Amending debt terms in CEE/SEE – one region, different regimes

The amending of debt terms is driven by local rules and regional distinctions. Although many CEE/SEE jurisdictions permit amendments to debt terms only after the initiation of court insolvency proceedings (save for consent of all creditors), a number of jurisdictions have implemented tools that allow for amendments also before insolvency proceedings have commenced and without consent of all debtors. The below map and following pages illustrate regional differences in this area across the CEE/SEE region.

Key

1.

NO YES

BEFORE
Possibility of amendments of debt structure (without consent of all creditors) before opening of insolvency proceedings

2.

NO YES

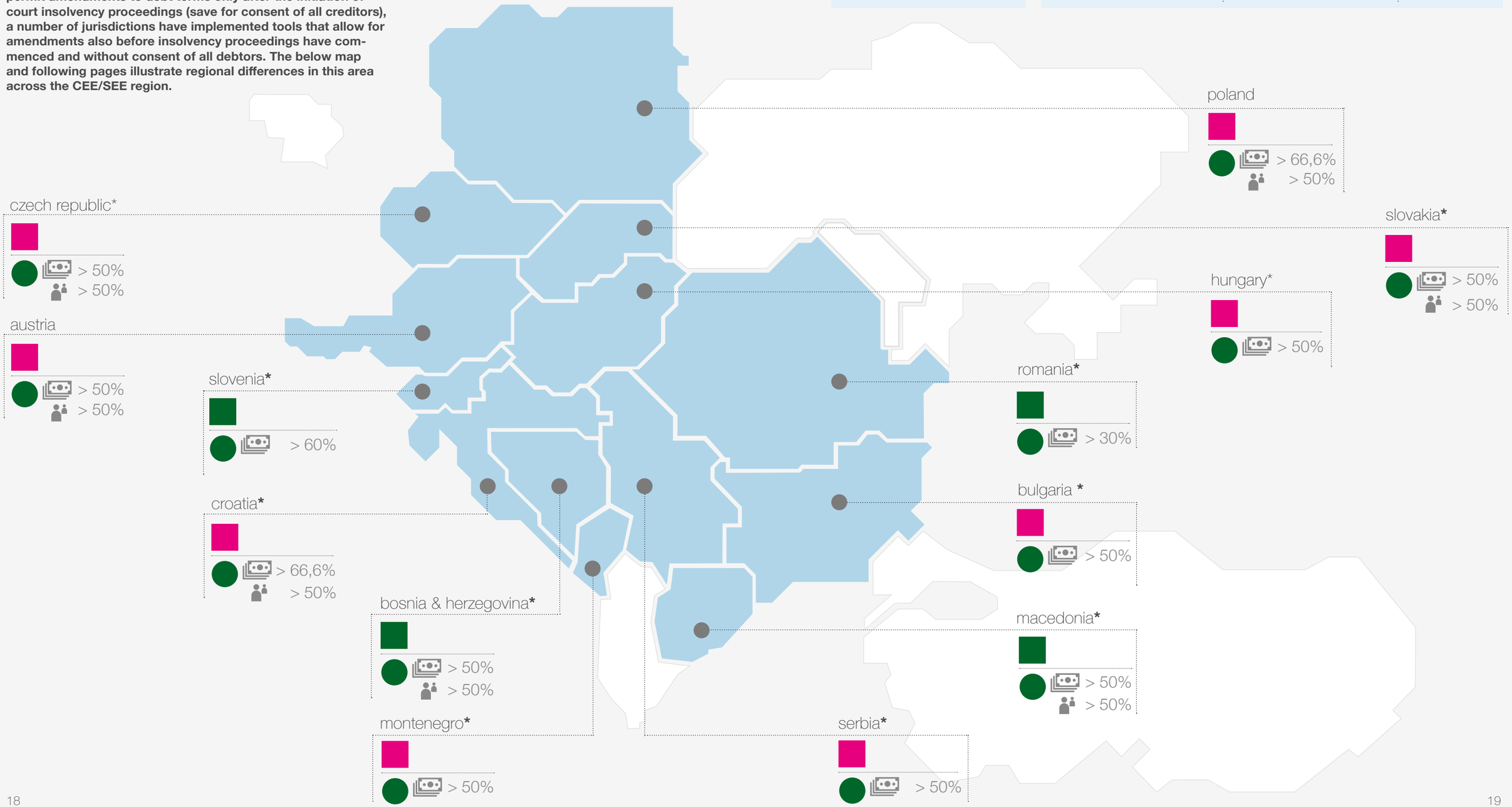
AFTER
Possibility of debt restructuring (reorganisation plan) after insolvency has been filed (in the course of insolvency proceedings)

