STRENGTHENING MOLDOVA'S BUSINESS INSOLVENCY SYSTEM

ASSESSMENT AND REFORM OPTIONS

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CONTENTS

CONTENTS I

TABLES AND FIGURES IV

ABBREVIATIONS V

EXECUTIVE SUMMARY VII

INTRODUCTION 1

INSOLVENCY SYSTEM'S ROLE IN ECONOMIC DEVELOPMENT AND THE REFORM CHALLENGES 1

PART I: EXISTING ASSESSMENTS OF MOLDOVA'S INSOLVENCY SYSTEM AND THE WORLD BANK'S DOING BUSINESS REPORT 1

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT 1

AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE / JUDICIAL REFORM INDEX 2

WORLD BANK DOING BUSINESS SURVEY/"CLOSING A BUSINESS" INDICATOR 2

FURTHER INVESTIGATION REGARDING THE WORLD BANK DOING BUSINESS SURVEY / "CLOSING A BUSINESS" RESULTS FOR MOLDOVA 3

Preparing a Complete Answer to the WB Questionnaire & Compiling a "Procedure List" 4

Understanding the Closing a Business Indicator: The "Mirage Hotel" Fact Pattern 4

Calculating the DB Case Study "Recovery Rate" (cents on the dollar recovered by creditors) ... 6

DATA COLLECTION FOR THE CLOSING A BUSINESS INDICATOR & SOME CONCLUSIONS ... 14

PART II: BIZTAR ASSESSMENT OF BUSINESS INSOLVENCY SYSTEM 17

GENERAL FINDINGS 17

Legal Framework 17

Implementing Institutions 18

INSOLVENCY PROCEDURES TAKE TOO LONG 19

Absence of Time Limitations 19

Appeals 19

Large Number of Cases Pending 19

Limited Institutional Capacity 23

Allocation of Rights and Responsibilities Often Not Clear 25

Abuses of the Insolvency System 26

PART III. POSSIBLE REFORMS TO STRENGTHEN INSOLVENCY SYSTEM & IMPROVE RECOVERY RATE 29
AMENDING THE INSOLVENCY LAW V. INSTITUTIONAL STRENGTHENING 29
PRIORITIZING THE REFORMS 29
STRENGTHENING THE CAPACITY OF THE COURTS TO HANDLE INSOLVENCY CASES 30
Specialized Judicial Training in Insolvency Law, Finance, Business and Accounting 30
Best Practices Manuals and Other Guides / Bench Books 31
Court Automation 31
Court Administrative Staff 32
Judicial Ethics Code 32
PROPOSED REFORM TO ELIMINATE THE ECONOMIC COURTS OF MOLDOVA 32
STRENGTHENING & REGULATING ADMINISTRATORS & LIQUIDATORS 34
Selection and Training 34
Professionalization, Self-Regulation and Discipline 34
Other Possible Areas for Reform 34
SETTING TIME LIMITS & LIMITING APPEALS 35
Time Limits 35
Shortening & Limiting Appeals 36
Simplified Insolvency Procedures for Small Businesses 36
THE PARTICIPATION OF SECURED CREDITORS 36
Voting Rules 37
Protecting Value of Secured Assets 37
Fees 37
ABM Proposal 37
REALLOCATING ROLES AND RESPONSIBILITIES 38
OTHER REFORMS NOT ANALYZED IN THIS REPORT 39
Plan Procedure or Reorganization 39
Out of Court Workouts and Negotiation 39
CONCLUSION 41
ANNEX 1 45
ANNEX 2 46
ANNEX 3 58
ANNEX 4 63

ANNEX 5 64

ANNEX 6 67

ANNEX 7 68

ANNEX 8 68

ANNEX 8 69

TABLES AND FIGURES

TABLES

Table 1: Closing a Business Indicator – Moldova's Rank 3
Table 2: investment statistics in hotel industry 9
Table 3: Activity of Economic Court of Appeal, Reporting period 2007-2009 – Number of Cases Filed 21

FIGURES

Figure 1: Top Five Reform Features in Closing a Business 40

ABBREVIATIONS

ABA ROLI	American Bar Association Rule of Law Initiative
ABM	Moldova Bank Association
ALARM	Association of Liquidators and Administrators of Moldova
BIZTAR	USAID|Moldova Business Regulatory & Tax Administration Reform Project
CB	Closing a Business Indicator, in the Doing Business Survey
DB	Doing Business Survey (Annual) published by the World Bank
EBRD	European Bank for Reconstruction & Development
GOM	Government of Moldova
I.L.	Insolvency Law (Law No. 632-XV of 14 November 2001, as amended)
MOE	Ministry of Economy of the Republic of Moldova
MOJ	Ministry of Justice of the Republic of Moldova
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
WB	World Bank Group

EXECUTIVE SUMMARY

BIZTAR is a USAID-financed project, formulated in consultation with representatives of the Government of the Republic of Moldova. The objective of BIZTAR is to simplify and streamline the business to government interface, in particular to make it easier for businesses to comply with government requirements and where possible to eliminate requirements that serve little purpose for governance in a climate where government wishes to stimulate economic growth.

This report was prepared by BIZTAR in response to a request in December 2009 from the Ministry of Economy of the Republic of Moldova to conduct a preliminary assessment of the business insolvency system. The request was based in part on concern with Moldova's relatively low ranking in the annual World Bank Doing Business survey's "Closing a Business" indicator, which seeks to rank the effectiveness of insolvency systems around the world based on the time, cost and ultimate recovery rate for creditors of an insolvent business.

An effective and predictable insolvency system is a key part of the business enabling environment, since such a system can help foster the development of credit markets by reducing credit risk, plays a key role in removing failing businesses so more efficient firms can enter the market, and in certain cases can help save businesses which are encountering temporary financial problems and are worth saving.

BIZTAR experts undertook a series of assessment and research activities from December 2009 to March 2010, including reviewing existing international assessments, contacting World Bank experts, preparing a complete answer to the World Bank survey questionnaire and a detailed mapping of the procedural steps, appeals and costs. The result of this work is set out in **Part I** of this Report.

The team then conducted comparative legal analysis and compiled international best practices and in March 2010, held meetings with government officials, insolvency administrators, commercial lawyers, bankers, Economic Court and Supreme Court judges and representatives professional and industry associations. The BIZTAR team's assessment, presented in **Part II** of this Report, found the following:

- The Insolvency Law, based in part on German law, is generally clearly drafted and relatively complete;
- In contrast, the implementation of the legal framework by the courts, insolvency administrators, lawyers and other insolvency professionals could be improved and many of these professionals could benefit from specialized training and institutional strengthening;
- Insolvency procedures often take too long, there are too many possible appeals that can be abused and a large number of cases are pending;
- The allocation of rights and responsibilities is unclear in a number of instances; and
- Factors outside of the insolvency system are negatively impacting the system.

Part III of this Report outlines a number of ways to strengthen Moldova's business insolvency system and improve the recovery rate for creditors are outlined in this Report; these are ordered in terms of how urgent they are and how much time and resources their implementation will likely take. The possible reforms include the following:

- Strengthening the judicial system's capacity to manage and decide insolvency cases through training, preparation of manuals, automation, strengthening court staff and enforcing ethics rules;
- Ensuring that if jurisdiction over insolvency cases is transferred away from the Economic Court of Appeals, the transfer will be carefully planned and adequate training will take place;
- Strengthening the capacity of Moldova's insolvency administrators, and establishing self-regulatory mechanisms;
- Amending the law to streamline proceedings and limit appeals;
- Clarifying and increasing the participation by secured creditors in insolvency procedures through possible amendments to the law; and
- Evaluating possible reallocation of the roles of judges, administrators and creditors through amendments to the law.

The reforms and initiatives outlined above require a mix of institutional strengthening, training and in some cases amendments to the law. Considerable work and resources will be needed to strengthen the institutions and professionals responsible for implementing the legal framework. The scope and resources needed to effectively strengthen these institutions should not be underestimated, and in many cases are dependent on broader judicial reform initiatives.

It is vital to ensure that the reform process is participative, collaborative and transparent and that all private and public sector stakeholders are involved. All stakeholders should be involved in the reform process not only because they play a key role in implementation, but also because they have considerable understanding of the legal, financial and business issues involved.

Once the scope of the reforms and other initiatives has been decided, it will be necessary to ensure that sufficient resources are available. Insolvency law is complex and reforming insolvency systems is challenging, controversial and involves important political and economic interests. The World Bank Doing Business indicator for insolvency measures the performance of the many institutions involved, and there are no "quick fixes."

A number of international institutions and bilateral donor agencies have experience in the area of insolvency reform and may be able to contribute technical assistance or other types of resources. Ultimately, however, local ownership and expertise is essential for the reform to be successful. The input of Moldovan insolvency experts and practitioners, as well as that of all stakeholders must be obtained if the reform process is to be successful.

INTRODUCTION

This report was prepared by the USAID BIZTAR Program in response to a request in December 2009 from the Ministry of Economy of the Republic of Moldova (MOE) to conduct a preliminary assessment of the business insolvency system in Moldova. The MOE's request was based on the Government of Moldova (GOM)'s concern with Moldova's relatively low ranking in the annual World Bank Doing Business survey's "Closing a Business" indicator, which seeks to rank the effectiveness of insolvency systems around the world based on the time, cost and ultimate recovery rate for creditors of an insolvent business.

After obtaining approval from USAID, BIZTAR experts undertook a series of assessment and research activities during December 2009 - March 2010 period, which are set out in detail in this report. A copy of the Statement of Work for BIZTAR legal expert Rémy Kormos is attached hereto as Annex 1. In brief, the BIZTAR team:

- Reviewed existing international assessments, including World Bank (WB), European Bank for Reconstruction & Development (EBRD) and the American Bar Association Rule of Law Initiative (ABA ROLI);
- Contacted World Bank experts in Washington DC to discuss Moldova's ranking in the Doing Business Report and possible reform initiatives;
- Studied the WB Questionnaire and the "Closing a Business" indicator and prepared detailed, complete answers;
- Revised and analyzed the procedures, costs and how insolvency cases are handled in practice today in Moldova;
- Conducted research on existing scholarship and judicial writings in Moldova on the topic of insolvency;
- Conducted extensive interviews with MOE and Ministry of Justice officials, insolvency administrators, commercial lawyers, bankers, Economic Court and Supreme Court judges and professional and industry associations such as the Moldova Association of Banks and the Association of Liquidators and Administrators of the Republic of Moldova.

INSOLVENCY SYSTEM'S ROLE IN ECONOMIC DEVELOPMENT AND THE REFORM CHALLENGES

An effective insolvency system fosters the availability of credit, which is essential to the growth of a market economy and the creation of jobs, by establishing rules that allocate the risk of failure in a predictable manner. Likewise, insolvency helps resolve conflicts among multiple creditors and to eliminate inefficient firms from the economy, allowing new firms to enter markets.

Insolvency systems have other functions that are in conflict with the above goals, including allowing the "rescue" or reorganization of a business that is encountering temporary financial difficulties but is worth

saving; this requires putting the interests of creditors "on hold". Reorganization procedures often become important in financial crises when an economy already has high unemployment

A business insolvency system, however, it is a complex legal framework with multiple institutional actors and competing economic interests, and reforming such a complex system is always a challenge. While the legal framework is important (and in itself complex since it combines both procedural and substantive rules), its implementation by the courts, insolvency professionals, banks and business community is perhaps even more important.

PART I: EXISTING ASSESSMENTS OF MOLDOVA'S INSOLVENCY SYSTEM AND THE WORLD BANK'S DOING BUSINESS REPORT

The following existing assessments of the Moldova insolvency system were identified and reviewed by the BIZTAR team. They are attached hereto as Annexes 6, 7, and 8.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

EBRD Report on the Quality of Insolvency Legal Regimes in Early Transition Countries (2003) (by Ronald Harmer and Neil Cooper) ("2003 EBRD Assessment"). This report rates a number of Eastern European and CIS countries according to the quality of their legal frameworks in five key areas: Commencement/Effect of Proceedings, Assets of the Estate, Treatment of Creditors, Reorganization and Terminal/Liquidation Procedures. Moldova ranks relatively high on most of these.

EBRD, Report on the Quality of Insolvency Legal Regimes in Early Transition Countries (2004) (by Mahesh Uttamchandani) ("2004 EBRD Assessment"). This assessment attempts to build on the 2003 assessment (which primarily looks at the extensiveness of the law itself) by adding an assessment of "effectiveness", i.e. how the legal framework is implemented in practice. This assessment, which is not as detailed as the 2003 EBRD Assessment, concludes that there is a significant gap between Moldova's legal framework (which ranks highly for the region) and its implementation in practice.

EBRD Insolvency Law Assessment Project—2009 ("2009 EBRD Assessment")
This assessment of the legal framework is much more detailed and is presented country by country with specific references to legal provisions. It is accordingly a useful starting place for an assessment and is required reading. Moldova again ranks fairly highly on its law (76% or "Medium Compliance"), again relative to other countries in the region.

The 2009 EBRD Assessment concludes that the legal provisions relating to the commencement of insolvency, representation of creditors, and the avoidance of (suspect) pre-bankruptcy transactions are particularly strong. The Assessment concludes that the law could be strengthened in a few areas, including increasing the requirements that the debtor company and third parties cooperate with the insolvency administrator, and by providing more detail regarding reorganization (e.g. independent analysis of reorganization plans, minimum protection for certain creditors and restrictions on voting by connected parties).

We note that for a number of provisions, including Section 8 (Automatic Stay) the EBRD assessment appears to have misinterpreted the law, no doubt due to poor translation of the law from Romanian to English.

EBRD Insolvency Office Holder Assessment—2009 ("2009 EBRD Moldova Insolvency Office Holder Assessment")

This assessment looks at the regulatory framework for insolvency administrators. Moldova ranks very poorly in this assessment (56% or Very Low Compliance). We note however that at least one of the assessment factors was incorrectly completed: see e.g. the answers to Question 24 which states that insolvency administrators : today administrators are required to follow a course of specialized training (100 hours over 2 months) at the Academy for Public Administration).

AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE / JUDICIAL REFORM INDEX

American Bar Association Rule of Law Initiative/ Judicial Reform Index for Moldova (2009) (JRI).

This recent assessment of judicial reform in Moldova was reviewed as part of the BIZTAR survey because the judicial system, and the Economic Court of Appeal and the Supreme Court in particular, are key implementing institutions for the insolvency system.

The JRI examines six key areas relating to the judiciary in each country where it is conducted: Quality/Education/ Diversity, Judicial Powers, Financial Resources, Structural Safeguards, Accountability and Transparency and Efficiency.

Some of the key positive developments in Moldova over the last few years include an improvement in the availability of initial training for judicial candidates and continuing education for sitting judges (who are now required to attend at least 40 hours of continuing training). Likewise the entry into effect of a new judicial ethics code and amendments to the law and regulations relating to the enforcement of judgments were cited as recent improvements. Although it is too early to assess its effectiveness, the JRI also notes that the Moldovan judiciary received a multi-million dollar investment in infrastructure and technology over the last few years, aimed at computerizing the entire judicial system and implementing modern case management technologies.

At the same time, the JRI reports that the Moldovan judiciary still faces challenges relating to judicial independence and accountability. Likewise, widespread perceptions of corruption continue to plague the judiciary in Moldova and the problems appear to be exacerbated by relatively low salaries. Other major concerns reported by judges and others surveyed include high turnaround among court staff, related to extremely low pay.

The ABA ROLI JRI is available in Romanian and English at http://www.abanet.org/rol/news/news_moldova_judiciary_assessment_reports_0110.shtml

WORLD BANK DOING BUSINESS SURVEY/"CLOSING A BUSINESS" INDICATOR

As noted above, the World Bank's Doing Business Survey (WB DB), which investigates the regulatory framework for business activity in 183 countries around the world, includes an indicator on business insolvency entitled "Closing a Business. Information regarding the WB DB survey is available at

www.doingbusiness.org. Below is a chart showing Moldova's ranking on the Closing a Business indicator in 2009, 91st out of 183. The ranking in 2010 was 90th.

TABLE 1: CLOSING A BUSINESS INDICATOR – MOLDOVA'S RANK

Indicator: Closing a Business	Moldova (Ranked 91 in 2009)	East Europe and Middle Asia	OECD (Average)
Time	2.8 (years)	2.9 (years)	1.7 (years)
Cost	9 %	13,5 %	8,4 %
Recovery rate	28.6 (cents on the dollar)	31.6 (cents on the dollar)	68.6 (cents on the dollar)

This indicator and the three elements that make determine the score (time, cost and recovery rate) are examined in further detail below.

FURTHER INVESTIGATION REGARDING THE WORLD BANK DOING BUSINESS SURVEY / "CLOSING A BUSINESS" RESULTS FOR MOLDOVA

In December 2009, the DAI team contacted senior World Bank staff in Washington DC to discuss the Closing a Business indicator for Moldova. The World Bank group was represented by staff from the both the Doing Business team and an expert on insolvency law reform who is part of the World Bank group that provides technical assistance in this area.

The World Bank insolvency specialist gave a general overview of the legal framework in Moldova; he indicated that overall the Insolvency Law itself was fairly complete and complied relatively well with international standards on legal frameworks for insolvency systems. He suggested that future technical assistance might focus on its implementation, rather than further legal amendments.

He indicated that the World Bank itself typically focused its technical assistance on actors outside of the courts, such as insolvency administrators and that they did not typically undertake judicial reforms or judicial training. The WB also supports efforts to encourage out of court workouts or other forms of negotiation between debtors and creditors.

However, none of the WB staff were able to answer any questions specifically relating to the Closing a Business indicator for Moldova. The WB Doing Business team does not appear to have received a sufficient number of responses from Moldovan experts on the Closing a Business questionnaire to reach a consensus on which procedure is most likely to be used in Moldova for the fact pattern (liquidation, reorganization or foreclosure). The World Bank subsequently asked us to try to identify other experts in Moldova who could complete the questionnaire (see below).

Other points which were discussed with the World Bank included the striking difference between Moldova's performance on the Closing a Business indicator, as compared to Enforcing a Contract indicator (90 vs. 22) in 2010. This difference is striking because it looks like the Commercial (or "Economic") courts have jurisdiction over both types of cases. Most neighbors have much closer correlation (e.g. Bulgaria, Serbia, Poland), although Russia has a similar gap (19 vs. 92). According to the WB staff, this big difference was due to the fact that the Closing a Business indicator takes into

consideration all appeals and all possible delaying tactics, whereas the Enforcing a contract indicator does not. She also indicated that several CIS states had similar gaps.

