	<ul style="list-style-type: none"> Discretionary court ordered charge utilised to secure the debtor's obligation to indemnify its directors during the course of a BIA proposal / CCAA proceeding. 	<p>Applies only to post filing obligations.</p> <p>Priority granted under court order, which can vary.</p>
Crown remittances	<ul style="list-style-type: none"> Amounts owed to the Crown for certain amounts deducted from employee wages but not remitted to the Crown form a deemed trust (s. 67(3) and 86(3) of BIA, s. 224(1.2), (1.3), 227(4) and (4.1) of Income Tax Act. Amounts deducted for goods and services tax but not remitted (Excise Tax Act, s. 222). 	<p>Deemed trust is in priority to all other security interests except mortgages on real property that arose prior to the claim arising and supplier claims.</p> <p>Plan under CCAA or proposal under BIA cannot be sanctioned by the court unless plan provides for all such outstanding amounts to be paid within six months after sanction (unless Crown otherwise agrees).</p> <p>No deemed trust for goods and services tax in a bankruptcy.</p>
Employee wage claims	<ul style="list-style-type: none"> Wage Earner Protection Program Act establishes a fund to pay wages of employees of an employer that is bankrupt or in receivership up to the amount of \$3,000 per employee. Corresponding charge on current assets of the employer up to \$2,000 to reimburse the program for such unpaid wages (BIA, s. 81.3 and 81.4). 	<p>CCAA plans and BIA proposals must provide for payment of unpaid amounts prior to date of filing of at least the \$3,000 as well as all wages, salaries and compensation that arose after the commencement of the applicable proceedings.</p>
Prescribed pension contributions	<ul style="list-style-type: none"> Claim for unremitted pension contributions outstanding upon bankruptcy or receivership of employer (BIA, s. 81.5 and 81.6). Includes a charge on all assets of debtor. 	<p>Charge available in bankruptcy or receivership.</p> <p>CCAA plans and BIA proposals must provide for the payment of certain amounts to the pension plan as a condition of court approval, unless all relevant parties agree otherwise.</p>

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Secured claims include claims collateralised by either all or substantially all of the debtor's assets, or by individual items of collateral. 	<p>Secured claims may be included within BIA proposals and CCAA plans.</p> <p>Secured claims are unaffected by a bankruptcy and its associated stay of proceedings.</p>
Costs of administration	<ul style="list-style-type: none"> Administrative claims include, among others: <ul style="list-style-type: none"> - operating expenses; - post-filing interest for fully secured lenders in certain circumstances; and - in a bankruptcy, includes fees and disbursements of bankruptcy trustee. 	<p>Administrative expenses are the actual, necessary costs and expenses of preserving the debtor.</p>
Preferred claims	<ul style="list-style-type: none"> Applicable in a bankruptcy only (BIA, s. 136) Claims are unsecured, but paid in priority to general unsecured claims. Preferred claims include, among others: <ul style="list-style-type: none"> - levy payable to Superintendent of Bankruptcy; - municipal taxes; and - claims of landlords under a lease for up to three months of rent arrears and up to three months of accelerated rent following bankruptcy. 	<p>Such claims have no preferred status in a BIA proposal or CCAA plan.</p>
General unsecured claims	<ul style="list-style-type: none"> General unsecured claims are claims that are not secured and not afforded administrative or preferred status. Such claims usually are last in the priority of claims. Such claims include unsecured funded debt (e.g., bonds), trade credit, and breach of contract claims, including rejection of executory contracts. 	

Type of Claim	Description	Comments
Preferred equity	<ul style="list-style-type: none"> Stock whose payment takes priority over common stock. 	In CCAA or BIA proposal proceedings no plan or proposal that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claims are to be paid.
Common equity	<ul style="list-style-type: none"> Stock whose payment is below preferred stock. 	See above qualification re equity claims.
Special types of claims		Presumption of <i>pari passu</i> status, but commonly reviewed for recharacterisation as equity.
a) Intercompany claims	<ul style="list-style-type: none"> Pre-filing claims held by a debtor against another debtor or related party 	<p>If an intercompany claim is also a “related party” claim, such claim cannot be voted in favour of a BIA proposal or CCAA plan.</p> <p>May also pass though unaffected in CCAA Plan or BIA proposal.</p>
b) Collective bargaining agreements	<ul style="list-style-type: none"> Claims arising from the rejection of collective bargaining agreements. 	<p>Collective agreements cannot be unilaterally disclaimed, however, the terms can be amended by agreement of the debtor and the bargaining agent.</p> <ul style="list-style-type: none"> - Unrevised collective agreements remain in force in a BIA proposal or CCAA plan. - The bargaining agent that is a party to a revised collective agreement has a claim as an unsecured creditor for the amount equal to the value of the concessions granted by the bargaining agent.
c) Critical suppliers	<ul style="list-style-type: none"> Claims arising from vital service providers such as gas, electricity, and telecommunications. 	<p>No creditor can be required to extend credit to a debtor in CCAA proceedings or BIA proposal proceeding.</p> <p>In CCAA filings only, the court may make an order declaring a person to be a critical supplier and may make an order requiring continued supply of goods / services on terms and conditions consistent with the supply relationship or on any basis the court considers appropriate.</p> <p>Critical suppliers must be given a security / charge over the property of the debtor and such security / charge may be given priority over the claim of any secured creditor. Notice is required to be given to secured creditors who are likely to be affected by the order.</p>

Type of Claim	Description	Comments
d) Disclaimed contracts	<ul style="list-style-type: none"> Contracts may be disclaimed by a trustee in a bankruptcy, or the debtor in a CCAA or BIA proposal proceeding. 	<p>A corporate debtor can disclaim / resiliate any agreement to which the debtor is a party on the day the notice of intention or proposal was filed or on the day the proceeding under the CCAA was commenced, provided the agreement is not an 'exempt agreement'.</p> <p>The debtor must give notice in the prescribed form and manner to all other parties to the agreement and to the trustee / monitor.</p> <p>The debtor cannot give notice unless the trustee / monitor approves the proposed disclaimer / resiliation.</p> <p>A party to the agreement who suffers a loss in relation to the disclaimer / resiliation is considered to have a provable claim.</p> <p>Within 15 days after the day on which the debtor gives notice of the disclaimer, a party to the agreement may, on notice to the other parties to the agreement and the trustee/monitor, apply to a court for an order that the agreement is not to be disclaimed / resiliated.</p> <p>If the debtor has granted a right to use intellectual property to a party to an agreement, the disclaimer / resiliation does not affect the party's right to use the intellectual property during the term of the agreement as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.</p>
e) 30 day goods	<ul style="list-style-type: none"> Unpaid suppliers may demand return of goods from trustee in bankruptcy, receiver or trustee under BIA proposal (s. 81.1 of BIA). Right of repossession ranks above every other claim (s. 81.1(6)). 	<p>Goods must have been delivered within 30 days of commencement of proceeding; be in original state; not comingled; not sold to arm's length purchaser.</p> <p>Supplier must deliver prescribed notice to trustee within 15 days of commencement of proceeding.</p>
f) Unpaid farmers, fisherman and aqua culturists	<ul style="list-style-type: none"> Unpaid farmers, fisherman and aqua culturists may demand return of supplied inventory from trustee in bankruptcy. Right of repossession ranks above every other claim (s. 81.1(6)). 	<p>Not available in restructuring proceedings under CCAA. Products must have been delivered 15 days of commencement of proceeding.</p> <p>Supplier must file claim within 30 days of commencement of proceeding.</p> <p>Not available in restructuring proceedings under CCAA.</p>

APPENDIX – Summary Chart of Select Confirmation Standards

Judicial Reorganisation

Type of Claim	Standard	Comments
Classification of claims (CCAA, s. 22(1))	<ul style="list-style-type: none"> A plan may place a claim in a particular class only if the interests and rights of such creditor is sufficiently similar to other creditors, taking into account: <ul style="list-style-type: none"> the nature of the debts, liabilities and obligations giving rise to their claims; the nature and rank of any security in respect of their claims; and the remedies available to the creditors in the absence of the plan, and the extent to which the creditors would recover their claims by exercising those remedies. 	<p>BIA proposals do not have prescribed criteria for classification of creditor classes except for general commonality of interest requirements.</p> <p>Courts must balance the confiscation of legal rights and avoid a tyranny of the minority.</p>
Sanction of CCAA plan (s. 6)	<ul style="list-style-type: none"> The Court has the discretion to sanction a plan binding each class of creditors where a majority of the proven creditors in each class, by number, together with 2/3 of the proven creditors in that class, by dollar value, approve of the Plan presented to them. The general requirements for court approval of a CCAA plan are: <ul style="list-style-type: none"> there must be strict compliance with all statutory requirements; all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorised by the CCAA; and the plan must be fair and reasonable. 	<p>Each holder of a claim or interest in each of the plan's impaired classes must either (1) vote in favor of the plan, or (2) will receive under the plan, property of value that is not less than what such holder would receive or retain under a chapter 7 liquidation.</p> <p>Court will measure the fairness and reasonableness of a plan against the available commercial alternatives, and weigh the equities and balance the relative degrees of prejudice that would flow from granting or refusing the sanction of the Plan.</p> <p>Factors considered by the courts in considering whether a plan is fair and reasonable in the circumstances of a particular case have included:</p> <ul style="list-style-type: none"> classification of creditors and creditor approval; what creditors would receive on liquidation or bankruptcy compared to the plan; alternatives to the plan and bankruptcy; oppression; unfairness to shareholders; and the public interest.

Type of Claim	Standard	Comments
Payment of pension, employee and Crown claims (CCAA, s. 6(3), 6(5), 6(6); BIA s. 60(1.1), 60(1.3), 60(1.5)]	<ul style="list-style-type: none"> • Court may not sanction a CCAA plan or BIA proposal unless the plan contains certain specified provisions concerning Crown claims, employee claims, and pension claims. 	<p>When deciding whether a BIA proposal should be approved, the court must take the following interests into account: (a) the interest of the debtor in making a settlement with creditors; (b) the interests of the creditors in procuring a settlement that is reasonable and that does not prejudice their rights; and (c) the interests of the public in the fashioning of a settlement that preserves the integrity of the bankruptcy process and complies with the requirements of commercial morality. Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court must refuse to approve the proposal.</p>

Cayman Islands

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Creditors with mortgages or charges or some other security interest over some or all of a company's assets. 	<p>When a company is placed into official liquidation, the legal rights of secured creditors are unaffected.</p> <p>There is no moratorium on a secured creditor's enforcement rights in the Cayman Islands by reason of any insolvency process.</p> <p>Secured creditors can enforce their security without leave of the court. Secured creditors whose debt is more than the value of their security can rank as unsecured creditors in the liquidation for the balance of their claims.</p>
Liquidation fees and expenses	<ul style="list-style-type: none"> The expenses reasonably and properly incurred in placing the company into liquidation and conducting the administration of the liquidation. 	<p>Fees and expenses are payable out of a company's assets in priority to all other claims.</p> <p>In broad terms, liquidation expenses are payable in the following order of priority:</p> <ul style="list-style-type: none"> - costs incurred by the petitioner; - costs incurred by the provisional and/or official liquidator in procuring professional indemnity insurance and/or a security bond; - expenses and disbursements properly incurred by a provisional liquidator; - remuneration of any provisional liquidator; - expenses and disbursements properly incurred by an official liquidator, including any expenses payable to a party who has submitted a statement of affairs; - expenses and disbursements properly incurred by the liquidation committee; - any order for costs made by the court in favour of any creditor or contributory in the winding up proceedings or in favour of any other person in proceedings to which the company is a party; and - the remuneration of the official liquidator. <p>In the case of a liquidation which commences voluntarily and is subsequently brought under the supervision of the court:</p> <ul style="list-style-type: none"> - expenses and disbursements properly incurred by the voluntary liquidator;

Type of Claim	Description	Comments
		<ul style="list-style-type: none"> - costs of making application for the supervision order, whether such costs are incurred by the voluntary liquidator or any creditor or contributory of the company; and - remuneration of the voluntary liquidator, shall rank equally with the expenses and disbursements incurred by the official liquidator, but in priority to the remuneration of the official liquidator.
Liquidation funding	<ul style="list-style-type: none"> • Financing provided by a stakeholder or commercial third party lender to meet the costs and expenses of the liquidation where insufficient funds are available in the liquidation estate. 	<p>Subject to any security interest that might be granted by the liquidator to the lender, such funding would rank equally with any other expenses and disbursements properly incurred by a provisional or official liquidator.</p> <p>The liquidator would be required to obtain sanction from the court in order to agree funding arrangements and any security interests in relation to that funding.</p>
Litigation funding	<ul style="list-style-type: none"> • Financing provided to the liquidation estate to allow a liquidator to commence or defend litigation in the name or on behalf of a company. 	<p>The costs of such litigation can be funded out of assets of a liquidation estate or, if they are insufficient, by a liquidator borrowing money on the basis that repayment will be made from the proceeds of litigation.</p> <p>Similar to liquidation funding noted above, the liquidator would be required to obtain sanction from the court in order to agree funding and repayment arrangements.</p> <p>In the event that litigation is unsuccessful, the liquidation estate might be liable for costs if there is an adverse costs award by the court, which would rank as an expense in the liquidation (unless subject to After The Event Insurance, to protect against this risk).</p>
Preferential claims	<ul style="list-style-type: none"> • Certain debts due to employees, including salary, wages and gratuities accrued during the four months before the liquidation commenced, medical health insurance premiums and pension contributions, and severance pay and earned vacation leave when the employment contract was terminated as a consequence of the company's liquidation. 	<p>All types of preferential claims rank equally with each other.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> • Certain taxes due to the Cayman Islands Government. • For banks incorporated in the Cayman Islands and holding a Type A licence issued under the Banks and Trust Companies Law (2013 Revision), any sum due to eligible depositors up to CI\$20,000 per depositor. 	
Ordinary unsecured claims	<ul style="list-style-type: none"> • All other non-preferential creditors of a company. 	<p>Ordinary unsecured creditors are paid on a <i>pari passu</i> basis, subject to subordination and set off adjustments (discussed in further detail below).</p> <p>Any subordination agreement made between a company and a creditor prior to commencement of the winding up is binding on the company in liquidation and shall be enforced by the official liquidator.</p> <p>In addition, any contractual right of set-off or non set-off or netting arrangement agreed between the company and any creditor prior to commencement of the liquidation is binding on the company in liquidation and shall be enforced by the official liquidator.</p>
Special types of claims		
a) Payments of a periodical nature	<ul style="list-style-type: none"> • Such as rent payments of payments due under any form of lease. 	<p>The creditor may prove for any unpaid amount accrued up to the date when the winding up order is made.</p> <p>Unless the official liquidator continues to pay the rent or other payments accruing after the date on which the winding up order is made as an expense of the liquidation, the creditor's claim in respect of amounts accruing after the date on which the winding up order is made shall be limited to a claim for damages for breach of contract.</p>
b) Debts payable at a future date	<ul style="list-style-type: none"> • Such as debt due under a contract (for example, deferred consideration due under a sale and purchase agreement) at a future date. 	<p>A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation.</p>

Type of Claim	Description	Comments
c) Contingent Claims	<ul style="list-style-type: none"> A claim dependent on the realisation of some uncertain future event. 	<p>If a dividend becomes payable before the date on which the debt would have fallen due, the amount of the dividend shall be discounted for accelerated payment using the rate of interest prescribed by the Judgment Debts (Rates of Interest) Rules.</p> <p>The official liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.</p> <p>The official liquidator may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.</p>
d) Interest	<ul style="list-style-type: none"> Pre-liquidation interest is determined by reference to a contractual right held by a creditor to claim interest which was entered into prior to commencement of the liquidation. Post liquidation interest is payable only in circumstances where: (1) an official liquidation lasts more than six months; and (2) there is a surplus after payment of the debts owed to ordinary unsecured creditors. 	<p>A creditor who has a contractual right to claim interest against an insolvent company may prove for the amount of the interest accrued up to the date of the commencement of the liquidation but is not entitled to prove for any interest accruing after the date of liquidation.</p> <p>Any surplus shall, in these circumstances be applied in paying interest on those debts in respect of the period during which they have been outstanding since the commencement of the liquidation pursuant to section 149 of the Companies Law (2013 Revision).</p> <p>The rate of interest payable is the greater of either: (1) the contractual rate; or (2) the prescribed rate under the Judgement Debts (Rates of Interest) Rules.</p> <p>No interest will be paid to any creditor whose claim to interest would amount to less than \$500.</p>
Redemption claims	<ul style="list-style-type: none"> The amount owed to an investor in respect of a redemption request which has been accepted by a fund. 	<p>Investors who have redeemed their shares but remain unpaid at the commencement of a company's liquidation are entitled to prove in the liquidation for their redemption proceeds as a creditor.</p> <p>Redeemed investors rank behind the Company's general creditors but ahead of its shareholders.</p>
Shareholder claims	<ul style="list-style-type: none"> All other amounts invested by shareholders. 	<p>Shareholders will be entitled to participate in any distributions in accordance to their rights under a company's articles of association.</p>

France

General Comments

French amicable proceedings called *Mandat ad'hoc* and Conciliation allow debtors to request from the president of the court the appointment of a *mandataire ad'hoc* or a *conciliateur* whose duty is to promote the conclusion of an amicable agreement between the debtors and their main creditors which is intended to put an end to the business's difficulties.

Pre-insolvency formal proceedings, procedure *de sauvegarde*, may only be started by the debtor and can only be opened as long as the debtor remains solvent.

On the contrary, judicial reorganization, *redressement judiciaire*, and judicial liquidation, apply to insolvent debtors.

Most of the rules applicable to *sauvegarde* proceedings also apply to judicial reorganization proceedings.

The purpose of reorganization proceedings is to allow the continuation of the business's operations, the employment to be maintained and the settlement of its liabilities.

Type of Claim	Description	Comments
Over secured creditors – super preferential wage claims ¹	Unpaid salaries at the opening of insolvency proceedings, as well as certain employment related items, limited to 60 working days prior to the opening judgment of the insolvency proceedings.	In safeguard proceedings, those claims are repaid as soon as funds are available, during the observation period.
	Payment in lieu of serving notice in case of dismissal.	In case of a reorganization plan, those claims which have been advanced to employees by AGS, are just repaid following the court's decision to accept the reorganization plan.
	Holiday pay.	In case of a later liquidation, and an asset sale plan, AGS will be paid first from the proceeds of the debtor's assets.
	Will be paid to employees by AGS ² , who then becomes creditor of the insolvent company.	

¹ L 3253-8 1° of the Labour code

² AGS is the French Insolvency Fund, the Association for the management of employee claims is an employer organization founded on solidarity with companies and financed by their contributions.

Type of Claim	Description	Comments
Preferential status of employment related items other than those benefiting from a super preferential status ³	<p>Other amounts due to employees at the opening of the insolvency proceedings, lay-off compensation.</p> <p>Will be paid to employees by AGS, who then becomes creditor of the insolvent company.</p>	<p>Will be affected by the rescheduling of debts in a reorganization plan.</p> <p>In case of liquidation, AGS is a secured creditor. Article 2331 of the Civil Code.</p>
<p>Preferential status of debts incurred after the opening of insolvency proceedings⁴.</p> <p>- Creditors granting credit facilities after the opening of the insolvency proceedings.</p> <p>- Utility contracts⁵.</p>	<p>Those creditors may be paid without suffering any competition with the pre-opening prior creditors.</p> <p>Post-petition claims resulting from contracts that have been continued during the observation period shall be paid when they become due.</p> <p>If those debts are not paid as they become due, creditors are given a preferential status by law.</p>	<p>Will not be affected by the rescheduling of debts in a reorganization plan.</p> <p>Will be paid upfront before pre-opening creditors.</p> <p>Will be paid in the event of a sale of the debtor's assets, senior to most other debts incurred prior to the opening judgment.</p> <p>They will however rank junior to arrears of wages, post-filing court expenses and new money facilities.</p>
Forced debt-to-equity swap ⁶ .	Creditors have the possibility to impose on shareholders a forced debt-to-equity-swap when they propose a safeguard or a reorganization plan, competing with the debtor's proposals.	
Debtor in possession financing ⁷	Financing provided to the debtor in the course of pre-insolvency proceedings called "conciliation" or pursuant to the conciliation agreement are granted a legal privilege.	In case of future insolvency proceedings, those claims described as "new money" will be not be affected by the rescheduling of debt repayment plan in a reorganization plan.

