



Bankruptcy and second chance for honest bankrupt entrepreneurs

Annex VI: Summarised country reports

Client: EC - DG Enterprise & Industry

Rotterdam, 31st of July 2014



Credit Score Rating

Credit Score	Description
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650 - 849	Excellent
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500 - 759	Great
300 - 500	Good

Small enterprise

Medium-sized enterprise

Bankruptcy
Worries
Stress
Debt
Financial crisis
OSS

Bankruptcy and second chance for honest bankrupt entrepreneurs

Annex VI: Summarised country reports

Client: EC - DG Enterprise & Industry

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Rotterdam, 31st of July 2014

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1 Austria

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0 Note: Criminal law provides such a distinction. Entrepreneurs that were convicted because of an intentional insolvency offense are not eligible for a Sanierungsplan or an Abschöpfungsverfahren.
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1 Note: Discharge proceedings exist and are the rule, however, there are instances where such discharge cannot take place. Insolvency proceedings for enterprises can only start if there are enough assets to satisfy minimum requirements.
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Max. 24 months for Firms in the Sanierungsverfahren Up to 5 years if the enterprise is

Questions	Options	Answer
honest and dishonest bankrupts)?		
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1 Note: In case when a Sanierungsplan (enterprise insolvency proceedings) has been accepted by the creditors the payment of the agreed quota does automatically lead to discharge (except secured debt) and does not require an additional court decision. If the quota has not been reached, however, this leads to a resumption of original claims.
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	3/5/7 years
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1 (public databases) 0 (private databases)

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5 (businesses) 0 (private bankruptcy)

Question/issue	Options	Answer
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	15
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1 (except if insolvency is declined due to lack of assets.

Output 4

Overview of how "prevention" is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

Prevention measures are relatively uncommon in Austria. Only a few measures exist, mainly supported by the Economic Chambers at the level of Bundesländer (e.g. in Vienna). Most interviewed experts were very sceptical on the success of possible information campaigns.

The Austrian Chamber of Commerce provides information on corporate management and bankruptcy prevention by offering a variety of seminars and informative literature;

With an amendment of Austrian bankruptcy law in 2010 a variety of measures to support the reorganisation of insolvent, but economically viable firms was implemented; this fundamental reform of bankruptcy law has to be appraised as a great success even by international standards; in nearly one third of all bankruptcies a reorganisation plan has been accepted by the creditors allowing debtors to continue their business instead of closing it down.

The project "Servicepaket zur Unternehmenssicherung des WIFI Wien" provides supported consulting with experienced consultants to guide firms during times of hardship. The program also provides a simple anonymized online check for SMEs (over 11.000 such checks have been conducted so far).

4.2. Which institutions exist that take care of this issue?

Institutions: Private consultants and some of Economic Chambers at the level of Bundesländer (esp. Vienna)

4.3. What are the costs involved?

No comprehensive information of total costs are available. In the programme of the Viennese Economic Chamber offers a free consultation day (one hour consulting) and a supported four-hour short consulting (50 % off for all firms 75 % off for young firms).

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issue is that enterprises come too often late and have fundamental weaknesses in basic costing and management. However, it is also difficult in a business environment to admit failure as customers and suppliers react to news of financial problems by becoming more restrictive.

4.5. How many companies have gone through "prevention" measures, and how many survived

Number of companies that survived after prevention measures: We did not obtain clear numbers regarding this question.

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6. Which measures are taken in your country to address this issue?

There are practically no measures that address second change, in the sense of restarting a new business. Second chance in the sense of reorganization is implemented in the ordinary bankruptcy legislation.

4.7. Which institutions exist that take care of this issue?

There are no institutions that concentrate on second chance.

4.8. What are the costs involved?

Impossible to get the estimation.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled? Most of the legal restrictions for having a second chance have been abolished since 2000 (Reform of the insolvency criminal law). Today most restrictions are of a practical nature, sometimes related to the bad credit rating of failed entrepreneurs (e.g. negative list of Austrian banks).

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Number of companies that survived after prevention measures: We did not obtain clear numbers regarding this question.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ¹
Kreditschutzverband von 1870	A-1120 Wien, Wagenseilgasse 7	Basis for a financing decision
Creditreform Wirtschaftsauskunftei Kubicki KG	A-1190 Wien, Muthgasse 36 - 40	Basis for a financing decision
Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft (AKV)	A-1040 Wien, Schleifmühlgasse 2/2	Basis for a financing decision
CRIF GmbH (vormals Deltavista)	A-1150 Wien, Diefenbachgasse 35	Basis for a financing decision
Dun & Bradstreet Information Services Gesellschaft m.b.H	A-1110 Wien, Geiselbergstraße 17- 19	Basis for a financing decision
FirmenABC Marketing GmbH	A-5301 Eugendorf, Pebering-Straße 1	Basis for a financing decision
GBI-Genios Deutsche Wirtschaftsdatenbank GmbH	D-81927 München, Freischützstraße 96 (Germany)	Basis for a financing decision
Intrum Justitia GmbH	A-1220 Wien, Donau-City-Straße 6	Basis for a financing decision

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria used are: Balance sheet data, individual research, Information from suppliers and customers, information from banks. No personal data is used in the compilation of credit scores.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

Providing credit information is not a regulated trade (Gewerbe). Constraints are provided by the Austrian data protection act. It is prohibited to provide information that is not related to credit scoring.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The rules with regard to deleting debtors from databases were established by the Austrian data protection commission. Here a ruling of the Austrian Supreme Court (OGH) regarding § 28 Abs. 2 DSG (Datenschutzgesetz) provides the legal basis. The OGH decided that everybody has the right to have its own entry cancelled in any public database that was not established by law. In the consumer credit database negative entries have to be deleted 5 years after payment, if an instalment payment or only a quota as in the Schuldenregulierungsverfahren is involved this entry has to be deleted after 7 years. In the Warnliste of Austrian Banks the entry will be deleted 3 years after payment if the payment was complete. If only part of the debt had to be repaid (Schuldenregulierungsverfahren) the time period is 7 years. For all other publicly available databases similar rules are applicable.

¹ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
19.03.2014	Dr. Artur Schuschnigg	Austrian Chambers of Commerce	Expert	Wiedner Hauptstraße 63 1045 Wien +43 (0)5 90 900 4014
24.03.2014	Mag. Christian Starzer	WIFI Vienna, Economic chamber of Vienna	Head of the project Unternehmenssanierung	Währinger Gürtel 97 1181 Wien +43 1 476 77 5353
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01.04.2014	Dr. Michael Lesigang	Kanzlei Hofer-Zeni & Lesigang	Lawyer, Masseverwalter	Landstraßer Hauptstraße 82, A-1030 Wien
01.04.2014	Dr. Hans-Georg Kantner	Kreditschutzverband von 1870	Head of KSV Insolvenz	Tel: ++43 (0)50 1870-8453 E-Mail: kantner.hans-georg@ksv.at
01.04.2014	Josef Wickenhauser	Creditreform	Head of Auskunft Österreich	Tel.: 01/218 62 20-121

Documents consulted

Name of document, author/organisation, year of publication
Fink, Herbert, Insolvenzrecht, LexisNexis ARD ORAC, 2013.
Mohr, Franz, Sanierungsplan und Sanierungsverfahren, MANZ, 2010
Lichtkoppler, Kurt and Reisch, Ulla (eds), Handbuch Unternehmenssanierung, MANZ, 2010
Feuchtinge, G. and Lesigang, Michael, Praxisleitfaden Insolvenzrecht, Linde Verlag, 2010
Hauser, Werner (eds), Insolvenzrecht, Linde-Verlag, 2010

Websites consulted

Name of website	Link to website
Bundeskazleramt Rechtsinformationssystem	https://www.ris.bka.gv.at/
KSV	https://www.ksv.at/
ARGE Daten	http://www.argedaten.at/
Austrian Economic Chamber	www.wko.at
Ministry of Justice	www.bmj.gv.at
Unternehmensinformationsportal	https://www.usp.gv.at/
Wikipedia	http://de.wikipedia.org/
Creditreform	https://www.creditreform.at/index.html
Ediktsdatei des Bundesministeriums für Justiz	http://www.edikte.justiz.gv.at/
Leben mit der Krise	http://www.unternehmer-in-not.at/

2 Belgium

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Can be 6 months up till the official judgement of liquidation (closing of bankruptcy proceedings). There is no maximum term to obtain full discharge. At the earliest after 6 months, at the latest when the judge declares the official liquidation.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	60 months
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2	0

Questions	Options	Answer
	years after discharge; 0: otherwise.	

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
8. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
9. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	0
10. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0 (maximum 5 years under law of continuity of enterprises)
11. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
12. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
13. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
14. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Not possible to give an average -> the time of bankruptcy procedures depends on a lot of factors, such as the complexity of the case, the size of the enterprise, the number of creditors, the honesty/dishonesty of the entrepreneur, the spread of the assets across multiple countries, ...
15. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy	1

Question/issue	Options	Answer
	proceedings.	
16. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

Output 4 Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

- 1) **Three types of prevention measures:**
 - a) **Federal Law on the Continuity of Enterprises (LCE) (WCO):**
 - i) Activated in 2009
 - ii) Concept: protect enterprise temporarily against creditors, so that it can work on its recovery/reorganization.
 - iii) The law foresees that accountants can act as early warning systems: they are the closest to the company and have a view on how well the company is doing. They should warn the Chambers of Commercial Inquiry if they notice difficulties within the company and the company does not react to the warnings of the accountant.
 - iv) Allows for 3 possibilities:
 - (1) Out-of-court settlement with creditors, possibly with the help of a mediator.
 - (2) Collective court settlement with creditors: entrepreneur needs to make up a debt settlement and recovery plan - creditors need to vote / agree on this (majority vote) and Court needs to confirm the vote and recovery plan.
 - (3) Transfer to Legal Authorities: (part of the assets) are sold; this process is led by a clerk of the court.
 - b) **Chambers of Commercial Inquiry** can summon SMEs and entrepreneurs in difficulty, based on information obtained from
 - (1) Graydon, which gathers account data, which can give an insight into the financial “health” of a company.
 - (2) VAT, tax and social security administrations: non-payment of social contributions and taxes can indicate that a company is in distress

It is allowed to question these entrepreneurs but not allowed to give them advice. If the entrepreneur doesn’t cooperate with the Chamber of Commercial Inquiry, the office of the public prosecutor will summon him to court and initiate bankruptcy proceedings.
 - c) **Regional Departments of Economy:**
 - i) Flanders:
 - (1) Flemish Enterprise Agency works on “preventive company management” and supports projects on prevention of bankruptcy.
 - (a) Provides a financial analysis and operational company scan, free of charge
 - (b) Provides a report on problem areas, free of charge
 - (c) Provides the development and implementation of a reorganisation plan, which is not free of charge but can be partly subsidized.

Companies need to fulfil certain criteria that indicate that there is a threat to the continuity of their activities in order to benefit from these services.
 - (2) Private organisations, subsidized by Flemish Ministry of Economy: Tussenstap, Efreem and Boek. Tussenstap and Efreem will merge in 2014.
 - (a) Provide guidance and advice to entrepreneurs in difficulty and bankrupt entrepreneurs

- (b) Their offer of services is free of charge & complete (legal, business and psychological assistance)
- ii) Brussels: Centre des Entreprises en Difficulté, which is financed by the Brussels' Region. Practical measures that they take for prevention are:
 - (1) Give advice, consulting services directly to entrepreneurs;
 - (2) Organize field permanencies together with local relays (municipality, business centres etc.) to proactively go towards the SME rather than wait for them to ask for help.
 - (3) Providing legal assistance through their collaboration with the bar and 15 pro deo lawyers.
 - (4) Providing accounting assistance through their collaboration with 15 pro deo accountants and individual expert accountants.

All these services are provided for free. Out of their 2000 cases a year 80% were already in debt, which means that only in 20% of cases they can really work on prevention. With the other 80% they work on emergency measures.
- iii) Wallonia: Centre des Entreprises en Difficulté Wallonia (CEd –W), which is a pilot project in collaboration with "Union des Classes Moyennes" (UCM)
 - (1) The CEd-W is a pilot initiative which was launched in 2013. It works with a central telephone number, but then dispatches the callers to a regional centre. The UCM is the contact point for the CEd-W in 3 Walloon provinces. There is no certainty yet that the CEd-W will be able to continue its activities in 2014 and beyond. The CEd-W only gives "first-line" advice, it refers callers to other possible service providers, such as lawyers and accountants. The CEd-W often has to try to limit the damages, because the entrepreneurs that call the CEd-W often call "too late" i.e. when their (often: debt) problems have escalated. As such, it is often too late to work on prevention

4.2. Which institutions exist that take care of this issue?

3 Regional institutions that work on prevention:

Flanders: Tussenstap, Efrem and Boek. Tussenstap and Efrem will merge in 2014. (see above).

Brussels: Centre des Entreprises en Difficulté (CEd) (see above).

Wallonia : Centre des Entreprises en Difficulté Wallonia (CEd –W), which is a pilot project in collaboration with "Union des Classes Moyennes" (UCM) (see above).

4.3. What are the costs involved?

This is very hard to estimate. Some cases are solved in 2 hours while others need 2 years during which a weekly meeting with the director of the company is required. It is time consuming work. It requires visiting the entrepreneur (because a mere telephonic correspondence is often not enough) and depends a lot on a lot of factors such as the complexity of the case, the size of the enterprise, the number of creditors,.... Also preventive communication campaigns need to be taken into account into these costs.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

Quick action: it is important for an organization in prevention to go visit the company to offer hands-on advice.. An example where quick action may be necessary is when an entrepreneur is already in a critical situation and in need of immediate judicial protection.

The organization that deals with prevention should have sufficient know-how (fiscal, business and legal).

The criteria to start a business should be re-evaluated in order to increase the entrepreneurial capabilities of starting entrepreneurs.

Private initiatives tend to be more efficient compared to governmental institutions. This is partly explained by the unjustified fear of entrepreneurs that contacting the government can induce an extra tax control etc. This is why they prefer a private organization. Hiring an expensive lawyer to get advice on solvency might only aggravate the problems. Therefore **help on prevention should be for free.**

Business and Management Trainings should be adapted to real life situations.

