
Professional Certificate in Company Law in the European Union

Corporate Restructuring and Insolvency

Administration – A court-appointed or creditor-appointed procedure whereby an insolvency practitioner takes control of a company’s affairs to achieve the best possible outcome for creditors. Related terms: administrator, moratorium, creditors’ meeting. The administrator assesses assets, negotiates with creditors, and may propose a restructuring plan or a sale of the business. Practical application: a UK retailer in financial distress may enter administration to preserve its brand while a sale of its assets is organised. Challenges include balancing competing creditor interests and meeting strict statutory deadlines.

Adjudicatory Body – Any authority empowered to resolve disputes arising from insolvency or restructuring proceedings, such as a court, tribunal, or specialised insolvency agency. Related terms: jurisdiction, arbitration, enforcement. In the EU, the European Court of Justice often acts as the adjudicatory body for cross-border insolvency cases. Example: a dispute over the priority of claims in a Dutch bankruptcy may be referred to the Amsterdam District Court. The main challenge is ensuring consistent interpretation across member states.

Agreement for Restructuring – A legally binding contract between a debtor and its creditors that sets out the terms for debt reduction, payment schedule, and operational changes. Related terms: restructuring plan, debt-for-equity swap, standstill. Under the EU Insolvency Regulation, such agreements may be recognised in multiple jurisdictions if they meet the “centre of main interests” (COMI) criteria. Practical use: an Italian manufacturing firm negotiates a 30% haircut with banks to avoid liquidation. Challenges include obtaining sufficient creditor support and complying with anti-avoidance provisions.

Alternative Dispute Resolution (ADR) – Mechanisms such as mediation or arbitration used to settle insolvency-related conflicts without resorting to court litigation. Related terms: mediation, conciliation, arbitration clause. ADR can speed up settlements and preserve business relationships, especially in cross-border restructurings. Example: a French-German joint venture uses mediation to resolve a dispute over asset valuation during a restructuring. Challenges involve ensuring enforceability of ADR outcomes across different legal systems.

Asset-Based Lending – A financing arrangement where loans are secured against specific assets of the borrower, often used in restructuring to provide liquidity. Related terms: collateral, secured creditor, priority claim. In a restructuring, a company may obtain a bridge loan secured by inventory to fund operations while negotiating a broader plan. Practical application: a Spanish logistics firm receives an asset-based loan against its fleet of trucks. Challenges include accurate valuation of collateral and the risk of asset seizure if the borrower defaults.

Bankruptcy – The legal status of a person or entity that cannot repay debts, leading to a court-supervised process of asset distribution. Related terms: liquidation, insolvency, discharge. In EU law, bankruptcy is largely governed by national legislation, but the EU Insolvency Regulation provides rules for cross-border

recognition. Example: a Greek shipping company declares bankruptcy, triggering liquidation of its vessels. Challenges include coordination of multinational creditor claims and protection of employee rights.

Board of Directors – The governing body of a company responsible for strategic decisions, including those related to restructuring and insolvency. Related terms: fiduciary duty, corporate governance, shareholders' meeting. Directors must act in the best interests of creditors once insolvency is imminent, shifting from a shareholder-centric to a creditor-centric duty. Practical scenario: directors of a Dutch tech start-up decide to propose a voluntary arrangement to avoid compulsory liquidation. Challenges involve potential liability for wrongful trading or breach of fiduciary duties.

Business Rescue – A statutory process (e.g., South African Companies Act) that allows a financially distressed company to reorganise its affairs under court supervision. Related terms: business rescue plan, moratorium, liquidator. Though not an EU-specific term, the concept aligns with EU restructuring mechanisms such as the "reorganisation" procedure in certain member states. Example: a Polish retailer initiates business rescue to renegotiate leases and reduce debt. Challenges include meeting strict filing deadlines and gaining creditor approval.

Capital Restructuring – The alteration of a company's capital structure, typically involving equity, debt, or hybrid instruments, to improve financial stability. Related terms: recapitalisation, debt-to-equity conversion, rights issue. In the EU, capital reductions may require a court order and shareholder approval. Example: a German automobile supplier undertakes a capital reduction to cancel shares and offset losses. Challenges include maintaining market confidence and complying with statutory capital maintenance rules.