³ L3253-16 alinea 2 of the Labour code

⁴ L622-17 of the code de commerce or L641-13 in case of future liquidation of the company

⁵ L622-13 of the code de commerce

⁶ L626-30-2 and R626-57-2 of the code de commerce

⁷ L611-11 of the code de commerce

Type of Claim	Description	Comments
Claims from secured creditors (published surety) or from creditors who are bound to the creditor with a published contract ⁸ .	For those creditors, time limit for filing those claims and being involved in future distribution, runs from the date of information notice received from the “Mandataire judiciaire.”	<p>Such privilege does not apply to equity financing.</p> <p>Secured creditors need to file their claim within two months of being notified in person by the mandataire judiciaire.</p> <p>Secured creditors lose their right to enforce their preferential rights in case of a safeguard or reorganization plan except:</p> <ul style="list-style-type: none"> - If the rescheduled payment plan is not respected (L626-27). - If during the course of the reorganization plan, an asset covered by a “real surety” is sold. In that case, the law provides for an immediate payment of the secured creditors (L 626-22). <p>In case of a liquidation, L641-13 applies, and those creditors will only be paid after:</p> <ul style="list-style-type: none"> - Super preferential debts (AGS) - New money - Post- petition claims <p>As a result of the foregoing, secured creditors’ chances of being repaid depends on the scope of the available assets.</p>
Claims from all other creditors except for employees ⁹ ;	All creditors whose claims arose prior to the date of the insolvency proceeding judgment must file a claim within two months after the publication of this judgment.	For proceedings opened since the 1st of July 2014, if the debtor has informed the Mandataire judiciaire of the amount due to its creditors, he is presumed to have done it on behalf of the creditors, as long as the creditors haven’t filed a claim for themselves.
Safeguard or reorganization plan established through creditors and suppliers’ committees ¹⁰ .	It is compulsory to establish both a creditors and a suppliers’ committee when the proceedings involve a debtor whose accounts are certified by statutory auditors or established by a chartered accountant and whose headcounts exceed 150 employees or whose annual turnover exceeds 20 million euros.	<p>All creditors are classified in three classes:</p> <ul style="list-style-type: none"> - Financial creditors - Trade creditors - Bondholders <p>Within each of these classes, there is no distinction between creditors. Each class of creditors will vote collectively on the proposed plan. The plan is approved by a committee if it is accepted by a 2/3 majority in amount of claims held by voting creditors of that class.</p> <p>In those circumstances, all claims are subject to a “cramdown.”</p>

⁸ L622-24 and R622-21 of the code de commerce

⁹ L 622-24 of the code de commerce.

¹⁰ L626-29 and L626-30 of the code de commerce.

Type of Claim	Description	Comments
	The “ <i>juge-commissaire</i> ” may also at the debtor’s or judicial administrator’s request, authorize committees below those thresholds.	
Safeguard or reorganization plan established without committees ¹¹ .	Each creditor is entitled to choose among different repayment proposals. It is compulsory that at least one proposal is a 100% repayment plan over a maximum of 10 years.	Claims are not subject to “cramdown” unless the creditor agrees to it.
Ownership right under a retention-of-title device ¹² .	Provides a very efficient security title in case of French insolvency proceedings. If the debtor wants to keep the goods, the creditor will be immediately paid, during the observation period, and therefore before any other creditors.	Those creditors benefiting from a retention of title arrangement, will not be affected by a later liquidation of the company.
Intercompany claims or current account balances due to shareholders ¹³ .		Nothing is written in the law, but the court and creditors usually expect the repayment of those claims to be subordinated to the repayment of all other creditors. It is now possible for those claims to be recharacterized as equity in case of a safeguard or rehabilitation plan.

¹¹ L626-5 of the code de commerce

¹² L624-16 of the code de commerce

¹³ L 626-3 code de commerce

Germany

General

- German bankruptcy law is regulated by the Insolvency Code (InsO).
- The types of claims are stated in Chapter Two dealing with the Insolvency Estate - Classification of Creditors (§ 35 InsO).
- Immature claims shall be deemed to be mature.
- Claims subject to a resolutive condition shall be taken into account in the insolvency proceedings as claims not subject to a resolutive condition as long as such a condition is not accomplished. This means creditors participate in the insolvency proceeding as any other creditors with their claims, unless such a condition has already occurred (§ 42 InsO).

Non-liquidated claims or contingent claims shall be filed at the value estimated as of the date when the insolvency proceedings were opened. Claims expressed in foreign currency or in a mathematical unit shall be converted into German currency according to the exchange value applicable at the time of the opening of the proceedings at the place of payment (§ 45 InsO).

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> • In the USA, DIP Financing is considered senior to all other debt, equity, and any other securities issued by a company – violating any absolute priority rule by placing the new financing ahead of a company's existing debts for payment. • A classic “DIP” financing as in the USA doesn't exist. • The only regulation for funding exclusively applies to funding in an insolvency plan. (§ 264-266 InsO). <p>Loan Ceiling (§ 264) (1) The constructive part of the insolvency plan may provide for lower-ranking status for the insolvency creditors compared to creditors with entitlements deriving from loans or other credits entered into by the debtor or the takeover company during</p>	<p>The preliminary and the appointed insolvency administrator can try to borrow from third parties like banks or other creditors during all stages of the proceedings. New credits will only be obtained when the repayment is guaranteed, the new claims are qualified as other preferred claims (ruled in § 55 Nr 1 InsO).</p> <p>Also, a lender generally wants to have securities, which are free from third party rights. This is usually not possible.</p>

Type of Claim	Description	Comments
	<p>the period of monitoring or held open by a preferential creditor to extend into the period of monitoring. In such a case, the maximum amount of such loans shall also be fixed (loan ceiling). It may not exceed the value of property listed in the survey of assets contained in the plan (section 229, first sentence).</p> <p>(2) The insolvency creditors shall rank lower under subsection (1) only in comparison to creditors entering into an agreement pursuant to which the amount of the claim, interest and costs of the loans granted by them are under the loan ceiling, and for which they receive confirmation of such agreement in writing from the insolvency administrator.</p> <p>(3) Section 39 subsection (1) no. 5 shall remain unaffected.</p> <p>Lower-ranking status of new creditors (§ 265)</p> <p>Creditors with other contractual claims created during the period of monitoring shall also have a lower-ranking status in comparison with creditors with entitlements deriving from loans entered into or held open under section 264. Claims created under a continuing obligation prior to monitoring shall also be deemed to constitute such claims for the time after the first date on which the creditor could terminate such a contract after monitoring began.</p>	

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> • The concept of a floating charge doesn't exist in Germany. • For moveable assets the following security rights are included:- <ul style="list-style-type: none"> - security transfer of title (<i>Sicherungsübereignung</i>) (Right of Separation ruled in § 47 InsO); - pledge (<i>Pfandrecht</i>), including a contractual pledge or a pledge acquired by attachment; - legal lien (ruled in § 50 InsO); - security assignment (<i>Sicherungsabtretung</i>) (Right of Separation ruled in § 47 InsO); and - reservation of proprietary rights (<i>Eigentumsvorbehalt</i>). • For immovable assets (real estate) the following security rights are included regulated in § 49 InsO:- <ul style="list-style-type: none"> - land charge (<i>Grundschuld</i>); and - mortgage (<i>Hypothek</i>). • Granting securities are the landlord's lien and the contractor's lien. • Anyone entitled to claim the separation of an object from the insolvency estate under a right in rem or in person shall not form part of the insolvency creditors. Entitlement to the separation of such an object shall be governed by the legal provisions applying outside the insolvency proceedings (§ 47 InsO). • Creditors with a right to satisfaction (land charge or mortgage) from objects subject to execution into immovables (immovable objects) shall be entitled to separate satisfaction under the provisions of the 	<p>The majority of the security rights are regulated in the German Civil Code (<i>Bürgerliches Gesetzbuch</i> abbreviated BGB).</p> <p>Usually an agreement exists between the parties in which the security right is regulated.</p>

Type of Claim	Description	Comments
	<p>Act Governing Auctions and Sequestrations of immovables (<i>Gesetz über die Zwangsversteigerung und die Zwangsverwaltung</i>) (§ 49 InsO).</p> <ul style="list-style-type: none"> • Creditors holding a contractual pledge, a pledge acquired by attachment or a legal lien in an object forming part of the insolvency estate shall be entitled to separate satisfaction in respect of the main claim, interest and costs from the pledged object under sections 166 to 173. • The landlord's or lessor's legal lien may not be claimed in insolvency proceedings for rent or lease payments covering an earlier period than the last twelve months foregoing the opening of the insolvency proceedings, and for any damages to be paid due to the termination of such lease by the insolvency administrator. Liens held by lessors of agricultural land shall not be subject to such restriction with respect to the lease payment (§ 50 InsO). 	
Preferential claims	<ul style="list-style-type: none"> • The insolvency estate shall be used to settle in advance the costs of the insolvency proceedings (preferential claims) and the other debts incumbent (other preferential claims (see below)) on the estate. • Preferential claims are first the court fees in respect of the insolvency proceedings and secondly the remuneration earned and the expenses incurred by the preliminary insolvency administrator, by the insolvency administrator and by the members of the creditors' committee. 	<p>The court fees and the expenses of the insolvency administrator are approved in Germany by the court at the end of the actual case, not at the beginning (§ 54 InsO).</p>

Type of Claim	Description	Comments
Other preferential claims	<ul style="list-style-type: none"> Other preferential claims are the following which shall be satisfied in the order given below, and according to the proportion of their amounts if ranking with equal status out of the insolvency estate. 1. Debts created by activities of the insolvency administrator or in another way by the administration, disposition and distribution of the insolvency estate without belonging to the costs of the insolvency proceedings. 2. Obligations under mutual contracts claimed to be performed to the credit of the insolvency estate or to be settled after the opening of the insolvency proceedings. 3. Obligations due to restitution for unjust enrichment of the insolvency estate (§ 55 InsO). 	<p>Cost of other professionals like lawyers or tax advisors have to be paid by the insolvency administrator out of the insolvency estate (=Nr. 1).</p> <p>Contribution to an employee benefit plan (Nr.2).</p> <p>Wages and salary payments by German social security institutions (=Bundesagentur für Arbeit) during the preliminary insolvency for a maximum time of three months are General Unsecured Insolvency Claims (=38 InsO).</p> <p>Wages and salary payments after the preliminary insolvency are preferential claims (=Nr.2), if the insolvency administrator is demanding the work. If not, they are treated as “general unsecured insolvency claims” (=38 InsO).</p>
General unsecured insolvency claims (so called “insolvency creditors”)	<ul style="list-style-type: none"> The insolvency estate shall serve to satisfy the well-founded claims held by the personal creditors against the debtor on the date when the insolvency proceedings were opened (insolvency creditors) (§ 38 InsO). General unsecured claims are claims that are not secured, not preferential and not subordinated. Such claims include unsecured trade payables, VAT tax, corporation tax or income tax, social insurance tax, wages and salaries older than three months, contract breach claims, payables arising from services such as telecommunications. 	

Type of Claim	Description	Comments
Subordinated insolvency claims (lower-ranking)	<ul style="list-style-type: none"> The following subordinated claims shall be satisfied ranking below the other claims of insolvency creditors in the order given below, and according to the proportion of their amounts if ranking within the same status. <ol style="list-style-type: none"> Interest and penalties for late payment accruing on the claims of the insolvency creditors from the opening of the insolvency proceedings. Costs incurred by individual insolvency creditors due to their participation in the proceedings. Fines, regulatory fines, coercive fines and administrative fines, as well as such incidental legal consequences of a criminal or administrative offence binding the debtor to pay money. Claims against the debtor's to render a service without payment /valuable consideration. Claims for restitution of a loan replacing equity capital or claims resulting from legal transactions corresponding in economic terms to such a loan. Claims which the creditor and the debtor agreed to be non-privileged in insolvency proceedings shall be satisfied after the claims mentioned at subsection (1) if the agreement does not provide otherwise (§ 39 InsO). 	

APPENDIX – Summary Chart of Select Regulations for an Insolvency Plan

Generals Comments

- The provisions relating to the German Insolvency Plan is stated in Part Six of the German InsO (§§ 217).
- The Plan normally has a declaratory and a constructive part.
- The declaratory part of the plan shall describe the measures taken or still to be taken after opening the insolvency proceedings in order to create the basis for the envisaged establishment of the rights held by the parties involved. The declaratory part shall contain all other information on the basis and effects of the plan which are relevant to the decision of the parties concerned on approval of the plan, and for its approval by the court.
- The constructive part of the plan shall determine how the insolvency plan shall transform the legal position of the parties involved.
- Chapter Two deals with the acceptance and approval of the Plan (§ 235).

Section	Description	Comments
Formation of groups (§ 222 InsO)	<p>(1) While determining the rights held by the parties involved in the insolvency plan, groups shall be formed where the parties concerned have differing legal status.</p> <p>A distinction shall be made between:-</p> <ol style="list-style-type: none"> 1. the creditors entitled to separate satisfaction if their rights are encroached upon by the plan; 2. the non-lower-ranking creditors (i.e., so called “insolvency creditors § 38 InsO” with general unsecured insolvency claims (see above)); 3. each class of lower-ranking insolvency creditors, unless their claims are deemed to be waived pursuant to section 225; and 4. those persons with a participating interest in the debtor where their share rights or membership rights are included in the plan. 	<p>Parties with equal rights may form groups in which parties with equivalent economic interests are set together. That means for example, that you normally put all unsecured banks and similar financiers together in one group.</p> <p>Generally in a plan a group of unsecured “small” creditors with claims like payables arising from services and trade payables.</p> <p>Also a group with all health insurance companies and their unsecured claims.</p> <p>Whether the financial authorities will form their own group depends on the size of their claims. Often they have their own group, if they have high open VAT tax, corporation tax or income tax claims.</p> <p>Other possible groups include, leasing companies, landlords, secured banks, secured traders or “<i>Bundesagentur für Arbeit</i>”.</p> <p>The approval of the plan shall be refused ex officio if for example the groups are not adequately separated from each other (§ 250 InsO).</p>

Section	Description	Comments
	<p>(2) Parties with equal rights may form groups in which parties with equivalent economic interests are set together. Such groups shall be adequately separated from each other. The criteria of their separation shall be indicated in the plan.</p> <p>(3) Employees shall form a separate group if they are claiming major amounts as insolvency creditors. Separate groups may be formed for minor creditors and for minor shareholders whose share in the liable capital amounts to less than one per cent or to less than one thousand euros.</p>	<p>To avoid a “<i>patt</i>” situation by group voting, it's absolutely necessary to have unequal numbers of groups. If there are problematic creditors it is necessary to check first if they can be out voted in their group by the majority of the other group creditors or if their claims are less than half of the sum of claims held by the creditors with voting rights who backed the plan.</p>
<p>Voting by groups (§ 243 InsO and § 244)</p>	<ul style="list-style-type: none"> • Each group of parties concerned with voting rights shall vote on the insolvency plan separately. <p>(1) Acceptance of the insolvency plan by the creditors shall require that, in each group, 1. the majority of creditors with voting rights backs the plan, and 2. the sum of claims held by creditors backing the plan exceeds half of the sum of claims held by the creditors with voting rights.</p> <p>(2) Creditors who hold a right jointly or whose rights constituted a uniform right until the reason to open insolvency proceedings came into effect shall be counted as one creditor in the vote. The same shall apply if a right is the object of a pledge or a usufruct.</p>	

Section	Description	Comments
	(3) Subsection (1) no. 2 shall apply mutatis mutandis to those persons with a participating interest in the debtor, with the proviso that the sum of the participating interests shall stand in place of the sum of claims.	
Prohibition to obstruct (§ 245 InsO)	(1) Even if the necessary majorities have not been achieved, a voting group shall be deemed to have consented if 1. the members of such a group are likely not to be placed at a disadvantage by the insolvency plan compared with their situation without such plan, 2. the members of such a group participate to a reasonable extent in the economic value devolving on the parties under the plan, and 3. the majority of the voting groups have backed the plan with the necessary majorities.	
	(2) A reasonable participation of a group of creditors for the purpose of subsection (1) no. 2 shall exist if under the plan 1. no other creditor will receive economic values exceeding the full amount of his claim; 2. neither a creditor with a lower-ranking claim to satisfaction without a plan, compared with the creditors forming the group, nor the debtor, nor a person holding the debtor's shares receives an economic value; and 3. no creditor to be satisfied on an equal footing with the creditors forming his group without a plan receives an advantage with respect to such creditors.	

Section	Description	Comments
	(3) A reasonable participation of a group of shareholders for the purpose of subsection (1) no. 2 shall exist if under the plan 1. no creditor receives economic benefits exceeding the full amount of his claim and 2. no shareholder who would be equal in rank to the shareholders in the group if no plan were drawn up is better placed than they are.	
Rights of lower-ranking insolvency creditors with subordinated claims § 225 InsO	(1) The claims of lower-ranking insolvency creditors shall be deemed waived unless the insolvency plan provides otherwise. (2) If the insolvency plan provides otherwise, the constructive part, for each group of lower ranking creditors, shall give the indications required under §224.	

Greece

Type of Claim	Description	Comments
Bankruptcy expenses	<ul style="list-style-type: none"> Bankruptcy expenses include among others: <ul style="list-style-type: none"> expenses for the administration of the bankruptcy estate, e.g. fees for security services for installations and other premises; and temporary and final remuneration of the bankruptcy administrator. 	<p>Bankruptcy expenses are the necessary costs and expenses of preserving the bankruptcy estate.</p> <p>These expenses enjoy priority in common with other claims accrued after the declaration of bankruptcy (“post-commencement claims”) over all other claims against the estate.</p>
Post-commencement claims	<ul style="list-style-type: none"> Creditors’ claims that arise after the issuance of the decision that orders the commencement of bankruptcy proceedings by action of the bankruptcy administrator. Such claims include among others claims of employees who continue to provide their services after the commencement of bankruptcy proceedings, claims arising from contracts concluded by the bankruptcy administrator etc. 	<p>Such claims are not subject to the moratorium and to bankruptcy proceedings in general. For instance, the creditors of post-commencement claims are not obliged to announce their claims. The creditors of post-commencement claims may file a lawsuit against the bankruptcy administrator, obtain an executory title and subsequently proceed to the exercise of individual enforcement measures against the bankruptcy estate at any time.</p>
DIP financing	<ul style="list-style-type: none"> Loans or credit provided pursuant to a recovery agreement or a reorganisation plan and loans or credit provided after the submission of a recovery agreement for judicial ratification are ranked as first-class general preferential claims, superseding any other pre-existing claim. 	<p>The claims of physical persons or legal entities that contributed goods or services in order to ensure the continuation of the business activities have the same privilege.</p> <p>The contribution in kind or in cash that was made by the shareholders within the framework of a share capital increase does not have any priority status.</p>

Type of Claim	Description	Comments
General preferential claims	<ul style="list-style-type: none"> The major privileged claims are the following (in order of seniority): <ul style="list-style-type: none"> DIP financing The following creditors' claims, which are ranked at the same class: <ul style="list-style-type: none"> unpaid employee remuneration incurred in the two years prior to bankruptcy being declared and employment termination compensation, regardless of when it occurred; lawyers' fees that date up to six months prior to the declaration of bankruptcy, and claims for compensation of salaried lawyers due to termination of their contract for a salaried mandate, regardless of the time it arose; social security contributions that arose until the declaration of bankruptcy; and claims of the state arising from value added tax (VAT) and its surcharges. Other claims of the state excluding claims arising from VAT. 	<p>After deducting administrative expenses, the bankruptcy administrator's remuneration, or any post-commencement claim, secured creditors are paid out of 65 per cent of the sale proceeds. General preferential creditors are paid out of 25 per cent of the sale proceeds. Unsecured creditors are satisfied by the remaining 10 per cent of the sale proceeds.</p> <p>The general preferential creditors' claims cease to bear any legal or contractual interest after the issuance of the decision that declares the debtor's bankruptcy.</p>
Secured claims	<ul style="list-style-type: none"> Secured claims are claims usually collateralised by individual items of collateral. The most common types of security that are available for immovable property are the pre-notation of mortgage and the mortgage. The most common types of security that are available for moveable assets are the pledge, the non-possessory pledge and the floating charge. 	<p>The declaration of bankruptcy does not suspend the individual enforcement of security rights; therefore, even after the declaration of bankruptcy the secured creditors can elect to exercise their security thus seeking satisfaction from the proceeds of the secured asset's sale. However, in cases where the debtor's business may be sold as a going concern, the bankruptcy administrator may seek a stay on individual enforcement. Moreover, after the list of creditors is finalised, bankruptcy under Greek law is said to enter the stage of "union of creditors". At that point, all individual enforcement measures cease and all sales are conducted by the bankruptcy administrator for the satisfaction of the claims of the creditors as a whole.</p> <p>Secured creditors' claims continue to bear legal or contractual interest after the commencement of bankruptcy proceedings.</p>

Type of Claim	Description	Comments
Unsecured claims	<ul style="list-style-type: none"> Unsecured creditors' claims are claims that are not secured, and not afforded any preferred status. 	The unsecured creditors' claims cease to bear any legal or contractual interest after the issuance of the decision that declares the debtor's bankruptcy.
Special types of claims		
a) Subordinated claims	<ul style="list-style-type: none"> Claims that are subordinated as a result of contract, or statutorily provided subordinated claims, e.g. art. 3 of Law No 2190/1920 in which case shareholders of preferential shares are satisfied after the creditors and prior to the rest of shareholders. 	Such claims are satisfied after the satisfaction of unsecured creditors' claims.
b) Conditional claims	<ul style="list-style-type: none"> Claims with a condition subsequent are claims in which case, the overturning of the results of the particular transaction depends on the occurrence of an uncertain future event, and upon occurrence of the event, the transaction is terminated and the previous status is <i>ipso jure</i> restored. Claims with a condition precedent are claims in which case the results of the particular transaction depend on the occurrence of an uncertain future event, and such results are achieved as soon as the relevant condition precedent is satisfied. 	<p>Conditional claims are submitted for verification as if they were not conditional.</p> <p>In case of a condition subsequent, the creditor must return any distribution upon fulfilment of the condition.</p> <p>In case of a condition precedent, the creditor will be ranked randomly (meaning in common with the unsecured creditors' claims) but receive payment either by placing a guarantee or upon fulfilment of the condition.</p>

APPENDIX

Section	Standard	Comments
Classification of claims	<ul style="list-style-type: none"> Recovery agreement <p>The Greek Bankruptcy Code, Law No 3588/2007 as currently in force ('GBC') requires the consent of a qualified majority of all affected creditors by value and also a minimum percentage approval (at least 40% by value of claims) by the secured creditors (i.e. creditors who have received security of any kind against assets of the debtor). Moreover, the principles of equal treatment among creditors of the same class and the no creditors' worse principle, mean that higher ranking creditors can require more favourable treatment under the agreement than lower ranking creditors as a condition for court ratification.</p> Reorganisation plan <p>The proposed debt settlement must not prejudice creditors' classification. The plan must mandatorily provide for secured creditors, general preferential creditors, unsecured creditors and subordinated creditors. Employee claims constitute a particular class. Claims of unsecured creditors that are of diminished value may be classified separately. Within a particular class, more than one group of creditors may be provided.</p> 	
No creditors' worse principle	<ul style="list-style-type: none"> The recovery agreement and the reorganization plan must be in the best interests of creditors. 	The recovery agreement must not leave creditors (especially non-consenting creditors) in a less favourable position than they would be through individual enforcement proceedings or bankruptcy liquidation.