PREPARING A COMPLETE ANSWER TO THE WB QUESTIONNAIRE & COMPILING A "PROCEDURE LIST"

After learning that the World Bank Doing Business staff had received insufficient responses from Moldovan experts on the Closing a Business questionnaire, the BIZTAR team decided to compile a complete and detailed answer to the Questionnaire. The process involved extensive consultations with local practitioners such as insolvency administrators and business lawyers, as well as Economic Court and Supreme Court judges and academic experts. This analysis included complete references to the law (or "legal justification" per the World Bank), plus any relevant case law, scholarly research, statistics and other information. This work would prove to be a useful tool for the BIZTAR assessment and would help the team to make reform recommendations to the GOM. The detailed information and complete answers to the Questionnaire were also provided to the World Bank in order to assist the collection of accurate data for Moldova.

UNDERSTANDING THE CLOSING A BUSINESS INDICATOR: THE "MIRAGE HOTEL" FACT PATTERN

Below we have reproduced the World Bank's detailed information regarding the Closing a Business indicator (Doing Business 2010), notably the fact pattern used in the questionnaire which is sent out to experts in each country.

Closing a Business

Doing Business studies the time, cost and outcomes of bankruptcy proceedings involving domestic entities. The data are derived from survey responses by local insolvency practitioners and verified through a study of laws and regulations as well as public information on bankruptcy systems. To make the data comparable across economies, several assumptions about the business and the case are used.

ASSUMPTIONS ABOUT THE BUSINESS

The business ("Mirage"):

- Is a limited liability company.
- Operates in the economy's largest business city.
- Is 100% domestically owned, with the founder, who is also the chairman of the supervisory board, owning 51% (no other shareholder holds more than 5% of shares).
- Has downtown real estate, where it runs a hotel, as its major asset. The hotel is valued at 100 times income per capita or $200,000, whichever is larger.
- Has a professional general manager.
- Has 201 employees and 50 suppliers, each of which is owed money for the last delivery.
- Borrowed from a domestic bank ("Bizbank") 5 years ago (the loan has 10 years to full repayment) and bought real estate (the hotel building), using it as security for the bank loan.
- Has observed the payment schedule and all other conditions of the loan up to now.
- Has a mortgage, with the value of the mortgage principal being exactly equal to the market value of the hotel.

ASSUMPTIONS ABOUT THE CASE

- The business is experiencing liquidity problems. The company's loss in 2008 reduced its net worth to a negative figure.
- There is no cash to pay the bank interest or principal in full, due tomorrow. The business therefore defaults on its loan.
- Management believes that losses will be incurred in 2009 and 2010 as well.
- The bank holds a floating charge against the hotel in economies where floating charges are possible. If the law does not permit a floating charge but contracts commonly use some other provision to that effect, this provision is specified in the lending contract.
- The business has too many creditors to negotiate an informal out-of-court workout.

It has the following options:

- a judicial procedure aimed at the rehabilitation or reorganization of the business to permit its continued operation;
- a judicial procedure aimed at the liquidation or winding-up of the company; or
- a debt enforcement or foreclosure procedure aimed at selling the hotel either piecemeal or as a going concern, enforced either in court (or through a government authority like a debt collection agency) or out of court (for example, by appointing a receiver).

If an economy has had fewer than 5 cases a year over the past 5 years involving a judicial reorganization, judicial liquidation or debt enforcement procedure, the economy receives a "no practice" mark. This means that creditors are unlikely to recover their debt through the legal process (in or out of court).

TIME

Time for creditors to recover their debt is recorded in calendar years. Information is collected on the sequence of procedures and on whether any procedures can be carried out simultaneously. Potential delay tactics by the parties, such as the filing of dilatory appeals or requests for extension, are taken into consideration (table 14.12).

COST

The cost of the proceedings is recorded as a percentage of the estate's value. The cost is calculated on the basis of survey responses by insolvency practitioners and includes court fees as well as fees of insolvency practitioners, independent assessors, lawyers and accountants. Respondents provide cost estimates from among the following options: less than 2%, 2–5%, 5–8%, 8–11%, 11–18%, 18–25%, 25–33%, 33–50%, 50–75% and more than 75% of the value of the business estate.

RECOVERY RATE

The recovery rate is recorded as cents on the dollar recouped by creditors through the bankruptcy, insolvency or debt enforcement proceedings. The calculation takes into account whether the business emerges from the proceedings as a going concern as well as costs and the loss in value due to the time spent closing down. If the business keeps operating, no value is lost on the initial claim, set at 100 cents on the dollar. If it does not, the initial 100 cents on the dollar are reduced to 70 cents on the dollar. Then the official costs of the insolvency procedure are deducted (1 cent for each percentage of the initial value). Finally, the value lost as a result of the time the money remains tied up in insolvency proceedings is taken into account, including the loss of value due to depreciation of the hotel furniture.

Consistent with international accounting practice, the depreciation rate for furniture is taken to be 20%. The furniture is assumed to account for a quarter of the total value of assets. The recovery rate is the present value of

the remaining proceeds, based on end-2007 lending rates from the International Monetary Fund's *International Financial Statistics,* supplemented with data from central banks.

The recovery rate for economies with "no practice" is zero. For *Doing Business 2010*, 2007 lending rates are used to avoid effects of the global financial and economic crisis on data comparability over time.

This methodology was developed in Djankov, Hart, McLiesh and Shleifer (2008).

What does closing a business measure?

Time required to recover debt *(years)*

- Measured in calendar years
- Appeals and requests for extension are included

Cost required to recover debt *(% of estate)*

- Measured as percentage of estate value
- Court fees
- Lawyers' fees
- Independent assessors' fees
- Accountants' fees

Recovery rate for creditors *(cents on the dollar)*

- Measures the cents on the dollar recovered by creditors
- Present value of debt recovered
- Official costs of the insolvency proceedings are deducted
- Depreciation of assets is taken into account
- Outcome for the business affects the maximum value that can be recovered

Source: Doing Business database.

CALCULATING THE DB CASE STUDY "RECOVERY RATE" (CENTS ON THE DOLLAR RECOVERED BY CREDITORS)

The recovery rate used in the Doing Business "Closing a Business" survey is calculated with a formula that takes into consideration:

(1) Whether Mirage continues as a going concern or does not and its assets are sold piecemeal (if it continues as a going concern, you start with 100 cents on the dollar, if not you start with only 70 cents on the dollar);

(2) The official costs of the court procedures, and

(3) The total time for the "most likely procedure" to be completed, including any appeals and delaying tactics. The total time is used to calculate the loss of the use of the money during the procedure and the depreciation (20% per annum) of the hotel furniture during that time.

Key Questions and Information Needed to Accurately Calculate Moldova's "Recovery Rate"

There are four key questions that the BIZTAR team studied in order to accurately complete the WB Doing Business Survey: (A) Most Likely Procedure, (B) Outcome, (C) Time and (D) Cost.

A. Most Likely Procedure for the Case Study

The first question in the WB Questionnaire for Closing a Business is "what is the most likely initial insolvency procedure for Mirage?" The answer is important, since the time needed for the procedure is part of the formula for calculating the recovery rate by the WB. The four choices are as follows:

(i) Debt Enforcement / Foreclosure (i.e. non-insolvency, individual court action or out of court action by Bizbank against Mirage);

(ii) Single Reorganization Procedure that leads to a reorganization attempt (a collective action, which under Moldova law would be a "Plan Procedure" under Chapter VII);

(iii) Reorganization Procedure that fails and leads to a liquidation; or

(iv) Liquidation Procedure (also a collective action, which would under Moldovan law be the basic "Insolvency" or liquidation procedure provided for in the main provisions of the 2001 law.

As noted above, the World Bank received a small number of contradictory responses to the survey last year, with some respondents choosing reorganization and others liquidation.

The BIZTAR team studied this question and consulted with a number of insolvency administrators, judges, law professors, commercial lawyers and ministry officials. A completed questionnaire was prepared by the team and is attached as Annex 5. We believe that both as a matter of law and of practice, the correct procedure for the fact pattern would clearly be liquidation, not reorganization or foreclosure.

Excluding the Possibility of Foreclosure Outside Insolvency

Although Bizbank may to seek to foreclose on its mortgage (or floating charge as the case may be), Mirage will successfully file for initiation of insolvency and the "automatic stay" or moratorium on actions against Mirage during insolvency will immediately stay any foreclosure action by Bizbank. (I.L., Arts. 65, 83, 90). Note that in this scenario Mirage's management has the legal obligation to initiate insolvency proceedings (I.L. Art. 26, Explicative Ruling of the Court of Justice No.34 of 22.11.2004, Decision of the Economic Collegium of Supreme Court of Justice in the file No.2re-57/2005 of 10.03.2005). Accordingly, foreclosure is not the procedure which would be used in this case.

Excluding Reorganization (Plan Procedure)

Under the scenario set out in the case, it is clear that the unsecured creditors, as well as management, may prefer a reorganization procedure, called "Plan Procedure" under Moldovan law and provided in Chapter VII of the I.L. However, based on the facts, Bizbank, which seeks to be repaid as soon as possible, would prefer liquidation. The creditors (Creditor's Meeting) must vote to initiate a Plan Procedure (I.L. Art. 164). Creditor voting rules are set out in Art. 69, and Art. 69(6); these rules require a "double majority": more than 50% of the total number of creditors and more than 50% of the

value of validated claims (both secured and unsecured) must vote to initiate a Plan Procedure. Since Bizbank holds 74% of Mirage's total outstanding debt, Bizbank may block initiation of the Plan Procedure. In fact, the Creditor's Meeting could not even meet quorum without Bizbank (Art. 69(2)).

Moreover, since it is mentioned that the following two years the firm will have a negative payment balance, and once the Plan Procedure lasts maximum 3 years, we can conclude that it would be quite difficult to satisfy the requirement of Art.199 of Insolvency Law, according to which at least 2/3 of outstanding debt should be satisfied (in accordance with the plan), contrarily, the collateral right of creditors to initiate the liquidation procedure could be applied.

Thus, according to the Insolvency Law, it is clear that reorganization procedure cannot be started without Bizbank's approval. Even if the law were not clear on this issue, current practice in Moldova would be to defer to the wishes of a senior secured creditor such as Bizbank. In any case, the vast majority of insolvency cases filed in Moldova is liquidation cases.

Liquidation

Accordingly, the default procedure of liquidation will be applied to Mirage and the insolvency administrator with court supervision, will be responsible for selling Mirage's assets or the business as a going concern and meeting creditor's claims as set out in the I.L. This liquidation procedure will be the final procedure. As noted above, foreclosure proceedings will be stayed at the start of insolvency and then made moot once the assets or business is sold by the insolvency administrator. Likewise, as noted above, a senior secured creditor holding 74% of the outstanding debt such as Bizbank can block any efforts to "convert" the liquidation procedure to reorganization and has the clear incentive to do so under the fact pattern.

B. Outcome (Going Concern v. Piecemeal Sale)

This question asks respondents to the Questionnaire to predict the ultimate outcome of the procedure: either Mirage continues as a business after the insolvency procedure is completed, or its assets are sold in pieces. It is important to understand that the choice of procedure (foreclosure v. reorganization v. liquidation) does not necessarily determine the outcome. Under most legal systems, reorganization may very well involve a sale of the business to a buyer, as may liquidation.

The 2010 Questionnaire which we obtained indicates that the 2009 answer was "No—Mirage does not continue operation after the completion of the procedure".

If Mirage does not continue as a going concern after completion of the procedure, the WB methodology shaves 30 cents off the recovery rate and thus the country will have a lower tier ranking on the Recovery Rate indicator.

We believe that based on this fact pattern, there is a strong likelihood that Mirage would be sold as a going concern. Moldovan law favors the sale of the business as a going concern during liquidation and the Insolvency Law provides considerable detail regarding the sale of debtor's business as a going concern by the administrator during liquidation. (I.L. Art. 126). The decision to sell the business as a going concern must be approved by the unsecured creditors. In this fact pattern, the unsecured creditors will have an incentive to approve such as sale, since they would prefer that the business continue rather than be sold piecemeal. The Plenum of the Supreme Court of Justice of Moldova

expressed a strong policy preference for selling a business as a going concern during insolvency (Ruling No. 34 of 22.11.2004, p. 22).

The Law on Mortgages expressly provides for mortgages on a business as a "patrimonial complex" (Art.27-31), which is equivalent to a "floating charge". While there is no single registry for filing such a floating charge and for notice purposes filings must still be made in the appropriate pledge and mortgage registries (so this mortgage on the business as a patrimonial complex is not used much today) the floating charge is enforceable. However, even if such a floating charge did not exist under Moldovan law, the functional equivalent can easily be achieved through several types of security and mortgage contracts. In any case, the hotel will likely be sold as a going concern regardless of whether or not a floating charge is used or not.

Based on the facts provided, the administrator will seek to sell Mirage as a going concern during the liquidation procedure. (I.L. Arts 126, 127, 128, 129, Law on Mortgages Arts. 28, 29, 30 and Civil Code Art. 298). Since the business is worth more as a going concern and since they are more likely to get paid if the business continues, the unsecured creditors will push for such a sale as a going concern, and once it is decided, they will likely cease to use delaying tactics.

It should also be noted that Mirage will likely continue operating during the liquidation procedure, since the creditors must approve the termination of business activities of the debtor company (the administrator may not terminate business activities unilaterally) (I.L. Art. 123). Since all the creditors and the management have an incentive to allow operations to continue, Mirage will continue to operate; this further increases the chance of a sale as a going concern. While arguably there are some security measures and seizures which the administrator may undertake to protect the estate (I.L. Art. 35), these measures should not stop business operations. Even seizure (one of the most drastic security measures) is allowed only during the preliminary phases. The Supreme Court of Justice has clarified this point, emphasizing that initial security measures such as seizure should not "…make it impossible to carry out the insolvency procedure, or meeting of creditor claims (Supreme Court Case No.2re-202/2007 of 17.05.2007).

It is clear that Moldovan law and policy strongly favors the sale of Mirage as a going concern. As a practical matter, such a sale will naturally depend on the existence of a market for hotel companies. Sectoral investment statistics for Moldova for the period from 2004 to 2008 suggest that there is significant demand for hotels and restaurants.

TABLE 2: INVESTMENT STATISTICS IN HOTEL INDUSTRY

Fix capital investment per type of economic activity (of the total of economic activities in the Republic of Moldova) expressed in million MDL as well as number of accommodation structures

Type of economic activity	2004	2005	2006	2007	2008
Hotels and restaurants	19.5	70.2	104.7	189	248.3
Percentage rate of total	0.4%	0.9%	1.0%	1.2%	1.4%

Total investments in fix capital	5140	7796.5	11012.3	15335.8	18123.1
Number of accommodation units (total per Moldova)	-	191	211	222	229

Source: "Moldova in Numbers", Statistics summary 2009, Chisinau 2009 (www.statistica.md)

The statistics shows an obvious growth of investments during the last years; as well we can state that the potential of this market in 2008 was 10 times bigger compared to hotel cost which will be for sale (USD 200,000, which is about MDL 2.5 million). We can also determine that the investments are not directed only to improve the existing structures, but also to create new structures, i.e. at least 7 accommodation structures are created annually. It is obvious the existence of constant demand on accommodation market, which makes us assume that a hotel valuing USD 200,000 in the most active touristic zone (of Moldova) will be very popular. As well we have to take into account that the law allows for revaluation within liquidation to take place up to 5 years. In our case, either the insolvency administrator or Bank could sell the hotel in tranches, i.e. the amount of USD 200,000 can be paid in tranches during 5 years, which increases considerably the chances for hotel to be sold as a going concern in a very short period.

Interviews with several practicing insolvency administrators confirmed that Mirage would likely be sold as a going concern by the insolvency administrator under court supervision, by public auction. The minimum starting bid price would be estimated by a specialized valuation firm.

The chart below cites some recent cases in Moldova where the business (or several core businesses) were sold as a going concern.

Cases when there was a Sale of the Business as a Going Concern:

Case of S.A. "Fraga" (see also Decision No. 2re-24/09 of the Supreme Court of Justice (SCJ)

Case of S.A. "Mixt-Vin" (found no documents)

Case of SRL "Crescendo" (see also Decision No. 2re-59/06 of the SCJ; No. 2ra-174/09 of the

Chisinau Economic Court of Appeal)

Case of ÎM „Euro TV Chișinău" and „Antena C" (registered at the SCJ as Case No. 3r-827/08)

Pending Cases in which the Court and the Creditors Decided to Sell the Business as a Going Concern:

Case of SRL "Bunele Traditii" (see also decision No. 2rae-336/09 of the SCJ involving another SRL)

Case of S.A. "Basarab-Vin" (see also decision No. 2rhe-52/08 of the SCJ)

(C) Time

We believe that the time estimates from last year correspond to reorganization (which was last year's answer) and the correct procedure according to the law and practice in Moldova would be liquidation. Below is a detailed list of the procedures and possible appeals (for both Question #5 and #6: If there are no delays, the insolvency proceeding can last on average 7 months, maximum 8 months.

Our calculation of the time required is based on the following:

a) 30-60 days for the preliminary procedure that starts with the introductory filing (by the debtor or a creditor) and during which it is decided if the company is in fact insolvent. This period ends with the ruling of the court about the situation of insolvency of the company.

b) 45 days calculated from the date of publication of the decision to initiate the insolvency as well as from convoking the first meeting of the creditors, where the next step of insolvency proceeding is decided and the claims of creditors are validated by forming Creditors' Committee (Art.67 of I.L.).

c) 15-30 days to establish the Inventory Committee and to make the inventory of debtor's assets (Art.117 of Insolvency Law).

d) 15-30 days to organize the contest for the Evaluation Committee and to report the results of contest and amount of remuneration for the appointed expert during the Creditors' Committee (Arts.78(5), 79(6), 124 (3) of Insolvency Law).

e) 15-30 days to assess the outstanding debt at the market price and to confirm the starting price of the assets for auction during General Creditors' Meeting or Creditors' Committee (Arts. 124 (3), 126 (1) of I.L.).

f) 60 days to present the offers for buying the company ready for auction as unique patrimonial complex and to conduct the auction (Art.126 (9) of Insolvency Law). Also during this period, the creditors will have the opportunity to vote for the final acceptance of the sale of the company. Only after the sale they will vote on the final distribution (in a 30 days period) and stopping the insolvency process (art. 147, 150).

The above procedural steps should take, in the best case, around 7 months (210 days).

If there are any delays (appealing the court's decisions, the official procedural actions of participants during the procedures) than it is hard to determine the maximum duration. Mainly because Civil Procedure Code uses the vague concept of "reasonable time" that if it is not determined by law it should be determined by the court (art.4 and art. 111 of Civil Procedure Code).