Chapter XI – The EU-wide "reorganisation" procedure introduced by the EU Directive on restructuring and insolvency, aiming to harmonise cross-border restructuring. Related terms: pre-packaged bankruptcy, restructuring plan, insolvency practitioner. It allows a debtor to propose a restructuring plan that, once approved, binds all creditors across the EU. Practical use: a multinational software firm files a Chapter XI plan to restructure debt in all member states simultaneously. Challenges include obtaining the required creditor support and navigating divergent national insolvency laws.

Creditor – Any person or entity to whom a company owes money, including banks, suppliers, tax authorities, and employees. Related terms: secured creditor, unsecured creditor, priority claim. Creditors' rights become paramount once insolvency is declared, influencing the distribution of assets. Example: an Austrian supplier files a claim in a Czech bankruptcy proceeding. Challenges involve proving claim validity, establishing priority, and dealing with cross-border enforcement.

Creditor-in-Possession (CIP) Financing – Funding provided to a debtor during restructuring that gives the lender a senior claim over other creditors, often with control rights. Related terms: debtor-in-possession, senior secured loan, covenant. CIP financing is common in US Chapter 11 cases and increasingly used in EU restructurings. Practical example: a French airline obtains CIP financing to continue operations while negotiating a restructuring plan. Challenges include negotiating terms acceptable to existing creditors and complying with national insolvency restrictions on new debt.

Cross-Border Insolvency – Insolvency proceedings that involve assets, creditors, or debtors located in more

than one jurisdiction. Related terms: COMI, EU Insolvency Regulation, coordination. The EU Insolvency Regulation (Regulation (EU) 2015/848) provides a framework for recognizing foreign insolvency proceedings and facilitating cooperation. Example: a Belgian holding company's subsidiary in Italy enters liquidation, triggering cross-border coordination. Challenges include determining the primary jurisdiction, handling language barriers, and reconciling differing creditor priorities.

Debt-For-Equity Swap – A restructuring technique where creditors exchange part of their debt claims for equity in the reorganised company. Related terms: conversion, dilution, shareholder rights. This reduces leverage and aligns creditor interests with the company's future performance. Practical use: a Spanish energy firm swaps €200 million of bank debt for a 25% equity stake. Challenges include valuation disputes, potential dilution of existing shareholders, and regulatory approval.

Debtor – The legal entity (individual or company) that owes money and may be subject to insolvency or restructuring proceedings. Related terms: insolvent debtor, debtor-in-possession, COMI. The debtor's status triggers specific duties, such as the duty to act in the best interests of creditors. Example: a Dutch construction company becomes an insolvent debtor after losing a major contract. Challenges include managing cash flow, preserving business continuity, and complying with filing obligations.

Debt Restructuring – The process of renegotiating the terms of existing debt to achieve more favourable repayment conditions. Related terms: maturity extension, interest rate reduction, covenant relief. In the EU, debt restructuring may be part of a voluntary arrangement or a court-supervised plan. Practical scenario: a Greek shipping company extends loan maturities and reduces interest rates to avoid default. Challenges involve creditor consensus, potential impact on credit ratings, and compliance with anti-avoidance rules.

Distressed Assets – Assets owned by a financially troubled entity that are sold at a discount to raise cash. Related terms: fire-sale, asset liquidation, price discovery. Distressed asset sales are common in insolvency to maximise recovery for creditors. Example: a French retail chain sells its real-estate portfolio at reduced prices during liquidation. Challenges include accurate valuation, market timing, and ensuring proceeds are distributed according to statutory priority.

EU Insolvency Regulation – The EU legislative framework (Regulation (EU) 2015/848) that governs the recognition and coordination of cross-border insolvency proceedings. Related terms: COMI, opening of proceedings, cooperation. It replaces the earlier 2000 Regulation and introduces provisions for restructuring plans, creditor-in-possession financing, and insolvency practitioners' cooperation. Practical application: a German parent company's insolvency is recognised in France, enabling a single insolvency practitioner to manage assets across borders. Challenges include differing national interpretations of "centre of main interests" and the need for efficient communication among practitioners.

