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REPORT ON THE OBSERVANCE OF STANDARDS AND CODES
INSOLVENCY AND CREDITOR/DEBTOR REGIMES

BULGARIA

JUNE, 2016



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Prepared by a staff team¹ from the World Bank Group on the basis of information provided by Bulgarian authorities and experts

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¹ This ICR ROSC was conducted by a World Bank Group (WBG) team from the WBG Finance & Markets Global Practice. The team was led by Nina Mocheva (Task Team Leader, Financial Sector Development Specialist) and included Adolfo Rouillon (Senior Insolvency Consultant) and Mia Oh (Legal Analyst). The team was supervised by Mahesh Uttamchandani (WBG Global Lead for Credit Infrastructure). The team was assisted by Adela Delcheva Nachkova (Team Assistant, ECCBG, WBG) and Bulgarian expert consultants from Kambourov & Partners, Attorneys at Law: Mr. Yavor Kambourov (Managing Partner), Mr. Emil Emanuilov (Partner), Mrs. Hristina Kirilova (Partner), Mr. Ivo Alexandrov (Head of Practice, Restructuring and Enforcement of Securities), and Mr. Martin Emanuilov (Senior Associate), as well as consultants from Tsvetkova Bebov Komarevski, Attorneys-at-Law: Mr. Nikolay Bebov (Partner), Mr. Damyan Leshev (Senior Associate), and Ms. Victoria Tzonkova (Senior Associate) (contributors to specific sections of the report – “Insolvency treatment of State-owned Enterprises”, “Principles for informal workouts and restructurings”, “Cross-border insolvency”).

EXECUTIVE SUMMARY

The Bulgarian legal framework governing creditor/debtor relationships provides several means for protecting credit and minimizing the risks of non-performance and default. However, the laws and institutions governing security rights over both immovable and movable assets should be improved. Mortgage enforcement is lengthy and rather ineffective, affecting in most cases loan recovery rates. Financial institutions do not yet consider movable assets as secure collateral and special pledges as a fully effective security mechanism. Insufficient regulation of non-judicial enforcement of special pledges affects recovery effectiveness. Frequent fraudulent actions committed by pledgers to harm the rights of pledgees, due to existing gaps in the legal framework, negatively affect a more widespread use of special pledges.

The land registration system is largely satisfactory but several issues should be still resolved. The registry information is integrated and accessible online. Legally effective information, however, can only be obtained in person from the Land Office. Searches must be done by asset owner's name (not by asset), so checking past encumbrances is difficult and information may be not fully reliable. Time periods for registration (6 – 15 days) delay loans disbursement. The Land Office is not interconnected with Cadastre, making difficult to resolve inconsistent data kept by both entities. Mortgage costs are reasonable: 0.1% of the loan amount for registration; plus notary fees which cannot exceed EUR 3,000.

The Central Pledge Registry is a centralized, public and electronic registry for recording non-possessory security rights over movable assets. Online access to the registry is not currently available. Information is provided in paper. The registry charges 50 Lev for initial registration and 5 Lev per page for information on pledges. Users of the system consider the charge per page as being somewhat expensive. Registration is effectively completed in one day. Searches by asset are not possible, so third parties may in good faith buy an asset ignoring it is encumbered.

Enforcement of unpaid claims is highly inefficient, negatively affecting loan recovery rates: less than 50 per cent in the case of unsecured debts and debts secured over movable assets; and 75 per cent of mortgage loans. Non-judicial enforcement procedures are available for special pledges, which work well in some cases; however, debtors frequently act fraudulently –in particular by creating a second or third degree pledge in favor of a phony creditor. Other secured and unsecured claims should be enforced using judicial procedures, which are generally considered as too complex, ineffective and slow (over 3 years on average). Enforcement costs are very high. Creditors must pay upfront 2% of the claim value as judicial enforcement fee. If the enforcement is objected and the creditor should initiate an ordinary proceeding to ascertain its claim, another 2% court fee must be satisfied in advance. Lawyers' fees are also high. Private enforcement agents (bailiffs) fees also increase execution costs. Debtors are allowed to raise numerous objections and appeals that, in some cases, convert the enforcement proceeding into a protracted ordinary lawsuit. Auction procedures are generally considered satisfactory but some issues still remain to be resolved. Performance of some private enforcement agents is not optimal yet.

The data collected and distributed by the Central Credit Registry seem to be sufficient for evaluating the creditworthiness of a debtor, but credit information systems could be further enhanced. The law governing directors' obligations in the period approaching insolvency does not work effectively to promote responsible corporate behavior while fostering reasonable risk taking and encouraging business reorganization. Criminal prosecution does not appear to be a strong deterrent against fraud and other misconduct in the context of insolvency. The duty to file for bankruptcy within 30 days has been ineffective to discourage very late filings. In practice, directors have rarely been sanctioned for untimely filing for bankruptcy.

A culture of out-of-court collective negotiation and agreements (workouts) to restore an enterprise financial viability is insufficiently developed. The legal framework does not encourage the use of workouts. Most transactions that could be entered into by the debtor and some creditors in a workout would be at a risk of being challenged in bankruptcy under the avoidable transactions regime. The law does not provide for an expedited procedure to confirm a pre-negotiated agreement (“pre-packaged plan”). There is no recognized code of conduct for informal workouts.

The bankruptcy legislation is rather comprehensive but in practice insolvency proceedings are not working effectively. Many creditors consider bankruptcy not as an effective collection mechanism but rather as a vehicle used by debtors to evade their obligations –in many cases, fraudulently. A widespread and significant mistrust between debtors and creditors prevent more frequent and timely use of rehabilitation. Successful rehabilitations are rare –6 cases in 3 years. Most bankruptcy cases end up as piece-meal assets liquidation. Opening a bankruptcy case takes too long –5 months usually, and up to 2 years if the case is complicated. Opened bankruptcy proceedings

may take 10 or even more years to be completed. A modern approach to insolvency as a business rescue opportunity is yet to be developed.

Many provisions in the Bulgarian Constitution and laws are aimed at ensuring the independence and impartiality of the judiciary, but effectiveness of the judicial system needs to be enhanced. Contradictory interpretation of many issues by different courts frequently occurs and interpretative decisions of the Supreme Court of Cassation have not resolved all such inconsistencies. The terms are not mandatory for the judges: they just have to examine and adjudicate in the cases “within a reasonable period of time”. There are no specialized insolvency courts and some judges are perceived as not sufficiently trained to deal with complex insolvency cases. Mediation and arbitration are not often used in loan disputes and never utilized in bankruptcy. Integrity of participants in bankruptcy proceedings is a matter of serious concern. There are repeated complaints about debtors not acting in good faith and abusing of the process. Some judges are perceived as being neither prepared nor willing to stop fraud, illegal activities and/or abuses of the process.

The regulation of insolvency representatives (syndics or trustees) is not entirely in accordance with international good practice. There is no procedure for effectively dealing with complaints about the insolvency representative’s conduct. There is no Code of Ethics to provide more detailed guidelines on standards of behavior for insolvency representatives. There are currently 240 insolvency representatives registered with the Ministry of Justice. The law requires them to pass an exam, but no training is provided to candidates before the exam. Registration for insolvency representatives is granted for life. The law requires continued education, but there is no re-assessment of the insolvency representatives’ qualifications.

This report tries to contribute to the authorities efforts aimed at continuing and further improving the laws and institutions related to credit relationships.

I. INTRODUCTION

1. The World Bank Group assessed the insolvency and creditor/debtor regimes (**‘ICR’**) of Bulgaria pursuant to the joint IMF/World Bank initiative on the observance of standards and codes (**‘ROSC’**). The assessment has been undertaken on the basis of the ICR Standard.² The conclusions in this assessment are based on a review of the legislation, and other regulations and procedures relevant to bankruptcy, restructuring, the creation and enforcement of pledges and other security interests over immovable and movable property, and debt enforcement.

2. The assessment team also had access to various reports and memoranda prepared by the World Bank Group, the IMF, and other organizations. In addition to the review of legislation, regulations and related information, the conclusions in this assessment are based on meetings held by the ICR ROSC team in July and October 2015 with a broad cross-section of local stakeholders, including representatives of: (a) the Ministry of Justice (b) the Ministry of Economy; (c) the Central Bank (d) the Sofia City Court; (e) the Sofia Court of Appeals; (f) the Banks Association; (g) the Central Credit Registry (CCR); (h) the Chamber of Private Enforcement Agents; (i) the Central Registry for Special Pledges; (j) Commercial banks; (k) Lawyers; (l) Academics; and, (m) Bankruptcy trustees. The objective of these meetings was to review the effectiveness of the legal infrastructure supporting debtor/creditor relationships, credit risk management and resolution practices. The ICR ROSC team expresses its gratitude for the excellent spirit of cooperation with which all its interlocutors received it.

² The ICR Standard is based on the World Bank *Principles for Effective Insolvency and Creditor/Debtor Regimes – Revised version 2015* (the Principles) and the United Nations Commission on International Trade Law (UNCITRAL) *Legislative Guide on Insolvency Law* (Legislative Guide). These two complementary texts represent the international consensus on best practices and set forth a unified standard and they serve as reference point for evaluating and strengthening national ICR systems. See:

<http://www.worldbank.org/en/topic/financialsector/brief/the-world-bank-principles-for-effective-insolvency-and-creditor-rights>

II. DESCRIPTION OF COUNTRY PRACTICE

A. CREDITOR RIGHTS: CONTEXT AND LEGAL FRAMEWORK

3. The Bulgarian legal framework governing creditor/debtor relationships is aimed at facilitating broad access to credit at affordable rates through the widest possible range of credit products (secured and unsecured). It provides several means for protecting credit and minimizing the risks of non-performance and default. A mortgage over residential real estate and/or commercial real estate (including real estate under construction) and/or land is the security right preferred by creditors. Non-possessory pledges over movable assets³ are also used. Commercial enterprises can be pledged as a whole and banks frequently accept this kind of security. Other types of securities used in lending practice are: letters of guarantee issued by local or foreign banks; securities issued by the Bulgarian government or by foreign governments or foreign National Banks; guarantees issued by governments, central banks and international organizations; company guarantees (i.e. surety agreements, letters of comfort, corporate guarantees); export and credit insurance (issued by governments, local insurance companies or foreign insurance companies); mortgages over ships, etcetera.

4. The legal framework for granting security rights over immovable assets (mortgages) is adequate and largely consistent with best international practice, but it should be improved. Most credit providers consider this framework as being theoretically satisfactory. Priority governing hierarchy of competing claims or rights in the same immovable asset is adequate. Priorities over security rights are very limited and also comply with international standards. In practice, however, mortgage enforcement is lengthy and rather ineffective, affecting in most cases the recovery rate of mortgage loans. Improving the enforcement effectiveness would be needed to further credit expansion at more affordable rates. Mortgage legal framework could also be updated to introduce more flexibility according to current market practices. Existing mortgages cannot be modified easily. Otherwise, creating a mortgage to secure future obligations would be allowed, but some market players consider the legal regulation as insufficient to that avail.

5. The legal framework for security rights over movable assets is comprehensive, but could be improved. Special pledges are frequently subject to abuses by unscrupulous debtors. A special pledge is a non-possessory security right (i.e., the pledged asset's possession remains with the pledgor) over movable assets or a whole enterprise (including immovable assets that are part of the enterprise)⁴. Special pledges are registered with the Central Pledge Registry (see paragraph 7. below) and priority among pledgees is determined by the registration date of each security right. Creating a special pledge is not problematic. In practice, however, insufficient regulation of non-judicial enforcement of special pledges affects recovery effectiveness. Frequent fraudulent actions committed by pledgers to harm the rights of pledgees (see paragraph 10. below) affect a more widespread use of special pledges. Thus, financial institutions do not yet consider movable assets as secure collateral and special pledges as a fully effective security mechanism. Most operators of the financial system point out that as long as the efficacy and transparency of enforcement of special pledges are not improved, a significant extension of pledge credits is unlikely. The Special Pledges Act does not adopt a “functional” approach to security over movables;

³ Including shares and company's participations listed; corporate bonds-listed; shares / bonds not listed; rights – patent rights, licenses, trademarks, software; goods in warehouse; goods in turnover; machinery, equipment; vehicles (different than aircraft and ships); flocks; raw materials; precious metals; precious stones and jewels; aircrafts; other FTA/inventories; receivables - pledged salary; account receivables; other receivables/rights.

⁴ A pledge over a commercial enterprise (as a whole) is particularly problematic when, together with the enterprise's movable assets, it encumbers one or more immovables. These problems are usually present when it comes to enforcement of the pledge over a whole enterprise which includes one or more immovables (see Principle A8, below). Otherwise, it is hard to find any potential benefit of such system, which could be advantageously replaced by a regime (adopted by most Civil Law countries) that differentiates security rights as follows: security rights over immovable and movable assets are governed by different laws and registered under distinct registries. Also different law provisions govern enforcement proceedings for both kinds of security rights, taking into account the diverse nature of the respective collateral.

i.e., it does not establish the same regime for possessory pledges, non-possessory pledges, liens, leases and other security rights.

6. The land registration system is largely satisfactory but several issues need to be addressed to make it fully efficient –in particular, interconnecting Land Office with Cadastre. The registry information is integrated and accessible online. However, computerized searching and remote access only provide indicative information (i.e., not legally effective). Official information can only be obtained in person from the Land Office. Searches at the Land Office must be done by person (asset owner's name), not by asset. This makes checking past encumbrances difficult and information not fully reliable. The average time of obtaining information is approximately 6 – 15 days. Registration of security rights over immovable assets could also take 6 – 15 days. These time periods delay loans disbursement, which is done only after actual registration of a mortgage. The cost of creating / registering a mortgage is rather reasonable: 0.1% of the loan amount for registration. In addition, notary fees are also calculated as a percentage of the loan amount but cannot exceed a ceiling of approximately EUR 3,000, excluding of VAT. The Land Office is not interconnected with Cadastre, making difficult to resolve inconsistent data kept by both entities. For example, differences between the land title description and the geodetic identification of the same piece of real estate may create problems to mortgage enforcement.⁵

7. The Central Pledge Registry is a centralized, public and electronic registry for recording non-possessory security rights (pledges, leases and sales with reservation of title) over movable assets. Any person can get access to the CPR information. Online access to the registry, however, is not currently available. Information is provided in paper. The CPR charges 50 Lev for initial registration and 5 Lev per page for information on pledges. Users of the system consider the charge per page as being somewhat expensive. Registration is effectively completed in one day. Information is kept by the name of the owner of the encumbered asset exclusively, so searches by asset are not possible. This weakness of the system creates a serious issue with collateral sold several times: third parties may in good faith buy such assets ignoring the existence of the encumbrance if they bought the asset not directly from the pledger.⁶ In such cases, it is not clear which right would prevail –i.e., the creditor's security right or the third party right of ownership. The jurisprudence is contradictory and the Court of Cassation is considering an interpretative decision to resolve such contradiction. Ownership of vehicles is registered with the Ministry of Internal Affairs registry, which is not linked or interconnected with the Central Pledge Registry.

8. Enforcement of unpaid claims is highly inefficient and is the weakest link of the credit legal system in Bulgaria, negatively affecting loan recovery rates. Non-judicial enforcement procedures are available for special pledges. Other secured and unsecured claims should be enforced using judicial procedures, which are generally considered as too complex, ineffective and slow (over three years on average). The ineffectiveness of enforcement affects loan recovery rates, which are very low in the case of unsecured debts and debts secured over movable assets: less than 50 per cent according to most market players. Enforcement inefficiency also affects recovery rates of mortgage debts, which would recover 75 per cent of the loan.

⁵ Users of the system reported that occasionally there are omissions and or misinterpretation of data, which undermine the reliability of the information in the land registries as a result of the absence of a unified method for collecting, checking, and certifying the necessary data for the existing entries. Market players also mentioned a problem related to lack of information in the land registry regarding changes in the real estate properties which have taken place during the construction process –in particular, apartments built on a piece of land previously mortgaged. In such case, the mortgage would include all improvements and constructions, but Cadastre will typically issue separate identification numbers (akin to “new titles”) for each apartment. When it comes to enforcement, the law does not provide any specific solution to resolve the real extension or coverage of the old mortgage in such situation.

⁶ At present, a debtor who transferred a pledge asset without the consent of the creditor is criminally liable under the Criminal Code, but few sentences have actually been pronounced and low sanctions have typically been imposed.

9. Enforcement ineffectiveness and delays are a result of some flaws in the legislation and ineffective implementation of execution procedures, namely:

- **Enforcement legislation is complex and inconsistently applied.** Contradictory interpretation of many enforcement issues by different courts frequently occurs and interpretative decisions of the Court of Cassation have not resolved all such inconsistencies.
- **Enforcement costs are very high.** Creditors must pay upfront 2% of the claim value as judicial enforcement fee. If the enforcement is objected and the creditor should initiate an ordinary proceeding to ascertain its claim, another 2% court fee must be satisfied in advance. If a single claim is owed by more than one debtor (co-debtors), the creditor has to multiply the fees by the number of debtors involved in the enforcement. Lawyers' fees are also high. Private enforcement agents (bailiff) fees also increase execution costs. Such fees are calculated on the claim amount and they could be increased if an asset is realized at the execution process (market players indicated that bailiff's fees are in the region of 6 - 7% in most cases). Contrary to what the law specifies for other professionals (such as notaries), there is no ceiling for the fees of both lawyers and private enforcement agents. Court fees are not subject to a maximum fixed amount either.
- **Debtors are allowed to raise numerous objections and appeals that, in some cases, convert the enforcement proceeding into a protracted ordinary lawsuit.** Although the law specifies that many objections (typically, ungrounded), appeals and other recourses shall not suspend the enforcement or execution, in practice debtors manage to obtain such suspension frequently. Many judges do not typically exercise their powers to immediately stop abuses of the process.
- **As regards the acceleration of debts,** there is no consistent interpretation yet on how the notification to the debtor must be done in order to consider the acceleration as duly proclaimed.⁷
- **Auction procedures are generally considered satisfactory but some issues still remain to be resolved.** First, the Civil Procedure Code allows for multiple simultaneous public sales of the same immovable asset. If more than one enforcement agent actually sells the same property, multiple buyers will be involved in hard to resolve disputes concerning their conflicting interests and rights. Secondly, buying at auction a property financed by a bank is difficult: usually, there is no time to have the loan approved and disbursed before the auction price must be paid. Thirdly, the buyer's rights are not sufficiently protected. In many instances he is requested to disburse the price before the auction is finally approved. Also, the transfer of ownership is not materialized until after the decision approving the auction becomes final. Consequently, unscrupulous debtors sometimes raise frivolous objections to the auction just to delay the consolidation of the rights of the buyer.
- **Performance of some private enforcement agents is not optimal yet.** Users of the system generally recognize that such agents have contributed to enhance enforcement procedures effectiveness but not all these agents are behaving effectively yet. Some agents and/or their staff are perceived as being poorly trained and enforcement delays in many cases would be produced by their unsatisfactory performance.

⁷ Market players mentioned a somewhat new key problem caused by an interpretative decision of the Supreme Court of Cassation that requires personal notification to the debtor for the acceleration to take effect and it was supposed to unify the contradictory court practice in the field of procedures for issuance a writ of execution and the subsequent lawsuit for proving the receivables, but created a problem for the banks. The decision also created an obligation for the courts to investigate the notification. However, in practice there is no consistent interpretation yet on how the notification must be done in order to consider the acceleration as duly proclaimed. Furthermore, the application of the mentioned decision retroactively has led to overruling numerous writs of execution or claims producing direct losses to the creditors.

10. Non-judicial enforcement of special (registered) pledges is theoretically effective and works well in many cases. However, several practical problems still exist, including the following:

- **Debtors frequently act fraudulently, in particular by creating a second or third degree pledge in favor of a phony creditor.** These “creditors” (connected to the debtor) quickly enforce their “claims” out-of-court and sell the collateral at undervalue, preventing the first degree pledgee to fully recover its claim (all pledges over the same asset are cancelled). Such irregular or fraudulent practice would be facilitated because the law does not precisely regulate an effective publication mechanism that should be complied with where a pledged asset is to be sold under the non-judicial enforcement procedure.
- **Enforcement of a commercial enterprise where both movable and immovable assets are part of the pledged enterprise is problematic.** In particular, if the immovable asset has also been mortgaged, the mortgage creditor may ignore that the asset will be realized under the non-judicial enforcement procedure applicable to the commercial enterprise pledge. The mortgage creditor cannot join or in any way benefit from the non-judicial enforcement of the pledge because mortgages must be enforced using a judicial procedure exclusively. Furthermore, the distribution of the proceeds effectuated in the non-judicial pledge enforcement would not include a payment to the mortgage creditor because such distribution should only satisfy pledge claims. The lack of a clear legal solution for this situation has created uncertainty on whether or not the mortgage creditor keeps its security right after the asset has been sold to a third party buyer in the non-judicial enforcement of a pledged commercial enterprise. Otherwise, assuming that the mortgage creditor cannot be deprived from its security right in the described situation, the third party will be buying an asset which will not be free from encumbrances because only the pledge (s) will be resolved and cancelled after a non-judicial enforcement. The mortgage (s) would remain encumbering the asset, which likely could discourage the participation of potential buyers and/or affect the prices that could otherwise be obtained for such assets.

B. RISK MANAGEMENT AND CORPORATE WORKOUTS

11. The data collected and distributed by the Central Credit Registry seem to be sufficient for evaluating the creditworthiness of a debtor, but credit information systems could be further enhanced. While the limitations on who may request information seem to be sufficient protection for the debtors’ privacy, there are potential creditors such as landlords, investors, or other non-bank creditors who cannot access the information. Another shortcoming of the CCR is that it is not clear how a company or person may challenge inaccurate information. The Central Registry of Debtors has not been functioning well, and also is somewhat limited by being only a list of defaulting debtors. It does not provide credit profiles that include positive payment histories. Information on the creditworthiness of individuals is limited without a credit bureau that tracks consumer-type credit such as leases, instalment payments, utility, and other payments to non-bank entities. There is no operational private credit bureau in the country. Also, given strong cultural and legal privacy concerns about personal and company financial information and lack of a law addressing them in relation to a private credit bureau, it is not clear what type of information will be collected, and if the law will allow collection of such information as utility and lease payments by individuals.

12. The Bulgarian legislation governing directors’ obligations in the period approaching insolvency does not work effectively to promote responsible corporate behaviour while fostering reasonable risk taking and encouraging business reorganization. Ever since the Criminal Code introduced provisions on crimes against creditors (1996), the courts have rarely imposed penalties for such crimes. Criminal prosecution does not appear to be a strong deterrent against fraud and other misconduct in the context of insolvency. According to the Commerce Act, any debtor who becomes insolvent or excessively indebted is obliged to file for bankruptcy within 30 days. This provision, however, has been ineffective to discourage very late filings. In practice, directors have rarely been sanctioned for untimely

filing for bankruptcy. More effective in terms of encouraging timely filings, and/or at least a more satisfactory solution for the bankruptcy creditors, would be to either complement the current system or to substitute it altogether with a modern regime of directors' obligations in the period approaching insolvency.

13. A culture of out-of-court collective negotiation and agreements (workouts) to restore an enterprise financial viability is insufficiently developed in Bulgaria. Many players recognized that in theory such mechanism could be faster and cheaper and more successful than formal reorganization proceedings (which are also infrequent in practice), but creditors find difficult to negotiate together a single solution for a common client. Tools typically used in workouts (such as debt-to-equity swaps, company restructuring, debt rescheduling, debt forgiveness, etcetera) do not present major legal obstacles to be performed in Bulgaria. Assignment of loans is allowed and it only requires notification to the debtor. Banks participation in equity of non-financial institutions is not prohibited but it is subject to EU regulation limits. However, no specific provisions exist for creating a more favorable legal environment for workouts.

14. The legal framework does not establish any measures to protect and encourage the use of out-of-court restructuring / reorganization by pre-insolvent or insolvent debtors. There is no legal provision discharging the directors' civil and criminal liability for not filing timely a bankruptcy application, so debtors and creditors may be forced to conduct restructuring only through formal bankruptcy proceedings. The bankruptcy legislation does not in general recognize voluntary (out-of-court) restructurings, so most transactions that could be entered into by the debtor and some creditors in a workout would be at a risk of being challenged in bankruptcy proceedings under the avoidable transactions regime.

15. The law does not provide for an expedited procedure to quickly process an informal, pre-negotiated agreement. Workouts can be reached under contract law, but they would only bind those creditors who signed them and there is no legal procedure to make the workout binding with respect to all creditors. The typical legal mechanism –absent in Bulgarian legislation- to protect workouts is the so-called “pre-packaged plan” or “expedited reorganization”, which is an abbreviated way to approve in-court a plan previously approved out-of-court by a majority of creditors defined in the law. The business and financial community does not typically utilize alternative dispute resolution mechanisms in workout negotiations, and has not yet developed a recognized code of practice for informal workouts.

C. LEGAL FRAMEWORK FOR INSOLVENCY⁸

16. The bankruptcy legislation is rather comprehensive but in practice insolvency proceedings are not working effectively so creditors do not regard these proceedings as effective collection mechanisms. Worse, many creditors consider bankruptcy as a vehicle used by debtors to evade their obligations –in many cases, fraudulently. When the insolvency regime is used, it is often invoked at a late stage and is perceived as a vehicle for liquidation of completely “dead” businesses, rather than as a method for rescue and recovery. A balance between liquidation and reorganization is not struck properly in practice. There is a negative stigma and a negative reputation to the insolvency regime, indeed not merely due to certain deficiencies in the law but also as a result of implementation shortcomings. Liquidations are slow and cumbersome, and often do not maximize the value of a firm's assets and recoveries by the creditors as a whole.

17. A modern approach to insolvency as a business rescue opportunity through either in-court or out-of-court negotiations and agreements between a debtor and its creditors is yet to be developed. Good faith debtors do not see insolvency proceedings as adequate means to rehabilitate a business in distress. A widespread and significant mistrust between debtors and creditors prevent more frequent and timely use of rehabilitation. Successful rehabilitations are rare –6 cases in 3 years, according to informed market players. Most bankruptcy cases end up as piece-meal assets liquidation. Opening a bankruptcy case

⁸ ‘Insolvency’ and ‘bankruptcy’ are used interchangeably.

takes too long –average, over 5 months. Cases with some complications take up to 2 years to be opened. If businesses generally are in serious trouble at the time of applying for bankruptcy, they will be highly likely closed down by the date the insolvency proceeding is opened. Upon commencement, bankruptcy proceedings completion takes also many years. The actual average duration has been hard to determine, but relevant users of the system mentioned that there are cases which take 10 or even more years to be completed. Moving from the current rather dysfunctional system to a new one that would allow for rehabilitation of viable businesses in distress as well as effective liquidation of non-viable ones will require amending several law provisions and enhancing the institutional framework for insolvency.

18. Access to insolvency proceedings is slow and not efficient in practice. Opening an insolvency proceeding is a cumbersome and lengthy process, never completed within the three months period established by the law. There are no legal consequences for the delay because judicial terms are not imperative. These delays are particularly affecting any chance of using the rehabilitation procedure successfully. The main reason for such delays is a widespread judicial practice that never applies the legal presumptions of insolvency, and usually requests expert opinion on several ratios of insolvency (in the balance-sheet sense), taking into account the financial statements of the debtor. The law contemplates a liquidity or cash-flow test but it is not used in practice to open a bankruptcy case. Furthermore, the lack of detailed provisions to specify the over-indebtedness test creates uncertainty and unpredictability on how such test shall be interpreted and applied in court. Also, creditors joining a prior bankruptcy application usually complicate and delay the opening of the case. Opening a case is not quicker upon an application by the debtor. Such an application is not considered as a presumption of insolvency either, so the court also requests expert opinions, delaying the commencement of bankruptcy. To further complicate this stage of the process, the law specifies that the procedure initiated by the debtor shall be stayed if, before ruling on it, a creditor files a bankruptcy petition. Access to insolvency proceedings is not cost-effective either. Although the initial fees that a creditor shall pay with a bankruptcy application are not high, the expenses determined by the court that the creditors should advance to continue a bankruptcy proceeding refrain creditors from filing bankruptcy petitions in many instances.

19. The exceptions to the stay on enforcement by creditors with special pledges and State claims are hardly consistent with the objectives of insolvency proceedings. In particular, rehabilitation will be difficult to achieve if most or all assets of the insolvency estate are sold before a rehabilitation plan can be drafted and negotiated.⁹ In addition, the stay shall not affect properties subject to agreement under the Financial Collateral Arrangements Act. The exclusion from the stay of the State claims ongoing enforcement is also problematic. It can also frustrate rehabilitation solutions, and in liquidation it could alter the priority for satisfaction of claims. The exception to the stay on enforcement by State claims is inconsistent with the priority ranking of such claims at distribution.

20. In insolvency proceedings, access to post-commencement finance is extremely rare. There are no specific provisions aimed at facilitating the business access to commercially sound forms of financing, upon commencement of bankruptcy proceedings, to enable the debtor to meet its ongoing business needs. The priority established by the law is too low to encourage post-commencement finance: such claims rank above unsecured creditors but below six other classes of preferential claims –including secured creditors, bankruptcy costs, labor claims, State claims and other unsecured privileged claims. Otherwise, contract provisions that provide for termination of a contract upon either an application for commencement, or the commencement of insolvency proceedings, are not expressly rendered unenforceable under Bulgarian law.

21. Except with respect to financial collateral agreements, the law does not ensure certainty to the rights of the parties to financial contracts when one of the parties fails to perform for insolvency reasons. Netting is dealt with in various sources of law that apply in Bulgaria. However, the application

⁹ There are reported cases of court decisions suspending out-of-court pledge enforcement. This judicial stay, however, is subject to the discretion of each court, which may or not grant it, and is not governed by any legal provision that could establish temporary limits and provide the secured creditors with adequate safeguards to protect its collateral value.

of all of such provisions is handicapped due to the lack of substantive netting rules or, in the case of the FCAA, netting will be in operation only if a financial collateral arrangement is put in place, the financial collateral is provided, and the netting provision is imbedded in the financial collateral arrangement (as opposed to including the provision in a derivatives master agreement, or a repurchase master agreement). Thus, while a netting arrangement is generally enforceable, it is widely accepted that in an insolvency context the enforceability of netting, in particular close-out netting provisions is not possible, or is at best dubious. Termination rights under derivatives, repurchase and similar master agreements are similarly in doubt.

22. The treatment of creditors and other stakeholders' rights in insolvency proceedings is largely consistent with international best practices. In particular, the priorities of claims established prior to insolvency proceedings under commercial and other ordinary legislation are upheld in bankruptcy (liquidation) proceedings. Such order of priorities of the claims, however, might be changed in a rehabilitation plan. There are no strict legal requirements as to the type of transformation of the claims, which may be introduced through adoption of a rehabilitation plan. The general meeting of the creditors and the approving insolvency court would have full discretion to re-arrange the order of satisfaction of the creditors' claims.

23. The procedure for recognition of claims does not ensure that valid claims are timely recognized, and it is not efficient to prevent fraudulent claims to be accepted. Stakeholders complain about the practice of phony claims frequently created by debtors, which end up being accepted in many insolvency proceedings. This practice affects not only the rights and interests of the real creditors but also has significantly contributed to the low reputation of bankruptcy proceedings. Some features of the legal design would be facilitating such dysfunctional results of the claims resolution procedures. The system does not ensure the timely participation, or the participation at all and collection possibility of creditors domiciled outside of Bulgaria. The law does not establish an obligation on the debtor or the insolvency trustee to notify the commencement of insolvency proceedings to the known creditors individually. All creditors are to be considered implicitly notified by the publication in the Trade Registry. Creditors domiciled abroad will likely learn about the insolvency proceedings at a time when their claims will no longer be admitted for recognition. Moreover, inter-creditors control of claims (i.e., one or more creditors disputing another creditor's claim) does not work well due to high fees and procedural costs risks –these costs could represent a significant proportion of the amount of an objected claim. In some cases the costs rise up to 25% but there might be a possibility where the ultimate costs could rise up to 35% of the amount of the objected claim. Most creditors are discouraged from filing a lawsuit (which could require three judicial instances to be resolved) in case an objection is not accepted by the bankruptcy judge. The divided judicial competence between the bankruptcy judge and other judge (s) that should deal with general proceedings to resolve the disputes over claims that have been not-accepted / accepted by the former creates a risk of contradictory judgments on similar claims disputes –which is highly undesirable.

24. The Bulgarian insolvency system is strongly biased towards liquidation. Most insolvency proceedings end up as a piece-meal liquidation of assets. Also going concern sales under a rehabilitation plan are rarely implemented. Several reasons may explain why rehabilitation is not workable, namely:

- Rehabilitation is generally regarded as cumbersome, expensive and time consuming.
- Rehabilitation is part of bankruptcy proceedings, which entail big stigma and enjoy low reputation among both creditors and debtors.
- The law does not contemplate any mechanism to protect and encourage the use of workouts by pre-insolvent or insolvent debtors, through a “prepackaged plan” or “expedited reorganization”.
- Out-of-court settlement agreements in bankruptcy are rarely achieved because obtaining the consent of the unanimity of creditors (required by law) is hard to obtain in most cases.

- Applications for bankruptcy are usually filed at very late stage, when the business is no longer viable. Worse, opening a bankruptcy proceeding takes such a long time that upon filing a bankruptcy application any functioning business will deteriorate further or close down.
- Significant mistrust between creditors and debtors in most cases constitutes a big obstacle for negotiating a successful rehabilitation plan.
- The law restricts the flexibility needed for facilitating negotiations of most rehabilitation plans. There is a strict time limit to offer a plan and it shall be voted “as is”. The time limit to submit a rehabilitation plan could be too short in some cases and the court is not authorized to extend it.
- The Ministry of Finance authorization / approval to any plan where taxes or other state claims are involved is also a significant obstacle to rehabilitation. Even if the authorization is granted, it will typically take long time and in many cases it will be too late for the rehabilitation. The preferential treatment afforded to state claims by the tax legislation may frustrate any rehabilitation plan procedure.
- Plan approval provisions are rather unclear and there are contradictory legal opinions and court practice on how should votes be counted and voting provisions be interpreted. If one class does not approve a plan, it is unclear whether or not the whole plan shall be considered as not approved, and the law does not allow the judge to impose a plan to the dissenting class. It is not clear either if a class whose rights are not impaired should or not vote the plan.
- The exceptions to the stay on enforcement by creditors with special pledges and State claims are hardly consistent with the objectives of insolvency proceedings (see above).
- Secured creditors form a class where they all vote, irrespective of the degree of their security rights and of the actual coverage of the collateral value with respect to their claims. For example, a third degree mortgage claim which by all means will not be satisfied with the proceeds of the liquidation of the encumbered immovable, is nevertheless considered as a “secured claim”, and the mortgagee will vote in the class of secured creditors. Thus, the class of (real, true) secured creditors could rather easily be manipulated by the creation of phony low degree security rights over the debtor’s already encumbered assets.
- Where a plan contemplates the sale of the whole enterprise as a going concern, the requirement that a draft sale agreement signed by the purchaser shall be attached to the plan renders such sales quite difficult to achieve.
- An approved reorganization plan cannot be amended with the consent of the affected creditors, not even when a modification may be needed to reflect economic changes.

25. The law provisions governing cross-border insolvency issues where a non-EU country is involved are largely consistent with international best practice. However, such legislation does not contemplate a clear and speedy process for obtaining recognition of foreign insolvency proceedings. Many legal and practical aspects which are typically involved in cross-border cases are not regulated. Otherwise, there are no legal provisions that deal with the insolvency of domestic enterprise groups and, other than the EU regulation there are no provisions that deal with the insolvency of international enterprise groups where non-EU countries are involved.

D. INSTITUTIONAL & REGULATORY FRAMEWORKS

26. Many provisions in the Bulgarian Constitution and laws are aimed at ensuring the independence and impartiality of the judiciary, but effectiveness of the judicial system needs to be enhanced. Enforcement proceedings are lengthy in practice and court fees are too high. Contradictory interpretation of many enforcement issues by different courts frequently occurs and interpretative decisions of the Supreme Court of Cassation have not resolved all such inconsistencies. Insolvency proceedings are

not effectively handled either. Courts do not typically open such cases within the law term. Upon commencement, bankruptcy is also a lengthy process. The general interpretation at courts is that all the terms are not mandatory for the judges: they just have to examine and adjudicate in the cases “within a reasonable period of time”. There are legal grounds for engaging the responsibilities of the judges in case of negligence, but in practice disciplinary sanctions are rarely imposed because in most cases delays are due to the large number of cases assigned to the respective judge. There are no specialized insolvency courts and there is a perception among users of the system that some judges are not sufficiently trained to deal with complex insolvency cases. Courts do not typically encourage consensual resolution of disputes. Mediation and arbitration are not often used in loan disputes and never utilized in bankruptcy.

27. Integrity of participants in bankruptcy proceedings is a matter of serious concern. Many relevant stakeholders complain about the behavior of most debtors, who typically do not act in good faith. There are repeated complaints about abuses of the process. Bankruptcy proceedings are frequently manipulated to harm secured creditors. Some judges are perceived as being neither prepared nor willing to stop fraud, illegal activities and/or abuses of the process. If the debtor is acting with fraud, the trustee and the bankruptcy judge should theoretically refer the case to the Criminal Court, but this is not usually done in practice.

28. The regulation of insolvency representatives in Bulgaria is not entirely in accordance with international good practice. While there is a body in charge of regulating and supervising the insolvency representatives’ profession, there is no procedure provided in the Regulation for effectively dealing with complaints about the insolvency representative’s conduct and it is unclear when an investigation by the MOJ is needed. Investigations of complaints are conducted by the MOJ’s Inspectorate, which is not a body specialized in review of insolvency matters. It is not clear that sufficient resources are designated within the MOJ to allow for specialized supervision of insolvency representatives. Nor is there a regular review of books and records of insolvency representatives. There is no Code of Ethics to provide more detailed guidelines on standards of behavior for insolvency representatives. Nor is there a professional association to set and enforce such standards, and to maintain the integrity of the profession through policing of members by their peers, and the insolvency representatives themselves appear reluctant to establish such an association. Overall, the legal guidance on supervision, and the powers of the MOJ are not sufficient to allow comprehensive oversight. There are currently 240 insolvency representatives (syndics) registered with the Bulgarian MOJ, the majority of whom are lawyers, but the list includes a number of economists, as well. The law requires them to pass an exam before the MOJ. The exam timing has not been fully transparent always and thus impedes the predictability of the process to enter the profession. No training is provided to candidates before the exam. Registration for insolvency representatives is granted for life but the law requires continued education. However, there is no re-assessment of the insolvency practitioners’ qualifications.

29. The law and regulations covering the competence and integrity of insolvency representatives are largely sound but could be further developed. The qualifying criteria for an insolvency representative are specific and clear, insolvency representatives are not to be appointed when they are in “any relations with the debtor or creditors”, and can be dismissed from a case for various reasons including inability to perform, conflict of interest, or at the request of the majority of creditors, as provided in the law. An insolvency representative should exercise “due care” in conducting his/her duties. The insolvency representative does face liability for damages to debtors and creditors caused by his/her actions. However, in many aspects the law and regulations are not specific enough to be effective. Particularly with remuneration, its payment is unpredictable and insecure, especially with respect to determining the final remuneration.¹⁰ In the area of liability, the law language is broad, without specifics, and without protection

¹⁰ Insolvency representatives may be removed at the request of the majority creditor before the proceedings are completed, which makes the final remuneration owed to the insolvency representative in such situations particularly unpredictable. Therefore, insolvency representatives report that they mostly rely on their current remuneration, paid as a salary on a monthly basis, which

for the insolvency representative for reasonable behavior, or normal business judgments. Moreover, the insurance amount required is small in relation to the potential losses in a case with significant assets. Insolvency representatives are unable to delegate their work to assistants, which interferes with the performance of their duties in some cases. Some insolvency representatives reported that the distribution of cases is ineffective, with many insolvency representatives having very few cases, and a few having many cases, such that they are overloaded with work.

III. KEY POLICY RECOMMENDATIONS

30. The following measures may be considered to strengthen the country's legal, regulatory and institutional frameworks for creditor/debtor relationships.

Creditor/Debtor Rights Systems

31. The legal framework for creditor rights can be reinforced. Some of the key issues to consider in this respect include:

- (i) Update mortgage legislation to introduce more flexibility according to current market practices. In particular, amendments to existing mortgages should be easier to establish. Mortgages to secure future obligations could be better regulated by the law. Mortgage enforcement needs to be improved.
- (ii) Improve the legal framework for security rights over movable assets: (i) Provide adequate protection to real pledgees against pledgers' fraudulent actions; (ii) Enhance the special pledges out-of-court enforcement mechanism; (iii) Adopt a functional approach to security over movables; and, (iv) Eliminate the possibility of pledging immovable assets under a special pledge of the whole enterprise; only movable assets could be included in a whole enterprise pledge.
- (iii) Improve the registration of rights on immovable assets by: (i) Implementing searches by asset, in addition to the current searching system by owner; and, (ii) Interconnecting the Land Offices and the Cadaster, ensuring consistency of the information kept by both entities.
- (iv) Improve the registration of security rights on movable assets by implementing a system that effectively allows: (i) Searching security rights by assets and transactions –not just by pledgers' names or personal identification data; (ii) Remote access, issuing electronic statements of information and certificates, as well as their online submission; (iii) Online filing of electronic applications for recordation or deletion of security rights; and, (iv) Obtaining information by paying a flat and inexpensive fee.
- (v) Enhance the enforcement system to further expand credit access at affordable rates, by providing creditors with effective enforcement mechanisms for their claims. One possibility lies with the extension of out-of-court enforcement mechanisms to other security rights apart from the ones that already enjoy that possibility. The law may also contemplate enforcement mechanisms with minimum judicial intervention. The laws governing the enforcement of security rights should, in general, respect the creditor's right to opt for a menu of execution methods at the time of enforcement; and permit the effective use of out-of-court enforcement. In any case, improving judicial enforcement will be highly beneficial and it would require several legal and institutional changes, namely: (i) The enforcement proceedings governed by the CPC may be streamlined and simplified,

leaves them with no incentive to liquidate quickly. A credible, competent profession with consistent standards is unlikely to develop when the remuneration is so unpredictable, and often fails to materialize.

reducing the number of steps between the presentation of a petition and the actual recovery of the claim is needed; defenses and objections, as well as appeals and other recourses that may suspend enforcement could be reduced; (ii) The enforcement costs may be lowered; in particular, judicial fees and the fees of both lawyers and private enforcement agents could be revisited and a ceiling for all those fees be established; (iii) The CPC provisions could ensure that a court would only be able to order suspension of the enforcement process for good cause, and then only for a strictly limited period; (iv) Judges will restrictively interpret the exceptional situations that would allow a suspension of enforcement, and obstructive and delaying tactics should be severely punished by judges; (v) The law may establish that where personal notification of a debtor is required and the debtor is not found “in person”, a statement by an enforcement agent certifying (under his signature) that the debtor was not available but the notification was left in its domicile, could have full procedural effects; (vi) The CPC provisions governing auction procedures may be revisited in order to strengthen the buyers’ rights in order to attract more potential bidders and increase prices obtained at public auctions; to avoid multiple simultaneous auctions of the same asset, sufficiently anticipated publicity of each upcoming auction in a single centralized website could be imposed, and if a plurality of enforcement agents is preparing an auction of the said asset, they should coordinate how to proceed according to procedural rules to be developed; (vii) Improvements are required to the bailiff service: consideration could be given to the implementation of a program of ongoing professional development for the officials and their staff, to better enable them to discharge their obligations effectively.

- (vi) Amend the SPA with respect to non-judicial enforcement of special (registered) pledges, to provide clear and effective provisions to restore the prestige of special pledges as sound security rights over movable assets. In particular, such amendments could: (i) Provide detailed regulation of non-judicial enforcement proceedings to eliminate all lacunae and uncertainties of the current regulation; (ii) Impose effective and detailed announcements and publicity that should be effectuated before a pledged asset is to be sold under the non-judicial enforcement mechanism, and establish provisions aimed at preventing fraud against real pledge creditors by unscrupulous pledgers; (iii) If the possibility of pledging immovables under a whole enterprise pledge is not eliminated (as recommended above), specify clear rules for the enforcement of commercial enterprises where an immovable asset is a part of the pledged assets of such enterprise, to protect the mortgage rights that could have been created over the same immovable asset.

Credit Risk Management Systems and Out-of-Court Restructurings

32. Measures for improving credit risk management and out-of-court debt restructuring include the following:

- (i) Enhance the CCR coverage by allowing non-financial institutions such as utilities to participate in the system. The quality of data reported by organizations purchasing claims from financial institutions (e.g. factoring and asset management companies) could be further enhanced. Clearer procedures could be provided for dealing with debtors’ complaints and error corrections in all credit information systems. The credit information system framework could also ensure that users disclose to the potential borrowers any adverse credit decisions on the basis of a bad credit report. The CRD could include information on all debtors that are subject to collection action. Private enforcement agents could be required to upload such information into the system. The IT system on which the CRD operates could also continue to be monitored and improved to ensure that it operates effectively. A private credit bureau that is more suited to consumer needs could be supported. Information on non-bank debts such as leases, installment payments, utility

payments, and other such regular recurring debts could be collected in order to provide a better picture of the creditworthiness of individuals.

- (ii) Introduce a modern regime defining directors' obligations in the period approaching insolvency, and directors' liabilities for breach of such obligations. This regime could specify that when they know or ought reasonably to know that insolvency is imminent or unavoidable, directors should have due regard to the interests of creditors and other stakeholders, and should take reasonable steps either to avoid insolvency, or, where insolvency is unavoidable, to minimize its extent. The law may specify the persons owing the obligation, which may include any person formally appointed as a director and any other person exercising factual control and performing the functions of a director; and the debtor itself in case of individuals. Where creditors suffer loss or damage due to a director's breach of their obligations, the law should impose liability subject to possible defenses (including that the director took reasonable steps to avoid or minimize the extent of insolvency or, for example, tried to resolve it through pre-bankruptcy proceedings). The extent of any liability would not exceed the loss or damage suffered by creditors as a result of the breach. The law may specify that the remedies for liability found by the court to arise from a breach of the obligations should include payment in full to the insolvency estate of any damages assessed by the court. The bankruptcy administrator would have primary standing to pursue a cause of action for breach and the law could provide for the costs of an action against a director to be paid as administrative expenses. Finally, the liability to compensate creditors for damage caused due to the breach of the obligation would not preclude holding directors accountable for fraudulent activities including through taking criminal actions against directors according to the Criminal Code.
- (iii) Introduce an effective framework for workouts which could reduce or eliminate the obstacles and disincentives to negotiation and implementation of informal restructuring arrangements, and also create an adequate set of incentives for debtors and creditors. Creating an enabling environment for workouts requires reviewing and amending, as needed, the bankruptcy legislation (in particular, the avoidance actions and liability of directors and officers regimes), and other laws and procedures, such as the tax treatment of the debtor's "income" for debt reduction or debt forgiveness; and similar treatment, with respect to the creditor, of deduction for bad debts and debt forgiveness. There are several ways in which workouts can be enhanced. In particular, the following measures are recommended: (i) Adopting a series of principles and guidelines that in practice operate as a code of conduct for workout participants, such as in the *Latvian Principles*¹¹ or the *INSOL Principles*;¹² (ii) Establishing alternative dispute resolution systems to deal with the inter-creditor conflicts that may arise in the context of a restructuring negotiation; and, (iii) Establishing an expedited reorganization procedure for processing and approving "prepackaged plans".

Insolvency Framework

33. Ensure prompt filing and quick commencement of the insolvency process since time is of the essence in insolvency proceedings, especially if business recovery is envisaged. In this regard, consideration should be given to the following:

- (i) Limit the court analysis to the fulfilment of the formal requirements of the insolvency petition, when a debtor has filed an application for opening an insolvency proceeding. The

¹¹ See the "Latvian Principles" text in Annex II, below.

¹² The complete text of the INSOL Principles can be found at www.insol.org

insolvency law should consider a debtor's application as a strong presumption of insolvency.

- (ii) Apply the cash-flow or liquidity test as the preferred test of insolvency, when a creditor applies for a debtor's bankruptcy, and the court's decision on opening bankruptcy proceedings (or rejecting a bankruptcy application) could be quickly taken.
- (iii) Limit court delays to declare bankruptcy because of multiple applications for bankruptcy of the same debtor. The bankruptcy court could handle each bankruptcy application in parallel but not delaying one or the other just because a new application is filed. Procedural consolidation is not needed before bankruptcy is declared. A plurality of creditors may be allowed to file an application separately without joining other creditor's application. An application for bankruptcy filed by the debtor should not be stayed because a creditor also filed a bankruptcy application.
- (iv) Reduce the burden of expenses that creditors must advance.
- (v) Eliminate the absolute exceptions to the stay on enforcement by creditors with special pledges and State claims. At the same time, specify that the stay of enforcement actions by any class of secured creditors will be of limited, specified duration, strike a proper balance between creditor protection and insolvency proceeding objectives, and provide for relief from the stay by application to the court based on clearly established grounds when the insolvency proceeding objectives or the protection of the secured creditor's interests in its collateral are not achieved.
- (vi) Specify that assets of some relevance will be valuated before direct selling of such assets by the bankruptcy trustee, and establish clear provisions for ensuring the transparency of direct selling. Include provisions aimed at protecting the rights and interests of a third party who owns assets that are used during insolvency proceedings.
- (vii) Upgrade the post-commencement finance priority in bankruptcy, to rank it as bankruptcy costs; and, provide regular post-commencement finance with protection from voidable transactions actions.
- (viii) Establish rules regarding the treatment of financial contracts, upholding (subject to a possible short stay for a defined period) termination, netting, and close-out provisions contained in clearly defined types of financial contracts, where undue delay of such actions would, because of the type of counterpart or transaction, create risks to financial market stability.
- (ix) Specify that contract clauses that provide for termination of a contract (subject to exceptions concerning defined financial contracts), upon either an application for commencement, or the commencement of insolvency proceedings, shall not be enforceable.
- (x) Revisit the avoidable transactions regime with respect to three main issues that could be affecting its effectiveness, namely: (i) The absolute exclusion from avoidance of the debtor's performance of public (State) obligations, which could be eliminated; (ii) According to the manner of performance, the law may protect from avoidance all regular payments made prior to the filing of a bankruptcy petition; and, (iii) The judge that deals with the bankruptcy proceeding should be competent to deal with avoidable transactions cases.
- (xi) Clarify the insolvency legislation to ensure that the order of priorities of claims which is applicable in bankruptcy cannot be changed in a rehabilitation plan by a majority of creditors or a court ruling.

- (xii) Amend the claims recognition and resolution procedure to ensure that all creditors have cost-effective and timely access to it; and phony claims are not accepted. To this end, consideration could be given to introducing amendments to the law as follows: (i) The commencement of the insolvency proceedings may be notified individually to the known creditors –in particular to creditors domiciled abroad; (ii) The procedure for reviewing the bankruptcy court decision to accept or not accept a claim could be simplified and shortened; its costs could be significantly reduced; the mandatory participation of the insolvency trustee may be established, and the voluntary participation of any other creditor (s) shall be allowed (iii) The competence to deal with bankruptcy proceedings and the disputes or recourses that could arise as a result of such proceedings would not be fragmented or divided: the same first instance judge or, respectively, the same court of appeals panel could deal with and resolve all such disputes or appeals; and, (iv) The recognition of a claim in bankruptcy proceedings would not be left to the procedural activity of the creditor and the debtor exclusively. The judge could have and actually exercise *ex officio* power to investigate and collect evidence every time a risk of fraud is present –and to reject acceptance of an undisputed claim which is proved to be fraudulent as a result of such *ex officio* investigation.
- (xiii) Establish a modern and complete regime for dealing with cross-border insolvency cases involving non-EU countries –such as the UNCITRAL Model Law on Cross-Border Insolvency.
- (xiv) Incorporate rules for governing the treatment of both domestic and international enterprise groups in insolvency.