Required majorities
For approval of reorganisation plan in insolvency proceedings:

% by amount of claims

% by headcount of creditors (if applicable)

* Creditors are divided in several classes (majority qualifications in each class must be reached for the approval of the reorganization plan)



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1. Are there statutory legal tools that allow a debtor together with a certain majority of its creditors outside of insolvency proceedings to amend the terms of its debt which are binding on all creditors (or creditors of a certain class)?	**No.** Austrian law does not provide for any such generally applicable statutory legal tools outside insolvency proceedings. In the absence of contractual arrangements that provide for certain majorities, all affected creditors need to agree on the terms of a financial restructuring or other changes to the debt capital structure. Neither the debtor nor the majority of creditors can force dissenting creditors to participate.	**Yes.** In the Republic of Srpska (i.e. a self-governed entity within the territory of B&H), a debtor or creditor (with debtor's consent) is entitled to file a court restructuring petition to the competent court, due to debtor's threatened illiquidity. Such restructuring is taken prior to the initiation of insolvency proceedings. The court restructuring is a process that regulates the legal status of the debtor and its relationship with creditors and enables the debtor to continue with its business operations. **No.** In the Federation of Bosnia and Herzegovina (i.e. a self-governed entity within the territory of B&H) there are no generally applicable statutory legal tools available outside insolvency proceedings.	**No.** Bulgarian law does not provide for legal tools outside of insolvency proceedings that allow a debtor together with a certain majority of its creditors (having less than 100 % of the claims) to amend the terms of the debt which are binding on all creditors (or creditors of a certain class).
2. Is court (or another public authority's) involvement required to make use of the statutory legal tools described in 1.?	**N/A**	**Yes.** In the Republic of Srpska court restructuring is a court-supervised process that may be initiated by the debtor or creditor (with the debtor's consent).	**N/A**
3. Which legal tools are available to amend the terms of debt after insolvency proceedings have commenced?	In addition to "standard" insolvency proceedings, Austrian law provides for the statutory legal tool of the "reorganisation plan" (Sanierungsplan). Upon insolvency, debtors can prepare a reorganisation plan which will be binding on all (including dissenting) creditors if all conditions have been met. The adoption of such a reorganisation plan requires that (i) the majority of all voting creditors agrees to it (majority by headcount), and (ii) the sum of the approving creditors' claims exceeds half of the total sum of all voting creditors' claims (majority by claim). After the creditors' acceptance (and if certain additional conditions are met), the insolvency court will confirm the reorganisation plan and it becomes binding on all creditors, including those who have not participated in the voting or who have voted against the plan. Often reorganisation plans include a substantial haircut and deferral of debt, the conditions of which apply to all creditors in the same manner. Any less favourable treatment of a particular creditor would require its express consent.	Under the Bankruptcy Act of the Federation of Bosnia and Herzegovina and the Bankruptcy Act of the Republic of Srpska, bankruptcy proceedings are conducted in the form of reorganisation or bankruptcy. Reorganisation is the process of satisfying creditors' claims in accordance with an approved reorganisation plan / pre-packaged reorganisation plan. The applicable legislation provides for two forms of reorganisation: reorganisation based on (i) a reorganisation plan, or (ii) a pre-packaged reorganisation plan. The stage at which either form of reorganisation plan is prepared and negotiated is the crucial difference between the two forms of reorganisation. While the preparation and negotiation of the reorganisation plan is protected from unilateral creditor action, negotiations around the pre-packaged reorganisation plan are not protected from unilateral creditor action, as there is no stay on creditor action until bankruptcy proceedings are opened. The adoption of such a reorganisation plan requires that (i) the majority in each creditor class have voted for the plan, and (ii) the sum of the claims of those who voted for the plan exceeds that of those who voted against it.	Upon commencement of Bulgarian insolvency proceedings, subject to certain exceptions, a reorganisation plan can be proposed. Adoption of the reorganisation plan must first be approved by creditors with accepted claims. Bulgarian law provides for five different classes of creditors and the creditors with accepted claims within each class need to vote separately. The plan is deemed to have been approved by the creditors if (i) the majority of all voting creditors within each class agrees to it (majority by amount of accepted claims), and (ii) creditors with more than half of all accepted claims approve the plan. Secondly, the plan must be approved by the court, where some additional statutory requirements must be met, inter alia that (i) all creditors within a certain class must be treated equally, unless those treated in a worse manner have consented in writing, and (ii) the plan must provide to each non-consenting creditor such payment which it would receive in the general distribution in insolvency.