European Court of Justice (ECJ) – The highest judicial authority of the EU, responsible for interpreting EU law, including insolvency regulations. Related terms: preliminary ruling, case law, jurisdiction. The ECJ may be asked to clarify the application of the Insolvency Regulation in cross-border disputes. Example: a case concerning the priority of employee claims in a multi-state bankruptcy may be referred to the ECJ. Challenges involve lengthy proceedings and the need for national courts to apply ECJ rulings consistently.

European Insolvency Register – An electronic database that provides information on insolvency proceedings opened in any EU member state. Related terms: transparency, public access, data sharing. The register enhances creditor confidence by allowing quick verification of a debtor’s insolvency status. Practical use: a creditor checks the register to confirm whether a Belgian company has an open liquidation proceeding. Challenges include ensuring data accuracy, timely updates, and dealing with language differences.

Examination of Claims – The process by which an insolvency practitioner verifies the validity and amount of creditor claims. Related terms: proof of claim, adjudication, priority ranking. Accurate examination is essential for fair distribution of assets. Example: during the liquidation of a Dutch subsidiary, the administrator reviews all supplier invoices to confirm claim amounts. Challenges include incomplete documentation, disputed amounts, and the need to respect statutory deadlines.

Fact-Finding Report – A document prepared by an insolvency practitioner detailing the financial position, causes of distress, and prospects of the debtor. Related terms: solvency analysis, due diligence, restructuring proposal. The report guides creditors and courts in deciding on restructuring versus liquidation. Practical application: a French court relies on the fact-finding report to assess a proposed reorganisation plan. Challenges involve gathering reliable data, especially from subsidiaries in other jurisdictions.

Forced Sale – A compulsory disposal of assets, usually ordered by a court, to satisfy creditor claims. Related terms: liquidation, auction, market value. Forced sales often result in lower proceeds than voluntary transactions. Example: a German machine manufacturer’s plant is sold under court order during liquidation. Challenges include achieving the best possible price under time pressure and managing employee impacts.

General Meeting of Creditors (GMC) – A gathering of all creditors, convened by the insolvency practitioner, to discuss and vote on proposals such as restructuring plans. Related terms: voting rights, quorum, resolution. The GMC is a key forum for creditor coordination in EU restructurings. Practical scenario: creditors of an Irish telecom company meet to approve a debt-for-equity swap. Challenges include differing creditor interests, language barriers, and ensuring proper notice.

Group Insolvency – Insolvency proceedings that involve multiple entities within the same corporate group, potentially spanning several jurisdictions. Related terms: umbrella proceeding, coordinated liquidation, group restructuring. The EU Insolvency Regulation allows for “umbrella” proceedings to handle group-wide assets efficiently. Example: a Luxembourg holding and its French subsidiaries are included in a single umbrella proceeding. Challenges include aligning national laws, managing inter-company claims, and preserving the value of the group as a whole.

Guarantor – A third party that promises to fulfill a debtor’s obligations if the debtor defaults. Related terms: surety, security, indemnity. In restructuring, guarantors may be called upon to provide additional liquidity or to support new financing. Practical use: a parent company acts as guarantor for its subsidiary’s bank loan, enabling the subsidiary to obtain CIP financing. Challenges include the guarantor’s own credit risk and potential contagion effects.

Hybrid Instruments Related terms: mezzanine financing, conversion feature, subordination. Hybrid instruments can be restructured to improve a company’s balance sheet. Example: a Spanish firm

restructures its convertible bonds by extending maturity and reducing coupon rates. Challenges involve valuation, tax implications, and obtaining consent from both debt and equity holders.

Insolvency – The state of being unable to pay debts as they fall due, triggering legal procedures for asset distribution. Related terms: cash-flow insolvency, balance-sheet insolvency, statutory insolvency. EU law distinguishes between “financial insolvency” (liabilities exceed assets) and “liquidity insolvency” (inability to meet payments. Example: a Dutch retailer experiences cash-flow insolvency after a sales slump. Challenges include early detection, preserving business value, and choosing between restructuring and liquidation.

Insolvency Practitioner (IP) – A licensed professional (e.g., administrator, liquidator, trustee) appointed to manage insolvency or restructuring proceedings. Related terms: qualification, fiduciary duty, professional indemnity. In the EU, IPs must be recognised in the jurisdiction where the proceeding opens. Practical scenario: an Irish insolvency practitioner is appointed to oversee the liquidation of a multinational group’s Irish subsidiary. Challenges include cross-border coordination, language competence, and managing stakeholder expectations.