34. Improve the legislation for rehabilitation of viable enterprises in financial difficulties or insolvency. In particular, consideration should be given to implementing rehabilitation proceedings as follows:

- (i) Revise the law to establish a cost-effective, simple, timely and efficient system to access insolvency rehabilitation proceedings. Access to these proceedings would be direct (not necessarily having to wait until a bankruptcy proceeding is opened), easy and quick.
- (ii) Allow debtors to apply if they are in a situation of “insolvency” or “severe financial difficulty” (akin to “imminent insolvency”). A debtor may be allowed to use a rehabilitation proceeding even before insolvency effectively occurs. A law provision could describe the financial difficulty (or financial crisis or imminent insolvency) standard considering it as a state of financial affairs that, if not dealt with, will almost certainly and within a short time period result in insolvency.
- (iii) If legal requirements of filing are satisfied, a court decision opening the procedure will be issued within a very short time period. The court could reject the case commencement only if the debtor abuse is manifest and evident at the time of filing. If debtor abuse of the process is discovered upon commencement of a rehabilitation procedure, the debtor management could be removed from administration and the creditors’ meeting or committee would resolve either the continuation of rehabilitation or the conversion of the case into liquidation.
- (iv) An automatic and comprehensive stay of creditors’ executions over assets of the debtor could apply, including a balanced moratorium of the rights of secured creditors during rehabilitation, in order to facilitate reorganization.
- (v) As a general rule, the debtor’s management would remain administering the business over the rehabilitation procedure, but under the supervision of an independent insolvency professional. Court authorization would be required for several transactions that could

affect the integrity of the insolvency estate. The law would establish the consequences of non-compliance with rehabilitation management rules, namely: (i) the debtor's management could be removed and an insolvency administrator or trustee would be appointed to take full control of the administration of the enterprise under rehabilitation; and, (ii) the validity of the transactions performed in breach of the mentioned rules would be subject to scrutiny and, if needed, rendered null and void vis-à-vis the creditors.

- (vi) Amend the law to provide for several and flexible rehabilitation measures under the plan. The legal requirements would be limited to promoting fairness and prevent abuse. Time limits for submitting rehabilitation plans would also be sufficient to allow preliminary consultations and negotiations with creditors that may enhance the chances for the proposed plan to be approved. Amendments to a proposed plan would be allowed under specific circumstances. The legal requirements would be limited to promoting fairness and prevent abuse. The rehabilitation plan would include: (i) a detailed description of the new arrangement with creditors; (ii) a business plan and/or a description of the sources where the assets/funds would originate to support the execution of the plan; and, (iii) an audited opinion on the viability of the plan. The debtor and the creditors would be allowed to voluntarily deliver technical studies/assessments about the plan's viability. If the plan contemplates the sale of the whole enterprise, a draft sale agreement signed by a purchaser would not need to be attached at the time the plan is proposed.
- (vii) Plan approval would be based on clear criteria aimed at achieving fairness among similar creditors and recognition of relative priorities which cannot be altered by a majority decision. Majority acceptance of the plan would be required, while offering opposing creditors or classes a dividend equal to or greater than they would likely receive in a liquidation proceeding. The voting system would consider the interests of the different classes of creditors. For voting purposes, establishing classes of creditors could be established. Counting of votes to consider a plan approved would be specified in clear provisions. Related parties would not be allowed to vote a rehabilitation plan or their voting rights would be subject to special scrutiny and treated in a manner that could ensure fairness. Failure to approve a plan within a defined time period, or any extended periods, would be grounds for placing the debtor into bankruptcy (liquidation) proceedings.
- (viii) In order to be valid, a plan approved by a majority of creditors will need to be confirmed by a court. The court would deny confirmation to a plan only in cases of fraud or where substantive legal requirements have not been satisfied. The court would not evaluate the plan viability from business perspective.
- (ix) The law will establish an expedited reorganization procedure that enables the quick processing and provision of binding effect to out-of-court agreements or pre-packaged plans.
- (x) A plan approved by a majority of creditors and confirmed by the Court would bind all creditors, including those who dissented or did not vote. The effects of the plan would be binding with respect to forgiveness, cancellation or alteration of debts.
- (xi) Upon Court confirmation, a plan could be challenged only on fraud grounds and during a limited time period. Where plan approval was obtained by fraud and where creditors would not have voted on the plan had they not been defrauded, in principle such a plan will be declared void.
- (xii) The effective implementation of the plan could be independently supervised. The law could allow the parties to a plan to establish a system to monitor plan performance.

- (xiii) In cases of non-performance of a plan, or not fulfilling of some obligations assumed under a plan, the law could allow that the plan be amended by approval of a majority of creditors. Otherwise, the rehabilitation procedure would be converted into liquidation.
- (xiv) Once a rehabilitation plan had been implemented and fulfilled, full discharge of obligations prior to commencement of the rehabilitation procedure will occur.
- (xv) Upon consummation and completion of the plan, provision will be made to swiftly close the proceedings and enable the enterprise to carry on its business under normal conditions and governance.

Institutional and Regulatory Frameworks

35. Enhance the effectiveness of the institutional framework which would be highly beneficial to improve creditor/debtor regimes and the insolvency system in Bulgaria. As regards the judiciary, the following measures could be considered:

- (i) Creating new judicial positions where needed, appointing judges with proved knowledge and enough experience in commercial and/or insolvency matters, providing them with auxiliary staff adequately trained, and considering the advantages of specializing some courts in insolvency –if practicable.
- (ii) Simplifying enforcement proceedings and procedural rules of bankruptcy proceedings to limit procedural abuses that result in improper delays of such cases and, encouraging judges to sanction the procedural bad faith and the abusive use of procedural mechanisms.
- (iii) Terms specified in enforcement and insolvency legislation could be mandatory for courts, and consequences/responsibilities if deadlines are not met may be established –unless there are reasonable circumstances that justify the delay in particular cases.
- (iv) Concentrating the competence over all disputes that may arise in the course of bankruptcy proceedings under a single judge / court of appeal.
- (v) Continuing training of judges could include basic and more sophisticated insolvency concepts and techniques, related commercial law subjects and accounting and finance concepts and techniques that are important in bankruptcy.
- (vi) Encouraging consensual resolution of disputes, in particular through mediation; expanding the use of arbitration in loan disputes and some conflicts that may arise in bankruptcy; and, eliminating contradictions in the jurisprudence.
- (vii) Effectively addressing fraud and other illegal activities as well as procedural abuses is key to enhance the reputation of insolvency proceedings. The courts could be empowered to address matters of improper or illegal activities by parties or participants in court proceedings –and such powers could be effectively used applying severe sanctions where necessary.

36. Consider measures to improve the regulatory framework for insolvency representatives, namely:

- (i) Conduct the qualifying exam in a transparent manner, including guidelines on the frequency of exams, and fair administration. Adequate training before the exam could be provided.
- (ii) Review the system for appointing and removing insolvency representatives in particular cases, so that they can act with impartiality and independence. The system could also ensure that all registered insolvency representatives are appointed in bankruptcy cases.

- (iii) Allow insolvency representatives to delegate some tasks to assistants, ensuring that the necessary confidentiality and fiduciary control are preserved.
- (iv) Develop a Code of Ethics with detailed guidance as to the proper conduct of insolvency representatives to remain transparent, competent and conflict-free. A body could be designated to hear complaints and take actions regarding violations of the Code of Ethics.
- (v) Define the responsibilities of insolvency representatives in the law or regulations, and ensure enforcement in practice of their liabilities. Investigations could be conducted by those who are qualified to evaluate all aspects of an insolvency representative’s work and roles, and who are qualified to identify irregularities.
- (vi) Establish a remuneration system with appropriate incentives for efficient performance of insolvency representatives and prompt completion of bankruptcy proceedings. Remuneration for insolvency representatives could be set forth in a schedule or tariff that provides reasonable reimbursement of expenses, as well as a component based on the value of recovered assets (such as a percentage), or the value or complexity of the enterprise, in the case of successful reorganization.
- (vii) Create an independent body or association with clearly delegated powers to regulate the qualification, licensing, training and supervision of insolvency representatives; or, alternatively, regulate in detail the functions and roles of the Ministry of Justice in this area, and provide it with adequate staff and budget to effectively supervise and regulate the insolvency representatives’ profession. A professional association may be able to serve as a resource for the insolvency representatives to support each other and enhance their visibility, reputation, and competence.

IV. CONCLUDING REMARKS

37. The implementation of the afore-mentioned recommendations would be an ambitious project, but would result in the creation of an insolvency and creditor/debtor system fitting within the contours of the current regime yet able effectively to channel debtor and creditors alike into a fair, wealth-creating and job-preserving collective forum consistent with some of the best international practices in this domain. Among the specific benefits that could be expected to flow from the adoption of the suggested reforms would be:

- increased access to credit by businesses, as improved legal structures, enhanced ability to take, register and enforce security with a clear priority outcome would increase the flow of credit;
- increased confidence in the judicial, legal and regulatory systems;
- increased confidence in the ability of commercial banks to support business; and
- increased growth, confidence and stability in the Bulgarian economy.

38. The World Bank’s Sofia Office and the World Bank’s Global Initiative on Insolvency and Creditor/Debtor Regimes stand ready to assist the Bulgarian authorities in implementation of the recommendations in this Report.

Bulgaria ICR ROSC - Main Recommendations

Recommendations	See Detail at Paragraphs	Priority
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Creditor / debtor regimes		
Introduce amendments to update the mortgage legislation	31 (i)	Medium
Improve the legal framework for security rights over movable assets	31 (ii)	High
Enhance the registration system for rights and encumbrances on immovable assets	31 (iii)	Medium
Improve the registration system for security rights on movable assets	31 (iv)	High
Amend procedural laws to make judicial enforcement of creditor rights more effective	31 (v)	High
Amend the Special Pledges Act to make non-judicial enforcement less vulnerable to fraudulent practices	31 (vi)	High
Out of court restructuring / risk management		
Enhance the credit information system framework	32 (i)	Medium
Establish a new regime defining directors' obligations and liabilities in the period approaching insolvency	32 (ii)	Medium
Create an enabling environment for workouts	32 (iii)	Medium
Insolvency framework		
Amend the insolvency legislation to expedite insolvency proceedings and make them more effective and transparent	33 (i) – (xii)	High
Establish a complete legal regime for dealing with cross-border insolvency cases involving non-EU countries	33 (xiii)	Medium
Incorporate rules for governing the treatment of both domestic and international enterprise groups in insolvency	33 (xiv)	Medium
Enhance the legal framework for rehabilitation of viable enterprises in financial difficulties (pre-insolvency) or insolvency	34 (i) – (xv)	High
Institutional framework		
Enhance the effectiveness of the court system with competence on commercial enforcement and insolvency proceedings	35 (i) – (vii)	Medium
Improve the regulatory framework for insolvency representatives	36 (i) – (vii)	Medium

ANNEX I: PRINCIPLE-BY-PRINCIPLE ASSESSMENT¹³

No.	PART A. CREDITOR/ DEBTOR RIGHTS	RATING
A1	Key Elements	MNO
A2	Security (Real Property)	LO
A3	Security (Movable Property)	MNO
A4	Registry for Property and Security Rights over Immovable Assets	LO
A5	Registry for Security Rights over Movable Assets	MNO
A6	Enforcement of Unsecured Debt	MNO
A7	Enforcement of Security Rights over Immovable Assets	MNO
A8	Enforcement of Security Rights over Movable Assets	MNO
PART B. RISK MANAGEMENT AND CORPORATE WORKOUT		
B1	Credit Information Systems	LO
B2	Directors' Obligations in the Period Approaching Insolvency	MNO
B3	Enabling Legislative Framework	MNO
B4	Corporate Workout – Restructuring Procedures	MNO
B5	Regulation of Workout and Risk Management	MNO
PART C. LEGAL FRAMEWORK FOR INSOLVENCY		
C1	Key Objectives and Policies	MNO
C2	<i>Due Process</i> : Notification and Information	LO
C3	<i>Commencement</i> Eligibility	O
C4	Applicability and Accessibility	MNO
C5	Provisional Measures and Effects of Commencement	MNO
C6	<i>Governance</i> Management	O
C7	Creditors and the Creditors Committee	O
C8	<i>Administration</i> Collection, Preservation, Administration and Disposition of Assets	LO
C9	Stabilizing and Sustaining Business Operations	MNO
C10	Treatment of Contractual Obligations	MNO/LO
C11	Avoidable Transactions	LO
C12	<i>Claims and Claims Resolution</i> Treatment of Stakeholder Rights & Priorities	LO
C13	Claims Filing and Resolution	MNO
C14	<i>Reorganization Proceedings</i> Plan Formulation and Consideration Voting and Approval of Plan Implementation and Amendment Discharge and Binding Effects Plan Revocation and Case Closure	MNO
C15	International Considerations	LO
C16	Insolvency of Domestic Enterprise Groups	NO
C17	Insolvency of International Enterprise Groups	MNO
PART D. IMPLEMENTATION: INSTITUTIONAL & REGULATORY FRAMEWORKS		
D1	Role of Courts	MNO
D2	Judicial Selection, Qualification, Training and Performance	LO
D3	Court Organization	LO
D4	Transparency and Accountability	O
D5	Judicial Decision Making and Enforcement	MNO
D6	Integrity of the System (Courts and Participants)	MNO
D7	Role of Regulatory or Supervisory Bodies	MNO

¹³ The methodology used to qualify the compliance with the World Bank Principles is as follows. A Principle will be considered: **Observed** (O) whenever all essential criteria are generally met without any significant deficiencies; **Largely Observed** (LO) whenever only minor shortcomings are observed in order to achieve full observance with the Principle; **Materially Not Observed** (MNO) whenever the legislation or practices stray outstandingly from the Principle; and, **Not Observed** (NO) whenever there is no legislation, or whenever the latter or the practices do not fit in at all with the Principle.

PART A. CREDITOR/DEBTOR RIGHTS	
Principle A1	<p>Key Elements</p> <p>A modern credit-based economy should facilitate broad access to credit at affordable rates through the widest possible range of credit products (secured and unsecured) inspired by a complete, integrated and harmonized commercial law system designed to promote:</p> <ul style="list-style-type: none"> <input type="checkbox"/> reliable and affordable means for protecting credit and minimizing the risks of non-performance and default; <input type="checkbox"/> transparency of credit instruments and a fair treatment of the rights of creditors and debtors, including appropriate protection for natural persons with respect to consumer debts and assets¹⁴; <input type="checkbox"/> reliable procedures that enable credit providers and investors to more effectively assess, manage and resolve default risks and to promptly respond to a state of financial distress of an enterprise borrower; <input type="checkbox"/> affordable, transparent and reasonably predictable mechanisms to enforce unsecured and secured credit claims by means of individual action (e.g., enforcement and execution) or through collective action and proceedings (e.g., insolvency); <input type="checkbox"/> a consistent policy governing credit access, property rights, credit protection, credit risk management and recovery, and insolvency through laws and regulations that are compatible procedurally and substantively.
Description	<p>The Bulgarian legal framework contemplates a wide range of credit products (secured and unsecured), which are described below. The OCA outlines the creditors' rights in general as well as the rights of the unsecured creditors. According to Art. 133 of the OCA, all creditors of a debtor have equal right of security over the debtor's property.</p> <p>Articles 149 – 155 of the OCA regulate mortgages over real property. The Notaries and Notary Business Act and the Regulation on Recording govern the procedure for mortgage creation and registration in the Registry Agency – Land office.</p> <p>The notion of pledge is detailed in Art. 156 -165 of the OCA. Pledges can be classic (contractual) pledges contemplated in the OCA and commercial pledges regulated in Art. 310 – 314 of CA. The SPA, promulgated in State Gazette No. 100/22.11.1996, effective 1.04.1997 regulates the registered pledges established without delivery of the pledged property.</p> <p>The FCAA, promulgated in State Gazette No. 68 / 28 August 2006, governs the financial collateral arrangement for transfer of the title or full entitlement to the financial collateral as well as the arrangement for providing financial collateral by way of security.</p>

¹⁴ See Principle A6 footnote.

	<p>The Bulgarian Merchant Shipping Code (Art 47 - 52) outlines the mortgage of vessels.</p> <p>Under Bulgarian law, a number of registries provide information to credit providers and investors and allow them to more effectively assess, manage and resolve the credit risk and potential financial distress of a borrower.</p> <p>The Trade registry, available online, provides full information regarding the entities performing commercial activity, the nominal shareholders (save for the shareholders in joint-stock companies and partnership limited by shares), the amount of the registered capital, the type of shares, registered pledge of the shares, annual financial statement, initiated liquidation or insolvency proceedings. The Registry Agency – Land Office collects all the information regarding the real properties, ownership, mortgages, encumbrances, etc. The Central Special Pledges Registry provides information on registered pledges over movable assets, contracts for sale with retention of title and leasing contracts concerning movable assets. The Central Depository contains information on the pledged dematerialized securities (other than domestic government bonds). The registries of the vessels are responsible to maintain information on the vessels’ mortgages. All of the described registries are publicly available.</p> <p>The central register of debtors with the Chamber of Private Enforcement Agents (PEA) of the Republic of Bulgaria is the centralized database of domestic enforcement cases, initiated by PEAs. This register is not publicly available. According to Art.19 of Ordinance No.22 of 16 July 2009 on the Central Credit Register (amended, State Gazette No.31/20.04.2012) the Bulgarian National Bank shall grant access to the Central Credit Register (CCR) for certain entities, eligible to have such access pursuant to the applicable legislation, in order to facilitate the creditworthiness evaluation processes relevant to the loan lending activities.</p> <p>The mechanisms to enforce unsecured and secured credit claims by means of individual action (e.g., enforcement and execution) are provided in the CPC. The CPC outlines the general mechanisms for collection and enforcement of secured and unsecured claims. The creditors are entitled to pursue the debtor by the regular claim proceedings or by the enforcement order proceedings (Art. 410, 417 of the CPC). The collective action and proceedings are regulated in the CA.</p> <p>Within the prerogatives of the BNB falls the unified policy governing credit access, credit protection, credit risk management. Additionally, the BNB regulates the credit institutions and the Central Credit Register, which provides information for the indebtedness of the debtors.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>The Bulgarian legal framework governing creditor/debtor relationships is aimed at facilitating broad access to credit at affordable rates through the widest possible range of credit products (secured and unsecured). It provides several means for protecting credit and minimizing the risks of non-performance and default. A mortgage over residential real estate and/or commercial real estate (including real estate under construction) and/or land is the security right preferred by creditors. Non-possessionary pledges over movable assets are also used (including shares and company’s participations listed; corporate bonds-listed; shares / bonds not listed; rights – patent rights, licenses, trademarks, software; goods in warehouse; goods in turnover; machinery, equipment; vehicles (different than aircraft and ships); flocks;</p>

	<p>raw materials; precious metals; precious stones and jewelers; aircrafts; other FTA/inventories; receivables - pledged salary; account receivables; other receivables/rights). Commercial enterprises can be pledged as a whole and banks frequently accept this kind of security. Other types of securities used in lending practice are: letters of guarantee issued by local or foreign banks; securities issued by the Bulgarian government or by foreign governments or foreign National Banks; guarantees issued by governments, central banks and international organizations; company guarantees (i.e. surety agreements, letters of comfort, corporate guarantees); export and credit insurance (issued by governments, local insurance companies or foreign insurance companies); mortgages over ships, etcetera.</p> <p>The legislation contemplates detailed mechanisms to enforce unsecured and secured credit claims by means of individual action (e.g., enforcement and execution) or through collective action and proceedings (e.g., insolvency). However, as explained below in this report, individual enforcement is not fully efficient yet and insolvency proceedings are not totally workable in practice.</p>
Comment	<p>The legal and institutional framework for credit in Bulgaria could be further enhanced so as to better protect the rights and interests of creditors and debtors, and to expand credit access. Despite some positive legislative developments, credit institutions still face significant issues in their debt collection efforts. The main issues that would need to be resolved in order to make the framework for credit fully effective, and the steps required to accomplish this objective are explained in detail below in this Report.</p>
Principle A2	<p>Security (Immovable Property)</p> <p>One of the pillars of a credit economy is the ability to own and freely transfer ownership in land and land-use rights, and to grant a security right (such as a mortgage, charge or hypothec) to credit providers with respect to such rights as a means of gaining access to credit at more affordable prices. The typical hallmarks of such system include the following features:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Clearly defined rules and procedures for granting, by agreement or operation of law, security rights in all types of immovable assets; • Security rights related to any or all of a debtor’s obligations to a creditor, present or future, and between all types of persons; <input type="checkbox"/> Clear rules of ownership and priority governing hierarchy of competing claims or rights in the same assets, eliminating or reducing priorities over security rights as much as possible; <input type="checkbox"/> Methods of notice, including a system of registry, which will sufficiently publicize the existence of security rights to creditors, purchasers, and the public generally at the lowest possible cost.
Description	<p>The OCA establishes the main rules and procedures for granting contractual mortgages and mortgages by law. Additional rules on mortgages can be found in the Ownership Act, the Notaries and Notary Business Law and the Civil Procedure Code.</p> <p>The mortgage is applicable to numerous security interests related to any or all of a debtor’s obligations to a creditor. For example, the mortgage can be used in relation</p>

to a loan to buy a home or land for building a home, office space, an industrial building, etc.; loan to reconstruct or improve a home; loan to purchase shares in housing properties for the purpose of acquiring the entire properties; consumer loan; loan to obtain operating capital for businesses; investment business loan; as well as an additional security provided to third parties borrowers.

The rules of ownership are generally provided in the Ownership Act (OA). Chapter V of the Criminal Code governs the penalties for criminal offenses against property rights. The protection of property can be non-judicial, which includes protection under Article 86 OA, administrative protection and judicial protection, which is provided in the criminal and civil law.

Civil protection includes the claims of the borrower to return the borrowed property of the tenant or of the depositor based on an existing relationship between the creditor and the debtor. Real property claims - restitution, omissions and errors in the cadastral plan. The possession protection can be performed by claims under Articles 75, 76 of the OA. The ownership of relevant real property should always be registered with the Registry Agency – Land Office.

Pursuant to the relevant legislation, a Registry Agency is established. According to the Regulation on Recordings, the Registry Agency has the duty to manage and keep a streamlined recording system and hence a system of announcing documents and circumstances related to the ownership of real property, the transactions and all related circumstances such as mortgages. This provides guarantee for the creditors' rights and legal interests.

A claim may be secured by a mortgage on a debtor or a third party immovable asset.¹⁵ It may be established only with respect to singularly specified properties and for a specific sum of money.¹⁶ A mortgage may be created only on property which belongs to the mortgagor at the time when the contract is concluded.¹⁷

A mortgage contract shall be concluded in writing, with a notarized title deed which shall indicate: the full names, domicile and occupation of the creditor and the debtor, as well as of the owner of the property if the mortgage is created for another's obligation, and if any of the above parties is a legal person - its trade name; the property on which the mortgage is created; the secured claim, its maturity and the interest rate if interest is agreed, as well as the amount for which the mortgage is created if the claim is non-monetary.¹⁸ The creation of a mortgage shall be invalid if either in the mortgage contract, in the application for creation of a mortgage by operation of law, or in the deed pursuant to which it is filed there is uncertainty as to the identity of the creditor, the owner or the debtor, the identity of the property and the secured claim, or the amount of the sum for which the mortgage is created.¹⁹

¹⁵ OCA, Art. 149.

¹⁶ OCA, Art. 166.

¹⁷ OCA, Art. 167.

¹⁸ OCA, Art. 167.

¹⁹ OCA, Art. 170.

The mortgage shall follow the secured claim when it is transferred and shall be extinguished if the claim is extinguished.²⁰ Should the obligation be divided among the debtor's heirs, the mortgage shall continue to encumber the whole obligation on the entire asset or on all assets even if they are divided among the heirs.²¹ Should the mortgage secure someone else's obligation, the owner of the mortgaged property may plead against the creditor all defences of the debtor, as well as claim set-offs with the debtor's claims against the creditor.²² A creditor whose claim is secured by a mortgage shall be entitled to be satisfied preferentially from the mortgaged property's price, irrespective of whose ownership it is.²³

In the event there are several mortgages on one property the creditors shall be satisfied preferentially in the order in which the mortgages were created, even though the secured claim may not have existed at the time of their creation.²⁴ A mortgage shall be considered created upon its registration in the property register.²⁵ A mortgage shall receive its rank upon its registration.²⁶ The registration shall be valid for 10 years from the date on which it was made. It may be extended, if the registration is renewed before the expiration of such period. Should the time period expire and no renewal is made the mortgage may be registered anew. In that case it shall be ranked as from the new registration.²⁷

If the mortgaged property perishes or is damaged, or is expropriated for state or municipal needs, the mortgagee shall be entitled to preferential satisfaction from the insurance amount or the compensation due in accordance with the order of privileges which their original claims had. However, a payment made to the owner shall be valid if the mortgagee was notified of it by the insurer or the person owing the compensation and did not object within a three month period.²⁸

If the debtor transfers the mortgaged property to a third party and the transferee pays or is subjected to forcible execution, he shall assume the rights of the satisfied creditor against the debtor, against the guarantors and against the persons who have later than him acquired from the debtor the ownership of mortgaged properties for the same obligation. The same rights shall also be enjoyed by an owner who has mortgaged his property for another debtor's obligation. However, in this case, he shall assume the creditors rights against the guarantors up to the amount which he could claim against them, were he a guarantor.²⁹

²⁰ OCA, Art. 150.

²¹ OCA, Art. 150.

²² OCA, Art. 151.

²³ OCA, Art. 173.

²⁴ OCA, Art. 153.

²⁵ OCA, Art. 166.

²⁶ OCA, Art. 169. In order to have effects, the transfer and pledging of a claim secured by mortgage, the assumption of such a claim and the imposition of an attachment on it, as well as its novation and substitution in obligation, must be in writing with the signatures certified by a Notary Public and must be incorporated in the property register (OCA, Art. 171). Also, see: OCA, Art. 175.

²⁷ OCA, Art. 172.

²⁸ OCA, Art. 154.

²⁹ OCA, Art. 155.

In individual executions (i.e., outside of insolvency proceedings), claims shall be satisfied according to the order of privileges established by Art. 136 of the OCA as follows:

1. Claims on costs for securing and forcible execution, as well as for actions pursuant to Articles 134 and 135 - out of the value of the property for which they were made, for the creditors in favor of whom these costs were made;
2. Claims of the state on taxes on a certain property or on a motor vehicle - out of the value of that property or vehicle, as well as claims on concession payments, interests and defaults on concession contracts.
3. Claims secured by a pledge or mortgage - out of the value of the pledged or mortgaged properties;
4. Claims for which the right of retention is exercised - out of the value of the retained property; should this claim arise from costs for maintenance or improvement of the retained property, it shall be satisfied before the claims under item 3;
5. Employee claims arising from employment relationships and maintenance claims;
6. Claims of the state other than fines.³⁰

Claims under items 5 and 6 shall be satisfied preferentially from the entire property of the debtor. Claims of the same order shall be satisfied proportionately.³¹ When the law does not specify the order for satisfying a claim for which it provides preferential satisfaction, that claim shall be paid after the claims under item 6.³² Where particular laws provide for some claims to be paid before all others they shall be paid after the claim under item 1, and in the event they compete with each other they shall be paid proportionately.³³

In addition to accrued interest the right to preferential satisfaction shall cover the outstanding interest from the moment the execution commenced, as well as interest for the year preceding it.³⁴ The mortgage shall secure the claim irrespective of any changes that may have occurred in the latter, but only to the amount covered by the registration. However, if it is noted that the claim is interest-bearing, the mortgage shall also secure the interest for the two years before the year of serving a writ of summons for voluntary performance on the owner, for the current year and for all the following years until the date of sale of the property. In addition, the mortgage shall secure the creditor's claims for expenses incurred for its creation and renewal, and court and execution expenses.³⁵

An agreement which stipulates in advance that if the obligation is not performed the creditor shall become owner of the property, as well as any other agreement which stipulates in advance a manner for satisfying the creditor other than the one provided

³⁰ OCA, Art. 136. This ranking of claims is largely upheld in insolvency proceedings (see Principle C 12.3, below)

³¹ OCA, Art. 136.

³² OCA, Art. 137.

³³ OCA, Art. 137.

³⁴ OCA, Art. 136.

³⁵ OCA, Art. 174.

	<p>for by the law shall be invalid.³⁶ (As regards mortgage enforcement, see Principle A7 below).</p> <p>The registration of a mortgage shall be deleted on the basis of the creditor’s consent, which must be certified by a notary public, or on the basis of an effective court ruling. The deletion shall be made upon an application to which the deed of consent or a copy of the effective court ruling is attached. It shall be made by indicating in the record of the mortgaged property. The deletion shall extinguish the mortgage. But if the deed on the basis of which the deletion was performed is declared null and void, the mortgage may be registered anew. In that case, it shall be ranked from the date of the new registration.³⁷</p>
Assessment	<p>Largely observed.</p> <p>The legal framework for granting security rights over immovable assets is adequate and largely consistent with best international practice, but it could be improved. Most credit providers consider this framework as being theoretically satisfactory. Priority governing hierarchy of competing claims or rights in the same immovable asset is adequate. Priorities over security rights are very limited and also comply with international standards.</p> <p>In practice, however, mortgage enforcement is lengthy and rather ineffective, affecting in most cases the recovery rate of mortgage loans (see Principle A7, below). Improving the enforcement effectiveness would be needed to further credit expansion at more affordable rates.</p> <p>Mortgage legal framework could also be updated to introduce more flexibility according to current market practices. At present, existing mortgages cannot be modified easily. For example, amending a mortgage contract interest rate would require a new mortgage instrument being created and registered. Otherwise, article 153 of the OCA would implicitly allow creating a mortgage to secure future obligations, but some market players consider such provision as insufficient to that avail.³⁸</p>
Comment	<p>Mortgage legislation should be revisited and updated to introduce more flexibility according to current market practices. In particular, amendments to existing mortgages should be easier to establish. Mortgages to secure future obligations should be clearly regulated by the law.</p> <p>Mortgage enforcement should be improved as suggested in Principles A6 and A7, below.</p>
Principle A3	<p>Security (Movable Property)</p> <p>A credit economy should broadly support all manner of modern forms of lending and credit transactions and structures, with respect to utilizing movable assets as a means of providing credit protection to reduce the costs of credit. A mature secured</p>

³⁶ OCA, Art. 152.

³⁷ OCA, Art. 179.

³⁸ OCA, Art. 153: “In the event there are several pledges or mortgages on one property the creditors shall be satisfied preferentially in the order in which the pledges and mortgages were created, even though the secured claim may not have existed at the time of their creation”.

	<p>transactions system enables parties to grant a security right in movable property, with the primary features that include:</p> <ul style="list-style-type: none"> □ Clearly defined rules for the creation, enforceability and effectiveness against third parties of security rights over movable assets; □ Clear rules for security agreements, and security rights arising by operation of law, if any; □ Allowance of security rights in all types of movable assets, whether tangible or intangible (for instance, equipment, inventory, goods in transit, attachments, accounts receivable, bank accounts, securities, intellectual property, agricultural products, commodities, and their proceeds, offspring and mutations), present, after-acquired or future assets (including goods to be manufactured or acquired); wherever located and taken as collateral as specific assets, categories of assets, or the totality of movable assets of the grantor; and based on both possessory and non-possessory rights; • Security rights related to any or all of a debtor’s obligations to a creditor, present or future, and between all types of person; □ Methods of notice (especially, through a system of registration) that will sufficiently publicize the possibility that there may be security rights to creditors, purchasers, and the public generally at the lowest possible cost; □ Clear rules of priority governing hierarchy of competing claims or rights in the same assets, eliminating or reducing priorities over security rights as much as possible; and □ Specific rules for acquisition finance developed on the basis of the general rules applicable to security rights or based on the recognition of the ownership rights of sellers in reservation of title sales and of lessors in financial leases; including methods of notice that will sufficiently publicize such rights.
<p>Description</p>	<p>The Bulgarian legislation provides several rules and procedures to create, recognize, and enforce security interests over movable assets, arising out of agreement or operation of law, and based on both possessory and non-possessory rights. Possessory pledges are governed by the OCA and the CA, and non-possessory pledges are governed by the SPA.</p> <p><i>A. Possessory pledges</i></p> <p>The OCA and the CA govern pledges where the possession of the pledged asset is transferred to the creditor or to a third party (‘possessory pledges’).</p> <p><i>a. Pledge on movable assets.</i> A contract for pledge shall be valid only if the pledged asset is handed over to the creditor or to another person designated by him and the pledgor.³⁹ Where a secured claim exceeds 5,000 levs, the pledge cannot be enforced against third parties if there is no document in writing bearing a relevant date indicating the pledged assets and the secured claim.⁴⁰ The creditor shall be entitled to retain the pledged asset until the secured claim is fully extinguished, but she shall</p>

³⁹ OCA, Art. 156.

⁴⁰ OCA, Art. 156.

not have the right to use it unless agreed otherwise.⁴¹ Should the creditor be deprived of possession of the asset, she may, on grounds of his pledge, claim it back from the person holding it.⁴² If the pledged asset is in danger of being damaged, both the creditor and the pledgor may request permission from the court of first instance to sell it and to deposit the amount received in a bank as security to the creditor.⁴³ A creditor shall be entitled to preferential satisfaction from the pledged asset price through forcible execution only if he has not returned it to the debtor. The asset shall be deemed returned if it is in the debtor's possession.⁴⁴ Where a secured claim is monetary or liquidated damages in cash have been agreed for it, if the pledge is created by a contract in writing or is provided by operation of law for securing claims which arise from a contract in writing, the creditor may request an immediate enforcement order according to the procedure established by Article 418 of the Code of Civil Procedure.⁴⁵

b. Pledge on claims. Transferable claims may be pledged. A contract for pledging a claim is not effective against third parties if the debtor was not informed of the pledge. A pledge cannot be enforced against third parties if there is no document in writing bearing a relevant date indicating the pledged assets and the secured claim.⁴⁶ A pledgor must hand over to the pledgee the documents which prove the pledged claim, if such exist.⁴⁷ A creditor who has a pledge on a claim must carry out all acts required to preserve it: he shall be obliged to collect the interest on the pledged claim, as well as the principal should it become due.⁴⁸ Anything collected by the creditor shall be kept by him as a pledge. If it is in cash, the amount shall be deposited in a bank as security for the creditor.⁴⁹ A creditor who has a pledge on a claim may also request an immediate enforcement order according to the procedure established by Article 418 of the Code of Civil Procedure.⁵⁰

c. Commercial pledge. A contract for commercial pledge which secures rights ensuing from a commercial transaction shall be considered concluded in the event of: (i) a pledge of movable items and bearer securities - upon their delivery to the creditor or to another person on his account; (ii) a pledge of securities to order - by endorsement for security and delivery to the creditor. In the event of transfer of a secured claim the pledge shall be considered transferred upon delivery of the pledged object, unless the transferor has agreed to hold it as another person.⁵¹ Where the pledge contract has been concluded in writing with a valid date and the parties

⁴¹ OCA, Art. 157.

⁴² OCA, Art. 157.

⁴³ OCA, Art. 158.

⁴⁴ OCA, Art. 159.

⁴⁵ OCA, Art. 160.

⁴⁶ OCA, Art. 162.

⁴⁷ OCA, Art. 163.

⁴⁸ OCA, Art. 164.

⁴⁹ OCA, Art. 164.

⁵⁰ OCA, Art. 165.

⁵¹ CA, Art. 310.

have agreed that, should the debtor be in delay, the satisfaction from the pledge may be effected without court intervention, the creditor shall be entitled to sell on his own the pledged item or securities, if they have a market or stock exchange price. The creditor shall be bound to immediately notify the pledgor of the sale and to pay him the remainder of the price obtained.⁵²

B. Non-possessory (registered) pledges

The SSPA governs pledges established without delivery of the pledged property, and the registry for these pledges.⁵³ The pledge contract shall be executed in writing.⁵⁴ In principle, the pledgor shall be a merchant or a person referred to in Article 2 of the Commerce Act, but the law also contemplates several exceptions to this restriction.⁵⁵

Registered pledges can be created over:

1. accounts receivable, uncertificated securities, and movable assets exclusive of ships and aircraft;
2. equity shares in general and limited partnerships, limited partnerships with shares or limited liability companies;
3. groups of accounts receivable, of machines and equipment, of goods or materials and of uncertificated securities;
4. rights in patents for inventions, utility models, registered marks, industrial designs, topologies of integrated circuits and certificates for plant sorts and animal breeds;
5. commercial enterprises.⁵⁶

It is possible for the pledged property to be defined in generic terms or to be future property. Future crops may be pledged from either the current, or the following season.⁵⁷ The security rights granted shall extend to the interest earned on a pledged accounts receivable.⁵⁸ Where a pledged asset is processed or becomes part of other asset, the security rights granted shall attach to the newly formed asset.⁵⁹ It shall be possible for the secured debt to be described in specific or generic terms, as well as to be contingent or future debt.⁶⁰ The pledge shall secure the debt and all interest and penalties emanating from the secured debt.⁶¹ The pledge shall continue to secure the secured debt in cases where the secured debt itself is used as pledged property.⁶² A pledge shall lapse where a third party acquires, through a transaction executed by

⁵² CA, Art. 311.

⁵³ SPA, Art. 1.

⁵⁴ SPA, Art. 2.

⁵⁵ SPA, Art. 3.

⁵⁶ SPA, Art. 4 (1).

⁵⁷ SPA, Art. 4 (2).

⁵⁸ SPA, Art. 4 (3).

⁵⁹ SPA, Art. 4 (4).

⁶⁰ SPA, Art. 5 (1).

⁶¹ SPA, Art. 5 (2).

⁶² SPA, Art. 6.

the pledgee within the scope of his ordinary activities conducted by occupation, rights in the pledged property, which are incompatible with the pledge law.⁶³

The pledgor shall have the right to retain possession of the pledged property. A pledgor who retains possession of the pledged property shall have the rights: (i) to use the pledged property in his activity, in accordance with its intended use; and, (ii) to dispose of the pledged property through legal transactions. Where subject of the disposal transactions are uncertificated securities or assets and rights which fall beyond the scope of the pledgor's ordinary, the consent of the pledgee shall be required.⁶⁴

A pledgor who retains possession of the pledged property shall be obligated to keep it with the care of a good merchant and, in particular, shall: (i) insure the pledged property at his own expense against the common risks accepted in the industry and in a way that enables the pledgee to benefit from any insurance compensations; (ii) inform the pledgee of any damage to or encroachments upon the pledged property; (iii) inform the pledgee of all proceedings affecting the pledged property; (iv) inform the pledgee in writing of all actions, in law or in fact, that may cause the transfer of title to, or the creation of third party rights in, or a change in the identity of the pledged property, as well as provide him with a copy of the documents certifying such transfer of title or creation of third party rights; (v) inform any third parties acquiring rights in the pledged property of the rights of the pledgee; (vi) sell the pledged property in case of potential spoiling thereof, after giving notice to the pledgee, and deposit the proceeds of the sale in a bank account as security for the pledgee.⁶⁵ The pledgor shall be obligated to provide the pledgee with opportunities to examine the condition of the pledged property.⁶⁶ The pledgor shall have the obligation to request forthwith the recording in the appropriate registry of any changes in the rights or in the identity of the pledged property.⁶⁷ The pledgor, after receiving a notification of the commencement of foreclosure, may not dispose of the pledged property.⁶⁸ The pledgor shall be obligated, upon lapse of the pledge, to satisfy the pledgee with the proceeds received from the transfer of the property.⁶⁹

The pledgee shall have the right to satisfy his claim from: (i) the price of the pledged property or from any compensation obtained therefor; (ii) the proceeds received from the transfer of the pledged property; (iii) the equivalent of the property referred to in either (i) or (ii), in case this property cannot be separated from the other property of the pledgor.⁷⁰ The pledgee, based on a certificate from the registry of a recorded security interest, shall have the right to be provided by the state authorities and the third parties, holding, safeguarding or having on their books the pledged

⁶³ SPA, Art. 7.

⁶⁴ SPA, Art. 8.

⁶⁵ SPA, Art. 9 (1).

⁶⁶ SPA, Art. 9 (2).

⁶⁷ SPA, Art. 9 (3).

⁶⁸ SPA, Art. 9 (4).

⁶⁹ SPA, Art. 9 (5).

⁷⁰ SPA, Art. 10 (1).

property, the information concerning this property accessible to the pledgor.⁷¹ Should the pledgor be in default of his obligations under the pledge contract, the pledgee may demand performance before the debt matures, as well as satisfy his claim from the pledged property.⁷²

A registered pledge shall be perfected as to third parties, only if it is recorded in the pledgor's record at the Central Pledges Registry.⁷³ Neither a pledge of accounts receivable, a contract for sale with retention of title until payment of the purchase price, a lease contract, nor an attachment of property, shall be perfected against a creditor who has received a security interest pursuant to the SPA in accounts receivable, sold, leased or attached items, unless it is recorded in the pledgor's record at the Central Pledges Registry.⁷⁴ In the cases where the law provides for recording in another registry, perfection shall be accomplished by recording the pledge in such other registry.⁷⁵ The priority of registered pledges in the same pledged property shall be determined by the sequential order of recording in the registry.⁷⁶ The right of priority in satisfaction and the perfection of the rights shall lapse if the pledge, sale or lease is not recorded within fourteen days after execution.⁷⁷ A debt secured by a registered pledge shall be satisfied in the order provided in Article 136, Paragraph (1), Sub-paragraph 3 of the Obligations and Contracts Act or Article 722, paragraph (1), Sub-paragraph 1 of the Commerce Act or Article 94, paragraph 1, Sub-paragraph 1 of the Bank Bankruptcy Act.⁷⁸

The pledge of an accounts receivable shall be effective against the debtor under the account, only after the debtor under the account has received notice. Notice may be given by either the pledgor or the pledgee. Until notice is received, the pledgor shall collect the accounts receivable and its yields.⁷⁹

All of the facts required by the SPA to be filed to record a pledge of uncertificated securities shall be recorded in the Central Depository.⁸⁰ Pledges of uncertificated stocks and bonds must be recorded in the issuing company's book for uncertificated stock or bonds.⁸¹ The facts required to be filed to record a pledge of government securities shall be recorded in the registers of government securities.⁸² Agreements for the pledge of equity shares in commercial companies shall be executed in writing and all signatures shall be notarized. All of the facts required to be filed to record a

⁷¹ SPA, Art. 10 (2).

⁷² SPA, Art.11.

⁷³ SPA, Art. 12 (1).

⁷⁴ SPA, Art. 12 (2).

⁷⁵ SPA, Art. 12 (3).

⁷⁶ SPA, Art. 14.

⁷⁷ SPA, Art. 15.

⁷⁸ See Principle A2 above, and Principle C12, below.

⁷⁹ SPA, Art. 17.

⁸⁰ SPA, Art. 18 (1).

⁸¹ SPA, Art. 18 (2).

⁸² SPA, Art. 18 (3).

pledge of equity shares, shall be recorded in the record of the issuing company in the Commercial Registry.⁸³ The facts concerning a pledge on industrial property shall be recorded in the registry of the Patent Office of Republic of Bulgaria.⁸⁴

The pledge of a group of assets shall attach to each one of its components, until a component has been separated from the group. The pledge of a group shall be transferred to its components as of the time of receipt of the notification of commencement of foreclosure.⁸⁵

Pledge contracts of a commercial enterprise shall be executed in writing and all signatures shall be notarized⁸⁶. All of the facts required to be filed to record a pledge of a commercial enterprise, shall be recorded in the pledgor's file in the Commercial Registry.⁸⁷ A pledge contract of a commercial enterprise shall be perfected as against third parties who have acquired rights in individual assets of the commercial enterprise, only if the pledge agreement has been recorded in the appropriate registry as well. If the contract for the pledge of a commercial enterprise lists individual assets, the pledge shall remain attached to them even when they have been separated from the enterprise.⁸⁸ In case of a transformation of the pledgor by splitting and spinning off and by a change of legal form, the pledge of the company shall be attached also to the enterprises of all newly established companies.⁸⁹ In case of a transformation of the pledgor by take-over, merger, splitting by acquisition, spinning off by acquisition and by transfer of property onto the sole owner, the pledge of the company shall attach only onto the set of items which used to belong to the pledgor. Within the period of separate management, the pledge creditor may request execution or security according to its rights. If the request is not satisfied within one month, the creditor may sell the set of items which used to belong to the pledgor as a company following the procedure stipulated in the SPA. With the expiry of the time period of separate management, the pledge shall be extinguished.⁹⁰ Simultaneously with the registration of the transformation, the Registration Agency shall record in the company case-file of each of the companies, undergoing transformation, as well as of the sole owner in the case of a transfer of property onto a sole owner, as well as the transfer of the pledge of the company onto the respective legal successor.⁹¹ The rules governing the pledge of a group of assets shall also apply to the pledge of a commercial enterprise.⁹²

The order of privileges is established by Art. 136 of the OCA (see Principle A2, above). The mentioned ranking of claims is largely upheld in insolvency

⁸³ SPA, Art. 19.

⁸⁴ SPA, Art. 19a.

⁸⁵ SPA, Art. 20.

⁸⁶ SPA, Art. 21 (1).

⁸⁷ SPA, Art. 21 (2).

⁸⁸ SPA, Art. 21 (3).

⁸⁹ SPA, Art. 21 (4).

⁹⁰ SPA, Art. 21 (5).

⁹¹ SPA, Art. 21 (6).

⁹² SPA, Art. 21 (7).

proceedings (see Principle C12, below). The enforcement procedure against the registered pledge under the SPA is non-judicial (see Principle A8, below).

C. Financial collateral arrangements

The Financial Collateral Arrangements Act (FCAA) defines the perfecting, contents and effect of financial collateral arrangements. The FCAA objective is to ensure certainty and effectiveness of financial collateral arrangements.⁹³

By a financial collateral arrangement, a person, called ‘collateral provider’ transfers the title or full entitlement to financial collateral or provides such financial collateral by way of security in favor of another person, called ‘collateral taker’, for the purpose of securing or otherwise covering the performance of certain financial obligations.⁹⁴ A financial collateral arrangement can be a financial collateral arrangement for transfer of the title or full entitlement to the financial collateral (‘title transfer financial collateral arrangement’), or an arrangement for providing financial collateral by way of security (‘security financial collateral arrangement’), whether or not these are perfected individually, are part of the contract giving rise to the relevant financial obligations, covered by a master agreement or general terms and conditions. Financial collateral arrangements must define the financial obligations and the financial collateral.⁹⁵ A financial collateral arrangement shall take effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganization measures in respect of the collateral provider or collateral taker.⁹⁶ The law specifies the entities that can be parties to a financial collateral arrangement.⁹⁷

⁹³ FCAA, Art. 1.

⁹⁴ FCAA, Art. 2 (1).

⁹⁵ FCAA, Art. 2 (2).

⁹⁶ FCAA, Art. 2 (6).

⁹⁷ Parties to a financial collateral arrangement are specified in FCAA, Art. 3 as follows:

(1) The collateral provider and the collateral taker shall be:

1. a public, central government and local government authority, including public sector bodies charged with or intervening in the management of government or municipal debt, and public sector bodies authorised to hold accounts for customers;
2. a central bank;
3. the European Central Bank, the Bank for International Settlements, the European Investment Bank, the International Monetary Fund and the multilateral development banks;
4. a credit institution according to Article 2 (5) of the Credit Institutions Act, a credit institution within the meaning of Article 4 (1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), including the institutions listed in Article 2 of that Directive;
5. a financial institution according to the Credit Institutions Act and a financial institution within the meaning of Article 4 (5) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;
6. an insurance undertaking according to the Insurance Code, according to Article 1 (a) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), and according to Article 1 (1) (a) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;
7. an investment intermediary according to the Markets in Financial Instruments Act and Article 4 (1) (1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives

	<p>By a title transfer financial collateral arrangement, including repurchase agreements ('repos'), a collateral provider fully transfers the title or full entitlement to financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of certain financial obligations.⁹⁸ By a security financial collateral arrangement, a collateral provider provides financial collateral by way of security in favor of, or to, a collateral taker, and the full or limited title to or the full entitlement to the financial collateral remains with the collateral provider when the security right is established.⁹⁹ Financial collateral shall be money claims, financial instruments and credit claims which, under a financial collateral arrangement, are used to secure or otherwise cover the performance of certain financial obligations.¹⁰⁰ Financial collateral shall be provided by being delivered, transferred, held, registered or otherwise passed into possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf.¹⁰¹</p> <p>The financial collateral arrangement shall be evidenced in writing. The provision of financial collateral shall be evidenced in writing in a way allowing for the identification of the financial collateral to which it applies. For this purpose, it is sufficient to prove that: (i) the book entry securities have been credited to, or form a credit in, the relevant account; (ii) the money claims have been credited to, or form a credit in, the designated account with a bank.¹⁰²</p> <p>Financial obligations shall be the obligations which are secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of</p>
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85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

8. a management company;

9. collective investment scheme and a national investment fund;

10. a regulated securities market;

11. a central depository;

12. a supplementary social insurance company;

13. a health insurance company;

14. a special investment purpose company;

15. a central counterparty, settlement agent or clearing house, including similar institutions, acting in the futures, options and derivatives markets;

16. a trader, other than a sole trader, who acts on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points 1 to 15, or

17. a trader, other than a sole trader or an unincorporated firm, provided that the other party to the financial collateral arrangement is an institution as defined in points 1 to 16.

(2) A party to a financial collateral arrangement can also be a person from a Member State who, under its national law, has the status of a person under paragraph 1, points 1, 2, 4 to 17.

⁹⁸ FCAA, Art. 2 (3).

⁹⁹ FCAA, Art. 2 (4).

¹⁰⁰ FCAA, Art. 4 (1).

¹⁰¹ FCAA, Art. 5 (1).

¹⁰² FCAA, Art. 6.

financial instruments. Financial obligations shall be: (i) present or future, actual or contingent or prospective obligations, arising under a master agreement or similar arrangement; (ii) obligations owed to the collateral taker by a person other than the collateral provider; (iii) obligations of a specified class or kind arising from time to time. A financial collateral arrangement shall secure the relevant financial obligations and any related thereto interest, penalties, damages and costs, unless otherwise agreed.¹⁰³ If, and to the extent that the terms of a security financial collateral arrangement so provide, the collateral taker is entitled to exercise a right of use in relation to the financial collateral provided.¹⁰⁴

In the event of default: (i) the collateral taker is entitled to realize or appropriate the financial collateral without any court approval, or (ii) a close-out netting provision comes into effect.¹⁰⁵ The close-out netting provision is a provision of a financial collateral arrangement, or in the absence of any such provision, any statutory rule by which, on the occurrence of default the obligations of the parties: (i) are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or, (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.¹⁰⁶ In the event of default and subject to the provisions of the security financial collateral arrangement, the collateral taker shall have the right, without court approval, to realize the financial collateral provided under a security financial collateral arrangement by: (i) selling or appropriating the financial instruments and setting off their value against, or applying their value in discharge of, the relevant financial obligations; (ii) setting off the money claims used as collateral against the relevant financial obligations or otherwise discharging the latter using the money claims; (iii) selling or appropriating the credit claims, setting off their value against, or applying their value in discharge of, the relevant financial obligations.¹⁰⁷ Appropriation of financial instruments and of credit claims is possible only if in the security financial collateral arrangement the parties have agreed on the appropriation and on the valuation of the financial instruments.¹⁰⁸ Unless otherwise agreed, the realization of the financial collateral shall be without any requirement to the effect that: (i) prior notice of the intention to realise the collateral must have been given; (ii) the terms of the realization of the collateral be approved by any court, other institution or other person; (iii) the realization be conducted by public auction or in any other prescribed by law manner; (iv) any additional time period must have elapsed.¹⁰⁹

In case of winding-up proceedings in respect of the collateral provider, the collateral taker shall retain the right to realize the financial collateral according to the above

¹⁰³ FCAA, Art. 7.

¹⁰⁴ FCAA, Art. 8 (1).

¹⁰⁵ FCAA, Art. 10 (1).

¹⁰⁶ FCAA, Art. 10 (2).

¹⁰⁷ FCAA, Art. 11 (1).

¹⁰⁸ FCAA, Art. 11 (2).