Set obligations to entrepreneurs to **attend trainings for a minimum number of hours per year.**

Get accountants to give more than just legal and accounting advice. They should contribute to prevention of bankruptcy by adding reflections in management and strategy.

4.5. How many companies have gone through “prevention” measures, and how many survived?

Flanders: Statistics from “Tussenstap”: Although success rates are hard to determine, evidence suggests that 51% of entrepreneurs that profited from advice on prevention of bankruptcy from the Flemish organization for prevention ‘Tussenstap’ has been able to survive for at least another two years. Tussenstap deals with about 1800 cases per year, of which 81% are on the “prevention” axis and 19% on the “2nd chance” axis. Of the 81% prevention cases, 51% of entrepreneurs they have helped still exist after 2 years.

Brussels: Statistics from “Centre des Entreprises en Difficulté”: Their qualitative statistics says that on their 2000 cases (per year) 25% to 30% of the enterprises they have helped, have been saved, 25% have been encouraged to file for bankruptcy, 25% have not responded and 25% are restructuring and thus have no results yet. This means that 1 on 4 to 1 on 3 companies have survived.

Belgium as a whole: Federal Law on the Continuity of Enterprises (LCE) (WCO): 85% of companies that go through legal reorganization via the law of continuity of enterprises still have to file for bankruptcy.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Flanders: Projects are undertaken by Flemish Enterprise Agency, but also by private organizations such as ‘Microstart’ and ‘Hefboom’, these two are micro-financing institutions dealing with, among other things, smaller scale financing solutions for 2nd chance entrepreneurs. Additionally, there is in Flanders a presence of multiple organizations for advising starters. Some of these also perform tasks for prevention and 2nd chance entrepreneurs. An example is ‘Syntra-Vlaanderen’.

Brussels: there is no institution involved in second chance.

Wallonia: “2nd chance” is not a focus of the Walloon economic policy, which wants to focus rather on prevention. Sowlfin (Walloon Agency for financing of Enterprises) provides a mixed financing instrument for starting companies that can also help 2nd chance entrepreneurs: it gives a guarantee on a bank loan and can provide co-financing on a bank loan of maximum € 25.000. However, the problem here is that the 2nd chance entrepreneurs face a lot of difficulties in obtaining a bank loan.

4.7. Which institutions exist that take care of this issue?

Flanders: Organizations such as: ‘Tussenstap Vlaanderen’ and ‘EFREM’ (soon to be merged), ‘vzw Boeren op een Kruispunt’ dealing with agricultural activities, ‘Microstart’, ‘Hefboom’. Tussenstap deals with about 1800 cases per year, of which 81% are on the “prevention” axis and 19% on the “2nd chance” axis.

Brussels: there is no dedicated institution involved in second chance.

Wallonia: there is no dedicated institution involved in second chance.

4.8. What are the costs involved?

This is a tough estimation exercise: a guiding example may be the 2010-2011 ESF-project in which the Flemish Organisation “Tussenstap” participated and which dealt with the coaching of bankrupt entrepreneurs. The project consisted of the closing of the bankruptcy procedures, the acquirement of the discharge and consultancy on future professional opportunities for these bankrupt entrepreneurs. In sum: 335 people were assisted, which received 8 hours of coaching. This was a bare minimum. Especially the closing/follow-up of the bankruptcy procedures and the discharge of the entrepreneur was time-intensive.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

The real effectiveness of the discharge mechanism: the discharge should allow for full “clearance” of bankrupt entrepreneurs and allow them to obtain new credits which is not the case in Belgium (see below);

the access to finance (specifically the practice of using official and unofficial black lists can pose a problem to 2nd chance entrepreneurs to obtain a bank loan with private banks) – can public authorities intervene or play a role here?

the learning possibilities from the past bankruptcy: do bankrupt entrepreneurs keep in mind the lessons learned from their bankruptcy when they start a new business?

Cultural change/change in mindset: “positive examples” of successful 2nd chance entrepreneurs should be communicated to the larger public in order to change the prejudices against bankrupt entrepreneurs that want to re-start.

Coaching of 2nd chance entrepreneurs.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

In the period January 1995 to April 2011, a total of 5631 Flemish bankrupt entrepreneurs restarted and were still active as an entrepreneur in November 2011. (Source: “Een onderzoek naar gefailleerde herstarters in Vlaanderen,(FaillEREN?), Onderzoeksrapport analyse gefailleerde herstarters in Vlaanderen”, Ann-Sophie Bouckaert, University College Ghent, Belgium, Ruth DeVreese, University College Ghent, Belgium, Carine Smolders, University College Ghent, Belgium, 2011). The total number of Flemish bankrupt entrepreneurs in this period was 31 123 which makes the percentage of successful re-starters in this period for Flanders equal to 18%.

(source:

<http://statbel.fgov.be/nl/statistieken/cijfers/economie/ondernemingen/faillissementen/jaarreeks/>).

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
Graydon Belgium	Uitbreidingstraat 84-b1, 2600 Berchem	For commercial clients to assess credit risk of e.g. customers,...and for commercial courts to assess which companies are in distress.
Duns and Bradstreet	Keizer Karellaan 576, Sint-Agatha-Berchem 1082	For commercial clients to assess credit risk of e.g. customers,...
ABK	Ledeganckkaai 7, 2000 Antwerpen	Basis for a financing decision
Antwerpse Diamantbank	Pelikaanstraat 54, 2018 Antwerpen	Basis for a financing decision
AXA Bank Europe	Vorstlaan 25, 1170 Brussel	Basis for a financing decision

Name of PCSB	Location/address	Main use of scores
Banca Monte Paschi Belgio	Jozef II straat 24, 1000 Brussel	Basis for a financing decision
Bank Degroof	Nijverheidsstraat 44, 1040 Brussel	Basis for a financing decision
Bank Delen & de Schaetzen	Jan Van Rijswijcklaan 184, 2020 Antwerpen	Basis for a financing decision
Bank J. Van Breda en C°	Ledeganckkaai 7, 2000 Antwerpen	Basis for a financing decision
Banque Eni	Guimardstraat 1A, 1040 Brussel	Basis for a financing decision
Banque Transatlantique Belgium	De Crayerstraat 14, 1000 Brussel	Basis for a financing decision
Belfius Bank	Pachecolaan 44, 1000 Brussel	Basis for a financing decision
Beobank NV	Generaal Jacqueslaan 263g, 1050 Brussel	Basis for a financing decision
BNP Paribas Fortis	Warandeborg 3, 1000 Brussel	Basis for a financing decision
bpost bank	Anspachlaan 1, 1000 Brussel	Basis for a financing decision
Byblos Bank Europe	Montoyerstraat 10 bus 3, 1000 Brussel	Basis for a financing decision
CBC Banque	Grote Markt 5, 1000 Brussel	Basis for a financing decision
Delta Lloyd Bank	Sterrenkundelaan 23, 1210 Brussel	Basis for a financing decision
Euroclear Bank	Koning Albert II-laan 1, 1210 Brussel	Basis for a financing decision
Europabank	Brugstraat 170, 9000 Gent	Basis for a financing decision
ING België	Marnixlaan 24, 1000 Brussel	Basis for a financing decision
KBC Bank	Havenlaan 2, 1080 Brussel	Basis for a financing decision
Keytrade Bank	Vorstlaan 100, 1170 Brussel	Basis for a financing decision
Optima Bank	Keizer Karelstraat 75, 9000 Gent	Basis for a financing decision
Puilaetco Dewaay Private Bankers	Herrmann Debrouxlaan 46, 1160 Brussel	Basis for a financing decision
Santander Benelux	Nerviërslaan 85, 1040 Brussel	Basis for a financing decision
Shizuoka Bank (Europe)	Jules Cockxstraat 8-10 bus 9, 1160 Brussel	Basis for a financing decision
Société Générale Private Banking	Kortrijksesteenweg 302, 9000 Gent	Basis for a financing decision
The Bank of New York Mellon NV	Montoyerstraat 46, 1000 Brussel	Basis for a financing decision
United Taiwan Bank	Regentlaan 45/46, 1000 Brussel	Basis for a financing decision
Argenta Spaarbank	Belgiëlei 49-53, 2018 Antwerpen	Basis for a financing decision
Banque CPH	Rue Perdue 7, 7500 Tournai	Basis for a financing decision
Beroepskrediet	Waterloolaan 16, 1000 Brussel	Basis for a financing decision
BKCP	Waterloolaan 16, 1000 Brussel	Basis for a financing decision
Centrale Kredietverlening	Mannebeekstraat 33, 8790 Waregem	Basis for a financing decision
Onderling Beroepskrediet	Waterloolaan 16, 1000 Brussel	Basis for a financing decision
Record Bank	Henri Matisselaan 16, 1140 Evere	Basis for a financing decision
VDK (Spaarbank)	Sint-Michielsplein 16, 9000 Gent	Basis for a financing decision
Crelan	Sylvain Dupuislaan 251, 1070 Brussel	Basis for a financing decision

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

First remark in terminology: difference between “Rating” and “Score”. Rating = on demand of the company, Score = not on demand of the company. The questions in this research thus refer to “scores” instead of “ratings”.

Data used for assessing the creditworthiness of entrepreneurs :

First layer: Official data such as annual account data from National Bank, the Belgian Official Gazette,... Remark: these data are often not reliable or accurate as they are published with a time-lag. These data are corrected by the PCSB.

Second layer: These data are linked together in a relational database to track e.g. whether a (bankrupt) entrepreneur owns multiple companies.

Third layer: These interlinked official data are augmented by “antennas” in the Belgian economy, such as contacts with the clerks of justice at Commercial Courts or at Labour Courts;

Fourth layer: additional data like e.g. aging lists, screening of local newspapers,...

These data are fed into a short-term and long-term model, resulting in a prediction on the risk of bankruptcy or possibility of growth.

The criteria that are applied by using the annual account/balance sheet data (first layer) are:

- Operating income before depreciation and amortization in relation to the size of the activity = $\text{Operating profit} + \text{depreciation} / \text{sales}$;
- The variation of the turnover excluding VAT of year n compared to the year n -1 = $(N \text{ Sales} - \text{Sales } n - 1) / n - 1 \text{ turnover}$;
- The financial costs in relation to turnover = $(\text{Financial expenses}) / \text{turnover (excluding VAT)}$;
- The cash in proportion to the revenue (taxes) = $\text{Cash} / \text{sales including VAT}$;
- Equity in relation to total assets = $\text{Equity} / \text{Total liabilities}$;
- The number of years of repayment of the total debt of the generated cash flow = $(\text{Current financial liabilities} + \text{current financial debt due within a year} + \text{financial debts payable within one year}) / (\text{generated cash flow})$.
- On the basis of these ratios , one can develop a model that will predict the probability of default and determines a score.

The criteria that are applied by using more qualitative data (second, third and fourth layer) are:

- the number of days per year of credits that were not paid in time ;
- the total outstanding credit (often derived from the data National Bank of Belgium) ;
- the total credit movements per year ;
- the total debit movements per year ;
- average debit balance per month;
- the percentage of loans that are secured by real collateral;
- arrears in repayment of loans of more than 25 % of the foreseen.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

Regulation on “scoring” is limited, but PCSB have agreements with the Belgian Privacy Commission on the publication and use of their scores.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Rule: the fact that an entrepreneur went bankrupt is taken into account into the determination of the credit score (of other companies he might own or of a new company he sets up after his bankruptcy) for 5 years (after the Commercial Court has decided on the bankruptcy/after the entrepreneur has been discharged) , in a decreasing way i.e. each year the “weight” that is attributed to his bankruptcy will decrease in the determination of his score. After 5 years, the fact

that an entrepreneur went bankrupt is no longer taken into account when the PCSB determines the score of the bankrupt entrepreneur's possible new company or possible other companies.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
27-03-2014	Eric Van de Broele	Graydon Belgium	Senior Manager Research & Development	Eric.Vandenbroele@graydon.be
21-03-2014	Melissa Vanmeenen	University Antwerp	Professor in bankruptcy law	melissa.vanmeenen@uantwerpen.be
13-03-2014	Jonathan Lesceux	UCM (Union des Classes Moyennes) & CED-W (Centre des entreprises en difficulté en Wallonie)	Advisor to the research department	jonathan.lesceux@ucm.be
13-03-2014	Michiel Verraes	Lawfirm Racine & Vergels	Curator and lawyer	MVerrees@racine.eu
10-03-2014	Nathalie Bartholomé	Federal Public Service of Justice, Direction générale de la Législation et des Libertés et Droits fondamentaux Service des Droits économiques		Nathalie.Bartholome@just.fgov.be
10-03-2014	Olivier Delaere	Tussenstap	Coordinator of the centre	olivier.delaere@tussenstap.be
11-03-2014	Olivier Kahn	Centre des Entreprises en Difficulté (Bruxelles)	Coordinator of the centre	cabinetok@skynet.be

Documents consulted

Name of document, author/organisation, year of publication
"Leren van Failleren! Herstarters in Vlaanderen", Ruth De Vreese, Hogeschool Gent, 2011
"Het gebruik van ratings bij kmo's: een empirisch onderzoek", Annemie Van Rompaey, 2008
"Evaluatierapport over de wet betreffende de continuïteit van de ondernemingen", VBO – FEB, 2012
"Een onderzoek naar gefailleerde herstarters in Vlaanderen,(FailLEREN?), Onderzoeksrapport analyse gefailleerde herstarters in Vlaanderen", Ann-Sophie Bouckaert, University College Ghent, Belgium, Ruth DeVreese, University College Ghent, Belgium, Carine Smolders, University College Ghent, Belgium, 2011
"Failure prediction models : performance, disagreements, and internal rating systems", by Janet Mitchell and Patrick Van Roy, Working Paper National Bank of Belgium, 2007
"Vademecum kredietfinanciering KMO's", Kenniscentrum van financiering van KMO's: KEFIK/CEFIP, 2012

Websites consulted

Name of website	Link to website
Website of the Commercial Court of Dendermonde: information on bankruptcy proceedings	http://www.rechtbankkoopchandendermonde.be/falingen_faq3.html
Website of Tussenstap, a Flemish organisation working on 2 nd chance and prevention, which contains a lot of information on prevention, bankruptcy proceedings and second chance.	http://www.tussenstap.be/
Website of the Flemish Enterprise Agency on prevention of bankruptcy.	http://www.agentschapondernemen.be/artikel/preventief-bedrijfsbeleid
Website of the Centre of Enterprises in Difficulty in Wallonia	http://www.infos-entreprises.be/fr/centre-pour-entreprises-en-difficulte-ced-w-1119
Website on the fiscal implications for creditors under the law of continuity of enterprises	http://www.monard-dhulst.be/-/fiscale-implicaties-van-de-wet-op-de-continuïteit-van-ondernemingen
Flemish Enterprise Agency on the role of ratings in assessing the creditworthiness of entrepreneurs.	http://www.agentschapondernemen.be/artikel/ratings-het-kredietproces-bij-de-bank

3 Bulgaria

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0:
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12 months
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0: no.
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	There is no such case in Bulgaria.
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0: otherwise. The entrepreneur is deleted from the Trade Register when the bankruptcy proceeding is terminated by the court after full discharge.