The I.L. provides for about 22 possibilities to appeal certain actions/decisions/rulings, which total period cannot be estimated with certitude. Based on consultations with practicing administrators and judges we estimated an approximate time of one month per appeal. We will try to make a list of conclusions and court judgment that can be appealed, i.e. assuming that the plan procedure is not applied but at the same time taking into account that other creditors might try to apply this procedure but with an eventual failure.

Decisions/rulings that can be appealed and that delay the process (besides the decision to initiate insolvency proceedings, which can be appealed but has no suspending character) are:

- Ruling to apply the security measures (Art.37 para.3);
- Decision to reject the introductive application (Art.47 para.2, Art.153 para.1, Art.199);
- Ruling to reject the application to convoke the Creditors' Meeting (Art.67 para.6);
- Ruling regarding the application to cancel the decision of Creditors' Meeting (Art.70 para.1, 2)
- Ruling to dismiss a member of Creditors' Committee (Art.71 para.5);

- Ruling to reject the proposal to appoint another administrator (Art.75 para.1);
- Ruling to dismiss or reject the application to dismiss the administrator (Art.80 para.4, 6);
- Ruling to reject the application of Creditors' Committee or Creditors' Meeting to dismiss the administrator (Art.80 para.4);
- Ruling regarding the refusal to validate the claims (Art.138, 141 para.1);
- Ruling to appeal the list of intermediary distribution (Art.145 para.2);
- Ruling to rectify the list of distribution (Art.145 para.3);
- Ruling to reject the application for additional distribution (Art.152 para.3);
- Decision on additional distribution (Art.152 para.4);
- Decision to end the insolvency process (Art.162);
- Ruling to apply the reorganization plan or not to admit the reorganization plan (Art.164 para.4);

There are 15 legal acts that can be appealed which can lead to 15 month delay on average. Therefore, if the parties intend to delay the process, the total period for carrying out the procedure is about 22 months.

As to the time necessary for payment to Bizbank, we estimate the additional time to close the transaction (transferring the business as a going concern to buyer, payment by buyer, etc.) at an additional 2 months, which is 24 month term (2 year) from the initiation of insolvency procedure until the bank (investor) gets the money back.

(D) Cost

Below is an explanation for our estimate. It should be mention that the cost included the expenditures strictly necessary to efficient carrying out of insolvency procedure (assuming the given case), thus, optional and current costs like transport, stationary, consultancy fee and additional evaluation, creditors fee, etc. costs were not included. But there was introduced the cost for some legal services provided by a lawyer of creditors, which in principle are not mandatory, and in practice the legal aspects are covered by the insolvency administrator once the procedure's costs are extracted from the outstanding debt, which inevitably leads to decreasing of amounts received by creditors at the end of process.

The cost of the insolvency proceeding is set by Arts.63, 64 of the I.L., at the Outstanding debt cost Chapter.

Hence, the costs of insolvency procedure are:

a) Court fee

Court costs include the state fee and fee for publication of court decisions in Monitorul Oficial of the RM.

According to Art.3 let.b) of Law on State Fee, the state fee of the insolvency proceeding is MDL 400 to submit the introductive application and if the value of claim is between MDL 1000000 and 5000000 – 0.9% of the collected amounts. Assuming that the market value of the hotel according to "Assumptions"

is USD 200,000 or MDL 2,500,000 (at the NBM exchange rate of 12.5 for 1 USD), then the state fee that has to be paid from the outstanding debt will be MDL 22,500.

On average, the cost for publication of a decision adopted by ECA in Monitorul Oficial of the RM is MDL 1,350, namely MDL 6 for a square cm of published text. At least three decisions of the ECA must be published during the insolvency proceeding, such as decision to initiate the insolvency proceeding, decision to stop the insolvency proceeding, and the decision to approve the liquidation balance and to erase the debtor from the State Register of Legal Persons. Hence, the minimum costs for publication during the insolvency proceeding is MDL 4050.

b) Remuneration and fees for temporary administrator and administrator, if applicable.

According to Art.36 (5) of Insolvency Law, the remuneration of the temporary administrator will be the responsibility of the party that submitted the introductive application.

At the same time, it should be mentioned that the remuneration of temporary administrator is not stipulated expressly in the legislation. From these reasons, when determining the remuneration for temporary administrator, the court will apply by analogy the Government Decision No. 743 from 11.06.2002 regarding the remuneration of employees from units with independent financing, Government Decision No.152 from 19.02.2004 "On tariff salary for 1st category of qualification of employees from units with independent financing", Annex 1 of Law No. 847 from 14.02.2002 on Salary. The minimum remuneration of temporary administrator during the period of temporary administration of one month will be MDL 5589. (the salary category 15 is covered by tariff coefficient 6.21. Respectively, 6.21 x MDL 900 = MDL 5589/month).

Remuneration of insolvency administrator, according to Art.79 (4) of Insolvency Law shall be calculated at the rate of at most 3% of the amounts distributed to creditors from the account of payment on claims. Using the conditions set forth in the case study, the amount distributed to creditors will be equal to the market price of the hotel, which will be sold as a patrimonial complex and is estimated at USD 200,000. The maximum remuneration of insolvency administrator will be USD 6,000 or MDL 75,000.

c) Payment obligations that result from the administration, selling and distribution of the estate, including taxes, fees and other payments that relate to insolvency process.

Payment obligations that relate to administration and sale of outstanding debt include the costs related to the valuation of the estate by companies specialized in this field. According to the market rates, the cost for evaluating an real estate depends on its surface, hence, the cost to evaluate an estate of 700 sq m and up to 2000 sq m will be MDL 4500, the cost will be MDL 7000 for a property of 2000 sq m to 5000 sq m, and the cost will be MDL 14500 from 5000 sq m and more. In our case, the evaluation costs of Mirage hotel will be approx. MDL 7000.

As for the inventory and sale of the estate, it should be mentioned that these actions are carried out in practice by the insolvency administrator jointly with the representatives of creditors.

It is up to the creditors to decide if the administrator will need to be accompanied by a qualified lawyer, although in the vast majority of cases creditors tend to entrust to the administrator all legal work. But if we will consider that creditors opted to have an assisting lawyer which is needed only from time to time than we include payment for his services in amount of about MDL 25.000 (the estimation is based on the market value for a month salary of a junior lawyer of about MDL 4.500).

Under these circumstances, it can be concluded that the minimum cost of the insolvency process is MDL 139,539 in the abovementioned case, which is USD 11163 at the rate of MDL 12.5 to 1 USD, which represents 5.5% of the value of USD 200.000.

DATA COLLECTION FOR THE CLOSING A BUSINESS INDICATOR & SOME CONCLUSIONS

The World Bank's Doing Business Report has generated a great deal of research and reform initiatives around the world; at the same time it has engendered considerable controversy in recent years, and there are literally hundreds of critical articles and books published around the world which question the methodology used and/or claim that the surveys are biased against Civil Law jurisdictions. It is beyond the scope of this report to address these academic and policy debates. In the course of our assessment, we did note some serious limitations in the way the Closing a Business questionnaire was administered in Moldova in recent years. These include:

- *Language limitations*. The survey was circulated in English, but unfortunately most insolvency practitioners (administrators, judges and banking professionals) in Moldova do not read or write English at the necessary level. This may explain the paucity of responses and the limited and incorrect answers which the WB did get.
- *Confusion regarding Legal Terminology*. Compounding the language limitations, a related concern is the difficulty for respondents to interpret the legal terminology in the questionnaire in light of Moldovan law. The questionnaire does not make a clear difference between the legal person and going concern (the business of this person). Some basic terms can easily be confused (though we note that for 2010 the World Bank did provide some standard definitions). We believe that the process could be facilitated considerably with a translation into Romanian of the questionnaire, provided such a translation accurately reflected the specialized the insolvency law terminology and matched the terms to those in the Moldovan law. As well, in terms of technical and general logic, the questionnaire needs clarifications and thorough understanding.
- *Targeted Respondents*. The survey appears to have been sent to several international business law firms in Chisinau which typically do not have insolvency practices, but it does not appear to have been sent to many insolvency administrators, judges or academic experts. There are admittedly few such experts in Moldova, but it would be worthwhile to identify them to the World Bank staff and the BIZTAR team will do so shortly, so that questionnaires can be sent to them in time for the 2011 Doing Business report.

In conclusion, the BIZTAR team was able to prepare a much more accurate and complete set of answers to the World Bank's Closing a Business questionnaire for Moldova. Based on the above data the recovery rate should be higher and Moldova's ranking higher as well. However, we cannot provide exact numbers or a ranking since the report is by its nature comparative and the World Bank seeks to receive as many questionnaires as possible.

The exercise was extremely useful for the BIZTAR team's assessment and analysis, since it required a detailed mapping of procedures (one which we do not believe has been done before) and review of possible appeals, costs and practical implementation problems. A copy of the detailed procedure mapping is attached as Annex 2.

PART II: BIZTAR ASSESSMENT OF BUSINESS INSOLVENCY SYSTEM

Building on the procedure mapping and consultations relating to the World Bank Doing Business "Closing a Business" questionnaire and on the desk review of existing international assessments described in Part I, the BIZTAR team undertook an intensive assessment in Chisinau in March 2010. This assessment focused on problems and possible recommendations which are likely to improve the recovery rate for creditors, since the GOM is interested in seeing an improvement in Moldova's ranking in the Doing Business Report. Furthermore, the assessment focused primarily on liquidation procedures rather than plan procedure (reorganization), due to the fact than plan procedures are rarely used in Moldova.

The BIZTAR team took into consideration international best practices relating to insolvency reform, comparative legal analysis, as well as modern insolvency assessment methodologies developed by the World Bank, USAID and the EBRD. Perhaps most importantly, meetings were held in Moldova in March 2010 with insolvency administrators and liquidators, business lawyers, bankers, judges, law professors and government officials. The authors would like to thank these experts for their time and for sharing their considerable experience and insight.

GENERAL FINDINGS

LEGAL FRAMEWORK

The BIZTAR team legal experts started the desk review process with a review of Moldovan laws and regulations relating to insolvency. The applicable laws and regulations include the Insolvency Law (Law No. 632-XV of 14 November 2001, as amended (Insolvency Law, or I.L.), as well as relevant provisions of the Law on Pledges (2001), the Civil Procedure Code (2003), the Civil Code (2003), the Enforcement Code (2004) and a number of other commercial and financial laws and regulations.

The Insolvency Law, which was modeled on the German Insolvency Law of 1994, is clearly drafted and relatively complete. We understand that insolvency experts from Germany provided technical input during the drafting process, and in any case the Moldovan text adopts the principal approaches and philosophy of the German law. There are a number of areas where the Moldovan law contains less detail than the German model, however. An example of this would be the provisions relating to the voting and acceptance of a reorganization plan (cf. German Insolvency Law Arts. 234-253 with Moldovan Insolvency Law Arts. 179-188). This simplification has resulted in a number of areas where practitioners in Moldova report gaps and the need for clarification or more detailed rules; several of these areas are discussed in more detail below.

It should also be noted that a number of technical amendments have been made to the Moldovan Insolvency Law since its passage in 2001, to address shortcomings or eliminate provisions which were not being used.

Since it is based on a modern and well drafted law, the Moldovan law generally meets most of the internationally accepted standards for insolvency legislation, such as the United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Insolvency Law (2005), the World Bank Creditor Rights and Insolvency (ROSC) Assessment Methodology (2005). The relatively high ranking of the Moldovan legal framework in the European Bank for Reconstruction and Development (EBRD) assessments conducted in 2003, 2004 and 2009 (see Part I of this Report) confirms this analysis. After the initial desk review, and because of the existence of the EBRD assessments and limited time and resources, the BIZTAR team opted against performing a full article-by-article assessment of the Moldovan legal framework; this is something that could be done if further resources are available. It would be particularly useful to focus as much as possible on an assessment of the implementing institutions, something which the UNCITRAL and EBRD standards provide some but not extensive guidance. USAID has also funded the development of Commercial Law assessment methodology (Commercial Law & Institutional Reform) which could also be used if the time and resources are available.

However, given not only the relatively high quality of the Moldovan legislation and its recent enactment, it is clear that no major amendment or re codification is necessary at this time, and that any such extensive reform would actually be counter-productive since the implementing institutions and professionals are in the process of developing their capacities and understanding of this complex legal framework. Likewise, the courts, particularly the Economic Collegium of the Supreme Court, are developing case law on insolvency which is filling in some of these gaps. None of the insolvency practitioners or experts interviewed by the BIZTAR team suggested that a major overhaul of the law was called for, though many of these practitioners did have specific technical amendments and improvements in mind, some of which would likely require substantial amendments. It is also useful to note that many of the technical issues that have been encountered in practice relate not to the Insolvency Law itself but other civil and commercial legislation.

IMPLEMENTING INSTITUTIONS

In contrast, the BIZTAR team found that there is a significant need to strengthen the Moldovan institutions and professionals responsible for implementing the insolvency legal framework. This finding also reflects the earlier international assessments such as the EBRD's 2003, 2004 and 2009 Assessments and the World Bank's Doing Business Report, which indicate that most of the weaknesses lie in implementation (how the law is applied in practice) rather than in the quality of the law "on the books".

The key implementing institutions in Moldova are 1) the Economic Court of Appeals in Chisinau, which has first instance jurisdiction over all insolvency cases, as well as the Economic Collegium of the Supreme Court of Moldova, which hears appeals from the Economic Court of Appeals , 2) Insolvency Administrators, who are private sector professionals who are responsible for managing much of the insolvency process under the supervision of the court, 3) the legal, financial and accounting professionals such as lawyers who advise debtor companies and creditors.

The main causes for the low recovery rate by creditors from companies in insolvency identified by the BIZTAR team are discussed in more detail in this Part II; possible reforms and other initiatives to improve the recovery rate are discussed in Part III of this report.

INSOLVENCY PROCEDURES TAKE TOO LONG

Respondents indicated that insolvency proceedings are complex and time consuming, and that the law provides for too many possibilities to appeal. We consider that the long period of case examination is due to great extent to the following factors: large number of case pending, absence of time limitations for examination, institutional capacities cannot cover the large number of cases.

ABSENCE OF TIME LIMITATIONS

The BIZTAR team found that Moldovan law contains very few time limitations on insolvency proceedings. There is an overall five year maximum for liquidation procedures and a three year maximum (with a five year maximum for certain types of procedures) for plan procedures (reorganization). However, there are no time limits for the opening phase of the procedure. Likewise, the sanctions for exceeding the set time limits are not clear, and the judges and administrators interviewed were able to cite pending insolvency cases which had gone on far longer than three or five years.

APPEALS

The Insolvency Law provides for numerous interlocutory appeals (appeals of specific court rulings during the insolvency). The BIZTAR team identified 22 specific procedures which can be appealed (that will be examined in the Superior Court). At the same time, there is no time limitation for appeal examination (especially the pending ones), as it was mentioned, the civil procedure law stipulates only "the reasonable term" concept.

LARGE NUMBER OF CASES PENDING

There is a large number of cases, including insolvency cases, pending at the Economic Court of Appeals relative to the small number of judges (currently eight judges, out of an authorized total of ten). As a judge from that court advised, us, the problem is only compounded by the fact that many of the insolvency cases are extremely time consuming and involve multiple procedures, steps and appeals. The table 3 below provides an overview of the types of cases pending at the Economic Court of Appeals, which not only hears insolvency cases on a first instance basis, but also a variety of other appeals from the Economic Court in Chisinau. Thus, based on this statistics we can analyze the insolvency case flow in the first instance on the entire territory of the country.

Nevertheless, it appears that in 2009 the Court of Appeals had 1,095 cases pending or filed, including 522 insolvency cases. Given that judges hear the insolvency cases individually and not *en banc* we can conclude that they must each deal with a large number of cases.

TABLE 3: ACTIVITY OF ECONOMIC COURT OF APPEAL, REPORTING PERIOD 2007-2009 – NUMBER OF CASES FILED

Categories of Cases		Number of cases pending at the beginning of Reporting Period	Number of cases filed during Reporting Period	Cases classified during the reporting period							Rest of Cases not classified at the end of reporting period	Being examined more than 1 year	Being examined more than 2 years	Being examined more than 3 years	Amount of state fee paid to the budget	Files examined in official language
				Examined with passed decision	By satisfying the action	Term-inated	Actions left without exami-nation	Sent to other courts	Classi-fied on time (3,5-7)	More than 2 months						
Insolvency Cases (Liquidation of legal entity due to insolvency)	2007	453	217	354	331	56	15	-	416	-	254	-	-	-	24670 lei	416
	2008	254	280	183	172	16	5	-	204	-	330	-	-	-	15220 lei	204
	2009	330	192	166	154	31	7	-	204	-	318	-	-	-	22720 lei	204
Total number of civil cases	2009	460	635	458	361	79	50	15	602	210	493	7	6	10	2467127,62 lei	602

This is an unofficial report provided by the Ministry of Justice of the Republic of Moldova.

LIMITED INSTITUTIONAL CAPACITY

The current insolvency system is very new—the Insolvency Law was only enacted in 2001 and implemented the following year. 2001 radically changed the insolvency system and eight years is a very short period of time to get all the professionals and parties involved fully trained and conversant in how the system functions. Accordingly, many judges, insolvency administrators, lawyers and other insolvency professionals often don't have all the needed specialized legal knowledge and business/financial skills. Insolvency professionals typically must not only master the law, but also must understand and be able to analyze financial statements and business management principles. Compounding the problem, there is a limited number of insolvency professionals in Moldova.

While the BIZTAR team was given negative assessments of the skill and knowledge level of the various professionals involved during our consultations, it should be noted that many of the negative comments came from representatives of one profession relating to members of another profession. Thus judges reported that few administrators had the requisite competence (but felt that they and their colleagues were altogether competent), while administrators and attorneys indicated that judges needed more training and the courts were not sufficiently transparent. This is typical, and should be taken into consideration.

We were not able to identify any attorneys with significant insolvency experience or specialization, and according to several business lawyers, this specialty has not yet developed within the legal profession in Moldova. Many business lawyers have generally dealt in one way or another with insolvency cases, though, and were able to provide input to the BIZTAR team.

Economic Court Judges

No special insolvency, financial or business training or skills are required of judges sitting on the Economic Court of Appeals. While these judges are subject to the new requirement to attend continuous training at the National Institute of Justice (NIJ), as of the time of this Report the NIJ did not offer any specialized continuing training courses. The initial training program at the NIJ, which just started training new judges last year, does offer commercial law courses which cover in part insolvency. The NIJ did report that they have instituted a detailed survey process to ascertain the training needs of sitting judges, and the possibility of offering courses relating to insolvency was raised for the future.

The judges of Economic Court of Appeal jointly with the judges of Supreme Court of Justice organize seminars where they discuss issues relating to the application of law in the field and these forums are used to exchange experience, including with international experts. These seminars undoubtedly have a positive effect, as do a number of rulings and directives issued by the Supreme Court on insolvency law issues.