¹⁰⁹ FCAA, Art. 11 (3).

described procedure.¹¹⁰ In case of default, the collateral taker's obligation to return to the collateral provider the financial collateral provided under a transfer financial collateral arrangement shall be extinguished, and the collateral taker shall be satisfied by retaining title, even in the case of winding-up proceedings in respect of the collateral provider.¹¹¹

If upon the enforcement of the close-out netting provision or after the realization of the financial collateral or the discharge of the obligation of the collateral taker to return to the collateral provider the financial collateral it turns out that the amount received is higher than the claim of the collateral taker, the balance shall be immediately paid to the collateral provider. The claims of the collateral provider shall be discharged with the expiry of one year period from the unilateral realization of the financial collateral.¹¹²

In the event of default, the close-out netting provision shall be applied notwithstanding: (i) the commencement or continuation of winding-up proceedings¹¹³ or reorganization measures¹¹⁴ in respect of the collateral provider and/or the collateral taker; (ii) any purported assignment of the financial collateral, other disposition or attachment thereof.¹¹⁵

A financial collateral arrangement, as well as the provision of financial collateral under such arrangement, may not be declared invalid or void or be reversed or terminated on the sole basis that the financial collateral arrangement has come into existence, or the financial collateral has been provided: (i) on the day of the commencement of winding-up proceedings or reorganization measures, but prior to the order or decree making that commencement; or (ii) in a prescribed period prior to, and defined by reference to, the commencement of such winding-up proceedings or reorganization measures or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such winding-up proceedings or reorganization measures.¹¹⁶ Where a financial collateral arrangement or a relevant financial obligation has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, winding-up proceedings or reorganization measures, it shall be legally enforceable and binding on third parties if the collateral taker can prove that

¹¹⁰ FCAA, Art. 11 (5).

¹¹¹ FCAA, Art. 11 (6).

¹¹² FCAA, Art. 12.

¹¹³ Winding-up proceedings shall be collective proceedings involving realization of the assets and distribution of the proceeds among the creditors, shareholders or members as appropriate, which is carried out within the territory of the Republic of Bulgaria or the territory of another country involving any intervention by administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency, on voluntary or compulsory liquidation (FCAA, Art. 14 (1)).

¹¹⁴ Reorganization measures shall be measures which involve any intervention by administrative or judicial authorities which are intended to preserve or restore the financial situation and which affect pre-existing rights of third parties, including but not limited to measures involving a suspension of payments, suspension of enforcement measures or reduction of claims, whether or not carried out within the territory of the Republic of Bulgaria or the territory of another country (FCAA, Art. 14 (2)).

¹¹⁵ FCAA, Art. 13.

¹¹⁶ FCAA, Art. 14 (3).

	he was not aware, nor should have been aware, of the commencement of such winding-up proceedings or reorganization measures. ¹¹⁷
Assessment	<p>Materially not observed.</p> <p>The legal framework for security rights over movable assets is quite comprehensive, but special pledges are perceived as subject of abuse under the current legal framework. Creating a pledge is not difficult under the current legal framework and most credit providers consider this framework as being theoretically sufficient. In practice, however, insufficient regulation of non-judicial enforcement of special pledges affects recovery effectiveness. Special pledges are also perceived as problematic because fraudulent actions committed by pledgers to harm the rights of pledgees are quite frequent (see Principle A8, below). Therefore, financial institutions do not yet consider movable assets as secure collateral and pledges as an effective security mechanism. Credits exclusively secured over movable assets are underdeveloped yet. Most operators of the financial system point out that as long as the efficacy and transparency of enforcement of pledges are not improved, a significant extension of pledge credits is unlikely. The authorities have decided to improve the current system and have prepared draft amendments to the SPA.</p> <p>A pledge over a commercial enterprise (as a whole) is particularly problematic when, together with the enterprise’s movable assets, it encumbers one or more immovables. These problems are usually present when it comes to enforcement of the pledge over a whole enterprise which includes one or more immovables (see Principle A8, below). Otherwise, it is hard to find any potential benefit of such system, which could be advantageously replaced by a regime (adopted by most Civil Law countries) that differentiates security rights as follows: security rights over immovable and movable assets are governed by different laws and registered under distinct registries. Also different law provisions govern enforcement proceedings for both kinds of security rights, taking into account the diverse nature of the respective collateral.</p> <p>The Special Pledges Act does not adopt a “functional” approach to security over movables; i.e., it does not establish the same regime for possessory pledges (when the debtor must transfer the collateral to the creditor or a third party), non-possessory pledges (when the pledgor keeps the possession of the collateral), liens, leases and other security rights.</p>
Comment	<p>The legal framework for security rights over movable assets should be improved to:</p> <ol style="list-style-type: none"> 1. Provide adequate protection to real pledgees against pledgers’ fraudulent actions. 2. Improve the special pledges out-of-court enforcement mechanism as recommended in Principle A8. 3. Adopt a functional approach to security over movables, as recommended by international best practices.

¹¹⁷FCAA, Art. 14 (4).

	<p>4. Eliminate the possibility of pledging immovable assets under a special pledge of the whole enterprise. Only movable assets should be included in a whole enterprise pledge.</p>
Principle A4	<p>Registry for Property and Security Rights over Immovable Assets</p> <p>There should be an efficient, transparent, and cost-effective registration system with regard to property rights and security rights in the grantor’s immovable assets.</p> <p>The registry should register property rights over land; land use rights; mortgages or hypothecs; charges or encumbrances over land, and it may also register permanent fixtures and attachments to the land. Land registries may be established by jurisdiction, region, or locale where the property is situated; ideally, they should provide for integrated, computerized search features.</p> <p>Mortgages, hypothecs and other charges or encumbrances over immovable assets should be registered in order to be effective vis-à-vis third parties.</p> <p>The registration system should be easily accessible, and inexpensive with respect to recording requirements and searches of the registry, and it should be secure.</p>
Description	<p>Bulgarian law provides a registration system with regard to property rights and security interests in the borrower’s immovable assets.</p> <p>The Registry Agency – Land Office maintains all the information on real properties concerning ownership, mortgages, and encumbrances.</p> <p>The functions of the Registry Agency – Land Office are established in the Cadastre and Land Registry Act, The Rules of the Registry Agency and The Rules for Entries.</p> <p>The Registry Agency – Land Office is a system of data regarding real property on the territory of the Republic of Bulgaria and is based on accounts of individual properties. The Registry Agency – Land Office keeps information concerning the land title and other real (<i>in rem</i>) rights on immovable assets as they are recognized, transferred, modified or terminated. Foreclosures and mortgages on real property are also included in the property register. The register shows the current status of the circumstances specified after the latest entry regarding the relevant property and enables chronological monitoring of changes to registered circumstances as well as to registered acts. Inquiries about the ownership of property, owners and real rights and restrictions on real property can be made in the registry offices across the country or via Internet against payment of a fee. User registration is also required.</p>
Assessment	<p>Largely observed.</p> <p>The land registration system is largely satisfactory but several issues should be still addressed to make it fully efficient.</p> <p>The information is integrated and accessible online. However, computerized searching and remote access only provide indicative information (i.e., not legally effective). Official information can only be obtained approaching in person the Land Office. Official searches at the Land Office must be done by person (asset</p>

	<p>owner’s name), not by asset. This makes checking past encumbrances difficult and information not fully reliable.¹¹⁸ Electronic filing is not allowed.</p> <p>The average time of obtaining information is approximately 6 – 15 days. Registration of security rights over immovable assets could also take 6 – 15 days. These time periods delay loans disbursement, which is done only after actual registration of a mortgage.</p> <p>The cost of creating / registering a mortgage is rather reasonable: 0.1% of the loan amount for registration. In addition, notary fees are also calculated as a percentage of the loan amount but cannot exceed a ceiling of approximately EUR 3,000 plus VAT.</p> <p>Users of the system reported that occasionally there are omissions and or misinterpretation of data, which undermine the reliability of the information in the land registries as a result of the absence of a unified method for collecting, checking, and certifying the necessary data for the existing entries.</p> <p>The Registry Agency – Land Office is not interconnected with Cadastre, making difficult to resolve inconsistent data kept by both entities. For example, differences between the land title description and the geodetic identification of the same piece of real estate may create problems to mortgage enforcement.</p> <p>Market players also mentioned a problem related to lack of information in the land registry regarding changes in the real estate properties which have taken place during the construction process –in particular, apartments built on a piece of land previously mortgaged. In such case, the mortgage would include all improvements and constructions, but Cadastre will typically issue separate identification numbers (akin to “new titles”) for each apartment. When it comes to enforcement, the law does not provide any specific solution to resolve the real extension or coverage of the old mortgage in such situation.</p>
Comment	<p>The registration of rights on immovable assets should be improved, by:</p> <ol style="list-style-type: none"> 1. Implementing searches by asset, in addition to the current searching system by owner. 2. Interconnecting the Land Offices and the Cadaster, ensuring consistency of the information kept by both entities.
Principle A5	<p>Registry for Security Rights over Movable Assets</p> <p>There should be an efficient, transparent and inexpensive means of providing notice of the possible existence of security rights in regard to the grantor’s movable assets, with registration in most cases being the principal and strongly preferred method, with limited exceptions. The registration system should be easily accessible and inexpensive with respect to recording requirements and searches of the registry, and should be secure.</p>

¹¹⁸ Although searches can be done online both by person and by asset, an extract from the online search cannot be used as written evidence in court proceedings and sometimes the online database is not complete and accurate. Therefore, a personal check at the offices of Registry Agency – Land Office around the country should be performed, and this search can be performed solely by person. Thus, an official extract for the current status of a property can be obtained solely by the owner’s name. Additionally, if a certificate for registered mortgages or other encumbrances over the property is requested all documents of ownership of the property must be provided.

	<p>Registration of notices should be possible before or after the creation of the security right.</p> <p>Registration of notices should be done upon the inclusion of the required information in the registry forms.</p> <p>The registry record and should integrate the notices of security rights, rendering them searchable on the basis of the grantor's name, and, in some cases, the serial number of assets.</p> <p>Ideally the registry system should be centralized and computerized.</p> <p>Special registries are beneficial in the case of certain kinds of highly mobile assets, such as aircraft and vessels.</p> <p>Security rights over intellectual property can be registered at the general security rights' registry, or at a special intellectual property registry, if any.</p> <p>Special registries for securities and rights over securities may also be established.</p> <p>Special registries should be coordinated, when necessary, with the general registry for security rights over movable assets.</p>
<p>Description</p>	<p><i>Registry for Security Rights over Movable Assets.</i> The Central Special Pledges Registry provides information on registered pledges over movable assets, contracts for sale with retention of title and leasing contracts concerning movable assets.</p> <p>The Central Pledge Registry is established as a legal person under the Minister of Justice with head office in Sofia, funded by the state budget. It is administered by a Director appointed by the Minister of Justice.¹¹⁹ The Minister of Justice issues rules to govern the structure and the activity of the Central Pledge Registry.¹²⁰</p> <p>The Registry is accessible to the public. Any person may request the issuance of a statement of information or of a certificate attesting to the existence or absence of recorded facts, as well as with regard to the documents on the basis of which the recordation has been effected. Everyone is entitled to unobstructed and free access to the Registry and the electronic form of the documents on the basis of which any recordation or deletion is effectuated.¹²¹ State fees shall be charged for each recording in the Registry, each search for records and each certificate issued, according to a tariff approved by the Council of Ministers.¹²²</p> <p>The following facts shall be recorded in the Registry: (i) name, personal identification number (PIN) and address or, as may be appropriate, the company name, the registered address, and the numbers of filing and of the record with the relevant Registry, of the debtor, a third party pledgor, the pledgee, the buyer and seller under a contract for sale with retention of title until payment of the purchase price, the lessee and lessor under a lease contract, and the person authorized to receive performance under the pledged account receivable prior to commencement of foreclosure; (ii) a description of the secured debt or the cash amount for which</p>

¹¹⁹ SPA, Art. 22.

¹²⁰ SPA, Art. 23.

¹²¹ SPA, Art. 24.

¹²² SPA, Art. 25.

the pledge has been established; (iii) a description of the property that has been pledged, sold with retention of title until payment of the price, or leased and its value, if stated; (iv) the duration of the pledge; (v) the conditions of the pledge.¹²³

The Registry shall also record: (i) assignment of rights in the secured debt or, of any of the rights of the seller or lessor; (ii) subrogation of rights in the secured debt or in any of the rights of the seller or the lessor in the secured property; (iii) novation or substitution of the debtor under the secured debt; (iv) acquisition of rights in the pledged property; and, (v) other changes in the facts on record.¹²⁴

Other data that should be recorded include: (i) attachment of any property described in SPA, Art. 4; (ii) attachment of the secured debt; (iii) renewal of the recording; (iv) commencement and abandonment of foreclosure; (v) name, PIN and address of the depository; (vi) name, PIN and address of the enterprise manager; (vii). any request from the merchant to the pledgee, for the appointment of an enterprise manager; (viii) court decision for the commencement of bankruptcy proceedings and the decision for declaration of bankruptcy; (ix) garnishment enforced as per the terms of the Tax and Social Insurance Procedure Code.¹²⁵

Recording and deleting shall be made upon request of the interested party. The request shall state the facts which are to be recorded. The recording request shall have appended to it the written consent for the recording, with a notarized signature, of the pledgor, the buyer with deferred payment of the price, or the lessee. A notarized signature shall not be required if the signature is executed before an officer of the Registry, who witnesses the execution thereof.¹²⁶

Each request to record facts shall be considered immediately. A request for recording may be denied only if it does not have the required contents or the applicable State fee has not been paid. The denial shall be communicated to the requesting party immediately. A notice of denial shall indicate all defects of the request. A party may remedy the defects in the request and file a new request. The new request shall be recorded according to the order in which it is received by the Registry.¹²⁷ The denial of a request for recording may be appealed before the Minister of Justice in accordance with the rules for administrative appeals. A denial by the Minister of Justice may be appealed pursuant to the Administrative Procedure Code.¹²⁸

Recorded facts shall be deemed to be known by third parties acting in good faith from the date of recording. A record shall be effective for five years from the date of the original recording. A record may continue to be in effect if it is extended before it expires.¹²⁹

Specialized registries. The registries of vessels under the Bulgarian Merchant Shipping Code contain information on vessels' mortgages. The registered pledges

¹²³ SPA, Art. 26 (1).

¹²⁴ SPA, Art. 26 (2).

¹²⁵ SPA, Art. 26 (3).

¹²⁶ SPA, Art. 27.

¹²⁷ SPA, Art. 28.

¹²⁸ SPA, Art. 29.

¹²⁹ SPA, Art. 30.

	<p>over vessels, as a part from the enterprise shall be entered in the Central Special Pledges Registry. According to Art. 23, para 4 of the Civil Aviation Act, transactions related to liens, pledges, privileges on aircraft shall be effective as of the date of entry in the Civilian Aircraft Register. The pledges over intellectual property rights shall be established under the SPA and entered into the Register of registered pledges with the Bulgarian Patent Office.</p> <p>The Central Depository maintains several registries in relation to the collateral and the dematerialized shares. The registered pledges and the establishment of financial collateral over dematerialized shares (and other financial instruments, as the case may be) shall be entered in the registry of dematerialized shares with the Central Depository. The Financial Supervision Commission directly controls the Central Depository activities. The functions and the obligations of the Central Depository are provided in the Rules of the Central Depository and its Articles of Association.</p> <p>The registered pledge of an enterprise as a whole should be entered in the Trade registry, which is publicly available and contains all the relevant information on enterprises. The Trade register is available on-line and issuance of certificates from the registry is not expensive</p> <p>Some additional registries provide useful information to creditors. For example, the central register of debtors with the Chamber of Private Enforcement Agents and the Central Credit with the Bulgarian National Bank (see Principle B1, below).</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>The Central Pledge Registry is a centralized, public and electronic registry for recording non-possessory security rights (pledges, leases and sales with reservation of title) over movable assets. The priority of the registered pledges on one and the same pledged asset is determined by the successive order of recording in the registry.¹³⁰ Any person can get access to the CPR information. The law specifies that the Central Pledge Registry shall allow searching via remote access, issuing electronic statements of information and certificates, as well as their online submission.¹³¹ The law also contemplates that the Registry shall allow for online filing of electronic applications for recordation or deletion, pursuant to the Electronic Document and Electronic Signature Act. Where submission of notarized documents is required, their electronic form shall be attached to the application.¹³² Online access to the registry, however, is not currently available. Information is provided in paper.</p> <p>The CPR charges 50 Lev for initial registration and 5 Lev per page for information on pledges. Users of the system consider the charge per page as being somewhat expensive. Registration is effectively completed in one day.</p> <p>Information is kept by the name of the asset's owner exclusively, so searches by asset are not possible. This weakness of the current system creates a serious issue with collateral sold several times: third parties may in good faith buy such assets ignoring the existence of the encumbrance if they bought the asset not directly from</p>

¹³⁰ SPA, Art. 14 (1).

¹³¹ SPA, Art. 24.

¹³² SPA, Art. 27 (5).

	<p>the pledger. In such cases, it is not clear which right would prevail –i.e., the creditor’s security right or the third party right of ownership. The jurisprudence is contradictory and the Court of Cassation is considering an interpretative decision to resolve such contradiction.¹³³ At present, a debtor who transferred a pledge asset without the consent of the creditor is criminally liable under the Criminal Code, but few sentences have actually been pronounced and low sanctions have typically been imposed. Allowing search of encumbrances by assets could significantly reduce these conflictive situations in practice –in particular, with respect to assets that may be identified by serial numbers (equipment, vehicles, and etcetera).</p> <p>Ownership of vehicles is registered with the Ministry of Internal Affairs registry, which is no linked or interconnected with the Central Pledge Registry.</p>
Comment	<p>The registration of security rights on movable assets should be improved, by implementing a system that effectively allows:</p> <ol style="list-style-type: none"> 1. Searching security rights by assets and transactions –not just by pledgers’ names or personal identification data. 2. Remote access, issuing electronic statements of information and certificates, as well as their online submission. 3. Online filing of electronic applications for recordation or deletion of security rights. 4. Obtaining information by paying a flat and inexpensive fee.
Principle A6	<p>Enforcement of Unsecured Debt</p> <p>A functional credit system should be supported by mechanisms and procedures that provide for efficient, transparent, and reliable methods for satisfying creditors’ rights by means of court proceedings or non-judicial dispute resolution procedures. To the extent possible, a country’s legal system should provide for abbreviated procedures for debt collection and execution.</p> <p>The proceeds should be distributed according to the priority rules of the applicable substantive law.</p>
Description	<p>Enforcement proceedings are governed by the Code of Civil Procedure (CPC). A creditor, on the basis of an enforcement title, may request to the court immediate issuance of a writ of execution. Absent such enforcement title, the CPC establishes two types of procedures for issuance of an enforcement order aimed at creating a possibility to quickly obtain a writ of execution whenever a debtor does not contest a claim.</p> <p><i>A. Issuance of a writ of execution</i></p>

¹³³ In 2015 the Court of Cassation initiated the Interpretative case No. 1/2015 concerning the application of several provisions of the SPA. The Court of Cassation Judges will have to decide on the question: “Is it permissible to enforce over an asset subject to a registered pledge against a third party who acquired the property after registration of the contract of pledge, and does the new owner can be considered as a pledgor under Article 13, paragraph 1 of the SPA if the disposition of the property is not registered on its file?”

The CPC contemplates the following enforcement titles: (i) the judgments and rulings of the court, entered into legal effect and force; the judgments of the second instance courts irrespective of their entering into legal effect and force, the enforcement orders, the memoranda on court settlement, the judgments of enforcement and enforcement orders which are subject to preliminary or immediate enforcement, as well as the awards of the arbitration tribunals and the settlements reached before such tribunals in arbitration cases; (ii) the judgments, the acts and the settlement agreements, concluded before foreign courts which are enforceable within the territory of the Republic of Bulgaria without an explicit proceeding; (iii) the judgments, acts and the settlement agreements concluded before foreign courts, as well as the awards of the foreign arbitration tribunals and the settlements reached before such tribunals in arbitration cases, which have been recognized to enforcement within the territory of the Republic of Bulgaria.¹³⁴

A writ of execution shall be issued on a written petition on the basis of any of the above mentioned acts. The petition shall be submitted to the first-instance court which has examined the case or to the court which has issued the enforcement order, and where the act is subject to immediate enforcement, any such petition shall be submitted to the court which has rendered the judgment of enforcement or has decreed the enforcement order. A petition based on the awards of the domestic arbitration courts and the settlements reached before such courts in arbitration cases shall be submitted to the Sofia City Court.¹³⁵ A writ of execution shall be issued after the court verifies whether the act is prima facie conforming and whether the said act attests an enforceable claim against the debtor.¹³⁶

An order whereby a petition to issue a writ of execution is granted or refused in whole or in part shall be appealable by an interlocutory appeal within two weeks which shall begin to run, in respect of the petitioner, as from the service of the order and, in respect of the respondent, as from the service of the notice of voluntary compliance. The appellate review of the order whereby the petition is granted shall not stay the enforcement.¹³⁷

On the basis of the issued writ of execution, the creditor may request from an enforcement agent the initiation of an enforcement proceeding.

The CPC provides explicit provisions regarding the recognition and enforcement of judgments and judicial acts rendered in other Member States of the European Union. The European legal acts are fully implemented in the local legislation.¹³⁸ Particular attention is paid to the enforcement under Regulation (EC) No 1896/2006 of the European Parliament and of the Council concerning the European order for payment procedure. Any creditor may request the issuance of a writ of execution pursuant to a European Order for Payment, issued by another Member State. The request shall

¹³⁴ CPC, Art. 404.

¹³⁵ CPC, Art. 405.

¹³⁶ CPC, Art. 406 (1).

¹³⁷ CPC, Art. 407.

¹³⁸ CPC, Chapter Fifty-Seven.

be submitted to the district court in accordance with the permanent address of the debtor, the entity's registered office, or the place of enforcement.¹³⁹

B. Issuance of an enforcement order

There are two types of procedure for issuance of an enforcement order, namely: (a) procedure under Art. 410, CPC; and, (b) procedure under Art. 417, CPC.

a. Procedure for issuance of an enforcement order under Art. 410, CPC.

This procedure is used to request an enforcement order for (i) receivables of sums of money or of fungible things, where the action is cognizable in the regional court (i.e., where the amount of the claim is below BGN 25,000); or, (ii) the delivery of a movable thing which the execution debtor has received with an obligation to return the said thing or which is encumbered by a pledge or has been transferred to the debtor with an obligation to surrender possession, where the action is cognizable in the regional court.¹⁴⁰ The application shall be submitted to the regional court exercising jurisdiction over the permanent address or over the registered office of the execution debtor.¹⁴¹ The court shall examine the application in private deliberation and shall issue an enforcement order within three days, except where: (i) the application does not comply with legal requirements; (ii) the application conflicts with the law or with good morals; (iii) the execution debtor does not have a permanent address or a registered office within the territory of the Republic of Bulgaria; (iv) the execution debtor does not have a habitual residence or a place of business within the territory of the Republic of Bulgaria.¹⁴² Where the application is granted, the court shall issue an enforcement order, a duplicate copy of which shall be served upon the execution debtor.¹⁴³

The enforcement order shall contain: (i) the indication "Enforcement Order"; (ii) date and place of issuance; (iii) a reference to the court and the name of the judge who rendered the order; (iv) the forenames, patronymics and surnames and addresses of the parties; (v) the case in which the order is issued; (vi) the obligation wherewith the execution debtor must comply, and the costs which the execution debtor must pay; (vii) an invitation to the execution debtor to comply within two weeks after service of the order; (viii) an instruction to the effect that the execution debtor may lodge an opposition within the time limit referred to in Item (vii); (ix) an instruction to the effect that if the execution debtor fails to lodge oppositions to the order or to comply, the enforcement order will enter into effect and coercive enforcement will be proceeded with; (x) the extent of appealability, before which court and within what time limit; (xi) the signature of the judge.¹⁴⁴

¹³⁹ CPC, Chapter Fifty-Eight.

¹⁴⁰ CPC, Art. 410.

¹⁴¹ CPC, Art. 411 (1).

¹⁴² CPC, Art. 411 (2).

¹⁴³ CPC, Art. 411 (3).

¹⁴⁴ CPC, Art. 412.

The enforcement order shall not be appealable by the parties, except in the part regarding the costs. The order whereby the application is rejected in whole or in part shall be appealable by the applicant by an interlocutory appeal.¹⁴⁵

The execution debtor may oppose in writing the enforcement order or a part thereof. Justification of the opposition shall not be required. An opposition shall be lodged within two weeks after service of the order, and the said time limit may not be extended.¹⁴⁶ Where the opposition has been lodged in due time, the court shall instruct the applicant that the said applicant may bring an action to establish the receivable thereof within one month, depositing the balance of the stamp duty due.¹⁴⁷ Where the applicant fails to present evidence that the said applicant has brought the action within the time limit set, the court shall invalidate the enforcement order in part or in whole, as well as the writ of execution issued under Art. 418, CPC.¹⁴⁸

Where an opposition has not been lodged in due time or has been withdrawn or after entry into effect of the judgment establishing the receivable, the enforcement order shall enter into effect. On the basis of the said order, the court shall issue a writ of execution and shall note this on the order.¹⁴⁹

b. Procedure for issuance of an enforcement order based on a document under Art. 417, CPC.

Alternatively, the applicant may request the issuing of an enforcement order where the receivable, regardless of the amount thereof, is based upon: (i) an act of an administrative authority, which should be enforced in the civil courts; (ii) a document or an abstract of the books of account, whereby receivables of the government institutions, the municipalities and the banks are established; (iii) a notarial act, a settlement or another contract bearing notarized signatures in respect of the obligations contained therein to pay sums of money or other fungible things, as well as obligations to deliver particular things; (iv) an abstract of the registered pledges registry on a recorded security interest and on commencement of foreclosure: in respect of the delivery of pledged things; (v) an abstract of the registered pledges registry on a recording of a contract for sale with retention of title until payment of the purchase price or a lease contract: in respect of the return of corporeal things sold or leased; (vi) a contract of pledge or a mortgage deed under Article 160 and Article 173 (3) of the Obligations and Contracts Act; (vii) an effective act establishing a State or municipal receivable, where the enforcement of this act is effected according to the procedure established by the CPC; (viii) a deficit deed; (ix) promissory note, a bill of exchange or another negotiable instrument payable to order which is equivalent thereto, as well as a bond or coupons attached thereto.¹⁵⁰

Where one of the above mentioned documents has been presented with the application, the creditor may approach the court with a motion to decree an

¹⁴⁵ CPC, Art. 413.

¹⁴⁶ CPC, Art. 414.

¹⁴⁷ CPC, Art. 415 (1).

¹⁴⁸ CPC, Art. 415 (2).

¹⁴⁹ CPC, Art. 416.

¹⁵⁰ CPC, Art. 417.

immediate enforcement and to issue a writ of execution. The writ of execution shall be issued after the court verifies whether the document is prima facie conforming and whether the said document attests an obligation enforceable against the execution debtor. The court shall make a due note on the document presented and on the enforcement order regarding the issuing of the writ of execution.¹⁵¹ The order whereby the petition for the issuing of a writ of execution is refused in whole or in part shall be appealable by the petitioner by an interlocutory appeal.¹⁵²

The order whereby the petition for immediate enforcement is granted shall be appealable by an interlocutory appeal within two weeks after service of the enforcement order. The interlocutory appeal of the immediate enforcement order shall be submitted together with the opposition to the enforcement order as issued and may be founded only upon considerations derived from acts covered under Art. 417, CPC. The appellate review of the immediate enforcement order shall not stay the enforcement.¹⁵³

An opposition to the enforcement order shall not stay the coercive enforcement in the cases covered under Items 1 to 8 of Art. 417 CPC, except where the execution debtor furnishes due security to the creditor. Such security is not necessary to stay a coercive enforcement as a result of an opposition if the creditor's claim is based on a promissory note, a bill of exchange or another negotiable instrument payable to order which is equivalent thereto, as well as a bond or coupons attached thereto.¹⁵⁴ Furthermore, where a motion for stay, supported by convincing written evidence, has been made within the time limit for opposition, the court which has decreed immediate enforcement may stay the said enforcement.¹⁵⁵ The ruling on the motion for stay shall be appealable by an interlocutory appeal.¹⁵⁶

If opposition is made by the debtor, the court would instruct the creditor to file a regular civil claim to ascertain the existence of the receivable. If in the framework of that regular civil claim the debtor succeeds in proving that the amounts are not due, the enforcement shall terminate and the court will issue a reverse writ of execution enabling the debtor to collect back from the creditor the amounts or the corporeal things that have been taken from the debtor in the course of enforcement.¹⁵⁷

c. Other ways for making opposition to enforcement orders

There are still two other mechanisms through which a debtor may object a creditor's claim where the enforcement order has been issued either under Art. 410 or Art. 417, CPC, namely: (i) opposition through intermediate appellate court review; and (ii) action to contest the receivable.

¹⁵¹ CPC, ART. 418 (1) and (2).

¹⁵² CPC, Art. 418 (4).

¹⁵³ CPC, Art. 419.

¹⁵⁴ CPC, Art. 420 (1).

¹⁵⁵ CPC, Art. 420 (2).

¹⁵⁶ CPC, Art. 420 (3).

¹⁵⁷ CPC, Arts. 422 and 245 (3).

Within one month after learning of the enforcement order, the execution debtor, who has been deprived of an opportunity to contest the receivable, may lodge an opposition to the intermediate appellate review court, where: (i) the enforcement order has not been duly served upon the said execution debtor; (ii) the enforcement order has not been served upon the said execution debtor in person and on the day of the service the said execution debtor did not have a habitual residence within the territory of the Republic of Bulgaria; (iii) the execution debtor was unable to learn of the service in due time owing to special unforeseen circumstances; (iv) the execution debtor was unable to lodge the opposition thereof owing to special unforeseen circumstances which the said execution debtor was unable to overcome. Simultaneously with the opposition, the execution debtor may furthermore appeal the costs and submit an interlocutory appeal.¹⁵⁸ The lodgement of an opposition to the intermediate appellate review court shall not stay the enforcement of the order, but the court may stay the enforcement if the debtor furnishes security.¹⁵⁹

The execution debtor may contest the receivable according to an action procedure, where newly discovered circumstances or new written evidence of material relevance to the case are discovered, which could not have been known to the debtor before expiry of the time limit for lodgement of the opposition or which the debtor could not procure within the same time limit. The action may be brought within three months after the day on which the new circumstance became known to the execution debtor or after the day on which the execution debtor could procure the new written evidence, but not later than within one year after extinguishment of the receivable.¹⁶⁰

C. Commencement, stay and termination of enforcement

The enforcement agent shall proceed with enforcement on a petition by the interested party on the basis of a presented writ of execution or another enforceable act. In the petition thereof, the execution creditor shall specify the method of enforcement. The creditor may specify several methods simultaneously. In the course of the proceeding, the creditor may specify other methods of enforcement as well.¹⁶¹ The law assigns the enforcement of civil claim to private enforcement agents (PEAs).¹⁶²

The enforcement agent shall invite the execution debtor to comply voluntarily with its obligation. The notice shall contain the name and address of the execution creditor and a warning to the execution debtor that unless the said execution debtor complies with the obligation thereof within the time limit allowed thereto, coercive enforcement will be proceeded with. The notice shall communicate the garnishments and preventive attachments imposed. A copy of the enforceable act shall be attached to the notice of voluntary compliance.¹⁶³ The regional court exercising jurisdiction over the place of enforcement, acting on a motion by the execution creditor, shall appoint an ad hoc representative of the execution debtor if, upon proceeding with

¹⁵⁸ CPC, Art. 423 (1).

¹⁵⁹ CPC, Art. 423 (2).

¹⁶⁰ CPC, Art. 424.

¹⁶¹ CPC, Art. 426.

¹⁶² Law on Private Enforcement Agents (LPEA), in force as of September 1, 2005.

¹⁶³ CPC, Art. 428.

enforcement, the execution debtor does not have a registered permanent or present address.¹⁶⁴

The enforcement agent, if so required for the enforcement, may order any buildings of the execution debtor to be opened and may search the personal effects, dwelling unit and other premises of the execution debtor. Government institutions, municipalities, organizations and citizens shall be obligated to render assistance to the enforcement agent. When requested to do so, the police authorities shall be obligated to render assistance to the enforcement agent if the execution of the functions thereof is obstructed. The enforcement agent shall have right of access to information in the court and administrative services.¹⁶⁵

The enforcement proceeding shall be stayed only in cases contemplated by the law.¹⁶⁶ The enforcement proceeding shall be terminated by decree where: (i) the execution debtor presents a receipt from the execution creditor, duly authenticated, or a receipt from the post office, or a letter from a bank showing that the amount under the writ of execution has been paid to or deposited with the execution creditor prior to the institution of the enforcement proceeding; (ii) the execution creditor has requested termination in writing; (iii) the writ of execution has been invalidated; (iv) the act on the basis of which the writ of execution has been issued is vacated or the said act is pronounced forged by an effective judicial act; (v) the property cited by the execution creditor cannot be sold and other property that can be seized is not discovered; (vi) the fees and costs related to the enforcement, due in advance, have not been paid, excluding cases where fees and costs are waived by the law¹⁶⁷; (vii) an effective judgment granting an action brought by the debtor¹⁶⁸ or a third party¹⁶⁹, is presented; (viii) the execution creditor fails to move for the performance of enforcement steps in the course of two years.¹⁷⁰ In all cases, the enforcement agent shall lift ex officio the garnishments and preventive attachments imposed after the decree on termination enters into effect.

D. Remedies against enforcement

The CPC contemplates a number of remedies against enforcement, namely:

a. Appellate review of enforcement agent's steps

The creditor may appeal against the refusal of the enforcement agent to perform an enforcement step sought, as well as the stay and termination of the coercive enforcement.¹⁷¹

The debtor may appeal against the decree on a fine and the levy of the enforcement against any property which the debtor considers not subject to seizure, the seizure

¹⁶⁴ CPC, Art. 430.

¹⁶⁵ CPC, Art. 431.

¹⁶⁶ CPC, Art. 432.

¹⁶⁷ CPC, Art. 83.

¹⁶⁸ CPC, Art. 439.

¹⁶⁹ CPC, Art. 440.

¹⁷⁰ CPC, Art. 433.

¹⁷¹ CPC, Art. 435 (1).

of a movable thing or the eviction of the debtor from an immovable, by reason of not being duly notified of the enforcement, as well as the decree on the costs.¹⁷²

The decree on award shall be appealable solely by a person who deposited earnest money before the last day of the sale, and by an execution creditor who entered the sale as a bidder, as well as by the execution debtor, by reason of a failure to conduct due bidding at the public sale or of the property not being awarded to the highest bidder.¹⁷³

A third party may appeal against the steps of the enforcement agent solely where the enforcement is levied against corporeal things which, on the day of the garnishment, preventive attachment or delivery, if a movable thing is concerned, were in the possession of the said person. Any such appeal shall not be granted if it is established that the corporeal thing was owned by the execution debtor upon imposition of the garnishment or preventive attachment.¹⁷⁴

A coercive seizure of possession of a corporeal immovable shall be appealable solely by a third party who was in possession of the said immovable prior to the bringing of the action where under the judgment is enforced. If the said third party fails to appeal within the time limit for appellate review, the said third party may bring a possessory action.¹⁷⁵

The appeal shall be considered by the district court exercising jurisdiction over the place of the enforcement.¹⁷⁶ The lodgement of the appeal shall not stay the enforcement steps, but the court may decree a stay.¹⁷⁷ The appeals lodged by the parties shall be examined in camera, except where witnesses or expert witnesses must be heard.¹⁷⁸ The appeals lodged by third parties shall be examined in public session, with the appellant, the execution debtor and the execution creditor on the petition whereof the enforcement case has been instituted being summoned.¹⁷⁹ The court shall examine the appeal on the basis of the data in the enforcement case and the evidence presented by the parties.¹⁸⁰ The court shall publish the judgment together with the reasoning thereof within one month after the receipt of the appeal in the court. The judgment shall be not appealable.¹⁸¹

b. Remedy according to action procedure

The execution debtor may contest the enforcement through an action. The action of the execution debtor may be founded solely on facts which have occurred after

¹⁷² CPC, Art. 435 (2).

¹⁷³ CPC, Art. 435 (3).

¹⁷⁴ CPC, Art. 435 (4).

¹⁷⁵ CPC, Art. 435 (5).

¹⁷⁶ CPC, Art. 436 (1).

¹⁷⁷ CPC, Art. 438.

¹⁷⁸ CPC, Art. 437 (1).

¹⁷⁹ CPC, Art. 437 (2).

¹⁸⁰ CPC, Art. 437 (3).

¹⁸¹ CPC, Art. 437 (4).

conclusion of the trial in the proceeding where under the enforcement title has been issued.¹⁸²

Any third party whereof a right has been affected by the enforcement may bring an action for declaration that the property where against the enforcement for a pecuniary receivable is levied does not appertain to the execution debtor. Any such action shall be brought against the execution creditor and the execution debtor.¹⁸³

E. Enforcement of monetary obligations

The execution creditor may levy the enforcement against any corporeal thing or receivable owned by the execution debtor.¹⁸⁴ The execution debtor may propose that the enforcement be levied against another corporeal thing or receivable or be performed solely by some of the methods of enforcement demanded by the execution creditor. If the enforcement agent determines that the method of enforcement proposed by the execution debtor is in a position to satisfy the execution creditor, the enforcement agent shall levy the enforcement against the corporeal thing or receivable named by the execution debtor.¹⁸⁵ The law specifies a number of assets of natural persons which are exempted from enforcement.¹⁸⁶ If the enforcement is levied against labor remuneration or against any other remuneration for work whatsoever, as well as against a pension to an amount exceeding the minimum wage, only some (variable) percentages established by law may be withheld.¹⁸⁷ :

The enforcement agent shall stay the enforcement if, before the day preceding the day of the sale, the natural-person execution debtor deposits 30 per cent of the receivables under the writs of execution and undertakes in writing to deposit to the enforcement agent 10 per cent of the said receivables monthly. If the execution debtor fails to pay any instalment, the enforcement agent, acting on a motion by any of the execution creditors, shall proceed with the enforcement without the execution debtor being able to seek a new stay. Payment in instalments shall not apply where a pledged or mortgaged corporeal thing or a corporeal thing incorporated into the commercial enterprise of a sole trader is being sold.¹⁸⁸

All amounts accruing under the enforcement case from the execution debtor, from the garnishee, from bidders and buyers in the sale, as well as from the retail establishments or commodity exchanges which have conducted the sale of movable things, shall be credited to the account of the enforcement agent. The amounts due to the execution creditor and to the joint creditors shall be paid within 7 days after the entry into force of the order allocating the collected amounts or after the expiration of the time limit under Article 191(5) of the Tax and Social Insurance Procedure Code, provided that no legal obstacle precludes the payment. Payments

¹⁸² CPC, Art. 439.

¹⁸³ CPC, Art. 440.

¹⁸⁴ CPC, Art. 442.

¹⁸⁵ CPC, Art. 443.

¹⁸⁶ CPC, Art. 444.

¹⁸⁷ CPC, Art. 446.

¹⁸⁸ CPC, Art. 454.

shall be made on the basis of payment orders issued by enforcement agents, who shall note the redemption on the writ of execution.¹⁸⁹

During any stage of the enforcement, while the distribution has not been prepared, other creditors of the same execution debtor may join the proceeding.¹⁹⁰ The joint execution creditor shall enjoy the same rights in the enforcement proceeding as the rights enjoyed by the original execution creditor.¹⁹¹ If the amount collected under the enforcement case is insufficient to satisfy all execution creditors, the enforcement agent shall effect a distribution, allocating first amounts for payment of the receivables which enjoy a right to preferential satisfaction according to the order of privileges established by Art. 136 of the OCA (see Principle A2, above). The balance shall be distributed among the other receivables on a pro rata basis.¹⁹²

The execution creditor who has been awarded the corporeal thing may set off such portion of the receivable thereof against the amount due for the value of the said thing as appertains to the said creditor on a pro rata basis.¹⁹³

Where one of the execution creditors contests the existence of the receivable of another creditor, the former must bring an action against the latter and the execution debtor. The bringing of the action shall stay the delivery of the amount allocated to the creditor holding the contested receivable. Unless such action is brought within one month after the distribution, the amount shall be delivered to the execution creditor. The action may alternatively be based on facts pre-dating the conclusion of the trial in the proceeding under which the enforcement title has been issued.¹⁹⁴

F. Enforcement against movable assets ('corporeal things')

The enforcement agent shall take an inventory of the corporeal thing specified by the execution creditor solely if the said thing is in the possession of the execution debtor, except where it is evident from the circumstances that the said thing appertains to another person.¹⁹⁵

The enforcement agent shall fix the price at which the movable thing is to be sold at a retail establishment. The starting bid for bidding at the open-outcry auction or for the public sale shall be 75 per cent of the value of the corporeal thing.¹⁹⁶ On a motion by a party, an expert shall be appointed to determine the value of the corporeal thing. The expert shall be appointed ex officio where determination of the value requires special knowledge in the field of science, art, crafts and other.¹⁹⁷ The sale of a corporeal thing shall be conducted by the enforcement agent who has taken an

¹⁸⁹ CPC, Art. 455.

¹⁹⁰ CPC, Art. 456.

¹⁹¹ CPC, Art. 457.

¹⁹² CPC, Art. 460.

¹⁹³ CPC, Art. 461.

¹⁹⁴ CPC, Art. 464.

¹⁹⁵ CPC, Art. 465.

¹⁹⁶ CPC, Art. 468 (1).

¹⁹⁷ CPC, Art. 468 (2).

inventory of the said thing.¹⁹⁸ The sale of a movable thing shall be conducted through a retail establishment or a commodity exchange, at open-outcry auction, or according to the procedure applicable to the public sale of an immovable.¹⁹⁹ Any corporeal things of a value appraised in excess of BGN 5,000, any motor vehicles, any ships and aircraft shall be sold by the enforcement agent according to the procedure applicable to the public sale of an immovable as established by the CPC.²⁰⁰

Once conducted, the sale may not be appealed or contested according to an action procedure. Ownership of the corporeal thing shall pass to the purchaser of the said thing regardless of whether the said thing appertained to the execution debtor. The previous owner shall be entitled to receive the price if the said price was not paid under the distribution. If the said price was paid, the said owner shall be entitled to recover from the execution creditors and from the execution debtor what they received under the distribution. If the execution creditor acts in bad faith, the said creditor shall be liable to the owner for the damages inflicted thereon. In all cases, the costs of the enforcement shall be borne by the execution creditor.²⁰¹

G. Enforcement against immovable assets

The enforcement agent shall take an inventory of the immovable specified by the enforcement creditor.²⁰² The inventory shall contain: (i) a reference to the writ of execution; (ii) the place where the inventory is taken; (iii) the location, the boundaries of the immovable, and any mortgages and preventive attachments imposed thereon, as well as any taxes due; (iv) the starting bid for the bidding; (v) the oppositions by the parties, if any, and any rights to the corporeal thing inventories as declared by third parties.²⁰³ The enforcement agent shall fix the starting bid for the bidding, applying Art. 468 of CPC *mutatis mutandi*. I.e.: the enforcement agent shall fix the price, at which the immovable is to be sold, and the starting bid for the public sale shall be 75% of the appraised value; on a motion by a party, an expert shall be appointed to determine the value of the corporeal thing.²⁰⁴ The immovable shall be left in the possession of the execution debtor until conduct of the sale.²⁰⁵

Upon the lapse of one week since the inventory was taken, the enforcement agent shall be obligated to draw up a notice of the sale, stating therein the owner of the immovable, a description of the immovable, whether the immovable is mortgaged and for what amount, the starting bid for the sale, and the place and the day on which the sale will commence and will end.²⁰⁶ The sale shall be conducted at the building

¹⁹⁸ CPC, Art. 473 (1).

¹⁹⁹ CPC, Art. 474 (1).

²⁰⁰ CPC, Art. 474 (5).

²⁰¹ CPC, Art. 482.

²⁰² CPC, Art. 483.

²⁰³ CPC, Art. 484 (1).

²⁰⁴ CPC, Art. 485.

²⁰⁵ CPC, Art. 486.

²⁰⁶ CPC, Art. 487.

of the regional court. The said sale shall continue for one month and shall end on the day stated in the notice.²⁰⁷

Earnest money for entry in the bidding, amounting to 10 per cent of the starting bid, shall be deposited in an account of the enforcement agent. Each bidder shall state the price offered thereby in figures and in words and shall submit the bid thereof, together with the receipt of deposit of the earnest money, in a sealed envelope. The bids shall be submitted at the office of the regional court, and any such submission shall be recorded in the incoming register.²⁰⁸

If the execution debtor deposits everything due under the writs of execution and the costs of the enforcement case before expiry of the time limit for submission of the written bids, the sale shall not be conducted.²⁰⁹

The bidder who has offered the highest price shall be considered purchaser of the immovable. The declaration of the purchaser shall be effected by the enforcement agent.²¹⁰ The purchaser shall be obligated to deposit the price offered thereby, deducting the earnest money deposited, within one week after the end of the sale.²¹¹

If bidders have not appeared or if no valid bids have been made, or if the purchaser has failed to deposit the price and the immovable has not been awarded according to the next bidder, the execution creditor may request that a new sale be conducted according to the rules applicable to the first sale. The new sale shall commence not earlier than one month after the end of the first sale at a starting bid equal to 80% of the starting bid for the first sale (i.e., the starting bid of the second sale should be 60% of the initial valuation). If the immovable is not sold even at that sale and the fixing of a new starting bid is not moved for within one week, the immovable shall be released from enforcement and the preventive detachment shall be expunged on a motion by the enforcement agent.²¹² A third auction, however, could be conducted after a new valuation of the asset, according to a ruling of the Supreme Court of Cassation.²¹³

The execution creditor, who has been declared purchaser of an immovable, shall be obligated, within one week after the distribution, to deposit the amount required for payment of the proportionate parts of the receivables of the other execution creditors,

²⁰⁷ CPC, Art. 488.

²⁰⁸ CPC, Art. 489.

²⁰⁹ CPC, Art. 491.

²¹⁰ CPC, Art. 492. If, upon declaration of the purchaser, any of the bidders who have appeared offers orally a price higher by one amount of earnest money, the enforcement agent shall record the bid in the memorandum and, after the bidder signs the said memorandum, the enforcement agent shall ask thrice whether anybody wishes to offer a price higher by one more amount of earnest money. If such a bid is submitted, it shall be recorded in the memorandum and the bidder shall sign the said memorandum. After the bids are exhausted, the bidder who has offered the highest price shall be declared purchaser of the immovable.

²¹¹ CPC, Art. 492 (3).

²¹² CPC, Art. 494.

²¹³ In principle, a third and any subsequent public sales at lower price are prohibited by law. According to article 494 paragraph 2 of CPC if the second public sale is not successful and if the claimant does not request a new valuation in one-week term, the immovable asset cannot be further enforced and the encumbrance shall be lifted upon request of the private bailiff. However, if within the mentioned term a new valuation is requested by the claimant the private bailiff can perform a new public sale following the same statutory rules applicable to the first and second public sales but taking into account the new valuation.

	<p>or the amount whereby the price exceeds the receivable of the said creditor where there are no other execution creditors.²¹⁴</p> <p>Where the person who has been declared purchaser deposits the amount due in due time, the enforcement agent shall award the immovable thereto by a decree. As from the date of entry into force of the award decree, the purchaser shall acquire all rights to the immovable which the execution debtor enjoyed. The rights to the immovable which any third parties have acquired shall be not effective vis-à-vis the purchaser if the said rights are not effective vis-à-vis the execution creditors. Unless the award is appealed, the validity of the sale shall be contestable solely upon non-payment of the price or where the immovable has been purchased by a person disqualified from bidding.²¹⁵</p> <p>Possession of the immovable shall be delivered to the purchaser by the enforcement agent on the basis of the effective award decree. The purchaser shall present certificates of fees paid on the transfer of the immovable and on recording of the award decree. The coercive seizure of possession shall be executed against any person who is in possession of the immovable. The only remedy available to such a person shall be an action for ownership.²¹⁶</p> <p>Upon the sale of a mortgaged immovable which is conducted to enforce a receivable other than the receivable of the mortgagee, the enforcement agent shall dispatch to the said mortgagee a communication on the scheduling of the inventory and the sale. The mortgagee may enter the sale on an equal footing with the rest of the creditors.²¹⁷</p> <p><i>H. Mediation</i></p> <p>The Bulgarian legislation provides mediation as an alternative method of resolution of legal and non-legal disputes. The Mediation Act, promulgated, State Gazette No. 110/17.12.2004 governs the mediation process. Subject of mediation can be civil, commercial, labor, family and administrative disputes related to consumer rights, and other disputes between natural and/or legal persons, including cross-border disputes.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>Enforcement of unpaid claims is highly inefficient and is the weakest link of the credit legal system in Bulgaria. Non-judicial enforcement procedures are only available for special pledges (see Principle A8). All other secured and unsecured claims should be enforced using judicial procedures, which are generally considered as very slow, too complex and decidedly ineffective. Market participants observe that enforcement proceedings characteristically take a long time (over three years on average). The ineffectiveness of enforcement affects loan recovery rates, which are very low in the case of unsecured debts and debts secured over movable assets: less than 50 per cent according to most market players. Enforcement inefficiency also affects recovery rates of mortgage debts, which would typically recover (approximately) 75</p>

²¹⁴ CPC, Art. 495.

²¹⁵ CPC, Art. 496.

²¹⁶ CPC, Art. 498.

²¹⁷ CPC, Art. 501.

per cent of the loan (depending on the market value of the collateral) according to several market players.

Enforcement ineffectiveness and delays are a result of some flaws in the legislation and ineffective implementation of execution procedures:

1. Enforcement legislation is complex and inconsistently applied. Contradictory interpretation of many enforcement issues by different courts frequently occurs and interpretative decisions of the Court of Cassation have not resolved all such inconsistencies. For example, the law does not provide a clear definition of “bank account statement” and the courts have differently interpreted the specifications that such documents should contain. Enforcement admissibility of such documents is thus unpredictable in many cases.
2. Enforcement costs are very high. Creditors must pay upfront 2% of the claim value as judicial enforcement fee. If the enforcement is objected and the creditor should initiate an ordinary proceeding to ascertain its claim, another 2% court fee must be satisfied in advance. Those judicial fees shall be paid “per debtor”; i.e., if a single claim is owed by more than one debtor (co-debtors), the creditor has to multiply the mentioned fees by the number of debtors involved in the enforcement. Lawyers’ fees are also high. Private enforcement agents (bailiff) fees also increase execution costs. Such fees are calculated on the claim amount and they could be increased if an asset is realized at the execution process (some market players indicated that bailiff’s fees are in the region of 6 - 7% in most cases). Contrary to what the law specifies for other professionals (such as notaries), there is no ceiling for the fees of both lawyers and private enforcement agents. Court fees are not subject to a maximum fixed amount either.
3. Debtors are allowed to raise numerous objections and appeals that, in some cases, convert the enforcement proceeding into a protracted ordinary lawsuit. Although the law specifies that many objections (typically, ungrounded), appeals and other recourses shall not suspend the enforcement or execution, in practice debtors manage to obtain such suspension frequently.
4. Many judges do not typically exercise their powers to immediately stop abuses of the process.
5. As regards the acceleration of debts, market players mentioned a somewhat new key problem caused by an interpretative decision of the Supreme Court of Cassation (2014). The decision requires personal notification to the debtor for the acceleration to take effect and it was supposed to unify the contradictory court practice in the field of procedures for issuance a writ of execution and the subsequent lawsuit for proving the receivables, but created a problem for the banks. The decision also created an obligation for the courts to investigate the notification. However, in practice there is no consistent interpretation yet on how the notification must be done in order to consider the acceleration as duly proclaimed. Furthermore, the application of the mentioned decision retroactively has led to overruling numerous writs of execution or claims producing direct losses to the creditors.