Section	Standard	Comments
Equal treatment of creditors	<ul style="list-style-type: none"> The recovery agreement must provide that creditors of the same class are treated equally and any exceptions must be justifiable by appeal to either important business and/or social reasons. The plan must provide equal treatment among creditors of the same class or sub-class, if applicable. 	In case of a reorganisation plan, focus is placed on what dissenting creditors would receive under the plan. Dissenting creditors must receive at least as much as they would receive through bankruptcy liquidation.
Acceptance of the recovery agreement and the reorganization plan	<ul style="list-style-type: none"> The recovery agreement and the reorganization plan must be signed by creditors representing a majority of 60 per cent of the total claims, 40 per cent of which should be secured. 	
Cramdown effect	<ul style="list-style-type: none"> The ratified recovery agreement and reorganization plan are binding <i>erga omnes</i> (such cram down includes the dissenting and non-participating creditors). 	<p>The bankruptcy court will ratify a recovery agreement if:</p> <ul style="list-style-type: none"> - the debtor is likely to become viable; - the non-signatory creditors will receive at least as much as they would in an enforcement procedure or liquidation; - the recovery agreement does not violate mandatory legislation, such as competition law, and is not the result of fraud conducted by the debtor or any creditor or any third party; - creditors of the same class are treated equally; and - through the proposed recovery, the cessation of payments is lifted. <p>The bankruptcy court will ratify the reorganization plan if:</p> <ul style="list-style-type: none"> - the formalities with regard to the mandatory features of the reorganization plan (i.e. information relating to the current financial situation of the debtor; information relating to at least one proposed form of reorganization; and information relating to payments that will be made to creditors) and the creditors' majority are met; - the acceptance of the plan is not the consequence of a malicious act perpetrated by the debtor, any creditor, the bankruptcy administrator or any third party; - the plan does not violate the public interest; or - the plan does not prejudice the interests of dissenting creditors.

Hong Kong

Type of Claim	Description	Comments
Secured claims (other than claims secured by a floating charge)	<ul style="list-style-type: none"> Secured claims are claims secured by a mortgage, charge or lien on the property of the debtor or any part thereof, provided that claims under a charge created as a floating charge rank behind preferential claims. 	<p>Secured claims are paid from the sale proceeds of the relevant charged assets, less the costs of realisation. Any excess proceeds are distributed in accordance with the order below.</p> <p>Equitable mortgages rank behind legal mortgages and fixed charges over the same asset rank in the order of creation.</p> <p>Secured creditors may continue to enforce security in a liquidation.</p> <p>If the sale proceeds are insufficient to satisfy the claim, the creditor can claim the balance as an unsecured creditor.</p>
Winding up costs, charges and expenses	<ul style="list-style-type: none"> Winding up costs, charges and expenses include the liquidators' fees and realisation costs. 	<p>Such costs, charges and expenses must be properly incurred.</p> <p>Liquidators are entitled to remuneration ahead of winding up costs.</p>
Preferential claims	<ul style="list-style-type: none"> Preferential claims include, among others: <ul style="list-style-type: none"> claims for amounts owed to employees, such as wages, holiday pay and unpaid contributions to retirement schemes; statutory debts that became due and payable to the Government in the 12 months prior to the appointment of the provisional liquidator (or the date of the winding up order if no provisional liquidator was appointed) or, otherwise, the date of commencement of the winding up; where the company being wound up is a bank, certain amounts owed to depositors; where the company being wound up is an insurer, amounts owed to persons with respect to certain claims and with respect to contracts of insurance and reinsurance. 	<p>The various claims for amounts owed to employees rank equally among themselves but have priority over the amounts owed to the Government.</p> <p>The amounts owed to the Government have priority over the amounts owed to depositors where the company being wound up is a bank, which in turn has priority over the amounts due to claimants where the company being wound up is an insurer.</p> <p>Preferential claims shall be paid out of any property subject to a floating charge before being applied to the claims of the charge holder.</p>

Type of Claim	Description	Comments
Claims secured by a floating charge	<ul style="list-style-type: none"> Claims of holders of debentures under any charge created as a floating charge. 	<p>Floating charges over the same asset rank in order of creation.</p> <p>If the sale proceeds are insufficient to satisfy the claim, the creditor can claim the balance as an unsecured creditor.</p>
Unsecured claims	<ul style="list-style-type: none"> Unsecured claims are claims that are not secured and not afforded priority status. Such claims are usually last in the priority of creditor claims, other than post liquidation interest and any subordinated creditor claims. 	<p>Unsecured creditors rank equally, and are paid on a proportional basis if there are insufficient assets to meet their claims in full.</p> <p>The court may allow departure from the <i>pari passu</i> principle on the application of the liquidator or Official Receiver in circumstances where:</p> <ul style="list-style-type: none"> (a) assets have been recovered under an indemnity given by certain creditors for costs of litigation; (b) assets have been protected or preserved by the payment of money or the giving of indemnity by creditors; or (c) expenses in relation to which a creditor has indemnified a liquidator have been recovered.
Post liquidation interest	<ul style="list-style-type: none"> Post liquidation interest is interest on any debt proved in the winding up from the date of commencement of the winding up. 	<p>Applies only where the company being wound up is not an insolvent company and there is a surplus remaining after the payment of proved debts.</p> <p>The applicable interest rate is the greater of: (i) the rate specified under section 49(1)(b) of the High Court Ordinance (Cap 4); and (ii) the rate applicable to that debt apart from the winding up.</p>
Deferred debts	<ul style="list-style-type: none"> Dividends or profits due from the company to its members as members. 	
Preferred shareholders	<ul style="list-style-type: none"> Shares whose payment take priority over common shares. 	
Common shareholders	<ul style="list-style-type: none"> Shares whose payment is below preferred shares. 	

Indonesia

Type of Claim	Description	Comments
Financing obtained by the receiver	<ul style="list-style-type: none"> Financing provided to the debtor during the bankruptcy proceedings. 	<p>The receiver may obtain financing from the third party, only for the purpose of maximizing of the value of the bankruptcy estate (Article 69 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Payments (Indonesian Bankruptcy Law or “IBL”).</p> <p>If <i>in rem</i> security right is required to secure the new financing, the receiver may provide collateral only from the bankruptcy estate that is free from encumbrances after obtaining approval from the supervisory judge.</p> <p>The bankruptcy estate's debt (<i>utang harta pailit</i>) is referred to, but not defined in the Bankruptcy Law. In principle, the estate claims are post-bankruptcy claims. In general, claims which arise as a result of or following a declaration of bankruptcy are considered to be claims against the bankruptcy estate and have priority over other preferred and unsecured claims. Based on this doctrine however, new financing constitutes a bankruptcy estate claim.</p>
Outstanding employees' claims	<ul style="list-style-type: none"> Outstanding wages (excluding severance payments and other rights) of the employees of the bankrupt debtor. Outstanding claims of the employees of the bankrupt debtor other than outstanding wages (e.g.: severance payments and other rights). 	<p>Article 39 of the IBL states that as of the bankruptcy declaration, the outstanding wages arising either prior to or after the bankruptcy declaration is rendered shall constitute bankruptcy estate's debt (<i>utang harta pailit</i>). The wage claims are the employee's right to payment that are received and stipulated in the form of money as compensation from the employer for work or services that have been or will be performed, stipulated and paid according to the work agreement or prevailing laws and regulations, including allowances for the work carried out to the employee and the family.</p> <p>Article 95 paragraph (4) of the Labour Law stipulates that if a company is declared bankrupt or liquidated based on the prevailing laws, the wages and other rights of the employees shall constitute preferred claims (must be paid in advance from other debts).</p>

Type of Claim	Description	Comments
		<p>Based on the Decision of the Constitutional Court No. 67/PUU-XI/2013 dated 11 September 2014, the Constitutional Court is of the view that the payment of (i) the outstanding employees' wages shall be prioritised over all other types of claims including claims of the secured creditors, the State's claim, auction office and any general agency established by the government; (ii) the outstanding rights of the employee other than wage claims shall be prioritised over the claims of the state, auction office and any general agency established by the government, except for the claims of the secured creditors.</p> <p>Outstanding rights of the employees of the bankrupt debtor other than outstanding wages would rank higher than any claims except the secured creditors' claims (Article 95 paragraph 4 of the Labour Law in connection to the Decision of the Constitutional Court No. 67/PUU-XI/2013 dated 11 September 2014).</p>
Specific expenses stipulated by the tax law	<ul style="list-style-type: none"> Specific expenses stipulated by the Tax Law consisting of: <ul style="list-style-type: none"> court's expenses solely on account of an order to auction moveable and or immovable objects; expenses incurred for salvaging the concerned objects; and court's expenses solely on account of the auction and the settlement of inheritance. 	<p>Article 21 paragraph (3) of the Law No. 6 of 1983 which has been amended several times by Law No. 9 of 1994, Law No. 16 of 2000, Law No. 28 of 2007 and Law 16 of 2009, regarding General Provisions and Procedures of Taxation ("General Provisions of Tax Laws") and Article 19 paragraph (6) of the Law No. 19 of 1997 as amended by Law No. 19 of 2000 regarding Collection of Tax with Warrants ("Tax Collection Law") provides that tax claims have priority over other preferred rights, except for (i) court expenses solely on account of an order to auction moveable and or immovable objects; (ii) expenses incurred for salvaging the concerned objects; and (iii) court's expenses solely on account of the auction and the settlement of inheritance.</p>
Tax claims		<p>With respect to the State's priority rights, Article 1137 of the Indonesian Civil Code ("ICC") stipulates as follows: "The priority of the State's treasury, the auction offices and other public institutions stipulated by high authority, the order in which they shall be implemented, and the time of the duration, shall be regulated by the relevant specific law which governs such issues."</p> <p>According to Article 35 of Law No. 1 of 2004 regarding State Treasury ("State Treasury Law"), certain central or regional government's claims have priority rights in accordance with the prevailing laws and regulations. The elucidation indicates that these claims can be in the form of tax or other claims being regulated by separate regulations.</p>

Type of Claim	Description	Comments
Bankruptcy estate creditors	<ul style="list-style-type: none"> Bankruptcy estate claims include, among others: <ul style="list-style-type: none"> the fee of the receiver; the fee for running the bankruptcy proceedings in accordance with the IBL (e.g., newspaper announcement cost, etc.); court approved expert fees; the costs of liquidating the bankruptcy estate (fees of an appraiser, an accountant etc.); new financing; the lease costs for the bankrupt's house or offices as of the date of the declaration of bankruptcy; and the wages of the employees of the bankrupt debtor as of the date of the declaration of bankruptcy (Article 39 paragraph 2 Indonesian Bankruptcy Law). 	<p>Bankruptcy estate claims include the administrative expenses that are the actual, necessary costs and expenses of preserving the estate that arise during the bankruptcy proceedings.</p>
Right of retention holder	<ul style="list-style-type: none"> The right of retention is a statutory remedy available to certain types of creditors who may refuse to surrender the possession of goods as long as the "secured" debt remains unpaid. The right to retain property (<i>hak retensi</i>) is a defence for the creditor; he has the right to retain the property until he has received full payment. Only upon payment is he obliged to surrender the goods. 	<p>There is no general provision in the law on the right to retain property, but there are some specific articles in the Indonesian Civil Code (ICC) on this right (e.g. Articles 1616 ICC, which stipulates: labourers, who have access to a property, to perform work thereon, shall be entitled to retain such property, until the total costs and labourers' wages have been paid, unless the client has provided sufficient security for such costs and labourers' wages). For example, a debtor brings its aircraft to the garage for maintenance. Under Indonesian law, the garage owner is entitled to hold on to the aircraft until he is paid by the debtor (for the repair (Article 1616 ICC).</p> <p>In a bankruptcy situation, a declaration of bankruptcy does not affect this right of retention. Article 61 of the Bankruptcy Law clearly stipulates that the creditor having right of retention over assets owned by the debtor, does not lose its right due to the existence of a bankruptcy declaration. In addition, the appointed receiver under the bankruptcy proceedings is obliged to pay the creditor's claim having the right of retention so that such assets (being retained) can be part of and are beneficial to the bankruptcy estate, as set forth by Article 185 paragraph 4 of the Bankruptcy Law.</p>

Type of Claim	Description	Comments
Preferred claims ranked above secured claims	<ul style="list-style-type: none"> • Court charges that specifically result from the disposal of a moveable or immovable asset (which must be paid from the proceeds of the sale of the assets over all other priority debts, and even over a pledge or mortgage). • The legal charges, exclusively caused by sale and saving of the estate (these will have priority over pledges and mortgages). 	<p>Article 60 (2) of the IBL refers to the preferred claims rank higher than the secured claims. Preferred claims are defined as claims referred to in Article 1139 ICC (regarding Specific statutorily preferred creditors whose preference relates only to specific assets) and 1149 ICC (regarding General statutorily preferred creditors).</p> <p>This type of claim, in addition to the above-mentioned types of claims, is deemed to be a preferred claim ranked higher than secured claims.</p>
Secured claims	<ul style="list-style-type: none"> • Secured claims are claims collateralised by Indonesian law pledge, fiduciary security, mortgage (over land rights), hypothec (over vessels) and international interests (over aircraft) towards all of the debtor's assets. 	<p>Entitled to receive “adequate protection” during the course of the bankruptcy case to protect against a potential decrease in value of the collateral during the course of the bankruptcy case.</p> <p>The right to enforce the security of the secured creditor shall be suspended within 90 days from when the bankruptcy declaration is rendered.</p> <p>During the stay period, the receiver can use the bankruptcy estate in the form of either moveable or immovable assets or sell the bankruptcy estate in the form of moveable assets under the control of the receiver in the framework of the continuation of the business of the bankrupt debtor, when the reasonable protection for the interest of the secured creditors or the relevant third parties have been provided.</p> <p>The elucidation of the IBL further provides that the bankruptcy estate's assets that can be sold by the receiver is limited to the inventory and / or current assets (moveable assets), although such assets are encumbered with in-rem security rights. Further, the reasonable protection refers to the protection that needs to be provided to protect the interest of the secured creditors or other third party whose rights are stayed. The transfer of such assets by the receiver results in the condition where the <i>in rem</i> security right over the assets is deemed terminated by the operation of law.</p>

Type of Claim	Description	Comments
Preferred creditors	<ul style="list-style-type: none"> • Specific statutorily preferred creditors whose preference relates only to specific assets (Article 1139 ICC)¹. • General statutorily preferred creditors (for example, revenue authorities, etc.) which should include the severance payments (Article 1149 ICC)². 	<p>The protection may be in the form of among others:</p> <ul style="list-style-type: none"> - the compensation on the decrease of the value of the bankruptcy estate; - the net proceeds from the sale; - the replacement of <i>in rem</i> security rights; and - the reasonable and fair compensation as well as other cash payments (of the debt being secured). <p>Under-secured claims may be verified as unsecured claims.</p> <p>If a composition plan is approved, the dissenting secured creditors must be compensated by the lowest value of either the collateral (can be selected between the collateral value being determined by the collateral documents or collateral value being determined by appraiser being appointed by the supervisory judge) or the actual claim directly secured by <i>in rem</i> security rights.</p>
General unsecured claims	<ul style="list-style-type: none"> • Unsecured claims are claims which will receive their pro rata share of any of the remaining proceeds. 	<p>Including damages claim arising from the termination of outstanding executory contract by the receiver.</p> <p>Subject to cramdown under composition plan that is approved by the creditors under the voting mechanism prescribed in the IBL in both bankruptcy proceedings and suspension of payments proceedings.</p>

¹ According to Article 1139 CC some creditors enjoy a statutory priority right. This priority right relates to specific assets only. The most important specific statutory priority rights are:

1. The court costs, to the extent that these costs are incurred as a result of the execution of an asset; these costs have priority over other preferred claims and over pledge and mortgage.
2. The rent for immovable assets and the costs for repair and other matters the lessee is required to pay under the tenancy agreement.
 - The lessor may assert his priority right by recovering his claim from the property found on the debtor's premises (such as inventory), regardless of who the legal owner of these assets is (Article 1140 CC).
 - The priority right of a lessor only applies with regard to the unpaid rent for the last three years and the current year (Article 1143 CC).
3. The unpaid purchase price of moveable assets.
 - The seller of moveable assets may assert his priority right by recovering his claim from the moveable assets as long as these assets are still in the possession of the debtor (Article 1144 CC).
4. The costs to preserve a specific asset.
5. The fee of the worker who was employed to carry out work with regard to a specific asset.

² According to Article 1149 CC some creditors enjoy a statutory priority right. This priority right relates to all of the debtor's property. The general statutory priority rights are:

1. The court costs, to the extent these costs are incurred as a result of the execution of or to safeguard the assets of an estate; these costs have priority over pledge and mortgage.
2. The funeral expenses, subject to the discretion of the court to reduce the amount if these expenses are excessive.
3. All costs relating to the last illness of the debtor.
4. The salary of the employees for the current and previous year.
5. Monies owed by the debtor for the delivery of food to the debtor and his family during the last six months (before the decision declaring bankruptcy).
6. Claims of boarding schools during the last year (before the decision declaring bankruptcy).

Claims of minors or persons under tutelage on their guardians with regard to the asset management performed (see book 1, title 15 CC), to the extent that these claims cannot be recovered from the proceeds of mortgaged assets or other collateral, as well as claims of minors on their parents based upon book 1 of the Civil Code.

Type of Claim	Description	Comments
Preferred equity	<ul style="list-style-type: none"> • Special class of shares that will receive liquidation proceeds in advance 	Do not participate in the voting for the composition plan in either the bankruptcy or suspension of payments proceedings.
General equity	<ul style="list-style-type: none"> • Ordinary shares 	Do not participate in the voting for the composition plan in either the bankruptcy or suspension of payments proceedings.