It is important to note however, that international best practices require judges hearing insolvency cases to have sufficient knowledge of basic accounting rules and the ability to interpret financial statements and understand banking documents, business plans and other complex business documents. This is because insolvency cases involve financial and business questions as much as they do legal ones. The BIZTAR team was not able to evaluate the level of knowledge of sitting judges at the Economic Court of Appeals, but anecdotal evidence suggests that this is an area for improvement. In fact one judge indicated that they did not feel that judges should need to have such accounting or business skills, reflecting their view that their role was solely legal.

Other factors which limit the institutional capacity of the Economic Court of Appeals to process insolvency cases include the limited means at their disposal in terms of support and administrative staff and budget resources. The ABA JRI reports that court staff is extremely poorly paid in Moldova, resulting in rapid turnover of staff. Also, the nature of insolvency cases often requires the judge to rule on matters relating to factories and property all around the country (for example to ascertain if factory machinery is being preserved) and the judges report facing practical challenges such as limited resources to undertaking such activities.

Finally, reference is made hear to the international reports cited in Part I relating to problems relating to transparency and corruption in the judicial system of Moldova. Several Moldovan respondents indicated to the BIZTAR team that these problems did indeed exist with the judiciary and that the Economic Courts were not immune. To be fair, problems of corruption and bad faith do not appear to be limited to judicial actors, as similar allegations were heard with respect to insolvency administrators and of course debtor companies and their management, including bad faith filings and illegal use of the protection of the insolvency system.

Administrators

According to international best practices as summarized in the UNCITRAL Legislative Guide on Insolvency Law (2005), insolvency administrators and liquidators play "a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtor companies and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency [administrator] be appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings, but also that there is confidence in the insolvency system. (p.174)."

Administrators and liquidators are individual professionals in Moldova. The Insolvency Law sets out the requirements in Art. 73: holding a university degree, having at least five years of work experience, have a professional certification (currently a 2 month training program described below) and no criminal convictions. There is no licensing system or regulatory framework, and accordingly the judge supervising an insolvency case exercises sole oversight over an administrator. The Insolvency Law sets out the basic tasks and rules for the administrator, but there are no specific ethical rules, no self-regulatory professional framework, and no disciplinary system. A positive development is that an initial certification training course (100 hours over two months) is now required for all insolvency administrators. Examination in four areas is required for certification: law, accounting, valuation and business management. This initial training is offered at the Academy for Public Administration. The BIZTAR team was able to meet with a Supreme Court judge who is the author of a training manual used for this training and who teaches at the Academy for Public Administration. No apprenticeship or other practice requirements are currently provided for.

The BIZTAR team was advised that an informal list of insolvency administrators and liquidators practicing in Moldova existed, and that there were as many as 90 individuals on that list. We were likewise advised by several judges and business lawyers that only a small number of these individuals were respected and considered competent and honest. Given how easy it is to qualify to become an administrator, it is not surprising that the perception of administrators is negative.

A commonly encountered problem for administrators is that their professional status remains unclear and they are often unable to complete missions entrusted upon them by the Insolvency Law. For example, many state institutions refuse to recognize them and release official documents or information to them. In those cases, the administrator is obligated to go back to the judge to obtain a court order—which prolongs the process and wastes resources.

The BIZTAR team was advised by a number of respondents that one of the limitations on the development of the insolvency administrator profession was the fact that the function must by law be fulfilled by individual professionals, rather than firms. A number of countries allow this, and the advantage is that a firm can handle large insolvencies more easily, and can assign specialists to handle the case.

Although the insolvency administrator profession is not regulated by law, the practicing administrators and liquidators have recently established a national association, the Association of Liquidators and Administrators of Moldova (ALARM) to represent their interests. An official statement of the ALARM is attached hereto as Annex 3; its sets out a number of policy recommendations.

Recent Legal Reforms Impacting Administrators:

A number of the recent amendments to the Law on Insolvency relate to the status of the administrator and/or how administrators conduct their work:

Law No. 573 from 26.12.2003 determines that the remuneration for the administrator of the preliminary phase is determined by the court and paid by the party who filed the insolvency case; when the court issues the decision to start the insolvency, the administrator is required to present the decision to all the state registers and other relevant institutions and to call the meeting of the creditors. This law also states that the same administrator cannot be designated for more than one (two as exception) company that is going into a Plan Procedure (reorganization) and it provides some rules for the organization of auctions and alternatives for the sale of assets.

Law No. 223 from 14.07.2006 states that the general meeting of creditors will decide the price for assets and the form of the sale; sets out certain conditions for the appointment of administrators and significantly imposes the rule that one administrator cannot take more than four liquidation cases at the time.

Law No. 67 from 27.03.2008 added to Art. 124 of the I.L. that the administrator may proceed with the sale of assets only with the express approval of the creditors; the same requirement for the approval of the creditors was introduced in Art. 126, relating to the sale of a business as a going concern.

ALLOCATION OF RIGHTS AND RESPONSIBILITIES OFTEN NOT CLEAR

The BIZTAR team was advised by almost all respondents we met with a key problem today in the implementation of the insolvency system in Moldova is that the respective roles and responsibilities of the judge, administrator, debtor company, and creditors are not always clear. Thus, judges complain that they have to undertake too many procedures and tasks within each insolvency case; administrators complain that often they can't accomplish tasks assigned to them because of legal uncertainty about their professional status and secured creditors of an insolvent company (typically banks) complain that they are insufficiently involved in the process and don't get to vote on certain important questions. As a result there is a tendency for creditors to gradually lose interest in insolvency cases, which ultimately

makes it harder to resolve the case efficiently. Some secured creditors also report that while the Insolvency Law, like its German counterpart, does in theory provide creditors a strong role, in practice the law is implemented with an anti-secured creditor bias.

This uncertainty is likely due to a number of factors, including the relatively short period of time since the new Insolvency Law was promulgated and the fact that a number of provisions of the law were simplified from the German model. As will be seen in Part III, some stakeholders believe that the roles and responsibilities of the participants in the insolvency process actually need to be modified to reflect the Moldovan reality. Others believe it's more a matter of time and experience.

ABUSES OF THE INSOLVENCY SYSTEM

Because the BIZTAR team's assessment went beyond a review of the law and of international assessments and involved extensive and detailed consultations with local insolvency practitioners, commercial lawyers, government officials and professors, the team was able to identify two significant impediments to the performance of the insolvency system which find their origins outside of insolvency and constitute an abuse of the insolvency system.

Dissolution v. Liquidation

As in all jurisdictions, Moldovan law provides for the voluntary dissolution (or winding down) of legal entities. The dissolution provisions, which apply where the company in question is not insolvent, are provided for in the Civil Code (Art. 87-100). The Civil Code sets forth a mandatory waiting period for dissolution of at least one year for all legal entities (two 6-month terms). In practice this term is longer than 12 months, since a number of confirmative acts have to be obtained from State agencies, there are publication requirements (to give notice to any potential creditors) and the process is time consuming and costly.

In order to avoid the costs and time of voluntary dissolution, the owners (shareholders) of these dormant legal entities (with no assets or debts) are increasingly filing for insolvency, which is seen as being more efficient and rapid than voluntary dissolution. This is done either by creating a debt (for example a loan from one of the founders or shareholders) or by identifying tax or other administrative liabilities which would otherwise have been abandoned by the State. The company then files for insolvency, and once the procedure is opened the Economic Court of Appeals judge, after ascertaining the lack of assets, will order the termination of the insolvency and the dissolution of the company (in accordance with Arts. 153, 154 of Insolvency Law).

Today in Moldova as much as 10% to 15% (and possibly more) of insolvency cases are actually these kinds of "false" insolvencies being filed in order to obtain a final dissolution of a legal entity. Even if these cases are processed rapidly (which they are) the sheer number of cases is causing a backlog of cases and slowing down the process for real insolvency cases. Interestingly, this "abuse" of the insolvency system indicates a relatively high level of confidence in the system and the Economic Court.

The Ministry of Economy has long been aware of this problem and is working to improve the voluntary dissolution system. The current draft reform would reduce the number of necessary acts to be presented for deletion (to State Registration Chamber), cancel the requirement to publish notifications about the "dissolution" in Monitorul Oficial, and would reduce the time stipulated expressly by law. Practicing administrators and liquidators suggest that a three month period is minimum necessary to dissolve a company. The Ministry of Economy has suggested to reduce the time up to six months; we

consider this a reasonable period of time, since it is imperative to take into account the interests of potential creditors. We believe that these reforms are urgent and will indirectly contribute to the improvement of the performance of the insolvency system, since it would lead to a very significant reduction in case load.

Using Insolvent Companies to Pursue Third Party Lawsuits & Debt Collection

Moldova has very high fees for filing lawsuits; depending on the type of case these filing fees can be as high as 5% of the claimed damages. Companies in insolvency proceedings are exempted from these filing fees, in order to facilitate the pursuit of legitimate claims by the insolvent company, which would ultimately increase the recovery rate by creditors.

The BIZTAR team was advised by one informant that this loophole in the law is sometimes abused by business entities and individuals in Moldova, who "use" an insolvent company as a front to buy troubled assets and companies and then file lawsuits, to engage in other debt collection activities that are completely unrelated to the business of the insolvent company or even to undertake corporate raider type takeovers. These shady activities apparently are used against both Moldovan and foreign companies, but usually involve lawsuits filed in Moldova, since the defendants in these cases (appeal) have to pay the high filing fees in order to defend themselves and avoid the risk of a default judgment.

Besides the extremely negative effect of this kind of activity on the reputation of the Moldovan judicial system, and its insolvency system in particular, we note that the filing of these lawsuits also results in extended insolvency procedures (since once these lawsuits are started the underlying insolvency cases remain open) and encourage corruption. There is reportedly a market for insolvent companies to use for these types of fraudulent lawsuits.

Regardless of how common these fraudulent lawsuits are in practice today in Moldova, the solution to this problem is an obvious and easy reform: the exemptions for court filing fees for insolvent companies should either be eliminated or limited to bona fide lawsuits relating to pre-existing activities of the insolvent company.

PART III. POSSIBLE REFORMS TO STRENGTHEN INSOLVENCY SYSTEM & IMPROVE RECOVERY RATE

Based on the key issues and challenges facing the insolvency system in Moldova presented in Parts I and II, the BIZTAR team has identified a number of possible reforms, training activities and institutional strengthening initiatives which could be implemented to improve the performance of the insolvency system and more particularly, the recovery rate for creditors in liquidation cases. Certain international best practices, experience from reforms in other countries in the region and useful resources are also presented in this Part III. Obviously, the Government of Moldova, the judiciary, the legal community, insolvency administrators, representatives of the banking sector, the private sector more broadly and all other stakeholders will have to determine in a collaborative fashion what reforms should be pursued, what resources are available and how those reforms should be designed and implemented. The BIZTAR team is available to answer further questions and/or to conduct further comparative studies or other research.

AMENDING THE INSOLVENCY LAW V. INSTITUTIONAL STRENGTHENING

In approaching insolvency reform, particularly where a relatively new and well drafted law is in place, it is important to avoid jumping to the conclusion that extensive legal amendments or redrafting is a necessary first step—or even necessary at all. As noted above, the Moldovan Insolvency Law was modeled on German law and is modern and well drafted, and many problems today relate to its implementation. Accordingly we have sought to indicate where initiatives such as training, institutional strengthening or improving secondary regulations may be effective in improving the performance of the insolvency system and the recovery rate. There is a tendency for jurists involved in reform initiatives to focus excessively on drafting of amendments to the law, rather than taking a broader institutional perspective. That being said, we recognize that some of the problems identified in this Report will likely require some sort of legal reform.

PRIORITIZING THE REFORMS

We are presenting a large number of possible reforms to strengthen the insolvency system and improve the recovery rate by creditors in insolvency cases in this Report; in order to make this Report useful to policy makers, we have sought to prioritize the reforms in terms of two factors: 1) how **urgent** we believe the reform is, and 2) **how quickly and easily** such a reform could realistically be designed and implemented.

Thus the first reform below, No. 1, is the most urgent and most easily implemented; No. 6 is an example of a more complex and extensive legal and institutional reforms that will need considerable research and debate.

All of these possible reforms are aimed at improving the functioning of the insolvency system as a whole in order to develop credit markets and economic development; at the same time, these reforms would likely improve the creditor recovery rate in cases such as the one used in the World Bank Doing Business Report.

STRENGTHENING THE CAPACITY OF THE COURTS TO HANDLE INSOLVENCY CASES

As noted in Part II, the BIZTAR team found that strengthening the key implementing institutions is a high priority. The courts play a key role in the insolvency systems of almost all legal systems, and strengthening the courts ability to manage and resolve insolvency cases will speed up the process and improve the chances of the business continuing as a going concern—all of which will result in higher recovery rates.

Some possible approaches for strengthening the courts include the following:

SPECIALIZED JUDICIAL TRAINING IN INSOLVENCY LAW, FINANCE, BUSINESS AND ACCOUNTING

The BIZTAR team found that limited initial and continuing training relating to insolvency law and related financial, business and accounting areas was available to Economic Court judges (or to other civil judges who may hear insolvency cases in the future, see following section). Thus, developing practice based courses at the National Institute of Justice should be a priority, both for new trainee judges at the NIJ and for sitting judges. This work could build on experience developing similar courses in Germany and the region; for example, USAID and the EU collaborated in training judges and other insolvency practitioners in Romania (See USAID/BIZCLIR Program, Speeding up the Bankruptcy Process/Lessons from Romania, 2007).

The training modules should be designed not only to meet the needs expressed by judges and reflected in the NIJ surveys, but also in compliance with modern adult education techniques and using participative, case study based exercises, as opposed to lectures. While the legal aspects of the training may need to be taught by sitting or retired judges, it is important to note that non-legal topics such as accounting, finance/banking, and business management topics should be taught by appropriate professionals. Judges may resist attending trainings taught by non-judges, so this is something to bear in mind.

A common objection to designing and implementing judicial training on insolvency at a time when reforms are also being considered is that the training should wait until the legislative reforms are passed. We do not believe that this objection is warranted in the case of Moldova at this point, since it is clear that the basic legal framework of the law is not going to be overhauled in any case, so training could easily be designed concurrently with the reforms. Furthermore, international experience suggests that judicial training sessions (and the development of training materials and manuals as set out below) are an extremely useful tool during the reform process. Indeed, training sessions are an ideal mechanism for obtaining input from judges (and other professionals) as to what reforms are needed in practice.

BEST PRACTICES MANUALS AND OTHER GUIDES / BENCH BOOKS

The BIZTAR team ascertained that there are no comprehensive manuals covering insolvency law and practice in Moldova. While there are training materials for insolvency administrators and some outline summaries on several topics in business law including insolvency, these are designed for the initial training of administrators and for university students respectively (these resources should of course be built upon and their authors consulted in any case; the BIZTAR team has obtained copies of these).

Several judges, lawyers and insolvency administrators advised the BIZTAR team that a comprehensive guide on insolvency practice in Moldova would be extremely useful. Indeed, one judge noted that they referred to a guide produced in Romania—even though Romanian law is different in many respects. Depending on for whom they are designed such manuals can contain the following kinds of information:

- Summary and analysis of existing laws and regulations applicable to insolvency cases;
- Summary and analysis of all relevant case law and Supreme Court advisory statements and rulings;
- Summary of existing doctrine (academic research);
- Where the law is not clear and there is not any Moldovan case law yet, summaries of the law and case law in other jurisdictions with similar systems; an obvious place to look would be Germany (for liquidation cases) and the US (for Plan Procedures, since German law on reorganization was largely based on US law ("Chapter 11"));
- Practical recommendations;
- Blank forms and checklists for all participants in the insolvency process; and
- Guidance on understanding financial statement and other accounting documents.

Resources

USAID Romania / Business Climate Legal & Institutional Reform (BIZCLIR) Program, Speeding up the Bankruptcy Process/Lessons from Romania, 2007), for information on the Best Practices Manual prepared for Romania

USAID / Bosnia-Herzegovina / BiH Bankruptcy and Liquidation Laws: Benchbook for Bankruptcy Judges, Checklist for Creditors of Companies in or about to Enter Bankruptcy Proceedings, and other materials (2004) (USAID Contract No. PCE-I-00-98-00015-00 TO 821).

USAID Serbia / Bankruptcy and Enforcement Strengthening Project (BES) (website for information on reform and training initiatives: www.serbia.usaid.gov).

COURT AUTOMATION

We understand that over the past several years significant investments have been made to computerize the Moldovan court system and design and implement case management software; this initiative was funded in part by the United States Government, through the Millennium Challenge Corporation in coordination with the judicial system and the Ministry of Justice. The BIZTAR team was advised that the case management system was designed to accommodate all types of civil, criminal and administrative cases, including insolvency cases, through special modules. However, the BIZTAR team did not have time to examine the insolvency case module or its implementation and training. A possible activity

would be to support the further development and implementation of the specialized insolvency module, if warranted.

COURT ADMINISTRATIVE STAFF

The BIZTAR team did not meet with any court administrative staff (clerks, court administrators, IT staff) during our visit, and none of the informants mentioned particular problems. However, international assessments such as the ABA Judicial Reform Index indicate that rapid turnover of staff presents a problem for judges, who often have to undertake administrative tasks themselves. The problem is often worse with insolvency cases, since these types of cases involve a number of non-judicial tasks. It may be useful to evaluate possible institutional strengthening initiatives targeting court staff, such as training, reviewing case management and / or IT training.

JUDICIAL ETHICS CODE

We note that a new Judicial Ethics Code was recently enacted. A possible activity would be to support its implementation within the Economic Courts (or whatever courts may hear insolvency cases in the future, see below) and design training materials specific to insolvency cases. Because of the unique nature of insolvency proceedings, the multiple parties and interests involved and the sales of assets which take place during the proceedings, the opportunities for corrupt practices and ethical violations is particularly high.

PROPOSED REFORM TO ELIMINATE THE ECONOMIC COURTS OF MOLDOVA

As part of a draft law intended to implement broader set of proposed reforms to the legal system, the Ministry of Justice recently published a proposed amendment to the Code of Civil Procedure which would abolish Moldova's two specialized jurisdictions, the Military Court and the Economic Court (both the first level and the Economic Court of Appeals). Under the Ministry's proposal, jurisdiction over insolvency cases would be transferred from the Economic Court of Appeals to the 46 first instance District Courts.

We understand that there are valid policy considerations underlying this proposal, and it is beyond the scope of this Report and the BIZTAR team's assessment to discuss these. However, the abolition of the Economic Court of Appeals and the transfer of jurisdiction over insolvency cases from a single, specialized court to 46 first instance general jurisdiction courts throughout the country would constitute a major change to the insolvency system and the BIZTAR team considered it appropriate to comment on this proposed change.