	<p>6. Auction procedures are generally considered satisfactory but some issues still remain to be resolved. First, the Civil Procedure Code allows for multiple simultaneous public sales of the same immovable asset. This has created problems when more than one enforcement agent actually sells the same property, causing hard to resolve disputes among multiple buyers with conflicting rights. Secondly, it is hard to buy a property at auction with financing from a bank because the time established by the law to pay the full price is too short to have the loan approved and disbursed. Thirdly, the buyer's rights are not sufficiently protected because in many instances he is requested to disburse the price before the auction is finally approved, and the transfer of ownership is not materialized until after the decision approving the auction becomes final –which could encourage unscrupulous debtors to raise frivolous objections to the auction just to delay the consolidation of the rights of the buyer.</p> <p>7. Performance of some private enforcement agents is not optimal yet. Users of the services of private enforcement agents generally recognize that they have contributed to enhance enforcement procedures effectiveness. However, market players also mentioned that not all these agents are behaving effectively. Some agents and/or their staff are perceived as being poorly trained and enforcement delays in many cases would be produced by their unsatisfactory performance.</p>
<p>Comment</p>	<p>The enforcement system should be significantly enhanced to further expand credit access at affordable rates, by providing creditors with effective enforcement mechanisms for their claims.</p> <p>One possibility lies with the extension of out-of-court enforcement mechanisms to other security rights apart from the ones that already enjoy that possibility: out-of-court enforcement mechanisms for mortgages would place mortgages on an even footing with special pledges. The law may also contemplate enforcement mechanisms with minimum judicial intervention. This kind of enforcement - a hybrid between the purely private execution and full judicial enforcement - is useful in security rights where the debtor retains possession of the encumbered asset. With this kind of execution, the creditor is allowed to sell or have the encumbered asset sold in a private manner. Nevertheless, there is a minimum judicial intervention required to take possession of the encumbered asset. Such judicial intervention is limited to confirmation of the formal legality of the security right and to the subsequent judicial order granting the creditor possession of the encumbered asset. That minimum judicial control does not imply an adversarial judicial procedure. The judge simply verifies the above-mentioned formal legality of the security right and orders the debtor's dispossession, the only requirement being the creditor's petition and the presentation of the documents required by law. The rights of debtors would be protected by other procedural mechanisms, which could be used after the enforcement of the secured claim. This procedural regime presents the obvious advantages of speed and economy.</p> <p>The laws governing the enforcement of security rights should, in general, respect the creditor's right to opt for a menu of execution methods at the time of enforcement; and should permit the effective use of out-of-court enforcement.</p>

	<p>In any case, improving judicial enforcement is indispensable and it will require several legal and institutional changes, namely:</p> <ol style="list-style-type: none"> 1. The enforcement proceedings governed by the CPC should be streamlined and simplified, reducing the number of steps between the presentation of a petition and the actual recovery of the claim is needed. Defenses and objections, as well as appeals and other recourses that may suspend enforcement should be reduced. 2. The enforcement costs should be lowered. In particular, judicial fees and the fees of both lawyers and private enforcement agents should be revisited and a ceiling for all those fees should be established. 3. The CPC provisions should ensure that a court would only be able to order suspension of the enforcement process for good cause, and then only for a strictly limited period. Judges should restrictively interpret the exceptional situations that would allow a suspension of enforcement, and obstructive and delaying tactics should be severely punished by judges. 4. The law may establish that where personal notification of a debtor is required and the debtor is not found “in person”, a statement by an enforcement agent certifying (under his signature) that the debtor was not available but the notification was left in its domicile, should have full procedural effects. 5. The CPC provisions governing auction procedures should be revisited in order to strengthen the buyers’ rights in order to attract more potential bidders and increase prices obtained at public auctions. To avoid multiple simultaneous auctions of the same asset, sufficiently anticipated publicity of each upcoming auction in a single centralized website should be imposed. If more than one enforcement agent is preparing an auction of the said asset, they should coordinate how to proceed according to procedural rules to be developed. 6. Improvements are required to the bailiff service. Consideration should be given to the implementation of a program of ongoing professional development for the officials and their staff, to better enable them to discharge their obligations effectively.
<p>Principle A7</p>	<p>Enforcement of Security Rights over Immovable Assets</p> <p>Enforcement systems should provide efficient, cost-effective, transparent and reliable methods (including both judicial and non-judicial) for enforcing a security right over immovable assets.</p> <p>Enforcement proceedings should provide for prompt realization of the rights obtained in secured assets, designed to enable recovery in a commercially reasonable manner.</p> <p>The proceeds should be distributed according to the priority rules of the applicable substantive law.</p>
<p>Description</p>	<p>If the debtor failed to fulfil its obligations towards the creditor and the creditor is secured by a mortgage, the latter may require the forced sale of the real property for the purpose of satisfaction of the debt from the price of the collateral. The mortgage</p>

	<p>creditor may request to the court an immediate enforcement order according to Articles 417 and 418, CPC. The creditor, based on the notary mortgage deed, may approach the court with a request to issue a resolution for immediate enforcement and a writ of execution. The writ of execution shall be issued after the court verifies whether the notary mortgage deed is <i>prima facie</i> conforming and whether the said document attests an obligation enforceable against the debtor. The appeal against the resolution of the court issuing the writ of execution does not suspend its effect. Based on the writ of execution the creditor can request an enforcement agent to commence the enforcement against the secured immovable asset, which shall be sold at public auction.</p> <p>The proceeds should be distributed according to the priority rules established by Art. 136 of the OCA (see Principle A2, above).</p> <p>The enforcement procedure applicable to monetary claims and the execution against immovable assets have been described in detail under Principle A6.</p>
Assessment	<p>Materially not observed.</p> <p>See Assessment at Principle A6, above.</p>
Comment	<p>See Comments at Principle A6, above.</p>
Principle A8	<p>Enforcement of Security Rights over Movable Assets</p> <p>There should be efficient, cost-effective, transparent and reliable methods (including both judicial and non-judicial) for enforcing security rights over movable assets.</p> <p>Enforcement proceedings should provide for recovery of possession of the encumbered asset, the possibility of proposing the acquisition of the asset by the secured creditor in total or partial satisfaction of the secured debt, and the prompt realization of the value of the encumbered asset, in good faith and in a commercially reasonable manner.</p> <p>The proceeds should be distributed according to the priority rules of the applicable substantive law.</p>
Description	<p><i>Enforcement of possessory pledges</i></p> <p>The OCA governs possessory pledges enforcement (see Principle A3, above). Where a secured claim is monetary or liquidated damages in cash have been agreed for it, if the possessory pledge is created by a contract in writing or is provided by operation of law for securing claims which arise from a contract in writing, the creditor may request an immediate enforcement order according to the procedure established by Art. 418, CPC.²¹⁸ A creditor who has a pledge on a claim may also request an immediate enforcement order according to the same procedure.²¹⁹ The enforcement procedure applicable to monetary claims and the execution against movable assets have been described in detail under Principle A6, above. The proceeds should be distributed according to the priority rules established by Art. 136 of the OCA (see Principle A2, above).</p>

²¹⁸ OCA, Art. 160.

²¹⁹ OCA, Art. 165.

Enforcement of commercial pledges

According to the CA, where a commercial pledge contract has been concluded in writing with a valid date and the parties have agreed that, should the debtor be in delay, the satisfaction from the pledge may be effected without court intervention, the creditor shall be entitled to sell on his own the pledged item or securities, if they have a market or stock exchange price. The creditor shall be bound to immediately notify the pledgor of the sale and to pay him the remainder of the price obtained.²²⁰

Enforcement of registered (non-possessory) pledges.

In case of default on a debt secured by a registered pledge, the pledgee may start enforcement on the pledged property. The enforcement procedure of registered pledges under the SPA is non-judicial. The pledgee shall request recording of the commencement of enforcement in the Registry and shall notify the pledgor of the commencement of enforcement.²²¹ With the recording of the commencement of enforcement the pledged property shall be transferred into disposition of the pledgee. He shall have the right to take measures for its preservation and to sell it.²²²

Prior to the completion of a public sale of the pledged asset, the pledgee who has proceeded to the commencement of enforcement is entitled to demand that the enforcement agent shall hand over the pledged property, based on a statement of recorded commencement of enforcement. Also, before a distribution is effected by the enforcement agent, the pledgee is entitled to join as a creditor on the grounds of a statement of information attesting to a recorded pledge.²²³

The notification to the pledgor of the commencement of enforcement shall be in writing and shall contain: (i) a statement that enforcement has started that refers to the record of this fact in the registry; (ii) a description of the debt and the part thereof that is being collected; (iii) a description of the pledged property; (iv) a statement of the choice of an enforcement method, in the case of a commercial enterprise.²²⁴

The pledgee shall be entitled to:

1. take possession of the pledged property;
2. notify the account debtor of the commencement of enforcement if enforcement is directed at an account receivable of the pledgor;
3. to request from the state authorities having the pledged property on their books to record its transfer into disposition of the pledge.
4. take measures for: (i) preserving, maintaining and insuring the pledged property; (ii) generating returns on the pledged property; and, (iii) maximizing the sale price or minimizing the sale expenses.²²⁵

Where the pledgor does not duly cooperate for the enforcement on the pledged property or for its conservation, the pledgee, proceeding from an abstract from the

²²⁰ CA, Art. 311.

²²¹ The pledgee shall have the same notification obligations in case he abandons the enforcement.

²²² SPA, Art. 32.

²²³ SPA, Art. 32 (5).

²²⁴ SPA, Art. 33 (1).

²²⁵ SPA, Art. 34.

registry of a recorded security interest and a recording of commencement of enforcement, shall have the option to request from the enforcement agent the delivery of the pledged property according to the procedure established by Article 521 of the Civil Procedure Code.²²⁶

In the enforcement proceeding, the pledgor may challenge the debt or the security interest according to the procedure established by Article 439 of the Code of Civil Procedure.²²⁷

The pledgee shall be entitled to sell the pledged property two weeks after the statement for commencement of enforcement is recorded. If a sale is not completed within six months, any other creditor who has recorded a commencement of enforcement may sell the pledged property in his name and at the pledgor's expense. A sale is concluded only for a full cash payment of the price, and the payment must be deposited with the depository. The pledgee shall carry out the sale with the care of a good merchant.²²⁸ The depository shall be appointed by the pledgee. The depository shall be an accountant.²²⁹

The depository, shall make a list of the persons who have rights in the pledged property and provide in that list information about the size and priority of each claim, based on the data available from the respective registry. The depository shall deposit in a bank account any proceeds received thereby in cash on the same day received, and shall certify the receipt of each payment. The depository shall prepare a plan for distribution of the amounts received thereby.²³⁰ All persons who have rights in the pledged property recorded in the registry shall be deemed joint creditors by law. Neither third party claiming perfected rights in the property appropriated pursuant to this chapter in relation to their claims arising under Article 482 of the Civil Procedure Code, nor other creditors of the pledgor, may join. These third parties or other creditors may attach the amounts received prior to or remaining after, the distribution.²³¹

The depository shall prepare a draft plan for distribution which may be appealed to the District Court within seven days after the draft plan is communicated to the parties. The District Court shall resolve any appeals in an open hearing. The decision of the District Court may be appealed pursuant to Article 278 of the Code of Civil Procedure. The depository shall pay the creditors the amounts specified in the plan for distribution, immediately after the plan takes effect. Any amounts remaining from the collected proceeds shall be paid to the pledgor, provided that, within seven days from the communication of the plan for distribution, the pledgor declares that he does not have any outstanding obligations to the State.²³²

²²⁶ SPA, Art. 35 (1).

²²⁷ SPA, Art. 36.

²²⁸ SPA, Art. 37.

²²⁹ SPA, Art. 38. A depository may not be the debtor or the pledgor himself, a creditor of the debtor or the pledgor, nor the appointed manager of the pledged enterprise. Nor shall he be a spouse or a direct relative without limitation, a collateral relative up to the fourth degree, or an in-law up to the third degree, of any one of the persons listed above.

²³⁰ SPA, Art. 39.

²³¹ SPA, Art. 40.

²³² SPA, Art. 41.

The commencement of bankruptcy proceedings against the pledgor shall not suspend an enforcement commenced under SPA, Art. 32. The bankruptcy trustee shall surrender pledged property to the pledgee for purposes of enforcement under Art. 32, when he discovers the existence of pledges recorded under this Act.²³³ (See Principle C12, below).

Enforcement on Securities. Where securities have been pledged to the benefit of a pledgee, he shall have the right to transfer the securities in the manner appropriate therefor. Where the securities are transferable by endorsement, the sequence of endorsements shall be deemed uninterrupted. Where the securities are quoted at an exchange, they shall be sold according to the price quoted by the exchange one day prior to the transfer.²³⁴

Enforcement on Accounts Receivable. The pledgee may sell a pledged account receivable or, if the account receivable is in cash, the pledgee may collect it. The proceeds from collection of the account receivable shall be received by the depository.²³⁵

Enforcement on an Equity Share in a Commercial Company. In case of enforcement, a creditor who has received a pledge of an equity share in a commercial company shall have the right to make a statement of dissolution of the company, or of termination of the pledgor's participation in the company with the pledged equity share.²³⁶

Enforcement on a Commercial Enterprise. The pledgee shall have the choice of satisfaction from the commercial enterprise as a group of rights, obligations and factual relations, or may sell individual assets. If the pledgee chooses to satisfy his claim from individual assets of the commercial enterprise, he shall be bound to sell first such assets, the sale of which could least affect the operation of the enterprise. If the pledgee chooses to satisfy his claim from the commercial enterprise as a group of rights, obligations and factual relations, he may appoint a manager of the enterprise. After the manager appointment has been recorded in the Commercial Registry, the merchant (pledgor) shall not be permitted to exercise any rights as to the commercial enterprise.²³⁷ The person who has managed the commercial enterprise before the registration of the appointed manager of the enterprise shall cooperate with the appointed manager, as may be necessary.²³⁸ The appointed manager of the enterprise shall be authorized to take all actions related to the usual activity of the commercial enterprise. The appointed manager may not transfer title to, or encumber, the enterprise as a whole or the individual items of real estate which are part of the enterprise, incur obligations under negotiable instruments, take loans or represent the pledgor in court proceedings. The pledgor may take the actions outside of the scope of authority of the appointed manager of the enterprise, only

²³³ SPA, Art. 43.

²³⁴ SPA, Art. 44.

²³⁵ SPA, Art. 44a.

²³⁶ SPA, Art. 45.

²³⁷ SPA, Art. 46.

²³⁸ SPA, Art. 47.

	<p>with the consent of the pledgee.²³⁹ The appointed manager of the enterprise shall: (i) take charge of the enterprise, by making a list of all assets and liabilities of the business; and, (ii) manage the enterprise and represent the merchant (pledgor), while taking all steps to protect the merchant’s interests in the enterprise using the care of a good merchant.²⁴⁰</p> <p><i>Enforcement of financial collateral arrangements</i></p> <p>See Principle A3, above.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>Judicial enforcement of security rights over movable assets: see Assessment at Principle A6.</p> <p>Non-judicial enforcement of special (registered) pledges is theoretically very effective and works well in many cases. However, relevant market players have identified several practical problems, including the following:</p> <ol style="list-style-type: none"> 1. Debtors frequently act fraudulently, in particular by creating a second or third degree pledge in favor of a phony creditor. These “creditors” (connected to the debtor) quickly enforce their “claims” out-of-court and sell the collateral at undervalue, preventing the first degree pledgee to fully recover its claim and having all pledges over the same asset cancelled. Such irregular or fraudulent practice would be facilitated because the law does not precisely regulate an effective publication mechanism that should be complied with where a pledged asset is to be sold under the non-judicial enforcement procedure. 2. In cases of enforcement of a commercial enterprise where both movable and immovable assets are part of the pledged enterprise, and the immovable asset has also been mortgaged, the mortgage creditor may ignore that the asset will be realized under the non-judicial enforcement procedure applicable to the commercial enterprise pledge. The mortgage creditor cannot join or in any way benefit from the non-judicial enforcement of the pledge because mortgages must be enforced using a judicial procedure exclusively (see Principles A6 and A7, above). Furthermore, the distribution of the proceeds effectuated in the non-judicial pledge enforcement would not include a payment to the mortgage creditor (because such distribution would only include pledge claims satisfaction). The lack of a clear legal solution for this situation has created uncertainty on whether or not the mortgage creditor keeps its security right after the asset has been sold to a third party buyer in the non-judicial enforcement of a pledged commercial enterprise. Otherwise, assuming that the mortgage creditor cannot be deprived from its security right in the described situation, the third party will be buying an asset which will not be free from encumbrances because only the pledge (s) will be resolved and cancelled after a non-judicial enforcement. The mortgage (s) would remain encumbering the asset, which likely could discourage the participation of

²³⁹ SPA, Art. 48.

²⁴⁰ SPA, Art. 49.

	potential buyers and/or affect the prices that could otherwise be obtained for such assets.
Comment	<p>As regards judicial enforcement of security rights over movable assets: see Comment at Principle A6.</p> <p>With respect to non-judicial enforcement of special (registered) pledges, the SPA should be amended to provide clear and effective provisions to restore the prestige of special pledges as sound security rights over movable assets, expanding its use and facilitating access to credit at affordable cost to borrowers who cannot provide immovable assets as collateral. In particular, such amendments should:</p> <ol style="list-style-type: none"> 1. Provide detailed regulation of non-judicial enforcement proceedings to eliminate all lacunae and uncertainties of the current regulation. 2. Impose effective and detailed announcements and publicity that should be effectuated before a pledged asset is to be sold under the non-judicial enforcement mechanism, and establish provisions aimed at preventing fraud against real pledge creditors by unscrupulous pledgers. 3. If the possibility of pledging immovables under a whole enterprise pledge is not eliminated (as recommended in Principle A3), the law should specify clear rules for the enforcement of commercial enterprises where an immovable asset is a part of the pledged assets of such enterprise, to protect the mortgage rights that could have been created over the same immovable asset.
PART B. RISK MANAGEMENT AND CORPORATE WORKOUT	
Principle B1	<p>Credit Information Systems</p> <p>A modern credit-based economy requires access to complete, accurate and reliable information concerning borrowers' payment histories. Key features of a credit information system should address the following:</p> <p>B1.1 Legal framework. The legal environment should not impede and, ideally should provide the framework for, the creation and operation of effective credit information systems. Libel and similar laws have the potential of constraining good faith reporting by credit information systems. While the accuracy of information reported is an important value, credit information systems should be afforded legal protection sufficient to encourage their activities without eliminating incentives to maintain high levels of accuracy.</p> <p>B1.2 Operations. Permissible uses of information from credit information systems should be clearly circumscribed, especially regarding information about individuals. Measures should be employed to safeguard information contained in the credit information system. Incentives should exist to maintain the integrity of the database. The legal system should create incentives for credit information services to collect and maintain a broad range of information on a significant part of the population.</p> <p>B1.3 Public policy. Legal controls on the type of information collected and distributed by credit information systems can be used to advance public policies. Legal controls on the type of information collected and distributed by credit information systems may be used to combat certain types of societal discrimination,</p>

	<p>such as discrimination based on race, gender, national origin, marital status, political affiliation, or union membership. There may be public policy reasons to restrict the ability of credit information services to report negative information beyond a certain period of time, e.g., five or seven years.</p> <p>B1.4 Privacy. Subjects of information in credit information systems should be made aware of the existence of such systems and, in particular, should be notified when information from such systems is used to make adverse decisions about them. Subjects of information in credit information systems should be able to access information maintained in the credit information service about them. Subjects of information in credit information systems should be able to dispute inaccurate or incomplete information and mechanisms should exist to have such disputes investigated and have errors corrected.</p> <p>B1.5 Enforcement/Supervision. One benefit of the establishment of a credit information system is to permit regulators to assess an institution’s risk exposure, thus giving the institution the tools and incentives to do it itself. Enforcement systems should provide efficient, inexpensive, transparent and predictable methods for resolving disputes concerning the operation of credit information systems. Both non-judicial and judicial enforcement methods should be considered. Sanctions for violations of laws regulating credit information systems should be sufficiently stringent to encourage compliance but not so stringent as to discourage operations of such systems.</p>
<p>Description</p>	<p>Overview</p> <p>The main credit information system in Bulgaria is operated by the Bulgarian National Bank (BNB) through the Central Credit Registry (the CCR). The CCR is a state-level public registry that was established in 2009. It is currently operating pursuant to the Bulgarian National Bank Ordinance No. 22 of 16 July 2009, as amended (the CCR Ordinance). The Ordinance determines the operation of, provision to and receipt of information from the Central Credit Register. In addition to the CCR, the Chamber of Private Enforcement Agents of the Republic of Bulgaria maintains a Central Registry of Debtors (CRD), which contains information on all enforcement cases against debtors, initiated by the Private Enforcement Agents in Bulgaria. There is no operational private credit bureau in Bulgaria as of November, 2015.</p> <p>The Central Credit Registry (CCR)</p> <p><i>Comprehensiveness of the system</i></p> <p>The Central Credit Registry, organized and maintained by the BNB, is an information system of debtors’ (natural persons and legal entities) credit indebtedness to banks and financial institutions, as well as to payment institutions and electronic money institutions granting credit under Article 19 of the Law on Payment Services and Payment Systems (LPSPS)²⁴¹ and conducting operations on the territory of the Republic of Bulgaria.²⁴²</p>

²⁴¹ See Law on Payment Services and Payment Systems, Article 19, published in SG. 23/27 Mar 2009, amend. SG. 24/31 Mar 2009, amend. SG. 87/3 Nov 2009, amend. SG. 101/28 Dec 2010, amend. SG. 105/29 Dec 2011, amend. SG. 103/28 Dec 2012.

²⁴² See Ordinance No. 22 of 16 July 2009 on the Central Credit Registry, Article 2, issued by the Bulgarian National Bank, published in SG. 62 Aug 2009, effective as of 1 October 2009, as amended, issue 31 of 2012, amended, issue 93 of 2015.

The CCR does not receive information from non-financial organizations, such as utilities. Information provided by the users includes both positive and negative information.²⁴³

Information on credit indebtedness of debtors is provided to, and accessible to, the following institutions:

- (i) a bank licensed by the BNB to conduct bank operations;
- (ii) a Member State's bank branch conducting operations on the territory of the Republic of Bulgaria under the procedure of Articles 20 and 21 of the Law on Credit Institutions (LCI);
- (iii) a foreign bank branch from a third country licensed by the BNB under Article 17 of the LCI;
- (iv) a financial institution with a registered office in the Republic of Bulgaria, which is recorded in the CCR under Article 3, paragraph 2 of the LCI;
- (v) a branch of a Member State's foreign financial institution under Article 24 of the LCI, correspondingly under Article 27 of the LCI, which conducts operations on the territory of the Republic of Bulgaria;
- (vi) payment institutions and electronic money institutions granting credit under Article 19 of the LPSPS.

Certain loans are not subject to reporting to the CCR, such as loans to the government, loans to the Bulgarian National Bank and loans on which an admissible excess payment has been allowed over the balance on payment accounts (overdraft) in the amount of under BGN 1000, where these loans are classified as standard exposure under Ordinance No. 9 of the BNB on the Evaluation and Classification of Risk Exposures of Banks and Allocation of Specific Provisions for Credit Risk.

Stakeholders, users of the system, report that the system is considered reliable and accurate and that it is being used on a regular basis. In particular, financial institutions, prior to making decisions on approval of loans, check the applicant's credit history primarily at the CCR, i.e. the record of all debts and loan repayments, both current and historical.

There is a onetime fee for accessing the CCR in the amount of 5000 BGN, and the fee for verifying the indebtedness of a customer is 0.5 BGN.²⁴⁴

Privacy, rights of subjects, data protection

Banks and financial institutions have online access to the CCR and may obtain information on customers' credit indebtedness. The information on credit indebtedness of customers includes data on both the current status of loans and on any active and repaid loans for the previous five years. Financial institutions may obtain and use information from the Central Credit Registry while complying with relevant rules related to bank, professional and trade secret. Financial institutions may access and use information from the Central Credit Registry only for purposes

²⁴³ CCR Ordinance, Article 10.

²⁴⁴ See Bulgarian National Bank Tariff on Central Credit Registry Fees, published in 2009, as amended on July 7, 2011 with Decision No. 65 of the Board of the Bulgarian National Bank.

of assessing the credit indebtedness of their customers, but are still bound by bank privacy and trade secret restrictions. Financial institutions are not allowed to disclose and share the obtained information with third persons or to use it solely for commercial purposes, including as consolidated data.

Searches of the CCR are conducted exclusively via the internet using a BULSTAT code or a Personal Identification Code assigned by the Registry Agency, for legal entities, and a Unified Registration Number (URN) for natural persons.²⁴⁵

The Central Credit Registry consolidates the information on total credit indebtedness of customers on a monthly basis until the twentieth day of the month following the reporting month and submits it electronically to the financial institutions, users of the system.

Any person or legal entity has the right to request from BNB information on his own credit indebtedness in the CCR, including the names of the institutions which have provided the information to the CCR system. It does not appear that there are clear rules on objections to inaccurate information.

The Central Registry of Debtors

The Chamber of Private Enforcement Agents of the Republic of Bulgaria maintains a Central Registry of Debtors (CRD),²⁴⁶ which contains information on all enforcement cases initiated through the Private Enforcement Agents in Bulgaria. The CRD has had some significant shortcomings in the past, including inadequate access and use of the data in the system. It appears that the Chamber has recently upgraded the system, but the results are unclear. Another significant shortcoming of the CRD is that the uploaded information is incomplete, and thus unreliable source of information on whether or not a particular person has been subject of an enforcement action. Regardless of its functional difficulties, the scope of the CRD is limited to debtors in default who are subject to pending enforcement proceedings, and does not provide a full credit history of debtors (i.e. positive payment information is excluded from the CRD).

Any natural person or legal entity may request information about pending enforcement cases against it, in person from the CRD at the chamber of any Private Enforcement Agent. Any natural person or legal entity may request information about pending enforcement cases against any legal entity, through the same procedure. Third parties may obtain information about pending enforcement cases against sole traders only by using their BULSTAT Code or Personal Identification Number with the Registry Agency, but not by their Unified Registration Number as natural persons (URN). Corporate applicants who would like to gain electronic access to the CRD must obtain permission from the Chamber and sign a contract for online access of the CRD.²⁴⁷ There is a fee of 12 BGN to obtain information from the CRD, payable directly to the Chamber.

Private Credit Bureau

²⁴⁵ CCR Ordinance, Article 16. Non-resident natural persons without an identity number under the relevant Bulgarian laws can be searched by their personal identity number or other identification data, and for non-resident legal entities which have not been registered in the Bulgarian Commercial Register – the identification code shall be based on their registered office registration data.

²⁴⁶ See <https://newregistry.bcpea.org/>

²⁴⁷ Id.

	<p>Experian, an international company, has entered the Bulgarian market in order to establish a privately operated credit bureau. However, it appears that it was not yet operational at the time of the ICR ROSC mission. The ICR team attempted to meet with representatives of the private credit bureau but was unable to do so, and the information provided on its website is limited.</p>
<p>Assessment</p>	<p>Largely observed</p> <p>The data collected and distributed by the CCR seem to be sufficient for evaluating the creditworthiness of a debtor. While the limitations on who may request information seem to be sufficient protection for the debtors' privacy, there are potential creditors such as landlords, investors, or other non-bank creditors who cannot access the information. Another shortcoming of the CCR is that it is not clear how a company or person may challenge inaccurate information.</p> <p>The CRD, which maintains information about debtors who have defaulted and are the subject of pending enforcement action, has not been functioning well, and also is somewhat limited by being only a list of defaulting debtors. It does not provide credit profiles that include positive payment histories. Information on the creditworthiness of individuals, or consumers, is limited without a credit bureau that tracks consumer-type credit such as leases, installment payments, utility, and other payments to non-bank entities. It is possible that a private credit bureau may be able to provide such information, if it is authorized to collect it, but (i) there is no operational private credit bureau in the country, and (ii) given strong cultural and legal privacy concerns about personal and company financial information and lack of a law addressing them in relation to a private credit bureau, it is not clear what type of information will be collected, and if the law will allow collection of such information as utility and lease payments by individuals.</p> <p>Thus while the Central Credit Registry meets many of the goals of credit information systems, it does not include certain regular payments by individuals. Nor is there an operational private credit bureau to collect such information. Another weakness of the system is that there is not a clear process by which a company or a person may challenge information contained in the CCR.</p>
<p>Comment</p>	<p>The CCR coverage can be enhanced by allowing non-financial institutions such as utilities to participate in the system. The quality of data reported by organizations purchasing claims from financial institutions (e.g. factoring and asset management companies) could be further enhanced.</p> <p>Clearer procedures should be provided for dealing with debtors' complaints and error corrections in all credit information systems, the CCR, the CRD, and when it is operational, the private credit bureau. The credit information system framework should also ensure that users disclose to the potential borrowers adverse credit decisions on the basis of a bad credit report.</p> <p>The CRD should include information on all debtors that are subject to collection action. Private enforcement agents should be required, both by policy and practically, to upload such information into the system. The IT system on which the CRD operates should also continue to be monitored and improved to ensure that it operates effectively.</p> <p>A private credit bureau that is more suited to consumer needs could be supported. Information on non-bank debts such as leases, installment payments, utility</p>

	<p>payments, and other such regular recurring debts could be collected in order to provide a better picture of the creditworthiness of individuals.</p>
<p>Principle B2</p>	<p>Directors' Obligations in the Period Approaching Insolvency</p> <p>Laws governing directors' obligations in the period approaching insolvency should promote responsible corporate behaviour while fostering reasonable risk taking and encouraging business reorganization. The law should provide appropriate remedies for breach of directors' obligations, which may be enforced after insolvency proceedings have commenced.²⁴⁸</p> <p>B2.1 The obligation. The law should require that when they know or ought reasonably to know that insolvency of the enterprise is imminent or unavoidable, directors should have due regard to the interests of creditors and other stakeholders, and should take reasonable steps either to avoid insolvency, or where insolvency is unavoidable, to minimize its extent.</p> <p>B2.2 Persons owing the obligation. The law should specify the persons owing the obligation, which may include any person formally appointed as a director and any other person exercising factual control and performing the functions of a director²⁴⁹.</p> <p>B2.3 Liability and Remedies. Where creditors suffer loss or damage due to a director's breach of their obligations, the law should impose liability subject to possible defenses (including that the director took reasonable steps to avoid or minimize the extent of insolvency). The extent of any liability should not exceed the loss or damage suffered by creditors as a result of the breach. The law should specify that the remedies for liability found by the court to arise from a breach of the obligations should include payment in full to the insolvency estate of any damages assessed by the court. The insolvency representative should have primary standing to pursue a cause of action for breach²⁵⁰.</p> <p>B2.4 Funding of actions. The law should provide for the costs of an action against a director to be paid as administrative expenses.</p>
<p>Description</p>	<p>The Bulgarian Criminal Code provides several provisions concerning crimes against creditors. Pursuant to Art. 227b of the Criminal Code a merchant who becomes insolvent and within thirty days following suspension of payments fails to notify the court, shall be punished by imprisonment for up to three years or by a fine in the amount of up to BGN 5,000. The penalty shall also be imposed on persons managing or representing a company or a co-operative if within thirty (30) days following suspension of payments, they have failed to request the court to initiate insolvency proceedings. The penalty shall also be imposed on a procurator who has failed to fulfil his/her obligation under Article 626, paragraph 3 of the CA. The punishment</p>

²⁴⁸ This principle addresses only accountabilities of directors in the period when they know or ought reasonably to have known that the enterprise imminently or unavoidably faces insolvency. General principles for corporate governance and officer and director liability to their shareholders are dealt with under the OECD Principles for Corporate Governance.

²⁴⁹ Persons owing the obligation are referred to in this principle as "directors".

²⁵⁰ The liability to compensate creditors for damage caused due to the breach of the obligation does not preclude imposing other remedies in addition to the payment of compensation, for example the disqualification of a director from being a director. It also does not preclude holding directors accountable for fraudulent activities including through taking criminal actions against directors.

shall also be imposed on persons who were bound to notify the Bulgarian National Bank of a bank, which has become insolvent, pursuant to the Credit Institutions Act, should they fail to do so.

According to Art. 227c of the Criminal Code a merchant who following the initiation of the insolvency proceedings: (i) conceals, destroys, damages or alienates gratuitously moneys, effects, securities or other valuables that may serve to satisfy his creditors; (ii) alienates moneys, effects, securities or other valuables which may serve to satisfy his creditors where what has been given away considerably exceeds what has been received and has been carried out in contradiction with the usual course of business; (iii) remits or conceals any of his receivables; (iv) admits to or anyhow assumes or fulfils a non-existent obligation; (v) gets a loan knowing that he is unable to repay it; (vi) supplies on credit goods, moneys, effects, securities or other valuables that are in his possession in a manner contradicting the usual course of business; (vii) satisfies in violation of the law only one or several creditors or secures them in the prejudice of all remaining creditors; (viii) destroys, conceals or alters his trade books or documents, or keeps them in violation of the law in a manner obstructing the ascertainment of the assets and liabilities of his business or activity, in the event that in consequence of the hereinabove enumerated acts considerable damages have been inflicted shall be punished for deliberate bankruptcy by imprisonment for up to three years.

Where, through an act enumerated hereinabove, damages in particularly large proportions have been inflicted, the penalty shall be imprisonment from three to fifteen years.

As per Art. 227e of the Criminal Code a merchant who: (i) has not conducted its business with the care of a good merchant or has partaken in apparently risky transactions that are not within the circle of its usual business; (ii) has incurred personal, family or other expenses apparently untypical of and not related to the scope of business and incongruous with its property status; (iii) has failed to set up or has set up an incorrect annual accounting statement and a balance sheet though under the obligation to do so, and in consequence whereof has been forced into insolvency and this has caused damages to its creditors, shall be punished for imprudent bankruptcy by imprisonment for up to two years.

The penalties under Art. 227e shall also be imposed on a merchant declared insolvent without having fulfilled his obligations under a preceding recovery plan. The penalties under Art. 227e shall also be imposed on the persons managing and representing a company or a co-operative if they commit or allow the commission of the acts specified under the same paragraph. The persons specified in Art. 227e shall not be penalized if they satisfy their creditors prior to the imposition of the sentence by the court of the first instance. This provision shall not be applied repeatedly.

Any debtor who becomes insolvent or excessively indebted is obliged to file for bankruptcy within 30 days.²⁵¹ The bankruptcy application must be submitted by the debtor, his heir, the managing body or liquidator of a company, or a partner with unlimited liability.²⁵² If the obliged persons fail to file for bankruptcy timely, they

²⁵¹ CA, article 626 (1).

²⁵² CA, article 626 (2).

	shall be jointly and severally liable with respect to the creditors for the damages caused by the delay. ²⁵³
Assessment	<p>Materially not observed.</p> <p>The Bulgarian legislation governing directors' obligations in the period approaching insolvency does not work effectively to promote responsible corporate behaviour while fostering reasonable risk taking and encouraging business reorganization.</p> <p>Ever since the Criminal Code introduced provisions on crimes against creditors (1996), the courts have rarely imposed penalties for the above-described crimes. Criminal prosecution of such crimes does not appear to be a strong deterrent against fraud and other misconduct in the context of insolvency.</p> <p>The provisions of the Commerce Act have also been ineffective to discourage very late filings. In practice, directors have rarely been sanctioned for untimely filing for bankruptcy under the CA provisions. More effective in terms of encouraging timely filings, and/or at least a more satisfactory solution for the bankruptcy creditors, would be to either complement the current system or to substitute it altogether with a modern regime of directors' obligations in the period approaching insolvency. This regime should clearly identify the directors' obligations and liabilities. The law should provide appropriate remedies for breach of directors' obligations, which may be enforced after insolvency proceedings have commenced.</p>
Comment	<p>The law should be amended to introduce a modern regime defining directors' obligations in the period approaching insolvency, and directors' liabilities for breach of such obligations. This regime should specify that when they know or ought reasonably to know that insolvency is imminent or unavoidable, directors should have due regard to the interests of creditors and other stakeholders, and should take reasonable steps either to avoid insolvency, or where insolvency is unavoidable, to minimize its extent. The law should specify the persons owing the obligation, which may include any person formally appointed as a director and any other person exercising factual control and performing the functions of a director; and the debtor itself in case of individuals. Where creditors suffer loss or damage due to a director's breach of their obligations, the law should impose liability subject to possible defenses (including that the director took reasonable steps to avoid or minimize the extent of insolvency or, for example, tried to resolve it through pre-bankruptcy proceedings). The extent of any liability should not exceed the loss or damage suffered by creditors as a result of the breach. The law should specify that the remedies for liability found by the court to arise from a breach of the obligations should include payment in full to the insolvency estate of any damages assessed by the court. The bankruptcy administrator should have primary standing to pursue a cause of action for breach and the law should provide for the costs of an action against a director to be paid as administrative expenses. Finally, the liability to compensate creditors for damage caused due to the breach of the obligation should not preclude holding directors accountable for fraudulent activities including through taking criminal actions against directors according to the Criminal Code.</p>

²⁵³ CA, article 627.

<p>Principle B3</p>	<p>Enabling Legislative Framework</p> <p>Corporate workouts and restructurings should be supported by an enabling environment that encourages participants to engage in consensual arrangements designed to restore an enterprise to financial viability. An environment that enables debt and enterprise restructuring includes laws and procedures that:</p> <p>B3.1 Require disclosure of or ensure access to timely, reliable and accurate financial information on the distressed enterprise;</p> <p>B3.2 Encourage lending to, investment in or recapitalization of viable financially distressed enterprises;</p> <p>B3.3 Flexibly accommodate a broad range of restructuring activities, involving asset sales, discounted debt sales, debt write-offs, debt reschedulings, debt and enterprise restructurings, and exchange offerings (debt-to-debt and debt-to-equity exchanges);</p> <p>B3.4 Provide favorable or neutral tax treatment with respect to losses or write-offs that are necessary to achieve a debt restructuring based on the real market value of the assets subject to the transaction;</p> <p>B3.5 Address regulatory impediments that may affect enterprise reorganizations.</p> <p>B3.6 Give creditors reliable recourse to enforcement as outlined in Section A and to liquidation and/or reorganization proceedings as outlined in Section C of these Principles.</p>
<p>Description</p>	<p>A culture of out-of-court collective negotiation is insufficiently developed in Bulgaria. There is no established practice of several creditors engaging together in consensual arrangements to restore an enterprise financial viability. Banks try to communicate among themselves in case of financial difficulties of a common client, but they find difficult to negotiate together a single solution.</p> <p>The Bulgarian legislation does not contain legal provisions that specifically focus on creating an enabling environment framework for corporate workouts and restructurings.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>Utilization of out-of-court agreements (workouts) is infrequent in Bulgaria, although many players recognized that in theory such mechanism could be faster and cheaper and more successful than formal reorganization proceedings (which are also infrequent in practice, see Principle C14 below).</p> <p>Most tools that creditors use in workouts in other jurisdictions (such as debt-to-equity swaps, company restructuring, debt rescheduling, and debt forgiveness, etcetera) do not present major legal obstacles to be performed in Bulgaria. Assignment of loans is allowed and it only requires notification to the debtor. Banks participation in equity of non-financial institutions is not prohibited but it is subject to EU regulation limits.</p> <p>No specific provisions exist for creating a more favorable legal environment for workouts or encouraging its use.</p> <p>The legal framework does not establish any measures to protect and encourage the use of out-of-court restructuring / reorganization (“workouts”) by pre-insolvent or</p>

	<p>insolvent debtors. There is no legal provision discharging the directors’ civil and criminal liability for not filing timely an application for bankruptcy proceedings (see Principle B2, above). As a result, the debtor and its creditors may be forced to conduct restructuring only through formal bankruptcy proceedings. The bankruptcy legislation does not in general recognize voluntary (out-of-court) restructurings, so most transactions that could be entered into by the debtor and some creditors in a workout would be at a risk of being challenged in bankruptcy proceedings under the avoidable transactions regime. Workouts can be reached under Bulgarian contract law, but they would only bind those creditors who signed them.</p> <p>The law does not contemplate the rapid processing / approval of plans agreed out-of-court. The typical legal mechanism to protect workouts is the so-called “pre-packaged plan” or “expedited reorganization”, which is an abbreviated way to approve in-court a plan previously approved out-of-court by a majority of creditors defined in the law. Such court approval requires a brief procedure (typically: no registration of claims, no trustee) to just give a chance to all creditors who did not sign the plan to contest it on very limited grounds defined by the law. If the court approves the workout plan, this shall produce the typical effects of a pre-bankruptcy or bankruptcy plan (notably, creditors who did not sign the plan would be bound by the pre-packaged plan approved by the majority of creditors and the court). This mechanism is extremely valuable to encourage debtors and creditors to use out-of-court restructuring / reorganization (workouts), dispelling threats from hold-out creditors (if they represent a minority of creditors) that usually frustrate out-of-court negotiations.</p>
Comment	<p>An effective framework for workouts should reduce or eliminate the obstacles and disincentives to negotiation and implementation of informal restructuring arrangements, and should also create an adequate set of incentives for debtors and creditors. If the legal framework contains no obstacles and actually encourages informal restructurings, the number of formal insolvency proceedings will diminish and the courts will have the possibility of concentrating on the cases that are best suited for formal insolvency proceedings.</p> <p>Creating an enabling environment for workouts requires reviewing and amending, as needed, the bankruptcy legislation (in particular, the avoidance actions and liability of directors and officers regimes), and other laws and procedures, such as the tax treatment of the debtor’s “income” for debt reduction or debt forgiveness; and similar treatment, with respect to the creditor, of deduction for bad debts and debt forgiveness. The legal obstacles or disincentives to out-of-court debt restructuring and corporate rehabilitation should be removed.</p> <p>The bankruptcy framework should establish an expedited reorganization procedure that enables the quick processing and provision of binding effect to out-of-court agreements or plans (workouts), leveraging out-of-court restructurings (see Principle B4, below).</p>
Principle B4	<p>Informal Workout Procedures</p> <p>B4.1 An informal workout process may work better if it enables creditors and debtors to use informal techniques, such as voluntary negotiation or mediation or informal dispute resolution. While a reliable method for timely resolution of inter-creditor differences is important, the financial supervisor should play a facilitating</p>

	<p>role consistent with its regulatory duties as opposed to actively participating in the resolution of inter-creditor differences.</p> <p>B4.2 Where the informal procedure relies on a formal reorganization, the formal proceeding should be able to quickly process the informal, pre-negotiated agreement.</p> <p>B4.3 In the context of a systemic crisis, or where levels of corporate insolvency have reached systemic levels, informal rules and procedures may need to be supplemented by interim framework enhancement measures to address the special needs and circumstances encountered with a view to encouraging restructuring. Such measures are typically of an interim nature designed to cover the crisis and resolution period, without undermining the conventional proceedings and systems.</p>
Description	Bulgarian law does not contain legal provisions that specifically focus on informal workout procedures.
Assessment	<p>Materially not observed.</p> <p>The Bulgarian business and financial community does not typically utilize alternative dispute resolution mechanisms in workout negotiations.</p> <p>The existent bankruptcy system does not provide for a formal, abbreviated or expedited procedure to quickly process an informal, pre-negotiated agreement (see Principle B4, above).</p>
Comment	<p>There are several ways in which workouts can be enhanced. A workout is theoretically possible in all legal systems where the parties are allowed to modify their contractual rights and obligations. The shortcomings of purely contractual restructurings, however, are rendered evident where there are coordination problems or where some creditors threaten others with the use of enforcement actions in order to receive full payment of their claims. These situations can be addressed by enhancing the traditional contractual framework for debt restructuring through the addition of some elements that improve its effectiveness in practice. In particular, the following measures are recommended:</p> <ol style="list-style-type: none"> 1. <i>Adopting a series of principles and guidelines that in practice operate as a code of conduct for workout participants</i> (see Principle B5, below). 2. <i>Establishing alternative dispute resolution systems to deal with the inter-creditor conflicts that may arise in the context of a restructuring negotiation.</i> Enhanced workouts through a principles and guidelines approach may also rely on mediation and provide access to independent mediators that create the conditions for negotiation among all the parties involved. In countries where creditor remedies and formal insolvency regimes are not regarded as fully satisfactory yet, it may be desirable to provide for a facilitator to encourage the commencement of the workout negotiations and to assist with its continuation until completion. In this way, the debtor and the creditors are able to select a forum in which they can negotiate an arrangement to deal with the debtor's financial difficulty. The financial supervisor should normally refrain from intervening in financial

	<p>sector restructuring, ²⁵⁴though supervisors and regulators may play an important role in the workout process, and in certain jurisdictions, lend their authority (and sometimes, material and administrative support) to a central mediation mechanism to which all regulated financial institutions may have recourse.</p> <p>3. <i>Establishing an expedited reorganization procedure.</i> A debt restructuring or corporate reorganization agreement obtained through a workout, can be binding even with respect to non-signatory creditors provided the law establishes a procedure to give such effect to these agreements. As indicated by its name, the expedited reorganization proceeding is characterized by brevity, because alternatives for debt restructuring (and, if needed, corporate reorganization) have been discussed and agreed prior and outside the expedited proceeding. Once the plan is confirmed by the court as having been concluded in a fair, non-discriminatory, and procedurally sound manner, minority creditors (those opposing or dissenting) of each category of creditors affected by the plan shall be bound as if such plan had been approved in a “formal” or “full” insolvency reorganization proceeding. Expedited restructuring proceedings preserve the advantages of workouts, reducing to a minimum delays and costs and, in addition, avoid the possible failure of a plan reached through voluntary restructuring negotiations.</p>
Principle B5	<p>Regulation of Workout and Risk Management Practices</p> <p>B5.1 A country’s financial sector (possibly with the informal endorsement and assistance of the central bank, finance ministry or bankers’ association) should promote the development of a code of conduct on a voluntary, consensual procedure for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure, especially in markets where corporate insolvency has reached systemic levels.</p> <p>B5.2 In addition, good risk management practices should be encouraged by regulators of financial institutions and supported by norms that facilitate effective internal procedures and practices that support prompt and efficient recovery and resolution of non-performing loans and distressed assets.</p>
Description	The Bulgarian business and financial community has not yet developed a recognized code of practice for informal workouts.
Assessment	<p>Materially not observed.</p> <p>The Bulgarian business and financial community has not yet developed a recognized code of practice for informal workouts.</p>
Comment	The authorities should consider the advantages of adopting a series of principles and guidelines that in practice operate as a code of conduct for workout participants,

²⁵⁴ The Supervisor should rather focus on supervising financial institutions and enforcing supervisory rules; eventually coordinate with other agencies such as the finance ministry on issues of regulatory forbearance. This task includes ensuring that banks have fully taken into account their risks from their exposure to a specific sector or region and made adequate provisions once losses have occurred, and encouraging banks to cooperate with their counterparties and central banks. It is crucial that banks recognize their losses, and the influence of the financial supervisor is instrumental in strengthening of provision requirements and the introduction of loan classification standards based on forward-looking criteria.

	<p>such as in the <i>Latvian Principles</i>²⁵⁵ or the <i>INSOL Principles</i>.²⁵⁶ Codes of conduct may perform a useful function in the shaping of a workout culture among financial firms, but to be effective it is necessary that those codes are internalized by participants, which may take time. This is why a code of conduct may be adopted by a facilitating agency, such as a central bank, a Ministry or an association of bankers. Thus, the strength of the workout guidelines comes from the <i>auctoritas</i> of the mentioned public or private entities, and from the persuasion that these rules effectively correspond with international best practices in the financial sector. A code of conduct does not have a binding effect for the financial institutions, but those institutions that do not respect them may be subject to social reprisals, and, most importantly, will have problems in obtaining assistance from other financial institutions when the situation is reversed, i.e. when the uncooperative financial institution has a large exposure to a debtor and needs a restructuring agreement to minimize its losses.²⁵⁷</p>
PART C. LEGAL FRAMEWORK FOR INSOLVENCY	
Principle C1	<p>Key Objectives and Policies</p> <p>Though country approaches vary, effective insolvency systems should aim to:</p> <ul style="list-style-type: none"> (i) Integrate with a country’s broader legal and commercial systems. (ii) Maximize the value of a firm’s assets and recoveries by creditors. (iii) Provide for both the efficient liquidation of nonviable businesses and those where liquidation is likely to produce a greater return to creditors, and the reorganization of viable businesses. (iv) Strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another. (v) Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors. (vi) Provide for timely, efficient and impartial resolution of insolvencies. (vii) Prevent the improper use of the insolvency system. (viii) Prevent the premature dismemberment of a debtor’s assets by individual creditors seeking quick judgments. (ix) Provide a transparent procedure that contains, and consistently applies, clear risk allocation rules and incentives for gathering and dispensing information. (x) Recognize existing creditor rights and respect the priority of claims with a predictable and established process. (xi) Establish a framework for cross-border insolvencies, with recognition of foreign proceedings.

²⁵⁵ See the “Latvian Principles” text in Annex II, below.

²⁵⁶ The complete text of the INSOL Principles can be found at www.insol.org

²⁵⁷ It has been said that the bank which frustrates an orderly workout for a company may find that other banks are less likely to be constructive next time round when their roles are reversed. Sooner or later, the tables are turned, and those who have not cooperated require cooperation from those who were previously let down.

<p>Description</p>	<p>The commercial insolvency in Bulgaria is regulated mainly by the provisions of the CA, Part IV. As far as this Part contains no special provisions, the respective provisions of the CPC shall apply accordingly.</p> <p>In order to maximize the value of the firm's assets, the CA provides that creditors shall define the valuation method, the manner of the realization of the assets (as a whole, or as individual assets or as a going concern) and shall nominate evaluators. All provisions in the CA for the assets' distribution are mandatory (see Principle 8).</p> <p>Provided that the commercial activity of the insolvent debtor is not terminated, there is a possibility for a reorganization plan to be proposed.²⁵⁸ The plan may provide for postponement or rescheduling of payments, a remission of the debts in full or in part, a reorganization of the enterprise, or undertaking other acts and making other transactions. The plan may also envisage a sale of the entire enterprise or a self-contained part of it, a conversion of claims into equity etc. In case a rehabilitation plan is not proposed within a period of one month following the court's approval of the list of accepted claims, the insolvency court shall render a decision for the termination of the debtor's activity and for the distribution of its assets (see Principle C14).</p> <p>Pursuant to Art. 272a of the CA, in case the assets are insufficient to cover the liabilities of the debtor in the stage of liquidation (as a consequence of the voluntary termination of the company) the liquidation procedure shall be converted into insolvency proceedings.²⁵⁹ In the insolvency proceedings, the acceptance of a rehabilitation plan is an optional stage. If a rehabilitation plan is not proposed or accepted by the creditors, the company enters the stage of cashing-in the bankruptcy estate assets. Once the procedure is at the stage of cashing in the assets there are no possibilities for turning back from liquidation to reorganization proceedings.</p> <p>According to Art. 616 (3) of the CA, domestic creditors in the insolvency proceedings have equal rights with foreign ones (see Principles C13 and C15). Pursuant to Art. 722 (2) of the CA, in case the cash funds are insufficient to fully satisfy the creditors holding unsecured claims under Art. 722 (1), items 3-12, they shall be allocated among the said creditors according to the commensurate order (i.e., pro rata distribution).</p> <p>Compared to the Civil Procedural Code (whose provisions shall apply in insolvency proceedings where there are no special provisions in the insolvency legislation)²⁶⁰, the CA provides shorter terms for the court to render its ruling.²⁶¹ However, the legal terms are not mandatory for the court, so the CPC requires that the court examine and adjudicate the cases within a reasonable period of time.²⁶² In case there are any</p>
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²⁵⁸ In case it is obvious that the further continuance of the activity of the debtor could damage the bankruptcy estate, the court may, upon request by the debtor, the Revenue Agency or a creditor, declare the debtor insolvent and terminate its business activity simultaneously with the decision for opening of the insolvency proceedings or later (CA, Art. 630, para. 2).

²⁵⁹ CA, Art. 272a.

²⁶⁰ CA, Art. 621.

²⁶¹ CA, Art. 629 and 634b.

²⁶² CPC, Art. 13.

doubts with regard to the court's independence and unbiasedness, each of the parties may recuse the judge.²⁶³

According to Art. 631 of the CA, the insolvency court shall reject the application, if it establishes that the debtor's distress is temporary or that it disposes of sufficient assets to cover the obligations, safeguarding the creditors' interests. In addition, in cases when the decision under Art. 631 of the CA has become effective and into force, the debtor (a natural person or a company as the case might be) shall be entitled to indemnification if the creditor has acted with intent or grave negligence. Indemnity shall be due for all pecuniary and non-pecuniary damages, which are direct and immediate consequence of the harm. If the request for institution of insolvency proceedings has been filed by several creditors, they shall be held liable jointly and severally.²⁶⁴

Under a pending request for institution of insolvency proceedings, the court may impose as a preliminary measure the suspension of individual enforcement proceedings. With the decision for opening of insolvency proceedings, individual enforcement proceedings shall be suspended, with the exception of special pledges and state claims enforcement (see Principle C5).

Creditors shall submit their claims in writing before the insolvency court within one month after the entry into the Trade Registry of the decision for opening of the insolvency proceedings. Each creditor shall indicate the grounds and amount of the claims, privileges and security, legal address for receiving notifications, as well as submit documentary evidence. There is a possibility for additional submission no later than two months after the expiration of the initial one-month period. The trustee shall prepare a list of accepted claims by the order of their filing indicating the creditor, the size and grounds of the claim, the privileges and securities, the date of the submission, as well as a list of the unaccepted claims.²⁶⁵ The trustee shall present for announcement in the Trade Registry the said lists and the accountancy reports immediately after their preparation, and shall leave them at the disposal of the creditors and the debtor at the clerk of the insolvency court. The debtor or any creditor may object in writing before the insolvency court against an accepted or unaccepted by the trustee claim within 7 days after the announcement. The court shall consider the objections in an open session. In case the court finds the objections grounded, it shall approve the list after the necessary changes, or else the court shall dismiss it. The ruling of the court for approval of the list is not subject to appeal. A creditor who has raised an objection can bring a claim in the court for ascertainin of the existence of an unaccepted receivable or the non-existence of an accepted receivable. In case of a submission of such a claim, the state fee shall not be paid in advance. If the claim is dismissed the expenses shall be paid by the claimant²⁶⁶ (see Principle C13).