APPENDIX – Summary Chart of Composition Plan and the Voting / Ratification Process

Section	Description	Comments
*Composition Plan in Bankruptcy Proceedings and Acceptance / Ratification of Composition Plan Article 151 IBL	<ul style="list-style-type: none"> Composition plan in bankruptcy proceedings. The decision to approve the composition plan requires the affirmative votes of: (a) more than half of the unsecured creditors, who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and (b) who represent at least two-thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged. 	<p>Secured creditors do not participate in the voting. Only unsecured creditors that vote on the composition plan.</p> <p>The Supervisory Judge must determine the schedule for the Commercial Court to hold a hearing for receiving the supervisory judge's report and hearing the arguments of the creditors (including the dissenting creditors) and the bankrupt debtor in relation to the approval or rejection of the plan. At this hearing or at the latest within 7 (seven) days of this hearing, the Commercial Court must decide whether or not to ratify the approved composition plan together with its grounds. The Commercial Court may only refuse to ratify the approved composition plan if:</p> <ul style="list-style-type: none"> - the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition; - implementation of the plan is not adequately assured; or - the plan was concluded fraudulently or under undue influence of certain creditors. <p>Once ratified, the composition plan becomes final and binding on all unsecured creditors without exception.</p>
*Composition Plan in Suspension of Payments Proceedings and Acceptance / Ratification of Composition Plan Article 229 IBL	<ul style="list-style-type: none"> Composition Plan in Suspension of Payments Proceedings In the voting process at the creditors' meeting, the decision to approve the composition plan or to extend the suspension of payments period or to grant a permanent suspension of payments requires the affirmative cumulative votes of: 	<p>If a composition plan is approved, the dissenting secured creditors must be compensated by the lowest value of either the collateral (can be selected between the collateral value being determined by the collateral documents or collateral value being determined by appraiser being appointed by the supervisory judge) or the actual claim directly secured by in rem security rights.</p> <p>At a pre-determined date, a hearing will be held by the Commercial Court to receive the report of the Supervisory Judge and hear the arguments of the administrator, the creditors (including the dissenting creditors) and the debtor in relation to the approval/rejection of the plan. At this hearing or at the latest within 14 (fourteen) days of such hearing, the Commercial Court must decide whether or not to ratify the approved plan together with its reasoning. The Commercial Court may only refuse to ratify the plan if:</p>

Section	Description	Comments
	<ul style="list-style-type: none"> • (a) more than half of the unsecured creditors, who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and (b) who represent at least two-thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and • (a) more than half of the secured creditors, who are present or represented at the meeting; and (b) who represent at least two-thirds of the total amount of the secured claims of the secured creditors present or represented at the meeting. 	<ul style="list-style-type: none"> - the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition; or - implementation of the plan is not adequately assured; or - the plan was concluded fraudulently or under undue influence of certain creditors; and/or - the administration costs cannot be paid. <p>Once ratified, the composition plan becomes final and binding on all secured and unsecured creditors, except for the dissenting secured creditors. A plan can be submitted only once. If (i) no plan is submitted and the request to extend the suspension of payments fails to be granted by the creditors or (ii) no composition is approved by the creditors after the maximum period for suspension of payments (i.e.: 270 (two hundred seventy) days as of the provisional suspension of payments is granted) expires or (iii) the plan is rejected in the voting process by the creditors or (iv) the plan is approved by the creditors but not ratified by the Commercial Court or (v) the final and binding ratified plan is nullified by the Commercial Court, bankruptcy will immediately be declared and the bankruptcy estate will be in a state of insolvency.</p>

Italy

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> • Financing provided to the debtor according to and in compliance with a reorganisation plan already filed and approved by the court (section 182 quarter Italian bankruptcy law - “IBL”, par. 1). • Financing provided to the debtor before the filing for reorganisation, and aimed thereto, provided that the financing be encompassed by the relative plan and the super priority right acknowledged by the court (section 182 quarter IBL, par. 2) (so called “bridge loan”). • Financing provided to the debtor after (or immediately before) the filing of a reorganisation plan, which is aimed at the best satisfaction of creditors, when an independent expert certifies the latter circumstance and the court authorises it (section 182 quinquies IBL, par. 1). • Financing provided to the debtor after the filing of a reorganisation plan, which is aimed at fulfilling the needs of the enterprise, provided that the latter will suffer permanent damages in lack of the financing, and that the debtor cannot otherwise find such financing. It has to be authorized by the court (section 182 quinquies IBL, par. 3). 	<p>Granted with super priority (<i>prededuzione</i>), ahead of all company's existing debts, except from secured creditors that have priority over the cash realised through the sale of the secured assets.</p> <p>In view of full payment requirement, DIP lenders do not vote on the plan.</p>
Secured claims	<ul style="list-style-type: none"> • Secured claims are collateralised by specific items of the debtor's assets. The most common securities in this respect are: 	<p>Not provided with “adequate protection” during the course of the bankruptcy case - No protection against a potential decrease in value of the collateral during the course of the bankruptcy case.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> - mortgage: it has priority over the cash realised through the sale of the relevant real estate; - pledge (either possessory or not possessory): it has priority over the cash realised through the sale of the relevant movable asset. 	<p>Granted with exclusive priority over the cash realised through the sale of the secured assets.</p> <p>Entitled to post-petition interest.</p> <p>Generally, (if paid in full) they do not vote on the plan.</p>
Privileged claims	<ul style="list-style-type: none"> • Privileged claims are collateralised by either all of the debtor's assets or by specific assets. 	<p>Privileged creditors concur on the amount realised through the sale thereof, according to the graduation provided by the relative discipline.</p> <p>Italian laws provide for dozens of different privileges; e.g., taxes, wages, professionals' fees.</p>
Administrative expenses	<ul style="list-style-type: none"> • Administrative expenses include, among others: <ul style="list-style-type: none"> - operating expenses; - court approved professional fees; - trustee fees; and - credits arising by the exercise of the ordinary business kept afloat by the trustee or by the DIP. 	<p>Granted with super priority, ahead of all company's existing debts.</p> <p>Paid as and when due prior or after confirmation of the plan of reorganisation.</p> <p>Authorisation of the judge may or may not be necessary.</p>
Unsecured claims	<ul style="list-style-type: none"> • General unsecured claims (pre-petition claims) are not secured nor they have any priority status. They include, for instance: <ul style="list-style-type: none"> - trade claims; - ordinary financing; and - contract breach claims. 	<p>They can be divided into different classes and receive a different treatment in accordance with a reorganisation plan (e.g., strategic suppliers).</p> <p>Interest not due starting from the opening of the proceeding.</p>
Intercompany claims	<ul style="list-style-type: none"> • Credits of the parent company vis-à-vis the subsidiary and credits of the subsidiary vis-à-vis the parent company, recurring certain circumstances. 	<p>They are generally subordinated to all the other creditors, and therefore treated as common equity, when they relate to financing granted when the company was already in a distressed situation in which an equity injection was more reasonable than the financing itself.</p>

Type of Claim	Description	Comments
Executory contract	<ul style="list-style-type: none"> Contracts that have not yet been fully performed or fully executed from both sides. 	<p>Post-filing credits are granted with super priority, while pre-filing credits are normally paid according to their nature.</p> <p>Specific provisions for certain contracts (leasing, real estate rental, and so forth).</p>
Common equity	<ul style="list-style-type: none"> Shareholders' investment in the company. 	They do not receive anything unless all the above creditors are paid in full.

APPENDIX – Summary Chart of Selected Confirmation Standards

Section	Standard	Comments
Classification of claims § 160 IBL	<ul style="list-style-type: none"> • Creditors can be allocated into different classes based on the uniformity of their legal status and economic interest. • Classes can be treated differently according to the reorganisation plan. 	The potential different treatment provided to creditors belonging to different classes cannot alter the priorities provided by law.
Vote of the plan § 177 IBL	<ul style="list-style-type: none"> • Plan shall be approved not only by the majority of creditors admitted to the vote, but also by the majority of each class of creditors, if the latter have been created. 	
Cram-down § 180 IBL	<ul style="list-style-type: none"> • Reorganisation plan can be broken down when creditors convince the judge that they will receive a better satisfaction within an alternative scenario (usually, the liquidation of all the assets within an ordinary bankruptcy). 	<p>Right reserved only to:</p> <ul style="list-style-type: none"> - any dissenting creditor of a dissenting class, if classes have been created; or - any dissenting creditor that represents at least the 20% of the credits admitted to the vote.

Japan

Introduction

In Japan, insolvency proceedings are implemented through any one of the following four distinct insolvency law regimes: 1) the Bankruptcy Act (Act No. 75, 2 June 2004) (*Hasan Ho*); 2) the Special Liquidation Act (Articles 510–574 and 879–902 of the Corporation Act) (*Tokubetsu Seisan in Kaisha Ho*); 3) the Civil Rehabilitation Act (Act No. 225, 22 December 1999) (*Minji Saisei Ho*); and 4) the Corporate Reorganisation Act (Act No. 154, 13 December 2002) (*Kaisha Kosei Ho*). Bankruptcy and Special Liquidation are liquidation proceedings. Civil Rehabilitation and Corporate Reorganisation are restructuring proceedings. Bankruptcy and Special Liquidation are not common in significant cross-border matters; therefore, this chart addresses only Civil Rehabilitation and Corporate Reorganisation proceedings.

Although there are exceptions to the general rule, secured claims are not subject to a Civil Rehabilitation proceeding and enforcement of secured claims is not stayed. The claims of unsecured priority creditors (such as employee claims) are also exempt from a Civil Rehabilitation proceeding. Therefore, a Corporate Reorganisation proceeding (rather than a Civil Rehabilitation proceeding) would be necessary when settlement agreements with secured creditors are not possible and nonconsensual changes to the rights of secured creditors are required.

Corporate Reorganisation and Civil Rehabilitation cases typically involve the debtor (or the debtor's trustee) finding a "sponsor" to acquire the debtor's business. The proceeds of the sale (which are usually treated as a cash infusion in exchange for equity in the reorganized debtor or an asset purchase) are then used to fund creditor recoveries.

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> Financing provided to the debtor during insolvency proceedings. 	<p>Absent consent of the DIP lender, DIP financing must be paid in cash in full as a requirement to emerge from both Civil Rehabilitation and Corporate Reorganisation.</p> <p>DIP lenders do not vote on the plan and (absent consent) are not affected by plan confirmation.</p> <p>DIP lenders have a payment priority as a “claim for common benefit” (discussed below) but not a “super priority lien” as in the United States. This makes DIP Lending somewhat less attractive to DIP lenders in Civil Rehabilitation proceedings where secured claims are neither stayed nor primed.</p>
Secured claims	<ul style="list-style-type: none"> Secured claims are claims collateralised by either all or substantially all of the debtor’s assets, or by individual items of collateral. 	<p>In Japan, secured creditors are not entitled to receive “adequate protection” as in the United States. Secured creditors may recover interest from the collateral value, but interest is not paid during the proceeding.</p> <p>As discussed above, the claims of secured creditors are not stayed in Civil Rehabilitation proceedings and are not subject to the plan (except deficiency claims).</p>
Claims for common benefit (Administrative expenses)	<ul style="list-style-type: none"> Claims for common benefit include, among others: <ul style="list-style-type: none"> costs of the judicial proceedings; costs of the management of the business and administration of the properties of the debtor during the proceeding; DIP Financing; certain taxes; salaries and wages of employees for up to six months prior to the commencement of the proceeding; retirement allowances; and bilateral contracts (i.e., executory contracts) assumed by the debtor during the proceeding. 	<p>Claims for common benefit are the actual, necessary costs and expenses of preserving the estate that arise during the pendency of the debtor’s insolvency proceeding.</p> <p>Claims for common benefit are paid from time to time prior to (or after) confirmation of the plan.</p> <p>Certain taxes, salaries and wages, and retirement allowances are treated as Claims for Common Benefit only in the Corporate Reorganisation proceeding. In other words, they are treated as the Claim with general priority in the Civil Rehabilitation proceeding, which can also be paid from time to time.</p>

Type of Claim	Description	Comments
Priority expenses		<p>See claims for common benefit (above).</p> <p>In Civil Rehabilitation, some unsecured claims such as taxes, salaries and wages are called “claims with general priority” and may be paid at any time during the proceedings.</p>
General unsecured reorganisation / rehabilitation claims	<ul style="list-style-type: none"> • General Unsecured Reorganisation / Rehabilitation claims are claims that are not secured and not afforded any priority status. • General Unsecured Reorganisation / Rehabilitation claims are usually last in the priority of claims, other than subordinated claims. • General Unsecured Reorganisation / Rehabilitation claims include: <ul style="list-style-type: none"> - unsecured funded debt (e.g., bonds); - trade credit; - deficiency claims and - contract breach claims, including rejection of executory contracts. 	<p>Corporate Reorganisation respects the priority of creditor claims through a “relative” rather than “absolute” priority rule. This rule essentially provides that a junior creditor may receive some level of recovery notwithstanding the fact that a senior creditor has not recovered in full, provided, however, that the junior creditor receives less favourable terms than the senior creditor.</p>
Preferred equity	<ul style="list-style-type: none"> • Stock whose payment takes priority over common stock (e.g., stock with liquidation preference). 	<p>Equity holders do not vote on the plan.</p>
Common equity	<ul style="list-style-type: none"> • Stock whose payment is below preferred stock. 	<p>Equity holders do not vote on the plan, unless the debtor is solvent in Corporate Reorganisation.</p>
Intercompany claims	<ul style="list-style-type: none"> • Prepetition claims held by an affiliate of the debtor. 	<p>Intercompany claims often arise from cash management system of a group enterprise, pursuant to which money may flow routinely between entities, giving rise to claims between debtor entities.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> Japan does not recognize substantive consolidation. In some Corporate Reorganisation cases, pooling arrangements have been adopted whereby each separate plan of Reorganisation provides for all group debtors to merge into one surviving company and make distributions at the same rate to creditors of each debtor. 	<p>Japanese law does not provide for equitable subordination. However, it requires that, for the court to confirm the plan, it must be fair and equitable. As a result, some intercompany claims might be treated less favourably than the claims of other creditors. This is also true for claims of directors and officers.</p>

APPENDIX – Summary Chart of Select Confirmation Standards

Section	Description	Comments
Classification of claims	<ul style="list-style-type: none"> • In Corporate Reorganisation proceedings, claims are usually simply grouped into two classes of secured and unsecured claims. (Secured claims are not subject to a Civil Rehabilitation proceeding and enforcement of secured claims is not stayed.) • Equity holders do not vote on the plan in Civil Rehabilitation. In Corporate Reorganisation, equity will only vote if the debtor is solvent. 	
Best interests	<ul style="list-style-type: none"> • The plan is in the best interests of creditors and interest holders. 	<p>Creditors have a right to vote in favour of or against the plan.</p> <p>The plan must provide a better distribution rate to creditors than creditors would receive in liquidation proceedings.</p>
Statutory criteria	<ul style="list-style-type: none"> • A plan under Corporate Reorganisation – <ul style="list-style-type: none"> (i) must not contravene any provisions of Japanese law, (ii) must be fair and equitable, (iii) must be feasible to perform, and (iv) must have been approved by voting procedures and means of adoption that were fair and in good faith. • A plan under Civil Rehabilitation must be denied confirmation if – <ul style="list-style-type: none"> (i) the plan contravenes the provisions of Japanese law and the defect is incurable, (ii) the plan is anticipated to be infeasible to perform, (iii) it has been approved by illegal voting procedures, or 	

Section	Description	Comments
	(iv) the resolution is against the common interests of the unsecured creditors.	
Acceptance of plan	<ul style="list-style-type: none"> • Votes are counted by the amount of claims. • Civil Rehabilitation requires a majority in number of creditors in addition to the amount of claims. • In Corporate Reorganisation, creditors are grouped into two classes of secured and unsecured claims, and the plan shall be approved when both groups are in favour. • In Corporate Reorganisation, there is not a “numerosity” requirement. 	<p>To approve a Corporate Reorganisation plan, the following percentages of approval must be attained:</p> <ul style="list-style-type: none"> - Secured: (i) 2/3 in amount to simply extend maturities, (ii) 3/4 in amount to approve a reduction of principal or interest, and (iii) 9/10 in amount to approve a plan that will liquidate the debtor's business. - Unsecured: Simple majority (any percentage exceeding 50%) in amount is required to approve a plan. - Equity: Simple majority (any percentage exceeding 50%) in amount is required to approve a plan (but equity holders are only permitted to vote when the debtor is solvent). <p>An abstention operates as a “no” vote for amount but not for number.</p>
Cramdown	<ul style="list-style-type: none"> • If a plan satisfies all confirmation requirements other than acceptance of all classes, the plan still may be confirmed over the dissenting class if the plan is fair and equitable. 	<p>In a Corporate Reorganisation proceeding, even where a proposed Corporate Reorganisation is not approved by the vote, the court may make an order of confirmation of the plan by modifying the proposed plan and specifying a clause to protect the rights of holders whose consent has not been obtained.</p>

Mexico

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> Financing provided to the debtor during <i>concurso mercantil</i> proceedings. 	<p>DIP financing must be paid in cash, in full as a requirement to emerge from insolvency proceedings (<i>concurso mercantil</i>), absent the express consent of DIP lender in regard to other payment arrangements¹.</p> <p>DIP lenders generally do not vote on the exit plan (<i>convenio concursal</i>) and, absent consent, are not affected by plan confirmation.</p>
Secured claims	<ul style="list-style-type: none"> Secured claims are claims collateralized by either all or substantially all of the debtor's assets, or by individual items of collateral, through mortgages and pledges; claims secured by guarantee trusts may be separated from the estate through a complicated and inefficient procedure (<i>acción separatoria</i>). 	<p>Entitled to receive recognition on interest accrual during the insolvency proceeding up to the amount of the claim. There is no real protection against a potential decrease in value of the collateral.</p> <p>Secured creditors voting against the adoption of a plan may initiate the sale of their collateral unless the “value of their guarantee” is paid to them in cash. In practice, given the lack of definition of such term, majority of recognized creditors may control the monetary value of the guarantees as a means of pressuring non-accepting secured creditors, as a “cramdown” is not provided for in the Concurso Law.</p>
Administrative expenses	<ul style="list-style-type: none"> Administrative claims include, among others: <ul style="list-style-type: none"> operating expenses (e.g., lease payments); court approved professional fees; claims for goods delivered to the debtor during the pendency of the proceeding; and any applicable registration fees. 	<p>Administrative expenses are the actual, necessary costs and expenses of preserving the estate, as considered by the conciliador, and which arise during the pendency of the debtor's concurso mercantil.</p> <p>These expenses are paid, under the supervision of the <i>conciliador</i>, on a current basis and must be informed to the court within two days of their payment (includes post-petition utilities and telecommunications expenses).</p>

¹ DIP financing as such has been limited because Mexican law provides that labor claims and existing secured creditors with mortgages and pledges have a priority before DIP lenders in the event of a liquidation. Banks and other financial institutions require reserves and capital adjustments that make DIP financing prohibitive in practice.

Type of Claim	Description	Comments
Priority expenses	<ul style="list-style-type: none"> • Priority expenses include, among others: <ul style="list-style-type: none"> - wages and salaries, and constitutionally protected labor benefits irrespective of their amount; - court approved DIP financing related payments; and - certain expenses incurred in the normal course of business to preserve the value of the estate. 	The <i>conciliador</i> plays a key role in overseeing the classification and payment of priority, expenses, and must constantly inform the court.
General unsecured claims	<ul style="list-style-type: none"> • General unsecured claims are claims that are not secured and not afforded administrative or priority status. • Such claims usually are last in the priority of claims, other than subordinated claims. • Such claims include unsecured funded debt (e.g., bonds), trade credit, and contract breach claims, including rejection of executory contracts. 	General unsecured claims are subject to “cramdown” in the restructuring or conciliatory phase of <i>concurso</i> proceedings. These include loans and the bulk of pre-petition operating expenses, including utilities and supplier claims.
Preferred equity	<ul style="list-style-type: none"> • Stock whose payment takes priority over common stock (e.g., stock with a liquidation preference). 	Subject to cramdown as stated above.
Common equity	<ul style="list-style-type: none"> • Stock whose payment is below preferred stock. 	Subject to cramdown as stated above.

Type of Claim	Description	Comments
Special types of claims ²		
a) Intercompany claims	<ul style="list-style-type: none"> • Prepetition claims held by a debtor against another debtor. 	<p>Intercompany claims generally arise from group enterprise cash management systems, in respect of which money flows routinely among the companies of the group, giving rise to claims between related debtor companies.</p> <p>Although intercompany claims may be recognized in the <i>concurso</i> proceeding as legally binding unsecured, subordinated claims, their vote is limited; unrelated creditors representing a majority of claims must approve the exit plan.</p>
b) Contractually subordinated claims	<ul style="list-style-type: none"> • Contractual subordination will be given effect. 	<p>With respect to tax credits, the <i>Concurso</i> Law establishes that as compared with other obligations, past due taxes will continue to accrue interest and penalties in accordance with the rules established in the Federal Tax Code. Nevertheless, in the event a <i>concurso</i> plan is adopted, interest, surcharges and penalties incurred during the conciliation or work-out stage will be cancelled. The actual taxes generated within the months that the proceeding is addressed, will be considered as incurred in keeping the business as an ongoing concern and thus entitled to a preference only behind labor claims.</p>
c) Tax claims	<ul style="list-style-type: none"> • Unsecured tax credits will continue to accrue interest and have a preference over unsecured creditors. 	<p>The <i>Concurso</i> Law and the Federal Tax Code recognize that unsecured tax credits will have a preference over unsecured creditors but be lower in priority to registered mortgages and pledges. In addition, the Federal Tax Code provides that the tax authorities will not participate in universal proceedings, such as <i>concurso mercantil</i>, and thus are under no obligation to file a claim. The debtor must communicate to the tax authorities the filing and acceptance of a <i>concurso</i> proceeding. The <i>conciliador</i> also has duty to recognize the tax credits which may have become due at the time of constructing the creditors list.</p>

² Even though the *Concurso* Law establishes a solid framework for claims recognition and conciliation, the many unnecessary formats and the excessive emphasis on many complicated formalities by the IFECOM, the Federal Judiciary and the litigation bar, have often placed an enormous burden on the courts which must work inefficiently to move along literally tons of paper. There is a need for improvement and perhaps Mexican insolvency practice will eventually enter the era of digitalization in the not too distant future.