Joint Creditors’ Committee (JCC) – A body representing the interests of major unsecured creditors during a restructuring or bankruptcy. Related terms: creditor representation, negotiation team, voting bloc. The JCC often works closely with the IP to shape the restructuring plan. Example: the JCC of a French aerospace company negotiates with bondholders on a debt-for-equity swap. Challenges involve balancing the interests of large and small creditors and ensuring transparency.

Judgment Creditors – Creditors whose claims arise from court judgments, such as damages or tax assessments. Related terms: preferential claim, statutory claim, secured claim. Judgment creditors may have priority over unsecured creditors but are subordinate to secured creditors. Practical example: a tax authority obtains a judgment for unpaid VAT and files a claim in a corporate liquidation. Challenges include proving the enforceability of the judgment and dealing with possible appeals.

Legal Entity Identifier (LEI) – A unique 20-character alphanumeric code that identifies parties to financial transactions, enhancing transparency in insolvency. Related terms: global identifier, regulatory reporting, data repository. LEIs are mandatory for many EU financial market participants and facilitate tracking of creditor claims. Example: a bank uses the debtor’s LEI to verify its exposure during a restructuring. Challenges include maintaining accurate LEI records and integrating LEI data into legacy systems.

Liquidation – The process of winding up a company’s affairs, selling assets, and distributing proceeds to creditors. Related terms: compulsory liquidation, voluntary liquidation, winding-up. Liquidation may be the terminal phase of a restructuring when a viable plan cannot be achieved. Practical application: a Czech manufacturing firm undergoes compulsory liquidation after its restructuring proposal is rejected. Challenges include maximising asset value, protecting employee rights, and handling cross-border assets.

Mandate Letter – A document issued by a court or creditor committee authorising an insolvency practitioner to act on specific matters. Related terms: scope of authority, powers, reporting obligations. The mandate defines the practitioner’s duties and limits. Example: a court issues a mandate letter authorising the administrator to sell a subsidiary. Challenges include ensuring the practitioner remains within the

mandate and addressing any conflicts of interest.

Merger of Insolvency Proceedings – The consolidation of two or more related insolvency cases into a single proceeding to improve efficiency. Related terms: joint administration, coordinated liquidation, procedural economy. EU law allows for merger when proceedings involve the same debtor or closely linked entities. Practical scenario: insolvency proceedings in Belgium and Luxembourg concerning the same holding are merged. Challenges include reconciling differing procedural rules and creditor voting thresholds.

Moratorium – A statutory period during which a debtor is protected from creditor actions, allowing time to develop a restructuring plan. Related terms: stay of proceedings, protection period, suspension. In many EU jurisdictions, a moratorium can be automatically triggered upon filing for insolvency. Example: a Spanish company files for “concurso” and receives a 60-day moratorium to negotiate with creditors. Challenges include ensuring the moratorium is respected by all creditors, especially foreign ones, and maintaining cash flow.

Negotiated Settlement – An agreement reached between a debtor and its creditors without formal court intervention, often through a voluntary arrangement. Related terms: composition, compromise, out-of-court restructuring. Negotiated settlements can be quicker and less costly than court-driven processes. Practical use: a Dutch tech start-up reaches a negotiated settlement with its venture capital investors to postpone debt repayments. Challenges involve securing sufficient creditor consent and avoiding later disputes over the settlement’s validity.

Offshore Insolvency – Insolvency proceedings involving entities incorporated in offshore jurisdictions, which may have distinct legal regimes. Related terms: tax haven, secrecy jurisdiction, enforcement. Cross-border EU cases may encounter offshore subsidiaries, complicating asset recovery. Example: a Luxembourg parent’s offshore subsidiary in the Cayman Islands is placed in liquidation, requiring cooperation with Cayman courts. Challenges include limited transparency, differing creditor protection standards, and difficulties in enforcing judgments.