²⁶³ CPC, Articles 22 and 23.

²⁶⁴ CA, Art. 631a.

²⁶⁵ The claims of a worker or an employee arising from a labor relationship with the debtor and claims for state receivables established by an act which has come into effect shall be entered ex officio by the trustee in bankruptcy in the list of accepted claims.

²⁶⁶ CA, Art. 694 (2).

	<p>The accepted claims shall be entitled to priority distribution as explained in Principle C12.</p> <p>Cross-border insolvency is regulated by Chapter Fifty-Two “Applicable Law” of the CA. The said Chapter was adopted in 1996, thus not taking into consideration current best practices. In cases involving EU countries, Bulgaria shall directly apply the provisions of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (“Regulation 1346/2000”) (see Principle C15).</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>The bankruptcy legislation is rather comprehensive but in practice insolvency proceedings are not working effectively.</p> <p>Creditors do not regard these proceedings as effective collection mechanisms. Worse, many creditors consider bankruptcy as a vehicle used by debtors to evade their obligations –in many case, fraudulently. When the insolvency regime is used, it is often invoked at a late stage and is perceived as a vehicle for liquidation of completely “dead” businesses, rather than as a method for rescue and recovery. A balance between liquidation and reorganization is not struck properly in practice. There is a negative stigma and a negative reputation to the insolvency regime, indeed not merely due to certain deficiencies in the law but also as a result of implementation shortcomings. Liquidations are slow and cumbersome, and often do not maximize the value of a firm’s assets and recoveries by the creditors as a whole.</p> <p>Good faith debtors do not see insolvency proceedings as adequate means to rehabilitate business in distress. A widespread and significant mistrust between debtors and creditors prevent more frequent and timely use of rehabilitation. Successful rehabilitations are rare –6 cases in 3 years, according to informed market players. Most bankruptcy cases end up as piece-meal assets liquidation. Opening a bankruptcy case takes too long –average, over 5 months.²⁶⁷ Cases with some complications take up to 2 years to be opened (see Principle C4). If businesses generally are in serious trouble at the time of applying for bankruptcy, they will be highly likely closed down by the date the insolvency proceeding is opened. Upon commencement, bankruptcy proceedings completion takes also many years. The actual average duration has been hard to determine, but relevant users of the system mentioned that there are cases which take 10 or even more years to be completed.</p> <p>A modern approach to insolvency as a business rescue opportunity through either in-court (formal proceedings) or out-of-court (workouts) negotiations and agreement between a debtor and its creditors is yet to be developed. Moving from the current rather dysfunctional system to a new one that would allow for reorganization / rehabilitation of viable businesses in distress as well as effective liquidation of non-viable enterprises will require amending several law provisions and enhancing the institutional framework for insolvency.</p>
<p>Comment</p>	<p>Despite its relatively comprehensive legal framework, the Bulgarian insolvency system is not working well in practice. The system needs to undergo some significant changes in the law and improve the institutional implementation. Making insolvency attractive for market participants is the only way to ensure the successful use of the system. The Bulgarian authorities are interested in improving the</p>

²⁶⁷ See. http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_bulgaria_bg.pdf.

	insolvency regime. The Principles that follow (C and D) provide with succinct suggestions to achieve this objective.
Principle C2	<p>Due Process: Notification and Information</p> <p>Effectively protecting the rights of parties in interest in a proceeding requires that such parties have a right to be heard on and receive proper notice of matters that affect their rights, and that such parties be afforded access to information relevant to protecting their rights or interests and to efficiently resolving disputes. To achieve these objectives, the insolvency system should:</p> <p>C2.1 Afford timely and proper notice to interested parties in a proceeding concerning matters that affect their rights. In insolvency proceedings there should be procedures for appellate review that support timely, efficient and impartial resolution of disputed matters. As a general rule, appeals do not stay insolvency proceedings, although the court may have power to do so in specific cases.</p> <p>C2.2 Require the debtor to disclose relevant information pertaining to its business and financial affairs in detail sufficient to enable the court, creditors and affected parties to reasonably evaluate the prospects for reorganization. It should also provide for independent comment on and analysis of that information. Provision should be made for the possible examination of directors, officers and other persons with knowledge of the debtor’s financial position and business affairs, who may be compelled to give information to the court and insolvency representative and creditors’ committee.</p> <p>C2.3 Provide for the retention of professional experts to investigate, evaluate or develop information that is essential to key decision-making. Professional experts should act with integrity, impartiality and independence.</p>
Description	<p>C2.1 Notice and appeals</p> <p>The CA arranges three types of announcements and notifications to the parties of the relevant information in the insolvency proceedings, as follows:</p> <ol style="list-style-type: none"> 1. The main decisions of the insolvency court shall be announced in the Trade Registry,²⁶⁸ including the following: (i) the decision for opening of the insolvency proceedings under Art.630; (ii) the decision for approval of the rehabilitation plan under Art. 705, para. 2 of the CA; (iii) the decision for approval of the out-of-court agreement between the debtor and the creditors with accepted claims under Art. 740 of the CA; (iv) the decision for suspending of the insolvency proceedings under Art. 632 of the CA; (v) the decision for termination of the insolvency proceedings under Art. 707, 710, 735 of the CA; (vi) the decision for renewing of the insolvency proceedings under Art. 744, para. 1 of the CA²⁶⁹; (vii) the ruling for the approval of the list with the accepted claims under Art.692 of the CA, etcetera. 2. According to Art. 634c, para. 1 of the CA, the actions of the debtor, the creditors, the creditors’ committee, the creditors’ meeting, the insolvency trustee and the rulings of the insolvency court shall be entered in a separate

²⁶⁸ CA, Art. 623 and Art. 624.

²⁶⁹ CA, Art. 622.

	<p>book, which shall be public and available in the chancery of the insolvency court. In the said book shall also be entered the rulings and resolutions of the Appeal Court and the Supreme Court of Cassation ruled on the appeals filed against the first instance court acts. The book may also be kept in electronic format.²⁷⁰</p> <p>3. For some court acts, which are subject to appeal, the parties (the debtor and the creditors) shall be notified in accordance with the CPC – with explicit written notification.²⁷¹</p> <p>In addition to the above, provided that the debtor is an operator or participant in a payment system recorded in a register of the Bulgarian National Bank or the debtor is a participant in the government securities settlement system, or the debtor is an operator or participant in a securities settlement system, the insolvency court shall simultaneously notify of the decision for opening of the insolvency proceedings the Bulgarian National Bank or The Central Depository respectively.²⁷²</p> <p>Rulings and decisions of the District Court specified in Article 613a, paragraph 1 of CA are subject to appeal according to the general provisions established by the CPC (before the Appeal Court and the Supreme Court of Cassation). With the exception of those acts, the other acts rendered by the District courts in insolvency proceedings shall be appealable only before the competent Appeal court according to the relevant procedure of the CPC.</p> <p>The decision for opening of the insolvency proceedings²⁷³ could be subject to appeal also by third parties who hold claims arising from an effective court judgment or an effective act establishing a public-law obligation, as well as by third parties which have a claim secured by pledge or mortgage, registered in a public register before the date of filing the request for institution of the insolvency proceedings.</p> <p>The powers of the Supreme Court of Cassation are for unifying the court practice and giving interpretation of the law. Rulings rendered by the Supreme Court of Cassation under the Article 290 of the CPC are obligatory for the courts.</p> <p>According to Art. 634 of the CA, the decision for opening of the insolvency proceedings has immediate effect. The court of jurisdiction does not have any power to stay the decision for the institution of the insolvency.</p> <p>C2.2 Disclose of information</p> <p>The request for institution of the insolvency proceedings could be filed by the debtor or, respectively, by the liquidator by a creditor of the debtor under as commercial transaction, as well as by the National Revenue Agency for public-law obligations to the State or municipalities related to the commercial activity of the debtor or an obligation under a private state receivable.²⁷⁴</p>
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²⁷⁰ CA, Art. 634c (1).

²⁷¹ CA, Art. 634c (2).

²⁷² CA, Art. 634c (3), (4) and (5).

²⁷³ CA, Art. 630 and Art. 632.

²⁷⁴ CA, Art. 625.

The request of the debtor shall be announced in the Trade Registry and shall be examined immediately by the insolvency court. In the said scenario, a counter party shall not be constituted by the insolvency court.

If, in addition to the request of the debtor, a creditor also requests insolvency, the debtor's petition shall be stayed.²⁷⁵

The application of the creditor shall be examined by the court in a closed session upon summoning of the debtor and the applicant, within fourteen days after the submission of the application.²⁷⁶

Other creditors may join the proceedings by submitting their own applications by the end of the first hearing of the case.²⁷⁷

The court shall render a decision within three months after the submission of the application.²⁷⁸ All terms are not mandatory for the court.

The insolvency court may require the debtor to disclose relevant information and to present written evidence pertaining to its business and financial affairs in sufficient detail as to enable the court and the creditors to reasonably evaluate its financial situation.

All the participants could present additional evidence. The court may at its own discretion establish facts and requires evidence that may be of significance to its judgments or rulings.

According to Art. 640 of the CA, within 14 days of the institution of insolvency proceedings, debtors shall be obliged to provide the court and the insolvency trustee with:

1. The relevant information on the activities of the company and debtor's property;
2. List of payments in cash or by bank transfer that exceed BGN 1,200 and have been effected within six months prior to the initial date of insolvency;
3. List of payments effected by the debtor to persons related thereto, for a period of one year prior to the initial date of insolvency;
4. A Notary certified statement specifying the separate assets, property rights and receivables, the names and addresses of the debtors.

The debtor shall provide the insolvency court or the insolvency trustee with information concerning the condition of its property and its commercial activity as of the date of the request, and all documents of relevance thereto. Such information and documents shall be provided within 7 days following the written request. Should the debtor fail to fulfil its obligation for providing the relevant information and documents, the court shall impose a fine.

C.2.3 Experts

²⁷⁵ CA, Art. 629 (3).

²⁷⁶ CA, Art. 629 (2).

²⁷⁷ CA, Art. 629 (4).

²⁷⁸ CA, Art. 629 (6).

	At the stage where the insolvency court is hearing the request for institution of insolvency proceedings, the insolvency court shall nominate an independent financial expert to ascertain the financial status of the debtor. If there are doubts on the impartiality and independence of the expert, each party may request recusal.
Assessment	Largely observed. The law does not establish an obligation on the debtor or the insolvency trustee to notify the commencement of insolvency proceedings to the known creditors individually. All creditors are to be considered implicitly notified by the publication in the Trade Registry of the decision for opening of the insolvency proceeding. This solution is particularly inappropriate with respect to creditors domiciled abroad, because they will likely learn about the insolvency proceedings at a time when their claims will no longer be admitted for recognition (see Principle C13, below). ²⁷⁹
Comment	The law should specify that the commencement of the insolvency proceedings should be notified individually to the known creditors domiciled abroad and the procedural terms with respect to them shall start as of the date of the reception of the individual notice.
	<i>Commencement</i>
Principle C3	Eligibility The insolvency proceeding should apply to all enterprises or corporate entities, including state-owned enterprises. ²⁸⁰ Exceptions should be limited, clearly defined, and should be dealt with through a separate law or through special provisions in the insolvency law.
Description	<i>Application of commercial insolvency proceedings</i> Insolvency proceedings governed by the CA apply to merchants ²⁸¹ . For the purposes of the CA, a merchant shall mean any natural or legal person engaged by occupation in any of the following transactions: (1) purchasing goods or chattels for the purpose of reselling them in their original, processed or finished form; (2) sale of one's own manufactured goods; (3) purchasing securities for the purpose of reselling them; (4) commercial agency and brokerage; (5) commission, forwarding and transportation transactions; (6) insurance transactions; (7) banking and foreign-exchange transactions; (8) bills of exchange, promissory notes and

²⁷⁹ In cases involving EU countries, Bulgaria shall apply directly the provisions of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ("Regulation 1346/2000"). Its Art. 40 provides that as soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgment of claims and other measures. Such notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims. However, according to the Bulgarian insolvency legislation the term for claiming the receivables and terms for exercising other rights by the creditors start to run from the publication of the information in the Trade Registry and not from the reception of the individual notice.

²⁸⁰ Ideally, the insolvency process should apply to SOEs, or alternatively, exceptions of SOEs should be clearly defined and based upon compelling state policy.

²⁸¹ CA, Art.607a, Art. 610, Art.611

cheques; (9) warehousing transactions; (10) license transactions; (11) supervision of goods; (12) transactions in intellectual property; (13) hotel operation, tourist, advertising, information, entertainment, impresario and other services; (14) purchase, construction or furnishing of real property for the purpose of sale; (15) leasing.²⁸²

Companies and cooperatives, except housing cooperatives, are merchants.²⁸³ A merchant is also a person which has established a business, which in accordance with its purposes and volume requires that its activities be conducted on a commercial basis, even if not listed under Art. 1 (1), CA.²⁸⁴

The following shall not be deemed merchants: (1) natural persons engaged in farming; (2) artisans, persons providing services through their own labor or members of the professions, except where their activity may be defined as a business within the meaning of Article 1, para 3, CA; and, (3) persons providing hotel services by letting rooms in their own home.²⁸⁵

Exceptions

a. Insolvency proceedings shall not be initiated against public enterprise merchants (i) which exercise state monopoly, or (ii) which are established by a special law.²⁸⁶ Rules and procedures pertaining to the insolvency of public enterprises exercising a state monopoly or to public enterprises established by a special law shall be regulated by a separate law. According to Art. 18, Paragraph 4 of the Bulgarian Constitution, a state monopoly may be legally established with regard to rail transport, national postal and telecommunication networks, use of nuclear energy, manufacture of radioactive products, weapons, explosives and biologically active substances.

An example of state monopoly is the State Enterprise National Railway Infrastructure Company (*Държавно предприятие „Национална компания Железопътна инфраструктура“*) established by the Railway Transport Act as a state enterprise.²⁸⁷ The latter manages the national railway infrastructure, determines the terms and conditions for exploitation of the national railway infrastructure and executes agreements with licensed railway carriers acting on the territory of Bulgaria. The Regulation on the Structure and Activity of State Enterprise National Railway Infrastructure Company²⁸⁸ provides that the company manages public and private state assets, as well as that enforcement proceedings against public and private state assets are not permissible and insolvency proceedings cannot be

²⁸² CA, Art. 1 (1).

²⁸³ CA, Art. 1 (2).

²⁸⁴ CA, Art. 1 (3).

²⁸⁵ CA, Art. 2.

²⁸⁶ CA, Art. 612 (1).

²⁸⁷ Railway Transport Act, promulgated in State Gazette, issue 97, dated 28 November 2000, effective as from 1 January 2002. In accordance with § 3.1 of the Transitional and Final Provisions of this Act, the Bulgarian State Railways National Company was terminated without liquidation as of 1st January, 2002. The State Enterprise National Railway Infrastructure Company is the legal successor of Bulgarian State Railways National Company.

²⁸⁸ Regulation on the Structure and Activity of State Enterprise National Railway Infrastructure Company, promulgated in State Gazette, issue 39, dated 26.05.2009.

initiated against the company. The State shall participate in funding activities related to the construction, maintenance, development and operation of the railway infrastructure. The amount of funding shall be determined on the basis of a 5-year contract between the State, represented by the Minister of Finance and the Minister of Transport, Information, Technology and communications one hand, and State Enterprise National Railway Infrastructure Company, of the other. Upon deficiency, the company shall be subsidized from the State budget. Additionally, the funds of the Company are accumulated from infrastructural charges; proceeds from commercial activities, European Union funds, etc.

There are many other examples of public enterprises which are established by special laws and against which no insolvency procedure can be initiated, by virtue of the stipulations of such laws, such as: six state enterprises for management of forest territories, established in accordance with Art. 163 of the Forests Act²⁸⁹, Strategic Infrastructure Projects National Company (*Национална компания „Стратегически инфраструктурни проекти“*) established in accordance with Art. 28a of the Roads Act²⁹⁰ Kabiyuk horse- and other domesticated animals breeding state enterprise (Държавно предприятие „Кабюк“), established in accordance with § 54.1 of the Transitional and Final Provisions to the Stock-Breeding Act²⁹¹, and not least State Enterprise “Air Traffic Services Authority” (BULATSA) (Държавно предприятие „Ръководство на въздушното движение“), which is shielded from insolvency by virtue of Article 53, para. 7 of the Civil Aviation Act.²⁹²

An example of a company, which is not a state enterprise, but is not subject to insolvency as per an explicit provision of the law, is the Central Depository AD (www.csdbg.bg), which is the central securities depository operating in Bulgaria. The Public Offering of Securities Act²⁹³ (Art. 127, Paragraph 9) provides that the Central Depository may not be dissolved upon decision of its General Meeting and may not be subject to insolvency proceedings. It should be noted that the Central Depository is a joint-stock company, with predominant, but not exclusive State ownership. The Ministry of Finance, the Bulgarian National Bank, banks, investment intermediaries, regulated markets, market operators, foreign depositaries and clearing institutions may subscribe for and hold shares in the Central Depository. The prohibition for initiation of insolvency proceedings against this company is an exception from the general principle as per the Bulgarian Commercial Act according to which the companies are subject to winding-up and insolvency proceedings. Such privileges in respect of the Central Depository are historical in origin and are unlikely to be retained in view of forthcoming EU market infrastructure legislation.

b. Excluded from commercial insolvency are also banks and insurers for which bankruptcy proceedings shall be instituted under the terms and procedures established by separate acts.

²⁸⁹ Forests Act, promulgated in State Gazette, issue 19, dated 8.03.2011.

²⁹⁰ Roads Act, promulgated in State Gazette, issue 26, dated 29.03.2000.

²⁹¹ Stock-Breeding Act, promulgated in State Gazette, issue 65, dated 8.08.2000.

²⁹² Civil Aviation Act, promulgated in State Gazette, issue 94, dated 1.12.1972.

²⁹³ Public Offering of Securities Act, promulgated in State Gazette, issue 114, dated 30.12.1999.

	<p>The banks bankruptcy is dealt with under the Bank Bankruptcy Act.²⁹⁴ The Credit Institutions Act (the “CIA”) governs the treatment and the corrective actions (special supervision regime) which can be undertaken with regard to banks facing the risk of insolvency.</p> <p>Bankruptcy of insurers is contemplated in the Insurance Code, Chapter Twelve, Section II.²⁹⁵</p>
Assessment	Observed.
Comment	
Principle C4	<p>Applicability and accessibility</p> <p>C4.1 Access to the system should be efficient and cost-effective. Both debtors and creditors should be entitled to apply for insolvency proceedings.</p> <p>C4.2 Commencement criteria and presumptions about insolvency should be clearly defined in the law. The preferred test to commence an insolvency proceeding should be the debtor’s inability to pay debts as they mature, although insolvency may also exist where the debtor’s liabilities exceed the value of its assets, provided that the value of assets and liabilities are measured on the basis of fair market values.²⁹⁶</p> <p>C4.3 Debtors should have easy access to the insolvency system upon showing proof of basic criteria (insolvency or financial difficulty).</p> <p>C4.4 Where the application for commencement of a proceeding is made by a creditor, the debtor should be entitled to prompt notice of the application, an opportunity to defend against the application, and a prompt decision by the court on the commencement of the case or the dismissal of the creditor’s application.</p>
Description	<p>C4.1 Access to the insolvency proceedings</p> <p>Insolvency proceedings may be requested with a petition in writing submitted to the court by (i) the debtor or, respectively, by the liquidator, or by (ii) a creditor of the debtor under or related to a commercial transaction, as well as by (iii) the National Revenue Agency, for a public-law obligation to the State or municipalities related to the commercial activity of the debtor or an obligation under a private state receivable.²⁹⁷</p> <p>According to Art.620 of the CA, preliminary state fees shall not be collected upon filing an application for opening of insolvency proceedings by the debtor. The fees shall be collected from the bankruptcy estate prior to distribution of the assets.</p> <p>The state fee for filing an application by a creditor against a company is a fixed sum of BGN 250, and against a sole proprietor BGN 50. The state fees are regulated in</p>

²⁹⁴ See text in http://www.bnb.bg/bnbweb/groups/public/documents/bnb_law/laws_bankbankrupt_bg.pdf).

²⁹⁵ See text in <http://www.fsc.bg/en/legal-framework/codes/>

²⁹⁶ A single or dual approach may be adopted, although where only a single test is adopted it should be based on the liquidity approach for determining insolvency – that is, the debtor’s inability to pay due debts.

²⁹⁷ CA, Art. 625.

	<p>Art.24 of Tariff for the state fees, collected by the Courts under the Civil Procedural Code.²⁹⁸</p> <p>Under a claim filed by the trustee or by a creditor for declaring certain null and void certain actions of the debtor (completed in the suspicious pre-insolvency period), state fees shall not be collected in advance (Art. 620, para5 and Art.649, para 6 from the CA).</p> <p>When the available property of the debtor does not suffice to cover the initial expenses, the court may determine the amount that shall be prepaid within a time limit set by the court by the creditors, for the purpose of instituting the bankruptcy procedure. The initial expenses shall be determined by the court depending on the current remuneration of the temporary trustee in bankruptcy, and the estimated expenses pertinent to the bankruptcy proceedings.²⁹⁹ Where the available property is not sufficient for covering the initial expenses and/or such expenses are not prepaid within the set time limit, the court shall declare the insolvency (or the over-indebtedness) of the debtor; shall set its initial date, shall institute bankruptcy proceedings, shall allow securing of the debt through the imposition of distraint or prohibition or other security measures; shall decree the termination of activities of the enterprise, shall declare the debtor bankrupt and shall close the proceedings. In such a case, the court shall not decree the deletion of the merchant from the Commercial Register.³⁰⁰ The bankruptcy proceedings can be resumed within one year from the recordation of the court ruling, upon the request of the debtor or a creditor. Resumption of proceedings shall be allowed if the requesting party can prove that sufficient property is available or if said party would deposit the required amount for prepayment of the initial expenses.³⁰¹ If within the mentioned time limit no resumption of proceedings is requested, the court shall terminate the bankruptcy proceedings and shall order the deletion of the debtor from the Commercial Register.³⁰²</p> <p>C4.2 Insolvency tests</p> <p>Insolvency proceedings may be instituted for merchants who are insolvent.³⁰³</p> <p>A merchant shall be insolvent if it is unable to meet an executable (exigible): (1) monetary obligation resulting from or related to a commercial transaction; or (2) public law obligation to the State or municipalities related to its commercial activity; or (3) obligation under a private state receivable. Insolvency shall be presumed where the debtor has failed to perform such obligations. Insolvency may also be in evidence in cases where the debtor has paid up or is in a position to pay up, wholly or in part, only the claims of certain creditors.³⁰⁴</p>
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²⁹⁸ Tariff for the state fees, collected by the Courts under the Civil Procedural Code, promulgated in State Gazette, issue 22 dated 28.02.2008 with last amendments and supplements as from SG 24 dated 12.03.2013.

²⁹⁹ CA, Art. 629b.

³⁰⁰ CA, Art. 632 (1).

³⁰¹ CA, Art. 632 (2).

³⁰² CA, Art. 632 (4).

³⁰³ CA, Art. 607a (1).

³⁰⁴ CA, Art. 608.

In addition, insolvency proceedings shall also be instituted for a company which is over-indebted.³⁰⁵

C4.3 Debtor's application

Debtors (or, respectively, liquidators) shall attach to the application: (1) a verified copy of the recent annual financial statement audited by a registered auditor and a balance sheet as of the date of submission of the application for insolvency, provided that the merchant is obliged by the law to prepare such documents; (2) inventory and evaluation of the assets and liabilities as of the date of submission of the application; (3) list of creditors, including the addresses, types, amounts and securities for claims thereof; (4) inventory of personal properties and properties that are joint matrimonial property – for sole proprietors and partners with unlimited liability.³⁰⁶

Creditors shall present with their application the evidence in writing and indicate any other evidence for the debtor's insolvency.³⁰⁷

Together with the application, both debtors and creditors shall present a notification to the National Revenue Agency concerning the commencement of the insolvency.³⁰⁸

C.4.4 Creditor's petition

Upon a creditor's request for commencement of insolvency proceedings, the debtor shall be constituted as a defendant. It shall be explicitly notified of the creditor's request by the insolvency court in accordance with the CPC. Together with the notification, the debtor shall be delivered a copy of the creditor's request with the attachments thereto. The debtor has a 30 days period to raise objections against the creditor's request and to present additional proofs.

A petition for institution of bankruptcy proceedings, submitted by a debtor or, respectively, by a liquidator, shall be examined immediately by the court in camera. The petition shall be announced to the Commercial Register.³⁰⁹

A petition for institution of bankruptcy proceedings, submitted by a creditor, shall be examined by the court in camera summoning the debtor and the petitioner, within fourteen days after submission of the petition.³¹⁰

The court shall stay the proceedings initiated upon a debtor's application, if by the date of issuing a ruling thereon a creditor files a petition for the institution of bankruptcy proceedings.³¹¹

Until the close of the first hearing of the case initiated on a petition by a creditor, other creditors may join the proceedings, objections may be raised, and written

³⁰⁵ CA, Art. 607a (2).

³⁰⁶ CA, Art. 628 (1).

³⁰⁷ CA, Art. 628 (2).

³⁰⁸ CA, Art. 628 (3).

³⁰⁹ CA, Art. 629 (1).

³¹⁰ CA, Art. 629 (2).

³¹¹ CA, Art. 629 (3).

	<p>evidence may be presented.³¹²</p> <p>The court must apply the rules of the foregoing paragraphs provided the petition for institution of bankruptcy proceedings as submitted meets all requirements set out in Art. 628, CA (see C4.3, above).³¹³</p> <p>The court shall institute the case on the day of submission of the petition and shall declare the case for adjudication within three months after its institution.³¹⁴</p>
Assessment	<p>Materially not observed.</p> <p>Access to insolvency proceedings is slow and not efficient in practice.</p> <p>Upon an application by the debtor or a creditor, opening an insolvency proceeding is a cumbersome and lengthy process, never completed within the three months period established by the law. There are no legal consequences for the delay because judicial terms are not imperative.³¹⁵ To be opened, simple cases take 5-7 months, and complicated cases up to two years (see Principle D1). These delays are particularly affecting any chance of using the rehabilitation procedure successfully. The main reason for such delays is a widespread judicial practice that never applies the legal presumptions of insolvency, and usually requests expert opinion on several ratios of insolvency (in the balance-sheet sense), taking into account the financial statements of the debtor. The liquidity or cash-flow test, contemplated by Bulgarian law, is not used in practice to open a bankruptcy case. Furthermore, the lack of detailed provisions to specify the over-indebtedness test creates uncertainty and unpredictability on how such test shall be interpreted and applied in court. Also, creditors joining a prior bankruptcy application usually complicate and delay the opening of the case.</p> <p>Opening a case is not quicker upon an application by the debtor. Such an application is not considered as a presumption of insolvency either, so the court also requests expert opinions as above mentioned, delaying the commencement of bankruptcy. To further complicate this stage of the process, the law specifies that the procedure initiated by the debtor shall be stayed if, before ruling on it, a creditor files a bankruptcy petition.</p> <p>Access to insolvency proceedings is not cost-effective either.</p> <p>Although the initial fees that a creditor shall pay with a bankruptcy application are not high, the expenses determined by the court that the creditors should advance to continue a bankruptcy proceeding refrain creditors from filing bankruptcy petitions in many instances.</p>
Comment	<p>Time is of the essence in insolvency proceedings. If business recovery is envisaged, prompt filing and quick commencement of the process is critical. According to international good practices, access to these proceedings should be efficient and</p>

³¹² CA, Art. 629 (4).

³¹³ CA, Art. 629 (5).

³¹⁴ CA, Art. 629 (6).

³¹⁵ CPC, Art. 13 specifies that “the court shall examine and adjudicate in the cases within a reasonable period of time”. This provision is generally cited as the grounds to interpret that judicial terms are not mandatory for the judges (see Principles D1 and D5, below).

	<p>cost-effective; and the debtor should have easy access to these proceedings. In this regard, consideration should be given to the following:</p> <ol style="list-style-type: none"> 1. If a debtor has filed an application for opening an insolvency proceeding, the law should consider this as a strong presumption of insolvency and the court should limit its analysis to the fulfilment of the formal requirements of the petition. I.e., just the admissibility of the proposal should be immediately checked –not other issues that would require producing substantial evidence and which, if needed, could be analyzed upon commencement of the case. 2. If the petition has been filed by a creditor, the preferred test of insolvency should be the cash-flow or liquidity test: the courts should actually give adequate relevance to the legal provision that specifies that “insolvency shall be presumed where the debtor has failed to perform an executable obligation”. The court’s decision on opening bankruptcy proceedings (or rejecting a bankruptcy application) should be quickly taken. Long delays to reject a creditor’s application for bankruptcy may harm the debtor’s reputation irreversibly. Long delays to open a bankruptcy case may aggravate the debtor’s financial situation and could frustrate rehabilitation in many cases (see Principle C14). 3. The bankruptcy court should handle each bankruptcy application in parallel but not delaying one or the other just because a new application is filed. Procedural consolidation is not needed before bankruptcy is declared. A plurality of creditors may be allowed to file an application separately without joining other creditor’s application. 4. An application for bankruptcy filed by the debtor should not be stayed because a creditor also filed a bankruptcy application. 5. Consideration could also be given to reducing the burden of expenses that creditors must advance according to the current legislation.
<p>Principle C5</p>	<p>Provisional Measures and Effects of Commencement</p> <p>C5.1 When an application has been filed, but before the court has rendered a decision, provisional relief or measures should be granted when necessary to protect the debtor’s assets and the interests of stakeholders, subject to affording appropriate notice to affected parties.</p> <p>C5.2 The commencement of insolvency proceedings should prohibit the unauthorized disposition of the debtor’s assets and suspend actions by creditors to enforce their rights or remedies against the debtor or the debtor’s assets. The injunctive relief (stay) should be as wide and all-encompassing as possible, extending to an interest in assets used, occupied or in the possession of the debtor.</p> <p>C5.3 A stay of actions by secured creditors should be imposed in liquidation proceedings to enable higher recovery of assets by sale of the entire business or its productive units, and in reorganization proceedings where the collateral is needed for the reorganization. The stay should be of limited, specified duration, strike a proper balance between creditor protection and insolvency proceeding objectives, and provide for relief from the stay by application to the court based on clearly established grounds when the insolvency proceeding objectives or the protection of</p>

	the secured creditor's interests in its collateral are not achieved. Exceptions to the general rule on a stay of enforcement actions should be limited and clearly defined.
Description	<p>C5.1 Provisional measures</p> <p>Before ruling on whether or not the insolvency proceeding will be opened, the court upon request of a creditor or ex-officio may impose preliminary or interim measures to protect the debtor property. The court may: (1) appoint a temporary trustee to supervise the debtor's activities and authorize new transactions; (2) attach assets; (3) impose a stay of enforcement against the property of the debtor, with the exception of enforcement cases under the Tax and Social Insurance Procedure Code; (4) order measures provided by law to secure the debtor's assets; (5) order the sealing of premises or transport vehicles where goods of the debtor are stored, if there is danger of dissipation, destruction or concealment of property.³¹⁶</p> <p>Where a creditor requests some provisional measures, the court shall impose these if: (i) the creditor's request is supported by convincing written evidence; or, (ii) a surety, in the amount established by the court, is provided to compensate the debtor for any damages incurred, in case it is not found to be insolvent, or over-indebted, respectively.³¹⁷ The court may rescind the measures imposed.³¹⁸</p> <p>The determination ordering the preliminary measures shall be announced to the person with respect to which the measures are imposed, and to the person that has requested the imposition thereof. The determination may be appealed within 7 days following receipt of the notification.³¹⁹ The appeal shall not suspend the immediate execution of the preliminary measures.³²⁰</p> <p>C5.2 Effects of commencement</p> <p>Upon institution of bankruptcy proceedings, court and arbitration proceedings within civil and commercial lawsuits against the debtor, with the exception of labor disputes on money claims shall be suspended. This provision shall not apply if as of the date of institution of bankruptcy proceedings on another case, where the debtor is a defendant, the court has accepted for joint consideration a counterclaim or an objection for offset submitted by the debtor.³²¹</p> <p>Proceedings against the debtor for monetary obligations secured by third party property shall not be stayed.³²²</p> <p>After bankruptcy proceedings have been instituted, it shall be inadmissible to commence new court or arbitration proceedings on civil or commercial cases for ownership against the debtor, except in respect of actions for: (1) protection of the rights of third parties owning any things included in the bankruptcy estate; (2) labor</p>

³¹⁶ CA, Art. 629a (1).

³¹⁷ CA, Art. 629a (2).

³¹⁸ CA, Art. 629a (5).

³¹⁹ CA, Art. 629a (6).

³²⁰ CA, Art. 629a (7).

³²¹ CA, Art. 637 (1).

³²² CA, Art. 637 (5).

	<p>disputes; (3) monetary receivables secured by third party property.³²³</p> <p>Within the insolvency proceedings, the powers of the debtor to dispose with bankruptcy estate assets are limited. At the liquidation stage, these rights are given to the insolvency trustee.</p> <p>The debtor, upon which insolvency proceedings have been instituted, continues its activities under the supervision of the trustee and may enter into new agreements with the preliminary consent of the trustee. Upon the court’s decision on whether the debtor jeopardizes the interests of the creditors with its actions, the debtor can be deprived of the powers to conduct its business activity and to dispose with its property whereas these rights are given to the trustee.³²⁴ Furthermore, where it is obvious that further continuance of the activity could damage the bankruptcy estate, the court may, upon request by the debtor, respectively the liquidator, the trustee in bankruptcy, the National Revenue Agency or creditor, declare the debtor bankrupt and terminate its activity concurrently with the ruling to institute bankruptcy proceedings or later but before the time period for proposing a plan has expired.³²⁵</p> <p>C5.3 Stay of enforcement by secured creditors</p> <p>Upon institution of bankruptcy proceedings, execution proceedings against assets of the insolvency estate shall be suspended. The insolvency stay on enforcement proceedings applies to secured creditors, with the exception of claims secured by a registered pledge.³²⁶ Claims governed by Article 193 of the Tax and Social Security Procedure Code are also excluded from the stay and can continue enforcement actions after commencement of insolvency proceedings.³²⁷</p> <p>Where actions have been undertaken in favour of secured creditors for implementing the security right, the court may allow the proceedings to continue, if the creditor’s interest is in danger of being harmed. Any surplus amount obtained after satisfaction of the secured claim shall be added to the insolvency estate.³²⁸</p>
<p>Assessment</p>	<p>Materially not observed</p> <p>The exceptions to the stay on enforcement by creditors with special pledges and State claims are hardly consistent with the objectives of insolvency proceedings. In particular, rehabilitation will be difficult to achieve if most or all assets of the insolvency estate (either the entire debtor’s enterprise or its separate manufacturing assets) are sold before a rehabilitation plan can be drafted and negotiated. There are reported cases of court decisions suspending out-of-court pledge enforcement. This judicial stay, however, is subject to the discretion of each court, which may or not grant it, and is not governed by any legal provision that could establish temporary limits and provide the secured creditors with adequate safeguards to protect its collateral value. In addition, the stay shall not affect properties subject to agreement</p>

³²³ CA, Art. 637 (6).

³²⁴ CA, Art. 635.

³²⁵ CA, Art. 630 (2).

³²⁶ SPA, Art. 43.

³²⁷ CA, Art. 638 (1).

³²⁸ CA, Art. 638 (3).

	<p>under the Financial Collateral Arrangements Act and some other assets (see Principle C8.1, below).</p> <p>The exclusion from the stay of the State claims ongoing enforcement is also problematic. It can also frustrate rehabilitation solutions, and in liquidation it could alter the priority for satisfaction of claims. The exception to the stay on enforcement by State claims is inconsistent with the priority ranking of such claims at distribution of the proceeds of the insolvency estate realization (see Principle C12).</p>
Comment	<p>Consideration should be given to amending the law in order to:</p> <ol style="list-style-type: none"> 1. Eliminate the absolute exceptions to the stay on enforcement by creditors with special pledges and State claims. Claims secured with special pledges and State claims should be encompassed by the bankruptcy stay on enforcement. 2. Specify that the stay of enforcement actions by any class of secured creditors (mortgages, pledges or any other security right) should be of limited, specified duration, strike a proper balance between creditor protection and insolvency proceeding objectives, and provide for relief from the stay by application to the court based on clearly established grounds when the insolvency proceeding objectives or the protection of the secured creditor's interests in its collateral are not achieved.
	<i>Governance</i>
Principle C6	<p>Management</p> <p>C6.1 In liquidation proceedings, management should be replaced by an insolvency representative with authority to administer the estate in the interest of creditors. Control of the estate should be surrendered immediately to the insolvency representative. In creditor-initiated filings, where circumstances warrant, an interim administrator with limited functions should be appointed to monitor the business to ensure that creditor interests are protected.</p> <p>C6.2 There are typically three preferred approaches in reorganization proceedings: (i) exclusive control of the proceeding is entrusted to an independent insolvency representative; or (ii) governance responsibilities remain invested in management; or (iii) supervision of management is undertaken by an impartial and independent insolvency representative or supervisor. Under the second and third approaches, complete administration power should be shifted to the insolvency representative if management proves incompetent, negligent or has engaged in fraud or other misbehavior.</p>
Description	<p>C6.1 and C6.2 Management in insolvency proceedings</p> <p>Before ruling on whether or not the insolvency proceeding will be opened, the court upon request of a creditor or ex-officio may impose preliminary or interim measures to protect the debtor property. In this regard, the court may appoint a temporary trustee to supervise the debtor's activities and authorize new transactions.³²⁹</p> <p>Upon institution of insolvency proceedings, the debtor may continue its activities</p>

³²⁹ CA, Art. 629a (1) 1.

	<p>under the supervision of the trustee and may enter into new agreements with the consent of the trustee. Upon the court’s decision on whether the debtor jeopardizes the interests of the creditors with its actions, the debtor can be deprived of the powers to conduct its business activity and to dispose with its property whereas these rights are given to the trustee.³³⁰</p> <p>Where it is obvious that further continuance of the activity could damage the bankruptcy estate, the court may, upon request by the debtor, respectively the liquidator, the trustee in bankruptcy, the National Revenue Agency or creditor, declare the debtor bankrupt and terminate its activity concurrently with the ruling to institute bankruptcy proceedings or later but before the time period for proposing a plan has expired.³³¹ The court shall also declare bankruptcy where a reorganization plan is not timely proposed, or a proposed plan is not accepted and approved.³³²</p> <p>On declaration of bankruptcy, the court: (1) declares the debtor bankrupt and terminates the activity of the debtor’s enterprise; (2) decrees a general attachment on the debtor’s assets; (3) terminates the powers of the debtor’s managing and representative bodies and hands these powers over to the insolvency trustee; (4) deprives the debtor of the right to manage and dispose of the assets included in the insolvency estate and hands these rights over to the insolvency trustee; and, (v) institutes the beginning of the realization of the assets included in the insolvency estate and of the proceeds distribution.³³³</p>
Assessment	Observed.
Comment	
Principle C7	<p>Creditors and the Creditors' Committee</p> <p>C7.1 The role, rights and governance of creditors in proceedings should be clearly defined. Creditor interests should be safeguarded by appropriate means that enable creditors to effectively monitor and participate in insolvency proceedings to ensure fairness and integrity, including by creation of a creditors’ committee as a preferred mechanism, especially in cases involving numerous creditors.</p> <p>C7.2 Where a committee is established, its duties and functions, and the rules for the committee’s membership, quorum and voting, and the conduct of meetings should be specified by the law. It should be consulted on non-routine matters in the case and have the ability to be heard on key decisions in the proceeding. The committee should have the right to request relevant and necessary information from the debtor. It should serve as a conduit for processing and distributing that information to other creditors and for organizing creditors to decide on critical issues. In reorganization proceedings, creditors should be entitled to participate in the selection of the insolvency representative.</p>
Description	C7.1 Creditors meetings

³³⁰ CA, Art. 635.

³³¹ CA, Art. 630 (2).

³³² CA, Art. 710.

³³³ CA, Art. 711.

	<p>The creditors play significant roles in the insolvency proceedings, participating in creditors meetings and in the creditors committee.</p> <p>The first creditors meeting is summoned by the insolvency court with the decision for opening of insolvency proceedings. Creditors who can participate are those included in the list prepared by the temporary trustee on the basis of the debtor's account books and presented to the court.³³⁴ Decisions shall be adopted by simple majority vote, considering the amount of the claims of the creditors with participation rights.³³⁵ The first meeting of creditors has the rights to hear the report of the temporary trustee, to nominate and vote for the permanent trustee and to define his remuneration and to constitute creditors' committee (optional decision).³³⁶</p> <p>The next meeting of creditors shall be convened after court approval of the list of claims allowed under Article 692, CA.³³⁷ After claims are allowed, voting rights at the meeting of creditors shall be granted only to creditors holding claims allowed.³³⁸ The court may grant voting rights to: (i) a creditor whose claim in the list is being challenged (Art. 637, para 3, and Art. 692 para 3) provided his claim is supported by the presentation of convincing evidence in writing, and, (ii) a creditor that has filed a claim for establishing the existence of its receivables, where these have been not allowed or have been allowed but another creditor or the debtor have made objected such claim.³³⁹ No voting rights shall be granted to a creditor holding a claim under Art. 616, para 2, CA.³⁴⁰</p> <p>The court shall convene the meeting of creditors at the request of the debtor, trustee in bankruptcy, creditors' committee or creditors holding one-fifth of the amount of claims allowed within maximum 7 days after the submission of the request.³⁴¹ The invitation to the meeting of creditors shall be posted in the Commercial Register, such posting being considered due notification of all creditors.³⁴²</p> <p>The meeting of creditors shall be held, regardless of the number of persons present and its chairman shall be the judge hearing the case. During the decision-making process, each creditor shall be entitled to a number of votes representing the proportional share of his claim in the total amount of claims allowed and the claims with voting rights. Decisions shall be made by simple majority vote, unless the law prescribes otherwise.³⁴³</p> <p>The meeting of creditors shall: (1) listen to the report of the trustee in bankruptcy on his activities; (2) hear the report of the creditors' committee; (3) nominate a trustee</p>
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³³⁴ CA, Art. 669.

³³⁵ CA, Art. 670.

³³⁶ CA, Art. 672.

³³⁷ CA, Art. 673 (1).

³³⁸ CA, Art. 673 (2).

³³⁹ CA, Art. 673 (3).

³⁴⁰ CA, Art. 673 (4).

³⁴¹ CA, Art. 674 (1).

³⁴² CA, Art. 675 (2).

³⁴³ CA, Art. 676.

in bankruptcy, if none has been nominated; (4) decide on the discharge of the trustee in bankruptcy and his replacement; (5) determine the amount of the current-basis remuneration of the trustee in bankruptcy, any alteration thereof, and the amount of the final remuneration; (6) appoint the creditors' committee, if none has been appointed, or change its membership; (7) propose to the court the amount of the subsistence for the debtor and his family; (8) determine the procedure and the method of cashing the debtor's property, the method and terms and conditions for property valuation, the choice of valuers and the determination of their remuneration. If the meeting of creditors fails to make a decision regarding the trustee, the court shall appoint one. The court ruling shall not be subject to appeal. If the meeting of creditors fails to make a decision concerning the realization of the insolvency estate, the decision shall be made by the trustee in bankruptcy.³⁴⁴

The decisions made by the meeting of creditors shall be binding on all creditors, including those who have been absent.³⁴⁵ The court (actually, an alternative panel of judges of the bankruptcy court³⁴⁶) may repeal a decision of the meeting of creditors, at the request of the debtor or a creditor, where such decision is unlawful or causes substantial damage to a part of the creditors.³⁴⁷

C7.2 Creditors committee

The creditors' committee is an optional collective body. The meeting of creditors may appoint a creditors' committee consisting of not less than three and not more than nine members, and it shall include persons representing both secured and unsecured creditors, except creditors holding subordinated claims under Art. 616, para 2, CA.³⁴⁸

The creditors' committee shall assist and check the activities of the trustee in bankruptcy with respect to the property management, inspect the books and cash availabilities, and notify the court in cases where the trustee should be removed under Art. 657, CA.³⁴⁹ The committee of creditors may, at its own initiative or at the request of the court, provide an opinion concerning the extension of the operation of the debtor's enterprise, the remuneration of the temporary and ex officio trustee in bankruptcy, actions related to cashing, the responsibility of the trustee in bankruptcy under Art. 663 (1), CA and on other matters.³⁵⁰

The members of the creditors' committee shall be entitled to remuneration which is determined at the time of their appointment, and it shall be paid at the expense of the creditors.³⁵¹

Members of the creditors' committee, their spouses and relatives shall not acquire in any way either directly or through another person assets or rights from the

³⁴⁴ CA, Art. 677.

³⁴⁵ CA, Art. 678.

³⁴⁶ CA, Art. 679 (2).

³⁴⁷ CA, Art. 679 (1).

³⁴⁸ CA, Art. 680.

³⁴⁹ CA, Art. 681 (1).

³⁵⁰ CA, Art. 681 (3).

³⁵¹ CA, Art. 682.

	bbankruptcy estate. ³⁵²
Assessment	Observed.
Comment	
	<i>Administration</i>
Principle C8	<p>Collection, Preservation, Administration and Disposition of Assets</p> <p>C8.1 The insolvency estate should include all the debtor’s assets, including encumbered assets and assets obtained after the commencement of the case. Assets excluded from the insolvency estate should be strictly limited and clearly defined by the law.</p> <p>C8.2 After the commencement of the insolvency proceedings, the court or the insolvency representative should be allowed to take prompt measures to preserve and protect the insolvency estate and the debtor’s business. The system for administering the insolvency estate should be flexible and transparent and enable disposal of assets efficiently and at the maximum values reasonably attainable. Where necessary, the system should allow assets to be sold free and clear of security interests, charges or other encumbrances, subject to preserving the priority of interests in the proceeds from the assets disposed.</p> <p>C8.3 The rights and interests of a third party owner of assets should be protected where its assets are used during the insolvency proceedings by the insolvency representative and/or the debtor in possession.</p>
Description	<p>C8.1 Insolvency estate composition</p> <p>As a general rule, the insolvency estate comprises: (1) property rights of the debtor as of the date of the decision for opening of the insolvency proceedings; (2) property rights of the debtor acquired after the decision for opening of the insolvency proceedings; and, (3) one half of the rights on chattels and money deposits that are joint matrimonial property of a debtor which is a sole proprietor of a business or unlimited liability partner of a company.³⁵³</p> <p>The law specifies some assets which are excluded from the insolvency estate³⁵⁴, as follows: (1) properties of the debtor and the unlimited liability partner which cannot be seized; (2) the financial security under Art. 22h and Art. 63a (2) of the Subsurface Resources Act; (3) the assets of a provider of water supply and sewerage services which are necessary to carry out the provider’s main operation until a new provider of water supply and sewerage services is appointed in the relevant self-contained territory; (4) the funds in the bank account under Article 60 (2) of the Waste Management Act; (5) properties over which the National Revenue Agency has undertaken enforcement under Article 193 of the Tax and Social Security Procedure Code prior to the institution of the insolvency proceeding³⁵⁵. If within a period of 6</p>

³⁵² CA, Art. 683.

³⁵³ CA, Art. 614 (1) - (3).

³⁵⁴ CA, Art. 614 (4) - (7).

³⁵⁵ CA, Art. 638 (1).

	<p>months from the date of initiation of insolvency proceedings the public enforcement agent has not sold the said property it shall be transferred from the public enforcement agent to the trustee in bankruptcy and shall be disposed in the bankruptcy proceeding.; (6) properties subject to agreement under the Financial Collateral Arrangements Act.</p> <p>In addition, assets pledged under the Registered Pledges Act might be excluded from the insolvency estate upon decision of the secured creditor, if it wishes to enforce the pledged assets outside of the insolvency proceedings (see Principle C5, above).</p> <p>C8.2 Preservation of the insolvency estate assets</p> <p>Upon commencement of the insolvency proceeding, the court may take several measures to protect the insolvency estate and the debtor’s business (see Principle C5, above).</p> <p>The disposal of assets shall be done by the insolvency trustee according to the decision of the meeting of creditors³⁵⁶ and following the insolvency court’s permission.³⁵⁷ The assets may be sold as a whole, as a group of some assets or individually.³⁵⁸</p> <p>In principle, assets should be sold through public auction. Upon the proposal of the insolvency trustee, the insolvency court may allow the sale to be made through direct negotiations by the trustee or through an intermediary, in case the assets were offered in auction but the sale was not realized because the buyer did not appear or desisted.³⁵⁹</p> <p>Before commencing the insolvency estate liquidation, the court may allow the trustee in bankruptcy to sell through direct negotiations: (1) any perishable movables; (2) items whose value does not cover their storage, subject to a consent of the meeting of creditors or the committee of creditors; (3) other property, subject to a consent of the meeting of creditors or the committee of creditors, if needed for covering the cost of the bankruptcy proceedings and if none of the creditors accepts to prepay the costs.³⁶⁰</p> <p>C8.3 Protection of rights and interests of third party owner of assets used in insolvency proceedings</p> <p>There are no special bankruptcy law provisions (different from the general civil and commerce laws) to protect the rights and interests of a third party owner of assets where its assets are used during the insolvency proceedings by the insolvency representative and/or the debtor in possession.</p>
Assessment	Largely observed.

³⁵⁶ CA, Art. 717 (1).

³⁵⁷ CA, Art. 716 (2).

³⁵⁸ CA, Art. 717 (2).

³⁵⁹ CA, Art. 718.

³⁶⁰ CA, Art. 639b.

	<p>The law does not specify if valuation is needed for direct selling of assets by the trustee where previous auction attempts failed. Several market players have reported lack of transparency in cases of direct negotiations for selling assets.</p> <p>There are no special bankruptcy law provisions (different from the general civil and commerce laws) to protect the rights and interests of a third party owner of assets where its assets are used during the insolvency proceedings by the insolvency representative and/or the debtor in possession.</p>
Comment	<p>The law should be amended to:</p> <ol style="list-style-type: none"> 1. Specify that assets of some relevance should be valued before direct selling of such assets by the bankruptcy trustee, and establish clear provisions for ensuring the transparency of direct selling. 2. Include provisions aimed at protecting the rights and interests of a third party who owns assets that are used during insolvency proceedings.
Principle C9	<p>Stabilizing and Sustaining Business Operations.</p> <p>C9.1 The business should be permitted to operate in the ordinary course. Transactions that are not part of the debtor’s ordinary business activities should be subject to court review.</p> <p>C9.2 Subject to appropriate safeguards, the business should have access to commercially sound forms of financing, including on terms that afford a repayment priority under exceptional circumstances, to enable the debtor to meet its ongoing business needs.</p>
Description	<p>C9.1 Continuation of business operations</p> <p>Upon institution of insolvency proceedings, the debtor may continue its activities under the supervision of the trustee and may enter into new agreements with the consent of the trustee. Upon the court’s decision on whether the debtor jeopardizes the interests of the creditors with its actions, the debtor can be deprived of the powers to conduct its business activity and to dispose with its property whereas these rights are given to the trustee.³⁶¹</p> <p>Where it is obvious that further continuance of the activity could damage the bankruptcy estate, the court may, upon request by the debtor, respectively the liquidator, the trustee in bankruptcy, the National Revenue Agency or creditor, declare the debtor bankrupt and terminate its activity concurrently with the ruling to institute bankruptcy proceedings or later but before the time period for proposing a plan has expired.³⁶² The court shall also declare bankruptcy where a reorganization plan is not timely proposed, or a proposed plan is not accepted and approved.³⁶³</p> <p>C9.2 Post-commencement finance</p> <p>The law specifies that the creditors whose claims have occurred after the opening of insolvency proceedings shall receive payment at maturity; and where they have</p>

³⁶¹ CA, Art. 635.

³⁶² CA, Art. 630 (2).