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	24 months
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	0

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

The “prevention” of bankruptcy of small and medium sized enterprises (SMEs) in Bulgaria is not a practice. The concept for creation of early warning system and provision of assistance from public institutions (including tax deferrals, graded multiple payments or the reduction of guarantees required to postpone payments) to entrepreneurs in financial difficulties is not acknowledged by all the national authorities in the country. Initiative for establishment of normative framework for “prevention” of bankruptcy of SMEs was launched by the Ministry of Economy and Energy in 2011 but it was not accepted by other stakeholders.

Also according to Bulgarian legislation (Trade Law), the recovery and adoption of recovery plan for an enterprise which is insolvent or in over-indebtedness is part of the bankruptcy proceeding. This means that taking measures for recovery implies filing a request for opening of bankruptcy proceedings. This is not acceptable by entrepreneurs who are experiencing temporary difficulties as the entering in bankruptcy proceeding significantly reduces the ability of the debtor to continue its business and it affects almost irreversibly its credibility.

Also the Bulgarian Trade Law requires a debtor who becomes insolvent or over-indebted within 30 days to request the opening of insolvency proceeding. The responsibility of managers who did not file such request within the defined 30 days is both proprietary and criminal.

In summary the legislation offers the possibility for reorganisation and thus continuation of firms facing difficulties, but the interviewed experts said this is very rarely implemented and mostly for state owned medium and large enterprises.

Out of Court (Voluntary) Agreement

The Bulgarian legislation states that at any stage of bankruptcy proceedings debtor may negotiate with all creditors, holding claims, settlement agreement for payment of the monetary liabilities. In this case, the curator does not represent the debtor. If the signed contract for the settlement agreement meets the requirements of the law, the court with a decision terminate the bankruptcy proceeding, if there are no claims against the list of accepted claims filed and this decision is published in Trade Register. If the debtor fails to fulfil its contractual obligations, creditors whose claims are not less than 15 percent of the total amount of claims may request resumption of bankruptcy proceedings, without proof of a new insolvency or over-indebtedness.

The interviewed experts shared that the out-of-court agreements are very rare cases in the practice of the Bulgarian bankruptcy proceedings. The average length of time for an out-of-court settlement is difficult to estimate since it varies depending on the specific situation of a firm and the number of creditors.

4.2. Which institutions exist that take care of this issue?

No institutions so far (no preventy measures). In theory, it should be the the Ministry of Economy and Energy or the Bulgarian Agency for SMEs promotion

4.3. What are the costs involved?

There is no statistics how many company have gone through prevention measures and how many of them have survived.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The opinion of the experts is that the introduction of "prevention" and "second chance" measures will require a complete change of the regulation treating the trade relations

4.5. How many companies have gone through "prevention" measures, and how many survived?

There is no statistics how many company have gone through prevention measures and how many of them have survived.

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6. Which measures are taken in your country to address this issue?

The „post-bankruptcy/ second chance“ was not addressed in our country in the last two years. As stated above in 2011 there were some ideas for amending the Law for SMEs and to be included new chapter related to prevention of bankruptcy and provision of „second chance“ for SMEs but the proposal for amendment were not accepted by the Ministry of Justice and were not supported by the Parliament as legislative body. Some of the interviewed experts shared that the introduction and application of such measures is quite difficult as the creditors (mostly banks) are really opposing on such initiatives as "prevention of bankruptcy" and "second chance" as they are worried whether their claims will be secured in such procedures.

Another issue is that the Trade Law and bankruptcy proceedings are prerogative of the Ministry of Justice and the courts on one side and the support for SMEs and the Law for SMEs are managed by the Ministry of Economy and Energy. Strong coordination and cooperation is needed between these institutions in order to be taken some steps towards „post-bankruptcy/ second chance“ introduction in Bulgaria.

4.7. Which institutions exists that take care of this issue?

Currently the Ministry of Justice has formed a Working Group for analyzing the Trade Law and elaboration of proposals for its improvement but it is not clear if "second chance" will be included. At the same time the adopted Strategy for promotion of SMEs 2014 – 2020 identifies that "second chance" will become a strategic objectives and urgent actions are referred in order Bulgaria rapidly to move at least to the average level for the EU in this priority area. It is still not clear how these actions will be implemented.

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

As an obstacle to the implementation of such measures in our country is that, these attempts for recovery may actually prolong the bankruptcy proceeding.

4.10. How many companies that were liquidated/ bankrupted have profited from "second chance" measures?

Non applicable.

Name of PCSB	Location/address	Main use of scores
Bulgarian Rating Agency	Sofia, 1421, 31 "Vaptazarov" Blvd, office@bra.bg	Given back to the client
Bulgarian Credit Rating Agency	Sofia, 1142, 95 "Evlogi Georgiev" Blvd., mihaylovsky@bcra-bg.com	Given back to the client, used for investment decision

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

The following criteria are used when is assessed the creditworthiness of companies:

Sectoral analysis. The historical development of the sector is reviewed, and its present state is analyzed. The main trends in the sector are analyzed, as well as the manner, in which these influence the scrutinized company. Based on this analysis, a projection is made for the future development of the sector.

Analysis of business risk: Reviewed are the product mix, the market shares in the separate segments, the volume of products sold/services rendered, and the existing capacity of the company. Reviewed are also the relations of the company with its counterparts, as well as the risks, which can arise from the agreements made and from the practices applied. The main point in the appraisal of business risk is the appraisal of the company management. The management is being analyzed from the viewpoint of its competency, of the management structure created, of the practices applied, and of the existing systems for company management.

Financial analysis: The state of the company (within the time frame) is being analyzed (tailor-made) in four main areas: Profitability, Operating effectiveness, Indebtedness, and Liquidity. The final point of the analysis is a forecast model, which comes to show the future net cashflows of the company and the coverage of its present and possible future liabilities.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

The credit rating agencies in Bulgaria are regulated through EU legislation framework.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The names of the companies which are in a proceeding of bankruptcy, after the decision of the court for the start of the bankruptcy procedure are published in the Trade Register. When the entrepreneur is fully discharged and the bankruptcy proceeding is finalized, the company is deleted from the Trade Register. There is no special list of the deleted companies; they are shown per periods together with entries and nominations of companies in the register.

Also is existing the Credit Register of the Bulgarian National Bank but it is confidential and its access is allowed only for banks as they provide the information for the debtors.

Date	Name of person interviewed	Organisation	Position	Contact details
13.03.2014	Alexander Dimitrov	Bulgarian Chamber of Commerce and Industry	Senior expert "Economic analysis"	ikontr@bccci.bg
17.03.2014	Liydmila Trencheva	Lawyer	Lawyer	l.trencheva@gmail.com

Date	Name of person interviewed	Organisation	Position	Contact details
19.03.2014	Margarita Zlatanova	Ministry of Economy and Energy	Jurist consult	m.zlatanova@mee.government.bg
19.03.2014	Tihomira Palova	Ministry of Economy and Energy	Senior expert	t.palova@mee.government.bg
25.03.2014	Viktor Sirakov	Curator	Curator	vi_sirakov@abv.bg
26.03.2014	Radka Arapkulieva	Ministry of Justice	Senior expert	r.arapkulieva@justice.government.bg
26.03.2014	Yliana Chulpanova	Ministry of Justice	Senior expert	y.chulpanova@justice.government.bg
02.04.2014	Christo Mihailovsky	Bulgarian Credit Rating Agency	Chief Executive Officer	mihailovsky@bcra-bg.com

Documents consulted

Name of document, author/organisation, year of publication
Trade Law, Bulgaria, 2013
Law on obligations and contracts, Bulgaria, 2008
Civil Procedure Code, Bulgaria, 2014
Law on SMEs, Bulgaria, 2009
Business Dynamics: Start-ups, Business Transfers and Bankruptcy, European Commission, January 2011
Conclusions on the review of the "Small Business Act" for Europe, Council of EU, May 2011
Entrepreneurship 2020, Action Plan, European Commission, January 2013
European Parliament resolution of 15 November 2011 with recommendations to the Commission on insolvency proceedings in the context of EU company law (2011/2006(INI))
A new European approach to business failure and insolvency, European Commission, December 2012
A second chance for entrepreneurs, European Commission, January 2011
Arguments for SMEs Law amendments, Ministry of Economy and Energy, Bulgaria, 2011
National Strategy for promotion of SMEs 2014 - 2020, Ministry of Economy and Energy, Bulgaria, 2013
Analysis of the entrepreneurship, perspectives for innovations development within the SMEs 2012 - 2013, Bulgarian SMEs Promotion Agency, 2013
Analysis of the Situation and Factors for Development of SMEs in Bulgaria: 2011-2012, Bulgarian SMEs Promotion Agency, 2012

Websites consulted

Name of website	Link to website
Point of single contact, Republic of Bulgaria	http://psc.egov.bg/psc-close-a-business-insolvency
LawsBG	http://www.lawsbg.com
Lectures on economics	http://www.bg-ikonomika.com
Labour and Law	http://trudipravo.bg/
Supreme Judicial Council	http://www.vss.justice.bg/bg/start.htm

4 Croatia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	42 months
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48 months
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral 0: courts are not neutral	1
2. Is a repayment plan part of the bankruptcy court procedures?	0: no 1: yes	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 24 months; 0: the length of time is longer than 24 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory.	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "bankruptcy procedure" includes the moment when bankruptcy is formally filed until liquidation is official. It does not include the discharge period.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	42 months
Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

Output 4

Overview of how "prevention" is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

A "prevention" process foresees pre-bankruptcy settlement procedure. Pre-bankruptcy settlement procedure is a procedure that is performed in order to establish the liquidity and solvency of the debtor (Law on financial operations and pre-bankruptcy settlement, Official Gazette NN 108/2012). Pre-bankruptcy settlement procedure can be initiated solely on the basis of the debtor's proposal to open such process, if the debtor within 60 days of the financial restructuring measures taken

outside the pre-bankruptcy settlement procedure cannot establish a state of liquidity and it has to be done no later than 21 days from the occurrence of insolvency.

The process lasts max 120 days, but there is also a shorter procedure for the companies whose total amount of liability specified in the statement of financial condition and operations does not exceed HRK 2,000,000.00, and the borrower employs fewer than 30 workers. The management of the company is obliged to present to the creditors its restructuring plan, including the plan for payment of debts toward the creditors. Creditors need to approve such plan, and the process is coordinated by FINA, the state financial agency. If the pre-bankruptcy settlement cannot be reached (is not approved by the creditors), the company the bankruptcy procedure. This procedure is in force for only one year so it is still early to assess the real impact and success of such policy measure.

Another instrument is for the companies with large tax debt accumulated due to their insolvency or illiquidity is offered by the Tax Office and called “Re-programme of tax debt”, where the companies that enter such programme are allowed to pay the tax debt over a longer period of time and in the meantime are allowed to participate in the public procurement tenders, which allows them more or less normal functioning on the market.

4.2. Which institutions exist that take care of this issue?

Ministry of Justice, Ministry of Finance, Commercial Court, Ministry of Economy, Ministry of Entrepreneurship and Crafts, FINA (national financial agency)

4.3. What are the costs involved?

Direct costs involved: Administrative cost of a pre-bankruptcy settlement procedure is between 1.000 and 1.300 EUR, depending on the size of debt and procedure taken (short or regular). It is almost impossible to estimate the total number of people that work on preventing a bankruptcy and the amount of time spent per person in total.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

Pre-bankruptcy settlement procedure is focused more on creditor demands than on preserving the entrepreneurial activities. There is almost no assessment involved on the impact of entrepreneurial activity on the market, regional development and employment.

4.5. How many companies have gone through “prevention” measures, and how many survived

Recovery rate is estimated as less than 40% but more than 25% of the estate.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

A “second chance” package of measures still under preparation. So far there are only several awareness raising activities in that sense.

4.7. Which institutions exists that take care of this issue?

Ministry of Economy and Ministry of Entrepreneurship and Crafts are promoters of such measures

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

Discrimination against re-starters - despite a fact that there is no administrative barriers to re-start business after a bankruptcy, such companies cannot participate in public procurement or benefit from grant nor other support schemes. Also the entrepreneur whose company underwent a liquidation process, upon starting a new company is considered a beginner which cannot use any of the references of the "old" company and in addition has a very negative image on the market.

4.10. How many companies that were liquidated/ bankrupted have profited from "second chance" measures?

Non applicable.

Output 5

Private Credit Rating Agencies in the country and national procedures related

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

In Croatia no such private agency operates. Croatian companies are rated by FINA (national financial agency), when applying for a bank loan, state guarantee or public grants (national or EU).