Order of Priority – The statutory ranking that determines the sequence in which creditors receive payouts from the debtor’s estate. Related terms: preferential creditors, unsecured creditors, residual claim. In the EU, the order is largely harmonised for cross-border insolvency, but national variations remain. Practical illustration: in a German liquidation, employees’ wages (preferential) are paid before unsecured trade creditors. Challenges include interpreting priority rules for complex claims such as tax liabilities or inter-company debt.

Parent Company Guarantee (PCG) – A guarantee issued by a parent corporation to secure the obligations of its subsidiary, often used in restructuring to obtain financing. Related terms: subsidiary, surety, corporate group. PCGs can be crucial for obtaining CIP financing. Example: a French parent provides a PCG to enable its Italian subsidiary to secure a €50 million bridge loan. Challenges include assessing the parent’s capacity, potential cross-border enforcement, and the impact on the parent’s own balance sheet.

Pre-Packaged Insolvency (Pre-Pack) – A rapid liquidation or restructuring process where a sale or plan is negotiated before the official insolvency filing, allowing immediate execution upon appointment of an

administrator. Related terms: pre-pack sale, accelerated liquidation, debtor-in-possession. Pre-packs are common in the UK and are gaining traction in EU jurisdictions seeking efficiency. Practical scenario: a French retailer arranges a pre-pack sale of its inventory to a competitor, completing the transaction within days of administration. Challenges include ensuring fairness to unsecured creditors and avoiding allegations of asset stripping.

Priority Claim – A creditor claim that ranks above ordinary unsecured claims, often due to statutory provisions (e.g., employee wages, tax debts). Related terms: preferential creditor, secured claim, super-priority. Priority claims are satisfied first from the estate’s assets. Example: in a Spanish liquidation, the tax authority’s claim for unpaid VAT is treated as a priority claim. Challenges involve determining the exact amount, especially when multiple statutory regimes intersect.

Proof of Claim – The formal document submitted by a creditor to an insolvency practitioner, asserting the amount owed and supporting evidence. Related terms: claim filing, verification, deadline. Accurate proof of claim is essential for proper distribution. Practical example: a supplier files a proof of claim with supporting invoices in a Dutch bankruptcy. Challenges include meeting filing deadlines, providing sufficient documentation, and dealing with disputed amounts.

Qualified Insolvency Practitioner (QIP) – An insolvency professional who meets specific regulatory criteria to act in cross-border EU proceedings. Related terms: accreditation, EU-wide licence, competence. QIPs facilitate coordination under the EU Insolvency Regulation. Example: a German insolvency practitioner obtains QIP status to manage a multi-jurisdictional restructuring. Challenges include maintaining continuing education, complying with multiple national codes, and handling language requirements.

Recapitalisation – The process of restructuring a company’s capital by injecting new equity, reducing debt, or altering share structure. Related terms: rights issue, capital reduction, equity injection. Recapitalisation can restore solvency and improve creditworthiness. Practical use: a Belgian bank conducts a €200 million rights issue to recapitalise after a loss-making year. Challenges include market reception, regulatory approval, and potential dilution of existing shareholders.

Recovery Plan – A detailed strategy outlining how a distressed company intends to restore financial health, often submitted to courts or creditors. Related terms: business plan, cash-flow forecast, restructuring roadmap. The plan must demonstrate feasibility and creditor benefit. Example: a Greek shipping company presents a recovery plan that includes fleet optimisation and debt reduction. Challenges involve realistic forecasting, securing financing, and gaining creditor endorsement.

Restructuring Plan – A legally binding document that sets out the terms of a company’s reorganisation, including debt adjustments, asset sales, and governance changes. Related terms: plan of arrangement, Chapter XI, court approval. Under EU law, a restructuring plan may be filed in a single jurisdiction and become enforceable across the EU. Practical scenario: a French-Italian joint venture files a restructuring plan that provides for a 40% debt haircut and a new board composition. Challenges include meeting voting thresholds, ensuring cross-border enforceability, and addressing dissenting creditors.

Reverse Takeover – A transaction where a private company acquires a publicly listed company to obtain a

stock exchange listing, sometimes used in restructuring to access capital markets. Related terms: backdoor listing, merger, corporate re-organisation. In an insolvency context, a reverse takeover may be part of a rescue strategy. Example: an Irish distressed tech firm executes a reverse takeover of a shell company to relist on the Irish Stock Exchange. Challenges include regulatory scrutiny, valuation complexities, and potential creditor objections.