A first concern is that the proposed law which would eliminate the Economic Courts does not provide any details on how this transition would be implemented. Given that the judges on the Economic Court of Appeals have been developing expertise over insolvency cases over the last eight years, it would seem clear that the intent of the reformers is to somehow re-assign these judges to support the work of the District Court judges which would hear these cases. Note that the District Courts currently hear civil, criminal and administrative cases. At the very least, then, it would seem that some sort of transition and training plan would need to be presented as part of the amendment. Likewise it would seem logical to assign insolvency cases to specific District Courts and/or specific judges, who could be trained. We believe that at least a year of transition and training would be appropriate, and we note that the

recommendations on specialized judicial training set out above in Section 1 would apply regardless of which court hears the insolvency cases.

A second concern is that jurisdiction over insolvency cases would be transferred from an appellate level court to a first-instance court. This would presumably mean that interlocutory appeals in insolvency cases would then have to go to the one of the five Courts of Appeal, and from there up to the Supreme Court of Justice. If this is the case, given the large number of appeals cited in the Insolvency Law (and other applicable legislation), absent other procedural reforms, the time and cost to decide insolvency cases would increase exponentially and the World Bank Doing Business Report's ranking for Moldova under "Closing a Business" would likely drop significantly over time. In fact, several Moldovan experts we consulted had heard about the proposed elimination of the specialized courts, but were under the impression that insolvency cases would be transferred not to the first instance District Courts but to the five Courts of Appeal. Several of these experts expressed the belief that there must have been a mistake made in the draft law and that it was completely unacceptable that jurisdiction over insolvency cases be transferred to the lower level courts.

A third concern is that eliminating specialized courts and transferring jurisdiction over complex economic cases such as insolvency cases to general courts of first instance, as presented in the draft law, and without a transition plan, would likely be perceived as a negative reform by the World Bank experts. Indeed, the World Bank explicitly recommends the *opposite* reform: The World Bank recently cited the establishment of specialized courts as one of the "most effective reforms" (World Bank Doing Business Report 2008, p. 56) and this year's Doing Business documents the fact that countries with specialized insolvency courts have higher recovery rates (World Bank Doing Business Report 2010, p. 63). Other international publications likewise recommend the establishment of specialized courts (see e.g. American Bar Association, Concept Paper on Specialized Courts (1996), available at www.abanet.org). Recent research by the European Bank for Reconstruction and Development (EBRD) on the performance of specialized insolvency courts is a bit more mitigated, stating that ultimately the training and support given to judges is more important than whether they sit within a specialized courts, and indeed, in many countries such judges don't get specialized training in any case (Uttamchandani et al., *Caveat Emptor: What Consumers of Insolvency Law Regimes Need to Know*, 14 International Insolvency Law Review, p. 195 (2005).

We are aware of the fact that in Germany, which provided the basic model for Moldovan insolvency law, local courts have jurisdiction over insolvency cases. That being said, it would be worthwhile to carefully evaluate whether the first instance judges in Moldova have the same level of training and experience as their counterparts in Germany. Many other jurisdictions around the world have made the decision to assign specialized judges to insolvency cases, including the US (federal bankruptcy judges are appointed after several decades of specialized experience typically as bankruptcy attorneys and hear insolvency cases exclusively) and in France (judges on the commercial courts are not career judges, but businesspeople elected by local chambers of commerce). In any case, as currently presented, the passage of the Ministry of Justice's proposed amendments to eliminate the specialized courts would almost certainly result in a precipitous drop in the World Bank's Doing Business rankings, since the World Bank explicitly considers both "positive" and what it considers "negative" reforms.

Finally we note that the Supreme Court of Justice has come out against the proposed Ministry of Justice reforms (see SCJ opinion published on www.csj.md) We strongly recommend that the Ministry of Justice's proposed amendments be carefully reconsidered by the Government, and that this review take

place as soon as is possible, because even if there are excellent reasons behind the proposal, as currently presented the reform will almost likely be perceived as negative by Moldovan and international experts and could have a strongly negative effect in practice as well.

STRENGTHENING & REGULATING ADMINISTRATORS & LIQUIDATORS

In order to address the issues raised in Part II of this Report relating to insolvency administrators and liquidators, a number of possible reforms and initiatives may be considered.

SELECTION AND TRAINING

We recommend that the current required training requirements for new administrators be maintained and if possible increased in duration. It may also be necessary to evaluate how selective the current examination system is, and if necessary adjust the examination process. In addition, ALARM recommends that a two-year internship with a practicing administrator be required, so that new administrators can develop the required practical skills. Finally, the BIZTAR team recommends that continuing training requirements for administrators be considered and implemented. It may also be useful to consider accrediting more additional educational institutions to provide training to insolvency professionals, in order to have competitiveness and to maintain the high quality of training.

PROFESSIONALIZATION, SELF-REGULATION AND DISCIPLINE

The BIZTAR assessment set out in Part II confirms that a key issue facing administrators today is the absence of a formally recognized professional status. Unlike attorneys and notaries, whose professional status is recognized by state agencies and third parties, insolvency administrators operate without a formal status. As noted, this lack of official recognition makes it hard for administrators to carry on their duties as set out in the Insolvency Law.

This does not mean that state regulation or a state licensing regime is called for, as there are many alternative self-regulatory arrangements in which a profession itself, with the approval of the state, regulates itself. Existing models include both the legal and notarial profession; in any case ethical and conflicts of interest rules would need to be developed, as would disciplinary mechanisms (in addition to the limited supervision by the court in a particular case). This question should be carefully examined with input from the administrator and judicial community.

We note that considerable guidance on these questions is available from international standards and research, such as the UNCITRAL Legislative Guide on Insolvency Law (Section III B and Recommendations 115-125, the World Bank, and the European Bank for Reconstruction & Development. Finally, the BIZTAR team has considerable comparative materials and research which could be made available to the reform team as needed.

OTHER POSSIBLE AREAS FOR REFORM

A number of other issues relating to insolvency administrators are typically examined in the reform process. These include a review of existing compensation and incentive mechanisms, the need for (and availability of) liability insurance for administrators, and finally whether or not firms (as opposed to individuals) can serve as administrator.

Implementing Reforms Relating to Insolvency Administrators Around the World

Professionalizing and regulating administrators is considered by the World Bank as one of the most frequent reforms ("Top 5 Reforms") in the world, constituting 16% of total insolvency reforms implemented since 2005. The following countries in the region have implemented reforms relating to insolvency administrators in the last five years:

- Bosnia & Herzegovina;
- Latvia;
- Poland (new law on insolvency administrator licensing passed);
- The Russian Federation (introducing professional qualification standards and regulating compensation);
- Albania (established agency to supervise administrators); and
- Romania (though note that the World Bank considers the Albanian reform a "negative reform" which increased the cost of insolvency procedures because it created a fund to reimburse the expenses of insolvency administrators in cases where the debtor has no assets; 1.5% of the total amount recovered from insolvency procedures now has to be paid into that fund).

(Source: World Bank, 2009, 2010)

SETTING TIME LIMITS & LIMITING APPEALS

TIME LIMITS

One of the key findings of the BIZTAR assessment is that insolvency procedures take too long and that a party seeking to delay the procedure can file multiple interlocutory appeals. Naturally strengthening the implementing institutions and strengthening the capacities of judges, administrators and other insolvency professionals should increase the efficiency of the system and reduce the time. In addition, consideration should be given to whether time limits can be imposed for key procedural steps and / or for overall liquidation and plan procedure (reorganizations). The current overall time limit of five years for liquidation and three years (or five for certain cases) for plan procedures could be shortened, and additional limits could be set for the "preliminary procedure."

However, the challenge of attempting such time limits is that there is a great variation in the complexity and value at stake for insolvency procedures; the reform should be sensitive this fact. Likewise, it is a challenge to enforce such time limits, as is seen in current practice where cases do drag on far beyond the current time limits. Any such reform would require legal amendments.

Another problem to bear in mind is that the notification process (service of process) in Moldova reportedly continues to be unreliable, particularly in Chisinau. As a result judges are not always confident that all parties are aware of a court date or filing deadline, and are accordingly sometimes unwilling to sanction a party for missing a court date and to enforce strict time deadlines. These problems can be remedied through reforms to the process (for example online posting and notification) or improvements in the coordination with the post office. Interestingly, informants advised the BIZTAR team that notification problems were not as severe in courts outside of Chisinau, perhaps because the judicial and legal communities outside the capital are small and it is easy for judges to ascertain that all the parties have received notice.

SHORTENING & LIMITING APPEALS

It may be possible to set shorter time limits for the consideration of appeals by the Supreme Court (which currently hears all interlocutory appeals from the Economic Court of Appeals). However, this reform would be unpopular and difficult to enforce. Indeed we should bear in mind that the Supreme Court hears a great variety of appeals and some may be more important and urgent than insolvency cases.

Another possible reform would be to limit the types of interlocutory appeals that can be brought in insolvency cases. As set out in detail in Part II, the BIZTAR team identified 22 possible appeals for liquidation cases, which can delay the process by two or more years, if these appeals are abused or applied in bad faith as delaying tactics. Of course a number of these appeals are basic in their nature and the right to appeal court judgments is a fundamental right, so any such reform would have to be carefully designed.

The World Bank reports that introducing or tightening statutory time limits and streamlining appeals were relatively frequent insolvency reforms, making up approximately 28% of insolvency reforms around the world since 2005. During this period several countries in the region implemented such reforms:

- Bulgaria (New Civil Procedure Code and Law for Commercial Registry, some of the new provisions will speed up bankruptcy cases)
- Albania (establishing statutory time limits);
- Russian Federation (reforms to speed up liquidation); and
- Tajikistan (statutory time limits and reduction of costs).

SIMPLIFIED INSOLVENCY PROCEDURES FOR SMALL BUSINESSES

Another possible reform is to introduce streamlined procedures for insolvencies involving small businesses (below a certain threshold of annual turnover, or based on outstanding creditor claims). Such an approach exists in France for example, and was recently introduced in Albania.

THE PARTICIPATION OF SECURED CREDITORS

Perhaps the most controversial question in insolvency is what involvement and rights should be granted to creditors, and in particular creditors that lent money to the debtor company and were granted a security interest in moveable property or a mortgage in real estate to guaranty the loan ("secured creditors"). Although it is a simplification, one can say that Moldovan law, like German law, is generally considered pro-creditor in its approach and creditors do have the right to vote on major decisions, to approve a number of acts by the insolvency administrator and more generally to participate in the insolvency procedures.

This pro-creditor approach (which contrasts notably with the French law approach of limiting the role of the creditors) may also be the optimal one to take for a transitional economy such as Moldova: several economists have argued that in countries where investor protections are weak and the judiciary is not strong and/or has relatively limited capacity to analyze the economic viability of insolvent companies, a creditor friendly law is optimal (Ayotte & Yun, Matching Bankruptcy Laws to Legal Environments, 10 Journal, Economics & Organization (2007), p. 1). This approach has been taken by

World Bank economists as well (see e.g. Djankov et al., Debt Enforcement Around the World (2007), p. 42) and the World Bank considers reforms that strengthen the rights and participation of creditors as positive reforms which increase the recovery rate.

A major argument in favor of pro-creditor systems where secured creditors enjoy legal protections, participate actively and are repaid promptly is that such systems foster the development of credit markets by lowering credit risks to lenders. Likewise the insolvency process tends to be more efficient where secured creditors are involved and defending their interests, since the banks will have considerable knowledge of the debtor's business and can help design and implement efficient reorganization plans or facilitate efficient sales of the business or its assets.

Several Moldovan insolvency practitioners (particular those representing banks, who are of course usually the major secured creditors) and law professors indicated to the BIZTAR team that even if the law was in principle "pro-creditor," Moldovan judges tended in practice to favor parties other than the secured creditor, such as other non-secured debtors like employees and suppliers, or the debtor company itself. As in many formerly communist countries in the region, there appears to be a cultural bias in Moldova against secured creditors and the enforcement of their rights against debtors.

Regardless of these possible biases, there are a number of concrete reforms that might be considered that relate to the participation of secured creditors. We note that these reforms require fairly complex amendments to the law and must be very carefully designed. We also note that the treatment of secured creditors in liquidation as their treatment in reorganization are quite different and involve different considerations.

VOTING RULES

Several informants advised the BIZTAR team that it is necessary to clarify the creditor voting rules (Meeting of Creditors). More specifically, there is a need to clarify when and how secured creditors can vote, as well as to analyze the so called "double majority" requirements. As in many countries, secured creditors do not have voting right relating to the liquidation (Arts. 69, 182, 183), but do in the case of reorganization.

PROTECTING VALUE OF SECURED ASSETS

Another important area is the protection of secured assets and compensation for depreciation during the insolvency process ("adequate protection") and who (the administrator or the secured creditor) can sell and otherwise deal with the secured property during insolvency,

FEES

Finally, there is lack of clarity on the fees charged to secured creditors upon the sale of the secured assets from the insolvency estate (this fee is used to pay for insolvency expenses and the fees of the administrator) (I.L. Art. 129). A related problem is whether or not such fees are payable if the secured creditor exercises its right to sell assets directly.

ABM PROPOSAL

The Association of Banks of Moldova (ABM) has proposed several amendments, including a proposal to exclude assets subject to a security interest from the insolvency estate, so that secured creditors do not

even participate in the insolvency process and can exercise their foreclosure rights. See Annex 9. This is a fairly radical reform which strongly favors secured creditors to the detriment of all other types of creditors (for example unsecured creditors, employees, trade creditors) and would need considerable debate and analysis. A particular concern is the fact that excluding secured debts from insolvency defeats one of the main goals of insolvency, which is to treat all debts collectively (insolvency is often referred to as "collective procedures"). Another major concern is that exempting secured creditors would make it difficult to successfully reorganize most insolvent companies, since the major creditor would often be foreclosing on key real property or machinery thereby reducing the value of the company as a going concern or making it impossible to continue operations.

It would certainly represent a departure from the German model, but there are some European jurisdictions, such as the Netherlands, which allows suspension of the "automatic stay" or moratorium for secured creditors. In contrast, Russia has taken the opposite approach, as its law causes secured creditors to lose their secured status automatically upon the start of insolvency ("lien stripping"); they are granted priority upon recovery. (See C. Averch, Lien Stripping Under Russian Bankruptcy Law: Is it Fair?, 105 Commercial Law Journal, 77 (2000).

In any case we believe that debate and analysis during the insolvency reform process is extremely important, and recommend that the Government of Moldova engage all stakeholders, including the ABM, in the reform process. The BIZTAR team would be happy to provide further comparative research and analysis on this question if there is interest.

Other Countries in the Region Implementing Similar Reforms

- Russian Federation (2008-2009) introduced several changes to its insolvency law, including to "strengthen the legal status of secured creditors."
- Poland: Recently implemented some reforms to more clearly define the priority of secured creditors.

Additional Resources

UNCITRAL Legislative Guide on Insolvency Law, Part III C "Creditors: Participation in Insolvency Proceedings, and Recommendations 126-136 (pp. 190-202), and Annex I ("Treatment of Secured Creditors in Insolvency Proceedings")

S. Schwarcz, *The Easy Case for the Priority of Secured Claims in Bankruptcy*, 47 Duke Law Journal 425 (1998).

REALLOCATING ROLES AND RESPONSIBILITIES

As discussed in Part II, Section 5 above, there is currently a debate on the respective roles and responsibilities of the principal actors in insolvency procedure, namely the judge, the insolvency administrator and the creditors.

A possible approach is to limit the role of the judge, who could intervene only at key points in the procedure, should establish certain facts and approvals (for example to confirm the legality of a reorganization plan) and to resolve disputes. The administrator and/or the creditors would undertake most of the substantive tasks in the procedures (selling assets or designing a reorganization plan for example). By way of example, such a reform could reduce the supervisory role of the judge, who today

pursuant to Art. 77 of the Insolvency Law must supervise all actions of insolvency administrator and all the documents issued by the Administrator—which creates an enormous workload and poses considerable challenges.

This approach is recommended by ALARM, which represents the administrator profession. Likewise, other experts believe that a limited role for the judge would conform to the philosophy of Moldova's new Code of Civil Procedure, which has reduced the role of the judge and required the parties to play a more active role in litigation.

In practice, however, amending the law to reallocate these responsibilities is an enormous and complex undertaking that requires considerable re-engineering. The logic and integrity of the German approach which was used as a model for the Moldovan law could be lost if such a reform was not done carefully. And of course, any increase in the role of one actor must come with a commensurate increase in that actor's capacity and responsibility. At this point in time, for example, it is not clear that the administrator profession is ready to take increased responsibility.

For these reasons, we have placed this type of reform towards the bottom of our list, as it is a difficult one to design and implement and because it may be too early to do so.

OTHER REFORMS NOT ANALYZED IN THIS REPORT

PLAN PROCEDURE OR REORGANIZATION

As noted above, the BIZTAR team decided not to conduct an assessment of reorganization, or "Plan Procedure" to use the term chosen by the Moldovan legislator. There were several reasons for this, including the fact that we understand it is used fairly infrequently in Moldova (one informant estimated such cases to constitute less than 1% of cases, but there are no official statistics available to confirm this estimate), and the fact that reorganization is usually applied for insolvencies of state-owned entities, which are by their nature exceptional cases. Another reason is that reorganization is likely not the procedure applicable to the World Bank Doing Business fact pattern, and the BIZTAR team focused its work on liquidation, which is the applicable procedure.

This does not mean that reforms aimed at improving the implementation of reorganization procedures are not needed or would not be worthwhile. We note that since the Moldovan law was modeled on German law, which itself adopted the US system of reorganization (known as "Chapter 11" after the chapter in the US Bankruptcy Code), experts from the US as well as Germany would be in a good position to assist in future assessment and reform initiatives.

Finally we do note that most of the institutional strengthening and training initiatives which are discussed in this Report would help improve the implementation of both liquidation and reorganization procedures.

OUT OF COURT WORKOUTS AND NEGOTIATION

We understand that debt restructuring and related negotiations take place in Moldova. Experience in other jurisdictions suggests that certain mechanisms can be put into place to encourage such out of court workouts, which then results in a lower number of cases in the courts. Developing such mechanisms can be challenging, but further research may be warranted. We note that this is an area which the World Bank provides technical assistance.