³⁶³ CA, Art. 710.

	not received payment at maturity, they shall be satisfied at the time of distribution of the money obtained in bankruptcy liquidation, with a priority that ranks them above unsecured ordinary claims but below other six classes of preferential claims (including, secured claims, bankruptcy costs and unsecured privileged claims). ³⁶⁴
Assessment	<p>Materially not observed.</p> <p>In insolvency proceedings, access to post-commencement finance is extremely rare. There are no specific provisions aimed at facilitating the business access to commercially sound forms of financing, upon commencement of bankruptcy proceedings, to enable the debtor to meet its ongoing business needs. The priority established by the law is too low to encourage post-commencement finance: such claims rank above unsecured creditors but below six other classes of preferential claims –including secured creditors, bankruptcy costs, labor claims, State claims and other unsecured privileged claims (see Principle C12).</p>
Comment	Consideration should be given to: (i) upgrading the post-commencement finance priority in bankruptcy, to rank it as bankruptcy costs (administrative expenses); and, (ii) providing regular post-commencement finance with adequate protection from voidable transactions actions.
Principle C10	<p>Treatment of Contractual Obligations³⁶⁵</p> <p>C10.1 To achieve the objectives of insolvency proceedings, the system should allow interference with the performance of contracts where both parties have not fully performed their obligations. Interference may imply continuation, rejection or assignment of contracts.</p> <p>C10.2 To gain the benefit of contracts that have value, the insolvency representative should have the option of performing and assuming the obligations under those contracts. Contract provisions that provide for termination of a contract upon either an application for commencement, or the commencement of insolvency proceedings, should be unenforceable subject to special exceptions.</p> <p>C10.3 Where the contract constitutes a net burden to the estate, the insolvency representative should be entitled to reject or cancel the contract, subject to any consequences that may arise from rejection.</p> <p>C10.4 Exceptions to the general rule of contract treatment in insolvency proceedings should be limited, clearly defined, and allowed only for compelling commercial, public, or social interests, such as in the following cases: (i) upholding general setoff rights, subject to rules of avoidance; (ii) upholding (subject to a possible short stay for a defined period) termination, netting, and close-out provisions contained in clearly defined types of financial contracts, where undue delay of such actions would, because of the type of counterparty or transaction, create risks to financial market stability³⁶⁶; (iii) preventing the continuation and</p>

³⁶⁴ CA, Art. 639 and Art. 722 (1) 7.

³⁶⁵ Treatment of contracts typically also includes leases.

³⁶⁶ The identification of relevant types of financial contracts should be determined in advance in accordance with existing international instruments (see below). The operation of termination, netting, and close-out provisions would not preclude the application of a short stay for a defined period under the national law governing bank resolution, or of a similar stay that the national insolvency law may provide, particularly to accomplish the orderly transfer of the contracts to a solvent counterparty. Such stay

	assignment of contracts for irreplaceable and personal services where the law would not require acceptance of performance by another party; and (iv) establishing special rules for treating employment contracts and collective bargaining agreements.
Description	<p>C10.1 to C10.3 Treatment of contracts</p> <p>The trustee in insolvency is entitled to terminate any executory agreement with a 15-day notice. Upon termination, the insolvent debtor owes indemnification to the counterparty, on account of the termination. The counterparty to the executory agreement may request the trustee to make a determination, within 15 days, as to whether the agreement concerned will continue to have effect; the law equates the trustee's silence to an affirmative statement to terminate the agreement.³⁶⁷ Where the trustee in insolvency retains the effects of an executory agreement (presumably an agreement being favourable to the insolvency estate), the law entitles the counterparty to receive the consideration under the agreement on the due date of the obligation, or else, i.e. e.g. if unpaid, the counterparty becomes a creditor in bankruptcy (see Principle C9.2).³⁶⁸ General contract law provisions entitling a party to withhold performance of his obligations until the performance by the other party should continue to apply to the benefit of both the insolvent debtor and the counterparty (see Art. 90 of the Obligations and Contracts Act).</p> <p>C10.4 Special rules on treatment of contracts – set off.</p> <p>Creditors may set off their obligations to debtors, provided that, prior to the date of the ruling on institution of bankruptcy proceedings: (i) both obligations existed, (ii) were of the same type, (iii) in privity between the same parties (i.e. the debts were mutual), and (iv) the obligation owed to the offsetting creditor was due and payable. Where the obligation owed to the offsetting party becomes due and payable in the course of bankruptcy proceedings, or as a result of the ruling for declaring the bankruptcy of the debtor, as well as where the obligations become of the same type as a result of such a ruling (art.617 CA), the creditor may set off only after the obligation owed to him becomes due and payable, or the obligations become of the same type.³⁶⁹</p> <p>A setoff is, however, subject to the rules of avoidance. A setoff may be declared invalid as against the insolvency creditors when the offsetting creditor has acquired the receivable and the obligation of the debtor prior to the date of the ruling on the institution of insolvency proceedings, but had known, as at the time of acquiring, of the existence of the prerequisites for the commencement of insolvency, or had known that a claim for the institution of such proceedings had been filed.</p>

should be subject to appropriate safeguards. Early termination rights would be suspended, provided that the substantive obligations of the debtor under the relevant contracts continue to be performed in full. The relevant provisions of national law should be reviewed generally for consistency with existing international instruments, including specifically the European Union Bank Recovery and Resolution Directive, the European Union Directive on Financial Collateral Arrangements, the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, and the UNIDROIT Principles on The Operation of Close-out Netting Provisions.

³⁶⁷ CA, Art. 644.

³⁶⁸ CA, Art. 639 (1).

³⁶⁹ CA, Art. 645.

	<p>Knowledge is not presumed and has to be proven by the plaintiff³⁷⁰. The retroaction period within which a set-off may be declared invalid has no time limits established by law.³⁷¹ Furthermore, a setoff effected by the insolvent debtor after the initial insolvency or over-indebtedness date shall be invalid (as preference) as against the insolvency creditors, except for the part that the creditor would acquire from distribution of the liquidation proceeds from the insolvency estate, regardless of the time when both cross-obligations have arisen; however, in the interest of legal certainty, this invalidity applies only for setoffs effected within the 1-year period preceding the filing of an insolvency claim or application (even if the initial insolvency date were found to fall on a date preceding the start of this period).³⁷²</p> <p>(The above paragraphs only outline general commercial insolvency regime treatment of the issues addressed by this Principle C10. The regime under the Bank Insolvency Act is not considered).</p> <p>Netting</p> <p>Except with respect to financial collateral agreements (see Principle A3, above), Bulgaria legal system does not have substantive rules on netting, in particular on close-out netting. A “close-out netting provision” means a contractual provision on the basis of which, upon the occurrence of an event predefined in the provision in relation to a party to the contract, the obligations owed by the parties to each other that are covered by the provision, whether or not they are at that time due and payable, are automatically or at the election of one of the parties reduced to or replaced by a single net obligation, whether by way of novation, termination or otherwise, representing the aggregate value of the combined obligations, which is thereupon due and payable by one party to the other.³⁷³</p>
<p>Assessment</p>	<p>Largely observed.</p> <p>Principle 10.4: Materially not observed.</p> <p>Except with respect to financial collateral agreements, the law does not ensure certainty to the rights of the parties to financial contracts when one of the parties fails to perform for insolvency reasons. Bulgaria is among the minority of EU member states that have no such legislation. According to unofficial data by the International Swaps and Derivatives Association (“ISDA”), as at late 2015, only Bulgaria and Lithuania do not have proper substantive netting legislation (whether based on the ISDA Model Netting Law or on the UNIDROIT Principles on the Operation of Close-out Netting Provisions). Netting is dealt with in various sources</p>

³⁷⁰ See e.g. Judgement No 20 of 31.01.2007 of the Supreme Court of Cassation in relation to commercial case 489/2006, Commercial Division, 1st Commercial Department.

³⁷¹ CA, Art. 645 (3).

³⁷² The 1-year period rule was introduced by the 2013 amendments to the CA. Similar amendments were introduced in respect of the avoidable transactions rules. See also the comments on principle C11.3.

³⁷³ Principle 2 of the UNIDROIT Principles on the Operation of Close-out Netting Provisions. As mentioned in the Introduction to the Principles, “[c]lose-out netting provisions are widely used in the financial market by private sector entities, in particular banks, but also private non-financial institutions. In the public sector, entities such as, especially, central banks and supranational financial institutions such as development banks make use of netting provisions. Close-out netting is typically applied to transactions such as derivatives, repurchase and securities lending agreements, and other kinds of transaction that tend to carry a high counterparty and/or market risk.” Netting is more a term (rather than a concept) that is not uncommon in the various specialized Bulgarian laws and regulations, however, there is no general definition thereof (therefore, the concept remains scantily regulated).

<p>Comment</p>	<p>of law that apply in Bulgaria, in particular, the FCAA (see Description in Principle A3, C), and has been dealt with in the Credit Institutions and Investment Firms Recovery and Resolution Act (transposing the BRRD), which entered into force on August 14, 2015. Furthermore, the CRD IV package (in particular CRR) clearly regards netting as a credit risk mitigation tool. However, the application of all of such provisions is handicapped due to the lack of substantive netting rules or, in the case of the FCAA³⁷⁴, netting will be in operation only if a financial collateral arrangement is put in place, the financial collateral is provided, and the netting provision is imbedded in the financial collateral arrangement (as opposed to including the provision in a derivatives master agreement, or a repurchase master agreement). Thus, while a netting arrangement is generally enforceable, it is widely accepted that in an insolvency context (general commercial insolvency, as well as banking insolvency) the enforceability of netting, in particular close-out netting provisions is not possible, or is at best dubious. Termination rights under derivatives, repurchase and similar master agreements are similarly in doubt. The lack of express legal provisions, in particular in the insolvency laws, shielding termination, netting, and close-out netting rights are, therefore, generally found to be problematic as regards the ISDA Master Agreement, the Global Master Repurchase Agreement, the European Master Agreement, as well as locally drafted master agreements, among others. To the extent in which repurchase agreements are structured as title transfer financial collateral arrangements, netting may be found to be shielded by the relevant provision of the FCAA.</p> <p>Separate from the above assessment concerning Principle C10.4, contract provisions that provide for termination of a contract upon either an application for commencement, or the commencement of insolvency proceedings, are not expressly rendered unenforceable under Bulgarian law as is advisable in accordance with Principle C10.2, second sentence (subject to special exceptions, in particular those referred to in Principle 10.4).</p> <p>Consideration may be given to including in the law:</p> <ol style="list-style-type: none"> 1. Specific rules regarding the treatment of financial contracts, upholding (subject to a possible short stay for a defined period) termination, netting, and close-out provisions contained in clearly defined types of financial contracts, where undue delay of such actions would, because of the type of counterparty or transaction, create risks to financial market stability³⁷⁵. The scope of any special treatment (e.g. the width of the concept of ‘financial contracts’) is dependent on policy choices. Additionally, close attention should be paid in this respect to the issue of systemic risk and the
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³⁷⁴ See articles 10 and 13 of the FCAA.

³⁷⁵ The identification of relevant types of financial contracts should be determined in advance in accordance with existing international instruments (see below). The operation of termination, netting, and close-out provisions would not preclude the application of a short stay for a defined period under the national law governing bank resolution, or of a similar stay that the national insolvency law may provide, particularly to accomplish the orderly transfer of the contracts to a solvent counterparty. Such stay should be subject to appropriate safeguards. Early termination rights would be suspended, provided that the substantive obligations of the debtor under the relevant contracts continue to be performed in full. The relevant provisions of national law should be reviewed generally for consistency with existing international instruments, including specifically the European Union Bank Recovery and Resolution Directive, the European Union Directive on Financial Collateral Arrangements, the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, and the UNIDROIT Principles on The Operation of Close-out Netting Provisions.

	<p>international standards on the financial institutions insolvency regime which may curtail the enforceability of early termination and close-out netting in certain circumstances. Use of the best practices in other European Union member states may be advisable. Including such special rules in both the CA and in the Bank Insolvency Act may be considered.</p> <p>2. A provision specifying that contract clauses that provide for termination of a contract (subject to exceptions concerning defined financial contracts, as discussed in the preceding item 1), upon either an application for commencement, or the commencement of insolvency proceedings, shall not be enforceable.</p>
<p>Principle C11</p>	<p>Avoidable Transactions</p> <p>C11.1 After the commencement of an insolvency proceeding, transactions by the debtor that are not consistent with the debtor’s ordinary course of business or engaged in as part of an approved administration should be avoided (cancelled), with narrow exceptions protecting parties who lacked notice.</p> <p>C11.2 Certain transactions prior to the application for or the date of commencement of the insolvency proceeding should be avoidable (cancelable), including fraudulent and preferential transfers made when the enterprise was insolvent or that rendered the enterprise insolvent.</p> <p>C11.3 The suspect period, during which payments are presumed to be preferential and may be set aside, should be reasonably short in respect to general creditors to avoid disrupting normal commercial and credit relations, but may be longer in the case of gifts or where the person receiving the transfer is closely related to the debtor or its owners.</p>
<p>Description</p>	<p>C11.1 Avoidable transactions performed after commencement of insolvency proceedings</p> <p>The following transactions and acts are null and void as against the insolvency creditors, when effected after the date of the ruling on institution of insolvency proceedings and not in compliance with the procedure established thereby (i.e. outside the ordinary course of the insolvency proceeding): (i) performance of an obligation that has occurred prior to the date of the ruling on institution of insolvency proceedings, irrespective of the manner of performance; (ii) pledging or mortgaging assets of the insolvency estate; or (iii) entering into transactions with assets forming part of the insolvency estate.³⁷⁶ The above rules do not apply with regard to the payment of public levies (as well as private levies payable to the State/municipalities where their collection is carried out in accordance with the rules on public levies collection).³⁷⁷</p> <p>C11.2 and C11.3 Avoidable transactions performed before commencement of insolvency proceedings</p> <p>The following steps and transactions, performed and effected by the debtor after the initial date of insolvency or over-indebtedness, as the case may be, within the time</p>

³⁷⁶ CA, Art. 646 (1).

periods specified below prior to the filing of the bankruptcy application, may be declared invalid in respect of the bankruptcy creditors:

1. performance of a non-executable monetary obligation regardless of the manner of performance, effected within a period of one year;
2. establishing of a mortgage or pledge as security for an obligation which has not been secured until then, effected within a period of one year;
3. repayment of an executable monetary obligation of the debtor, regardless of the manner of performance, effected within a period of 6 months.³⁷⁸

The invalidity shall not affect the rights acquired by bona fide third parties against consideration prior to the registration of the claim. Unfairness shall be presumed until the contrary is proved, if the third party is a related person of the debtor or the person with whom the debtor negotiated.³⁷⁹

If the creditor had been aware that the debtor was insolvent or over-indebted, the above mentioned time periods are duplicated.³⁸⁰ The creditor's knowledge shall be presumed where: (i) the debtor and the creditor are related parties, or, (ii) the creditor was aware or was in a position to become aware of circumstances, based on which a justified assumption could be made of the existence of insolvency or over-indebtedness.³⁸¹

Performance or repayment of a non-executable or an executable monetary obligation³⁸² shall not be invalid where the performance falls within the usual operations of the debtor and where: (i) it had been effected in accordance with the agreement between the parties together with the provision of an equivalent good or service to the benefit of the debtor or up to 30 days following the due date of the monetary obligation, or, (ii) following the execution of the payment the creditor has actually provided to the debtor an equivalent good or service.³⁸³ Performance by the debtor of public receivables or of private state receivables whose coercive collection is effected according to the procedure applicable to public receivables shall not be invalid either.³⁸⁴

A mortgage or pledge created as a security for an obligation which has not been secured until then shall not be invalid where the pledge or mortgage had been established: (i) prior to or at the time of extending of a loan to the debtor; (ii) to replace another property security, which itself cannot be declared invalid in accordance with the avoidance actions rules of the CA; (iii) to secure a loan extended for the acquisition of the subject of the pledge or mortgage.³⁸⁵

In addition to the above mentioned cases, the following steps performed and

³⁷⁸ CA, Art. 646 (2).

³⁷⁹ CA, Art. 646 (7).

³⁸⁰ CA, Art. 646 (3).

³⁸¹ CA, Art. 646 (4).

³⁸² CA, Art. 646 (5).

³⁸³ CA, Art. 646 (5).

³⁸⁴ CA, Art. 646 (8).

³⁸⁵ CA, Art. 646 (6).

	<p>transactions effected by the debtor may be declared null in respect of the bankruptcy creditors, where such steps and transactions have been performed or effected within the time periods specified below prior to the filing of the bankruptcy:</p> <ol style="list-style-type: none"> 1. a gratuitous transaction, with the exception of an ordinary donation, to the benefit of a party related to the debtor, effected within three years; 2. a gratuitous transaction effected within two years; 3. an onerous transaction, where the things given exceed considerably in value the things received, effected within two years, but not earlier than the date of the insolvency or over-indebtedness, as the case may be; 4. establishing of a mortgage, pledge or personal security for debts of others, effected within one year, but not earlier than the date of the insolvency or over-indebtedness, as the case may be; 5. establishing of a mortgage, pledge or personal security for debts of others to the benefit of a creditor, which is a related party to the debtor, effected within two years; 6. a transaction that harms the creditors, a party to which is a related person to the debtor, effected within two years.³⁸⁶ <p>The above mentioned steps and transactions (1. – 6.) may also be declared null in respect of the bankruptcy creditors where effected by the debtor during the period between the filing of the bankruptcy application and the date of the judgement for initiation of bankruptcy proceedings.³⁸⁷</p> <p>The invalidity under Article 647 of the CA shall not affect the rights acquired by bona fide third parties against consideration prior to the registration of the claim. The exception in favor of public obligations shall also apply.³⁸⁸</p> <p>The <i>Actio Pauliana</i> under Article 135 of the Obligations and Contracts Act (the general contracts law cause of action against fraudulent disposals by a debtor to the detriment of his creditor)³⁸⁹ can be pursued in an insolvency setting as well.</p>
Assessment	Largely observed.

³⁸⁶ CA, Art. 647 (1).

³⁸⁷ CA, Art. 647 (2).

³⁸⁸ CA, Art. 647 (3).

³⁸⁹ In an *Actio Pauliana*, the scienter of the debtor is presumed where the debtor is dealing with close relatives (Art. 135, para. 2 of OCA); there is no such general presumption in OCA in case of dealings between entities of which one controls the other or which are under common control (since OCA was first enacted in 1950, i.e. at times when all business activity was controlled by the “socialist” state, the limited scope of para. 2 had its rationale; in a modern context, an express inclusion of the presumption of scienter in dealings between legal entities, as suggested above, might be helpful, irrespective of the fact that Bulgarian courts sometimes apply, by analogy of law, the presumption to legal entities (see e.g. judgment № 336 dated 29.04.2015 of the Varna District Court in relation to commercial case № 1395/2014). However, to remedy this statutory shortage, the legislature amended Article 649 of the CA in 2013 to expressly spell out in para. 4 a presumption of scienter, for the purposes of an *Actio Paulina* brought in connection with insolvency proceedings, as regards transactions between the insolvent debtor and “related parties” (as defined in the CA).

The various causes of avoidance actions were re-written in 2013³⁹⁰, as the previous regime was affected from a number of weaknesses.³⁹¹ A significant change introduced in 2013 was the re-definition of the various suspect periods. The longest suspect period (up to three years before the date of filing for bankruptcy) applies in case of gratuitous conveyances in favor of related parties.³⁹² In most cases, the suspect periods are defined in connection with the initial insolvency date but may not exceed one or two years, depending on whether the counterparties to the transactions or actions are “related parties” or not. In certain cases the knowledge of the creditor of the debtor’s insolvency or over-indebtedness results in the application of longer suspect periods and knowledge may be presumed (rebuttably).³⁹³ However, for the existence of a voidable preference to be established, the knowledge of the debtor, of the creditor, or of a third counterparty is generally irrelevant, since the rules are concerned with the mere fact of a transaction or action being entered into or done³⁹⁴ or with the economic imbalances resulting from such transactions or acts.³⁹⁵ Ordinary business carve-outs have been introduced in the new regime.³⁹⁶

As the 2013 amendments are still relatively new, and even though cases are already reaching the courts and judgments are being issued, the effectiveness of the new regime is yet to be assessed. Some issues however may be pointed out as weaknesses of the avoidable transactions regime, namely:

1. The absolute exclusion from avoidance of the debtor’s performance of public (State) obligations creates a privilege to the State and municipalities over other creditors that could be unjustified in many instances.
2. If Art. 646 (2) 3, CA shall be interpreted in the sense that, regardless of the manner of performance all regular payments over the past 6 months can be reversed, such avoidance provision would be rather far reaching. It does not take into account the position of a *bona fide* creditor having no reason to believe that such payment should not have been received, and it introduces great uncertainty in ordinary market transactions.
3. Actions to avoid a transaction shall be brought before the bankruptcy court.³⁹⁷ The general interpretation and practice is that a judge from such court will be competent but not the same judge who is dealing with the

³⁹⁰ The amendments to the CA were published in State Gazette issue 20/28.02.2013.

³⁹¹ A major scholarly work on the subject of avoidance actions is Stefan Stefanov’s book “Preference Actions to the Benefit of the Insolvency Estate”, Sofia, CIBI Publishing House, 2011, which addresses the old regime. See also “Current Issues in Insolvency Proceedings”. Trud and Pravo Publishing House, 2nd edition 2015 (Stefan Stefanov, Associate Professor with the Sofia University, et al.; <http://www.trudipravo.bg/knigi/knigi-v-prodazhba/2356-aktualni-vaproshi-na-proizvodstvoto-po-nesastoyatelnost>) (http://www.trudipravo.bg/index.php?option=com_content&view=article&id=2413:aktualni-vuproshi-proizvodstvonesustoiatelnost&catid=2:expebooks&Itemid=4).

³⁹² CA, Art. 647 (1) 1.

³⁹³ CA, Art. 646 (4).

³⁹⁴ CA, Art. 646 (2).

³⁹⁵ CA, Art. 647 (1) 3 and 6.

³⁹⁶ CA, Art. 646 (5) and (6).

³⁹⁷ CA, Art. 649 (5).

	<p>bankruptcy proceeding (otherwise –it is argued- the latter could be involved in a conflict of interest). This ‘divided competence’ may contribute to delaying bankruptcy proceedings and create the risk of inconsistent interpretation of similar conflicts related to the same bankruptcy case.</p>
Comment	<p>Consideration may be given to revisiting the avoidable transactions regime with respect to three main issues that could be affecting its effectiveness, namely:</p> <ol style="list-style-type: none"> 1. The absolute exclusion from avoidance of the debtor’s performance of public (State) obligations, which could be eliminated. 2. According to the manner of performance, the law may protect from avoidance all regular payments made prior to the filing of a bankruptcy petition. 3. The judge that deals with the bankruptcy proceeding should be competent to deal with avoidable transactions cases.
	<i>Claims and Claims Resolution Procedures</i>
Principle C12	<p>Treatment of Stakeholder Rights and Priorities</p> <p>C12.1 The rights of creditors and priorities of claims established prior to insolvency proceeding under commercial or other applicable laws should be upheld in an insolvency proceeding to preserve the legitimate expectations of creditors and encourage greater predictability in commercial relationships. Deviations from this general rule should occur only where necessary to promote other compelling policies, such as the policy supporting reorganization or to maximize the insolvency estate’s value. Rules of priority should enable creditors to manage credit efficiently consistent with the following additional principles:</p> <p>C12.2 The priority of secured creditors in their collateral should be upheld and, absent the secured creditor’s consent, its interest in the collateral should not be subordinated to other priorities granted in the course of the insolvency proceeding. Distributions to secured creditors should be made as promptly as possible.</p> <p>C12.3 Following distributions to secured creditors from their collateral and payment of claims related to costs and expenses of administration, proceeds available for distribution should be distributed <i>pari passu</i> to the remaining general unsecured creditors,³⁹⁸ unless there are compelling reasons to justify giving priority status to a particular class of claims. Public interests generally should not be given precedence over private rights. The number of priority classes should be kept to a minimum.</p> <p>C12.4 Workers are a vital part of an enterprise, and careful consideration should be given to balancing the rights of employees with those of other creditors.</p> <p>C12.5 In liquidation, equity interests or the owners of the business are not entitled to a distribution of the proceeds of assets until the creditors have been fully repaid. The same rule should apply in reorganization, although limited exceptions may be</p>

³⁹⁸ Subject to any inter-creditor agreements and contractual subordination provisions or where equitable subordination of a creditors claim may be appropriate.

	made under carefully stated circumstances that respect rules of fairness that entitle equity interests to retain a stake in the enterprise.
Description	<p>C12.1 and C12.2</p> <p>In insolvency proceedings creditors shall retain their security rights.³⁹⁹ Also, any creditor who exercises retention rights shall benefit with priority from the proceeds out of the sale of the assets over which the retention rights have been exercised.⁴⁰⁰</p> <p>Distribution to the secured creditor shall be made immediately after the foreclosure of the collateral when the proceeds cover the amount of the claim plus the accrued interest. Such principle also applies to the sale of a property over which a creditor exercises retention rights.⁴⁰¹</p> <p>C12.3</p> <p>The bankruptcy estate shall be used to satisfy all creditors of the debtor for commercial or non-commercial obligations.⁴⁰² Foreign and domestic creditors shall have equal rights in bankruptcy proceedings.⁴⁰³ In insolvency proceedings the law specifies several classes of creditors' claims, which shall be satisfied by order of priority as follows:⁴⁰⁴</p> <p>First, secured claims (pledges and mortgages) shall be paid with the proceeds of realization of the secured asset (s).</p> <p>Second, claims of creditors with a right of retention on a particular asset shall be paid with the proceeds of realization of such asset.</p> <p>Third, bankruptcy costs (administrative expenses).</p> <p>Fourth, claims deriving from employment contractual rights, which emerged before the date of the decision to institute the insolvency proceedings.</p> <p>Fifth, alimony due by the debtor to third persons in accordance with the applicable legislation.</p> <p>Sixth, public law claims of the state or municipalities, such as taxes, customs duties, fees, obligatory social security contributions, which emerged prior to the institution of the insolvency proceedings.</p> <p>Seventh, claims which have arisen after the date of commencement of the insolvency proceedings and have not been paid on their maturity.</p> <p>Eighth, any remaining general unsecured claims occurred prior to the insolvency proceedings commencement.</p> <p>When the proceeds from the liquidation of insolvency estate assets are insufficient to satisfy the claims of the relevant class of creditors in its entirety, then the proceeds</p>

³⁹⁹ CA, Art. 618 (1).

⁴⁰⁰ CA, Art. 722 (1) 2.

⁴⁰¹ CA, Art. 724.

⁴⁰² CA, Art. 616 (1).

⁴⁰³ CA, Art. 616 (3).

⁴⁰⁴ CA, Art. 722 (1).

shall be distributed pro rata among the creditors.⁴⁰⁵ Pro rata distribution is not applicable to the first two classes of claims (secured creditors and creditors with a right of retention).

Finally, the following (subordinated) claims shall be paid only after the full satisfaction of all above classes:

1. interest determined by operation of law or by the contract on unsecured claims, due after the date of ruling to institute bankruptcy proceedings;
2. credits extended to the debtor by partners or shareholders;
3. gratuitous transactions claims;
4. expenses accrued by creditors in pertinence to their participation in bankruptcy proceedings, except for expenses prepaid by a creditor for the purpose of initiating the bankruptcy proceeding.⁴⁰⁶

C12.4

In addition to the labor claims priority (see above), the Bulgarian law envisages other mechanisms aimed at protecting the rights and interests of the employees in the debtor's insolvency proceedings.

One of the measures for protection of the employees' rights is the obligation for the trustee in insolvency incorporated to include *ex officio* the claims of the employees in the list of the accepted claims which shall be taken into account for the satisfaction with the proceeds received from the liquidation of the bankruptcy estate (see Principle C13, below).

Furthermore, pursuant to the Bulgarian Law on the Guarantee of the Claims of the Employees and Officers in the Event of the Employer's Bankruptcy (LGCEOB)⁴⁰⁷ the employees of company in bankruptcy are entitled to receive a guarantee payment from a special fund ("Guaranteed Claims of the Employees and the Officers" with the National Social Security Institute) in an amount established in relation to the duration of the employment relation and based on the fact that the labor contract has been terminated at the time of the institution of the insolvency proceeding. After the payment of the guarantee, the said fund shall substitute the employees in their claims against the debtor within the insolvency proceeding. In such case the fund (represented by the Bulgarian National Revenue Agency) shall benefit from the priority given by the law to the claims of the employees (i.e. shall be satisfied after the claims of the secured creditors and the administrative expenses for the insolvency proceedings have been duly covered).

The employees may participate at, and collect in the bankruptcy proceedings the amount of their claims not covered by the guarantee.

12.5

The Bulgarian legislation gives a priority to the interests of the creditors over those of the owners of the capital of the company in bankruptcy. Therefore, the owners of the capital (shareholders or partners, as the case may be) are not included in the

⁴⁰⁵ CA, Art. 722 (2).

⁴⁰⁶ CA, Art. 616 (2).

⁴⁰⁷ Promulgated in State Gazette, № 37/4.05.2004, last amended in State Gazette, № 84/27.09.2013, in force as of 1.10.2013.

	<p>list of the creditors who shall receive a distribution of the proceeds from the sale of the bankruptcy estate. They may receive part of the assets of the debtor, only in the case when after the liquidation of the bankruptcy estate all of the creditors' claims are duly paid off and there is still a remainder which shall be returned to the debtor.⁴⁰⁸</p> <p>In addition, it should also be noted that when there is a loan extended to the debtor by an owner of the capital (shareholder or partner, as the case may be), such claim shall be subordinated with respect to all other secured and unsecured creditors' claims –save for the expenses made by the creditors in the insolvency proceeding (see above).</p> <p>In cases of a rehabilitation plan, one of the conditions for its court approval is that the plan should not envisage the payment to the partner or shareholder to be executed prior to the final satisfaction of the claims of the creditors whose interests are affected by the plan.⁴⁰⁹ However, when the rehabilitation plan envisages the conversion of the creditors' claims into shares or units of the debtor's capital, the existing owners of the capital may retain their participation in the capital of the insolvent company. The existing owners must accept the new shareholders/partners and, most likely, the former will lose the controlling stake in the company as a result of the compulsory capital increase.⁴¹⁰</p>
<p>Assessment</p>	<p>Largely observed.</p> <p>The Bulgarian law treatment of creditors and other stakeholders' rights in insolvency proceedings is largely consistent with international best practices. In particular, the priorities of claims established prior to insolvency proceedings under commercial and other ordinary legislation are upheld in bankruptcy (liquidation) proceedings.</p> <p>Such order of priorities of the claims, however, might be changed (suspended) in case a rehabilitation plan is adopted by the general meeting of the creditors and approved by the court. There are no strict legal requirements as to the type of transformation of the claims, which may be introduced through adoption of a rehabilitation plan. The general meeting of the creditors and the approving insolvency court would have full discretion to re-arrange the order of satisfaction of the creditors' claims. This interpretation has been confirmed in court.⁴¹¹ It is also recognized by some legal scholars.⁴¹²</p> <p>Although the law specifies that a dissenting creditor should receive under the plan the same payment he would have received in liquidation⁴¹³, allowing the majority</p>

⁴⁰⁸ CA, Art. 732.

⁴⁰⁹ CA, Art.705 (1) 6.

⁴¹⁰ See: see Kalaidjiev, A., "Rehabilitation of the undertaking", Trud i Pravo Publishing House, p.173.

⁴¹¹ See Decision № 2377, dd. 14.05.1999 of the Supreme Administrative Court under the case № 4391/98, I section, pursuant to which it is stressed that is not questionable that by a court approved rehabilitation plan the order of the satisfaction of the creditors' claims can be rearranged.

⁴¹² For example Professor Angel Kalaidjiev expressed such opinion in its monography "Rehabilitation of the undertaking", Trud i Pravo Publishing House, p.113.

⁴¹³ CA, Art. 705 (1) 4.

	of creditors and/or the court to alter the order of priorities in a rehabilitation plan might not preserve the legitimate expectations of creditors and reduces predictability in commercial relationships.
Comment	Consideration should be given to clarifying the insolvency legislation to ensure that the order of priorities of claims which is applicable in bankruptcy cannot be changed or altered in a rehabilitation plan by a decision of a majority of creditors or a court ruling.
Principle C13	<p>Claims Resolution Procedures</p> <p>Procedures for notifying creditors and permitting them to file claims should be cost effective, efficient and timely. While there must be a rigorous system of examining claims to ensure validity and resolve disputes, the delays inherent in resolving disputed claims should not be permitted to delay insolvency proceedings.</p>
Description	<p>As a general principle incorporated in the CA, in insolvency proceedings the debtor should be notified in its headquarters address, and the creditors shall be notified at an address specified by the latter on the territory of the Republic of Bulgaria. A creditor, whose seat is outside the territory of Bulgaria and does not have an address in Bulgaria, should indicate such address before the competent court. If it fails to do so, then the notifications with regard to the insolvency proceedings shall be announced in the Bulgarian Commercial Register with the Registration Agency and therefore shall be deemed to be duly delivered.</p> <p>Some of the notifications within insolvency proceedings should be done through announcement in the Bulgarian Commercial Register with the Registration Agency (at least 7 days before the respective meeting is to be held). In case that, in accordance with the provisions of the CA, the notifications are not to be necessarily announced in the Bulgarian Commercial Register with the Registration Agency and are not to be necessarily submitted directly to the creditors, they should be registered in the special public book maintained by the competent insolvency court. In this book should also be registered the actions of the debtor, creditors, creditors' committee, the general meeting of the creditors, the trustee in insolvency, as well as the acts of the insolvency court and the decisions and orders of the court of appeal and the court of cassation which have been taken with regard to the claims disputing the acts of the insolvency court (see Principle C2, above).</p> <p>Creditors shall claim their receivables in writing before the bankruptcy court within one month following the announcement in the Commercial Register of the decision for opening of the insolvency proceedings.⁴¹⁴ Each creditor shall indicate the grounds and amount of the receivables, privileges and security, the legal address and submit evidence in writing.⁴¹⁵ The claims of a worker or employee arising from a labor relationship with the debtor shall be entered <i>proprio motu</i> by the trustee in bankruptcy in the list of accepted claims.⁴¹⁶ The trustee in bankruptcy shall also enter <i>proprio motu</i> in the list of presented claims any public levy established by an act</p>

⁴¹⁴ CA, Art. 685 (1).

⁴¹⁵ CA, Art. 685 (2).

⁴¹⁶ CA, Art. 687 (1).

which has come into effect.⁴¹⁷

Any claim made after the expiration of the above mentioned one month period, but not later than two months therefrom, shall be entered on the list of presented claims and acknowledged in accordance with the terms and procedures set forth by law. A creditor with claims submitted during the mentioned two months period may not challenge claims already acknowledged or a distribution which has been made and he shall be satisfied with the remainder if the property cashed in has been distributed. The additional expenses for the acceptance of his claim shall be borne by him. After the expiration of such three months period, no claims which have occurred prior to the date of institution of bankruptcy proceedings may be presented.⁴¹⁸ The claims which have not been filed in the bankruptcy proceedings and the rights which have not been exercised shall be extinguished.⁴¹⁹

The act of making a claim in bankruptcy proceedings shall be deemed to constitute an interruption of the statute of limitation. The statute of limitation shall be suspended for the duration of the bankruptcy proceedings.⁴²⁰

The trustee in bankruptcy shall compile: (i) a list of the acknowledged claims that have been presented, by order of their presentation, indicating the creditor, the amount and the grounds of the claim, the privileges and security, the date of presenting the claim; (ii) a list of the labor and public levy entered proprio motu by the trustee; (iii) a list of claims presented but not acknowledged; (iv) annual financial statements for the preceding calendar year and for the last month before the date of the institution of bankruptcy proceedings.⁴²¹

Any claim accepted or not accepted by the trustee in insolvency may be disputed by the debtor or by a creditor before the insolvency court, in writing with a copy for the trustee in insolvency, within 7 days from the announcement of the list of the accepted claims. In this case, the trustee in insolvency is obliged to present to the competent court an opinion for any objection made within 3 days after the receiving of the objection, but no later than the date of the court hearing of the objections.⁴²²

The insolvency court shall examine the received objections with regard to the accepted /not accepted claims (where possible, in one open court hearing) and if it finds them reasonable, it shall amend the final list of the accepted claims. If the competent court does not satisfy the objections made, the disputed creditor/the debtor shall have a right to commence a lawsuit (a general civil proceeding) before the insolvency court in order to ascertain whether the disputed claim exists (or not exist, if this was disputed), within 7 days after the announcement in the Bulgarian Commercial Register with the Registration Agency of the order of the insolvency

⁴¹⁷ CA, Art. 687 (2).

⁴¹⁸ CA, Art. 688.

⁴¹⁹ CA, Art. 739 (1).

⁴²⁰ CA, Art. 685a (1).

⁴²¹ CA, Art. 686 (1).

⁴²² CA, Art. 690.

	<p>court for the adoption of the list of the accepted claims. Such a lawsuit shall be resolved by another court panel of the respective bankruptcy court.⁴²³</p> <p>Any disputed claim shall be taken into account in case of introduction of a rehabilitation plan (as in accordance with Art.700, Para.1, Item 1 of the CA the rehabilitation plan should envisage guarantees for the fulfilment of the disputed claims) and also when the bankruptcy estate is to be liquidated (due to the fact that pursuant to Art. 726 of the CA the amounts necessary for satisfaction of the disputed claims should be set aside and not be distributed among other creditors), so that proceedings related to disputed claims do not delay the entire insolvency proceeding.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>The procedure for recognition of claims is not working effectively. It does not ensure that valid claims are timely recognized, and it is not efficient to prevent fraudulent claims to be accepted. Many relevant stakeholders complain about the practice of phony claims frequently created by debtors, which end up being accepted in many insolvency proceedings. This practice affects not only the rights and interests of the real creditors but also has significantly contributed to the low reputation of bankruptcy proceedings in Bulgaria. Creditors and debtors trust is very low generally, which prevents a widespread utilization of rehabilitation mechanisms (see Principle C14 below).</p> <p>Some features of the legal design would be facilitating such dysfunctional results of the claims resolution procedures.</p> <p>If the bankruptcy judge does not accept to include a claim in the list, it has been mentioned by many users of the system that:</p> <ol style="list-style-type: none"> 1. If the claim is real, the creditor will frequently abandon it because the general civil proceeding it should promote to review the bankruptcy court decision is very expensive and slow. 2. If the claim has been fabricated, the general civil proceeding that the phony creditor will probably file is not subject to the control of the insolvency trustee or any other creditor. Furthermore, in such lawsuit the judge is not empowered to request evidence <i>ex officio</i> so very likely the claim will be accepted because the debtor (who is the “counterparty”) will make no opposition. <p>Also the system does not ensure the timely participation, or the participation at all and collection possibility of creditors domiciled outside of Bulgaria. The law does not establish an obligation on the debtor or the insolvency trustee to notify the commencement of insolvency proceedings to the known creditors individually. All creditors are to be considered implicitly notified by the publication in the Trade Registry. This solution is particularly inappropriate with respect to creditors domiciled abroad, because they will likely learn about the insolvency proceedings</p>

⁴²³ CA, Art. 694 (1).

	<p>at a time when their claims will no longer be admitted for recognition (see Principle C2, above).⁴²⁴</p> <p>Moreover, inter-creditors control of claims (i.e., one or more creditors disputing another creditor’s claim) does not work well due to high fees and procedural costs risks –these costs could represent a significant proportion of the amount of an objected claim. In some cases the costs rise up to 25% but there might be a possibility where the ultimate costs could rise up to 35% of the amount of the objected claim (including the state fee, the expert’s remunerations and the lawyers’ fees before the First Instance Court, the Appeal Court and the Supreme Court of Cassation). The state fee shall not be paid in advance but if the court finally rejects the claim, the creditor shall bear all the costs. Most creditors are discouraged from filing a lawsuit (which could require three judicial instances to be resolved) in case an objection is not accepted by the bankruptcy judge.</p> <p>The divided judicial competence between the bankruptcy judge and other judge (s) that should deal with general proceedings to resolve the disputes over claims that have been not-accepted / accepted by the former is also problematic. It makes the whole review process lengthy and creates a risk of contradictory judgments on similar claims disputes related to the same bankruptcy proceeding –which is highly undesirable.</p>
<p>Comment</p>	<p>Restoring the prestige of bankruptcy proceedings in Bulgaria requires modifying several features of its legal system to ensure that: (i) all creditors have cost-effective and timely access to the proceedings through an efficient claims recognition and resolution procedure; and, (ii) phony claims are not accepted, and fraudulent activities by debtors and third parties are severely sanctioned. To this end, consideration should be given to introducing amendments to the law as follows:</p> <ol style="list-style-type: none"> 1. The commencement of the insolvency proceedings should be notified individually to the known creditors –in particular to creditors domiciled abroad. 2. The procedure for reviewing the bankruptcy court decision to accept or not accept a claim should be simplified and shortened; its costs should be significantly reduced; the mandatory participation of the insolvency trustee should be established, and the voluntary participation of any other creditor (s) shall be allowed. 3. The competence to deal with bankruptcy proceedings and the disputes or recourses that could arise as a result of such proceedings should not be fragmented or divided: the same first instance judge or, respectively, the same court of appeals panel should deal with and resolve all such disputes or appeals. 4. The recognition of a claim in bankruptcy proceedings should not be left to the procedural activity of the creditor and the debtor exclusively. The judge should have and actually exercise <i>ex officio</i> power to investigate and collect evidence every time a risk of fraud is present –and to reject acceptance of

⁴²⁴ Some special rules for notifications of foreign creditors apply with regard to the insolvency proceedings with respect to banks and insurance companies. However, they have not been tested in practice yet.

	<p>an undisputed claim which is proved to be fraudulent as a result of such <i>ex officio</i> investigation.</p> <p>5. Fraud and other illegal activities by any participant in bankruptcy proceedings should be effectively and severely sanctioned (see Principle D6, below).</p>
<p>Principle C14</p>	<p>Reorganization Proceedings</p> <p>C14.1 The system should promote quick and easy access to the proceeding, assure timely and efficient administration of the proceeding, afford sufficient protection for all those involved in the proceeding, provide a structure that encourages fair negotiation of a commercial plan, and provide for approval of the plan by an appropriate majority of creditors. Key features and principles of a modern reorganization proceeding include the following:</p> <p>C14.2 Plan Formulation and Consideration. A flexible approach for developing a plan consistent with fundamental requirements designed to promote fairness and prevent commercial abuse.</p> <p>C14.3 Plan Voting and Approval. For voting purposes, classes of creditors may be provided with voting rights weighted according to the amount of a creditor’s claim. Claims and voting rights of insiders should be subject to special scrutiny and treated in a manner that will ensure fairness. Plan approval should be based on clear criteria aimed at achieving fairness among similar creditors, recognition of relative priorities and majority acceptance, while offering opposing creditors or classes a dividend equal to or greater than they would likely receive in a liquidation proceeding. Where court confirmation is required, the court should normally defer to the decision of the creditors based on a majority vote. Failure to approve a plan within the stated time period, or any extended periods, is typically grounds for placing the debtor into a liquidation proceeding.</p> <p>C14.4 Plan Implementation and Amendment. Effective implementation of the plan should be independently supervised. A plan should be capable of amendment (by vote of the creditors) if it is in the interests of the creditors. Where a debtor fails or is incapable of implementing the plan, this should be grounds for terminating the plan and liquidating the insolvency estate.</p> <p>C14.5 Discharge and Binding Effects. The system should provide for plan effects to be binding with respect to forgiveness, cancellation or alteration of debts. The effect of approval of the plan by a majority vote should bind all creditors, including dissenting minorities.</p> <p>C14.6 Plan Revocation and Closure. Where approval of the plan has been procured by fraud, the plan should be reconsidered or set aside. Upon consummation and completion of the plan, provision should be made to swiftly close the proceedings and enable the enterprise to carry on its business under normal conditions and governance.</p>
<p>Description</p>	<p>C14.1</p>

A rehabilitation plan may provide for rescheduling of payments, full or partial remission of debts, reorganization of the enterprise, or other acts, or transactions.⁴²⁵

A rehabilitation plan may be proposed no later than one month following the date of announcement (at the Bulgarian Commercial Register with the Registration Agency) of the court's ruling for the approval of list of accepted claims. More than one plan may be proposed in the insolvency proceedings.⁴²⁶

A rehabilitation plan may be proposed by: (i) the debtor; (ii) the trustee; (iii) creditors holding at least 1/3 of the secured claims; (iv) creditors holding at least 1/3 of the unsecured claims; (v) shareholders holding at least 1/3 of the capital of the debtor's company; (vi) an unlimited liability partner; or, (vii) 20% of the total number of the debtor's employees. Creditors with subordinated claims are not entitled to propose a plan.⁴²⁷

C14.2 Contents of the Rehabilitation Plan

A rehabilitation plan shall contain:

1. The extent of satisfaction of the claims enlisted in the list of accepted claims; the manner and deadlines for payments to the creditors within each class, as well as guarantees for fulfilment of the disputed and not accepted claims which as of the date of proposing the plan are subject to pending litigation;
2. The terms and conditions under which the partners in a general or limited partnership are fully or partially relieved from their liabilities;
3. The extent of satisfaction which will be received by each class of creditors as compared with the amount they would have received in the event of distributing the assets (in liquidation) under the terms and procedures provided by law;
4. The guarantees provided to each class of creditors in relation to the implementation of the plan;
5. The management, organizational, legal, financial, technical and other actions for the implementation of the plan;
6. The influence of the plan on the employment of the debtor's employees.⁴²⁸

The plan may further envisage the sale of the entire enterprise or an autonomous part of it, the manner and the terms of the sale, the buyer, a debt-to-equity swap, novation of claims, or performance of other steps or transactions.⁴²⁹ If the plan contemplates the sale of the entire enterprise or a separate part of it, a draft sale-purchase

⁴²⁵ CA, Art. 696.

⁴²⁶ CA, Art. 698.

⁴²⁷ CA, Art. 697.

⁴²⁸ CA, Art. 700 (1).

⁴²⁹ CA, Art. 700 (2).

agreement signed by the buyer has to be attached.⁴³⁰ A market evaluation of the property subject to the transaction shall be also attached.⁴³¹

Where the plan envisages the conversion of claims into equity, the plan has to enclose a list of creditors willing to subscribe shares; a full description of in-kind contributions –claims, their evaluation, the grounds of the proposer’s rights and the number, type and nominal value of shares which will be acquired. If the company’s property is not sufficient to cover its money obligations, the conversion of the claims into shares will be conducted at the nominal value of the shares. Otherwise, the conversion will be conducted at the book value of the shares. The conversion will become effective after the rehabilitation plan is duly approved and such approval shall have the same force as the decision for capital increase by in-kind contributions taken by the General Meeting of the Shareholders (respectively by the General Meeting of the Partners as the case may be).⁴³²

The plan may envisage the appointment of a supervisory body to monitor the implementation of the rehabilitation plan.⁴³³ The supervising body can be an individual or a collective body (from 3 to 7 members).⁴³⁴ The supervising body can be also appointed by the creditors upon voting for the proposed rehabilitation plan.

The law sets forth several obligations of the debtor the violation of which can be regarded as a serious breach of the rehabilitation plan and the breach of which further may, upon decision of the insolvency court, serve as grounds for reopening of the insolvency proceedings (see C14.4, below), namely:

- A. On a quarterly basis, the debtor shall provide the supervising body with reports related to implementation of the rehabilitation plan.⁴³⁵
- B. The debtor shall notify the supervising body in a timely manner of any occurred circumstances, which can have a significant impact on implementation of the rehabilitation plan.⁴³⁶
- C. The supervising body can at any time request information or documents from the debtor.⁴³⁷
- D. Only after the prior consent of the supervising body can the debtor resolve on the following: (i) transformation of the debtor; (ii) close or transfer of the commercial enterprise or significant parts of the commercial enterprise; (iii) property transactions that go beyond the customary actions or transactions related to the normal business activity of the debtor; (iv) any material change in the debtor’s business activity; (v) any material organizational change; (vi) long-term cooperation of material significance for implementation of the

⁴³⁰ CA, Art. 700 (4).

⁴³¹ CA, Art. 700 (3).

⁴³² CA, Art. 700 (6).

⁴³³ CA, Art. 700 (5).

⁴³⁴ CA, Art. 700a (1) and (2).

⁴³⁵ CA, Art. 700a (5).

⁴³⁶ CA, Art. 700a (6).

⁴³⁷ CA, Art. 700a (7).

plan or the termination of such a cooperation; (vii) setting up or closing down a branch.⁴³⁸

The above circumstances shall be registered at the Bulgarian Commercial Register.⁴³⁹

C14.3 Voting and Approval of the Rehabilitation Plan

Within 7 days after expiry of the statutory term for proposing a rehabilitation plan, the court shall review the plan and shall admit the plan to be considered by the creditors if the plan is in compliance with the statutory requirements (see above). The court shall schedule a meeting of the creditors within 45 days. If the plan does not meet the legal requirements, the court may request from the proposer to remedy the instances of non-compliance within 7 days. The ruling on non-admittance of the plan is subject to appeal.⁴⁴⁰

The creditors' meeting date shall be notified by the court to the debtor and the trustee in insolvency, while the creditors are deemed notified upon announcement of the court ruling at the Bulgarian Commercial Register with the Registration Agency.⁴⁴¹

Creditors with accepted claims are entitled (have the right) to vote on a plan. The court may grant voting rights also to: (i) creditors whose claims are included in the list of accepted claims but against which are filed objections, if such creditors provide the court with sufficient evidence for acknowledgement of the claims; (ii) creditors with unaccepted claims which initiated court proceedings for recognition of the claims; and (iii) creditors with accepted claims against which court proceedings are initiated requesting the establishment of the non-existence of such claims.⁴⁴² Creditors with subordinated claims⁴⁴³ (see Principle C12) shall have no voting rights under Art. 673 (3), CA.⁴⁴⁴

The creditors shall vote separately in the following classes:

1. Creditors with secured claims and creditors with a right of retention;
2. Employees with claims under employment contracts which occurred prior to the date of opening of the insolvency proceedings;
3. The Bulgarian State and the Bulgarian municipalities for their public receivables such as taxes, customs duties, fees, obligatory social security contributions, etc., which occurred prior to the date of opening of the insolvency proceedings;
4. Creditors with unsecured claims;

⁴³⁸ CA, Art. 700a (8).

⁴³⁹ CA, Art. 700a (9).

⁴⁴⁰ CA, Art. 701.

⁴⁴¹ CA, Art. 702.

⁴⁴² CA, Art. 703 (1) and Art. 673 (2) and (3).

⁴⁴³ CA, Art. 616 (2).

⁴⁴⁴ CA, Art. 673 (4).

5. Creditors holding claims subordinated by law according to Art. 616 (2), CA.⁴⁴⁵

The plan shall be accepted by each class by a simple majority of the claims falling in the respective class.⁴⁴⁶ A plan voted against by creditors with more than half of the claims allowed, regardless of the classes in which they are distributed, shall not be considered adopted.⁴⁴⁷

The accepted rehabilitation plan shall be announced at the Bulgarian Commercial Register with the Registration Agency. The accepted plan can be objected before the insolvency court within 7 days as from the voting date.⁴⁴⁸ The court shall review all the objections in one court hearing, if possible. The court shall render its ruling on the objections within a period of 14 days after the court hearing.⁴⁴⁹

The insolvency court shall approve the plan if the requirements of the law have been observed⁴⁵⁰, namely:

1. The requirements of the law for acceptance of the plan by the different classes of creditors have been observed;
2. The plan has been approved by a majority of the creditors with accepted claims; if the plan envisages partial payment, at least one of the creditor classes which has approved it shall receive partial payment;
3. All creditors of the class are equally treated, unless the impaired creditors provide their consent in writing;
4. The plan ensures that a dissenting creditor and an dissenting debtor receive the same payment which they would have received if the assets were allocated under the terms and procedures provided by law (upon liquidation of the insolvency estate);
5. No creditor receives more than its accepted claim;
6. No income is envisaged to be received by a partner or shareholder until the final payment of the obligations to the class of creditors whose interests are affected by the plan;
7. No support of a sole proprietor, unlimited liability partner or their families, greater than the support ruled by the court is envisaged up to the final fulfilment of the obligations to the class of creditors whose interests are affected by the plan.

Upon approval of the rehabilitation plan, the court terminates the insolvency proceedings and appoints the plan supervisory body where this is contemplated in

⁴⁴⁵ CA, Art. 703 (2).

⁴⁴⁶ CA, Art. 703 (4).

⁴⁴⁷ CA, Art. 703 (6).