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

Non applicable.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Non applicable.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
7/2/2014	Dragica Karajić	Ministry of Entrepreneurship and Crafts	Head of Department	Dragica.karajic@minpo.hr +385 1 6106 812
7/2/2014	Sanja Fišer	Ministry of Entrepreneurship and Crafts	Head of department	Sanja.fiser@minpo.hr +385 1 6106 957
10/2/2014	Marijan Filković	Ministry of Finance	Head of department	Marijan.filkovic@mfin.hr + 385 1 4591 333
11/2/2014	Ana Marija Ivanković	Commercial Court	Judge, bankruptcy manager	ivankovic@odvjetnica-ivankovic.hr +385 91 9739 888
12/2/2014	Anny Brusić	Employers' Association (HUP)	Head of section for SMEs	Anny.brusic@hup.hr +385 1 4897 572
12/2/2014	<i>Insists of staying anonymous</i>	SME, creditor in pre-bankruptcy procedure	Managing director	n/a
12/2/2014	Vesna Nemčić	Accountancy and tax advisory service for SMEs	Managing director	Vesna.viz@gmail.com +385 1 2989 329
13/2/2014	Ivan Poljak	Financial agency FINA	Expert advisor on systems	Ivan.poljak@fina.hr +385 1 6127 325

Documents consulted

Name of document, author/organisation, year of publication
Law on bankruptcy, Official Gazette NN 44/96, 29/99, 129/00, 123/03, 82/09, 119/10, 25/12, 133/12
Law on financial operations and pre-bankruptcy settlement, Official Gazette NN 108/2012
Re-programme of tax debt, Croatian Tax Authority, 2010

Websites consulted

Name of website	Link to website
FINA	www.fina.hr
Business.hr (financial newspaper)	www.business.hr http://www.business.hr/vijesti/linic-predstecajne-nagodbe-su-uspiesni-model-kojim-su-spasena-radna-miesta
Ministry of Finance	www.mfin.hr
Tax Authority	www.porezna-uprava.hr
Official Gazette	www.nn.hr

5 Cyprus

Output 1 Interview notes
Available upon request.

Output 2 Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0; Not foreseen by law; trustees and lawyers may make special efforts to identify fraud but it is up to them
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5; There is never discharge of the debt; discharge proceedings are difficult and not often used.
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48; There are two different provisions for 4 and for 5 years for individual entrepreneurs, the latter has not been applied; for companies there is only a possibility of annulment of the order of liquidation so that the company can start operating again
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	The bankrupts are discharged by the Court only in case they pay all their debts or at least 50% provided the creditors agree. The discharge takes place in four years (if there is no objection or further offence) otherwise the time is extended to 14 years ² .
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

² As in the note by the Commission, this was not declared during the interviews who suggested it could continue forever

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	0
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	More than 5 years
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more	0

Question/issue	Options	Answer
rights)?	consequences than financial only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

No specific measures, a brief reference to the Law is insufficient and has never applied.

This short reference in the Law that might be interpreted as “prevention” because it foresees the possibility of reorganisation of companies in crises. However, this is done with a short article in the Law, whereas the application of such a provision needs details and conditions. This is why there has never been any use of the particular provision.

4.2. Which institutions exist that take care of this issue?

No institutions at that stage, the preparatory committee for the legal amendment is studying the issue.

4.3. What are the costs involved?

No case hence no cost.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

No case.

4.5. How many companies have gone through “prevention” measures, and how many survived?

No case.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Second chance is easier for individual entrepreneurs than for companies. Based on legal amendments in 2008-2009 after 4 years a bankrupt entrepreneur can request his discharge and may become director again (second chance). His debts are not annulled.

Based on a more recent provision (art. 31a) five years after the decision of transfer to the Official receiver the entrepreneur can request annulment of the bankruptcy court decision. Because there are serious delays if the court agrees to that the individual may still possess assets that could not be liquidated in the period of time elapsed. Creditors in this case need to start the bankruptcy procedure all over again.

Until 28/12/2012 the process could last forever. No opportunity to cancel the procedure, since the debts were not paid; creditors should give consent. On 28/12/2012 an amendment to the Law (art. 31a) introduced the second chance by conditions for annulment of the bankruptcy court decision. The debts of the individual remain but the new company is solvent.

4.7. Which institutions exist that take care of this issue?

Official receiver

4.8. What are the costs involved?

No cases known

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

No experiences, legal changes too recent.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

No applying to companies, individual entrepreneurs.

Output 5

Private Credit Rating Agencies in the country and national procedures related

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

There are no scoring companies in Cyprus. There are two rating companies accredited by ESMA but they only rate listed banks and companies in the nearby Arab countries. GAP is a list that keeps record of companies that do not comply with their financial obligations (black list available to banks). The Official receiver has also a registry of companies that in the process of liquidation and bankrupt individuals.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

Not relevant.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Not relevant.

Output 6

Sources

Interviews

Name of person interviewed	Organisation	Position	Contact details
Tsiakkis	Chamber of Commerce and industry	Deputy Secretary General	38, Grivas Dhigenis Ave. & 3, Deligiorgis Str., 1509 Nicosia Tel.: +357-22889860 Fax: +357-22665685 marios@ccci.org.cy
Costas Christofides	Federation of employers and industrialists	Assistant Director General	2, Acropoleos Ave. & Glafkou, Strovolos P.O.Box 21657, 1511 Nicosia, Cyprus Tel.: +357 22665102 Fax: +357 22669459 cchristofides@oeb.org.cy
Maria Theodorou	Ministry of Energy, Commerce, Industry and Tourism	Trade and Industry Function Department of Industry Development	+357 22867176 +357-99407304 mtheodorou@mcit.gov.cy
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Andri Antoniou LLB LPC	CRI Group Ltd	Personal & Corporate Insolvency Manager	20 Nikis Avenue, Office 400, 1086 Nicosia CYPRUS,

Name of person interviewed	Organisation	Position	Contact details
			Tel: (+357) 22 45544/5 Fax: (+357) 22 515212, www.crigroup.com.cy
Dina James	Capital Intelligence (Cyprus) Ltd	Marketing Officer	Oasis Complex, Block E, 1st Floor, Gladstone Street, PO Box 53585, Limassol 3303 - CYPRUS Tel: +357 2534 2300 Fax: +357 2534 3739 / 2581 7750 E-mail: marketing@ciratings.com

Documents consulted

Name of document, author/organisation, year of publication
Company Law (Chapter 113); Year of adoption 1968, various amendments until 2013
Bankruptcy Law (Chapter 5) ; year of adoption 1985, various amendments until 2012

Websites consulted

Name of website	Link to website
Cypriot Barr Association	http://www.cylaw.org/index.html
CRI Group, Corporate recovery and Insolvency Specialists	http://crigroup.com.cy/
Department of Registrar of Companies and Official Receiver	http://www.mcit.gov.cy/mcit/drcor/drcor.nsf/index_en/index_en?OpenDocument

6 Czech Republic

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0,5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	72
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	60
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0,5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Approx. 60 months
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

*Overview of how “prevention” is addressed in the country.***4.1. Which measures are taken in your country to address this issue?**

Measures taken to address this issue are all just about the possibility of a restructuring of a company that is accompanied by a plan to pay off the creditors. Prevention can take place only when companies detect their difficulties early. When they are viable but entered insolvency, they undergo the so-called reorganisation. Reorganisation allows the debtor to continue his activities within the limits set in the reorganisation plan. Reorganisation is possible only when the company is not in liquidation and its overall annual net turnover in the last accounting period prior to insolvency application was at least 50mil. CZK and the company employed at least 50 people on permanent contract. The proceeding lasts up to 6 months; the debtor is obliged to elaborate the reorganisation plan within 120 days from the lodging of request. The court then decides on the cancellation of the plan within 6 months to 3 years. It depends on the number of creditors and the amount. When the company pays off its debts, it is reorganised and can continue in its normal functions.

4.2. Which institutions exist that take care of this issue?

There are no specific institutions that take care of this issue but there are institutions that provide for legal or professional counselling.

4.3. What are the costs involved?

The costs involved vary considerably from case to case and cannot really be estimated. Costs linked to the initial court fees are 1000 CZK per hour, solicitor at least 350 CZK an hour. Initial legal counselling is free of charge.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issue to be tackled for successful prevention of bankruptcy is financial management skills.

4.5. How many companies have gone through “prevention” measures, and how many survived?

The number of companies that have gone through “prevention” measures can be estimated since the Insolvency act is valid (for 3 years already); so far, 39 requests for reorganisation were approved. For example, out of 5,000 requests, 19 reorganisations were approved. The conditions are strict and it is a lengthy process.

*Overview of how “post bankruptcy/second chance” is addressed in the country***4.6. Which measures are taken in your country to address this issue?**

Measures taken to address this issue are covered by Insolvency law (Act No. 182/2006 Coll. on bankruptcy and restructuring). The measures include bankruptcy, reorganisation and debt discharge, and a simpler form below a certain size of companies (small bankruptcies) – in case of a few creditors and low amount of assets. Then the entrepreneur can start all over again.

4.7. Which institutions exist that take care of this issue?

Special institutions for “post-bankruptcy /second chance” do not exist but there are institutions that provide for legal or professional counselling.

4.8. What are the costs involved?

The costs connected with “post-bankruptcy /second chance” vary considerably from case to case and cannot really be estimated. Costs related to the insolvency proceeding: initial court fees are 1000 CZK per hour and solicitor fee is 350 CZK per hour.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

One of the most critical issues to be tackled is following: The companies publish their financial statements with a delay of several years or not at all, and they prevent their business partners from checking their creditworthiness. The problem to be tackled is that trade registers and financial bureaus can impose sanctions only in theory; it does not work in practice.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

After bankruptcy, the entrepreneurs can get a second chance but they must settle their debts first. Very few honest bankrupt entrepreneurs have benefited from “second chance” measures or succeeded. Only a handful of individual entrepreneurs have been able to use the reorganisation process prior to 1 January 2014 and an increase cannot really be expected, even given the lowering of the size test and the related changes. The process is just too difficult and too costly for them to use. The opening of the debt discharge route to individual entrepreneurs is more promising and it remains to be seen how often it is used and with what results.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ³
The Insolvency Register (www.rejstrik-insolvencni.cz)	Czech Republic, Prague, správca Ministerstvo spravedlivosti ČR	Rating using points
The Central Credit Register (www.cnb.cz)	Czech Republic, Prague, Česká národní banka	Rating using points
SOLUS , Interest group of legal persons (www.solus.cz)	Czech Republic, Prague, Praha	Rating using points
Duns & Bradstreet (www.dandb.com)	USA, Los Angeles	Rating using points
BPX.cz (www.bpx.cz)	Czech Republic, Vaclavovice	Rating using points
Client Information Bank Register (BRCI) – www.cbcb.cz	Czech Republic, Prague	Rating using points
Non-bank Client Information Register (NRCI) www.cncb.cz	Czech Republic, Prague	Rating using points
Central Debtors Register of the Czech Republic (CERD), www.centralniregisterdluzniku.cz	Czech Republic, Prague	Rating using points
CRIF – Czech Credit Bureau, a.s. (www.crif.cz)	Czech Republic, Prague	Rating using points

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

In order to assess the creditworthiness of enterprises, mainly their economic results are taken into consideration. On this basis, their solvency and position on the market are ranked.

For the banking sector, CRIF – Czech Credit Bureau has developed 7 to 14 grades rating models. A similar methodology is used to assess commercial subjects such as companies, natural persons – business persons, and for non-profit sector as well. This methodology is suitable for the assessment of start-ups of natural persons as well. The whole scale of rating models is offered under the label iRating.

³ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

The calculation of the rating of enterprises is based on the assessment of basic data on companies used in a number of financial and non-financial criteria. The output is then an illustrative table consisting of the own rating grade and further useful information for the assessed company. The rating is set on the basis of the financial and non-financial assessment (creditworthiness) of the firm. The financial creditworthiness is characterised by one of five grades and results mainly from the assessment of financial indicators that show short-term liquidity, long-term solvency, and profitability. Each indicator has its values and weight depending on the business field. The non-financial creditworthiness is characterised by one of three grades and assesses mainly non-financial criteria concerning the company, the field of business and the respective region. Each criterion has its own weight. The combination of the grades of the financial and non-financial creditworthiness determines the resulting rating grade.

Rating is provided by agencies such as Moody's, Standard&Poor's a Fitch, with which the Ministry of Finance in the Czech Republic cooperates. Each subject is assigned a rating by the agency according to a scale, which is similar across the agencies and usually uses capital letters: A (good investment position), B (speculative position) and C (default). The ratings usually influence the interest rate of a loan.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

The rules of bank regulation are outlined in the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, the Act No. 6/1993 Coll. on the Czech National Bank. The rules allow for the use of ratings of recognised rating agencies in order to calculate the requirements for own bank resources and for traders with securities.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The Insolvency register keeps the evidence 5 years after the bankruptcy, the Central Register under the Czech National Bank keeps the records for 10 years after the debt settlement, SOLUS stores the data 3 years after debt settlement, BRCI (Client Information Client Register) and Czech Banking Credit Bureau provides access for banks for 4 years after the settlement and the Central register of debtors (CERD) keeps the records for 10 years.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
20.03.2014	Mr Jan Majdan	UniCredit Bank Czech Republic	Manager Small Business Senior	+421 918 501 620 jan.majdan@unicreditgroup.sk
24.03.2014	Ms Vera Kamenickova	CRIF – Czech Credit Bureau, a.s	Statistical Analyses Manager	+420 277 778 524, v.kamenickova@crif.com, www.crif.cz
24.03.2014	Mr Thomas Richter (key interviewer)	Clifford Chance Prague LLP	Counsellor	+420 222 555 222 tomas.richter@cliffordchance.com
28.03.2014	Ms Vera Sichova	Municipal Court in Prague	Press Officer	vsichova@msoud.pha.justice.cz +420 224 172 020

Documents consulted

Name of document, author/organisation, year of publication
The Law of Insolvency, Act No. 182/2006 Coll on Bankruptcy Settlement
Act No. 6/1993 Coll. on the Czech National Bank, part Financial supervision
Rating SMEs in the Czech Republic – information from websites www.ratingmsp.cz, www.ratingfirmy.cz

Websites consulted

Name of website	Link to website
Association of Small and Medium-Sized Enterprises and Crafts CZ	www.amsp.cz
BPX.cz	www.bpx.cz
Central Debtors Register of the Czech Republic (CERD)	www.centralniregisterdluzniku.cz
Chamber of specialists for crisis management and insolvency	www.kskri.cz
Client Information Bank Register (BRCI)	www.cbcb.cz
Clifford Chance Prague LLP	www.cliffordchance.com
CRIF – Czech Credit Bureau, a.s.	www.crif.cz
Czech Businesswomen Association	www.svazpodnikatelek.cz
Duns & Bradstreet	www.dandb.com
Ministry of Industry and Trade	www.mpo.cz
Ministry of Justice	www.justice.cz
Non-bank Client Information Register (NRCI)	www.cncb.cz
SOLUS, Interest group of legal persons	www.solus.cz
The Central Credit Register	www.cnb.cz
The Insolvency Register	www.rejstrik-insolvencni.cz

7 Denmark

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	3 years or 5 years. For bankruptcies where the majority of the debt is business-related, the period is 3 years
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	The Danish tax authorities can ask for a guarantee the first year of a new company's lifetime (if the owner previously went bankrupt). In addition, the tax authorities can limit the possibility to obtain different licences (licence to operate as a lawyer, licence to serve liquor etc.) The length differs from industry to industry. Apart from that, it is next to impossible to obtain a loan from the same bank that the bankrupt entrepreneur previously used.
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted	0 (when the debt is paid and the creditor notifies Experian about this); or after 5 years, even if the debt is not repaid

Questions	Options	Answer
	from the database between 1-2 years after discharge; 0: otherwise.	