FIGURE 1: TOP FIVE REFORM FEATURES IN CLOSING A BUSINESS

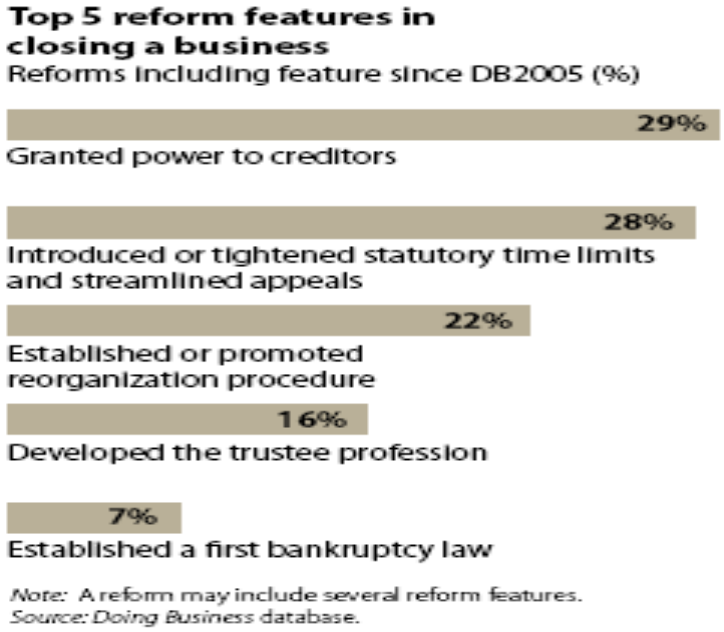

Table reproduced from Simeon Djankov, *Bankruptcy Regimes during Financial Distress* (World Bank 2009).

CONCLUSION

A number of ways to strengthen Moldova's business insolvency system and improve the recovery rate for creditors are outlined in this Report. These are based on the BIZTAR team's assessment, international best practices and comparative analysis, and can be ordered in terms of how urgent they are and how much time and resources their implementation will likely take. The possible reforms include the following:

1) Strengthening the judicial system's capacity to manage and decide insolvency cases through training, preparation of manuals, automation, strengthening court staff and enforcing ethics rules;

2) Ensuring that if jurisdiction over insolvency cases is transferred away from the Economic Court of Appeals, the transfer will be carefully planned and adequate training will take place;

3) Strengthening the capacity of Moldova's insolvency administrators, and establishing self-regulatory mechanisms;

4) Amending the law to streamline proceedings and limit appeals;

5) Clarifying and increasing the participation by secured creditors in insolvency procedures through possible amendments to the law; and

6) Evaluating possible reallocation of the roles of judges, administrators and creditors through amendments to the law.

The reforms and initiatives outlined above require a mix of institutional strengthening, training and in some cases amendments to the law. It is clear that a major overhaul of the legal framework is *not* needed, as the law is basically well drafted and complete. Instead, it appears that there is principally a need for clarifications; filling in details, helping the participants fulfill their role properly, and perhaps some reallocation of functions. In contrast, considerable work and resources will be needed to strengthen the institutions and professionals responsible for implementing the legal framework. The scope and resources needed to effectively strengthen these institutions should not be underestimated.

In any case, it is vital to ensure that the reform process is participative, collaborative and transparent and that all private and public sector stakeholders are involved. For example: public hearings, informal forums and workshops can be held and written comments on draft legislation and regulations can be solicited. Already today there are proposed reforms from associations such as ALARM and the ABM and there are prominent judges and academic experts in Moldova examining possible reforms; it is essential to involve such stakeholders in the reform process not only because they play a key role in the implementation of the law, but also because they have considerable understanding of the legal, financial and business issues involved.

Once the scope of the reforms and other initiatives has been decided by the stakeholders, it will be necessary to ensure that sufficient resources are available and allocated. Insolvency law is complex and reforming insolvency systems is challenging, controversial and involves important political and economic interests.

Finally, we note that a number of international institutions and bilateral donor agencies have experience in the area of insolvency reform and may be able to contribute technical assistance or other types of resources. These include the World Bank (including the IFC), the EBRD, USAID and other bilateral aid agencies. Since the Moldovan insolvency system was strongly influenced by German law, German insolvency experts would be well placed to provide training or legal reform assistance. Depending on the available resources, the BIZTAR team would be delighted to conduct further research, provide advice and of course respond to specific questions raised by this Report.

Ultimately, however, local ownership and expertise is essential for the reform to be successful. The input of the many Moldovan insolvency experts and practitioners, as well as that of all stakeholders must be obtained during the reform process.

ANNEX 1

Closing a business survey – Moldova 2010

[see attached file]

ANNEX 2

1. PROCEDURAL PHASES TO INITIATE INSOLVENCY PROCEEDING

No.	Action to be carried out	Act/document to be obtained	Purpose	Official/unofficial cost	Normative base
1.	Submit the introductive application	Introductive application	To initiate the insolvency proceeding	State fee – MDL 400	Arts. 22, 28-30, 32 of Insolvency Law
2.	Accepting the action for examination and applying the insurance measures	Conclusion on accepting the application for examination and appointment of temporary administrator	Deciding on the insurance measures towards the debtor	-	Art.35 of Insolvency Law
3.	Notification regarding the application of insurance measures	Notifications	Ceasing the activities with debtor's assets	Postal costs (from MDL 100 up to MDL 200),	Arts.37, 38 of Insolvency Law
4.	Determining the assets' situation and the terms to initiate the insolvency proceeding	Report on temporary administration	Appreciating the grounds of insolvency and of facts ascertained during the examination of introductive application	Administrator's fee (from MDL 400 up to MDL 1000), plus salary of MDL 5589/month	GD RM no. 743 of 11.06.2002, GD RM no.152 of 19.02.2004; Art.36, 38, of Insolvency Law
5.	Examination of introductive application	Decision to initiate insolvency proceeding	Initiation of insolvency proceeding	Costs for publishing the Decision in *Monitorul Oficial* of RM (from MDL 1200 up to MDL 1500)	Art.44 of Insolvency Law

Analysis and comments

In some cases, the temporary procedure is delayed because the debtor's management does not transfer the documents regarding economic and accounting activities to the temporary administrator due to different reasons.

According to Art.36 of Law on Accounting, as well as in order to make an inventory of assets, the debtor has to transfer to (in case of removal of the debtor from the company's management) or to provide (in case of maintaining the right to manage the debtor) the temporary administrator with constitutive documents of the company, records, minutes of the General Meetings of Shareholders and Board of Management, the state registration certificate, documents that confirm the rights to company's

assets and the right to sale the company's assets, company's ledgers, auditor's and tax and financial body's reports, company's stamp, accounting documents as well as other documents stipulated by law.
In practice, the temporary administrator cannot obtain the requested documents from the debtor. Under these circumstances, it should be stipulated the criminal responsibility in the legislation, including material responsibility for the offences of executive body. The applied measure shall discipline the managers of debtor's company and will allow significantly reducing the time of carrying out temporary procedure, which will reduce the costs of this procedure.

2. PROCEDURAL PHASES DURING THE INSOLVENCY PROCEEDINGS

No.	Action to be carried out	Act/document to be obtained	Purpose	Official/unofficial cost	Normative base
1.	Initiation of insolvency proceedings by the Economic Court of Appeal	Court ruling	To apply the effects of insolvency proceeding towards the debtor	State fee MDL 400	Art.44 of Insolvency Law, Law on State Fee
2.	Publication of Decision of ECA in the *Monitorul Oficial* of RM by insolvency administrator	Note in the *Monitorul Oficial* of RM	Notification of interested persons about the initiation of insolvency proceedings towards the debtor	MDL 6 for one sq cm of advertisement text. On average, MDL 1350 for decision	Art.45 of Insolvency Law
3.	The insolvency administrator shall send registered letters notifying about the ruling of ECA to – 1. Debtor that owns all the company's documents related to economic activity. 2. State Registration Chamber that keeps the Register of Legal Persons; 3. Ministry of Justice that keeps the Register of Mortgage over Estates; 4. Ministry of Informational Technologies that keeps the State Register of Transport; 5. State Enterprise Cadastre that keeps the Register of Estates; 6. State Tax Inspectorate that keeps the Register of Debtor's subdivisions and of bank accounts. 7. Independent registrators (12) that keep the registers of estates; 8. Banks where the debtor has current accounts 9. AGEPI – that keeps the State Register of Copyright, Trademarks, and Invention Patents; 10. Post office that keeps the commercial correspondence of debtor. 11. Other relevant institutions and organizations, depending on the case.	Notifications drafted by the insolvency administrator	Introducing the note about the initiation of insolvency proceedings against the debtor in respective registers	Postal services to send a registered letter MDL 5.20 On average, 20 registered letters are sent. The postal costs are estimated on average as MDL 100 to 200	Art.45 of Insolvency Law
4.	Making all the necessary	The excerpt from the	Removing the	Services of State	Law on State

	modifications regarding the replacement of debtor's executive body with the insolvency administrator in the State Register of Legal Persons	State Register of Legal Persons issued by the State Registration Chamber	Executive Body from the debtor's management	Registration Chamber for making modifications and issuing the excerpt	Registration of Legal Persons and Individual Enterprises.
5.	Extracting the company's stamp and economic activity related documents	Stamp, certificate for issuing the stamp, State Registration Certificate, constitutive documents, records and minutes of Shareholders' Meetings, auditor's reports and other bodies' reports, internal documents of debtor, accounting documents, etc.	Assessment of pre-existing relations of debtor and evaluation of its assets situation by taking over all ongoing contracts, judicial files of debtor	In case of lost, destroy or deterioration of requested documents and stamp, the insolvency administrator shall re-obtain these, which leads to additional costs, such as: 1.Publication of two announcements regarding the loss of stamp and Registration Certificate in *Monitorul Oficial*: 2. Ordering a duplicate of Registration Certificate 3. Ordering a new stamp:	Law on Registration of Legal Persons and Individual Enterprises, Law on Accounting
6.	Conducting reporting and claim validation-related activities.	1. Report of insolvency administrator, and depending on the case, the reorganization plan of debtor 2. Claim table	1.Validation of creditor's claims 2. Establishment of Creditors' Committee 3.Adopting decisions regarding the application of outstanding debt liquidation or reorganization plan	There are no direct costs	Art.Art.67,123 of Insolvency Law
7.	Establishing the Commission for outstanding debt inventory	Order to appoint the Inventory Commission	Determining the inventory of all corporative and non-corporative assets from the outstanding debt	Costs related to remuneration of members of Inventory Commission and on-site visits. It is different from case to case.	Art.117 of Insolvency Law and the Regulation on Inventory approved by Order of the Ministry of Finance
	If there is no outstanding debt, the insolvency proceeding will stop, and the debtor's liquidation procedure shall start	1. Decision of Creditors' Meeting. 2.Decision of ECA to stop the insolvency proceeding	Paying the validated claims and erasing the debtor from the State Register of Legal Persons.	1. Costs regarding the publication of the Note on convoking the General Creditors' Meeting in the *Monitorul Oficial* of the RM. 2. Costs related to the publication of decision of ECA	Art.Art.154 of Insolvency Law
8.	Appointing the expert who has to evaluate the assets from the outstanding debt	1. Announcement regarding the contest for selecting the evaluator. 2. Decision of Creditors' Committee through which the winner of the contest is approved and his/her remuneration is determined	Estimating the market price of the assets from the outstanding debt for their disposition of during the insolvency proceeding	Expert's remuneration and on-site visits related costs	Art.Art.78 (5),79 (6),119,124 (3) of Insolvency Law
9	Disposition of the outstanding debt	Decision of Creditors' Meeting or Creditors' Committee to approve	Transforming the outstanding debt in monetary means that	1. Costs related to the publication of the note on convoking the	Art.Art.124,126 of Insolvency Law

		the market price for the assets and the procedure of disposition of the outstanding debt	have to be distributed between creditors	General Creditors' Meeting in *Monitorul Oficial*. 2. Costs related to the publication of the notification about the disposition of the outstanding debt 3. Costs related to organization of auction or contest of disposing of the outstanding debt	
10	Distribution of money received as a result of disposition of outstanding debt	List of distribution of outstanding debt approved by the court	Paying the creditors' claims and stopping the insolvency proceeding	No direct costs	Art.139-146 of Insolvency Law
11	Stopping the insolvency proceeding and/or erasing of the debtor from the State Register of Legal Persons	Final report of insolvency administrator and Court Decision to stop the insolvency proceeding	Completing the insolvency proceeding	Costs related to the publication of ECA decision in *Monitorul Oficial* of RM	Art.147-150 of Insolvency Law

Analysis and comments

All actions and procedures stipulated above have a real importance for the insolvency proceedings and cannot be reduced or combined; the only thing that can be subject to modification is the cost of insolvency administrator or creditors related to the publication of decisions to initiate insolvency proceeding and/or the announcements and notes during the insolvency proceeding in *Monitorul Oficial* of RM. These acts are issued by courts that are state public authorities and respectively, the information of the public about the content of issued acts should be ensured by the State, for example, the decisions adopted by the Government, Parliament, Constitutional Court, etc. that are also state public authorities.

3. PROCEDURAL PHASES FOR LIQUIDATION (DURING INSOLVENCY)

There are two necessary procedural phases, and namely:

1. Phases necessary to liquidate the outstanding debt that begin with the Decision of Creditors' Meeting to stop the debtor's activity and end with the Decision of Creditors' Meeting and court to stop the insolvency proceeding due to no outstanding debt.
2. Phases necessary to liquidate the debtor as legal person that start with the Decision to stop the insolvency proceeding due to no outstanding debt and end with the Decision of the State Registration Chamber to erase the debtor from the State Register.

No	Action to be carried out	Act/document to be obtained	Purpose	Official/unofficial cost	Normative base
1.	To convoke the Creditors' Meeting to decide on the insolvency proceeding (Art. 123 of Insolvency Law)	Decision of Creditors' Meeting to stop debtor's activity	To dispose of and liquidate the outstanding debt, the administrator needs the agreement of creditors to dispose of and liquidate the outstanding debt (Art. 124 (11) of the Law), otherwise he/she is responsible towards the creditors.	Publication of the announcement about the organization of Creditors' Meeting in *Monitorul Oficial* of RM (up to MDL 300)	Art. 122-124 Insolvency Law
2.	Inventory of outstanding debt.	1. Administrator's	To determine the	Travel costs;	Arts.59-60, 117

	In accordance with Insolvency Law, the administrator should make an inventory of all assets (corporative and private) that are covered by outstanding debt. The inventory shall be made in the presence of the debtor. A fact for the inventory is that the administrator has to introduce in the outstanding debt all the goods he/she finds, irrespective of the fact if these have or not documents. When a third party based on a real or personal right can prove that the asset cannot be included in the outstanding debt, then he/she can require in general the administrator not to include the good in the debt, and in case of refusal, to ask the competent court to separate this good from the outstanding debt. At the same time, if the good, which separation is requested, was sold by the debtor before the initiation of insolvency proceeding or by the administrator after the initiation of insolvency proceeding, the person, who has the right over this good, has the right to transferred value, and in the case when this can be divided from the outstanding debt, he/she can claim the value.	order to carry out the inventory and to establish the Inventory Committee. 2. List of inventory 3. Act of receipt and acceptance. 4. Register of outstanding debt. 5. Court ruling regarding the introduction of goods in the outstanding debt	size, content and state of outstanding debt. To inform the creditors and court. To obtain the necessary acts. To dispose of/sell (registration of immovable goods or other goods which registration is compulsory)	In case of necessity, remuneration of dokers, warehouse keepers, etc. Costs for forming the immovable and/or costs for registering their ownership	of Insolvency Law; Regulation regarding the inventory approved by the Order of the Ministry of Finance No. 27 of 28.04.04
3.	Evaluation of outstanding debt. After the inventory of outstanding debt, the administrator shall evaluate the assets taking into account all the circumstances. Law does not bind the administrator to hire experts for this. Although the evaluation should be approved by the creditors, and if experts are hired, they should be hired on contest basis, and their pay rate should be approved by the creditors. In conclusion, the administrator can evaluate the outstanding debt, if he is qualified for this. For example, in Romania, the insolvency administrators have to pass an evaluation exam.	1. Decision of Creditors' Committee regarding the approval of evaluation costs, 2. Evaluation report 3. Decision of Creditors' Committee regarding the approval of evaluation report	To set the initial selling price. The administrator is personally responsible for costs that are not coordinated with the creditors.	Experts' fee: Chisinau: 3-5 % regions: 3-10 %	Arts. 117, 119 of Insolvency Law.
4.	Liquidation and/or disposal of the outstanding debt. The Insolvency Law specifies two legal procedures to obtain the product from the outstanding debt. Thus, it can be disposed of and/or liquidated. Liquidation of outstanding debt. 1. To set the price and establish the auction or bidding commission. Based on the evaluation report, the Creditors' Meeting or Committee shall set the initial selling price that cannot be lower than estimated value. After setting up the price, the Creditors' Meeting or Committee will establish an Auction or Bidding Commission and its remuneration. 2. Selling of outstanding debt. It should be mentioned that according to general rule, the liquidation of outstanding debt can take place only on action or bidding basis. As an exception, the Law stipulates the sale of outstanding debt based on direct negotiations only after three unsuccessful auctions or bids. Thus, after setting the price and	1. Decision of Creditors' Meeting or Committee regarding the price, further decrease of price or sale of goods by the administrator based on direct negotiations.	In accordance with Insolvency Law, the Creditors' Meeting has the duties to set the term, way and selling price of goods. The law-maker conferred such authorities to creditor because the product obtained from the outstanding debt should be directed to meet the estate's claims. In other words, the creditors are the most interested in obtaining a bigger product as a result of liquidation of outstanding debt.	1. Informative note in *Monitorul Oficial* – from MDL 300 2. Remuneration of members of Auction/Bidding Commission. 3. If an intermediary is involved in auction/bid, the cost is - 1-3 % (Chisinau); 1-10 % (region). 4. Costs for disposal - 4 % 5. Costs related to disposal of the outstanding debt – 5 % If the costs are lower or higher, then their real quantum is set.	Arts. 52, 66, 124 of Insolvency Law; Regulation on auctions and discount auctions.