Type of Claim	Description	Comments
		<p>It is noted that the Federal Tax Administration (the “SAT”) is given broad authority under provisions of the Federal Tax Code, to issue pardons for the payment of tax credits due prior to a declaration of <i>concurso</i> or insolvency, in terms consistent with the discounts resulting in respect of unsecured claims upon the approval of a <i>concurso</i> plan. Recent cases have confirmed the willingness of the SAT to participate in debt reductions arising from approved plans, as a means of supporting the survival of the enterprise with the objective of pursuing, in the long term, the generation and collection of direct and indirect taxes, i.e. potential present and future fiscal revenues which would be lost upon bankruptcy and liquidation.</p>

Nigeria

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> Financing of insolvent debtor during bankruptcy or insolvency proceedings whilst the debtor still remains in possession. This is done under the protection of the bankruptcy (insolvency) court¹. Claims on account of DIP financing have super priority over all other debts (secured, preferred or otherwise), administrative expenses, equity, and any other securities issued by a company. DIP financing loan may be defensive (provided by existing secured lenders) or offensive (new third party lender). 	<p>The concept of DIP financing that is recognized in US and Canada's jurisdictions is technically speaking alien to Nigerian bankruptcy and insolvency system, which has strong creditor protection bias.</p> <p>A Practitioner in Possession (PIP) system is practiced in Nigeria such that whilst there is no specific express statutory recognition of DIP Financing, Section 425(2)(e), on liquidator's powers specifically acknowledges the liquidators power to raise money required for him to carry on the business of the company as may be most expedient for a beneficial winding up and is secured by the assets of the company in his possession. Section 539 gives power to the debtor company to compromise with its creditors and members including achieving a formal deal sanctioned by the court that would provide usually for defensive DIP financing where the fundamentals of the business remain viable or the specific sector involved has a critical economic importance or a long term maturity period, etc. and presently offensive and defensive DIP financing through the arrangement and compromise workout principles contained in section 539 CAMA is beginning to be used and sustained informally by lenders, particularly in the context of syndicated loans with global security created even where some of the banks are specifically secured by specific collateral over some of the assets of the company.</p> <p>Further with the amendment of the AMCON Act in June 2015 leading to the creation of administrative receivership and growth of business rescue, there is regulatory encouragement for workouts with debtors, which in turn provides opportunities now in big corporate cases to consider PIP Financing through AMCON.</p> <p>DIP or even PIP financing however is not expressly prescribed or recognized in resolving personal insolvency.</p>

¹ It is important to note that notwithstanding impending legislative reform in Nigeria, the term bankruptcy is technically only used with reference to personal insolvency which is regulated primarily by the Bankruptcy Act, Cap B.2 LFN 2010, whilst insolvency of body corporates is regulated generally by the provisions of Parts XV and XVI of the Companies and Allied Matters Act, Cap. C20 LFN 2010. Both Acts were promulgated respectively in 1979 and 1990 and are strongly influenced by English law as applicable as of 1945.

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Duly registered and formalized collaterals created over specific fixed assets of the debtor² or a global type of security created over most or all assets whether existing or future. 	<p>In the context of insolvency and priority of claims, secured claims are collaterals created by the creditors over the assets of the company exclusively for the purpose of repayment of credit advanced, and the interest of the creditor would be protected even where the debtor becomes insolvent.</p> <p>It is important from the outset to remark that whilst this is available in most jurisdictions, in Nigeria creation of security interests on moveable assets from inadequate legislative framework notwithstanding recent efforts of the Nigerian Central Bank of Nigeria (CBN) to pass additional regulation. For instance, the Old English received Sale of Goods Laws which create a framework for creation of security or secured claims over moveables assets is only adopted in Lagos State and a few other States in the South West/East. Technically speaking also, Lagos State has set up since 2007 a Bill of Sales registry (there can be no valid and enforceable Bill of Sales except in writing and registered) but it is of very limited use as the scope of creation of such security is limited to individual debtors whilst the Companies and Allied Matters Act (CAMA) provides for registration of moveables under chattel mortgage charge or asset debenture.</p> <p>The CBN Governor in September 2014 issued the Central Collateral Registry Regulations, which allow banking institutions to create and register Security Agreements over moveables and register the same as secured claims subject to normal ranking priority in creation of securities. Having stated this, it is still apt to say that in Nigeria there is no general law on security over personal property. Further, it is important to appreciate that in Nigeria, secured creditors are those lenders (banking institutions) that make the requisite funds available to the debtor.</p> <p>Lenders by law are required to secure the credit given to the debtor, and bankers would be criminally liable for any credit advanced without proper security put in place. However, it appears that for the purpose of insolvency, unless recognized as a secured claim by special laws or bye laws such as the NDIC Act, the ISA, the AMCON Act, securities that do not directly and formally encumber the assets of the debtor, such as right of lien, negative pledge, guarantee, etc. are not viewed as secured claims. For instance, there is no law protecting unpaid suppliers as obtains in some other major jurisdictions creating a security in the goods that they supplied for a period of 90 days.</p> <p>There is also no contractor lien available in construction related transactions.</p>

² From this point, and flowing below in this survey, debtor would be construed as a body corporate, particularly since the issues are more properly articulated under Nigerian corporate insolvency. Rules of priority and preferential treatment under the Bankruptcy Act are in any event similar.

Type of Claim	Description	Comments
		<p>The usual securities that would be validly viewed as secured claims will be those created over the assets of the corporate debtor that are registered, including legal mortgage or charge, fixed, and or all assets debentures. Where not properly registered, stamped and or perfected they would merely amount to equitable (inchoate) security but will not qualify as secured except there is a judicial endorsement or perfection of same.</p> <p>Nigerian law and jurisprudence on secured credit and liquidation shows that except when a secured creditor elects to abandon the security and participate in the collective procedure, a properly created or valid secured claim has precedence in the sense that it can be realized by a creditor privately or with the support of the court but without recourse to the debtor company or it can be raised to restrain the Insolvency Practitioner (IP) from dealing with such assets of the debtor that are encumbered as such IP takes subject to the rights of prior encumbrances: generally, Sections 166-179 on debentures and priority of fixed & floating charge, Sections 197, 202 on nullity of unperfected charge claim against a liquidator or other creditor of the company, Sections 208 and 209 on powers of debenture holders to realize security, Section 393(1) on receivership and rights of prior encumbrances and Section 494 (4) CAMA and also provisions of companies winding up rules on rights and precedence of secured creditor's claims filed Sections 122-127.</p>
Administrative expenses	<ul style="list-style-type: none"> • This relates to various costs and expenses necessary for the preservation and realization of the insolvent estate. • They include, <i>inter alia</i> remuneration of the liquidator, costs of the liquidator reasonably incurred in the course of preservation of the estate or carrying on the business of the company with a view to a beneficial realization, costs due to professionals for sundry issues such as valuation, auction fees, preparation of statements of affairs, retainer of solicitors/ attorneys, official registration or court fees, etc. 	<p>Although awkwardly stated in the substantive operative procedures for winding up by the courts³, the accepted jurisprudence is that costs and expenses of all insolvency procedures are taken out in priority during the course of insolvency proceedings as the need arises.</p>

³ Section 494 dealing with preferential payments subjects payment of preferential or priority claims to the retention of such sums as are necessary for the costs and expenses of the winding up. Section 448, however states that in a winding up by the court, the court is empowered to order costs and expenses of winding up in such order of priority as he deems fit. On the other hand, administrative expenses, including liquidator's remuneration are expressly and unequivocally stated as having priority over all other claims. Section 484 CAMA.

Type of Claim	Description	Comments
Priority expenses	<ul style="list-style-type: none"> In Nigeria, this would relate to priority given to insolvency expenses and costs as above discussed 	<p>In a winding up by the court, Section 127 of the Companies Winding Up Rules provides priority for payment (except varied by the court) of expenses as follows:-</p> <ul style="list-style-type: none"> (a) Costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the court. (b) Remuneration of the Special Manager (if any). (c) Costs and expenses of any person who makes or concurs in making the company's statement of affairs. (d) The charges of any shorthand writer appointed to take an examination. (e) Necessary disbursements of any liquidator appointed in the winding-up by the court, other than property incurred in preserving, realising or getting in the assets heretofore provided for. (f) Costs of any person's property employed by any such liquidator. (g) Remuneration of any such liquidator. (h) Actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Commission. <p>However, the above priority cannot affect priority of litigation costs ordered by the court to be paid by the company or the Liquidator, or the rights of the person to whom such costs are payable.</p>
Preferential claims	<ul style="list-style-type: none"> These include labour / pension claims as well as tax claims which are unsecured claims enjoying preferential ranking in priority amongst general unsecured claims. 	<p>Section 494 CAMA singles and details rules of preferential payments for a) labour claims, such as social insurance deductions claims, wages and salary, pensions, etc. b) accrued holiday remuneration, etc. and b) local tax, rates and charges, etc.</p> <p>These preferential claims rank equally among themselves and whilst their priority rank below administrative costs and expenses, they rank in priority over a floating charge.</p>
General unsecured claims	<ul style="list-style-type: none"> Claims not secured or not given preferential payments or not understood as administrative costs or given any priority status. Such claims range from claims of trade creditors, suppliers, claims from creditors whose security are not valid, etc. 	<p>These claims are at the bottom of the pyramid of creditors to be paid, however they enjoy priority of payment over contributories claims where there are sufficiently available assets.</p>

Type of Claim	Description	Comments
Preferred equity	<ul style="list-style-type: none"> Stock with preferential privileges as to voting and payments when the company is a going concern. 	Our insolvency system does not expressly make a distinction in insolvency with regards to class of contributories by reference to classes of shares but generally preference shares are known to carry in Nigeria a right to preference in the repayment of capital presumably also in a winding up.
Common equity Special type of claims	Ordinary Shares	
<ul style="list-style-type: none"> Intercompany claims 		Intercompany claims can be treated pari passu in right of payment with third party unsecured claims. It is however not clear under our jurisprudence whether netting and setoff considerations would not come into play particularly as the IP has the power both to pursue claims for debtor company and to compromise claims. The corporate veil is not lifted if fraud is not established amongst the related companies.
<ul style="list-style-type: none"> Utility bills 		Payments due on utility bills that are incurred during the pendency of an insolvency procedure would be taken as administrative costs but when they exist pre petition, they will be categorized as unsecured debt.
<ul style="list-style-type: none"> Intermediated securities claims 		Intermediated securities claims by investors in the event of insolvency procedure against a capital market operator are considered under the Investments and Securities Act 2007 as secured third party claims, and have super priority under such insolvency procedure including over any secured claim for the law views the assets created as belonging to investors and merely being warehoused or held by the capital market operator as a custodian. Section 42 ISA 2007.
<ul style="list-style-type: none"> Retention of title clause claims 		<p>The same idea applies to claim arising from Retention of Title (ROT) clauses but the jurisprudence here which is mainly inherited from Common Law cases is quite divided: depending on how strong such clause is, it may be considered as a secured claim and take priority. Pre petition, sellers of goods/vendors may be able to protect their interest even in the event of insolvency through a properly worded retention of title clause in sale of goods contracts such that title to the goods delivered to the debtor company would not pass until discharge of company's financial obligations. However, the issue of priority of ROT clauses can only be decided through a claim against the liquidator who takes possession of the assets of (ostensibly belonging to) the debtor company.</p> <p>There is strong paucity of jurisprudence in this area. Generally, the IP has the opportunity to endorse or avoid onerous contracts. He also has general powers to pursue contractual claims that would benefit the debtor company.</p>

People's Republic of China

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Claims by creditors that hold a mortgage, pledge, earnest money or lien on property of the debtor as security for a debt or obligation. 	<p>The amounts of secured claims in excess of guaranteed loans form part of the bankruptcy assets.</p> <p>Secured claims are limited by the value of the collateral; deficiency claims are reclassified as unsecured claims.</p> <p>Contractor of a construction project is paid prior to secured claims and other claims. The construction contractor shall submit their claim to the administrator for the priority adjudication six months from the completion of the construction project or the completion date agreed upon in the construction project contract. (Reply of the Supreme People's Court on the Priority of Compensation for Construction Project Price, Effective 27 June 2002)</p> <p>Secured claims are the most senior claims.</p>
Claims outside the scope of the bankruptcy process	<ul style="list-style-type: none"> Bankruptcy expenses include: <ul style="list-style-type: none"> - legal costs of the bankruptcy case; - expenses for managing, selling and distributing the property of the debtor; and - expenses incurred by the administrator in performing duties, remuneration and other professional fees. Debts for common benefit include: <ul style="list-style-type: none"> - debts incurred in connection with the administrator or debtor requiring counterparties to perform contracts which has not been completed by the parties; - debts incurred by default in connection with the management of debtor assets; 	<p>Bankruptcy expenses are actual and necessary costs and expenses to guarantee the implementation of bankruptcy process and management, sale and distribution of debtor's property.</p> <p>Bankruptcy expenses are senior to all other claims and should be paid prior to any distribution to any other creditors.</p> <p>Bankruptcy expenses and debts for common benefit shall be paid as and when due.</p> <p>The administrator should petition for the termination of bankruptcy if the bankruptcy expenses cannot be fully paid.</p> <p>Debts for common benefit must be generated from activities with the purpose of protecting the interests of all creditors.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> - debts incurred in connection with improper gains obtained by the debtor; - labour remuneration and social insurance premiums incurred in order to continue operations; - debts arising from loss or damage to third party caused by administrator or relevant persons in performance of duties; and - debts arising from loss or damage to third party caused by the property of debtor. 	
DIP financing	<ul style="list-style-type: none"> • DIP financing is a financing arranged for companies in distress, typically during restructuring under corporate bankruptcy law. 	<p>DIP financing is treated as expenses and debts incurred for the common good of creditors during debtor's on-going operation.</p> <p>These debts can be paid off with the debtor's property at any time.</p> <p>These claims are junior to bankruptcy expenses but senior to labour cost and unsecured claims.</p>
Labour costs	<ul style="list-style-type: none"> • Labour costs include: <ul style="list-style-type: none"> - wages, medical and disability subsidies; - pension fund premiums and health insurance premiums payable to employee; and - severance payments in accordance with laws and administrative regulations. 	<p>Labour costs include costs incurred prior to the bankruptcy order.</p> <p>The administrator is required to investigate and adjudicate costs based on internal and publicly available information.</p> <p>Labour costs are junior to secured claims, but senior to tax claims.</p>
Tax claims	<ul style="list-style-type: none"> • Social insurance premiums other than those are labour claims. • Taxes owed by the debtor. 	<p>Tax claims include costs incurred prior to the bankruptcy order.</p> <p>Tax claims are junior to secured claims and labour claims but senior to unsecured claims.</p>

Type of Claim	Description	Comments
Unsecured claims	<ul style="list-style-type: none"> • Unsecured claims are claims that are not secured by any personal or real property collateral. • Deficiency claims of secured claims. • Secured claims forfeit the priority of repayment. 	Unsecured claims are junior to secured claims, labour costs and tax claims.

APPENDIX – Common Questions and Answers

Question	Answer
What is the distribution order under bankruptcy liquidation?	<p>The administrator should distribute the cash to the creditors after realisation of all assets. A creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property. The balance should be distributed according to the following order:</p> <ul style="list-style-type: none"> - bankruptcy and common expenses; - labour expenses and related costs; - taxes; and - common creditors.
Who would adjudicate the proof of debt (POD) submission?	The administrator has the statutory duty to adjudicate the claim and prepare for the summary of POD for stakeholders to review during the 1st creditors meeting.
When is the deadline to submit the proof of debt?	The date of gazette would be after the court accepted the bankruptcy application. In practice, the court would arrange to gazette the deadline for the submission along with the notice, ie 25 days from the date of decision.
When will the adjudicated result be announced?	<p>The administrator would publish the summary during the 1st creditors meeting for stakeholders to review.</p> <p>Any creditor or debtor is entitled to launch a petition with the court when they object to the summary of POD.</p>
Can the creditor object to the adjudication result?	The creditor can raise an objection during the review at the 1st creditors meeting or by launching a petition with the court. The administrator can set a deadline for the creditor to raise an objection. The administrator is also required to withhold bankruptcy assets to allow for future distributions if the petition is successful in court.
Can a creditor submit the POD after the adjudication?	<p>Any creditor can submit POD after the bankruptcy process has commenced, administrator is entitled to charge a fee for the late adjudication. As long as there are still bankruptcy assets to be distributed, the administrator would distribute them according to the approved recovery rate as per the creditor meeting.</p> <p>In the bankruptcy process, the late filing creditor would only receive the subsequent distribution from the date the late filing is approved.</p> <p>If there are no assets available, then no distribution would be made. The POD would be a null claim without financial substance.</p>

Question	Answer
	<p>In the bankruptcy process, once the restructuring plan has been approved by the court and executed. The creditor who submits an approved claim then would not have any input on the restructuring plan. The creditor can only accept and comply with the approved restructuring plan.</p> <p>A creditor can also exercise its right against the guarantor of the debt and would not be subject to any restriction in the restructuring plan.</p>
Can the creditor vote when the debt has not been adjudicated?	Only when the creditor submitted its claim or the creditor whose claim can be confirmed by the court, has the right to vote in the creditors meeting.
What happens to the interest for an interest bearing loan?	Interest will be suspended for all interest bearing debt during the bankruptcy period from the date the bankruptcy order is granted.
What information would be required in the proof of debt?	<p>Information to be included in the claim:</p> <ol style="list-style-type: none"> 1. The completed POD form issued by the administrator 2. Copy of original contract and supplementary contract 3. Invoice 4. Receipt 5. Good delivery docket 6. Account statement 7. Confirmation by bankrupted entity 8. Court order or settlement order 9. Arbitration order 10. Guarantee contract 11. Detail of security or mortgage 12. Other document to substantiate the claim
What happens to the adjudicated debt when the restructuring plan or reconciliation plan fails?	If the restructuring plan fails to be carried out, the entity would enter into bankruptcy. The waived portion of the debt would revert to its originally adjudicated amount less the amount of distribution already received. The balance becomes the total adjudicated claim for the calculation of final distribution.

Question	Answer
Can the amount of the debt be offset against other payables owed to the bankrupt entity?	<p>A creditor can apply to the administrator to offset an adjudicated debt against a payable, except when:</p> <ul style="list-style-type: none"> - the payable debt is created after the bankruptcy process has commenced; - the creditor has knowledge of the insolvency of the bankrupt entity, except when the payable is created under law or more than 12 months prior to the bankruptcy application; and - the debtor of the bankrupt entity has knowledge of the insolvency or the bankruptcy application except when the payable is created under law or more than 12 months prior to the bankruptcy application.