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1 (it is mandatory that the entrepreneur is informed about the possibility of discharge after curator has finalised his/her work)
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5 – 0 (discharge procedures can begin when the curator has finalised his/her work, and debt repayment is done over 3 or 5 years. However, not all debtors are granted a discharge immediately)
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0 (but in the case of discharge, large creditors can participate in the meetings where the discharge procedure is established)
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Interviews: 1-2 years. Can be done in a year, if the case is clear-cut 2010-figures from the evaluation of the Early Warning System: The average time for a bankruptcy procedure was 492 days for companies and

Question/issue	Options	Answer
confirmed. It does not include the remaining period until discharge.		606 days for private persons
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 – Certain personal belongings necessary to maintain a simple living (Depending on liability. The above refers to personal liability which is the case for many entrepreneurs)
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0 Depending on your industry, certain licences can be taken away. In addition, the entrepreneur is often stigmatised

Output 4 *Overview of how “prevention” is addressed in the country*

4.1. Which measures are taken in your country to address this issue?

The Danish Business and Commerce Agency has initiated an Early Warning Programme for companies in trouble. The Danish regional business development centres (Væksthusene) are coordinating the effort.

The process starts with a company that contacts the Early Warning-centre. The first contact for the company is an Early Warning (EW) consultant, who is employed by the business development centre. The EW consultant screens the company case and comes with a first assessment of the possibilities for the company. Next step is often that a lawyer specialized in insolvency is put on the case. The company in trouble then meets up with the lawyer to see what should be done with the company, if there are possibilities of continuing operations, if the company should be shut down etc. If the company can survive, a volunteer from the private sector (business consultant) is put on the case, to help the company back on track. If the company goes bankrupt, the volunteer is also put on the case, since the lawyer cannot help the bankrupt company anymore. It can as mentioned take 1-2 years from bankruptcy proceedings are formally opened by the court and until a decision is taken. During this period, the company may need support, which the volunteer can offer.

4.2. Which institutions exist that take care of this issue?

The Danish Business and Commerce Agency, Danish regional business development centres (Væksthusene)

4.3. What are the costs involved?

The costs involved in preventing bankruptcy are relatively low, since the lawyers are giving advice for free and the business consultants are involved on a voluntary basis. So the cost of one prevention case is DKK 11.400 (App. EUR 1500) on average, covering the EW-consultants' salary and car allowances. It is relatively easy to get business consultants to volunteer. What drives the people is especially the wish to help others.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The greatest challenge is that entrepreneurs still react too late. When entrepreneurs see that their company is performing badly, they continue to inject money in it instead of seeking advice. It is often banks, auditors and even spouses that need to tell an entrepreneur to seek advice. It is closely connected to the fact that many entrepreneurs feel stigmatized from being in a financially difficult situation. It is closely related to the way bankruptcy is articulated in Denmark. The political focus has long been on hindering the fraudulent entrepreneurs from exploiting the system. A negative side effect of this has been that it is not very accepted to fail. This is a challenge, also seen in the light of the experience of Early Warning which clearly shows that the sooner in the process a company/entrepreneur seeks help, the less is the financial loss. It is also important to articulate that it can be positive both to restructure and to close a company, thus losing less money than if an unhealthy company is kept alive for an additional year with an increased debt. Studies have shown that in the last months of a company's life time, much money is injected into the company to try and save it – with a large debt as a result. This situation is to be avoided.

4.5. How many companies have gone through “prevention” measures, and how many survived?

The Early Warning Initiative helps app. 600 companies every year and has done so since 2007. In 2011, an evaluation was carried out of the Early Warning Initiative. The evaluation showed that from 2007 when the programme was initiated, and up until 2010, app. 1500 companies had received help from Early Warning. App. 800 of these had completed their counseling programme, and out of these companies, app. 60 percent of these companies survived at the time of the evaluation.

However, it is not always preferable that a company survives. Sometimes, the best possible solution is to shut it down immediately instead of keeping it alive for perhaps one extra year, and increasing the debt in this extra year. Thus, success of a programme should not necessarily be measured by the amount of companies that have survived.

The evaluation also showed that the companies that sought the advice of Early Warning and has come through the crisis have outperformed companies that handled a similar crisis in their company on their own. The companies counseled by the Early Warning-programme from 2009 to 2010 had a revenue decline of 9 percent and a loss in the value growth of 7.5 percent, compared with 15 percent and 18 percent for non-counseled companies. This corresponds to an overall difference of app. DKK 160 million (app. EUR 20 million) in revenue and app. DKK 100 million (app. EUR 13 million) in value added growth.

Companies counseled by the Early Warning-initiative that had to shut down ended up with less debt than closed businesses that had not made use of the scheme. The 215 companies involved in Early Warning that had to close their business, had an average debt of DKK 750,000 (app. EUR 100,000) to the public. That is 20 per cent less than the app. DKK 930,000 (app. EUR 125,000) which was the average for companies that had not used the scheme. It approximately corresponds to a reduction of companies' debt to the public by DKK 30 million (app. EUR 4 million).

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Denmark does not have special measures to promote second chance. In general, there is a balance between promoting a second chance and ensuring that fraudulent entrepreneurs are not exploiting the system. As mentioned, the political agenda has long been focused on limiting the room for manoeuvre for fraudulent companies. However, Denmark has introduced various legal

actions to make it easier to start a business again after a bankruptcy. For example, the discharge period has been shortened from 5 to 3 years (if the majority of the debt is business-related).

4.7. Which institutions exist that take care of this issue?

Non applicable.

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

A critical issue is to shift the political focus more in the direction of promoting second chance instead of focusing strongly on eliminating fraudulent companies. As with prevention measures, it boils down to how second chance is articulated.

4.10. How many companies that were liquidated/ bankrupted have profited from "second chance" measures?

It is not possible to give a percentage of second chance companies, since this term does not really exist in the Danish system. However, the organisation ASE and the Danish Business and Commerce Agency has carried out a survey, where it can be seen that app. 60 percent of the entrepreneurs that went bankrupt consider starting – or have started – a new company.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
DBRS Limited	Not physically present	Used for investment decisions
Moody's Investors Service	Not physically present	Used for investment decisions
Standard & Poor's Rating Services	Not physically present	Used for investment decisions
Fitch Ratings	Not physically present	Used for investment decisions
Bisnode Credit (former Soliditet) – cooperates with D&B Denmark (same address)	Tobaksvejen 21 DK-2860 Søborg	Used for investment decisions
Experian	Lyngbyvej 2 DK-2100 København Ø	Used for investment decisions Debt recovery purposes
Intrum Justitia	Lyngbyvej 20 DK-2100 København Ø	Used for investment decisions Debt recovery purposes
Dansk KreditorService	Helsingørvej 6 DK-7100 Vejle	Used for investment decisions
Atradius A/S	Sluseholmen 8A DK-2450 København SV	Used for investment decisions
Euro Capital A/S	Priorvej 2 DK-2000 Frederiksberg	Used for investment decisions
Euler Hermes Danmark	Amerika Plads 19 DK-2100 København Ø	Debt recovery purposes
Svea Inkasso	Torvestrædet 3 DK-3450 Allerød	Incasso
Debitor Registret	Vester Søgade 10 DK-1601 København K	Debt recovery purposes
UXOR ApS	Diplomvej 376 DK-2800 Kgs. Lyngby	Incasso

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

The large international PCSBs follow a set of criteria that are relatively similar. The following elements are used to rate a company: Profitability, Balance sheet, Management of company, Operating environment, Prospects

The international PCSBs typically only rate large companies. Small companies can be rated by for instance Bisnode Credit. According to the personal data act, PCSBs “ay process information, which by their nature are important for the assessment of financial standing and creditworthiness” (chapter 6, art. 20). In practice this differ a bit among the registered PCSBs, but include the following: Size of previous debt, History of possible previous bankruptcy, When the debt was registered, When the debt was deleted, Key financial figures

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

PCSBs are regulated in Denmark under the Credit Rating Agency (CRA)³ Regulation (EU law). Apart from this legislation, which is fully implemented in Denmark, rating agencies are regulated in the Danish personal data act (persondataloven). Moreover, operating in Denmark requires a permit from the Data Inspection Board.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Experian lists all persons, private and entrepreneurs, who are unable to pay their debt. A creditor notifies Experian if a client cannot pay his/her bill. The private person or entrepreneur is then registered in Experian. When the debt is paid the entrepreneur is deleted from the register. If the debt is not paid, the entrepreneur is deleted from the register after 5 years.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
26 March	Henrik Noes Piester	Erhvervsstyrelsen	Special advisor	+45 3529 1695
31 March	Svend Røge	Væksthus Midt	Project manager, Early Warning	+45 21343136
31 March	Hans Henrik Thorsen	Advoffice	Attorney at law	+45 2143 8416
31 March and 1 April (written answers)	Tina Skotte Sørensen	Finanstilsynet	Special advisor	+45 33 55 82 02
1 April	Trine (employee assisting with information on PCSBs, not real interview)	Datatilsynet		

Documents consulted

Name of document, author/organisation, year of publication
Erhvervs- og Byggestyrelsen (2011): Virksomheder I krise – gode råd til en ny start
PLANET S.A. (Greece), Paris Chamber of Commerce and Industry (France), Danish Technological Institute (Denmark), GFA Consulting (Germany) (2011): "Business Dynamics: Start-ups, Business Transfers and Bankruptcy". <i>The economic impact of legal and administrative transfers and bankruptcy on entrepreneurship in Europe.</i>
eStatistik (2011): Early Warning – en evaluering af programmets indsats overfor kriseramte danske virksomheder
ASE og Erhvervsstyrelsen (2012): Efter Konkursen
Retsplejeloven: LBK nr 1139 af 24/09/2013
Konkursloven; LBK nr 11 af 06/01/2014
Persondataloven: LOV nr 429 af 31/05/2000

Websites consulted

Name of website	Link to website
Domstolene	http://www.domstol.dk
Experian Q&A	http://www.dininfo.dk/Forbruger/FAQ.aspx
Finanstilsynet approved credit rating bureaus	http://www.finanstilsynet.dk/Temaer/Solvens/Kreditinstitut-og-fondsmaegleromradet/Godkendelser-mv/Kreditvurdering.aspx?sc_lang=da
Early Warning Initiative	http://startvaekst.dk/earlywarning.dk/forside/0/2
Nationalbanken	http://www.nationalbanken.dk/C1256BE2005737D3/side/Finansiel_Styring_i_Danmarks_Nationalbank/\$file/kap11.html
Datatilsynet	http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/artikel/svar-til-folketinget-om-opslag-i-kreditoplysningsbureauer/ http://www.datatilsynet.dk/erhverv/kreditoplysningsbureauer/ https://anmeld.datatilsynet.dk/frontend/fortegnelse/soeq.asp

8 Estonia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48 For companies, there is no option of full discharge. As for private persons, one could obtain full discharge, but this option is not available for all insolvent persons (for example, if one has committed an insolvency related crime, if one already has undergone full discharge procedure in past 10 years etc). The court will decide upon the full discharge when 5 years have passed from the beginning of the full discharge procedures. Court can also decide to rule full discharge before 5 years have passed, but no earlier than 3 years after the beginning of the discharge procedures.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0 ⁴
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Total length from declaring bankruptcy to deleting from business registry – 30 months; from the start of proceedings to debt repayment plan agreement – 15 months
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

⁴ There is no time limit for debt repayment plan.

4.1. Which measures are taken in your country to address this issue?

By law an enterprise is not allowed to be insolvent. If the board identifies insolvency they must apply for bankruptcy in 20 days (Commercial Code). The members of the board can be held responsible if they fail to do so. In the opinion of some interviewees smaller companies are not aware of these requirements. As for larger companies, their annual financial statements have to be audited. The annual financial statement has to be presented electronically to the Commercial Register. The Register automatically controls if net assets are above the required threshold set by law. If not, the company is notified, but no further follow-up action is performed. Therefore, the measure's effectiveness is questionable as it happens with long time lag and is not followed up. But it is a cheap solution that covers all companies unlike auditing or control by client's bank. There is no systematic out-of-court settlement procedure for insolvency. Mostly these cases are handled through court. However, the Reorganisation Act does not exclude out-of-court settlement in the preparation phase. Besides, the preparations should and usually do start before going to the court, but only larger companies can afford that.

Second, Estonian Chamber of Commerce and Industry has Court of Arbitration which is also used by firms for debt settlement purposes. However, the number of cases is very small and in the opinion of most interviewees there is no systematic out-of-court settlement procedure in Estonia.

Indirectly various public business advisory services also help to prevent bankruptcies by enhancing the management skills of the owners and managers.

4.2. Which institutions exist that take care of this issue?

Checking for insolvency in annual reports: Estonian Centre of Registers and Information Systems through its e-Business Register. (For larger firms also their auditors)

For reorganisation of firms and debt restructuring of private persons – courts.