⁴⁴⁸ CA, Art. 703 (5).

⁴⁴⁹ CA, Art. 704.

⁴⁵⁰ CA, Art. 705 (1).

the plan.⁴⁵¹ The court decision shall be announced at the Commercial Register. It can be appealed within seven days as from announcement. If the court decision is repealed, no rehabilitation proceedings shall be performed. The court decision rejecting approval of the plan is also subject to appeal.⁴⁵²

If the plan provides a reduction or rescheduling of public law claims, the consent of the Bulgarian Minister of Finance shall be obtained.⁴⁵³

C14.4 Plan Implementation and Amendment

The plan approved by the court is mandatory for the debtor and the creditors, whose claims occurred before the date of opening of the insolvency proceedings.⁴⁵⁴ The claims of the creditors shall be transformed in accordance with the plan.⁴⁵⁵

The debtor is obliged to immediately carry out the structural changes envisaged in the plan.⁴⁵⁶

Guarantors and persons who have established a pledge or a mortgage to secure an obligation of the debtor, and any persons liable jointly and severally with the debtor, except unlimited liability partners, may not avail of any privileges envisaged in the plan.⁴⁵⁷

In case of sale of the whole or a part of the commercial enterprise, any actions of disposition performed by the buyer prior to full payment of the purchase price shall be deemed void vis-à-vis the creditors in the insolvency proceedings.⁴⁵⁸ The final sale purchase agreement of the whole enterprise shall be concluded within a month as from the date on which the decision for approval of the plan entered into legal force. Otherwise, within a month after the expiry of the above term, each party may request the insolvency court to declare the preliminary agreement as final. If, within the term above, none of the parties requests announcement of the preliminary agreement as final, upon request of a creditor the insolvency court shall resume the insolvency proceedings and shall declare the debtor insolvent.⁴⁵⁹

The law does not provide an obligatory appointment of a supervising body. Generally, the insolvency court reviews the applications filed by creditors or the supervising body, if any, regarding violations of the rehabilitation plan. Not all breaches are considered grounds for reopening of the insolvency proceedings. The law provides that in case of violations of the rehabilitation plan or in case of violations under items A. through D. mentioned at Section C 14.2 above, upon request of the creditors holding at least 15% of the total amount of the claims (save for the special right established in favour of the Minister of Finance pursuant to

⁴⁵¹ CA, Art. 707 (1).

⁴⁵² CA, Art. 707a.

⁴⁵³ TSIPC, Art. 189.

⁴⁵⁴ CA, Art. 706 (1).

⁴⁵⁵ CA, Art. 706 (3).

⁴⁵⁶ CA, Art. 706 (4).

⁴⁵⁷ CA, Art. 706 (2).

⁴⁵⁸ CA, Art. 706 (5).

⁴⁵⁹ CA, Art. 706a.

TSIPC, as mentioned above in Section C12.3) or upon request of the supervising body, the insolvency court may reopen the insolvency proceedings and declare the debtor insolvent. In such a case, further rehabilitation proceedings cannot be performed.⁴⁶⁰

C14.5 Discharge and Binding Effects

A rehabilitation plan approved by the court is mandatory for the debtor and all creditors whose claims occurred before the date of opening of the insolvency proceedings.⁴⁶¹ The law provides that a new statute of limitation shall commence with regard to such claims, as follows: (i) from the date of entry into force of the court decision on the approval of the rehabilitation plan, where such claims are subject to immediate satisfaction, and (ii) from the date on which such claims become due, where according to the plan such claims are rescheduled.⁴⁶² In case of filed request for resumption of bankruptcy proceedings, the statute of limitations shall not apply to accepted claims for the duration of resumed bankruptcy proceedings.⁴⁶³

The obligations of the debtor shall be fulfilled as prescribed by the rehabilitation plan. As mentioned above the rehabilitation plan may provide rescheduling of payments, full or partial remission of debts, etcetera (see Section C14.1). In practice, the rehabilitation plan can provide remission of all interests and default payment and full payment of the principal amounts.⁴⁶⁴

The rehabilitation plan, as approved by the insolvency court, can serve as legal grounds for issuance of a writ of execution by the court, regardless of the amount of the claims.⁴⁶⁵

C14.6 Plan Revocation and Closure

The grounds for reopening of the insolvency proceedings (i.e. the specific violations of the rehabilitation plan) are formulated in Art. 709, Paragraph 1 of the CA (see C14.4, above).

The Bulgarian law allows reviewing cases of fraud in the light of approval of a rehabilitation plan and the respective implications. The plan itself is accepted by the creditors (see C14.3, above) and subsequently the insolvency court shall review in detail the entire voting procedure and shall decide whether the rehabilitation plan was accepted as per the requirements of the law (see C14.3, above).

During implementation of the rehabilitation plan, the debtor can continue performing its normal course of business. Upon request of a creditor, the supervising body or the debtor, the court may: (i) define the property that the debtor may dispose

⁴⁶⁰ CA, Art. 709.

⁴⁶¹ CA, Art. 706 (1).

⁴⁶² CA, Art. 707b (1).

⁴⁶³ CA, Art. 707b (2).

⁴⁶⁴ Reorganization plan approved by Court Decision, dated 26.11.2008, issued by the Sofia City Court, commercial case No. 55/2005, VI-9 Panel, Insolvency proceedings of Darko AD.

⁴⁶⁵ CA, Art. 708.

	<p>only upon consent of the supervising body, or the court if no supervising body is elected; (ii) replace one or more members of the supervising body, if any.⁴⁶⁶</p> <p>Out-of-court settlement in bankruptcy.</p> <p>At any point in the bankruptcy proceedings it is possible to conclude an agreement in writing for settlement of cash obligations between the debtor and all the creditors holding claims accepted in the bankruptcy proceeding. If such an agreement satisfies the requirements of the law, the court shall, by a ruling, terminate the bankruptcy proceedings, subject to the condition that there are no pending lawsuits regarding ascertainment of the non-existence of an accepted claim. Such ruling is subject to appeal within 7 days from the date of entry thereof into the Commercial Register. Civil law shall apply unless provided otherwise in the agreement or the Commerce Act. If the debtor fails to perform its obligations under the contract, creditors whose claims constitute not less than 15 per cent of the total amount of claims may request a renewal of the bankruptcy proceedings without having to prove new insolvency or over-indebtedness, as the case may be. In the renewed bankruptcy proceedings, no rehabilitation proceedings shall be carried out.⁴⁶⁷</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>The Bulgarian insolvency system is strongly based towards liquidation. In practice, the number of rehabilitation cases is very low according to information provided by all players interviewed. No more than 6 successful rehabilitation cases would have been completed in the past 3 years.⁴⁶⁸ Most insolvency proceedings end up as a piece-meal liquidation of assets. Also going concern sales under a rehabilitation plan are rarely implemented.</p> <p>Several reasons may explain why rehabilitation is not workable, namely:</p> <ol style="list-style-type: none"> 1. Creditors generally do not regard insolvency proceedings as an effective mechanism for debt recovery and debtors do not consider such proceedings as an appealing tool for salvaging a business in distress. Rehabilitation is generally regarded as cumbersome, expensive and time consuming. 2. Rehabilitation is part of bankruptcy proceedings, which entail big stigma and enjoy low reputation among both creditors and debtors. The system does not establish a separate debt restructuring / business reorganization proceeding for insolvent or pre-insolvent debtors. The current “unitary” or “single entry” procedure does not reduce the stigma of insolvency and reinforces the idea “insolvency = liquidation”. 3. The law does not contemplate any mechanism to protect and encourage the use of out-of-court restructuring / reorganization (“workouts”) by pre-insolvent or insolvent debtors, through a “prepackaged plan” or “expedited reorganization”, which is an abbreviated way to approve in-court a plan previously approved out-of-court by a majority of creditors defined in the law (see Principle B4). Out-of-court settlement agreements in bankruptcy

⁴⁶⁶ CA, Art. 707.

⁴⁶⁷ CA, Articles 740, 741 and 741a.

⁴⁶⁸ Anecdotal evidence gathered over the ICR ROSC mission.

	<p>proceedings are almost never achieved because obtaining the consent of the unanimity of creditors is hard to obtain in practice in most cases.</p> <ol style="list-style-type: none"> 4. Applications for bankruptcy are usually filed at very late stage, when the business is no longer viable. Worse, opening a bankruptcy proceeding takes such a long time (up to 2 years, see Principle C4) that upon filing a bankruptcy application any functioning business will deteriorate further or close down. 5. Significant mistrust between creditors and debtors in most cases constitutes a big obstacle for negotiating a successful rehabilitation plan. 6. The law restricts the flexibility needed for facilitating negotiations of most rehabilitation plans. There is a strict time limit to offer a plan and it shall be voted “as is”. The time limit to submit a rehabilitation plan (one month following the date of announcement at the Bulgarian Commercial Register with the Registration Agency of the list of accepted claims) could be too short in some cases and the court is not authorized to extend it. 7. The Ministry of Finance authorization / approval to any plan where taxes or other state claims are involved is also a significant obstacle to rehabilitation. The Minister of Finance can block the adoption of any proposed rehabilitation plan or out-of-court settlement agreement (related to commenced insolvency proceedings) if such a plan or agreement provides for a reduction, deferral and/or rescheduling of state claims. The law (TSIPC) provides some criteria for the MoF to determine whether to approve a plan, but in practice such criteria do not prevent the MoF to exercise ample discretionary powers to deny its approval. Even if the authorization is granted, it will typically take long time and in many cases it will be too late for the rehabilitation. Furthermore, the MoF has a special right to request a reopening of the insolvency proceeding, when a rehabilitation plan or an out-of-court settlement agreement have not been fulfilled, not being required that the MoF holds at least 15% of the total amount of the creditors’ claims –as is the case for creditors from the private sector.⁴⁶⁹ The described preferential treatment afforded to state claims by the tax legislation may frustrate any rehabilitation plan procedure.⁴⁷⁰ 8. Plan approval provisions are rather unclear and there are contradictory legal opinions and court practice on how should votes be counted and voting provisions be interpreted.⁴⁷¹ There is no flexibility with respect to the
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⁴⁶⁹ TSIPC, Art.189 (5).

⁴⁷⁰ Commercial case No. 33/2011, Rousse District Court, Insolvency proceedings of Preciz Inter Holding AD, appeal of refusal of the Minister of Finance to provide consent for the rehabilitation plan before Supreme Administrative Court – Court Decision No. 7862/29.06.2015 under administrative court case No. 6296/2015, I Division, 5 member Panel, Supreme Administrative Court.

⁴⁷¹ Some Bulgarian courts consider that if the rehabilitation plan is approved by creditors who hold more than one half of the approved by the court accepted claims (requirement under Art. 705, Paragraph 1, item 2 of CA), the plan is considered duly passed, even if one or more than one of the classes rejected the plan with a majority of the claims in the respective class (Art. 703, Paragraph 4 of CA). (Court Decision No. 9/ 31.01.2011, issued under commercial case No. 30/2010 by the Sofia District Court; Court Ruling No. 244/ 29.01.2010, issued under commercial case No. 382/2008 by the Varna District Court). Other courts find that the rehabilitation plan can be successfully passed only if, along other legal requirements, the plan is approved by creditors who hold more than one half of the approved by the court accepted claims and all classes approved the plan with a majority of the claims in the respective class. Such courts consider that the second requirement is a precondition for the validity of the plan. The Supreme Court of Cassation was approached in view of the above controversial practice. In Court Ruling No. 593/26.10.2015 under

	<p>classification of claims for voting. Separation of creditors by classes is mandatory, and the number and composition of classes are also legally defined and not subject to changes in particular cases. If one class does not approve a plan, it is unclear whether or not the whole plan shall be considered as not approved, and the law does not allow the judge to impose ('cramdown') a plan to the dissenting class or classes. It is not clear either if a class whose rights are not impaired should or not vote the plan.</p> <p>9. The exceptions to the stay on enforcement by creditors with special pledges and State claims are hardly consistent with the objectives of insolvency proceedings. In particular, rehabilitation will be difficult to achieve if most or all assets of the insolvency estate (either the entire debtor's enterprise or its separate manufacturing assets) are sold before a rehabilitation plan can be drafted and negotiated (see Principle C5).</p> <p>10. Secured creditors form a class where they all vote, irrespective of the degree of their security rights and of the actual coverage of the collateral value with respect to their claims. For example, a third degree mortgage claim which by all means will not be satisfied with the proceeds of the liquidation of the encumbered immovable, is nevertheless considered as a "secured claim", and the mortgagee will vote in the class of secured creditors. Thus, the class of (real, true) secured creditors could rather easily be manipulated by the creation of phony low degree security rights over the debtor's already encumbered assets.</p> <p>11. Where a plan contemplates the sale of the whole enterprise as a going concern, the requirement that a draft sale agreement signed by the purchaser shall be attached to the plan renders such sales quite difficult to achieve. The legal term (one month) for submitting a plan proposal is too short for allowing a third party to evaluate the convenience of such a transaction and to structure all its terms in a draft that must be signed.</p> <p>12. An approved reorganization plan cannot be amended with the consent of the affected creditors, not even when a modification may be needed to reflect economic changes.</p>
<p>Comment</p>	<p>The legislation for rehabilitation of viable enterprises in financial difficulties or insolvency needs to be significantly amended and enhanced. The system should strike a reasonable balance between liquidation and rehabilitation, permitting both debtors and creditors to have quick and easy access to the proceedings, and avoiding formalistic and excessively strict pre-requisites for commencing the process. The adoption of a system that favors debt restructuring and business reorganization</p>

commercial case No. 1577/2015, the Supreme Court of Cassation established that there is a controversial court practice, but did not allow the case for review because the raised question was not significant for the outcome of that particular case. (Court Decision No. 158/ 30.11.2012, issued under commercial case No. 42/2012 by the Supreme Court of Cassation; Court Decision No. 11/ 14.01.2015, issued under commercial case No. 1037/2014 by the Plovdiv Court of Appeal).

Otherwise, some Bulgarian courts find that creditors with accepted claims, approved by court as of the date of the creditors' meeting, are qualified to vote for/ against the rehabilitation plan (Art. 673, Paragraph 2 in conjunction with Art. 692, Paragraphs 1 and 4 of CA). (Court Decision No. 158/ 30.11.2012, issued under commercial case No. 42/2012 by the Supreme Court of Cassation). Other courts consider that creditors with claims accepted only by the receiver, i.e. claims which as of the date of the creditors' meeting are not yet approved by the court, can also vote for/ against the rehabilitation plan. (Court Decision No. 11/ 14.01.2015, issued under commercial case No. 1037/2014 by the Plovdiv Court of Appeal).

should not result in establishing a safe haven for non-viable enterprises: enterprises that are beyond rescue should be liquidated as quickly and efficiently as possible.

In particular, consideration should be given to implementing rehabilitation proceedings as follows:

1. The law should establish a cost-effective, simple, timely and efficient system to access insolvency rehabilitation proceedings. Access to these proceedings should be direct (not necessarily having to wait until a bankruptcy proceeding is opened), easy and quick (see Principle C4).
2. Debtors should be able to apply if they are in a situation of “insolvency” or “severe financial difficulty” (akin to “imminent insolvency”). A debtor should be allowed to use a rehabilitation proceeding even before insolvency effectively occurs. The earlier an enterprise seeks rehabilitation the higher the chances such an outcome could be achieved. In this regard granting an enterprise in financial difficulty –but not yet technically insolvent- access to rehabilitation proceedings should increase the number of successful reorganization of distressed businesses. A law provision should describe the financial difficulty (or financial crisis or imminent insolvency) standard considering it as a state of financial affairs that, if not dealt with, will almost certainly and within a short time period result in insolvency.
3. If legal requirements of filing are satisfied, a court decision opening the procedure should be issued within a very short time period. The court could reject the case commencement only if the debtor abuse is manifest and evident at the time of filing. If debtor abuse of the process is discovered upon commencement of a rehabilitation procedure, the debtor management should be removed from administration and the creditors’ meeting or committee should resolve either the continuation of rehabilitation or the conversion of the case into liquidation.
4. An automatic and comprehensive stay of creditors’ executions over assets of the debtor should apply, including a balanced moratorium of the rights of secured creditors during rehabilitation, in order to facilitate reorganization. The stay should apply to all claims enforcement, including special pledges and state claims. The stay of enforcements of secured credits should be limited as to its duration. The law should allow the secured creditor to petition to the court to lift an unjustified or unnecessary stay. Secured creditors should have the right to sell the collateral if the rehabilitation plan and the debt repayment schedule are not fulfilled or if the plan is not implemented.
5. As a general rule, the debtor’s management should remain administering the business over the rehabilitation procedure, but under the supervision of an independent insolvency professional. Under such a system, the company management would be more willing to timely utilize a rehabilitation procedure if it has a prospect of keeping the direction of the company. However, creditors’ confidence is vital to developing and approving a rehabilitation plan that creditors will support. In order to achieve this, the law should establish management oversight through an independent supervisor and court authorization for several transactions that could affect the integrity of the insolvency estate (see Principle C6).

	<p>6. The law should specify an administration regime applicable during formal rehabilitation that could differentiate between: (i) acts that are undertaken in the “ordinary course of business”, which may be performed by the debtor’s management under the oversight of the supervisor; and, (ii) acts that fall outside of, or beyond the “ordinary course of business” which cannot be performed by the debtor’s management unless duly authorized by the court –having previously heard the independent supervisor and the creditors’ committee opinion.</p> <p>7. The law should establish the consequences of non-compliance with rehabilitation management rules⁴⁷², namely: (i) the debtor’s management could be removed and an insolvency administrator or trustee would be appointed to take full control of the administration of the enterprise under rehabilitation; and, (ii) the validity of the transactions performed in breach of the mentioned rules would be subject to scrutiny and, if needed, rendered null and void vis-à-vis the creditors.⁴⁷³</p> <p>8. The business should be kept as a going concern during the period of restructuring, with a view either to sell it out or to reorganize it. This cannot be done unless the legal system provides a framework, whereby post-commencement finance is allowed and protected. The system should provide the legal instruments to obtain new financing with safeguards for the eventual repayment of the new loans. This could be done recognizing the need for and authorizing such funding, and by specifically creating a significant priority for its repayment to the provider of post-commencement finance (see Principle C9).⁴⁷⁴</p> <p>9. The law should adopt a flexible approach so that the debtor and creditors can agree on a rehabilitation plan. The law should allow several and flexible rehabilitation measures under the plan. Time limits for submitting rehabilitation plans should also be sufficient to allow preliminary consultations and negotiations with creditors that may enhance the chances for the proposed plan to be approved. Amendments to a proposed plan should be allowed under specific circumstances. The legal requirements should be limited to promoting fairness and prevent abuse.</p> <p>10. The rehabilitation plan should include: (i) a detailed description of the new arrangement with creditors⁴⁷⁵; (ii) a business plan and/or a description of the sources where the assets/funds would originate to support the execution of the plan; and, (iii) an audited opinion on the viability of the plan. The debtor and the creditors should be allowed to voluntarily deliver technical studies/assessments about the plan’s viability. If the plan contemplates the</p>
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⁴⁷² For example, where management enters into contracts requiring authorization without first obtaining such authorization.

⁴⁷³ In all cases in which the debtor’s management is clearly unfit or has engaged in improper conduct or unduly retained information, an insolvency administrator with full powers should be appointed and take over the administration until rehabilitation is completed. This change in management would require an appropriate court decision.

⁴⁷⁴ In order to keep a distressed business running, new expenditure must be incurred and some sort of financing obtained (either from banks or from suppliers and other trade creditors). In most cases, the only way than an insolvent debtor may receive credit lines from the market is if the new creditors get a priority over previous creditors.

⁴⁷⁵ For example, when the claims will be satisfied, the amount of satisfaction and all other circumstances regarding compliance.

sale of the whole enterprise, a draft sale agreement signed by a purchaser should not be attached at the time the plan is proposed.

11. Plan approval should be based on clear criteria aimed at achieving fairness among similar creditors and recognition of relative priorities which cannot be altered by a majority decision. Majority acceptance of the plan should be required, while offering opposing creditors or classes a dividend equal to or greater than they would likely receive in a liquidation proceeding. The final decision as to the plan approval should be taken by an adequate and legally specified majority obtained by the vote of creditors individually expressed at a general meeting or assembly or by other means over a specified time period. The voting system should consider the interests of the different classes of creditors. For voting purposes, establishing classes of creditors could be established. Voting rights should be weighted pursuant to the amount of the credit. Counting of votes to consider a plan approved should be specified in clear provisions. Related parties should not be allowed to vote a rehabilitation plan or their voting rights should be subject to special scrutiny and treated in a manner that could ensure fairness. Failure to approve a plan within a defined time period, or any extended periods, should be grounds for placing the debtor into bankruptcy (liquidation) proceedings.
12. In order to be valid, a plan approved by a majority of creditors should be confirmed by a court. The court should deny confirmation to a plan only in cases of fraud or where substantive legal requirements have not been satisfied. The court should not evaluate the plan viability from business perspective.
13. The law should establish an expedited reorganization procedure that enables the quick processing and provision of binding effect to out-of-court agreements or pre-packaged plans (see Principles B3 and B4).
14. A plan approved by a majority of creditors and confirmed by the Court should bind all creditors, including those who dissented or did not vote. The effects of the plan should be binding with respect to forgiveness, cancellation or alteration of debts.
15. Upon Court confirmation, a plan could be challenged only on fraud grounds and during a limited time period. Where plan approval was obtained by fraud and where creditors would not have voted on the plan had they not been defrauded, in principle such a plan should be declared void.⁴⁷⁶
16. The effective implementation of the plan should be independently supervised. The law should allow the parties to a plan to establish a system to monitor plan performance. For example, the creditors may appoint (in the plan) a person to monitor the execution of the plan. It could be an external professional⁴⁷⁷, a creditor or the person who served as supervisor in the rehabilitation proceeding. In each particular case, the plan could

⁴⁷⁶ This solution would be consistent with fundamental rules of contract law that contracts induced by fraud are voidable. In some instances, however, the level of fraud may not have a fundamental impact in altering the rights or decisions of creditors, in which case the court should be entitled to consider those questions before setting aside the plan.

⁴⁷⁷ For example, an auditor or business specialist of the sector in which the company operates.

	<p>contemplate an <i>ad hoc</i> solution absent which the court should establish an oversight regime for the implementation phase of the plan.</p> <p>17. In cases of non-performance of a plan, or not fulfilling of some obligations assumed under a plan, the law should allow that the plan be amended by approval of a majority of creditors. Otherwise, the rehabilitation procedure should be converted into liquidation.</p> <p>18. Once a rehabilitation plan had been implemented and fulfilled, full discharge of obligations prior to commencement of the rehabilitation procedure should occur. A discharge or alteration of debts and claims that have been discharged or otherwise altered under the plan should be granted to the debtor.⁴⁷⁸ Commercial certainty requires giving binding effect to the forgiveness, cancellation or alteration of debts in accordance with the approved plan. This is particularly important to ensure that the plan provisions will be complied with by creditors that rejected the plan and by creditors that did not participate in the process. It also gives certainty to other lenders and investors that they will not be involved in unanticipated litigation or have to compete with hidden or undisclosed claims. The discharge establishes unequivocally that the plan fully reconstitutes the legal rights of creditors.</p> <p>19. Upon consummation and completion of the plan, provision should be made to swiftly close the proceedings and enable the enterprise to carry on its business under normal conditions and governance.</p>
<p>Principle C15</p>	<p>International Considerations</p> <p>Insolvency proceedings may have international aspects, and a country’s legal system should establish clear rules pertaining to jurisdiction, recognition of foreign judgments, cooperation among courts in different countries and choice of law. Key factors to effective handling of cross-border matters typically include:</p> <ul style="list-style-type: none"> (i) A clear and speedy process for obtaining recognition of foreign insolvency proceedings; (ii) Relief to be granted upon recognition of foreign insolvency proceedings; (iii) Foreign insolvency representatives to have access to courts and other relevant authorities; (iv) Courts and insolvency representatives to cooperate in international insolvency proceedings; (v) Nondiscrimination between foreign and domestic creditors.
<p>Description</p>	<p>Bulgarian courts shall recognize a foreign court decision for the commencement of insolvency, if it is rendered by a competent authority having jurisdiction within the region of the seat of the debtor: (i) on the basis of reciprocity⁴⁷⁹ or, (ii) in the context</p>

⁴⁷⁸ This effect is closely related to the effect of a majority vote, which should bind all creditors, including dissenting minorities. This is necessary to (i) ensure that the reorganized enterprise has the best chance of succeeding; and, (ii) guarantee commercial certainty.

⁴⁷⁹ CA, Art. 757.

of cross-border insolvency involving EU member states, on the basis of the provisions of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (“Regulation 1346/2000”).

The competent court, which will review the application for recognition and enforcement of a court decision rendered in another EU member state, will be the district court having jurisdiction within the seat of the debtor. The applicant shall submit a certified copy of the court decision and a certified certificate evidencing that the court decision has entered into legal force. Both documents shall be translated in Bulgarian. The Bulgarian court issues a ruling for recognition and enforcement of the EU court decision based on the review of the above-mentioned documents. The court ruling is subject to appeal before the Sofia Court of Appeal and the Supreme Court of Cassation. The above legal procedure for recognition of an insolvency judgment rendered in another Member State is in compliance with the principle stipulated in Art. 17 “*Effects of recognition*” of Regulation 1346/2000 according to which the judgement opening of insolvency proceedings shall, with no further formalities, produce the same effects as under this law, unless Regulation 1346/2000 provides otherwise and as long as no insolvency proceedings against the same debtor are opened in that other Member State.

Court decisions and acts issued by non-EU countries are subject to enforcement before the Sofia City Court. The applicant shall submit a copy of the court decision and a certificate evidencing that the court decision has entered into legal force, both certified by the Bulgarian Ministry of Exterior. The Bulgarian court does not review the case in its merits. It conducts a formal check of the following:

1. If the foreign court was competent to review the case;
2. If the defendant received a copy of the statement of the claim, if the parties have been duly summoned, if any rights related to the defense of the parties have been violated;
3. If there is an entered into legal force court decision rendered by a Bulgarian court between the same parties, on the same grounds and for the same request;
4. If there is a pending litigation before a Bulgarian court between the same parties, on the same grounds and for the same request, which was initiated prior to initiation of the court proceedings before a foreign court, and ended with the court decision subject to recognition and enforcement;
5. If the recognition and enforcement of the court decision contradicts the Bulgarian public order.

If the court finds that the prerequisites for recognition and enforcement of a foreign decision are at hand, it issues its decision, which may be further appealed before the Sofia Court of Appeal and further before the Supreme Court of Cassation.

The Bulgarian court will be the competent authority to review the court insolvency case if the seat of the debtor is registered in Bulgaria.

The Bulgarian court, upon request of the debtor or the trustee appointed by the foreign court, or a creditor, can initiate a case ancillary to the foreign insolvency case, if the debtor owns significant assets on the territory of Bulgaria. The ancillary

	<p>proceedings pending before the Bulgarian court affect only the debtor's assets located in Bulgaria.⁴⁸⁰</p> <p>A trustee appointed by a foreign court shall have the powers envisaged in the State where the insolvency proceedings are initiated, provided that these powers do not contradict the public rules of Bulgaria.⁴⁸¹</p> <p>A claim for repeal lodged by the trustee under the insolvency proceedings shall be deemed to apply to both the plenary foreign insolvency case and the case ancillary to the foreign insolvency case.⁴⁸²</p> <p>A creditor who has received partial payment under the plenary foreign case shall participate in the distribution of assets under the ancillary insolvency case, provided that the portion the creditor would receive is bigger than the respective portion to be received by the other creditors under the ancillary insolvency case.⁴⁸³</p> <p>A rehabilitation plan can be approved in the ancillary insolvency case only with the consent of the trustee in the plenary insolvency case.⁴⁸⁴</p> <p>The assets remaining after distribution under the ancillary insolvency case shall be transferred to the assets under the plenary foreign case.⁴⁸⁵</p> <p>Upon request of the applicant, the Bulgarian court can impose appropriate preliminary security measures to the debtor's assets, such as attachments over real property, distrains over movables, bank accounts, receivables from third parties, etc. In such cases, the court takes into consideration if the requested preliminary security measure is necessary, if it is appropriate and if the application for recognition of the foreign court decision will be most likely recognized.</p> <p>The Republic of Bulgaria is not a party to any bilateral or multilateral treaties or conventions governing insolvency.</p>
<p>Assessment</p>	<p>Largely observed.</p> <p>The Bulgarian legislation governing cross-border insolvency issues where a non-EU country is involved are largely consistent with international best practice.</p> <p>However, such legislation does not contemplate a clear and speedy process for obtaining recognition of foreign insolvency proceedings. The <i>exequatur</i> proceeding that should be conducted through (potentially) three instances is not an effective mechanism to obtaining prompt recognition of foreign court decisions in insolvency proceedings –where, typically, foreign courts request of cooperation needs to be urgently addressed and decided.</p> <p>Otherwise, the CA provisions that deal with cross-border insolvency issues fall short of regulating in detail many legal and practical aspects which are typically involved</p>

⁴⁸⁰ CA, Art. 759.

⁴⁸¹ CA, Art. 758.

⁴⁸² CA, Art. 760 (1).

⁴⁸³ CA, Art. 760 (2).

⁴⁸⁴ CA, Art. 760 (3).

⁴⁸⁵ CA, Art. 760 (4).

	in such cases. For example, the law grants access to foreign insolvency representatives but it does not specify in detail how they should be recognized in Bulgarian courts. ⁴⁸⁶
Comment	Establishing a modern and complete regime for dealing with cross-border insolvency cases involving non-EU countries –such as the UNCITRAL Model Law on Cross-Border Insolvency- would further improve the Bulgarian insolvency system in a manner that is consistent with international standards.
Principle C16	<p>Insolvency of Domestic Enterprise Groups</p> <p>C16.1 Procedural Coordination. The system should specify that the administration of insolvency proceedings with respect to two or more enterprise group members may be coordinated for procedural purposes. The scope and extent of the procedural coordination should be specified by the court.</p> <p>C16.2 Post-commencement Finance. The system should permit an enterprise group member subject to insolvency proceedings to provide or facilitate post-commencement finance or other kind of financial assistance to other enterprises in the group which are also subject to insolvency proceedings. The system should specify the priority accorded to such post-commencement finance.</p> <p>C16.3 Substantive Consolidation. The insolvency system should respect the separate legal identity of each of the enterprise group members. When substantive consolidation is contemplated, it should be restricted to circumstances where: (i) assets or liabilities of the enterprise group members are intermingled to such an extent that the ownership of assets and responsibility for liabilities cannot be identified without disproportionate expense or delay; or (ii) the enterprise group members are engaged in a fraudulent scheme or activity with no legitimate business purpose. The court should be able to exclude specific claims and assets from an order of consolidation. In the event of substantive consolidation, the system should contemplate an adequate treatment of secured transactions, priorities, creditor meetings, and avoidance actions. The system should specify that a substantive consolidation order would cause the assets and liabilities of the consolidated enterprises to be treated as if they were part of a single estate; extinguish debts and claims as amongst the relevant enterprises; and cause claims against the relevant enterprises to be treated as if they were against a single insolvency estate.</p> <p>C16.4. Avoidance actions⁴⁸⁷. The system should authorise the court considering whether to set aside a transaction that took place among enterprise group members, or between any of them and a related</p>

⁴⁸⁶ In Bulgarian court proceedings, the foreign representative or creditors can be represented by an attorney-at-law registered in the Bulgarian Attorneys-at-Law Bar Association or by an attorney-at-law registered in the Bar of another EU Member State, a state which is a party to the European Economic Area Agreement, or Switzerland, acting together with a Bulgarian attorney-at-law.

⁴⁸⁷ See Principle C11.

	<p>person, to take into account the specific circumstances of the transaction.</p> <p>C16.5 Insolvency Representative. The system should permit a single or the same insolvency representative to be appointed with respect to two or more enterprise group members, and should include provisions addressing situations involving conflicts of interest. Where there are different insolvency representatives for different enterprise group members, the system should allow insolvency representatives to communicate directly and to cooperate to the maximum extent possible.</p> <p>C16.6 Reorganization Plans. The system should permit coordinated reorganization plans to be proposed in insolvency proceedings with respect to two or more enterprise group members. The system should allow enterprise group members not subject to insolvency proceedings to voluntarily participate in a reorganization plan of other group members subject to insolvency proceedings.</p>
<p>Description</p>	<p>There is a provision in the CA, according to which the insolvency court may declare null and void an action or an agreement performed by the debtor within a period of two years prior to the filing of the application for opening of insolvency proceedings if the contracting party is a related person.⁴⁸⁸ The legal definition of “related persons” include, among others: (i) persons one of which is involved in the management of the other one’s company; (ii) partners; (iii) a company and a person who owns more than 5 percent of the company’s voting shares and stock; (iv) persons whose activities are under the direct or indirect control of a third party; (v) persons who exercise joint direct or indirect control over a third party. Related persons shall be also persons who either directly or indirectly participate in the management, control or capital of another person or persons, which may enable them to agree on terms and conditions which differ from the standard practice.⁴⁸⁹</p> <p>There are no provisions for procedural coordination, post-commencement finance and substantive consolidation in case of insolvency of domestic enterprise groups. Furthermore according to Art.655 (2) 5. of the CA, which provides that the trustee shall not to be in any relations with the debtor or creditor that may generate substantiated doubts as to his impartiality, a person who is appointed to be a trustee of a mother insolvent company could not be appointed as a trustee of the insolvent subsidiaries.</p>
<p>Assessment</p>	<p>Not observed.</p> <p>There are no Bulgarian legal provisions that deal with the insolvency of domestic enterprise groups.</p>
<p>Comment</p>	<p>The Bulgarian insolvency regime should incorporate rules for governing the treatment of enterprise groups in insolvency. In this regard, the system should:</p> <ol style="list-style-type: none"> 1. Specify that the administration of insolvency proceedings with respect to two or more enterprise group members may be coordinated for procedural

⁴⁸⁸ CA, Art.647 (7).

⁴⁸⁹ CA, Supplementary Provisions, 1 (1) and (2).

	<p>purposes. The scope and extent of the procedural coordination should be specified by the court.</p> <ol style="list-style-type: none"> 2. Permit an enterprise group member subject to insolvency proceedings to provide or facilitate post-commencement finance or other kind of financial assistance to other enterprises in the group which are also subject to insolvency proceedings. The system should specify the priority accorded to such post-commencement finance. 3. Respect the separate legal identity of each of the enterprise group members. When substantive consolidation is contemplated, it should be restricted to circumstances where: (i) assets or liabilities of the enterprise group members are intermingled to such an extent that the ownership of assets and responsibility for liabilities cannot be identified without disproportionate expense or delay; or (ii) the enterprise group members are engaged in a fraudulent scheme or activity with no legitimate business purpose. The court should be able to exclude specific claims and assets from an order of consolidation. In the event of substantive consolidation, the system should contemplate an adequate treatment of secured transactions, priorities, creditor meetings, and avoidance actions. The system should specify that a substantive consolidation order would cause the assets and liabilities of the consolidated enterprises to be treated as if they were part of a single estate; extinguish debts and claims as amongst the relevant enterprises; and cause claims against the relevant enterprises to be treated as if they were against a single insolvency estate. 4. Authorize the court considering whether to set aside a transaction that took place among enterprise group members, or between any of them and a related person, to take into account the specific circumstances of the transaction. 5. Permit a single or the same insolvency representative to be appointed with respect to two or more enterprise group members, and should include provisions addressing situations involving conflicts of interest. Where there are different insolvency representatives for different enterprise group members, the system should allow insolvency representatives to communicate directly and to cooperate to the maximum extent possible. 6. Allow coordinated reorganization plans to be proposed in insolvency proceedings with respect to two or more enterprise group members. The system should allow enterprise group members not subject to insolvency proceedings to voluntarily participate in a reorganization plan of other group members subject to insolvency proceedings.
<p>Principle C17</p>	<p>Insolvency of International Enterprise Groups⁴⁹⁰</p> <p>C17.1. Access to court and Recognition of Proceedings. In the context of the insolvency of enterprise group members, the system should provide foreign representatives and creditors with access to the court,</p>

⁴⁹⁰ See Principle C15. See also Principle C16.

	<p>and for the recognition of foreign insolvency proceedings, if necessary.</p> <p>C17.2. Cooperation involving courts. The system should allow the national court to cooperate to the maximum possible extent with foreign courts or foreign representatives, either directly or through the local insolvency representative. The system should permit the national court to communicate directly with, or to request information or assistance directly from, foreign courts or representatives.</p> <p>C17.3. Cooperation involving insolvency representatives. The system should allow insolvency representatives appointed to administer proceedings with respect to an enterprise group member to communicate directly and to cooperate to the maximum extent possible with foreign courts and with foreign insolvency representatives in order to facilitate coordination of the proceedings.</p> <p>C17.4. Appointment of the insolvency representative. The system should allow, in specific circumstances, for the appointment of a single or the same insolvency representative for enterprise group members in different States. In such cases, the system should include measures addressing situations involving conflicts of interest.</p> <p>C17.5. Cross-border insolvency agreements. The system should permit insolvency representatives and other parties in interest to enter into cross-border insolvency agreements involving two or more enterprise group members in different States in order to facilitate coordination of the proceedings. The system should allow the courts to approve or implement such agreements.</p>
Description	In cases where cross-border insolvency matters fall within the ambit of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (“Regulation 1346/2000”), Bulgaria shall apply this Regulation.
Assessment	<p>Materially not observed.</p> <p>Other than the EU regulation, there are no Bulgarian legal provisions that deal with the insolvency of international enterprise groups where non-EU countries are involved.</p>
Comment	<p>The Bulgarian insolvency regime should incorporate rules for dealing with a number of issues that are typically present in most cases of insolvency of international enterprise groups. To this end, the system should:</p> <ol style="list-style-type: none"> 1. Provide foreign representatives and creditors with access to the court, and for the recognition of foreign insolvency proceedings, if necessary. 2. Allow the national court to cooperate to the maximum possible extent with foreign courts or foreign representatives, either directly or through the local insolvency representative. The system should permit the national court to communicate directly with, or to request information or assistance directly from, foreign courts or representatives. 3. Permit insolvency representatives appointed to administer proceedings with respect to an enterprise group member to communicate directly and to cooperate to the maximum extent possible with foreign courts and with

	<p>foreign insolvency representatives in order to facilitate coordination of the proceedings.</p> <ol style="list-style-type: none"> 4. Allow, in specific circumstances, for the appointment of a single or the same insolvency representative for enterprise group members in different States. In such cases, the system should include measures addressing situations involving conflicts of interest. 5. Permit insolvency representatives and other parties in interest to enter into cross-border insolvency agreements involving two or more enterprise group members in different States in order to facilitate coordination of the proceedings. The system should allow the courts to approve or implement such agreements.
PART D. IMPLEMENTATION: INSTITUTIONAL & REGULATORY FRAMEWORKS	
Principle D1	<p>Role of Courts</p> <p>D1.1 Independence, Impartiality and Effectiveness. The system should guarantee the independence of the judiciary. Judicial decisions should be impartial. Courts should act in a competent manner and effectively.</p> <p>D1.2 Role of Courts in Insolvency Proceedings. Insolvency proceedings should be overseen and impartially disposed of by an independent court and assigned, where practical, to judges with specialized insolvency expertise. Non-judicial institutions playing judicial roles in insolvency proceedings should be subject to the same principles and standards applied to the judiciary.</p> <p>D1.3 Jurisdiction of the Insolvency Court. The court’s jurisdiction should be defined and clear with respect to insolvency proceedings and matters arising in the conduct of these proceedings.</p> <p>D1.4 Exercise of Judgment by the Court in Insolvency Proceedings. The court should have sufficient supervisory powers to efficiently render decisions in proceedings in line with the legislation without inappropriately assuming a governance or business administration role for the debtor, which would typically be assigned to the management or the insolvency representative.</p> <p>D1.5 Role of Courts in Commercial Enforcement Proceedings. The general court system must include components that effectively enforce the rights of both secured and unsecured creditors outside of insolvency proceedings. If possible, these components should be staffed by specialists in commercial matters. Alternatively, specialized administrative agencies with that expertise may be established.</p>
Description	<p>D1.1 Independence, impartiality and effectiveness</p> <p>The Bulgarian Constitution specifies that “the judiciary is independent. In carrying out their functions, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.”⁴⁹¹</p> <p>Several provisions of the Judicial System Act (JSA) are aimed at ensuring the independence, impartiality and effectiveness of the judiciary, namely:</p>

⁴⁹¹ Constitution, Art. 117, para. 2.

	<ol style="list-style-type: none"> 1. Judicial system bodies shall be guided by the Constitution and the principles set forth in the JSA.⁴⁹² 2. In adopting their acts judges, prosecutors and investigating magistrates shall be based on the law and the evidence gathered in the case.⁴⁹³ 3. Judicial system bodies shall impartially discharge their functions.⁴⁹⁴ 4. Citizens and legal entities shall be entitled to obtain information about the work of the Judiciary.⁴⁹⁵ 5. Judicial system bodies shall ensure openness, accessibility and transparency in their actions.⁴⁹⁶ 6. Judges, prosecutors and investigating magistrates shall be politically neutral in carrying out their business.⁴⁹⁷ 7. Everyone shall be entitled to a fair and open trial within reasonable time before an independent and impartial court.⁴⁹⁸ 8. Citizens and legal entities shall be entitled to judicial protection that shall not be denied to them.⁴⁹⁹ 9. Subject to the terms and procedure specified by law citizens may obtain legal aid, which shall be financed by the state.⁵⁰⁰ 10. Judicial system bodies shall apply the laws with precision and uniformity in respect to all persons and cases to which such laws are relevant.⁵⁰¹ 11. No limitation of rights or any privileges based on race, nationality, ethnicity, sex, origin, religion, education, convictions, political affiliation, personal or social status or patrimony shall be allowed in the discharge of functions of the Judiciary and in recruitment for the positions at judicial system bodies.⁵⁰² <p>The Supreme Judicial Council and the Inspectorate with the Supreme Judicial Council are the primary regulators of judges, court officers and administrators in the judicial system. The Supreme Judicial Council is a permanent body representing the</p>
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⁴⁹² JSA, Art. 2.

⁴⁹³ JSA, Art. 3.

⁴⁹⁴ JSA, Art. 4.

⁴⁹⁵ JSA, Art. 5 (1).

⁴⁹⁶ JSA, Art. 5 (2).

⁴⁹⁷ JSA, Art. 6.

⁴⁹⁸ JSA, Art. 7 (1).

⁴⁹⁹ JSA, Art. 7 (2).

⁵⁰⁰ JSA, Art. 7 (3).

⁵⁰¹ JSA, Art. 8 (1).

⁵⁰² JSA, Art. 8 (2).

Judiciary and securing its independence.⁵⁰³ Both the Supreme Judicial Council and the Inspectorate have the necessary powers to ensure the independence, impartiality and effectiveness of the judicial system.

The Supreme Judicial Council has wide-ranging powers to manage and organize the Bulgarian judicial system. The Supreme Judicial Council is a permanently acting body, which shall represent the judicial system and ensure its independence, determine its personnel and work organization. The Council manages the activities of the judicial system but shall not interfere with the independence of its bodies.

The other main regulatory body is the Inspectorate, which is entitled to perform the following activities: (i) revision of the organization of the administrative activities in courts, prosecution offices and investigation bodies; (ii) revision of the initiation and progress of court, prosecution and investigation case files, as well as the disposal thereof within the established time limits; (iii) analysis and summary of the cases that have been disposed of by virtue of an effective judicial act, as well as the files and cases assigned to the prosecutors and investigative officers; (iv) notification of the competent bodies of the necessity to demand interpretative judgments or interpretative decrees in the case of contradictory jurisprudence; (v) making proposals for the imposition of disciplinary sanctions on judges, prosecutors and investigative officers and on the administrative directors of judicial system bodies; (vi) addressing complaints, proposals and reports to other state bodies, including the competent judicial system bodies; (vii) preparation and submission to the Supreme Judicial Council of an annual program and a report on its business; (viii) discussion of the draft budget for the Judiciary system proposed by the Minister of Justice with regard to the budget of the Inspectorate and its submission to the Supreme Judicial Council; (ix) provision on an annual basis of public information about its activities and publication of a report on its activities on the website of the Supreme Judicial Council.

On the other hand, courts have powers that allow them to regulate their work although these powers are limited by the ones of the Supreme Judicial Council and the Inspectorate. The chairperson of the relevant court is obliged to: (i) provide overall organizational and administrative direction of the court; (ii) prepare and submit to the Inspectorate at the Supreme Judicial Council and to the Minister of Justice a report on the initiation, progress and termination of cases, as well as on the acts that have been definitively repealed by higher instance courts; (iii) prepare an annual report on the business of the regional court and of the district courts in its judicial area and submit it to the chairperson of the appellate court at the respective judicial area; (iv) prepare electronic information, enquiries and statistics, based on models and within time limits as endorsed by the Supreme Judicial Council; (v) assign a judge of the relevant district court to perform inspection of the organization of the activities of judges at the regional court, as well as of state enforcement agents and recordation judges; (vi) organize the improvement of qualifications of regional court judges; (vii) convene the judges of the regional court and of the regional courts for a discussion of the annual reports and the reports from inspections; (viii) transfer judges, state enforcement agents and recordation judges in the area of the regional court subject to the conditions of Articles 81, 274 and 290 of the JSA; (ix) organize the training of trainee lawyers and be responsible for it; (x) convoke and preside over the general assembly of the court. The orders of the chairperson of the court in

⁵⁰³ JSA, Art. 16 (1).

relation to the work organization of the court shall be binding to all judges and office holders.

According to article 129 (3) of the Bulgarian Constitution, having completed a five-year term of office as a judge, prosecutor or investigating magistrate, and upon attestation, followed by a decision of the Supreme Judicial Council, the judges, prosecutors and investigating magistrates shall become irremovable. This provision of the Constitution aims to ensure that judges, prosecutors or investigating magistrates that have acquired the necessary experience, high moral and professional qualities, cannot be subject to a change in position due to political or other reasons.

D1.2 Role of courts in insolvency proceedings

The insolvency court has broad jurisdiction over the different stages of the case. Namely, it has judicial power to declare insolvency or over-indebtedness of the debtor and to define the initial insolvency date thereto, to open and terminate the insolvency proceedings, to impose preliminary securities for protecting the debtor's estate under the pending request for institution of the insolvency such as appointment of a temporary trustee and/ or distraint over assets, to approve the list of the accepted claims prepared by the trustee, to approve and supervise a rehabilitation plan or liquidation of the estate of an insolvent debtor, to supervise the activity of the insolvency trustee, to review and declare null and void numerous fraudulent and preferential transactions made by the debtor in the suspicious pre-insolvency period, to hear claims against the insolvency trustee, etcetera (see C Principles, above).

Compared with the CPC, the CA provides shorter terms for the court to examine the case and to deliver its acts. For example, according to Article 634b of the CA, the court shall deliver a decision within 3 days upon the request of a party in the insolvency proceedings, unless another period is provided for. According to Art. 629, paragraph 2 of the CA, the request of a creditor for opening of the insolvency proceedings shall be examined by the court in closed session upon summoning the debtor and the creditor, within fourteen days after submission of the request. The court shall render a decision within three months after submission of the request. As a summary, the whole insolvency procedure is described in detail in the CA.

The CA contains special procedural rules which shall apply in insolvency proceedings, namely:

1. The jurisdiction as defined by law for bankruptcy proceedings cannot be amended through an agreement between the participating parties⁵⁰⁴; and,
2. The court can, of its own accord (*ex officio*), establish facts or gather evidence as may be of significance for its judgments or rulings.⁵⁰⁵

The provisions of the CPC shall be applied in insolvency proceedings in case there are no special provisions in the CA.⁵⁰⁶ However, the provisions of the CPC regarding the following shall not apply to bankruptcy proceedings:

⁵⁰⁴ CA, Art. 621a (1) 1.

⁵⁰⁵ CA, Art. 621a (1) 2.

⁵⁰⁶ CA, Art. 621.

1. Suspension of proceedings by mutual consent of the parties;
2. Withdrawal or cancellation of a creditor's motion for initiation of bankruptcy proceedings after a judgment is passed as per art. 630, paragraph (1) or (2), or Article 632 of the CA; and,
3. Withdrawal or cancellation of a claim filed by a trustee in bankruptcy or creditor in accordance with Article 645, paragraph (3), Article 646 or Article 647 of the CA.⁵⁰⁷

The Bulgarian legislation does not provide for any non-judicial institution to play judicial roles in insolvency proceedings.

D1.3 Jurisdiction of insolvency courts

Insolvency proceedings may be dealt with only by a District court with jurisdiction over the territory where the seat and management address of the debtor is located at the time of filing a bankruptcy application.⁵⁰⁸ The competent insolvency court has a wide scope of powers over the different stages of the case and may hear almost all matters that arise in the course of insolvency proceedings and related to them.⁵⁰⁹

The rules that govern the jurisdiction of the insolvency court are mandatory with no exceptions allowed.

D1.4 Exercise of judgment by the court in insolvency proceedings

All court judgements issued in the insolvency proceedings by the District court as a first instance court, shall be made by a single judge. A judicial decision shall contain the facts and legal grounds, which support the findings of the court. The insolvency court is independent in its powers to render judicial decisions during the insolvency proceedings and shall be governed by the interests of both the debtor and the creditors. The insolvency court is not empowered by the law to assume a governance or business administration role for the debtor, which is assigned to the management or the insolvency trustee (see Principles C6 and C9).

D1.5 Role of courts in commercial enforcement proceedings

Enforcement proceedings before public or private bailiffs shall be initiated only on the grounds of a judicial decision. Besides this, the role of the court is limited to hearing appeals against certain actions of the private or public bailiffs. Upon judicial decision, such as writ of execution for example, both secured and unsecured creditors have the right to file a petition before a bailiff for commencement of an individual enforcement procedure. Enforcement proceedings are regulated in detail in the Civil Procedure Code, the Registered Pledge Act, the Financial Collateral Arrangements Act and other laws (see Principles A6, A7 and A8). Currently, the Bulgarian legislation does not provide experts in commercial matters or specialized

⁵⁰⁷ CA, Art. 621a (3).

⁵⁰⁸ CA, Art. 613.

⁵⁰⁹ CA, Art. 621a (2) specifies that the following claims shall also be subject to the jurisdiction of the bankruptcy court, without the possibility for its jurisdiction to be amended through an agreement between the participating parties: (1) claims against the trustee in bankruptcy as per Article 663, paragraphs (2) & (3), regardless of whether at the time of filing of the claim such bankruptcy proceedings are pending or completed; and, (2) claims defined as per Article 646 or Article 647 of the CA.

	<p>administrative agencies to assist or represent the creditors in enforcement proceedings. Both secured and unsecured creditors may exercise their rights by themselves or authorizing third persons such as lawyers to represent them during the enforcement proceedings.</p>
<p>Assessment</p>	<p>Materially not observed.</p> <p>Many provisions in the Bulgarian Constitution and laws are aimed at ensuring the independence and impartiality of the judiciary. Effectiveness of the judicial system, however, needs to be enhanced.</p> <p>As regards enforcement proceedings, they are costly and lengthy in practice. Court fees are too high. Debtors tend to abuse the process frequently and many judges do not take effective measures to stop such practices. Contradictory interpretation of many enforcement issues by different courts frequently occurs and interpretative decisions of the Supreme Court of Cassation have not resolved all such inconsistencies (see Principle A6).</p> <p>Insolvency proceedings are not effectively handled either. Courts do not typically open such cases within the law term. Upon commencement, bankruptcy is also a lengthy process. Ineffectiveness of bankruptcy proceedings frustrates also rehabilitation of potentially viable enterprises in distress. (See Principles C1, C4 and C14).</p> <p>JSA provisions seem to establish mandatory terms for judicial rulings and decisions. JSA, Art. 12 (2) specifies: “The time limits specified by procedural laws in respect to the discharge of powers attributed to judges, prosecutors and investigating magistrates shall be mandatory for them, but shall not affect the rights of the parties at trial”, and JSA, Art. 210, establishes: “Judges, prosecutors and investigating magistrates shall be obligated 1. To dispose of the files and cases assigned to them within the imparted term.” Notwithstanding this and based on Art. 13 of the CPC, the general interpretation at courts is that all the terms are not mandatory for the judges: they just have to examine and adjudicate in the cases “within a reasonable period of time”.⁵¹⁰ However there are legal grounds for engaging the responsibilities of the judges in case of negligence. Pursuant to Art.54 from the Judiciary System Act the Inspectorate at the Supreme Judicial Council have powers to examine the work of the judges including the institution and continuation of the cases filed, as well as the disposal thereof within the established time limits. In case of delay it has powers to make proposals to the Supreme Judicial Council for imposing of disciplinary sanctions on judges. In practice disciplinary sanctions are rarely imposed because in most cases delays are due to the large number of cases assigned to the respective judge. The law does not arrange the criteria for allocation of cases to the judges and because of that some judges are holding much more cases than others. Therefor such disciplinary sanctions are imposed in individual cases.</p> <p>There are no specialized insolvency courts and there is a perception among users of the system that some judges are not sufficiently trained to deal with complex insolvency cases. The divided judicial competence between the bankruptcy judge and other judge (s) that should deal with general proceedings to resolve the disputes over claims that have been not-accepted / accepted by the former is also problematic. It makes the whole review process lengthy and creates a risk of contradictory</p>

⁵¹⁰ CPC, Art. 13.