Secured Creditor – A creditor whose claim is backed by specific assets of the debtor, granting priority over unsecured creditors. Related terms: lien, mortgage, pledge. Secured creditors may enforce their security independently of insolvency proceedings, though court intervention may be required. Practical example: a bank holds a mortgage over a German factory's premises. Challenges involve determining the extent of the security, reconciling with other claims, and handling cross-border enforcement.

Shareholder Loan – Debt provided by the company's shareholders, often used as bridge financing during restructuring. Related terms: subordinated debt, mezzanine financing, equity-linked loan. Shareholder loans may be convertible into equity, aligning interests with the company's future. Example: a French venture capital firm extends a €10 million shareholder loan to a distressed start-up. Challenges include negotiating conversion terms, ensuring compliance with capital maintenance rules, and managing tax implications.

Solvency Test – An assessment of whether a company's assets exceed its liabilities, often required before initiating restructuring or liquidation. Related terms: balance-sheet test, cash-flow test, statutory solvency. In the EU, both balance-sheet and cash-flow solvency tests may be applied, depending on national law. Practical use: a German company conducts a solvency test to determine if a voluntary liquidation is permissible. Challenges include accurate asset valuation, accounting for contingent liabilities, and dealing with fluctuating market conditions.

Standstill Agreement – A temporary arrangement in which creditors agree not to enforce claims while the debtor prepares a restructuring plan. Related terms: moratorium, pause, negotiation window. Standstill periods are essential for giving the debtor breathing space. Example: a consortium of banks signs a 90-day standstill agreement with a French retailer to allow time for a restructuring proposal. Challenges include maintaining creditor confidence, preventing creditor dissent, and ensuring the standstill is legally enforceable.

Statutory Claim – A claim recognised by law as having priority, such as employee wages, tax arrears, or certain pension obligations. Related terms: preferential creditor, priority claim, protected claim. Statutory claims are paid before unsecured creditors in insolvency distribution. Practical illustration: in a Dutch liquidation, employee severance payments are classified as statutory claims. Challenges include calculating the correct amounts, especially where multiple jurisdictions are involved.

Staggered Voting – A voting mechanism in creditor meetings where different classes of creditors vote separately, often used to protect minority creditor interests. Related terms: class voting, quorum, voting thresholds. Staggered voting can prevent dominant creditors from imposing unfavorable terms. Example: in a restructuring plan, secured creditors vote on debt haircut proposals while unsecured creditors vote on asset sales. Challenges involve coordinating multiple voting rounds and ensuring compliance with procedural rules.

Subordination – The ranking of a claim lower in priority to other claims, often used to protect senior creditors. Related terms: junior debt, waterfall, priority. Subordinated debt may be converted to equity or written off in restructuring. Practical scenario: a company's mezzanine loan is subordinated to senior bank debt in a restructuring plan. Challenges include negotiating acceptable terms for junior creditors and managing the impact on future financing.

Suspended Proceedings – A temporary halt to insolvency or restructuring actions, typically ordered by a court to allow for further investigation or negotiation. Related terms: stay, moratorium, adjournment. Suspension may be granted when new information emerges that could affect the outcome. Example: a court suspends the liquidation of an Italian subsidiary pending a cross-border arbitration outcome. Challenges include preserving assets during suspension and managing creditor expectations.

Swiss Procedure – A specific restructuring framework used in Switzerland, often referenced for its efficiency, that may influence EU best practices. Related terms: debt restructuring, creditor committee, court-supervised plan. Though not an EU system, the Swiss Procedure's emphasis on early creditor involvement is mirrored in the EU's Chapter XI. Practical use: an EU-based company looks to the Swiss model when designing its own restructuring timetable. Challenges include adapting Swiss-specific features to EU regulatory constraints.

Takeover Bid – An offer made by an entity to acquire control of a target company, which can be part of a rescue strategy in insolvency. Related terms: hostile bid, friendly bid, merger-by-absorption. In distressed situations, a takeover bid may be the most efficient way to preserve value. Example: a Dutch private equity fund makes a takeover bid for a struggling electronics manufacturer to inject capital and restructure operations. Challenges include obtaining regulatory approvals, satisfying creditor demands, and managing employee concerns.