Out of court settlements for firms - Court of Arbitration at Estonian Chamber of Commerce and Industry

4.3. What are the costs involved?

All interviewees said it is impossible to assess these costs as the cases are so different and the number of cases is quite small in Estonia to make significant generalizations about the cost.

As for the automatic check whether a company is solvent based on their annual report - this should be close to zero, since the annual reports are now submitted electronically and an algorithm issues a warning (I presume through e-mail, or otherwise the cost is sending a letter to the company).

For reorganisation of firm, the cost of reorganisation adviser was estimated to be about 6 months of work by one person (not including work done by courts and the firm itself).

Court of Arbitration at Estonian Chamber of Commerce and Industry - it could be as little as one week.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

Reacting fast to potential problems and first signs of insolvency, including access to legal and financial advice (and awareness where to get the advice). Often entrepreneurs/managers are not aware of/do not notice the first signs of insolvency (eg knowledge of financial management is poor). They do not know where to find help. This leads to legal mistakes and restructuring starting too late to save the firm. This also leads to another problem - the recovery rate of creditors is low (about

40%) and majority cases filed for bankruptcy actually end with liquidation as the company to has no assets (even to cover the costs of the bankruptcy process).

4.5. How many companies have gone through “prevention” measures, and how many survived? If these numbers cannot be estimated, please give a percentage of surviving companies.

In 2013 there were 459 insolvent companies in Estonia of which 151 (3 private person) went through the bankruptcy procedures and the rest the liquidated as the court found the company to have no assets. In the end of 2008 a new law, Reorganisation Act, was adopted by the Parliament to allow restructuring the firms’ economic activity and debts. Until today there has been 159 applications (12/2008-01/2014), but only 22 confirmed reorganisation plans. The average length of court proceedings of the ended cases is 148 days. There is no statistics on how many of these companies have survived. But according to one interviewee about 25% (max 50%) are successful. Another interviewee estimated that out of 100 reorganisation attempts 5 reach a reorganisation plan successfully. According to reorganization adviser it takes about 6 months of active work with the company by one person. In the end of 2010 a similar law was adopted for natural person (incl entrepreneurs) that allows avoiding bankruptcy – Debt Restructuring and Debt Protection Act. In 2012 there were 28 applications of debt restructuring to the courts and 5 were approved (Riigikogu, 2013). Both laws involve in-court procedures.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

There are no specific measures addressed to “second chance” entrepreneurs to support a fresh start. The principle is to guarantee equal treatment to all entrepreneurs, hence public business support measures are open to the second chance entrepreneurs.

4.7. Which institutions exists that take care of this issue?

Non applicable.

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

Non applicable.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Non applicable.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
AS Krediidinfo	Narva mnt 5, 10117 Tallinn	Given back to client who paid for it; used for other research done by the firm (eg sectoral ratings)

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs? (simply list in bullets the criteria)

There is only one major PCSB in Estonia – AS Krediidinfo (a member of Experian group since 2006). The company also administers the payment defaults register (Estonian Credit Register) that was established by the banks in 2001.

Credit ratings are given in 7 categories (AAA to C). The main criteria of assessing the creditworthiness by AS Krediidinfo are: financial statements from the last year (balance sheet, profit statement, cash flow report etc) to assess the effectiveness of business model, past professional experience of the key management figures, past record of the payment defaults

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

There is no specific law regulating the activities of PCSB's. (The banks are required by law to have a methodology in place to assess the creditworthiness of its clients.) In addition, the Estonian Data Protection Inspectorate has prepared guidelines for making public the payment default information of private persons (AKI, 2010). The guidelines explain the principles set by the Personal Data Protection Act that states that information on payment default and debt can sometimes be made public without person's consent. According to the guidelines the information on payment default of a person can be shared with public (for example via internet) only if the person has agreed to that and the person can any time withdraw his/her agreement. Without the agreement the information can only be shared with the parties with legitimate interest. Except tax defaults that can be made public without consent.

5.3. What rules with regard to deleting debtors from databases exist?

Firms and persons get to the payment default database through information submitted by credit institutions and by the creditors who are registered clients of AS Krediidinfo. Rules: payment deadline must have been at least 45 days ago, the debt is over 30 euros, the claim is not challenged

Information on the payment default remains in the database for: private persons for three years, except for incidences registered by credit institutions which remain available for banks for five years (Credit Institutions Act), firms for seven years. Everyone can check for current tax defaults data on Tax Office's website.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
20/03/14	Indrek Niklus	Ministry of Justice	Director, Private Law Division	+372 6208210
20/03/14	Kaupo Sempelson	Ministry of Economic Affairs and Communication	Senior Specialist, Entrepreneurship Unit, Economic Development Department	+372 6256350
21/03/14	Toomas Saarma	The Estonian Chamber of Bailiffs and Trustees in Bankruptcy	Member, Management Committee; Trustee in bankruptcy	+372 6270444

Date	Name of person interviewed	Organisation	Position	Contact details
27/03/14	Ürjö Jõks	AS Hektor Light (bankrupt)	Owner/manager	+372 5031382
28/03/14	Debbie-Triin Napits	Estonian Chamber of Commerce and Industry	Specialist, Court of Arbitration	+372 6040060
28/03/14	Urmas Tross	Alusta Uuesti OÜ	Manager; Reorganisation adviser; Trustee in bankruptcy	+372 5019750
31/03/14	???	AS Kredidiinfo	Someone in management position	+372 6659600
31/03/14	Oliver Ennok	Cavere Õigusbüroo OÜ	Trustee in bankruptcy	+372 6844400

Documents consulted

Name of document, author/organisation, year of publication
Kredidiinfo, 2014. Pankrotid Eestis 2013 (Bankruptcy in Estonia 2013).
Justiitsministeerium, 2012. Maksejõuetusajade menetlemise keskuste loomine ja halduri nimetamise regulatsiooni muutmine (Creating special centres for insolvency cases and changing the regulation for trustee nomination)
PricewaterhouseCoopers Advisors, 2012. Maksejõuetuse menetlemise tõhususe uuring (Study of the Proceeding Efficiency of Insolvency Cases)
Võlgade ümberkujundamise ja võlakaitse seadus (Debt Restructuring and Debt Protection Act) https://www.riigiteataja.ee/en/eli/530102013060/consolide
Saneerimisseadus (Reorganisation Act) https://www.riigiteataja.ee/en/eli/514112013009/consolide
Pankrotiseadus (Bankruptcy Act) https://www.riigiteataja.ee/en/eli/531032014005/consolide
Andmekaitse Inspeksioon (AKI), 2010. Maksehäirete avaldamise juhend (Guidelines to Making Public Payment Defaults) http://www.aki.ee/et/juhised/maksehairete-avaldamine
Riigikogu, 2013. Riigikogu kroonika (Chronicles of the Parliament) http://www.riigikogu.ee/index.php?id=175876&parent_id=175226

Websites consulted

Name of website	Link to website
Võlanõustaja (<i>Debt adviser</i>)	www.volanoostaja.ee
AS Kredidiinfo	www.kredidiinfo.ee
Legal texts	www.riigiteataja.ee
The Estonian Chamber of Bailiffs and Trustees in Bankruptcy	www.kpkoda.ee
Ministry of Justice	www.just.ee
Estonian Courts	www.kohus.ee

9 Finland

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	1

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

The *Talousapu* service started in 2009 as a counselling for entrepreneurs in financial distress. The service is free-of-charge and consist of a phone- and an online service. 20 experts are affiliated with the service. From the start up in 2009 until 2013, the service was partly financed by public funds and partly by private funds. As of 2014, the service is completely funded by the Ministry of Employment and the Economy.

4.2. Which institutions exist that take care of this issue?

The following institutions have been involved in operating/financing the service: The Ministry of Employment and the Economy, The Federation of Finnish Enterprises, Confederation of Finnish Industries, Federation of Finnish Financial services, and other private organisations.

4.3. What are the costs involved?

One case generally requires between 2 – 8 working days (usually a business consultant and/or a lawyer), but it largely depends on the specific case.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

All of the sources consulted believe that the most important issue to address in terms of preventing bankruptcy is that most entrepreneurs do not seek help in time. The survival rate will be much higher if entrepreneurs became better at realizing their financial problems in time.

4.5. How many companies have gone through “prevention” measures, and how many survived?

The service receives around 2000 enquiries annually. More than a third of the companies who enquire have to file for bankruptcy. Nevertheless, this is simply the right decision in some case.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

In Finland, there are no practical measures in place to promote second chance for honest bankrupt entrepreneurs. The general message from the respondents is that such measures should be in place. However, according to one source consulted, there are legal changes underway, which is supposed to facilitate a smoother way out of bankruptcy for honest sole entrepreneurs. It is estimated by the source that at an annual basis between 200 – 300 entrepreneurs will benefit from such a change in legislation. There are no indications on when this change will have effect or any concrete details of the change.

4.7. Which institutions exists that take care of this issue?

Non applicable.

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issue to be tackled in terms of second chance is the bad reputation that it creates. Even though there is nothing in theory that prevents an honest bankrupt entrepreneur from starting a new business, but the bad reputation makes it somewhat impossible, hence, the honest entrepreneurs are simply losing too much time before it is practically possible to start a new business.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Non applicable.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁵
Suomen Asiakastieto OY	Helsinki	Information for paying clients / Investment decisions
Bisnode Finland Oy	Helsinki	Information for paying clients
Intrum Justitia Oy	Helsinki	Information for paying clients / Debt recovery purposes
Euler Hermes Service AB	Helsinki	Debt recovery purposes

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

The most relevant information in assessing the creditworthiness of entrepreneurs, is the financial history and the current financial situation of the individuals involved in the business.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

The PCSBs are regulated by the Credit Data Act. Among other things, the legislation outline how to handle, store and share such data. According to the Credit Data Act, the Data Protection Ombudsman have to give permission before a company can engage in credit data activity. The Data Protection Ombudsman also has a supervising role. At the time being, only 4 companies have been authorized to engage in credit data activity.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

A debtor will be deleted from the register within 5 years, but this varies depending on the specific circumstances in the case and on the company form.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
20/03/14	Helena Laine	Office of the Bankruptcy Ombudsman	Bankruptcy Ombudsman	Helena.laine@oikeus.fi +358 295665102
21/03/14	Janne Makkula	The Federation of	Manager of Legal	Janne.makkula@yrittajat.fi

⁵ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Date	Name of person interviewed	Organisation	Position	Contact details
		Finnish Enterprises	Affairs	+358 405812472
27/03/14	Jari Leskinen	Centre for Economic Development, Transport and the Environment	Development Manager	Jari.s.leskinen@ely-keskus.fi +358 405933157
21/03/14	Jyrki Tähtinen	Attorneys at Law Borenius	Senior Partner	Jyrki.tahtinen@borenius.com +358 961533411
14/03/14	Mari Aalto	Finnish Ministry of Justice	Counsellor of Civil Law	Mari.aalto@om.fi +358 295150502
21/03/14	Pär Österlund	Bisnode Finland	Marketing Director	Par.osterlund@bisnode.com +358 975119100

Documents consulted

Name of document, author/organisation, year of publication
Finnish Bankruptcy Act (2004/120)
Finnish Credit Data Act (2007/527)

Websites consulted

Name of website	Link to website
Finlex Data Bank website	http://www.finlex.fi/en/
Finnish Ministry of Justice website	http://www.oikeusministerio.fi/en/index.html
Finnish Bankruptcy Ombudsman website	http://www.konkurssiasiamies.fi/3920.htm
The Federation of Finnish Enterprises website	http://www.yrittajat.fi/en-gb/
Talousapu website	http://www.talousapu.fi/

10 France

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0 (during the process another action can be conducted for fraudulent)
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0 (only for those with 1 or 0 employees)
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	6 to 24
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36 to 60
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0 (not from private ones)

Output 3 *Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries*

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of	1: courts are neutral; 0: courts are not neutral.	1 (courts apply the law favouring the company in order to save jobs)

Question/issue	Options	Answer
debtors or creditors?		(since the 1984/85 laws).
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	0 (assets are liquidated to pay debts within 2 months)
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0 (10 years maximum by legislation)
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5 (depending on the financial level)
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12 (more for complicated cases)
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 (personal assets if separated and no loan based on them)
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

4.1. Which measures are taken in your country to address this issue?

Measures: there are two ‘out of court’ procedures called “Mandat adhoc”⁶ (working well for prevention) and ‘conciliation’⁷.

Both have been reinforced by the March 12 decree reforming insolvency has been made by the French government. A project to improve the collective procedures by modernizing the law has been presented in March 2014 (applicable on 1st July 2014).

There are also several processes to alert on the bad situation⁸, from those within the company to those lending to the company and those in charge of monitoring (accountant, tribunal of commerce who are keeping an annual record of the account).

4.2. Which institutions exist that take care of this issue?

There are many institutions working on prevention, for example associations representing sectors of activity (APCMA or UPA for craft and merchants, CGPME for SMEs, MEDEF for big companies), or Chambers of Commerce (CCI), accountants, etc... SMEs may get different opinions as to what to do depending on the actors consulted which makes a decision even harder. No particular organisation is leading but rather, they are all acting in the prevention chain.

For example, the CGPME⁹ is acting to prevent bankruptcy by being in contact with their members.

The level of support depend on the territorial representation which is at the level of the county (<http://www.cgpme.fr/a-la-carte>). The office may have for example a free phone number, information package, support provided by a member of the association or CGPME staff, etc ...

Some offices such as CGPME Lyon are providing more than others due to their size.

The CCI network is the main prevention actor due to its strong local presence. Each CCI has a different procedure, but they all have a common entry point with a free first meeting. The appointment is confidential with a diagnostic established and referral to partners such as lawyers or accountants. Some CCIs have a free call number, etc... Other CCIs are providing more such as helping to prepare the file for the court, etc... but then they ask for being paid for the service.

CCI and partners have also set up cells prevention « Cellules de prévention » since they are the main actor for preventing difficulties. CCIs work in partnership with accountants, former consular judges and lawyers. CCIs are also partners for CIP (see below). More than 50% of CIP (about 50) are located within CCIs, others are located by accountants and few by APCMA. The CIP is not always performing well.