	establishing the auction/bidding commission, the administrator shall liquidate the outstanding debt in the most advantageous conditions and in the quickest time. If the goods are not sold during the auction or bid, these will be tried to be sold again at lower prices, which requires the approval of Creditors' Meeting or Committee. If the goods cannot be sold at the lowest prices, the Creditors' Meeting has the right to authorize the administrator to sell the outstanding debt on the basis of direct negotiations. In this sense, the law does not stipulate the minimum price that can be accepted by the administrator. From the logical point of view, it is correct that the minimum price does not exceed the initial price that was approved by the last organized auction.				
5.	Disposal of the outstanding debt 1. The disposal of the outstanding debt consists in obtaining products from that through possession and/or use. Thus, the disposition of debt exclude the act of disposal over the outstanding debt, i.e. it is disposing of without selling. Practically this can take place through an efficient management depending on the nature of outstanding debt. In this context, based on assumptions, the administrator of Mirage SRL can dispose of the outstanding debt by continuing the main activity of the company during the entire insolvency proceeding (providing accommodation). At the same time, if there is any share of outstanding debt that does not participate in providing accommodation services (premises, equipment, machinery, movable assets), with the agreement of the Creditors' Meeting, the administrator can rent them on the condition that this does not decrease the outstanding debt. 2. Another possibility to dispose of the outstanding debt is to pursue the claims of Mirage SRL towards other companies. This is a very efficient way especially because the law facilitates this procedure by delaying the payment of state fee by the insolvent companies. 3. During the disposal of process and/or liquidation of the outstanding debt, the insolvency administrator can discover legal acts concluded by the debtor through which the assets were affected, i.e. the outstanding debt. In this context, the Insolvency Law vests the administrator with the right to initiate proceedings to cancel the legal acts or corresponding transactions.	Decision to approve, issued by Creditors' Meeting	Administrator can dispose of the outstanding debt only with creditors' agreement. If there is no creditors' agreement, the legal acts concluded by the administrator shall be considered invalid, since the later acted without authorizations. In this situation, the administrator shall be responsible for caused damage due to non-coordinated sale of outstanding debt.		Art. 124 (1), (11) of Insolvency Law, Art. 113-114, 115 of the Civil Procedure Code, Art. 86 (2) of Law on State Fee
6.	Secured goods. 1. Disposal of the secured goods. The administrator can freely dispose of a secured good, if he/she possesses the good. In the case when the good is not in the possession of the administrator, he can exercise the right of enforcement (to	1. Creditor's agreement 2. Court ruling regarding the transfer of good into the possession of creditor or the	Secured good gives priority to the secured creditor in meeting the claims. In this sense, the disposal of these goods should be	1.Costs related to validation 2. Costs related to disposal set in their real quantum.	Arts. 127-130 of Insolvency Law, Art. 491 of Civil Code, Art. 79 of Law on Mortgage

	obtain the possession over the good) or enforced administration to remove the impediments related to possession. The Insolvency Law shall bind the administrator to exercise the obligation to inform the creditor, upon his request, about the state of assets, at the same time, allowing the creditor to examine them and/or to see the accounting ledgers and other documents of the debtor. We would like to mention that the law-maker made a confusion in Section 3 of Chapter V of Insolvency Law regarding the way of disposing of secured assets. Thus, on one hand, Art. 127 (2) specifies that the administrator can freely dispose of the asset secured with a real security. On the other hand, Art. 130 stipulates that the administrator can use the secured good only with the agreement of secured creditor. The disposal involves both the use and sale of goods. 2. Sale of secured goods. The secured good can be sold in more ways. a) One of these ways is the sale of secured good by the administrator, but not before notifying the secured creditor. In this situation, the creditor is given one week during which he has to express himself regarding a more advantageous possibility of selling the good. Thus, if the creditor gives a more advantageous possibility within the given period of time, the administrator has to take into account this possibility. b) Another way of selling the secured good is to transfer the good into the possession of secured creditor. In this situation, the court gives the secured creditor a term for selling the good, and if the good is not sold during this term, the administrator can value the good. The validation and valuation costs shall be deducted from the product obtained from valuing the secured goods, and the change shall cover immediately the claim of secured creditor. The validation and valuation costs are fixed as 4 % and respectively 5 % of the product. But in practice, the validation and valuation costs are estimated based on their real quantum. c) Another possibility to sell the secured goods is their sale under court's supervision. The secured good can be sold under court's supervision. As a rule, this way is applied only in the cases stipulated expressly by Law, and an exception can be applied only when the creditors cannot reach an agreement on decision-making. An example can be the insolvency proceeding of SRL Adlidorus-Part, where the creditors did not reach an agreement regarding the selling price of secured good. Thus, as a result of administrator's request, the insolvency court decided the good to be sold by the administrator under court's supervision.	refusal to transfer.	coordinated with the owner.		

7.	Distribution of outstanding debt. Distribution to unsecured creditors is made depending on the existing means in the outstanding debt. The distribution is made by the administrator with the agreement of Creditors' Committee. Before any distribution, the administrator shall submit to court the list of claims that should be satisfied. The administrator should take into account the appealed claims. In this sense, the creditor whose claim is appealed should present to the administrator the evidence of appealing the refuse to validate and the pending process. If the evidence is presented within 15 days, the administrator shall book the share from the corresponding outstanding debt. The administrator has to take into account the secured creditors who within 15 days before the distribution have to submit the evidence that the secured claim was not satisfied fully or the abjure of real securities. At the same time, the administrator has to take into account the conditioned claims by booking the corresponding share of outstanding debt. Although if at the final distribution, the condition for conditioned claim is removed, this will not be taken into account. Final distribution session. For final distribution, the creditors are convoked for their final meeting. If at the final distribution, the claims of all creditors were satisfied fully, the administrator shall send the excess to the debtor. When the insolvency proceeding is stopped, and after the final distribution meeting some deposits have became free, some paid amounts were refund from the outstanding debt due to different reasons or goods that belong to outstanding debt were discovered, the court shall decide, upon administrator's or unsecured creditors' request or in camera, on an additional distribution after the cancellation of insolvency proceeding.	1. Distribution list; 2. Decision of Creditors' Meeting/ Committee to approve the distribution list; 3. Appealed distribution list; 4. Decision on refusal to appeal or modification of distribution list; 5. Appealing the above-mentioned decision; 6. Decision of Appeal court; 7. Final report of administrator 8. Decision of Creditors' Meeting regarding the appeals of final distribution list; 9. Decision of Creditors' Meeting regarding the share of outstanding debt that was not valued	To extinguish the creditors' claims. To stop the insolvency proceeding. To solve the problems related to the excess of outstanding debt or claims that have been extinguished but which product (monetary means) was not used.		Arts. 139-152 of Insolvency Law
8.	I. Stopping the insolvency proceeding that has the effect to liquidate the debtor. 1. If as a result of final distribution, the claims of all creditors were satisfied, the court shall decide to cease the insolvency proceeding. We would like to specify that in this situation the decision cannot be appealed. This should be published in *Monitorul Oficial* of the Republic of Moldova. Within two weeks from the publication, the administrator shall present the court decision to State Register of Companies and State Register of Organizations that is considered as basis for deleting the debtor from the registers. From the moment the debtor is deleted from the State Register of Companies or State Register of Organizations, the debtor is considered liquidated. II. Stopping the insolvency proceeding due to other reasons.	1. Decision to cease the insolvency proceeding; 2. Decision to delete; 3. Decision on rejecting the introductive application and liquidation of debtor; 4. Appeal of the above-mentioned decision. 5. Note regarding the insufficiency of outstanding debt; 6. Decision to stop the insolvency proceeding due to insufficient outstanding debt.	To liquidate the debtor	Informative note; Remuneration of temporary administrator; Remuneration of liquidator.	Art. 153 of Insolvency Law Art. 86-100 of Civil Code

	1. Refusal to initiate the insolvency proceeding due to insufficient outstanding debt. If it is ascertained that the debtor does not have his own goods or that his goods cannot cover the costs for insolvency proceeding, the court shall reject the introductive application and shall decide on the liquidation of the debtor. The decision to reject the introductive application can be appealed. The rejection of introductive application shall not take place if there is enough money to cover the costs for insolvency proceeding. It should be mentioned that in this situation the court concludes that the debtor is insolvent, but since there is no outstanding debt or it cannot cover the costs for insolvency proceeding, the court rejects the introductive application. In this sense, if the creditor deposits an amount of money that is enough to cover the costs of insolvency proceeding, the court will initiate the proceedings. In case of application's rejection due to lack of outstanding debt, the court shall appoint a liquidation commission or a liquidator to liquidate the debtor. The Insolvency Law does not stipulate the procedure that should be applied during debtor's liquidation based on Art. 153. As well, the Insolvency Law does not stipulate if the Decision on rejection of introductive application should be published. In practice, the liquidation procedure applied according to Art. 153 of Insolvency Law is that for company's liquidation stipulated in the Civil Code. However, this procedure shall not be applied each time, if it can be applied in the process of examination of liquidation from the point of view of insolvency. Practically, the Decision on introductive application rejection is published in M.O. by giving the creditors a 6-month period to submit the claims. After the expiry of 6 months, the court shall liquidate the debtor based on the final report of the liquidator. The decision serves as basis to delete it from the State Register. 2. Stopping the insolvency proceeding due to lack of outstanding debt. If after the initiation of insolvency proceeding, it is established that the outstanding debt is not sufficient to cover the costs of the process, the court shall stop the proceeding. If the creditors or a third party pays for the costs of insolvency proceeding, the cancellation of proceedings shall not be ruled. Before adopting the decision to cancel, the court shall hear the creditors' meeting, administrator and creditors of the outstanding debt. The administrator shall inform the court about the insufficiency of outstanding debt. After this, the administrator shall distribute				

	the existing outstanding debt. Law specifies that the liquidation of the debtor according to Art. 154 is carried out according to Art.153 para.(3)-(7).				

Analysis and comments

End of 6-month term from the Decision to reject the introductive application to the Decision to liquidate the debtor

We can mention here that, in practice, there is a 6-month period to submit the claims from the Decision to reject the introductive application and initiation of liquidation procedure to the Decision to liquidate the debtor from the State Registry of Companies and Organizations. In this context, it should be mentioned that the introductive application could be submitted by both debtor and creditor. We consider that it is important that in the case of submitting the introductive application by debtor, the Decision to accept it for examination should be obligatorily published in M.O. Hence, it is assumed that the debtor submits the introductive application, and the publication of decision cannot infringe his rights. At the same time, the Insolvency Law stipulates that the period of time during which the validation meeting should be organized should not exceed 15 days from the moment of first reporting meeting of the administrator, which also cannot exceed 45 days from the moment of publishing the decision to initiate the insolvency proceeding. So the creditors receive no more than 60 days to submit the claims during the insolvency proceeding. Thus, we consider important to mention that if the debtor's introductive application is rejected, the time for submitting the claims by the debtors should not exceed 60 days. Or, according to Art.153 of Insolvency Law, the introductive application shall not be rejected due to no insolvency basis, but due to no outstanding debt. In this sense, making a comparison with the practice of the Russian Federation, the Decision according to which the introductive application is rejected due to lack of outstanding debt stipulates expressly in its text that the debtor is insolvent and the application is rejected due to lack of outstanding debt. We welcome this practice, especially since the proclamation of insolvency brings about the debtor some opportunities such as the possibility of pursuing the debtors, cancellation of transactions (Art. 113-114 of Insolvency Law) by delaying the state fee payment, which gives the possibility to cumulate the outstanding debt and to pay the creditors, respectively.

We consider that in the case of stopping the insolvency proceeding on the basis of art. 154, the liquidation of the debtor should be made in accordance with art. 150 of law. This is because of the fact that the obligation to inform the creditors was made within the insolvency proceeding by publishing the decision to initiate. We consider necessarily to grant an additional period of time for submitting the claims, if the 60-day period has not passed from the decision to initiate the insolvency proceeding to the decision to stop the process.

Costs:

1. Publication of decisions, conclusions of insolvency court
   It should be mentioned that the publication of decisions and rulings of insolvency court brings about considerable costs. It is necessary that the decisions and conclusions of court, which publication is mandatory, be published based on a Note/Excerpt approved by the court that issued the act. This measure would reduce considerably the costs during the insolvency proceeding.
2. Mandatory publication of informative note on auction in *Monitorul Oficial*. We consider that since the goods can be in different places, it would be necessary the publication of informative note in local newspapers, and if the goods are not commercialized, at the discretion of administrator, the note can be published additionally in *Monitorul Oficial*. Moreover, not all participants in legal relations read *Monitorul Oficial*.

4.PROCEDURAL PHASES TO APPLY SUCCESSFULLY THE REORGANIZATION PLAN

No	Action to be carried out	Act/document to be obtained	Purpose	Official/unofficial cost	Normative base
1	To submit the application on reorganization plan procedure (by debtor starting with the introductive application until the distribution meeting or by the administrator)	- Decision of Creditors' Meeting to accept the plan's process - Court decision to apply procedure plan	- To initiate procedure plan; - To give time to prepare the plan correctly and justified	- If the application is drafted and justified by the debtor in person, it does not require essential costs. - If accounting and consulting services are required, about Euro 300-500 or 1-2%	- Insolvency Law. - Accounting Law. - Law on Attorney's Services.
2	To notify the State Registration Chamber about the application of procedure plan towards the debtor and to submit the Decision to court	- Note on the registration certificate that this is undergoing procedure plan. - Excerpt from the Register of Legal Persons that confirms that the company is undergoing procedure plan.	- To manufacture a new stamp with the syntagm "undergoing procedure plan" - To announce the public about procedure plan. - To change the examples of signature at the bank.	- To obtain the new excerpt, change of stamp and signatures – about MDL 450	- Insolvency Law. - Law on Notary - Law on State Registration of Legal Persons and Individual Entrepreneurs
3	To draft the plan to redress the debtor's solvability	- Decision of Creditors' Meeting to accept the plan - Court decision to confirm the plan. - Court decision to stop the insolvency process.	- To undertake the procedure plan and to pay the creditors in accordance with the order set in the plan.	- In order to have a real and executable plan, to convince the creditors about the plan's opportunity compared to liquidation of debtor's patrimony, it is necessary to apply for the services of some independent auditors to prepare the economic analysis (market research, company's possibilities, investments or costs that needs to be covered, revenues that can be obtained and how quickly) and by taking into account the cause that determined the default. Cost ranges between Euro 2000-4000 or 0-2% of the patrimony.	Insolvency Law. Law on Audit Activity.
4	Application to publish the decision on plan's approval and plan's excerpt in *Monitorul Oficial.*	To publish the note in *Monitorul Oficial.*	To inform the public, creditors who submitted their claims.	- To publish the decision – MDL 700; plan's excerpt another MDL 700-800.	Insolvency Law
5	The requirement to publish the decision to stop the insolvency proceeding and to continue the procedure plan in *Monitorul Oficial.*	To publish the note in *Monitorul Oficial*.	To inform the public, creditors who submitted their claims.	- To publish the decision – MDL 700 - 800;	Insolvency Law

6	Informing the State Registration Chamber about stopping the insolvency proceeding and continuation of procedure plan towards the debtor.	- Excerpt from the Registry of Legal Persons to restore the debtor's duties (management bodies) and to institute supervision by the administrator of procedure plan.	- to inform the public; - to change the signature samples at the bank or to remove the interdiction applied on debtor's accounts.	- to obtain the excerpt and to change the signatures – MDL 140-150.	Insolvency Law
7	Plan's implementation (reorganization of debtor or his activity, application of new services or streamlining the existing ones, changing the organizational structure, reducing the costs)	- Court decision regarding the cease of supervision (as a result of full implementation of plan, full payment of claims stipulated in the plan).	- To maintain the company, debtor's business; - To keep the jobs. - Full payment of creditors' claims or increase their recovery rate (sometime by loosing time)	- Differs depending on the complexity of debtor's activity reorganization and investments necessary for this, or to recover company's activity. About 3-5% of the patrimony.	Insolvency Law

Analysis and comments

We consider that the phases for accepting the procedure plan, confirming the plan and ceasing the insolvency process should be included in one phase. Especially, it is not necessary to introduce the note in the registry of legal persons and respectively, on the company's registration certificate about its ongoing procedure plan. First of all, this specification has no legal importance, does not produce any effects; second, this stipulation does not clarify and even misleads the public whether the company is undergoing through the insolvency proceeding or not, once the note appears in procedure plan. We would like to draw the attention that in accordance with Art.164 (4), 165 of Insolvency Law, the note that the company is undergoing the procedure plan shall be made from the moment the decision to apply the procedure plan is made, while the ceasing of insolvency proceeding happens, according to Art. 191 of the same law, only after the decision to confirm the plan is final. In practice, the company is undergoing the procedure plan for a while, but actually, the plan for redressing debtor's solvability is not approved by creditors or is not confirmed by the court. Both creditors' decisions and court's decision to confirm the plan can be appealed repeatedly and respectively, a formal procedure can be established. Additionally, it should be mentioned that the Decisions of Economic Court of Appeal that examines the insolvency reasons are final from the moment they are passed.

Under these circumstances, we think that more reasonable and efficient will be to give the debtor or administrator the possibility to propose the plan during the insolvency proceeding, to submit it to the creditors for analysis and voting, and further, to the court for confirmation. As a result, one decision regarding the plan is adopted and namely, to accept procedure plan regarding the debtor; to confirm the plan approved by Creditors' Meeting; to stop the insolvency proceeding towards the debtor.

In this situation, both time and money are saved for all separated notification, publications of separated decisions in *Monitorul Oficial*, obtaining different modifications in the registry of legal persons, excerpts, and samples of signatures.

ANNEX 3

Analysis of the Association of Liquidators and Administrators from the Republic of Moldova

General Aspects Assessment within the Insolvency Institution Framework

Problems and solutions

The insolvency proceeding cannot fully protect the interests of all parties. When developing the norms that should be applied in this process, such goals as addressing the company's solvability which is facing the financial crisis, keeping the jobs, protection of creditors' rights, inputs to company's development and setting a reasonable balance between these goals should be taken into account, under the law. Hence, the obligations, rights and risks of participants in the insolvency proceeding should be balanced in a way that would correspond interlay with the economic, social and political goals of the state. Reaching this balance of insolvency legislation and its integration within a broader legal regime is a vital thing to maintain the public order and state's stability. All the participants in the insolvency proceeding should know how they can exercise their legal rights in the case of debtor's incapacity to fulfill the pecuniary obligations. This fact will allow the creditors to determine the legal effects that follow and to appreciate their risks.

There is no universal decision regarding the structure of the legislation on insolvency, because there is a large difference between the interests of participants in the process. At the same time, it should be mentioned that the Insolvency Law of the RM stipulates a strict regime regarding the validation and enforcement of creditor's rights and favors the creditors in getting the wide control over the debtor. Hence, Moldovan legislation underlines especially the liquidation of debtor's company to remove the ineffective and incompetent players from the market and minimizes the importance of applying the debtor's reorganization procedure. In this sense, the norms of insolvency law should be balanced, by directing the vector towards the debtor's reorganization by increasing the importance of meeting the creditors' claims within a functional economic unit, which represents another chance for the shareholders and executive body of debtor; ensuring incentives so the entrepreneurs use this procedures to regulate the risks or to protect the vulnerable groups, such as employees. The time stipulated for the application of plan's procedure should be increased up to 5 years, with the right to be extended for another 2 years. The insolvency administrator should be allowed as well to equally participate in liquidation and reorganization procedures.