Country Author	**Croatia** Ozren Kobsa	**Czech Republic** Natálie Rosová	**Hungary** Gergely Szalóki	**Macedonia** Magdalena Petreska
1. Are there statutory legal tools that allow a debtor together with a certain majority of its creditors outside of insolvency proceedings to amend the terms of its debt which are binding on all creditors (or creditors of a certain class)?	**No.** Croatian law does not provide for any such generally applicable statutory legal tools outside insolvency proceedings. In the absence of contractual arrangements that provide for certain majorities, all affected creditors need to agree on the terms of a financial restructuring or other changes to the debt capital structure. Neither the debtor nor the majority of creditors can force dissenting creditors to participate.	**No.** Czech law does not provide for any such generally applicable statutory legal tools outside insolvency proceedings. In the absence of contractual arrangements that provide for certain majorities, all affected creditors need to agree on the terms of a financial restructuring or other changes to the debt capital structure.	**No.** Hungarian law does not provide for any such generally applicable statutory legal tools outside insolvency proceedings. In the absence of contractual arrangements that provide for certain majorities, all affected creditors interested in a debtor's reorganisation need to agree on the terms of a financial restructuring or other changes to the debt capital structure. Neither the debtor nor the majority of creditors can force dissenting creditors to participate or accept a haircut.	**Yes.** A debtor may negotiate an out-of-court restructuring of its liabilities towards creditors (of which at least one must be a financial institution) under the Out-of-Court Settlement Act. Conclusion of an out-of-court financial restructuring plan is only possible if creditors holding a majority of claims vote in favour of the restructuring plan. The measures of the financial restructuring are similar to those typically associated with insolvency reorganisation plans. The adopted restructuring plan is binding on all creditors, except those holding collateral who have not waived their right to separate enforcement against the collateral.
2. Is court (or another public authority's) involvement required to make use of the statutory legal tools described in 1.?	**N/A**	**N/A**	**N/A**	**Yes.** In Macedonia the restructuring plan must be approved by the Settlement Council which is appointed by the Macedonian Ministry of Economy.
3. Which legal tools are available to amend the terms of debt after insolvency proceedings have commenced?	The Croatian insolvency regime provides for two statutory legal tools of the "reorganisation plan": i) within pre-bankruptcy proceedings: this voluntary, debtor-in-possession proceeding enables a debtor to avoid bankruptcy by way of a court-overseen procedure which restructures the debtor's finances through a restructuring plan. The trigger for initiating the procedure is an "imminent inability to make payments", which is determined by the court. A reorganisation plan needs to be adopted by (i) a majority of all creditors, whereas (ii) within each group of creditors, the claims of creditors that voted for must exceed by double the claims of creditors that voted against. ii) within bankruptcy proceedings: adoption of a bankruptcy reorganisation plan requires that (i) the majority of all creditors in each creditors group voted on the bankruptcy plan and (ii) within each group of creditors, the claims of creditors that voted for the plan, have to be double the claims of creditors that voted against it. Both reorganisation plans almost always include a substantial haircut and deferral of debt and, if adopted, affect all (including dissenting) creditors.	In addition to standard insolvency proceedings, Czech law provides for the statutory legal tool of reorganisation. A non-liquidation process is entered, which aims at the continuation of the debtor's business activity. Creditors are satisfied gradually based on a reorganisation plan approved by the creditors and the insolvency court. Adoption of such a reorganisation plan requires that a majority of the voting creditors within each class having at least half of the total nominal amount of the claims of the voting creditors votes for its approval. Under specific circumstances, the insolvency court may approve the plan even if it is not accepted by each class of creditors.	In an insolvency proceeding, Hungarian law provides for the statutory legal tool of the reorganisation plan. The debtor can prepare a reorganisation plan which will be binding on all (including dissenting) creditors if all conditions have been met. Adoption of such a reorganisation plan requires the majority of votes (by amount of claim) of both the secured and unsecured creditors. After the creditors' acceptance (and if certain additional conditions are met), the court confirms the reorganisation plan and it becomes binding on all creditors, including those who have not participated in the voting or who voted against the plan. Reorganisation plans often include a substantial haircut and deferral of debt, the conditions of which apply to all creditors in the same manner.	Under the Macedonian Insolvency Act, debt may be amended through the reorganisation process. Reorganisation is based either on (i) a pre-packaged reorganisation plan filed simultaneously with the petition for initiation of insolvency proceedings, or (ii) a reorganisation plan filed by certain deadlines after the insolvency proceeding has been opened. The adoption of such a reorganisation plan requires that creditors with a majority of all claims and a simple majority within each creditor's class have approved the plan. Therefore, cramdown of creditors within a creditor class is possible, while cramdown of a creditor class is not.