Tax Claim – A demand by tax authorities for unpaid taxes, which often enjoys statutory priority in insolvency. Related terms: fiscal lien, preferential creditor, tax lien. Tax claims may be secured against specific assets, such as property. Practical scenario: the French tax authority files a claim for unpaid corporate income tax in a liquidation proceeding. Challenges involve determining the exact amount, negotiating settlements, and coordinating with other priority creditors.

Turnaround Management – The practice of guiding a distressed company back to profitability through operational and financial changes. Related terms: restructuring advisor, performance improvement, crisis management. Turnaround managers may be appointed by creditors or the board. Example: a specialist turnaround team is engaged by a German automotive supplier to cut costs and renegotiate supplier contracts. Challenges include rapid implementation, cultural resistance, and aligning stakeholder expectations.

Ultra-Vires – Acts performed by a company beyond its legal capacity, which may be invalidated in insolvency proceedings. Related terms: beyond powers, nullity, statutory authority. Ultra-vires actions can be challenged by creditors seeking to recover losses. Practical example: a French subsidiary enters into a contract that exceeds its authorised capital, and the court declares it ultra-vires during liquidation. Challenges include assessing the impact on asset valuation and potential recovery from the parent

company.

Unsecured Creditor – A creditor without a specific claim on the debtor’s assets, ranking after secured and preferential creditors in distribution. Related terms: general creditor, *pari-passu*, residual claim. Unsecured creditors often form committees to coordinate their actions. Example: a group of trade suppliers in a Spanish liquidation file as unsecured creditors. Challenges include limited recovery prospects, reliance on collective bargaining, and potential disputes over claim validity.

Unfair Preference – A transaction made by a debtor before insolvency that unfairly favours one creditor over others, which may be set-aside by the court. Related terms: claw-back, fraudulent conveyance, preferential payment. Courts may recover the asset or payment for redistribution. Practical scenario: a debtor pays a €5 million loan to a related party shortly before filing for bankruptcy, and the court declares it an unfair preference. Challenges involve proving intent, timing, and calculating the recoverable amount.

Valuation Report – An independent assessment of the market value of a company’s assets or the entire business, essential for restructuring and liquidation. Related terms: fair market value, expert appraisal, asset pricing. The report guides creditor decisions and court approvals. Example: an independent valuer provides a report on the worth of a French hotel chain’s property portfolio during restructuring. Challenges include selecting appropriate valuation methods, dealing with volatile markets, and managing potential conflicts of interest.

Venture Debt – Debt financing provided to high-growth companies, often used as a supplement to equity during restructuring. Related terms: convertible loan, mezzanine financing, growth capital. Venture debt can be restructured alongside equity components. Practical use: a German biotech firm renegotiates its venture debt terms to extend maturity and reduce interest rates as part of a broader restructuring. Challenges include preserving lender rights, maintaining dilution limits, and aligning with investors’ expectations.

Waiver of Claims – A creditor’s voluntary relinquishment of its right to enforce a claim, sometimes used as part of a restructuring incentive. Related terms: claim release, settlement, concession. Waivers may be conditional on the success of a restructuring plan. Example: a bank waives part of its claim in exchange for a larger equity stake in the reorganised company. Challenges include ensuring the waiver is legally enforceable and that it does not prejudice other creditors.

Working Capital Loan – Short-term financing used to fund a company’s day-to-day operations, often crucial during restructuring. Related terms: revolving credit, cash-flow financing, bridge loan. Working capital loans may be provided on a covenant-light basis in distressed contexts. Practical scenario: an Italian fashion house obtains a €20 million working capital loan to maintain inventory while negotiating a debt restructuring. Challenges include collateral adequacy, covenant compliance, and repayment risk.

Yield-Based Covenant – A financial covenant that requires the debtor to maintain a certain yield or return on assets, used to protect lenders in restructuring. Related terms: financial covenant, performance metric, covenant breach. Violation can trigger default and accelerate repayment. Example: a loan agreement includes a covenant that the company must achieve a 10% return on invested capital; failure leads to a restructuring trigger. Challenges involve realistic target setting, monitoring, and potential conflicts with

operational restructuring goals.