The service « assurance santé entreprise » is provided by accountant

(<https://www.tresor.economie.gouv.fr/File/339848>)

Accountants and CCI are regrouped to prevent from difficulties under the network CIP « Centre d'information sur la Prévention des difficultés des entreprises » ('Information Center on the Prevention of business difficulties' <http://www.cip-national.fr>). As it a regional organisation, local actors may work together better in some places than others. Usually accountant and consular judges are the most active while lawyers are less active. In some places, associations are also very active such as SOS entrepreneur (<http://www.sos-entrepreneur.org/medias/files/6-Propositions-de--SOS-Entrepreneur---Janvier-2014.pdf>). The mediator of credit is also very active to help with public administration debt.

⁶ <http://www.avocatparis.org/entreprisesij/reponse-aux-entrepreneurs/faq-entreprises-en-difficulte/2331-le-mandat-ad-hoc.html>

⁷ <https://www.infogreffe.fr/societes/sauvegarde-entreprises/entretien-mandat-ad-hoc-conciliation.html>

⁸ <http://www.avocatparis.org/entreprisesij/reponse-aux-entrepreneurs/faq-entreprises-en-difficulte/2336-la-procedure-d-alerte.html>

⁹ The General Confederation of Small and Medium sized Enterprises (“Confédération Générale des Petites et Moyennes Entreprises”)

4.3. What are the costs involved?

The cost is very difficult as each case is different. In addition, the procedure is confidential so no data are collected. Only the bankruptcy procedure is recorded¹⁰. An example was provided for which the number of actor involved (mainly because of the number of creditors) was in term of months. This prevent saving many companies due to a lack of resources.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

- The most difficult is the psychological aspect of the business failure.
- Managing skills: entrepreneurs are very good in their domain of expertise, but their managing skills can be improved such as better financial capacity and debt management of clients (re-launching non-paid invoice was a bit less systematic before the 2008 crisis). CGPME is informing / sensitize its members. The 2008 crisis has also helped a lot.
- Early help: the difficulty is to get entrepreneur to accept that they have a problem and need help. SME are afraid of asking for help. The problem is (of mentality or thinking) to accept that a company is created and can stop due to external constraints (the market has changed, the product is too expensive to produce, ...). As a consequence, it would be accepted that entrepreneur stop a company to start a new one. In the US, it is better to have failed at least once. FIBEN 040 has disappeared since September 2013 (only for one bankruptcy during the last 5 years), but if you failed several times (in case of holding company for example), you are still marked by FIBEN 050 or FIBEN 060. A separation should be made between those having made recognised mistakes. In addition, banks keep the information.
- Coaching is proposed for entrepreneurs for self-esteem and understanding what went wrong.

4.5. How many companies have gone through “prevention” measures, and how many survived?

Number of companies: data not available due to confidentiality of the procedure. According to interviewees, about 5 to 20 % of the companies survive (depending on the experience of the people interviewed) but no firm data to support this.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Measures: the cancellation of the indicator called “FIBEN 040” was a request from CGPME in order to stop following entrepreneurs many years after their bankruptcy. The measure is implemented since September 2013. However, bankers will still use indicators to score (other than FIBEN 040).

The association sector is the most active. For example, “Initiative France” is an association which is the biggest voluntary funding network for entrepreneurs in France: represented by 230 platforms support throughout France and responsible for maintaining or creating 16,107 companies and 37,141 jobs in 2012. The platform funds creators and those having difficulties. Following an agreement with banks, when the network funds someone, the banks add 2 to 5 times the amount (<http://www.initiative-france.fr>).

4.7. Which institutions exists that take care of this issue?

- Public organization support entrepreneurs in their steps such as CCSF (“commission des chefs de secteurs financiers” to have debt negotiation <http://www.cip-national.fr/que-faire/ccsf>), the CODEFI (<http://www.cip-national.fr/que-faire/codefi>) for small companies (less than 400 employees) and CIRI for big companies
- Associations for entrepreneurs willing to have a second chance: SOS Entrepreneur, RE-CREER, 60 000 rebonds, Second Souffle, sous forme d’un GIA¹¹ (“Groupement d’Intérêt

¹⁰ For example : Data from “Observatoire Economique - Données financières des entreprises en procédures collectives” CNAJMJ <http://www.cnajmj.fr/upload/Lettre/21-La-lettre-observatoire-lettre-de-mars-2014.pdf>

¹¹ <http://portaidurebond.com>

Associatif" Interest Grouping Association). The agreement between the 4 associations and the government is to have conferences across the country to promote second chance. This concerns about 60 000 entrepreneurs in France every year (source: <http://portaildurebond.com/g-i-a/>)

- Association "Initiative France" (see above).

4.8. What are the costs involved?

There is no formalization or data, so it is difficult to give a number. It is also very difficult as each case is different.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

- Those who failed are not well perceived in France. But it seems that many do succeed after such an experience although there is no statistics about that.
- Those looking for a second chance are more experienced, more lessoning to others but there is no particular action directed to them. They are treated as any other entrepreneurs. In particular, the psychological aspect of the business failure is very difficult. For those who have lost much and their personal self confidence (personal debt, clients, personal life...) are not treated in any particular system except by associations such as the GIA to rebound (see above).
- Each case is different due to the expertise of the experts involved in the failure process. The outcome of the negotiation depends of the quality of the experts...
- The "FIBEN 040" indicator is cancelled but bank experts will still continue to use internal financial information to score the risk associated to providing funds. FIBEN 060 or FIBEN 050 indicators provided by Banque de France are also still in place (even if there is no fraud).
- Most entrepreneurs are bankrupt once they go to into the court procedure (hence their reluctance to go) due the cost of those mandated to redress (their remuneration is negotiated case by case sometimes up to 50% of the total amount of cash to be found) and the priority to get employees and creditors paid (such as social security, banks, etc) rather than to save the enterprise.
- CCIs, who are mostly in charge of preventing difficulties, are not very active. Today, their role is diminishing, especially with the forthcoming stronger role of regions in the economic development and professional training (both are CCIs' roles). The time needed for one file (to help an entrepreneur) is enormous which prevent to instruct many files. In addition, reproducing the same effort at regional level is a challenge. CCIs should have anticipated this work (CIP are not very active, maybe 10 CIPs are working out of 50, 30 do something, the others...). The effort needed is enormous with each actor: URSSAF and RSI for social security, Banks, etc...
- Entrepreneurs are rarely wiling to animate working groups and share their experience but this phase is essential for failed entrepreneurs to start again. In addition, banks are not wiling to help by using indicators of failed entrepreneurs with the hypothesis that a failed entrepreneur is not good (it could be the reverse, a failed entrepreneur has more experience). Also difficult to get data from entrepreneur helped... (small sample, population not wiling to respond to surveys, and data would be needed over a long period to have a better view).
- Commercial banks have admitted that they do not fund further entrepreneurs showing the first signs of difficulties such as lower production, firing employees, etc... (even before any in court procedure). It is an order for their hierarchy.
- The cost of the process to survive is confidential in France.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Number: those creating a business do not declare that they had a failure or a business before, so no data on those having a second chance (those having failed use other names for being the creator such as the wife, etc..).

European Commission data was cited by Ms Fleur Pelerin (former minister) was: to start a new business after bankruptcy, 8/9 years in France, 6 years in Germany, and less than 1 year in Norway (no source). Very difficult to say and analyse in France (at least).

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
Banque de France	https://www.banque-france.fr/accueil.html	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Coface	http://www.eulerhermes.fr/	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Dominion Bond Rating Services	http://www.coface.fr	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Fitch Ratings	http://www.fitchratings.fr	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Japan Credit Rating Agency	http://www.jcr.co.jp/english/	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Moody's Investors Services	https://www.moody's.com	Entrepreneurs and companies quotation for banks, credit insurance, and administrations
Standard & Poor's Ratings services	http://www.standardandpoors.com/ratings/france/en/eu	Entrepreneurs and companies quotation for banks, credit insurance, and administrations

Source: the following seven organizations were recognized as ECAI 'External Credit Assessment Institution' ("organismes externes d'évaluation de crédit" - OEEC) in France, see <http://acpr.banque-france.fr/communication/communication-a-la-profession/reconnaissance-des-organismes-externes-devaluation-de-credit-par-lautorite-de-controle-prudentiel.html>

Among the new provisions introduced in the method of calculating the solvency ratio is the possibility for credit institutions and investment firms, in some specific cases, to use external credit assessments produced by external agencies assessment credit (EOTC).

“Banque de France” is recognised ‘In-house credit assessment system’ (Icas) & ‘Eurosystème Credit Assessment Framework’ (ECAF) for other banks refinancing credits. See

<http://www.fiben.fr/pdf/Banque-de-France-Guide-reference-cotation.pdf>

<http://www.ecb.europa.eu/paym/coll/risk/ecaf/html/index.en.html>

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

- Basic indicators provided by 'Banque de France': "L'indicateur dirigeant"¹² 'FIBEN 00' is neutral, 'FIBEN 040' has been canceled by decree in September 2013, 'FIBEN 050' for entrepreneurs having been bankrupt twice in different companies over a period of 5 years, and 'FIBEN 060' for entrepreneurs having been bankrupt three times in different companies over a period of 5 years
- Other institutions (credit insurance companies, see list of PCSBs) are providing additional indicators to lenders
- Lenders (such as BPCE, Credit Mutuel, both banks are quite favourable to SMEs) use these data and add other internal objective indicators plus internal history of the company and the entrepreneur (in conformity with BALE III that individualizes more the scoring of companies).
- The problem is the lack of human judgment and discussion on what is going wrong within the company. The notation of bank is rather industrial.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

Among the new provisions introduced in the method of calculating the solvency ratio is the possibility for credit institutions and investment firms, in some specific cases, to use external credit assessments produced by external agencies assessment credit (EOTC).

Pursuant to Article L. 511-44 of the Monetary and Financial Code, the list of external assessment bodies whose credit assessments may be used by credit institutions and investment firms for the purposes of setting implementation of the new regulations on the credit was established by the prudential Control Authority has specified for each levels of credit quality which correspond assessments conducted by these organizations.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Bank of France: The indicator is valid for 3 to 5 years depending on the gravity of the judgment. The exit is automatic (but the bank is making sure by cleaning regularly the data). The indicator is the translation of the judgment made by the commercial court and the information is received from the commercial court (RCS). Other banks: Entrepreneurs do not have access to the quote who belongs to the bank. CGPME is pushing for a better dialogue.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
13/03/2014 & 01/04/2014	Marie- Christine Roger	DGCIS - Direction Générale de la Compétitivité, de l'Industrie et des Services	Chef du bureau BDA - Bureau du Droit des Affaires - Ministère du Redressement productif	marie- christine.roger@finances.gouv.fr Tél : + 33 1 44 97 25 26
11/03/2014	Ms Corinne MANEROUCK	CCI	Chargée de mission_Juriste Commerce, Direction	C.MANEROUCK@ccifrance.fr Tel + 33 1 40 69 38 63

¹² <http://www.fiben.fr/pdf/plaquette-indicateur-dirigeant.pdf>

Date	Name of person interviewed	Organisation	Position	Contact details
			Compétitivité des Entreprises	
11/03/2014	Ms Nathalie Carré	CCI	Chargée de mission Entrepreneuriat (creation, reprise et transmission)	N.CARRE@ccifrance.fr Tel +33 1 40 69 38 63
13/03/2014	Mr Lionel Vignaud	CGPME	Juriste droit des affaires - Direction des affaires économiques / UNPS	lvignaud@cgpme.fr Tel + 33 1 47 62 73 29
14/03/2014	Mr Christian de Baecque	RE-CREER association	President	Tel 09 50 79 93 71
26/03/2014	Mr Patrice Duceau	CGPME Centre	Président	Tel +33 6.80.72.59.86. / Tel +33 2 54 56 06 06
01/04/2014	Mme Vickie Pajon	Banque de France	chef de service entreprises	Tel +33.5.46.51.48.73
28/03/2014	Me Marc ANDRE	CNAJMJ	Vice-Président	Tel +33.6 83 85 82 18

Documents consulted

Name of document, author/organisation, year of publication
L'indicateur Dirigeant, Banque de France Eurosysteme, 2013, http://www.fiben.fr/pdf/plaquette-indicateur-dirigeant.pdf
Guide de reference de la cotation, 2013, http://www.fiben.fr/pdf/Banque-de-France-Guide-reference-cotation.pdf
L'indicateur dirigeant, 2013, http://www.fiben.fr/pdf/plaquette-indicateur-dirigeant.pdf

Websites consulted

Name of website	Link to website
French Government	http://www.elysee.fr/chronologie/#e5833,2014-03-12,conseil-des-ministres-du-mercredi-12-mars-2014
Ministry of Justice	http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/simplification-du-droit-des-societes-26827.html
Ministry of Justice	http://www.textes.justice.gouv.fr/dossiers-thematiques-10083/ordonnance-du-120314-procedures-collectives-12663/
Association law and prosperity	http://droitetcroissance.fr/wp-content/uploads/2014/03/LJM29_DEBAT.pdf
Court resolution body or commercial court « Juges consulaires »	http://www.tribunauxdecommerce.org
Data	http://www.altares.fr
SOS Entrepreneur, RE-CREER, 60 000 rebonds, Second Souffle, GIA du rebond (Groupement d'Intérêt Associatif) - CREDIR (Centre d'Entraînement Global pour Dirigeants et acteurs de	http://www.sos-entrepreneur.org http://www.re-creer.com http://www.60000rebonds.com http://secondsouffle.org/presentation-intro/ http://portaldurebond.com

Name of website	Link to website
l'entreprise)	http://www.credir.org
Banque de France	https://www.banque-france.fr/en/home.html http://www.fiben.fr/fiben-ligne21.htm
Centre d'information sur la Prévention des difficultés des entreprises	http://www.cip-national.fr
Association pour le Retournement des Entreprises (ARE)	http://www.are.fr
Le Conseil National des Administrateurs Judiciaires et des Mandataires Judiciaires	http://www.cnaimj.fr
L'Autorité de contrôle prudentiel et de résolution (ACPR)	http://acpr.banque-france.fr/communication/communication-a-la-profession/reconnaissance-des-organismes-externes-devaluation-de-credit-par-lautorite-de-controle-prudentiel.html
Association syndicale professionnelle d'administrateurs judiciaires (ASP AJ)	www.aspaj.fr
Institut français des praticiens des procédures collectives	www.ifppc.fr
Service public, the official website for administrative news	http://www.service-public.fr/professionnels-entreprises/actualites/00998.html?xtor=EPR-140

11 Germany

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.0	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	72
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	n.a. ¹³
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

¹³ In the interviews, we collected a couple of numbers on the average time of bankruptcy procedures:

- In the interview with the representatives of the Federal Government, we were told that the average time of insolvency proceedings is 4 years for legal persons and 2 years for natural persons.
- In the interview with the District court judge, we were told that the average time of insolvency proceedings that aim at liquidation is 36 months and the average time of insolvency proceedings that aim at reorganisation is 8 months.
- In the interview with the curator and the representative of the Federal Association Debt Counselling, we were told that the average time of insolvency proceedings that aim at reorganisation is 6 months and that insolvency proceedings that aim at liquidation can take up to 120 months (in both cases, the interviewees could not provide average).