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1. Are there statutory legal tools that allow a debtor together with a certain majority of its creditors outside of insolvency proceedings to amend the terms of its debt which are binding on all creditors (or creditors of a certain class)?	**No.** Generally, Polish law does not provide for such a possibility outside of the insolvency regime. All affected creditors interested in a debtor's reorganisation need to agree on the terms of a financial restructuring or other changes to the debt capital structure. Dissenting creditors cannot be forced to participate or accept a haircut. Additionally, and only with respect to bonds, Polish law provides that in certain cases a meeting of bondholders may amend the elements of issuance terms and conditions if more than half of voting bondholders vote in favour.	**No.** There is only a potential three-month suspension of the initiation of insolvency proceedings in case of a consensual financial restructuring, but no haircut on dissenting creditors. A debtor may negotiate an out-of-court restructuring of its liabilities towards creditors, of which at least one must be a financial institution. The availability of consensual financial restructuring to the debtor and its creditors is conditioned by (i) the state of financial difficulty of the debtor, (ii) the viability of its business, and (iii) the debtor's suitability to be restructured. Consensual financial restructurings are hardly ever used in practice, because they are strictly voluntary and are only binding on parties choosing to participate in them. The sole exception to this rule is that hold-out creditors are prohibited from initiating insolvency proceedings against the debtor for three months as of the signing of the consensual financial restructuring participation accord, provided the accord is signed by creditors holding 75 % or more of the amount of claims.	**Yes.** Only the terms of the debt will be amended, not the nominal amount. Under Romanian law, the composition procedure allows for a certain majority of creditors (holding at least 75 % of the accepted claims) to negotiate and vote for the approval of a composition arrangement, which includes a project and a recovery plan proposed by the debtor together with a court-appointed administrator. If the composition arrangement is duly validated by the court of law, the court can accept the debtor's request to impose a term during which the maturity of claims by creditors who have dissented or did not participate in the composition arrangement is postponed. The above provisions may impact creditors.	**No.** A debtor may negotiate an out-of-court restructuring of its liabilities towards certain creditors under the Companies (Arranged Financial Restructuring) Act. However, this proceeding is hardly ever used in practice, as it does not permit a cramdown of dissenting creditors. A precondition is that all creditors are willing to negotiate and voluntarily enter into a restructuring agreement. The debtor and creditors will first enter into a standstill agreement prohibiting the commencement and continuation of any enforcement proceedings or settlement initiated by these creditors. This voluntary standstill should allow for the debtor to negotiate a financial restructuring agreement with creditors. Under the agreement, various restructuring measures may be implemented.	**No.** The Slovak law does not provide for such tool outside of restructuring proceedings. Therefore all affected creditors must contractually agree on the terms of a finanicial restructucuring or other changes to the debt capital structure, such as a haircut. Without consent of a creditor, changes to respective debt is not possible.	**Yes.** Slovenian law provides for a "pre-emptive restructuring" proceeding aimed at enabling eligible distressed corporate debtors to avoid insolvency by entering into a financial restructuring agreement with its financial creditors outside formal, court-sponsored restructuring proceedings. Notably, the pre-emptive restructuring is designed to only affect financial creditors. If the requisite majority of financial creditors (30 % as a general rule) agree to the initiation of pre-emptive restructuring, this will result in a statutory standstill for the entire class of financial creditors. Provided that (i) the requisite majority of financial creditors (75 %) then accedes to the financial restructuring agreement, and (ii) the financial restructuring agreement is confirmed by the court, dissenting financial creditors will face a cramdown.
2. Is court (or another public authority's) involvement required to make use of the statutory legal tools described in 1.?	**N/A**	**N/A**	**Yes.** In Romania there is a court involvement in pre-insolvency proceedings.	**N/A**	**N/A**	**Yes.** In Slovenia there is court involvement. The financial restructuring agreement needs to be deposited with a notary public and needs to be approved by an auditor. The financial restructuring agreement is then confirmed by the court. The court's review is limited to checking whether the formal conditions are met.