Russia

Legal Entities – Liquidation and Restructuring

Type of Claim	Description	Comments
Current expenses	<ul style="list-style-type: none"> Current expenses are monetary obligations that arise after the application for bankruptcy is been accepted by the court. 	<p>In contrast to all other creditor's claims, current expenses do not have to be included into the creditor claims register to be eligible for recovery.</p> <p>While current expenses enjoy priority over all other claims, there is an internal ranking of current expenses claims:</p> <ol style="list-style-type: none"> court expenses and payment of the bankruptcy manager and expenses associated with engaging other persons whose participation is mandatory under the insolvency law; claims for salaries and severance pay; expenses associated with engagement of persons whose participation in the bankruptcy proceedings is not mandatory; utility and maintenance charges; and other current claims. <p>Claims of the debtor's management, members of the collective executive body, chief accountant, their deputies, managers of branches or representative offices, chief accountants of branches or representative offices, their deputies do not qualify as current expenses and are settled separately after third ranking claims (see below).</p>
First rank - claims connected with bodily injuries or other injuries to health	<ul style="list-style-type: none"> Natural persons that have the right to demand compensation from the debtor for bodily injuries or other injuries to health enjoy priority over all other creditors save for current expenses creditors. Such claims are to be filed for inclusion in the creditor claims register within two months of publication of information that the debtor is undergoing bankruptcy liquidation. 	<p>The amount due as compensation is to be calculated by capitalizing the periodic compensation payments for a period until the creditor reaches the age of 70, but not less than 10 years. If the creditor is over 70 years old the capitalization period is 10 years.</p> <p>The creditor may agree to assign his right to claim compensation to the Russian Federation, which will in turn be obliged to make compensation payments to the creditor.</p>

Type of Claim	Description	Comments
Second rank - claims of employees for salaries and severance payments, royalties to the authors of items of intellectual property	<ul style="list-style-type: none"> The amount due to creditors for their salaries and severance payments, royalties to the authors of items of intellectual property under the second rank is calculated as the amount accrued as of the date the court accepted the application for bankruptcy plus interest accrued on late salary and severance payments. Such claims are to be filed with the creditor claims register within two months after information that the debtor is undergoing bankruptcy liquidation has been published. 	<p>If such claims arise after the application for bankruptcy has been accepted, such claims qualify as current expenses and are settled accordingly.</p> <p>Claims of the debtor's management, member of the collective executive body, chief accountant, their deputies, managers of branches or representative offices, chief accountants of branches or representative offices, their deputies do not qualify as current expenses and are settled separately after third ranking claims (see below).</p> <p>Second ranking claims are to be settled in the following order:</p> <ol style="list-style-type: none"> Claims of employees for their salaries and severance payments in the amount of RUB 30,000 (approx. USD 450) per month per person. Remaining claims of employees for their salaries and severance payments. Royalties to the authors of items of intellectual property.
Third rank - claims of all other creditors	<ul style="list-style-type: none"> All claims that do not fall within the categories above and below, including claims of secured creditors, claims of state bodies (e.g. federal, regional government, tax, pension funds etc.). Such claims are to be filed for inclusion in the creditor claims register within two months of publication of information that the debtor is undergoing bankruptcy liquidation. 	<p>The claims in the third rank are to be settled in the following order:</p> <ol style="list-style-type: none"> Principal of the claim and interest. Lost profits, penalties and other financial sanctions. <p>A secured creditor having claims secured by the pledge of the debtor's assets may enforce its security by means of foreclosure. Such secured claims are satisfied prior to other creditors' claims of the same rank. In the event of foreclosure on pledged assets, a creditor will receive 70% of the proceeds from the assets' sale and the remaining 30% will be used to cover claims of the creditors of the first and second ranks, as well as the court and bankruptcy manager expenses. If the pledge was to secure the debtor's obligations under a credit agreement, 80% of the proceeds from the assets' sale go to the creditor, with the remaining 20% used to cover claims of the creditors of the first and second ranks, as well as the court and bankruptcy manager expenses.</p> <p>Close-out netting is available for transactions corresponding to a set of criteria and reported to a repository. The resulting netted obligations are subject to settlement as third rank claims.</p>

Type of Claim	Description	Comments
Claims to be settled after third rank claims	<ul style="list-style-type: none"> • Claims under transactions that are deemed to infringe creditors' rights. • Claims under transactions that are deemed to give preference to an existing creditor. • Claims by the debtor's management, member of collective executive body, chief accountant, their deputies, manager of a branch or representative office, chief accountant of a branch or representative office, their deputies. • The above claims are to be filed for inclusion in the creditor claims register within two months of the publication of information that the debtor is undergoing bankruptcy liquidation. 	
Claims not duly filed for inclusion in the creditor claims register	<ul style="list-style-type: none"> • Any claim that has not been filed for inclusion in the creditor claims register within the two-month window after publication of information that the debtor is undergoing bankruptcy liquidation, except for current expenses, which do not need to be filed to be eligible for settlement. 	
Distribution of remaining assets between the participants or shareholders	<ul style="list-style-type: none"> • Any remaining assets are distributed between the entities' participants or shareholders. 	<p>The remaining assets of a limited liability company are to be distributed to its participants in the following order:</p> <ol style="list-style-type: none"> i. Payment of distributed, but not yet paid, profits. ii. Distribution of remaining assets in proportion to the participation interest held.

Type of Claim	Description	Comments
		<p>The remaining assets of a joint stock company are to be distributed to its shareholders in the following order:</p> <ul style="list-style-type: none"> i. Payments for buy-back of shares when such buyback is prescribed by the law. ii. Payment of distributed, but not yet paid, dividends on preferred shares and payment of liquidation value as prescribed by the company's charter for preferred shares. iii. Distribution of remaining assets between common and preferred shareholders.

Natural Persons - Bankruptcy

Section	Description	Comments
Current expenses	<ul style="list-style-type: none"> Current expenses are monetary obligations that arise after the application for bankruptcy is been accepted by the court. 	In contrast to all other creditor claims, current expenses do not have to be included into the creditor claims register to be eligible for recovery.
First rank - claims connected with bodily injuries or other injuries to health, alimony	<ul style="list-style-type: none"> Natural persons that have the right to demand compensation from the debtor for bodily injuries or other injuries to health and/or alimony enjoy priority over all other creditors save for current expenses creditors. Such claims are to be filed for inclusion in the creditor claims register within two months of publication of information that the debtor is undergoing bankruptcy liquidation. 	In contrast to legal entities, no capitalization of periodic compensation payments is conducted.
Second rank - claims of employees for their salaries and severance payments	<ul style="list-style-type: none"> The amount due to creditors for their salaries and severance payments falls into the second rank. Such claims are to be filed for inclusion in the creditor claims register within two months of publication of information that the debtor is undergoing bankruptcy liquidation. 	If such claims arise after the application for bankruptcy has been accepted, such claims qualify as current expenses and are settled accordingly.

Section	Description	Comments
Third rank - claims of all other creditors	<ul style="list-style-type: none"> • All claims that do not fall within the categories above and below, including claims of secured creditors, claims of state bodies. • Such claims are to be filed for inclusion in the creditor claims register within two months of publication of information that the debtor is undergoing bankruptcy liquidation. 	<p>A secured creditor having claims secured by the pledge of the debtor's assets may enforce its security by means of foreclosure. Such secured claims are satisfied prior to other creditors' claims of the same rank. In the event of foreclosure on pledged assets, a creditor will receive 80% of the proceeds from the assets' sale. Of the remaining sum, 10% will go towards settlement of claims of the first and second ranks and 10% towards payment of the financial manager's remuneration and expenses associated with other persons engaged by the financial manager as well as expenses associated with foreclosure on the pledged asset.</p> <p>Should any sum remain afterwards, it is used to settle the secured claim (in addition to the 80%). Should the secured claim be fully settled, any remaining sum of money is used to settle claims in the third rank.</p>
Claims that were not duly filed for inclusion in the creditor claims register	<ul style="list-style-type: none"> • Any claim that has not been filed for inclusion in the creditor claims register within the two-month window after publication of information that the debtor is undergoing bankruptcy liquidation, except for current expenses, which do not need to be filed to be eligible for settlement. 	

Singapore

Introduction

Under the winding up procedure in Singapore, secured creditors need not prove for their debts but can realise their security and obtain full satisfaction of the debts owed to them. Once the secured creditors have been paid out of the assets that comprise their securities, the remainder of the assets of the company will be distributed among the preferred creditors in the priority set forth in the chart below. The unsecured creditors share *pari passu* in the remaining assets, and any remaining surplus is then distributed amongst the members in accordance with the company's Memorandum and Articles of Association.

The statutory section referred to in the chart are from the Companies Act of Singapore.

Type of Claim	Description	Comments
Costs and expenses of the winding up S 328(1)(a)	<ul style="list-style-type: none"> These include: <ul style="list-style-type: none"> taxed costs of the applicant for the winding up payable under s 256 of the Act; remuneration of the liquidator; and the costs of any audit carried out pursuant to s. 317 of the Act. 	
Wages and salary S 328(1)(b)	<ul style="list-style-type: none"> Such sums are payable whether or not earned wholly or in part by way of commission. This includes any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating the contract of employment of any employee. Employees entitled to such payments are persons who have entered into or worked under a contract of service with an employer, and includes a subcontractor of labour. 	Where any payment has been made to any employee of the company on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> • This includes: <ul style="list-style-type: none"> - all arrears of money due to a subcontractor of labour; - any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, whether such amount becomes payable before, on or after the commencement of the winding up; and - any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up. 	
Retrenchment benefits S 328(1)(c)	<ul style="list-style-type: none"> • This includes <i>ex gratia</i> payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up. • This includes: <ul style="list-style-type: none"> - all arrears of money due to a subcontractor of labour; - any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, whether such amount becomes payable before, on or after the commencement of the winding up; 	<p><i>Ex gratia payment</i>” means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work. The “amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement.</p> <p>Employees entitled to such payments are persons who have entered into or worked under a contract of service with an employer, and includes a subcontractor of labour.</p> <p>Retrenchment benefit means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work. The “amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> - any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up. 	
Work injury compensation S 328(1)(d)	<ul style="list-style-type: none"> • Includes all amounts due under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up. 	
Contributions payable by the company S 328(1)(e)	<ul style="list-style-type: none"> • Includes all amounts payable during the 12 months before, on or after the commencement of the winding up. 	Such amounts are payable by the company under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax.
Vacation claims S 328(1)(f)	<ul style="list-style-type: none"> • This includes all remuneration payable to any employee in respect of vacation leave, or in the case of his death, to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding up. 	Where any payment has been made to any employee of the company on account of vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.
Taxes S 328(1)(g)	<ul style="list-style-type: none"> • This includes all tax assessed and all goods and services tax due under any written law before the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired. 	

South Africa

Type of Claim	Description	Comments
Business Rescue Practitioners (“BRP”) remuneration and other costs arising out of the Business Rescue proceedings 135(3) Companies Act 71 of 2008 (CA)	<ul style="list-style-type: none"> These costs include the BRP’s remuneration as well as costs arising out of the Business Rescue proceedings such as: <ul style="list-style-type: none"> - legal fees; - costs of maintaining the assets; and - administrative costs. 	<p>The BRP’s remuneration is based on an hourly tariff of R2500. The BRP may propose an agreement with the company providing for further remuneration to be calculated on a contingency related to the adoption of the plan or the attainment of a particular result in the business rescue (section 143 CA).</p> <p>Should service providers continue to render services post commencement of business rescue proceedings, such claims will be treated as costs of business rescue.</p> <p>Until a contract or lease is cancelled by the BRP, the obligations which become due during the Business Rescue will be treated as a cost of the Business Rescue (See Appendix).</p>
Pre-commencement secured claims 134(1) & 134(3) CA	<ul style="list-style-type: none"> Pre-commencement secured claims in respect of any security held by a secured creditor over any assets of the company. 	<p>Examples of forms of security over assets of the company would be a mortgage bond over immovable property, a notarial bond over movable property that has been perfected, special notarial bond over specified movable property.</p> <p>Property interests are protected in business rescue. Should the company in business rescue dispose of property over which another party has security or title interests, the company must obtain the prior consent of such party, unless the proceeds of the sale would be sufficient to fully discharge the debt so secured (See Appendix).</p> <p>A secured creditor has a voting interest equal to the value of the amount owed to that creditor.</p> <p>Secured claims not subject to cramdown, unless the secured creditor specifically agrees thereto (See Appendix).</p>

Type of Claim	Description	Comments
Employees (post commencement) 135(3)(a) CA	<ul style="list-style-type: none"> Claims of employees that arise subsequent to the commencement of the business rescue proceedings. 	These claims are treated as PCF (as defined herein) if not paid in the business rescue proceedings.
Secured post commencement finance (PCF) 135 CA 135(2) (a) CA	<ul style="list-style-type: none"> PCF is funding made available to a company under business rescue supervision to enable the company to continue trading or for a specific purpose required to ensure that the Business Rescue Plan (“the BR Plan”) developed by the BRP may be implemented and which is secured using unencumbered assets of the company. 	<p>PCF may be secured by utilizing any assets not yet encumbered.</p> <p>PCF may not be secured with assets encumbered prior to business rescue commencing save with the consent of the creditor holding the security.</p> <p>PCF creditors are entitled to vote in the business rescue proceedings equal to the quantum of their PCF claim.</p>
Unsecured PCF 135 CA	<ul style="list-style-type: none"> Funding made available to a company under business rescue supervision to enable the company to continue trading or for a specific purpose required to ensure that the BR Plan developed by the BRP may be implemented and which is not secured. 	Ranks in the order in which it was incurred.
Employees (pre-commencement) 135 CA	<ul style="list-style-type: none"> All amounts due to employees which arose prior to business rescue proceedings. 	The Companies Act has created a preference in respect of these unpaid claims of employees relating to remuneration, reimbursement for expenses or other amounts of money relating to employment.
Unsecured pre-commencement claims 135 CA	<ul style="list-style-type: none"> All unsecured claims that arose prior to the commencement of business rescue proceedings. 	<p>Claims which are not collateralized by any property of the company and do not enjoy any priority for payment.</p> <p>Inter-company loans that are not subordinated to other creditors’ claims will rank pari passu with other unsecured claims.</p> <p>Inter-company loan creditors have a voting right in business rescue unless the claim has been fully subordinated to other creditors, in which case the voting interest is equal to the amount that the intercompany creditor could expect to receive in liquidation (which is usually zero).</p>

Type of Claim	Description	Comments
		<p>If the intercompany loan creditor is related to the company, the lender is not an independent creditor for the purposes of voting (See Appendix).</p> <p>Unsecured creditors have a voting interest equal to the amount owed to that creditor.</p>
Liquidation claims 135(4) CA	<ul style="list-style-type: none"> If business rescue proceedings are superseded by a liquidation order, the preference will remain in force except to the extent of any costs arising out of the costs of the liquidation. 	<p>The costs of the liquidation will rank just after the BRP's remuneration and claims arising out of the business rescue proceedings and ahead of the pre-commencement secured claims of creditors.</p>

Liquidation proceedings

Type of Claim	Description	Comments
Administration costs	<ul style="list-style-type: none"> • These costs include: <ul style="list-style-type: none"> - operating expenses such as lease payments; - costs of legal fees; - any post-liquidation interest (if funds are available to pay interest on claims of fully secured creditors); - costs of liquidation (governed by tariff and which is based on a percentage of the value of assets realised); - costs of the BRP if the company was previously in business rescue. 	<p>Administration costs are paid first out of the proceeds in the estate.</p> <p>If there are not sufficient funds in the estate to cover these costs, the ‘applicant creditor’ and any other creditors which have proved claims will have to contribute <i>pro rata</i> to cover these costs.</p>
Secured claims Section 89 Insolvency Act 24 of 1936 (“IA”)	<ul style="list-style-type: none"> • Creditors with security over assets will prove a claim and assign a value to their security. If the value of the security does not cover the creditor’s claim, the creditor can elect whether to rely on their security or participate in the free residue for any balance owing. 	<p>Administration costs relating to the expenses of preserving, maintaining and securing secured assets are paid out of the proceeds of those secured assets before payment of the proceeds is made to the secured creditor holding security over that asset. If the realized value of the asset is less than the administration costs relating to that asset, the secured creditor will need to pay in to cover these costs.</p> <p>Outstanding municipal taxes (for a period of two years preceding liquidation) and liens over immovable property will be paid before the secured creditor out of the proceeds of the asset.</p> <p>Interest owing on a secured claim in respect of a period not more than two years prior to the date of liquidation are secured as if it were part of the capital amount.</p>
Preferent claims Sections 98A to 103 IA	<ul style="list-style-type: none"> • Only if there is a balance of free residue remaining after paying the administration costs and secured creditors, will the free residue be applied in making dividend payments to statutorily preferred creditors. 	<p>Employees claims for unpaid salary and wages, leave pay or severance or retrenchment pay and contributions to pension, provident and medical aid funds (to a maximum of R28 000 per employee).</p> <p>Amounts that were due to Workmen’s Compensation Commissioner immediately prior to the liquidation.</p> <p>Any income tax and other taxes which may be due to the South African</p>

Type of Claim	Description	Comments
		<p>Revenue Services, including any Customs Duties and Value Added Tax.</p> <p>Claims secured by an unperfected general notarial bond.</p>
Concurrent claims	<ul style="list-style-type: none"> Any balance of free residue after the payment of preferent claims will be available to pay concurrent claims proved against the estate. 	<p>These are unsecured claims that rank <i>pari passu</i>, unless subordinated.</p> <p>Intercompany loans can be subordinated to creditors' claims, but this subordination will only be effective in a liquidation of the claim is subordinated to all creditors' claims pre-liquidation by the intercompany creditor agreeing to such subordination.</p>

APPENDIX

Type of Claim	Description	Comments
152(2) read with 2(1) and 128(g) CA	<ul style="list-style-type: none"> Independent creditors. 	<p>These are creditors (including employees) who are not related to the company.</p> <p>The classification of an independent creditor is relevant for the purposes of voting in a business rescue.</p> <p>A BR Plan will be approved if voted for by the holders of more than 75% of the creditors' voting interests that were voted and the votes in support of the proposed plan included at least 50% of the independent creditors' voting interests, if any, that were voted.</p>
Voting	<ul style="list-style-type: none"> In a business rescue, creditors do not vote in separate classes and all votes are considered according to their value. In a liquidation, creditors vote in separate classes of secured, preferent and concurrent and decisions are taken on the majority of votes in number and value in the separate classes. 	<p>See note on subordinated claims which are voted on a liquidation value.</p>
Business Rescue Plan 150 CA	<ul style="list-style-type: none"> The Companies Act provides what information needs to be included in the BR Plan. The Companies Act does not expressly provide that the business rescue plan be in the best interests of creditors but there are significant safeguards in place to ensure this is the case. 	<p>The purpose of the BR Plan is to maximize the likelihood of the company continuing in existence on a solvent basis or if this is not possible, would result in a better return for the company's creditors or shareholders that would result from a liquidation.</p>

Type of Claim	Description	Comments
153(1)(b)(ii) CA	<ul style="list-style-type: none"> Any affected person may make a binding offer to purchase the voting interests of one or more parties who opposed the adoption of the BR Plan at a value independently and expertly determined to be a fair and reasonable estimate of return to that person if the company were to be liquidated. 	<p>The Supreme Court of Appeal has neutralized this section by holding that the offer is only binding on the party making the offer and cannot be withdrawn. The offer is subject to acceptance by the offer and only upon acceptance will it be binding on both parties.</p>
Cramdown 154 (2) CA	<ul style="list-style-type: none"> If the BR Plan is approved and implemented, a creditor is not entitled to enforce any debt owed by the company immediately before the beginning of the business rescue process except for the extent provided for in the BR Plan. 	<p>The Act does not provide a mechanism to challenge or oppose a BR Plan that has been adopted, which effectively means that this section creates a cramdown unless the BR Plan provides that the balance of a creditors claim survives the business rescue.</p> <p>The cramdown does not affect the rights of secured creditors as section 134(3) protects the property interests of a secured creditor.</p>
Contracts	<ul style="list-style-type: none"> In business rescue, section 136(2)(a) of the Companies Act provides that during business rescue proceedings the BRP may entirely, partially or conditionally suspend any obligation of the company that arises under an agreement to which the company was a party at the commencement of the proceedings and would otherwise become due during the proceedings; or <p>in terms of section 136(2)(b) apply urgently to Court to entirely, partially or conditionally cancel on any terms that are just and reasonable any obligation of the company.</p> <ul style="list-style-type: none"> The BRP may not suspend any provision of an employment contract. 	<p>The party to the cancelled or suspended contract will have a claim for damages against the company.</p> <p>The BRP cannot suspend the company's obligation for payment as this is reciprocal to the company receiving services etc.</p> <p>An executory contract is one where the liquidator still has to perform.</p> <p>If the liquidator elects not to abide by the contract, the other party will have a concurrent claim for damages.</p> <p>Rental payable by the company in liquidation is a cost of administration.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> • In liquidation proceedings, the liquidator has an election whether or not to abide by an agreement that is executory in nature. • A liquidator has a period of 3 months from final appointment within which to make an election on whether to continue with a lease to which the company is a party. 	

Spain

Introduction

In Spain, insolvency proceedings are implemented through the Spanish Insolvency Act (Ley 22/2003, de 9 de julio, Concursal). The Spanish legal system provides two classes of judicial proceedings to which individuals or legal entities in financial difficulties can resort in order to obtain the restructuring of their debt:

- “Preventive” proceedings with the purpose of providing fast economical solutions to enable debtors to overcome their solvency crises without resorting to formal insolvency proceedings (e.g.: the “homologation of refinancing agreements”, similar to the English “scheme of arrangement”, and characterized by requiring limited judicial intervention).
- Formal insolvency proceedings (the so-called “concurso”), which are judicial proceedings with much more far-reaching effects on the assets and liabilities of the creditors and the debtor, where the solution to the insolvency situation is pursued by means of the liquidation of the debtor’s assets (in a manner comparable to the U.S. Chapter 7 proceedings) or by means of an arrangement with creditors (on the lines of the U.S. Chapter 11 proceedings).

The following chart refers to concurso (formal insolvency proceedings), as in the preventive homologation framework there is no claim allowance filter made ex-ante by the court (class control is only made ex post in case of challenge).

Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> • Financing provided to the debtor during insolvency proceedings. 	<p>DIP financing can be paid from all the debtor’s property and rights excluding any pre-existing collateral.</p> <p>DIP lenders do not vote on the creditors’ reorganization plan and are not affected by its approval.</p> <p>DIP financing is treated as any other post-petition claim and thus shall be paid at maturity, although under certain exceptional circumstances (such as insolvency within the insolvency) the insolvency managers can modify this rule.</p>
Specially preferred claims (Secured claims)	<ul style="list-style-type: none"> • Specially preferred claims are claims collateralized by specific rights or assets of the debtor (e.g.: those secured by a pledge or mortgage). 	<p>Specially preferred creditors are not entitled to receive “adequate protection” as in the United States. However, under certain circumstances, they have a right of separate enforcement which allows them to continue with their enforcement avoiding the content of a liquidation plan.</p> <p>In the event of transfer of the security, auction as the preferred transfer method, must be observed on a compulsory basis.</p>

Type of Claim	Description	Comments
		<p>Interest continues to accrue provided it is covered by the value of the security.</p> <p>The claims of specially preferred creditors are not subject to the reorganization plan (except express adherence or intra-class “cram down”). See Appendix.</p>
Post-petition claims (Administrative expenses)	<ul style="list-style-type: none"> • Post-petition claims include, among others: <ul style="list-style-type: none"> - operating expenses; - costs of the judicial proceedings; - insolvency managers' fees; - salaries and wages of employees for up to thirty days prior to the commencement of the insolvency proceedings; - 50 % of the new cash receipts granted in the framework of a formal refinancing agreement or one that is homologated judicially; and - claims arising from executory contracts which relate to contractual obligations accrued after the insolvency order. 	<p>Post-petition claims are the actual, necessary costs and expenses of preserving the estate that arise during the pendency of the debtor's insolvency proceeding.</p> <p>These expenses are paid at maturity, although under certain circumstances, the insolvency managers can modify this rule.</p> <p>Post-petition claims can be paid from all the debtor's property and rights excluding any pre-existing collateral.</p>
Generally preferred claims (Priority expenses)	<ul style="list-style-type: none"> • Claims which are not backed by security interests but which must be paid before other unsecured claims within insolvency proceedings. • Generally preferred claims include, among others: <ul style="list-style-type: none"> - salaries and severance for up to three times the national minimum wage; - claims relating to tax and social security withholdings; - 50% of other tax and social security claims; - 50% of the non-subordinate claims of the creditor who has successfully filed the insolvency petition; and - 50% of the claims arising from a refinancing agreement. 	<p>The claims of secured creditors and are not subject to the plan (except express adherence or intra-class “cramdown”). See Appendix.</p> <p>In a liquidation scenario, generally preferred claims are paid immediately after post-petition claims and before ordinary claims. If the assets are insufficient to pay all of them, they shall be paid <i>pari passu</i> within each category.</p>

Type of Claim	Description	Comments
Ordinary claims (General unsecured claims)	<ul style="list-style-type: none"> • Ordinary claims are claims that are not secured and not afforded any priority status. • Such claims are usually last in the priority of claims, other than subordinated claims. • This category constitutes a kind of “catch-all category” and includes, among other claims, invoices pending to suppliers and the principal of unsecured loans. 	<p>Ordinary creditors are entitled to vote on a reorganization plan.</p> <p>Subject to “cram down” in a reorganization plan under specified circumstances. See Appendix.</p> <p>If the ordinary creditor has not voted for the agreement, such creditor will continue to benefit from any eventual rights against those jointly and severally liable with the debtor or against the latter’s sureties.</p> <p>In a liquidation scenario, ordinary claims are paid after preferred claims. If the assets are insufficient to pay all of them, they shall be paid <i>pari passu</i>.</p>
Subordinate claims	<ul style="list-style-type: none"> • Subordinate claims are last in the priority of claims. • Subordinate claims include, among others: <ul style="list-style-type: none"> - claims subordinated by contractual agreement; - claims due to interests (not secured); - fines, penalties and pecuniary sanctions; - claims notified late; and - claims held by persons specially related to the insolvent debtor. 	<p>Subordinate claims are affected by numerous restrictions, among which, the following may be mentioned: -</p> <ul style="list-style-type: none"> - Subordinate creditors are not entitled to vote on a reorganization plan, yet nevertheless, the content of that arrangement will be binding on them. See Appendix. - In the event of approval of a restructuring plan, the deferral agreed for subordinate claims does not begin to be calculated until the ordinary creditors have been paid in full. - In a liquidation scenario, subordinate claims are paid if and when every other claim has been paid in full. If the assets are insufficient to pay all of them, they shall be paid <i>pari passu</i> within each category. - “Specially related persons” see their credits lose any security granted to them by the insolvent debtor.
Contingent claims	<ul style="list-style-type: none"> • Contingent claims are in which the claim has not yet been confirmed or definitively quantified. • Contingent claims include, among others: (i) claims subject to a condition precedent; or (ii) claims subject to litigation. 	<p>Creditors holding contingent claims cannot vote on a reorganization plan, yet nevertheless, the content of that plan could be binding on them if such claims are finally confirmed.</p>

APPENDIX – Summary Chart of Select Confirmation Standards

Section	Standard	Comments
Classification of claims	<ul style="list-style-type: none"> • Within insolvency proceedings, claims are initially grouped into two large blocks: post-petition claims and pre-petition claims. • Pre-petition claims are further divided into specially preferred claims, generally preferred claims, ordinary claims and subordinate claims. • All preferred claims can be subdivided into labor, public, financial and others. 	
Acceptance of a reorganization plan proposal	<ul style="list-style-type: none"> • In order to be approved, the proposal requires certain majorities of the ordinary creditors to vote in favor of the plan. • Additionally, preferred creditors are entitled to vote on the proposal and will be bound by it if they choose to vote in favor and the plan is ultimately approved. • Subordinate creditors may not vote on the proposal but its content will be binding on them if it is approved. • If a reorganization plan is approved, subordinate claims will be forcibly affected by it. 	<p>The majorities required to approve a proposal are the following:</p> <ul style="list-style-type: none"> - Simple majority (more votes for than votes against), if the arrangement consists of the full payment of ordinary claims in a period not exceeding three years or of the immediate payment of ordinary claims due with a reduction of less than twenty per cent. - 50% of the debt held by ordinary creditors and preferred creditors who choose to vote in favor of the proposal, where the arrangement provides for write-offs up to 50%, stays up to 5 years or the conversion of debt into participative loan for the same period (i.e., a “soft plan”). - 65% of the debt held by ordinary creditors and preferred creditors who choose to vote in favor of the proposal, where the arrangement provides for write-offs exceeding 50%, stays exceeding 5 years but less than 10 years or the conversion of debt into participative loan for the same period (i.e., a “hard plan”). <p>Subordinate claims must receive the same treatment than unsecured ordinary creditors, although they shall not be entitled to distribution until the latter have been paid in full.</p>

Section	Standard	Comments
Cramdown	<ul style="list-style-type: none"> • Ordinary creditors can be subject to a cross-class cram down if preferred creditors have sufficient majority and treatment of preferred creditors and ordinary creditors is the same. • Preferred creditors can be subjected to an intra-class cram-down if the arrangement is approved by a sufficient majority within the relevant class. 	<p>A plan may be imposed to preferred claims if it is supported by the following majorities of preferred creditors of the same class (i.e. labor, public, etc.):</p> <ul style="list-style-type: none"> - 60% in the case of “soft plans” and - 75% in the case of “hard plans”

Summary Chart of Judicial Homologation of Refinancing Agreements

Section	Standard	Comments
Classes of claims affected	<ul style="list-style-type: none"> • Claims representing any financial indebtedness at the time of the filing may be bound by homologation of a refinancing agreement, regardless of whether or not they are secured by collateral. • Creditors holding the status of a “person specially related” to the debtor are not taken into account to calculate the majorities, but may be affected by the homologation. • Claims subject to public law and claims held by labor or trade creditors are not affected by the homologation of a refinancing agreement. 	Labor and trade creditors, however, may choose to request accession to it and thus be bound by the agreement.
Homologation	<ul style="list-style-type: none"> • Merely to be homologated, the agreement must be expressly supported by creditors who represent at least 51% of the debtor’s financial liabilities. • Further, there are additional formal requirements to be satisfied: - <ul style="list-style-type: none"> - Formalization in a public instrument. - Inclusion of a feasibility plan which allows for the continuation of the debtor’s activity in the short and medium term. - The issue by the debtor’s auditor of a certificate which proves that the relevant majorities have been reached. • In some cases, a report from an independent expert may be required to determine the value of the collateral enjoyed by a creditor. 	<p>If only the formal requirements as well as the majority of 51% are reached: -</p> <ul style="list-style-type: none"> - the refinancing agreement will be protected from possible claw back actions, and - the content of the agreement will only bind the signatory creditors.

Section	Standard	Comments
	<ul style="list-style-type: none"> The debtor or the creditors may request the appointment of an independent expert to report on the reasonableness of the feasibility plan or on the proportionality of the new security granted. 	
Cramdown	<ul style="list-style-type: none"> In order to implement the forced extension of the effects of the agreement to dissident creditors, four situations are identified: - - Extension to unsecured creditors of deferrals of up to five years or conversions of debt into participative loans for the same period ("Scenario A"). - Extension to unsecured creditors of debt reductions, deferrals of between five and ten years, conversions of debt into participative loans for the same period, debt-for equity swaps, or debt-for-assets-swaps in full payment of the debt ("Scenario B"). - Extension of measures referred to in Situation A to secured creditors ("Scenario C"). - Extension of measures referred to in situation B to secured creditors ("Scenario D"). 	<p>The majorities required for cramdown are:</p> <ul style="list-style-type: none"> - 60% in the case of Scenario A. - 75% in the case of Scenario B. - 65% of the secured claims in the case of Scenario C. - 80% of the secured claims in the case of Scenario D. <p>Therefore, secured creditors can only undergo an intra-class cram down, whilst unsecured creditors may suffer a cross-class cram down if secured creditors have a sufficient percentage of the total financial liabilities.</p>

The Netherlands

Introduction

Two types of insolvency proceedings exist under the Dutch Bankruptcy Act (DBA): suspension of payments (*surseance van betaling* – a type of restructuring procedure) and bankruptcy (*faillissement* – a liquidation procedure). The chart below discusses the priority of claims of both procedures.

Dutch insolvency law applies the principle of treating all creditors equally. In principle, all creditors have an equal right to be paid out of the proceeds of the estate on a *pro rata* basis. However, exemptions apply in case of certain statutorily preferred creditors (such as tax authorities and employees), secured creditors and subordinated creditors. The order of priority as stated in the Dutch law is set forth in the chart below. Creditors whose claims are secured with a security right (i.e. right of pledge or right of mortgage) are principally not affected by an insolvency proceeding. Dutch law does not have a mechanism to cramdown dissenting creditors outside of insolvency proceedings, but at this present time a draft Bill to introduce a cramdown procedure in the Netherlands is pending.

Bankruptcy

Type of Claim	Description	Comments
Secured claims	<ul style="list-style-type: none"> Secured claims are claims that are secured with a right of pledge or a right of mortgage on certain (specific) assets. Dutch law does not have the concept of a floating charge. Furthermore, creditors that have supplied goods to the bankrupt debtor under a retention of title can, in principle, invoke their retention of title and collect their goods from the bankrupt debtor (under certain circumstances). 	<p>Secured creditors may foreclose on their collateral as if no bankruptcy exists (i.e. secured creditors are not affected by the bankruptcy).</p> <p>A temporary stay can temporarily affect the right of secured creditors to foreclose on their collateral. A temporary stay can be declared in bankruptcy for a maximum period of two months and an extension may be granted for an additional two months. A bankruptcy trustee is entitled to set a reasonable period of time during which a secured creditor must foreclose on its collateral.</p> <p>If the debt of the secured creditor cannot be (fully) satisfied from foreclosure on the asset on which it has a security right, the secured creditor can claim the remaining amount as an ordinary creditor (please see below).</p>
Estate claim (<i>boedelschuld</i>)	<ul style="list-style-type: none"> Estate claims take the highest priority to receive a payment from the bankruptcy estate. They rank ahead of any pre-insolvency claims. Dutch law distinguishes different types of estate debt: <ol style="list-style-type: none"> debt that is qualified as estate debt pursuant to Dutch law, 	<p>Estate claims do not have to be verified and give an immediate entitlement to payment of the relevant claim by the bankruptcy estate (except when the trustee foresees that there are insufficient funds to pay all estate claims).</p> <p>Estate debt qualified as such by Dutch law includes, amongst others:</p> <ol style="list-style-type: none"> the salary of the bankruptcy trustee; rental payments as of the date of the bankruptcy; and

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> (ii) debts incurred by the bankruptcy trustee in his capacity as bankruptcy trustee (e.g. debt incurred by the bankruptcy trustee with an intention thereto), and (iii) debts resulting from the bankruptcy trustee's actions in breach of an obligation or commitment in his / her capacity as bankruptcy trustee. 	<p>(iii) salary payments of employees as of the date of the bankruptcy.</p> <p>Debts incurred by the bankruptcy trustee in his / her capacity as bankruptcy trustee (and / or resulting from the bankruptcy trustee's actions in breach of an obligation or commitment in his capacity as bankruptcy trustee) include, amongst others:</p> <ul style="list-style-type: none"> (i) a tort claim, if the bankruptcy trustee has acted wrongfully against a (third) party and as a result thereof, such party has suffered damages; and (ii) claims arising out of ongoing agreements that the bankruptcy trustee has confirmed will be honoured by the bankrupt debtor. <p>Within estate claims, there is also a ranking (in case the estate is insufficient to pay all estate claims). The salary of the bankruptcy trustee ranks the highest. Subsequently, taxes and employment costs rank higher than other (ordinary) estate claims.</p>
Preferential creditors	<ul style="list-style-type: none"> • Preferential creditors are creditors that pursuant to Dutch law have a claim that ranks higher than an ordinary or subordinated claim. 	<p>The claims of the following three parties are preferential pursuant to Dutch law:</p> <ul style="list-style-type: none"> (i) the Dutch tax authorities¹, (ii) the Employee Insurance Agency (UWV) (for any unpaid pre-bankruptcy wages that the Employee Insurance Agency has paid out to employees), and / or (iii) employees for unpaid pre-bankruptcy wages (if not paid out by the Employee Insurance Agency). <p>Furthermore, Dutch law gives a general preference to certain (minor) claims (such as the costs for the application of the bankruptcy, if requested by another party than the debtor itself).</p>
Ordinary creditors (with unsecured claims)	<ul style="list-style-type: none"> • Claims from ordinary creditors (i.e. whose claim is not secured by a security right and does not qualify as estate debt or a preferential claim). 	<p>Examples of claims from ordinary creditors are²:</p> <ul style="list-style-type: none"> (i) contractual and tort claims against the bankrupt debtor that existed prior to the moment the debtor was declared bankrupt (to the extent it does not qualify as estate debt or such claim does not have a preferential status); (ii) the claim of a secured creditor to the extent such claim was not (fully) satisfied from the proceeds of the sale of the secured asset(s);

¹ Please note that under certain circumstances, the Dutch tax authorities have a preferential claim on certain assets of the bankrupt debtor (that supersedes also claims from creditors with a retention of title on those assets). Those assets can be located either on the territory of the bankrupt debtor or at a third party.

² Although not very commonly used, a composition plan can be offered in a bankruptcy which affects the ordinary creditors (secured creditors cannot be bound by the composition plan). Dutch law does not differentiate in classes of ordinary creditors (there is effectively only one class, the class of the ordinary unsecured creditors). Ordinary creditors (whose claim have been admitted and recognised) will be invited to vote on the composition plan. The thresholds, in principle, are a simple majority of creditors representing at least 50% of the claims admitted and recognised.

Type of Claim	Description	Comments
		<p>(iii) a claim resulting from a recourse claim or subrogation claim on the bankrupt debtor; and</p> <p>(iv) claims that originate after the date of the bankruptcy, but resulting from a legal relationship that existed prior to the bankruptcy.</p>
Subordinated claims	<ul style="list-style-type: none"> A creditor can contractually agree to the subordination of its claim (i.e. no statutory subordination exists under Dutch law). A distinction can be made between a creditor that subordinates its claim(s) to (i) the claim(s) of (a) certain other creditor(s) (i.e. specific subordination) or (ii) all creditors of the debtor (i.e. general subordination). 	<p>For specific subordination, the following is relevant. First, the bankruptcy trustee will treat the subordinated creditor as an ordinary creditor in order to calculate the amounts that each ordinary creditor will be entitled to on their claim from the bankruptcy estate. However, in the internal relationship between the subordinated creditor and the creditor(s) to which such subordinated creditor has subordinated its claim(s) (the senior creditor) the subordinated creditor's share is paid out to (and divided amongst) the senior creditor(s) up to the amount necessary to fully satisfy the senior creditor(s).</p> <p>In case of a general subordination, effectively a ranking below the ordinary creditors is created. Only if the claims of all ordinary creditors are fully satisfied, the generally subordinated creditors will be eligible for a payment on their claims (which is extremely rare).</p> <p>Dutch law is not explicit on the treatment of subordinated creditors. The doctrine as currently applied by legal scholars is derived from (scarce) Dutch case law.</p>
Non-verifiable claims (<i>niet-verifieerbare vorderingen</i>)	<ul style="list-style-type: none"> Claims that do not qualify as – <ul style="list-style-type: none"> (i) an estate claim, (ii) secured claim or (iii) a pre-bankruptcy claim are not verifiable claims and as such creditors of such claims will not receive a payment thereon from the bankruptcy estate. 	<p>Examples of non-verifiable claims are claims:</p> <ul style="list-style-type: none"> (i) that came into existence after the bankruptcy proceedings were opened, but do not qualify as estate claims and do not derive from an existing relationship, and (ii) accrued interest during bankruptcy.

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> In the rare event that all of the abovementioned creditors are paid and there is a surplus in the bankruptcy estate, the bankruptcy could be terminated with the company reviving. In such case, the creditors with a non-verifiable claim could be eligible to receive a payment from such surplus. 	
(Preferred) equity	<ul style="list-style-type: none"> Shareholders' equity is not considered to be a claim on the bankruptcy estate. 	<p>Payment to equity is only relevant in case of a surplus in the bankruptcy (which is extremely rare). Shareholder loans are not subordinated by statute and thus rank <i>pari passu</i> with other ordinary creditors.</p>

Suspension of Payments

According to the Dutch Bankruptcy Act, the suspension of payments only affects ordinary creditors' claims and does not affect secured or preferential creditors. These latter creditors can therefore demand payment for the claims that are not affected by the suspension of payments. However, the debtor can only pay such debt if the administrator agrees to such payment since the debtor can no longer dispose of assets without approval of the administrator.