	<p>judgments on similar claims disputes related to the same bankruptcy proceeding – which is highly undesirable (See Principle C13). Similar considerations apply with respect to the judge (s) that deals with avoidable transactions (See Principle C11).</p>
Comment	<p>Enhancing the effectiveness of the institutional framework is essential to improve creditor/debtor regimes and the insolvency system in Bulgaria. Among other measures, the following should be considered:</p> <ol style="list-style-type: none"> 1. Creating –if needed- new judicial positions in courts where the number of commercial law cases, executions and bankruptcy proceedings cannot be processed by the existent judges, appointing judges with proved knowledge and enough experience in commercial and/or insolvency matters, providing them with auxiliary staff adequately trained, and considering the advantages of specializing some courts in insolvency –if practicable. 2. Simplifying enforcement proceedings and procedural rules of bankruptcy proceedings to limit procedural abuses that result in improper delays of such cases and, encouraging judges to sanction the procedural bad faith and the abusive use of procedural mechanisms (see Principle A6). 3. Terms specified in enforcement and insolvency legislation should be mandatory for courts, and consequences/responsibilities if deadlines are not met should be established –unless there are reasonable circumstances that justify the delay in particular cases. 4. Concentrating the competence over all disputes that may arise in the course of bankruptcy proceedings under a single judge (bankruptcy judge). The competence to deal with bankruptcy proceedings and the disputes or recourses that could arise as a result of such proceedings should not be fragmented or divided: the same first instance judge or, respectively, the same court of appeals panel should deal with and resolve all such disputes or appeals.
Principle D2	<p>Judicial Selection, Qualification, Training and Performance</p> <p>D2.1 Judicial Selection and Appointment. Adequate and objective criteria should govern the process for selection and appointment of judges.</p> <p>D2.2 Judicial Training. Judicial education and training should be provided to judges.</p> <p>D2.3 Judicial Performance. Procedures should be adopted to ensure the competence of the judiciary and efficiency in the performance of court proceedings. These procedures serve as a basis for evaluating court efficiency and for improving the administration of the process.</p>
Description	<p>D2.1 Judicial selection and appointment</p> <p>A judge, prosecutor, and other judicial authorities, with the exception of the the chairperson of the Supreme Court of Cassation, of the chairperson of the Supreme Administrative Court and of the Prosecutor General, shall be appointed, promoted, demoted, transferred and relieved from office by resolution of the Supreme Judicial</p>

Council.⁵¹¹ An individual with only a Bulgarian citizenship may be appointed as a judge, prosecutor and investigating magistrate, provided s/he also meets the following conditions:

1. Has a higher education in the specialty area of law;
2. Has undergone the internship provided for in the JSA and obtained legal competency;
3. Has the required moral and professional characteristics complying with the Code of Ethical Behavior of Bulgarian magistrates;
4. Has not been sentenced to imprisonment for a deliberate criminal offence, notwithstanding rehabilitation;
5. Is not an elected member of the Supreme Judicial Council who has been relieved from office on disciplinary grounds due to impairing the prestige of the judiciary;
6. Does not suffer from a mental illness.⁵¹²

Any court case shall be constituted upon bringing an action, submission of a request or petition before the competent court. The judge that will be hearing the case shall be appointed by a computer system on the principle of random case distribution.⁵¹³

At the current state of the court system, each court has different departments based on the type of cases each department shall hear. There are commercial, civil, matrimonial, administrative and company departments. The distribution system shall appoint a case to a judge from the department based on the subject of the claim.

D2.2 Judicial training

The National Institute of Justice⁵¹⁴ is the public institution, which provides learning activities as follows: (i) compulsory initial training for junior magistrates who have successfully passed the relevant competition; (ii) compulsory initial courses meant to further enhance the qualification of the judges, prosecutors and investigators during the first year after they took office⁵¹⁵; (iii) continuing training for all sitting magistrates on amendments to the legislation, changes in jurisprudence, interdisciplinary topics and training in EU Law; (iv) training of the court administration.

The Supreme Judicial Council may decide that particular courses are mandatory for judges, prosecutors, investigating magistrates and clerks of court, in the event of:

1. Promotion in position;
2. Appointment as administrative heads; and,

⁵¹¹ JSA, Art. 160.

⁵¹² JSA, Art. 162.

⁵¹³ JSA, Article 9.

⁵¹⁴ JSA, Art. 249.

⁵¹⁵ JSA, Art. 259.

3. Specialization.⁵¹⁶

Besides, the Supreme Judicial Council and the Chairperson of the relevant court shall also organize the judicial education through qualification courses for judges.

D2.3 Judicial performance

The Inspectorate at the Supreme Judicial Council shall regularly evaluate several issues related to court performance, by:

1. Checking the organization of administrative business in courts, prosecution offices and investigation bodies,
2. Checking the arrangements made for the institution and progress of court, prosecution and investigation case files, as well as the disposal thereof within the established time limits,
3. Analyzing and summarizing the cases that have been disposed of by virtue of an effective judicial act, as well as the files and cases assigned to the prosecutors and investigating magistrates,
4. In the presence of contradictory jurisprudence the existence of which has been found in the course of business under paragraph 3, it shall alert the competent bodies of the need to demand interpretative judgements or interpretative decrees,
5. In presence of violations in the discharge of business under items 1- 3, it shall alert the administrative head of the body concerned and the Supreme Judicial Council,
6. Making proposals for the imposition of disciplinary sanctions on judges, prosecutors and investigating magistrates and on the administrative heads of judicial system bodies,
7. Addressing alerts, proposals and reports to other state bodies, including the competent judicial system bodies,
8. Preparing and submitting to the Supreme Judicial Council an annual program and a report on its business,
9. Discussing the draft budget for the Judiciary proposed by the Minister of Justice with regard to the budget of the Inspectorate and submitting it to the Supreme Judicial Council,
10. Providing on an annual basis public information about its business and publish the report on its business on the website of the Supreme Judicial Council.⁵¹⁷

The Inspectorate shall act through inspections envisaged in its annual program or following alerts.⁵¹⁸

⁵¹⁶ JSA, Art. 261.

⁵¹⁷ JSA, Art. 54 (1).

⁵¹⁸ JSA, Art. 56.

	<p>A judge, prosecutor, investigating magistrate, state enforcement agent and a recordation judge shall be disciplined where they have committed a disciplinary offence. A disciplinary offence shall be the guilty failure of a judge, prosecutor and investigating magistrate in fulfilling their official duties. Disciplinary offences shall be:</p> <ol style="list-style-type: none"> 1. The systematic failure to observe terms provided for in procedural laws; 2. Any act or omission slowing down proceedings without justification; 3. Any breach of the Code of Ethical Behavior of Bulgarian Magistrates; 4. Any act or omission undermining the prestige of the Judiciary; 5. Failure to discharge any other official duties.⁵¹⁹ <p>The disciplinary sanctions for a judge, prosecutor, investigating magistrate, administrative head and a deputy of an administrative head shall be:</p> <ol style="list-style-type: none"> 1. Reprimand; 2. Censure; 3. Reduction of the basic labor remuneration by 10 to 25 percent for a term of 6 months to two years; 4. Demotion in rank or position at the same judicial system body for a term of one to three years; 5. Relief from office as administrative head or deputy of an administrative head.⁵²⁰ <p>When setting the disciplinary sanction, the gravity of the offence, the form of guilt, the surrounding circumstances and the conduct of the offender shall be taken into consideration.⁵²¹</p>
Assessment	<p>Largely observed.</p> <p>The system of selection and appointment of judges seems to be transparent and reasonably adequate. Users of the judicial system, however, express concern about the lack of sufficient understanding of some judges with respect to complex commercial transactions and bankruptcy procedures. Particularly in commercial and bankruptcy cases, some judges seem to require more financial and business training.</p>
Comment	<p>Continuing training reinforces the quality and skills of judges, newly appointed or existing ones. This training should include basic and more sophisticated insolvency concepts and techniques, related commercial law subjects and accounting and finance concepts and techniques that are important in bankruptcy.</p>
Principle D3	Court Organization

⁵¹⁹ JSA, Art. 307.

⁵²⁰ JSA, Art. 308.

⁵²¹ JSA, Art. 309.

	<p>The court should be organized so that all interested parties—including the attorneys, insolvency representative, debtor, creditors, public and media—are dealt with fairly, timely, objectively and as part of an efficient, transparent system. Implicit in that structure are firm and recognized lines of authority, clear allocation of tasks and responsibilities, and orderly operations in the courtroom and case management.</p>
<p>Description</p>	<p>D3 Court organization</p> <p>The JSA specifies several rules that shall be observed in all court proceedings. In adopting their acts judges, prosecutors and investigating magistrates shall be based on the law and the evidence gathered in the case.⁵²² Judicial system bodies shall impartially discharge their functions.⁵²³ Citizens and legal entities shall be entitled to obtain information about the work of the Judiciary.⁵²⁴ Judicial system bodies shall ensure openness, accessibility and transparency in their actions.⁵²⁵ Judges, prosecutors and investigating magistrates shall be politically neutral in carrying out their business.⁵²⁶ Everyone shall be entitled to a fair and open trial within reasonable time before an independent and impartial court.⁵²⁷ Citizens and legal entities shall be entitled to judicial protection that shall not be denied to them.⁵²⁸ Subject to the terms and procedure specified by law citizens may obtain legal aid, which shall be financed by the state.⁵²⁹ Judicial system bodies shall apply the laws with precision and uniformity in respect to all persons and cases to which such laws are relevant.⁵³⁰ No limitation of rights or any privileges based on race, nationality, ethnicity, sex, origin, religion, education, convictions, political affiliation, personal or social status or patrimony shall be allowed in the discharge of functions of the Judiciary and in recruitment for the positions at judicial system bodies.⁵³¹</p> <p>Accordingly, the CPC also establishes provisions aimed at governing the court organization so that all parties are treated in a fair, objective and timely manner. Courts shall be obligated to examine and adjudicate in each petition submitted thereto for protection and facilitation of personal and property rights.⁵³² The court shall examine and adjudicate cases according to the precise meaning of the laws, and where the laws are deficient, obscure or conflicting, according to the common sense thereof. In the absence of an applicable law, the court shall found the judgment thereof on the fundamental principles of law, custom and ethics.⁵³³ Each party shall</p>

⁵²² JSA, Art. 3.

⁵²³ JSA, Art. 4.

⁵²⁴ JSA, Art. 5 (1).

⁵²⁵ JSA, Art. 5 (2).

⁵²⁶ JSA, Art. 6.

⁵²⁷ JSA, Art. 7 (1).

⁵²⁸ JSA, Art. 7 (2).

⁵²⁹ JSA, Art. 7 (3).

⁵³⁰ JSA, Art. 8 (1).

⁵³¹ JSA, Art. 8 (2).

⁵³² CPC, Art. 2.

⁵³³ CPC, Art. 5.

	<p>have the right to be heard by the court before the issuance of a judgement relevant to its rights and interest.⁵³⁴ The court shall afford to each party an opportunity to get acquainted with the demands and arguments of the opposing party, with the subject of the case and its progress, as well as to express a stand on the said demands, arguments and subject matter.⁵³⁵ The court secures equal possibilities for each party to exercise their rights. The court applies the law equally in respect of all.⁵³⁶</p> <p>The hearing of cases is done orally in public sessions, save as where a law provided that the hearings shall be held in camera.⁵³⁷ This principle provides the opportunity for everybody to attend hearings. There are no restrictions for the media to attend the hearings. The only exception to the said principle is where by law certain cases shall be heard in camera. In this case, nobody besides the parties may attend the hearings. Art. 136 of CPC exhaustively specifies the circumstances where the court on its own discretion or upon the request of a party may rule the hearings to be held in camera. In addition, Art. 139 of CPC provides that without the explicit permission of the court minors which are not a party to the case or witnesses, and armed persons beside the court security, may not attend hearings.</p>
Assessment	<p>Largely observed.</p> <p>In spite of current regulations, efficiency and timeliness in practice are still in need of substantial improvement: enforcement and bankruptcy cases take too long to be completed (see Principles A6, C1, C4, C14 and D1, above).</p>
Comment	See Comment at D1.
Principle D4	<p>Transparency and Accountability</p> <p>An insolvency and creditor rights system should be based upon transparency and accountability. Rules should ensure ready access to relevant court records, court hearings, debtor and financial data and other public information.</p>
Description	<p>D4 Transparency and accountability</p> <p>Each party in a case has the right and opportunity to access case documents, records, hearings and other information that is relevant to the current case. Also, citizens and legal entities shall be entitled to obtain information about the work of the Judiciary.⁵³⁸ Judicial system bodies shall be held to ensure openness, accessibility and transparency in their actions in pursuance hereof and in pursuance of the procedural laws.⁵³⁹</p>

⁵³⁴ CPC, Art. 8 (1).

⁵³⁵ CPC, Art. 8 (3).

⁵³⁶ CPC, Art. 9.

⁵³⁷ CPC, Art. 9.

⁵³⁸ JSA, Art. 5 (1).

⁵³⁹ JSA, Art. 5 (2).

	<p>Courts shall examine cases in public hearings.⁵⁴⁰ The publicity of trial may only be limited by law. By all means, a sentence shall be publicly delivered.⁵⁴¹ Judges shall be held to deliver their acts in accordance with the procedure and within the term specified by law.⁵⁴²</p> <p>These principles also apply in insolvency proceedings. However, all hearings in an insolvency case (including the meetings of creditors) are held in camera.⁵⁴³ Besides, the debtor shall provide to the court and the trustee all relevant information regarding its business activity, including its financial information. Once the information is provided to the court, each creditor has the right of access to it.⁵⁴⁴ All other public information concerning the debtor, such as information published in the Trade Registry, Land Registry and other entities is available to all creditors.</p>
Assessment	Observed.
Comment	
Principle D5	<p>Judicial Decision Making and Enforcement of Orders</p> <p>D5.1 Judicial Decision Making. Judicial decision making should encourage consensual resolution among parties where possible and otherwise undertake timely adjudication of issues with a view to reinforcing predictability in the system through consistent application of the law.</p> <p>D5.2 Enforcement of Orders. The court must have clear authority and effective methods of enforcing its judgments.</p> <p>D5.3 Creating a Body of Jurisprudence. A body of jurisprudence should be developed by means of consistent publication of important and novel judicial decisions, especially by higher courts, using publication methods that are conventional and electronic (where possible).</p>
Description	<p>D5.1 Judicial decision making</p> <p>Courts shall be obligated to examine and adjudicate in each petition submitted thereto for protection and facilitation of personal and property rights.⁵⁴⁵ In adopting their acts judges, prosecutors and investigating magistrates shall be based on the law and the evidence gathered in the case.⁵⁴⁶ The court shall examine and adjudicate in cases according to the precise meaning of the laws, and where the laws are deficient, obscure or conflicting, according to the common sense thereof. In the absence of an applicable law, the court shall found the judgment thereof on the fundamental</p>

⁵⁴⁰ JSA, Art. 132 (1).

⁵⁴¹ JSA, Art. 132 (2).

⁵⁴² JSA, Art. 132 (3).

⁵⁴³ CA, Art. 629, Art. 669 (2) and Art. 673.

⁵⁴⁴ CA, Art. 640 (1) 1.

⁵⁴⁵ CPC, Art. 2.

⁵⁴⁶ JSA, Art. 3.

	<p>principles of law, custom and ethics.⁵⁴⁷ Also, the court shall found the judgment thereof on the circumstances of the case held thereby as established and on the law.⁵⁴⁸</p> <p>The court shall examine and adjudicate in the cases within a reasonable period of time.⁵⁴⁹ Where the court fails to perform a particular procedural step in due time, the party may, during any stage of the proceeding, submit a petition to the superior court to set an appropriate time limit for performance of the said step. Where the court performs forthwith all steps stated in the petition and sends the party a communication regarding this performance, the petition shall be presumed withdrawn. The petition shall be transmitted for examination to the superior court if the party declares within one week after receipt of the communication under Paragraph (1) that it continues to maintain the said petition.⁵⁵⁰ A petition to set a time limit shall be examined by a judge of the superior court within one week after receipt of the said petition. If the court finds an unreasonable delay, the court shall set a time limit for performance of the step. Otherwise, the court shall deny the petition.⁵⁵¹</p> <p>Judges have no right to share in advance of the judgment any views on the cases assigned to them, as well as any views on cases not assigned to them.⁵⁵² Judges cannot provide legal advice.⁵⁵³</p> <p>In presence of contradictory or erroneous jurisprudence on the interpretation or application of the law, an interpretative judgement shall be adopted by the general assembly of: (i) The criminal, the civil or the commercial college of the Supreme Court of Cassation, (ii) The civil or the commercial colleges of the Supreme Court of Cassation, (iii) A college of the Supreme Administrative Court, (iv) The colleges of the Supreme Administrative Court. In presence of contradictory or erroneous jurisprudence between the Supreme Court of Cassation and the Supreme Administrative Court, the general assembly of the judges of the respective colleges of the two courts shall adopt a joint interpretative decree.⁵⁵⁴ Interpretative judgements and interpretative decrees shall be adopted and delivered within three months of receipt of a request. Interpretative judgements and interpretative decrees shall be binding on judicial and executive bodies, on local government bodies, as well as on all bodies issuing administrative acts.⁵⁵⁵ Interpretative judgements shall</p>
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⁵⁴⁷ CPC, Art. 5.

⁵⁴⁸ CPC, Art. 235 (2).

⁵⁴⁹ CPC, Art. 13.

⁵⁵⁰ CPC, Art. 256.

⁵⁵¹ CPC, Art. 257.

⁵⁵² JSA, Art. 212.

⁵⁵³ JSA, Art. 213.

⁵⁵⁴ JSA, Art. 124.

⁵⁵⁵ JSA, Art. 130.

	<p>be published on an annual basis in a bulletin of the Supreme Court of Cassation or of the Supreme Administrative Court and interpretative decrees - in both bulletins.⁵⁵⁶</p> <p>D5.2 Enforcement of orders</p> <p>Judgments and rulings of the court are subject to coercive enforcement.⁵⁵⁷ A judgement is mandatory for the parties of the case. Enforcement of court judgments and rulings is materialized by enforcement officers (see Principles A6, A7 and A8). Non-performance of a court judgment constitutes a criminal offence.⁵⁵⁸</p> <p>D5.3 Creating a body of jurisprudence</p> <p>Functions related to the publication of important and novel judicial decisions are carried out by the Supreme Court of Cassation, which publishes a monthly Bulletin. The Bulletin contains judgements of great importance rendered mainly by SCC, including Interpretative decisions of the Civil and Commercial Bench of SCC. Additionally, SCC maintains an internet page, which provides different types of search criteria for browsing the SCC case law.</p> <p>There are several database platforms (such as Apis⁵⁵⁹ and Ciela⁵⁶⁰), which upon payment provide access to all legislation including old amended or supplemented provisions, and to a very large database of case law of all courts in Bulgaria.</p>
Assessment	<p>Materially not observed.</p> <p>Courts do not typically encourage consensual resolution of disputes. Adjudication is usually lengthy in most cases (see Principle D1). Decision-making is not always predictable as contradictory interpretations of the law are rather frequent (see Principle A6). Mediation is not often used in commercial disputes and never utilized in bankruptcy proceedings. As regards arbitration proceedings, they are not typically used for resolving loan disputes, and never used in bankruptcy either.</p>
Comment	<p>Consideration should be given to:</p> <ol style="list-style-type: none"> 1. encouraging consensual resolution of disputes, in particular through mediation; 2. expanding the use of arbitration in loan disputes and some conflicts that may arise in bankruptcy; and, 3. eliminating contradictions in the jurisprudence.
Principle D6	<p>Integrity of the System</p> <p>D6.1 Integrity of the Court. The system should guarantee security of tenure and adequate remuneration of judges, and personal security for judicial officers and court</p>

⁵⁵⁶ JSA, Art. 131.

⁵⁵⁷ CPC, Art. 404, 1.

⁵⁵⁸ Criminal Code, Art. 293a and Art. 296.

⁵⁵⁹ See: <http://www.apis.bg/en/about-us/about.html>

⁵⁶⁰ See: <http://www.ciela.net/products/product/38/no/ciela-law>

	<p>buildings. Court operations and decisions should be based on firm rules and regulations to avoid corruption and undue influence.</p> <p>D6.2 Conflict of Interest and Bias. The court must be free of conflicts of interest, bias and lapses in judicial ethics, objectivity and impartiality.</p> <p>D6.3 Integrity of Participants. Persons involved in a proceeding must be subject to rules and court orders designed to prevent fraud, other illegal activity and abuse of the insolvency and creditor rights system. In addition, the court must be vested with appropriate powers to enforce its orders and address matters of improper or illegal activity by parties or persons appearing before the court with respect to court proceedings.</p>
<p>Description</p>	<p>D6.1 Integrity of the court</p> <p>According to Art. 8 of the Bulgaria Constitution, the power of the State is divided into three separate branches – executive, legislative and judiciary. This separation of powers serves as the basis for the integrity of the court and the court system as a whole. The Bulgarian Constitution specifies that “the judiciary is independent. In carrying out their functions, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.”⁵⁶¹ (See Principle D1, above).</p> <p>After having completed a five-year term of office as a judge, prosecutor or investigating magistrate, and upon attestation, followed by a decision of the Supreme Judicial Council, the judges, prosecutors and investigating magistrates shall become irremovable.⁵⁶² This provision of the Constitution is aimed at ensuring security of tenure of judges, prosecutors or investigating magistrates, so as to avoid political or other undue influence.</p> <p>The chairpersons of the Supreme Court of Cassation and of the Supreme Administrative Court, the Prosecutor General and the Director of the National Investigation Service shall have a basic monthly remuneration equal to 90 percent of the remuneration of the chairperson of the Constitutional Court. The basic monthly remuneration for the lowest judicial, prosecutorial or investigating magisterial position shall be set at the double amount of the average monthly salary of budget-funded employees, based on data of the National Institute of Statistics. Remunerations for other positions at judicial system bodies shall be set by the Supreme Judicial Council.⁵⁶³ On top of the basic monthly remuneration, judges, prosecutors and investigating magistrates shall be paid additional remuneration for extended work as a judge, prosecutor and an investigating magistrate at the amount of 2 percent for each year of service record, not to exceed 40 percent.⁵⁶⁴ Additional remuneration for extra work shall be paid to judges, prosecutors and investigating magistrates only for the discharge of their official duties on holidays and days off.⁵⁶⁵ Mandatory social security and health insurance (including insurance against</p>

⁵⁶¹ Constitution, Art. 117, para. 2.

⁵⁶² Constitution, Art. 129, para. 3.

⁵⁶³ JSA, Art. 218.

⁵⁶⁴ JSA, Art. 219.

⁵⁶⁵ JSA, Art. 220.

accidents) of judges, prosecutors and investigating magistrates shall be provided at the expense of the Judiciary budget.⁵⁶⁶

A Security Directorate General exists under the Minister of Justice and provides for the security of the judicial system bodies. The Security Directorate General is a legal entity headquartered in Sofia under the Ministry of Justice. The Security Directorate General organizes and provides for the security of court buildings, ensures the order inside court buildings and the security of judicial system bodies in the performance of their powers, organizes and provides for the protection of judges, prosecutors, investigating magistrates - under the terms and procedures specified in a Regulation of the Minister of Justice, in coordination with the Supreme Judicial Council, and of protected individuals under terms and procedures specified in the Protection of Persons Threatened in Relation to Criminal Proceedings Act, as well as performs other activities and services stipulated in section V of the JSA.

D6.2 Conflict of interest and bias

The existence of the judiciary system as a separate state power, the tenure of judges, prosecutors and investigating magistrates, the mandatory regulation of the remuneration for all personnel working in the judiciary system, are aimed at securing the independence of the judiciary system and the immunity of judges to any kind of undue influence. The integrity of the judiciary system lays is the basis but also the obligation of all judges to render judiciary acts free of conflicts of interest.

Should such conflicts exist, a judge should recuse himself from the case. The parties can also recuse a judge, a prosecutor or a court clerk on the grounds established by the law, as follows.

Participation in a case as a judge shall be inadmissible for any person:

1. who is a party to the case or, together with any of the parties to the case, has entered into the contested legal relation or into a legal relation linked thereto;
2. who is a spouse of or a lineal relative up to any degree of consanguinity, or a collateral relative up to the fourth degree of consanguinity, or an affine up to the third degree of affinity, to any of the parties or to any representative of any such party;
3. who is a de facto cohabitee with any party to the case or with any representative of any such party;
4. who has been a representative or an attorney-in-fact, as the case may be, of any party to the case;
5. who has taken part in adjudication in the case in a court of another instance or who has been a witness or an expert witness in the case;
6. in respect of whom other circumstances exist which give rise to reasonable doubts as to the impartiality of the said person.

⁵⁶⁶ JSA, Art. 224.

The judge shall be obligated to exclude himself or herself in the cases covered under items 1 to 5, and should he or she decline the recusal under item 6, to disclose the circumstances.⁵⁶⁷

Each of the parties may recuse a judge during a hearing after the grounds for recusal have arisen or have become known. The court shall deal with the recusal with the participation of the judge in respect of whom the motion was made. If, owing to the recusal of judges, the examination of the case at the relevant court is impossible, the superior court shall decree the transfer of the case for examination to another court of equal rank.⁵⁶⁸

The prosecutor and the clerk of court may be excluded on the same grounds as judges.⁵⁶⁹

Furthermore, the Supreme Judicial Council has issued a Code of Ethical Conduct of Bulgarian Magistrates (CECBM). Section IV of the Code is named “Rules for avoidance of conflicts of interest” and provides the occasions where a judge shall recuse himself. The CECBM also regulates the lapses in judicial ethics, objectivity and impartiality. The code is mandatory for all to whom it may concern, including judges, and violation of its provisions may represent grounds for imposing different types of disciplinary sanctions.

D6.3 Integrity of participants

The persons participating in court proceedings and the representatives thereof, on pain of liability for damages, shall be obligated to exercise the procedural rights conferred thereon in good faith and in compliance with good morals. The said persons shall be obligated to present to the court nothing but the truth.⁵⁷⁰ During the proceedings, the parties are obliged to state real facts and to present real evidences to the court. This general principle covers all civil and commercial proceedings, including insolvency proceedings. On the grounds of it, each party may file for damages against another party, in case the latter is abusing its procedural rights.

Chapter nine of the CPC contains several provisions regulating the imposition of fines to different parties involved. Fines may be imposed to witnesses, experts and others, for causing unreasonable delay of cases and other explicitly specified occasions. For example, if a third party who does not participate in the case refuses to present a document or a tangible thing for inspection demanded therefrom by the court, which has been established to be in the possession of the said party, the court shall impose a fine thereon and shall urge to present the said document or thing.⁵⁷¹ Also, the court shall impose a fine for: (1) disorderly behavior during a court hearing; (2) disobedience of the orders of the court; (3) insult of the court, a party, a representative, a witness or an expert witness.⁵⁷² These provisions also apply in insolvency proceedings.

⁵⁶⁷ CPC, Art. 22.

⁵⁶⁸ CPC, Art. 23.

⁵⁶⁹ CPC, Art. 24.

⁵⁷⁰ CPC, Art. 3.

⁵⁷¹ CPC, Art. 87.

⁵⁷² CPC, Art. 89.

Assessment	<p>Materially not observed.</p> <p>Integrity of participants is a serious issue in bankruptcy proceedings. Many relevant stakeholders complain about the behavior of most debtors, who typically do not act in good faith. Such creditors consider bankruptcy as a vehicle used by debtors to evade their obligations –in many case, fraudulently. There is a negative stigma and a negative reputation to the insolvency regime, indeed not merely due to certain deficiencies in the law but also as a result of implementation shortcomings. There are repeated complaints about abuses of the process. Bankruptcy proceedings are frequently manipulated to harm secured creditors (see Principle C1 and C14).</p> <p>Some judges are perceived as being neither prepared not willing to stop fraud, illegal activities and/or abuses of the process. If the debtor is acting with fraud, the trustee and the bankruptcy judge should theoretically refer the case to the Criminal Court, but this is not usually done in practice. The procedure for recognition of claims is not working effectively. It does not ensure that valid claims are timely recognized, and it is not efficient to prevent fraudulent claims to be accepted (see Principle C13). This practice affects not only the rights and interests of the real creditors but also has significantly contributed to the low reputation of bankruptcy proceedings in Bulgaria. Creditors and debtors trust is very low generally, which prevents a widespread utilization of rehabilitation mechanisms (see Principle C14 above).</p>
Comment	<p>Effectively addressing fraud and other illegal activities as well as procedural abuses is essential to enhance the reputation of insolvency proceedings. Otherwise, it will be very difficult to move from the current perception that these are just mechanisms to defraud creditors, to a modern concept which sees these proceedings as an opportunity to rehabilitate viable enterprises in distress and to effectively liquidate non-viable ones. The courts should be empowered to address matters of improper or illegal activities by parties or participants in court proceedings –and such powers should be effectively used applying severe sanctions where necessary.</p>
Principle D7	<p>Role of Regulatory or Supervisory Bodies</p> <p>The bodies responsible for regulating or supervising insolvency representatives should:</p> <ul style="list-style-type: none"> - Be independent of individual representatives; - Set standards that reflect the requirements of the legislation and public expectations of fairness, impartiality, transparency and accountability; and, - Have appropriate powers and resources to enable them to discharge their functions, duties and responsibilities effectively.
Description	<p>The regulation of insolvency representatives in Bulgaria is contemplated in Chapter 42 of the Commerce Act⁵⁷³ and Regulation 3/ 2005 for selection, qualification and control of the insolvency representatives (the Regulation), which includes the procedures for selection, qualification and supervision control of the insolvency</p>

⁵⁷³ See Commerce Act, Art. 655-671.

representatives.⁵⁷⁴ The eligibility criteria for prospective insolvency representatives are set forth in the Commerce Act, namely:⁵⁷⁵

1. must not have criminal record;
2. must not be a spouse or direct relative of the debtor or a creditor;
3. must not be a creditor in the same bankruptcy procedure;
4. must not be a bankrupt debtor whose rights have not been reinstated;
5. must not be in any relations with the debtor or a creditor, which may generate reasonable doubts as to his impartiality;
6. must have completed university education in economics or law, and have no less than 3 years of experience in the respective field;
7. must successfully pass a qualification exam following a procedure set forth in Regulation 3/2005, and must be included in the list of eligible insolvency representatives, approved by the Minister of Justice and promulgated in the State Gazette.

The Ministry of Justice (MOJ) is the supervisory body responsible for the oversight of insolvency representatives in Bulgaria.

An examination board, consisting of two members from the MOJ, administers the qualifying exam. If the prospective insolvency representative meets the requirements of Art.655 and Art.656 of the CA, including the exam and is included in the MOJ list, he might be appointed by the bankruptcy court as an insolvency representative in the insolvency proceedings. The exam includes a written test and a verbal part, and is announced with an Order of the Minister of Justice, which is published in the State Gazette, as well as on the website of the MOJ, and includes information on the date, time and venue of the exam, as well as the application fee.

While the procedures for developing the exam and administering it are laid out in the Regulation, in practice the examination process is not transparent. The Regulation does not provide guidance on the frequency of administering exams for insolvency representatives. One insolvency representative reported that he had to file a complaint with the Ministry of Justice, to announce the date of the next exam.

Pursuant to the Regulation, the MOJ and the Ministry of Economy and Energy (MOE) must organize annual training for insolvency practitioners. The insolvency representative is required to make an annual contribution for professional training. Failure to make the contributions for professional training serves as grounds for the exclusion of the insolvency representative from the MOJ list. The training is mandatory for insolvency representatives. Some interviewees reported that despite the training requirement, insolvency representatives that entered the profession many years ago have not updated their approach or skills to match the current law and economic realities in Bulgaria. During the training, there is no re-assessment of the skills of insolvency representatives. Thus those that have been “grandfathered”

⁵⁷⁴ See Regulation 3/ 2005 for selection, qualification and control of the insolvency representatives, issued by the Minister of Justice, Minister of Economy and Minister of Finance –SG 64/ 05.08.2005.

⁵⁷⁵ See Commerce Act, Art. 655 and Art. 656.

	<p>into the profession through seniority never passed an exam, and their skills cannot be verified, potentially undermining the credibility of the profession.</p> <p>The Regulation also specifies that the MOJ may “routinely or upon alert” initiate an investigation of the insolvency representative’s conduct in proceedings.⁵⁷⁶ The investigation is to be conducted through the MOJ’s inspectorate.</p> <p>There is no clear procedure for raising complaints against the insolvency representative’s conduct, to trigger an investigation by the MOJ, pursuant to the Regulation. Without a procedure, complainants’ issues may never be heard.</p> <p>There is no professional association of insolvency representatives. In some countries, the professional association for insolvency representatives is mandatory in order to practice. Such an association may conduct the functions of complaint intake, investigation, discipline, and even termination of license in some cases. They wield significant power over their members; they also exert collective pressure on members for good conduct in order to maintain the standards and reputation of the profession. Insolvency representatives interviewed during the mission expressed strong reluctance to accord any such professional association significant powers such as disciplinary powers, as is the case in other countries where the professional association receives complaints and can discipline or even dismiss insolvency representatives. The Bulgarian insolvency representatives expressed extreme reluctance to be judged by their peers.</p>
<p>Assessment</p>	<p>Materially Not Observed</p> <p>The regulation of insolvency representatives in Bulgaria is not entirely in accordance with international good practice. While there is a body in charge of regulating and supervising the insolvency representatives’ profession, there is no procedure provided in the Regulation for complaints about the insolvency representative’s conduct, sufficient to trigger an investigation by the MOJ. Without a procedure, complainants’ issues may never be heard. Moreover, it will not be clear to MOJ when an investigation is needed.</p> <p>Investigations of complaints are conducted by the MOJ’s Inspectorate, which is not a body specialized in review of insolvency matters. This can lead to inconsistent practices and results from investigations. It is not clear that sufficient resources are designated within the MOJ to allow for specialized supervision of insolvency representatives.</p> <p>Nor is there a regular review of books and records of insolvency representatives. Article 23(1) of the Regulation does provide for reviewing of a particular proceeding, but not of the insolvency representative’s books and accounts. Reviewing such accounts and identifying potential irregularities is an important method of detecting negligence or willful misconduct.</p> <p>There is no Code of Ethics to provide detailed guidelines on standards of behavior for insolvency representatives. Nor is there a professional association to set and enforce such standards, and to maintain the integrity of the profession through policing of members by their peers, and the insolvency representatives themselves appear reluctant to establish such an association.</p>

⁵⁷⁶ See Regulation 3/2005, Art. 23(1).

	<p>Overall, the legal guidance on supervision, and the powers of the MOJ are not sufficient to allow comprehensive oversight. In the case of the exam, its timing has not been fully transparent and thus impedes the predictability of the process to enter the profession.</p>
<p>Comment</p>	<p>The qualifying exam should be conducted in a transparent manner, including guidelines of the frequency of exams, and fair administration.</p> <p>Investigations should be conducted by those who are qualified to evaluate the economic aspects of an insolvency representative’s work and accounts, and who are qualified to identify irregularities.</p> <p>A professional association may be able to serve as a resource for the insolvency representatives to support each other and enhance their visibility, reputation, and competence. A professional association of insolvency representatives may provide significant oversight of its members, taking in complaints, investigating, and administering discipline. Given the MOJ’s limited resources to dedicate to insolvency representatives, such an association could likely benefit the Bulgarian insolvency representatives. The reluctance of insolvency representatives themselves to allow their peers to police them, and each other, is an obstacle to the establishment of such an association. Nevertheless, the insolvency representatives will have difficulty obtaining public trust and credibility if they do not trust each other’s integrity. There should be efforts to bring the insolvency representatives together to resolve the mistrust expressed, so they can work together to improve their reputation and performance, and earn greater trust of the public.</p> <p>The law should be clarified so that the insolvency regulator’s office can qualify its personnel to support his/her work, while also maintaining confidentiality, and ensuring that the insolvency representative is able to take responsibility for his fiduciary duty (control the flow of funds and sensitive information) and fulfill it.</p> <p>A Code of Ethics should be developed with detailed guidance as to the proper conduct of insolvency representatives to remain transparent, competent and conflict-free. A body should be designated to hear complaints regarding violations of the Code of Ethics. That body should be empowered to take action against the insolvency representative if he is guilty of a violation.</p>
<p>Principle D8</p>	<p>Competence and Integrity of Insolvency Representatives</p> <p>The system should ensure that:</p> <ul style="list-style-type: none"> - Criteria as to who may be an insolvency representative should be objective, clearly established and publicly available; - Insolvency representatives be competent to undertake the work to which they are appointed and to exercise the powers given to them; - Insolvency representatives act with integrity, impartiality and independence; and

	<p>- Insolvency representatives, where acting as managers, be held to director and officer standards of accountability, and be subject to removal for incompetence, negligence, fraud or other wrongful conduct.⁵⁷⁷</p>
<p>Description</p>	<p>The current law prescribes criteria of eligibility for appointment of the insolvency representative. In addition to expertise and professional experience, an insolvency representative must have adequate education, must have passed the mandatory examination for insolvency representatives, and must be included in the list of insolvency representatives compiled by the Ministry of Justice.</p> <p>According to the CA an insolvency representative is a natural person – jurist or economist who meets the requirements of Art.655 and Art.656 of the CA. To qualify to take the mandatory exam, a prospective insolvency representative must have no criminal record, nor have filed insolvency. The prospective insolvency representative must have graduate diploma in law or economics, and a minimum of three years’ professional experience in the relevant field. The list of the successful candidates is published in the State Gazette, and on the website of the MOJ. Passing the exam appears to qualify a candidate to be an insolvency representative and be appointed by the bankruptcy court to insolvency cases. An insolvency representative should not be appointed to a case when there is a conflict of interest, which is defined in the CA.⁵⁷⁸ Some interviewees reported that the exam has not been always conducted in a fully transparent manner, and dates for future exams have not been advertised publicly, hampering predictable entry into the profession.</p> <p>As described in Principle D7, an insolvency representative is required to participate in mandatory annual training conducted by the MOJ and the MOE.</p> <p>After the insolvency representative has been appointed by the bankruptcy court, it is up to him to decide if he is competent to undertake the work on the particular case. Upon taking the office in the particular case, the insolvency representative should present preliminarily written consent with a notarized signature.</p> <p>The bankruptcy court shall discharge the insolvency representative upon his request in writing sent to the court or in case of inability to exercise his powers.</p> <p>The principles that the insolvency representative must act with integrity, impartiality and independence derive from the provisions of Art. 655 and Art. 660 of the CA.</p> <p>According to Art. 657, para 2 of the CA, the bankruptcy court may discharge the insolvency representative from the particular case at any time during the proceedings <i>ex officio</i> or at the proposal of the debtor, the creditors’ committee, or a creditor, when such insolvency representative fails to fulfil his obligations or his actions jeopardize the interests of the creditor or the debtor.</p> <p>Under Art. 663 of the CA, an insolvency representative is liable to compensate the debtor or creditors for damage “inflicted” by him through the exercise of the powers of his office. Pursuant to Art. 663a, an insolvency representative is required to carry liability insurance, to compensate for acts of “guilty misconduct”, in an amount between BGN 10,000 and 25,000.</p>

⁵⁷⁷ See Principle B2.

⁵⁷⁸ See Commercial Act, Art. 655(2) (5).

	<p>Insolvency representatives reported several other obstacles to their performance of their duties in bankruptcy cases. They include:</p> <ol style="list-style-type: none"> 1. Remuneration is unpredictable and insecure. 2. Reluctance to hire assistants due to interpretation of the law regarding confidentiality and delegation of power issues. 3. The ability of a majority creditor to cause the court to dismiss an insolvency representative without providing a justifiable reason, creating insecurity for the insolvency representative and an incentive to work in the interest of the majority creditor rather than all creditors. 4. A lack of caseload for some insolvency representatives while a few are overloaded, leading to experience and earnings to be accrued by a minority in the profession. 5. Insufficient monitoring of skills of insolvency representatives that were “grandfathered” into the system without an exam or assessment of their skills. <p>The remuneration of an insolvency representative is set by the creditors at their first meeting, or by the court in the case of a terminated or temporary trustee, or when the creditors cannot agree on the remuneration.⁵⁷⁹ The remuneration is current (paid on monthly basis) and final, in an amount determined by the meeting of creditors. The law does not provide any guidelines for determining the current or final remuneration of the insolvency representative. This has been reported by insolvency representatives to result in inconsistent and unpredictable earnings.</p> <p>Another source of professional uncertainty is the provision in Article 657(1) of the CA, which requires the court to terminate the insolvency representative at the request of creditors representing a majority share of the debt. No reason or justification needs to be provided. Insolvency representatives report that this results in a conflict, as the insolvency representative may be inclined to promote the interests of a majority creditor rather than the collective interests of the creditors, or of the debtor.</p> <p>It was also reported that the distribution of cases is very uneven. According to Art. 656, creditors elect the insolvency representative to each case. In practice, this has led to a few insolvency representatives receiving large workloads, and others very few cases, if any at all. This prevents professional development of those that are not receiving cases and makes it difficult for new entrants into the profession to establish themselves.</p>
<p>Assessment</p>	<p>Materially Not Observed</p> <p>There are currently 240 insolvency representatives (syndics) registered with the Bulgarian MOJ, the majority of whom are lawyers, but the list includes a number of economists, as well. The law requires them to pass an exam before the MOJ, but no training is provided to candidates before the exam. Registration of insolvency representatives is granted for life but the law requires continued education through the annual training provided by the MOJ and the MOE. However, there is no re-assessment of the insolvency practitioners’ qualifications.</p>

⁵⁷⁹ See Commerce Act, Art. 661.

The law and regulation largely cover the aspects of this principle—the qualifying criteria for an insolvency representative are specific and clear, insolvency representatives are not to be appointed when they are in “any relations with the debtor or creditors” (CA, Art. 655), and can be dismissed from a case for various reasons (CA, Art. 657) including inability to perform, conflict of interest, or at the request of the majority of creditors, as provided in the law. There is also a provision, Art. 660, which requires that the insolvency representative exercise “due care” in conduct of his/her duties. In addition, the insolvency representative does face liability for damages to debtors and creditors caused by his/her actions.

However, in many aspects the law and regulations are not specific enough to be effective. Particularly with remuneration, the law allows creditors and the bankruptcy court to determine the remuneration on a case by case basis. While some guidance as to factors to be considered are provided in Art. 661 of the CA, the insolvency representatives report that payment is unpredictable and insecure, especially with respect to determining their final remuneration. They may also be terminated at the request of the majority creditor before the proceedings are completed, which makes the final remuneration owed to the insolvency representative in such situations particularly unpredictable. Therefore, insolvency representatives report that they mostly rely on their current remuneration, paid as a salary on a monthly basis, which leaves them with no incentive to liquidate quickly. A credible, competent profession with consistent standards is unlikely to develop when the remuneration is so unpredictable, and often fails to materialize.

Another area where nonspecific language may lead to problems is the area of liability. The principle is broad, without specifics, and without protection for the insolvency representative for reasonable behavior, or normal business judgments. International experience shows that without more specific guidelines as to when an insolvency representative is liable and when he/she is not, either the liability is ineffective, or it has a chilling effect and the insolvency representative becomes so conservative in his/her actions so as to not maximize the potential of the bankruptcy assets or business. Moreover, the insurance amount required is small in relation to the potential losses in a case with significant assets.⁵⁸⁰

Insolvency representatives also report that when their workloads are heavy, they are unable to delegate their work to assistants. This comes from privacy concerns related to the financial information they handle, and perhaps also to the interpretation of Art. 660 of the CA, which states “Trustees in bankruptcy may not delegate their powers to other persons, except in case of an explicit permission by court.” This reluctance to use assistants reportedly interferes with the performance of their duties.

Some insolvency representatives reported that the distribution of cases is ineffective, with many insolvency representatives having very few cases, and a few having many cases, such that they are overloaded with work. Creditors choose the insolvency representative at their first meeting pursuant to Art. 656 of the CA. It appears that only a few are being chosen regularly. While in some countries debtors or creditors regularly propose their insolvency representatives of choice, in countries concerned about corruption this can be seen as a contributing factor, as the insolvency representative may not be objective, but rather represents the interests of the

⁵⁸⁰ Regulation 3/2005, Art. 22 stipulates that the minimum required insurance is BGN 10,000 for a single event, or BGN 25,000 for all events during the duration of the insurance.

	particular party that proposed him/her. It can also promote inappropriate collusion and dishonest financial dealings in systems that are vulnerable to such problems.
Comment	<p>Remuneration for insolvency representatives should be set forth in a schedule or tariff that provides reasonable reimbursement of expenses, as well as a component based on the value of recovered assets (such as a percentage), or the value or complexity of the enterprise, in the case of successful reorganization.</p> <p>The law should be clarified to allow insolvency representatives to delegate tasks to assistants but maintain the necessary confidentiality and fiduciary control. This could involve insurance or bonding on behalf of the insolvency representative’s firm, or other measures appropriate to Bulgaria’s legal and economic context.</p> <p>A lack of workload will prevent an insolvency representative from developing a practice, and the skill that experience brings. Some countries assign cases based on a rotation system among trustees assigned to a particular court, or in a particular region. This prevents a few insolvency representatives from receiving all the cases. Another way is for random assignment, which is used in some systems to avoid conflict and/or improper collusion between parties and the insolvency representative; such collusion can be perceived to occur more easily when the party has chosen the insolvency representative. Different systems for assignment of insolvency representatives to cases should be considered in Bulgaria. If the insolvency representatives can come together to form a professional association, they may be able to address the issue of uneven workload collectively.</p> <p>Creditors certainly need to have an avenue to provide feedback regarding insolvency representatives’ selection and performance, since the creditors are the stakeholders in an insolvency case. However, too much control by creditors, particularly a majority creditor, over the insolvency representative, can result in a conflict of interest and in the debtors’ rights, or minority creditors’ rights, being compromised. The portions of the law that relate to removal of an insolvency representative should be reviewed and the current balance of power should be reconsidered, without taking away the rights of creditors with legitimate grievances against insolvency representatives.</p> <p>Some insolvency representatives proposed a reassessment of insolvency representatives’ skills. This is a resource-intensive proposition that may not be feasible in Bulgaria. A professional association, such as suggested in the discussion of Principle D7, could address lack of practical skills among its members.</p> <p>There should be a clear complaint procedure, outside of the courts, directly to the supervisory bodies, to address insolvency representatives’ actions when they cause harm. There should be a dedicated body, and a publicized, transparent procedure for investigation, as stated in the discussion in Principle D7.</p> <p>Language in the law regarding the liability of insolvency representatives should be clarified. They need the freedom to take economic and business decisions that are reasonable, even if the results are less than optimal—suboptimal results are a possibility even with reasonable business actions.</p>

ANNEX II: LATVIAN PRINCIPLES FOR OUT OF COURT COMPANY DEBT RESTRUCTURING

The Ministry of Justice of Latvia in association with the state agency “Insolvency Administration”, the Latvian Commercial Bank Association, Latvian Certified Insolvency Process Administrator Association, the Latvian Labor Confederation, the Foreign Investor’s Council in Latvia, the Latvian Chamber of Commerce and Industry, and the Latvian Borrower's Association participated in a Consultative Committee for Insolvency Issues, which approved the *Principles and guidelines for out of court debt restructuring in Latvia* on 6 August 2009. A World Bank Group expert team provided technical assistance to the Latvian authorities for developing the principles and guidelines, which are based on examples of the best international practices. Under the Latvian principles, before insolvency proceedings are initiated in court, a legal entity which has come under financial difficulties and its creditor/s may attempt to come to an out-of-court agreement to change the terms of the debt repayment in a way that allows the debtor to continue doing business. Out of court debt restructuring is categorized into two types: (i) mutual negotiations between a debtor and a creditor in order to come to an agreement on re-negotiating the repayment schedule, and/or forgiving the debt; and, (ii) multi-party negotiations between a debtor and a plurality of its main creditors in order to agree on a repayment schedule or debt forgiveness. The Latvian document recognizes, however, that debt restructuring usually involves a number of the largest and most important creditors, among which are almost always the debtor's banks. Other main creditors may also be involved in the restructuring, including, for example, the lessors of commercial property and the largest suppliers. Since August 2009, the Latvian principles have been used in several out-of-court debt restructurings.

Principle 1 - Debt restructuring is a compromise, not a right

Out of court debt restructuring must be initiated only if the debtor's financial problems can be solved and their business can continue in the long term. A debtor should turn to the creditors in order to discuss available options.

Principle 2 - Good faith

Negotiations between the debtor and the relevant creditors must take place in good faith in order to create a constructive solution.

Principle 3 - Unified approach

The interests of all parties should be observed if a unified approach is taken to solving the issues. Creditors may facilitate coordination of the issues by forming a coordination work group. In more complex situations, the parties should consider the option of inviting professionals who can consult with and advise the parties and the relevant creditors.

Principle 4 - Negotiation with the debtor

The creditors must appoint one person (usually it is the creditor which has the largest claim against the debtor, with experience in negotiating debt restructuring, or it may be a neutral third party), who will conduct negotiations with the debtor, and will ensure that the relevant creditors receive the information provided by the debtor. It must be taken into account that if necessary, in the event that there is a dispute between the interested parties, they may turn to an arbitration procedure.

Principle 5 - Moratorium period

All relevant creditors must be prepared to cooperate with the debtor as well as with each other in order to provide the debtor with enough time (identifying a deadline) in which to prepare options for solving financial problems (hereinafter – moratorium period). Granting this moratorium period is not the right of the debtor, but is a concession granted by the creditors. The beginning date is called the first date of the

moratorium period. It is necessary to identify the length of the moratorium period, providing enough time to prepare the plan as mentioned in Principle 11, or to constitute how much time would be necessary to prepare such a plan.

Principle 6 - Priority of new resources

If, during the moratorium period, or in accordance with the suggestions put forth as a part of the restructuring process, additional assets are given to the creditor, then the grantor of this loan shall have the option to request security for the loan.

Principle 7 - Creditors do not take action during the moratorium period

All relevant creditors do not take any actions to submit court claims against the debtor or to reduce their claims against the debtor during the moratorium period.

Principle 8 - Debtor's pledge to the creditors during the moratorium period

During the moratorium period, the debtor promises not to take any actions which may negatively affect the proposed debt repayment to the relevant creditors (to all, or either of them individually) in relation to the state at the beginning of the moratorium period.

Principle 9 - Debtor's complete transparency during the moratorium period

During the moratorium period, the debtor shall provide the relevant creditors and advisers with access to all information regarding assets, liabilities, and business transactions and forecasts.

Principle 10 - Information confidentiality

Information regarding the debtor's assets, liabilities, and business transactions and forecasts, as well as proposals for solving the problems must be available to the relevant creditors and must be confidential, unless it is publicly available information.

Principle 11 - Debt restructuring plan

It is the obligation of the debtor and his advisers to prepare proposals for debt restructuring which are based on a business plan that contains information regarding the necessary steps that need to be taken to solve the debtor's financial problems.⁵⁸¹ The business plan must be based on sound and feasible forecasts, which indicate the debtor's ability to increase cash flow to the point that is necessary to execute the debt restructuring plan (and not delaying the insolvency process).

Principle 12 - Settlement proposals correspond with the party's rights

When creating proposals for solving the debtor's financial difficulties, the parties must take into account the rights of the creditor and the amount of outstanding obligations at the beginning date of the moratorium period.

⁵⁸¹ The plan may, for example, call for selling assets, a repayment schedule for creditors, debt forgiveness, gaining additional financing, and guarantee and loan capitalization.

ANNEX III: REMOVED DUE TO CONFIDENTIALITY