3. Which legal tools are available to amend the terms of debt after insolvency proceedings have commenced?	The Polish insolvency regime, in particular restructuring proceedings, allow for a composition to be concluded between the creditors, which will be binding on all (including dissenting) creditors. Adoption of such composition requires that (i) the majority (by headcount) of all voting creditors agrees to the composition, and (ii) the sum of the approving creditors' claims exceeds two-thirds of the total sum of all voting creditors' claims (majority by claim). After the creditors' acceptance, the restructuring court confirms the composition and it becomes binding on all creditors, including those who have not participated in the voting or who voted against the composition. The composition may include a substantial haircut and deferral of debt, which will apply to all creditors in the same manner. However, if a given creditor is to be treated less favourably in any way, its explicit consent is required.	Under the Insolvency Act, debt may be amended through a reorganisation process. Reorganisation is based on either (i) a pre-packaged reorganisation plan filed simultaneously with the petition for initiation of insolvency proceedings or (ii) a reorganisation plan filed, within certain deadlines, after the insolvency proceeding has opened. A reorganisation plan is approved if a majority of the creditor class vote in favour of its adoption. A creditor class approves the plan by a favourable vote of its members holding more than 50 % of the amount of claims in that class. If the reorganisation plan is adopted by the majority of creditor classes and approved by the court, it will bind dissenting creditors. Therefore, both, creditors within a creditor class and the entire creditor class may be crammed down.	Under Romanian law, debt may be amended through a judicial reorganisation process based on a reorganisation plan. The adoption of such a plan requires that (i) the majority of the classes of creditors vote in favour of its adoption; (ii) at least one of the disadvantaged classes of creditors agrees to the plan; and (iii) creditors holding at least 30 % of the total amount of the claim pool approve the plan. Within a certain class of creditors, the plan is approved by a favourable vote of more than 50 % of the total amount of the claim pool within the respective class. After the reorganisation plan is approved by the creditors and subsequently confirmed by the court, the plan becomes binding on all creditors (including those who have not participated in the voting or who have voted against the plan).	A debtor may file an insolvency petition accompanied by a pre-packaged reorganisation plan. In this case, the debtor may avail itself of an expedited proceeding that would likely end with the adoption of the plan, if the debtor has drawn up the plan together with the creditors. If an insolvency case is already opened, a reorganisation plan may also be filed subsequently within certain deadlines. The adoption of such a reorganisation plan requires that each class of creditors vote for its adoption. A creditors class approves the plan by a favourable vote of its members who hold the majority of the amount of claims in that class. If just one creditor class does not approve the reorganisation plan, the plan will not be adopted. If the reorganisation plan is adopted by all creditor classes and approved by the court, it will bind dissenting members within the class.	Slovak insolvency law provides apart from standard insolvency proceedings leading to liquidation of a company also restructuring proceedings (aiming at keeping at solving the pending insolvency status). Restructuring ends with a restructuring plan which needs first to be approved by the creditors and is afterwards confirmed by an insolvency court. The restructuring plan is also binding on the creditors which voted against the plan (unless statutory exemptions apply) and the claims of creditors which did not participate in the restructuring proceedings within the given statutory period cannot be judicially enforced in full. Approval of the restructuring plan requires mainly that (i) the majority by amount of claims in each group for secured receivables votes for approval, (ii) the majority by amount of claims in each group for unsecured receivables and (iii) majority of votes of present creditors at the meeting votes for the plan adoption. In general, in the course of restructuring creditors need to be satisfied at least by 50% of their claims.	In Slovenian insolvency law, the terms of debt can be amended in a compulsory settlement. As a rule, the compulsory settlement affects all unsecured claims existing at the time the compulsory settlement proceedings were opened, while secured claims remain unaffected. However, the terms of the compulsory settlement proposal can be modified by the initiating party, for example to limit the effects of the compulsory settlement to financial creditors only and/or to extend the effects of the compulsory settlement to secured claims. If the compulsory settlement is approved by the requisite majority (60% of all affected claims), the terms of the compulsory settlement will be binding on the entire class (cramdown). If the compulsory settlement is modified to also affect secured claims, the vote on the compulsory settlement proposal is carried out in two separate classes whereby a higher, 75% majority is required in the secured claims class.