Section	Description	Comments
Secured claims	<ul style="list-style-type: none"> Secured claims are claims that are secured with a right of pledge or a right of mortgage on certain assets. 	<p>Secured creditors may foreclose on their collateral as if no suspension of payment exists (i.e. secured creditors are not affected by the suspension of payments).</p> <p>Like in bankruptcy, a temporary stay can temporarily affect the right of secured creditors to foreclose on their collateral.</p> <p>If the debt of the secured creditor cannot be (fully) satisfied from foreclosure on the asset on which it has a security right, the secured creditor can claim the remaining amount as an ordinary creditor. The secured creditor is affected by the suspension of payments for the remaining amount of its claim that cannot be satisfied from the proceeds of the execution of the security right.</p>
Estate claims (<i>boedelschuld</i>)	<ul style="list-style-type: none"> Estate claims take the highest priority to receive a payment from the debtor and include rental payments as of the date of the suspension of payments and salary payments as of the date of the suspension of payments. 	<p>Estate claims do not have to be verified and give an immediate entitlement to payment of the relevant claim (see also above at the description given in the bankruptcy table).</p>
Preferential creditors	<ul style="list-style-type: none"> Preferential creditors are creditors that pursuant to Dutch law have a claim that ranks higher than an ordinary or subordinated claim. 	<p>The claims of the following three parties are preferential pursuant to Dutch law:-</p> <ul style="list-style-type: none"> (i) the Dutch tax authorities, (ii) the Employee Insurance Agency (<i>UWV</i>) (for any unpaid wages prior to the suspension of payments that the Employee Insurance Agency has paid out to employees), and / or (iii) employees for unpaid wages prior to the suspension of payments (if not paid out by the Employee Insurance Agency). <p>Furthermore, Dutch law gives a general preference to certain (minor) claims (such as the costs for the application of the bankruptcy, if requested by another party than the debtor itself). These creditors are not affected by the suspension of payments.</p>

Section	Description	Comments
Ordinary creditors (with unsecured claims)	<ul style="list-style-type: none"> Claims from ordinary creditors (i.e. whose claim is not secured by a security right and does not qualify as estate debt or a preferential claim). 	<p>Examples of claims from ordinary creditors are³:</p> <ul style="list-style-type: none"> (i) contractual and tort claims against the debtor that existed prior to the moment the debtor was in suspension of payments (to the extent it does not qualify as estate debt or such claim does not have a preferential status); (ii) the claim of a secured creditor to the extent such claim was not (fully) satisfied from the proceeds of the sale of the secured asset(s); (iii) a claim resulting from a recourse claim or subrogation claim on the debtor; and (iv) claims that originate after the date of the suspension of payments, but resulting from a legal relationship that existed prior to the suspension of payments.
Subordinated claims	<ul style="list-style-type: none"> A creditor has to contractually agree to the subordination of its claim (i.e. the creditor is not obliged to agree to such subordination). As is the case in bankruptcy, a distinction can be made between a creditor that subordinates its claim(s) to – <ul style="list-style-type: none"> (i) the claim(s) of (a) certain other creditor(s) (i.e. specific subordination) or (ii) all creditors of the debtor (i.e. general subordination). 	<p>Since claims are not eligible for verification during a suspension of payments, the priority of subordinated claims only arises during a bankruptcy proceeding. However, the subordinated creditors could be eligible to vote on a composition plan submitted during a suspension of payments (as mentioned under footnote 3). For the calculation of whether such subordinated creditors can vote on a composition plan, it is generally assumed that the same system is applicable as if the creditors would receive a payment during a bankruptcy proceeding (as set forth above at the description given in the bankruptcy table).</p> <p>Dutch law is not explicit on the treatment of subordinated creditors. The doctrine as currently applied by legal scholars is derived from (scarce) Dutch case law.</p>
Non-verifiable claims (niet-verifieerbare vorderingen)	<ul style="list-style-type: none"> Claims that do not qualify as – <ul style="list-style-type: none"> (i) an estate claim, (ii) secured claim or (iii) a claim arising prior to the suspension of payments are not verifiable claims <p>and as such creditors of such claims will not receive a payment thereon from the debtor.</p>	<p>Creditors with a non-verifiable claim are not entitled to vote on the composition plan submitted during the suspension of payments (and will not receive a payment on their claim under such composition plan).</p> <p>Examples of non-verifiable claims are claims:</p> <ul style="list-style-type: none"> (i) that came into existence after the suspension of payments proceedings were opened, but do not qualify as estate claims and do not derive from an existing relationship, and (ii) accrued interest during suspension of payments.

³ Simultaneously with or after the request for (provisional) suspension of payments, the debtor is entitled to submit a composition plan to the Court, which affects the ordinary creditors (secured creditors cannot be bound by the composition plan). Approval of the composition plan leads to termination of the suspension of payments. Dutch law does not differentiate between classes of ordinary creditors (there is effectively only one class, the class of the ordinary unsecured creditors). Ordinary creditors (whose claims have been admitted and recognised) will be invited to vote on the composition plan. The thresholds, in principle, are a simple majority of creditors representing at least 50% of the claims admitted and recognised.

Section	Description	Comments
(Preferred) equity	<ul style="list-style-type: none"> Shareholders' equity. Under Dutch law, shareholders' equity is not considered to be a claim on the debtor. 	If a debtor comes out of a suspension of payments successfully, the position of the shareholders remains unchanged (i.e. the company is not liquidated and they retain their position as shareholder).

England and Wales

Introduction

The Insolvency Act 1986 and the Insolvency Rules 1986 set out the priority of how an officeholder should distribute asset realisations to creditors.

The general rule is that monies are distributed to creditors within each class on a *pari passu* basis (i.e., in proportion to the debt due to each creditor). Subject to certain exceptions, such as the prescribed part, the officeholder must repay each class of creditors in full before moving to the next class.

There are a couple of ‘self help’ style remedies that are worth noting as they impact on distributions to creditors and the *pari passu* principle.

Insolvency set off	The Insolvency Rules 1986 provide for mandatory insolvency set off in both administration and liquidation on the basis that it would be unfair for a creditor to be obliged to pay its debt in full only to receive part payment of its debt from the insolvent company. A creditor will therefore only pay, or prove for, the balance.
Liens	A lien is a right entitling a party who has lawfully received property belonging to another to keep possession of that property whilst a debt owed by the owner of the property remains unpaid. A lien can survive a company entering an insolvency procedure. Therefore, if the asset in question is critical, it may result in a ransompayment being made to that creditor.

There are two procedures that can be used to cramdown creditors – company voluntary arrangement (CVA) and scheme of arrangement. A CVA cannot alter the rights of either secured or preferential creditors without their express consent. In comparison, there is no such restriction in a scheme of arrangement subject to the necessary voting thresholds and court sanction being obtained.

Where the EC Regulation on Insolvency Proceedings applies, and the company has assets outside England and Wales, in certain circumstances, local laws may apply to the realisation and distribution of those assets.

The Financial Collateral Arrangements (No 2) Regulations 2003, which were introduced to simplify the process of taking financial collateral in the EU, vary a number of the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986. Where relevant, these changes have been included.

Type of Claim	Description	Comments
Proprietary claims	<ul style="list-style-type: none"> A proprietary claim exists where a creditor can show that it (rather than the insolvent company) has beneficial title to the asset in question. 	<p>If an asset is subject to a valid proprietary claim then it does not form part of the insolvent estate.</p> <p>Common examples include hire purchase agreements, assets supplied subject to retention of title and trust arrangements.</p>
Fixed charge creditors	<ul style="list-style-type: none"> A creditor with fixed charge security over a specific asset, who controls any dealing or disposal of that asset by the company. 	<p>If a company goes into liquidation, a secured creditor with a fixed charge will usually enforce its security. If realisation of the asset provides insufficient funds to repay the debt, the secured creditor can prove for the balance as an unsecured creditor (see below). If there is a surplus, however, it must be returned to the liquidator for distribution to other creditors.</p> <p>A secured creditor cannot enforce its security when a company is in administration without the permission of the administrator or the court (unless the security is part of a financial collateral arrangement).</p> <p>An administrator cannot sell assets subject to fixed security without the consent of the secured creditor or the permission of the court. The court cannot make an order permitting an administrator to dispose of fixed charge assets where that charge is part of a financial collateral arrangement.</p> <p>If an administrator or liquidator sells a fixed charge asset he will be entitled to deduct the costs of sale before passing the net proceeds to the secured creditor.</p>
Expenses of the insolvency proceedings	<ul style="list-style-type: none"> Expenses of the insolvency proceedings include (amongst other things): <ul style="list-style-type: none"> expenses and disbursements properly incurred in the insolvency proceedings; a debt or liability incurred under a contract entered into by an administrator; the costs of the party who put the company into administration or compulsory liquidation; the remuneration of anyone employed by the officeholder to perform any services for the company; 	<p>The rules on expenses and the priority of different categories of expenses vary depending on whether the company is in administration or liquidation.</p> <p>If a floating charge is part of a financial collateral arrangement, the expenses of the insolvency proceedings will not be payable in priority to the debt secured by the floating charge.</p>

Type of Claim	Description	Comments
	<ul style="list-style-type: none"> - the officeholder's remuneration; and - any corporation tax on chargeable gains accruing on the realisation of any asset of the company. 	
Ordinary preferential creditors	<ul style="list-style-type: none"> • Ordinary preferential creditors include: <ul style="list-style-type: none"> - contributions to occupational and state pension schemes; - limited amounts of unpaid wages and salary and holiday pay due to employees; - EU levies on coal and steel production; - certain debts owed to the Financial Services Compensation Scheme (FSCS); and - eligible deposits up to the level of compensation that would be payable under the FSCS. • Where a company is in compulsory liquidation, and in the three months prior to the winding up order: <ul style="list-style-type: none"> - any person has distrained upon the goods of the company, or - certain debts have been paid to Her Majesty's Revenue & Customs (HMRC) by deduction from the company's accounts, the claims of the company's preferential creditors will have a first charge over the goods so distrained, or their proceeds, or the amount deducted by HMRC. Once the goods are surrendered, or payment returned to the company, the person who has surrendered them, or HMRC, will rank as a preferential creditor in respect of that amount. 	<p>On 1 January 2015 preferential debts were effectively divided into two classes – ordinary and secondary – and expanded to cover retail banking deposits in the event of bank or building society insolvency.</p> <p>On 26 March 2015, certain debts owed to the FSCS were added to the list of debts benefiting from preferential status.</p> <p>The FSCS is funded by participant firms and provides a compensation scheme (up to set statutory limit) for customers in the event of the insolvency of a financial institution or financial services firm.</p> <p>If a floating charge is part of a financial collateral arrangement, preferential creditors will not be payable in priority to the debt secured by the floating charge.</p>

Type of Claim	Description	Comments
Secondary preferential creditors	<ul style="list-style-type: none"> • Secondary preferential creditors include: <ul style="list-style-type: none"> - the balance of eligible deposits in excess of the amount covered by the FSCS; and - certain deposits made through non-EEA branches of credit institutions authorised in an EEA state. 	
Prescribed part	<ul style="list-style-type: none"> • A proportion of the company's net property that would otherwise be distributed to floating charge creditors is retained for distribution to unsecured creditors. • The prescribed part is calculated on a sliding scale basis, being: <ul style="list-style-type: none"> - 50% of the first £10,000 of floating charge realisations; and - 20% of floating charge realisations thereafter, up to a maximum of £600,000. 	<p>Applies to floating charges created after 15 September 2003.</p> <p>The prescribed part applies where the company is in administration, liquidation, provisional liquidation or receivership. It does not apply to company voluntary arrangement or scheme of arrangement if the company is not otherwise subject to formal insolvency proceedings.</p> <p>If the floating charge is part of a financial collateral arrangement, it may be enforced without accounting for the prescribed part.</p> <p>Disapplication of the prescribed part if:</p> <ul style="list-style-type: none"> - the net property of the company is less than £10,000; and - the officeholder considers that the cost of administering the prescribed part would be disproportionate to the benefit to creditors. <p>OR</p> <ul style="list-style-type: none"> - the net property of the company is greater than £10,000; and - the officeholder obtains court sanction.
Floating charge creditors	<ul style="list-style-type: none"> • A secured creditor with a charge over all of, or a class of, the present and future assets of a company, allowing the charged assets to be dealt with by the company in the ordinary course of business until crystallisation of the charge upon default. 	<p>A secured creditor cannot enforce its security when a company is in administration without the permission of the administrator or the court (unless the security is part of a financial collateral arrangement).</p> <p>An administrator cannot dispose of or take action relating to property that is subject to a floating charge as if it were not subject to that charge if the floating charge is part of a financial collateral arrangement.</p> <p>If realisation of the asset provides insufficient funds to repay the debt, the secured creditor can prove for the balance as an unsecured creditor (see below).</p>

Type of Claim	Description	Comments
Unsecured creditors (provable debts)	<ul style="list-style-type: none"> An unsecured creditor is a creditor with a provable debt which is neither secured nor preferential. 	<p>A provable debt is a debt or liability that:</p> <ul style="list-style-type: none"> - the company was subject to when it entered either administration or liquidation; or - arises from an obligation which the company was subject to when it entered either administration or liquidation.
Statutory interest	<ul style="list-style-type: none"> Interest that accrues on unsecured debts from the commencement of either the administration or liquidation until the date of payment. 	<p>The interest rate payable is the higher of:</p> <ul style="list-style-type: none"> - the Judgments Act rate, which is currently 8%; or - the rate (if any) specified in the original contract between the parties.
Unsecured creditors (non-provable debts)	<ul style="list-style-type: none"> A limited category of debts that do not fall within the statutory definition of a provable debt, but that are paid in priority to amounts due to shareholders. 	<p>An example of a non-provable is the loss suffered as a result of a currency fluctuation between the date the creditor's claim was converted into sterling and the date of payment of the claim.</p>
Return to shareholders	<ul style="list-style-type: none"> Once all creditors have been paid in full, the officeholder must return any surplus to shareholders in accordance with their rights and interests in the company. 	

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Type of Claim	Description	Comments
DIP financing	<ul style="list-style-type: none"> Financing provided to the debtor during bankruptcy proceedings. 	<p>Absent consent of the DIP lender, DIP financing must be paid in cash in full as a requirement to emerge from bankruptcy.</p> <p>In view of full payment requirement, DIP lenders do not vote on the plan and (absent consent) are not affected by plan confirmation.</p>
Secured claims	<ul style="list-style-type: none"> Secured claims are claims collateralised by either all or substantially all of the debtor's assets, or by individual items of collateral. 	<p>Entitled to receive “adequate protection” during the course of the bankruptcy case to protect against a potential decrease in value of the collateral during the course of the bankruptcy case. Adequate protection may involve periodic payments to lender, or other forms of protection.</p> <p>Only over-secured creditors are entitled to post petition interest on attorneys' fees.</p> <p>Subject to “cramdown” in a chapter 11 plan under specified circumstances. See Appendix.</p>
Administrative expenses	<ul style="list-style-type: none"> Administrative claims include, among others: <ul style="list-style-type: none"> - operating expenses (e.g., lease payments); - court approved professional fees; - post-petition interest for fully secured lenders; - claims for goods delivered to the debtor within 20 days prior to the filing; and - U.S. Trustee fees. 	<p>Administrative expenses are the actual, necessary costs and expenses of preserving the estate that arise during the pendency of the debtor's bankruptcy case.</p> <p>These expenses are paid, absent consent of the creditor, as and when due prior to or after confirmation of the plan of reorganisation.</p>

¹ The United States Bankruptcy Code contemplates several types of insolvency proceedings, including reorganizations, liquidations, and cross-border insolvency cases. This chart outlines claim priorities and select considerations in reorganization proceedings but does not discuss in detail priorities in a liquidation or other considerations in either a liquidation or cross-border insolvency scenario.

Type of Claim	Description	Comments
Priority expenses	<ul style="list-style-type: none"> • Priority expenses include, among others: <ul style="list-style-type: none"> - wages, salaries, and commissions in an aggregate amount not to exceed a specified limit earned within 180 days before the petition date; - contribution to an employee benefit plan arising from services rendered within 180 days before the petition date; and - certain prepetition taxes. 	Although such claims may have priority below administrative expense claims, they are often approved for payment in the early days of the bankruptcy case.
General unsecured claims	<ul style="list-style-type: none"> • General unsecured claims are claims that are not secured and not afforded administrative or priority status. • Such claims usually are last in the priority of claims, other than subordinated claims.² • Such claims include unsecured funded debt (e.g., bonds), trade credit, and contract breach claims, including rejection of executory contracts. 	Subject to “cramdown” in a chapter 11 plan under specified circumstances. See Appendix.
Preferred equity	<ul style="list-style-type: none"> • Stock whose payment takes priority over common stock (e.g., stock with a liquidation preference). 	Subject to “cramdown” in a chapter 11 plan under specified circumstances. See Appendix.
Common equity	<ul style="list-style-type: none"> • Stock whose payment is below preferred stock. 	Subject to “cramdown” in a chapter 11 plan under specified circumstances. See Appendix.

² Contractual subordination agreements are enforceable “to the same extent that such agreement is enforceable under applicable nonbankruptcy law.” § 510(a). Subordination is permissible for claims arising from: (1) rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor; (2) damages arising from the purchase or sale of such security; and (3) reimbursement or contribution allowed under § 502 on account of any such claims. Such claims are subordinated to all claims and interests that are senior or equal to the claim or interest represented by the security that gave rise to the claim. § 510(b).

³ Unlike subordination, pursuant to which a claim is subordinated to all other claims but remains senior to equity, recharacterisation reclassifies a claim as an equity interest due to the true nature of the obligation.

Type of Claim	Description	Comments
Special types of claims	<ul style="list-style-type: none"> • Prepetition claims held by a debtor against another debtor. 	<p>Intercompany claims often arise from cash management system of a group enterprise, pursuant to which money may flow routinely between entities, giving rise to claims between debtor entities.</p> <p>Presumption of <i>pari passu</i> status, but commonly reviewed for equitable subordination to other claims, or recharacterisation as equity³.</p> <p>Characterization of intercompany claims as debt or equity can have material impact on recoveries under a plan.</p> <p>May also pass though unaffected in a chapter 11 plan of group enterprise.</p>
a) Intercompany claims		
b) §§ 1113 and 1114 claims	<ul style="list-style-type: none"> • Claims arising from the rejection of collective bargaining agreements and the payment of insurance benefits to retired employees, respectively. 	<p>Special protections are afforded to these claims, and as such, these claims are difficult to reduce under a plan of reorganisation.</p>
c) Utilities	<ul style="list-style-type: none"> • Claims arising from vital service providers such as gas, electricity, and telecommunications. 	<p>Utility providers are entitled to adequate assurance of payment, in the form of a deposit or other security, for service provided after the petition date. § 366.</p>
d) Executory contracts and unexpired lease rejection claims	<ul style="list-style-type: none"> • Unless counterparty holds collateral, general unsecured claim on account of rejection of an executory contract or unexpired lease pursuant to section 365 of the bankruptcy code. 	<p>Rejection of unexpired lease under which debtor is a lessor entitles counterparty to retain its rights under such lease for the balance of the term of such lease and pay rent. § 365(h).</p> <p>Rejection of license agreement for right to intellectual property under which debtor is licensor entitles licensee to retain its license rights and pay contractual royalties. § 365(n).</p>

APPENDIX – Summary Chart of Select Confirmation Standards

Type of Claim	Standard	Comments
Classification of claims § 1122	<ul style="list-style-type: none"> A plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. 	<p>There must be (1) substantial similarity and (2) some reasonable basis for the classification or the creditor must agree to the classification of its claim.</p> <p>All claims within a particular class must be similar but need not be identical. Dissimilar claims may not be in the same class.</p> <p>Substantially similar claims may be placed in separate classes to facilitate treatment or on any other reasonable basis that is not designed to “gerrymander” or artificially create an impaired accepting class.</p>
Best interests § 1129(a)(7)—	<ul style="list-style-type: none"> Plan is in the best interests of creditors and interest holders. 	<p>Each holder of a claim or interest in each of the plan’s impaired classes must either (1) vote in favor of the plan, or (2) will receive under the plan, property of a value that is not less than what such holder would receive or retain under a chapter 7 liquidation.</p> <p>Focus is on what individual dissenting parties (not classes) would receive under the plan as compared to a hypothetical chapter 7 liquidation.</p>
Acceptance of plan § 1129(a)(8)	<ul style="list-style-type: none"> Each class of claims or interests must either accept a chapter 11 plan or be unimpaired thereunder. 	<p>A class of impaired claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the claims voted in that class vote to accept the plan.</p>
Payment of priority claims § 1129(a)(9)	<ul style="list-style-type: none"> Plan complies with statutorily mandated treatment of administrative and priority tax claims. 	<p>Requires that persons holding claims entitled to priority under section 507(a) receive specified cash payments under the plan.</p>
Cramdown § 1129(b)	<ul style="list-style-type: none"> If a plan satisfies all confirmation requirements other than acceptance of all “impaired classes, plan still may be confirmed over dissenting impaired class if – (1) the plan does not discriminate unfairly against such dissenting impaired class and 	<p><i>Unfair discrimination</i></p> <p>Plan must not discriminate unfairly against similarly situated creditors by providing materially lower recovery or materially greater risk.</p> <p><i>Fair and equitable (a.k.a. Absolute Priority Rule)</i></p>

Type of Claim	Description	Comments
	<p>(2) the plan is fair and equitable with respect to such dissenting impaired class.</p> <ul style="list-style-type: none"> • A class is “impaired” if its legal, equitable, and contractual rights are altered by the plan. 	<p>Secured claims</p> <p>Three circumstances under which a plan can be considered “fair and equitable” with respect to an impaired class of secured claims:</p> <ul style="list-style-type: none"> - the full payment of the allowed amount of the secured claim by deferred payments having a present value equal to the collateral’s value and secured by the prepetition collateral; - the sale of the prepetition collateral under sections 363(f) and (k) free and clear of the secured creditor’s liens, with the lien attaching to the proceeds; or - the realization of the “indubitable equivalent” of the allowed amount of the secured claim. <p>Unsecured claims</p> <p>Two circumstances under which a plan can be considered “fair and equitable” with respect to an impaired class of unsecured claims:</p> <ul style="list-style-type: none"> - the plan provides that the holder of the unsecured claim receive property equal to the allowed amount of such claim; or - a junior holder of an unsecured claim is not receiving any property under the plan. <p>Interests</p> <p>Two circumstances under which a plan can be considered “fair and equitable” with respect to an impaired class of interests:</p> <ul style="list-style-type: none"> - the plan provides that the holder of the interest receive property equal to the greatest of: (1) the allowed amount of any fixed liquidation preference to which the holders are entitled, (2) any fixed redemption price to which the holders are entitled or (3) the value of the interest; or - a junior holder of an interest is not receiving any property under the plan.

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