At the same time, redirection of legislation to debtor's reorganization should not lead to the formation of a refuge for "dead" companies. Companies that cannot be saved should be liquidated quickly and effectively.

When the interests of some participants can be qualified as not important towards other interests, the establishment of their insurance mechanisms outside the legislation on insolvency can be considered the best solution. As an example can be the case described under Assumptions, where the personnel of SRL Mirage gets no salary payment during insolvency proceeding because the bank as secured creditor has priority when distributing the monetary resources after the sale of outstanding debt. To protect the employees; rights, the insurance mechanisms through State Fund or mandatory insurance system can be applied, which foresee an additional source of financing for salary debts for three months before the initiation of insolvency proceeding. The State Fund that guarantee the salary claims can present

requirements towards the outstanding debt and can have the same priorities as the employees. This insurance system works successfully in the Baltic countries.

Assuming the fact that the society is in continuous development, the insolvency legislation cannot be static, it has to be periodically reevaluated to be harmonized with new relations. In our case, the Insolvency Law of the RM of 2002 has not been essentially modified; it has to be amended and modifies under the practical conditions of system's functioning in relation with human resources and existing materials. When amending the insolvency legislation, it is important to specify the structure of procedure with the help of which the choice between debtor's reorganization or liquidation is made. This proposal results from the common characteristic of both procedures, which have many common points from the point of view of procedural actions and law aspects of case materials. Application of one of the abovementioned procedures depends theoretically on the fact whether the company is viable or not. In practice, on the date of initiation the reorganization or liquidation procedure, it is almost impossible to determine the capacity to address the financial solvency of the debtor.

One of the existing deficiencies in Moldovan legislation is maximum polarization between the reorganization and liquidation procedures, which lead directly to delays, high and inefficient costs; especially when the plan's procedure is not successfully implemented, the creditors have to submit another introductive application to the debtors regarding the repeated initiation of insolvency proceeding. This deficiency can be removed by combining both procedures to foresee the possibility of substitution of one procedure with another under certain conditions and by establishing the mechanisms meant to prevent the wrong application of insolvency proceeding, for example, as when the reorganization procedure is started in order to avoid company's liquidation of delaying of selling of outstanding debt.

To guarantee the rights of creditors, the legislation should stipulate clearly the system of immediate transition from the reorganization to liquidation procedure once it is ascertained that this will have no success. At the same time, it should be stipulated that the reorganization procedure has priority before the liquidation procedure, and the liquidation procedure will be initiated only in the case when the solvency of debtors is unlikely based on clear conclusion of insolvency administrator or the solvency plan of debtor was not implemented on time or under certain conditions. At the same time, it should be ascertained the fact that once there are discovered circumstance during the liquidation procedure that can lead to improvement of debtor's solvency, then at debtor, administrator or creditor's request, the procedure will be changed to reorganization procedure.

The main advantages of respective method are simplification and flexibility of procedural relations with possible time and court costs savings. The unified procedure will contribute directly to stimulation of debtors to apply it preliminarily as an anti-crisis method, which will increase the possibility to reorganize successfully the debtor.

Evaluation of institutional framework problems within the insolvency

Insolvency legislation is a component part of the commercial law system, and its adequate application depends, to great extent, on both the development of law system and the development of institutional basis regarding law application. All reforms of insolvency law should be in direct relation with the potential of already existing institutions. The insolvency system will be effective only when the courts and decision-making factors responsible for its application in practice will have the possibility to use the necessary potential to reach the effective, immediate and adequate results for the beneficiaries of insolvency regime. If there is no institutional potential, then it is likely that the insolvency legislation reform is supported by the institutional reform.

In Moldovan legislation, the insolvency proceeding is carried out in one court – Economic Court of Appeal, where the judges of this court, besides other judicial cases, examine the insolvency cases, a fact that has negative impact on the quality of their work.

When developing the modifications to Insolvency Law, it should be mentioned the extent the judges have to supervise the proceeding, by restricting some of their duties that can be performed by other participants in the process, such as Creditors' Meeting or Committee and insolvency administrators. This fact is conditioned by different aspect (economic, financial, commercial, labor, etc.) of the issues that should be settled during the insolvency proceeding and by the possibility of judicial system to solve them operatively and adequately because it is limited in human resources with special knowledge and experience in economic field, because all of them have legal background. Hence, a part of judges' duties can be assigned to creditors or insolvency administrator, for example, the insolvency administrator can make decisions on verification and validation of claims, need of financing the court fees after the initiation the insolvency proceeding, refusal from the secured assets or that with no value for outstanding debt, sale of outstanding debt, cancellation or annulment of legal acts previously concluded by debtor, convocation of general meeting, etc. The creditors can make decisions to adopt a number of decisions made by insolvency administrator such as large sale of debtor's assets. Due to the complexity of insolvency proceeding, the court should intervene only in the case when there are litigations between the participants in the insolvency proceeding or shall ascertain some facts or adopt the creditors' decisions.

The provisions of Insolvency Law confirm the abovementioned; the approval of reorganization plan is vested with the court. The court's task is not in accordance with the goal set forth by the law because the judge who is not a specialist in the economic field has to make complicated financial evaluations regarding the validity and effectiveness of reorganization plan. The creditors, in turn, have a wide experience in trade to make a correct decision regarding the solidity of debtor's reorganization plan.
As for the functionality of institution of insolvency administrator, we would like to specify that the statute of this in the law system of the Republic of Moldova is not precisely determined. In the practical activity, we face situations where the law-enforcement bodies such as Office of General Prosecutor, Police, local public administration authorities and even common courts does not know such an institution as insolvency.

The criminal investigation bodies confuse most often the insolvency administrators with the executive bodies of the debtor, thus, assuming the risk to be subjected to some constraints. At the same time, public authorities very often refuse to cooperate with the insolvency administrator, which imposes the contest of Economic Court of Appeal.

The functionality of liquidator's institution faces the same issues ad the institution of insolvency administrator. Additionally, the Insolvency Law does not assign a separate statute to the liquidator appointed by court. If we refer to Law on Entrepreneurship and Companies which stipulates in Art. 35 (2) that "In case of company liquidation through court decision, the court shall appoint a mature person as liquidator, who is a citizen of the Republic of Moldova, has high education and experience in the field and is registered as individual entrepreneur".

In practice there have been registered cases when a banking institution was appointed as temporary administrator of debtor, which was also the creditor that submitted the introductive application (see the insolvency proceeding SA Metalcom).

It should be mentioned that according to the Law on Forced Enforcement, the insolvency administrator are assimilated to the judicial executors, which in practice is not applied. Thus, if before the initiation of

insolvency proceeding, the debtor's assets were seized, the public registries, financial institutions denies the access of administrator to those goods, irrespective of the fact that they were informed about the initiation of insolvency proceeding. The insolvency administrator should require additionally the removal of seizure from all authorities.

Practical application of insolvency system depends not only on the court but also on other specialists that participate in the process such as insolvency administrator, attorneys, accounts, experts, evaluators, etc. The qualification can be improved only if professional standards and internship in the field are adopted. It is suggested that the candidates for insolvency administrator position have to be interns for one-two years of insolvency precisionist before taking the specialty training courses, which will generate experts with wide knowledge in the field on the market.

Evaluation of problems regarding the correct application/execution of existing insolvency (and liquidation) legislation

The main problems of enforcing the insolvency law results from the general purpose of the insolvency institution, thus, the legal framework should be amended, and at the same time, to correspond with the legal and social needs of our society. In this context, assuming that our state is a young state, the regulation of new institutions such as the insolvency institution should be made very careful.

The insolvency itself is a legal mechanism which based on collective principles satisfies the creditors' claims from the account of personal property and non-patrimonial property of the debtor. This legal mechanism should satisfy and protect simultaneously the interests of all participants in the process.

The practice of the Republic of Moldova proves the fact the legal framework that regulates the insolvency institution is not compatible with our society and this is because of superficial regulation of legal relations that can appear at a certain phase of the process.

Thus, there are situations which have no solutions or their solutions are not clearly stipulated in the practice. As well due to imprecise regulation, some norms can be misinterpreted. The main problem of implementing the legal framework in practice is lack of evidence.

The legal technique that should be used in regulating the legal relations in the insolvency field should be exact without abusive interpretations. The legal norm should be coherent, concrete. Actions, acts should be explained in details without doubts. The statute, rights and obligations of participants are strictly determined.

It would be welcome if the insolvency law stipulates a transparent mechanism of setting a remuneration for insolvency administration, which will allow to avoid litigations and will ensure a stability regarding the necessary costs of insolvency proceeding. The remuneration of insolvency administrator has to be diversified depending on certain circumstances, for example as percentage of outstanding debt plus fix fee paid by the creditor, who initiated the insolvency proceeding or under the form of floating fee paid from the State Insolvency Insurance Fund which is financed from different sources such as compensations for paid by the executive bodies to debtors that are undergoing the liquidation process, from the fees calculated at the registration of insolvency application, from the percentage calculated from collected amounts as a result of sale of outstanding debt and collected mandatory on a common bank account or fees collected as a result of submitting the income tax declarations, etc.

At the same time, it should be mentioned that the national legislation does not stipulate any clear regulations regarding trans-border insolvency, which is very usual nowadays. That is why, it is necessary

to develop the Law on Trans-border Insolvency, which will include the provisions of frame law developed by UN Commission on International Trade Law approved by the Resolution No. 59/40 of the United Nations Organization.

Other comments and suggestions

1. Art.24 of Insolvency Law entitled "The Right to Submit an Introductive Application" stipulates that debtors, creditors and other persons mentioned in the law have the right to submit the introductive application. This syntagm "and other persons stipulated in the law" is a syntagm that is often used in the legal technique, but in this case it is completely unnecessary. Or the introductive application can be submitted only by debtors and creditors.
2. Art.24 of Insolvency Law, as we mentioned above, stipulates a in a wide way the right to submit the introductive application and other persons mentioned by law. In this sense, the explicative decision of the Plenum of the Supreme Court of Justice regarding the application of Insolvency Law by the economic courts in para.6 explains (interprets) that the introductive application cannot be submitted by:
    a. employees against their company;
    b. persons whose copyrights, related rights or activity and industrial property were infringed;
    c. persons, whose health was injured through body injures;
    d. consumers, whose rights were infringed, or consumers of defections products;
    e. persons in cases of causing prejudice through the actions of criminal investigation, preliminary investigation bodies, Office of General Prosecutor or court;
    f. persons whose dignity and honour or professional reputation, etc. were prejudiced;

The decision explains that the mentioned cases can be settled as law litigation by observing the norms of civil procedure. But the actions that should be carried out if the legal act cannot find its conclusion, i.e. cannot be executed, are not specified.

ANNEX 4

Proposals and solutions from Association of Banks from Moldova [1]

In the context of economic crises of the Republic of Moldova, and in order to improve the activity of financial and banking system, the Association of Banks from Moldova developed a draft law on the amendments of some legal acts and presented it to the Government for approval. The adoption of this draft law, in the opinion of Association of Banks, would encourage the credibility of real sector of the national economy and would improve essentially the quality of bank assets, thus, enhancing the stability of banking system on overall. In particular, the modifications of normative acts stipulated in the draft law, developed in accordance with the prudence and bank supervision (BASEL II), will improve the activity of commercial banks, mainly in effective supervision of events that create the risk to not refund the loan, and namely that risk when the debtor is in that state or impossibility to meet his contract obligations (interest payment) in part or overall.

In the practice of some banks the debtors applies intentionality the insolvency law during the active period of the loan, as a result of being declared as insolvent to influence on extending the due time of debts or to decrease the amount of real debts calculated by the bank (interest and other payments), as a result of using the loan. Besides this, some debtors do not inform the banks about their actions undertaken through the court, hence, by not informing the banks, this does not allow them to use all legal methods effectively and efficiently to exercise the right to own the debtor's goods. As a result, the late refund of all loan means by debtors brings some impediments to the banks in their relation with clients in undertaking their obligations towards the payment of deposits of physical and legal persons.

The Association of Banks suggests the following modifications to the Insolvency Law No. 632-XV of 14.11.2001:

- modification of Art. 25
To introduce a new paragraph with the following content: "As for the approval of introductive application, the court shall adopt immediately a decision, within 3 days from the acceptance of application and shall notify within this term the creditors mentioned in the introductive application by the debtor with the suggestion to present a reference to introductive application submitted by the debtor. The conclusion to accept the introductive application can be appealed by the creditors in the way set forth by civil procedure."
- modification of Art. 59
To introduce a new paragraph with the following content: "The creditor that has a real right over some goods of debtor, who is recognized as secured creditor can ask the court to separate these goods to be transferred into the possession with their sale and cancellation of debtor's debts. Debtor's creditors shall have the preferential right in procuring the separated goods."
- modification of Art. 65 para 1
After the word "individually" to add the following phrase: "except for the cases when the secured creditor requires the separation of goods to be transferred for sale and extinguishment of debt".
We would like to note that ABM recommends modifications for a number of legal acts, but we have reflected only the modifications that relate directly to the insolvency proceeding. Thus, based on ABM proposal, it is tried: a) to impose explicitly the notification of known creditors about the initiation of preliminary insolvency proceeding; b) to set a right towards the secured creditors to request the non-replacement of secured goods with real guarantees in the outstanding debt.

[1] The text was taken from the Newsletter of Moldova Association Banks, No.2, 2009, page 9

ANNEX 5

SCOPE OF WORK BIZTAR SOW086

Position: Legal Consultant

Consultancy Objective: Assess the causes for Moldova's poor ranking on recovery rate in insolvency cases and suggest best practices that Moldova might adopt to improve its recovery rate.

Project Background:

BIZTAR is assisting the Government of Moldova to improve the business enabling environment by reducing administrative burdens on the private sector, streamlining tax administration, curtailing opportunities for corruption, improving access for citizens and businesses to government information, and strengthening the public-private sector dialogue. It will build on past accomplishments and structures. The Project places considerable emphasis on the creative deployment of information and communications technology (ICT) to facilitate transparent data management, streamlined administrative processes, and enhanced private-public sector partnerships.

The Project covers two major aspects of reform: 1) business regulatory reform to simplify regulations and streamline procedures affecting businesses; and 2) Tax administration reform to simplify and streamline compliance requirements and fair treatment of taxpayers

Assignment Objectives

Closing or reorganizing a business rapidly with court supervision, at a reasonable cost and with a high recovery rate for creditors provides for a better allocation of resources in a market economy and is important for the development of credit markets. According to the 2010 Doing Business report, insolvency or bankruptcy proceedings in the Republic of Moldova take 2.8 years, cost 9% of the estate value and enable the recovery of some 28.6 cents on a dollar. As such, Moldova ranks 90th in the world over all and 90th in terms of the recovery rate.

The overall objective of the proposed consultancy is to conduct an assessment of the legal and regulatory provisions and how the legal framework is implemented in practice by Economic Court judges, clerks, insolvency administrators, lawyers and bankers, in order to identify the legal provisions and practices with regard to insolvency which may have resulted in such a low ranking on recovery rate for Moldova.

The purpose of this consultancy is to identify possible legal, regulatory and institutional reforms Moldova might adopt to improve the recovery rate for creditors in insolvency proceedings.

Phase 1

The international consultant, Remy Kormos, will first conduct a desk review of any existing assessments of the insolvency system and of the courts in Moldova, including European Bank for Reconstruction and Development (EBRD), the World Bank, USAID, the American Bar Association, as well as review of the current Moldova legal framework (2001 Law on Insolvency as amended) in light of international standards such as UNCITRAL. Thereafter, the consultant will review with World Bank specialists, in person or in a visit to Washington, DC, the Doing Business assessment of Moldova to determine which of the characteristics or factors in Moldova to process insolvency cases leads to a relatively very poor recovery rate for creditors. Following that the consultant will review the Moldovan bankruptcy law and then identity countries with similar legal systems that have much higher recovery rates and suggest best practices that Moldova might adopt to significantly improve its recovery rate. The consultant will prepare a short, draft report presenting to Moldova his/her findings.

Phase 2

Independently of that work, BIZTAR will assign a Moldovan consultant, Nicolae Botan, to (1) conduct , short, informal interviews with Ministry of Justice officials, Economic Court judges, bankers (if possible to include staff lawyers within the legal department of banks), business association representative and/or lawyers to assess what the major issues and problems are with the current insolvency system, and (2) if possible review the bankruptcy cases decided in 2009 to assess the quality and speed with which cases were processed and if possible to assess real recovery rates by creditors, particularly with respect to cases similar to the Doing Business scenario. The local consultant will also contact the Ministry of Justice [or the Economic Court] to obtain any available statistical data on insolvency cases. This assessment will be undertaken in December through mid-January. Mr. Kormos will work on some proposed questions for these interviews, and follow up with more in depth interviews when in Moldova.

Phase 3

After review by BIZTAR specialists in Moldova and translation, the international consultant will travel to Moldova to conduct with the Moldovan consultant, Nicolae Botan, a more detailed assessment of the issues faced by insolvency system users and present his report to government officials and business representatives on what the problems are with the recovery rate and to engage the Government, the judiciary and the banking and business communities in the identification of specific legal and regulatory reforms, training needs and institutional strengthening initiatives. BIZTAR assistance in the elaboration of revised regulations and/or legal reforms, institutional strengthening initiatives and/or training programs will be defined following the response of the government and the business community to enact specific reforms. Then the consultant will develop with government officials a possible work plan to develop agreed-upon reforms.

Reporting:

The consultant will report to the COP and work with the BIZTAR technical team. The consultant will work at the BIZTAR offices when in Moldova.

Illustrative activities:

- Visit or discuss via phone with the World Bank Doing Business specialists to understand the factors causing Moldova's ranking and to identify best relevant practices
- Research and review all existing assessments, studies of the Moldova insolvency system and relevant international standards
- Draft a report and make presentations to Moldovan government and business representatives
- Review findings of local consultants on 2009 bankruptcy cases and interviews of insolvency practitioners, judges and stakeholders
- Conduct follow on in-country interviews of insolvency practitioners, judges and stakeholders
- Draft follow-up action plan with relevant government and business representatives

Professional requirements:

Advanced Law degree

Regional experience

At least 5 years experience in commercial law, regulatory and judicial reform

At least 3 years experience in bankruptcy and foreclosure issues

ANNEX 6

EBRD Report on the Quality of Insolvency Legal Regimes in Early Transition Countries (2003)

ANNEX 7

EBRD, REPORT ON THE QUALITY OF INSOLVENCY LEGAL REGIMES IN EARLY TRANSITION COUNTRIES (2004)

ANNEX 8

EBRD Insolvency Law Assessment Project—2009

(“2009 EBRD Assessment”)