Given this information, we found it very difficult (not to say: impossible) to calculate a meaningful mean, as the interviewees made different distinctions and in part, did not give exact numbers.

4.1. Which measures are taken in your country to address this issue?

There are two federal programmes that address prevention of bankruptcies. They are called Turn Around Consultancy and Round Table. Both are financed and administered by the KfW (a public business development bank) and offer financial support for the usage of external consultancy.

Some interviewees point out that specific regulations of the Insolvency Code can also be regarded as prevention measures. At first, as part of the simplified consumer insolvency proceeding, which is specifically aimed at individuals and self-employed persons without employees and with less than 20 creditors, debtors are obliged to approach their creditors before applying for the opening of insolvency proceedings in order to achieve an out-of-court settlement (in around 10 to 20 per cent of all consumer insolvency proceedings, debtor and creditors find an out-of-court agreement). Second, the self-administered restructuring that was implemented with the Company Restructuring Simplification Act in March 2012 can be seen as a prevention measure and as a substitute for out-of-court settlements, as it requires an application to open insolvency proceedings to be filed as early as possible.

4.2. Which institutions exist that take care of this issue?

In addition to the services of private consultants, chambers of industry and commerce are offering services like “round tables” that aim at facilitating exchange between creditors and debtors. Other non-profit organisations (e.g. consumer protection organisations, debt counselling services, and the Federal Association Insolvent Persons and New Chances) offer advice and education.

4.3. What are the costs involved?

The maximum eligible costs are 8,000 Euros for a Turn Around Consultancy and 1,600 Euros for a Round Table. In 2013 alone, 1,787 Turn Around Consultancies and 2,231 Round Tables were granted. Consulting services are mainly offered by private consultants. The costs of such services depend on the size of a company and the phase of distress it is in. As a result, interviewees reported a wide range of possible costs ranging from 50,000 Euros for small companies up to millions of Euros for larger companies.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The interviewees regard good financial data and a sound controlling as well as the qualifications of an entrepreneur and a possible external consultant as important issues for successful prevention. Furthermore, it is argued that contact to creditors and external consultants should take place as early as possible.

4.5. How many companies have gone through “prevention” measures, and how many survived? If these numbers cannot be estimated, please give a percentage of surviving companies.

In an evaluation of the Turn Around Consultancy, 97.4 per cent of the companies that received a Turn Around Consultancy and that participated in an online survey reported that their business was still in operation.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

On the federal level, there are no specific programmes for the promotion of “second chance”. However, after successful discharge restarters are eligible for all federal support measures for start-ups in Germany (e.g. financial support for the usage of external consultancy or loans with reduced interest rates from the KfW – a public business development bank).

4.7. Which institutions exist that take care of this issue?

The Federal Ministry of Economics and Energy offers a guideline for restarters on its website for start-ups. For consumers and self-employed persons, local debt counselling services offer information and education on “second chance”. Other non-profit organisations help with individual consulting services, self-help groups, and information events.

4.8. What are the costs involved?

One of these organisations (the Federal Association Insolvent Persons and New Chances) estimates the costs of one “second chance” case to be around 10,000 Euros with three of its employees involved.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

Most interviewees report a lack of “second chance” culture in Germany. Potential restarts were both institutionally and culturally stigmatized. They request more education and information in order to change this situation. From the point of view of many interviewees, financial liquidity is the most critical for a successful “second chance”. In this context, it is pointed out several times that negative ratings remained for too long in the databases of private credit scoring bureaus even after a successful discharge. As a result restarters faced difficulties, e.g. to get credit (liquidity problem), to lease workspace and vehicles or to open a bank account.

In Germany, only natural persons can get a full discharge. If legal persons (such as joint-stock companies or limited liabilities companies) are left without any assets at the end of insolvency proceedings, they will be dissolved ex officio. At the moment, the period of time to obtain a full discharge is 6 years (from the moment of application for the opening of the insolvency proceedings). However, on 1 July 2014 a reform of the Insolvency Code will come into effect. Then, the time to obtain full discharge can be reduced to up to 3 years if by then the debtor has repaid 35 per cent of the outstanding debt and the costs of the insolvency proceedings.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

None of the interviewees could provide the respective information.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
SCHUFA Holding AG	Kormoranweg 5, 65201 Wiesbaden	credit assessment, sectoral research
Creditreform Boniversum GmbH	Hellersbergstraße 11, 41460 Neuss	credit assessment, sectoral research, investment decisions
Bürger Wirtschaftsinformationen GmbH & Co. KG	Gasstraße 18, 22761 Hamburg	credit assessment, sectoral research
Bisnode Deutschland GmbH	Robert-Bosch-Straße 11, 64293 Darmstadt	credit assessment, investment decision, self-rating of companies
Kredit-Control GmbH	Gritznerstraße 11, 76227 Karlsruhe	credit assessment
Creditsafe Deutschland GmbH	Charlottenstraße 68-71, 10117 Berlin	credit assessment, sectoral research, self-rating of companies
Deltavista GmbH	Dessauerstraße 9, 80992 Munich	credit assessment, sectoral research
Scoredex GmbH	Bahnhofstr. 52, CH-8001 Zurich	credit assessment, sectoral research, self-rating of companies, georating

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria for the assessment of creditworthiness are e.g.: Number of employees, turnover, business development, solvency, former insolvencies, frequency of changes in the place of business, frequency of changes in the management.

The main data sources used to assess creditworthiness are craft and trade registers, financial press, annual reports of companies, public insolvency publications, and voluntary reporting of companies.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

In Germany, there is no specific regulatory framework for PCSBs. However, the provisions of the Data Privacy Act on the collection, recording, alteration and transfer of personal data and their use as a means to pursue commercial purposes as well as on scoring are relevant.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Duration of storage and deletion of negative ratings are also regulated in the Data Privacy Act. It stipulates that the necessity for further storage of information must be reviewed three years after the completion of a recorded event (e.g. the opening of an insolvency proceeding or a full discharge). However, this stipulation is not binding and PCSBs can decide to store information for extended periods of time. Nonetheless, in practice usually all negative credit ratings that existed prior to the opening of insolvency proceedings and the information that a full discharge took place are deleted three years after a discharge.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
11 April 2014	Dr. Eichholz	Federal Ministry of Justice an for Consumer Protection	Policy officer	Fon + 49 (0)30 18580 9633 Bornemann-al@bmjv.bund.de
11 April 2014	Mr. Bornemann	Federal Ministry of Justice and for Consumer Protection	Policy officer	
11 April 2014	Dr. Rosenberg	Federal Ministry of Economics and Energy	Policy officer	
?	Martin Horstkotte	District Court Charlottenburg/Berlin	Judge	Fon +49 (0)30 9017 74 15
?	Michael Bretz	Verband der Vereine Creditreform e.V.	Head of Department "Enterprise Communication"	Fon +49 (0)21 31 109 171 m.bretz@verband.creditreform.de
?	Dr. Christian Groß	Deutscher Industrie- und Handelskammertag	Responsibility "Economic Law"	Fon +49 (0)30 20308 2723 gross.christian@dihk.de
?	Dr. Daniel Bergner	Verband Insolvenzverwalter Deutschlands e.V.	Managing Director	Fon +49 (0)173 280 6919 bergner@vid.de
?	Guido Stephan	Bundesarbeitsgemeinschaft Schuldnerberatung e.V.	Board Member	Fon +49 (0)561 771093 guido.stephan@email.de

Date	Name of person interviewed	Organisation	Position	Contact details
?	Attila von Unruh	Bundesverband Menschen in Insolvenz und neue Chancen e.V.	Chairman	Fon +49 (0)2295 9274030 avunruh@bv-inso.de

Documents consulted

Name of document, author/organisation, year of publication

Kranzusch, P., Icks, A., 2010. Wann werden die Gläubiger ausgezahlt? Dauer von Unternehmensinsolvenzen im regionalen Vergleich. IfM-Materialien 193.

Websites consulted

Name of website	Link to website
Federal Ministry of Justice and for Consumer Protection	www.bmju.de
Federal Ministry of Economic Affairs and Energy	http://www.bmwi.de/
Verband der Vereine Creditreform e.V.	http://www.creditreform.com
German Association of Chambers of Industry and Commerce	http://www.dihk.de/themenfelder/recht-steuern/privates-wirtschaftsrecht/insolvenzrecht
German Association of Insolvency Administrators	www.vid.de
Federal Association Debt Counselling	www.baq-sb.de
Federal Association Insolvent Persons and New Chances	http://www.bv-inso.de
SCHUFA Holding AG	https://www.schufa.de
Creditreform Boniversum GmbH	http://www.boniversum.de/
Bisnode Deutschland GmbH	www.bisnode.de
Kredit-Control GmbH	www.kredit-control.de
Bürgel Wirtschaftsinformationen GmbH & Co. KG	https://www.buergel.de/
Creditsafe Deutschland GmbH	http://www1.creditsafede.com/
Deltavista GmbH	www.deltavista.de
Scoredex GmbH	https://www.scoredex.com/
Gesetze im Internet (BMJV)	http://www.gesetze-im-internet.de/aktuDienst.html
Restarter guideline (Federal Ministry of Economics and Energy)	http://www.existenzgruender.de/selbstaendigkeit/entscheidung/branchen_zielgruppen/restarter/index.php

12 Greece

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	120
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	6
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

Output 4 *Overview of how “prevention” is addressed in the country.*

4.1. Which measures are taken in your country to address this issue?

It is possible the out of the court agreement with the creditors with or without mediator. However in practise this rarely happens due to the lack of agreements of all creditors. If only the majority agrees then there is the next option. The possibilities for such arrangement are low due to the lack of trust and the impact of the crisis. There is no system to monitor it, so we do not know the number of such agreements.

In court procedure: Preparation of a consolidation plan that is agreed with the creditors (at least the majority) and it is presented before the court. If the debtor fails to follow the consolidation plan then the court opens the bankruptcy procedure. This part of legislation was introduced in 2011.

Recently a high level policy body (Government Council of Private Debt Management - ΚΥΔΙΧ) has set up whose purpose is to closely monitor the implementation of policies for resolving issues that are related with the debt of individuals and companies. The aim is to end up with a comprehensive and adequate mechanism for preventing and management of bad-debts and insolvency.

Bank of Greece has prepared a Banking Code of Conduct for the management of private debt. What is important about the Code is that it forces Banks to exhaust all possibilities for an out of the court agreement or to seek for an in-court consolidation agreement before they commence insolvency proceedings against debtors.

4.2. Which institutions exist that take care of this issue?

The courts are to only bodies dealing with the prevention of bankruptcy at the operational level. However, at the policy level the newly created Government Council of Private Debt Management the Ministry of Justice, the Ministry of development and the Bank of Greece e the main players.

4.3. What are the costs involved?

It was not possible for the interviewees to assess the cost involved.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The legal framework has been recently updated and it seems that it is adequate. The increasing of awareness of SMEs regarding the available options and the change of the unfavourable and rigid regulatory framework regarding the settlement of the private and company debt to the state are among the main issues. In addition, the establishment of an early warning system could improve prevention.

4.5. How many companies have gone through “prevention” measures, and how many survived?

30% of company's applications requesting an in-court consolidation plan in order to avoid bankruptcy are rejected. Less than 50% of the companies going through the in-court consolidation survive.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

There are no measures addressing second chance.

4.7. Which institutions exists that take care of this issue?

No such institutions exist.

4.8. What are the costs involved?

No relevant

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

Discharge does not protect the entrepreneur after the end of the bankruptcy period as any dissatisfied creditor can start a new legal procedure against the bankrupt entrepreneur after the completion of the liquidation period.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Not relevant

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ¹⁴
ICAP	El. Venizelou 2, 176 76 Kalithea, Greece	Scores are given to the clients that paid for them.
Tiresias SA	Alamanas 2 & Premetis, 15125 Marousi, Greece	Scores are given to the clients that paid for them.

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

ICAP use statistical analysis plus qualitative analysis. TIRESIAS SA provides a behaviour credit score based on the existence of data concerning negative data as well as positive data and behaviour (i.e. bad cheques, bankruptcies, issued orders for payment, arrears, closed credit behaviour etc.).

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

ICAP and TIRESIAS follows the regulatory framework set by the European Security and Market Authority i.e. the Regulation 1060/2009. This regulation has been adopted and adapted to the Greek regulatory framework and the Bank of Greece and the Securities and Exchange Commission supervise activities of the PCSBs. There is also extensive regulation regarding the data types, data retention, data deletion etc: . - L. 2472/1997, - Regulatory decisions of the Hellenic Data Protection Authority (for instance 109/1999, 523/1999, 50/2000), - L. 3816/2010 - Decisions 89/2013, 234/2006 issued by Central Bank of Greece.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

ICAP does not retain such database however use information of TIRESIAS database.

A financial entity (natural or legal person) enters TIRESIAS database as following:

A bank credit is granted (card, loan) and remains for updating in the database as long as the credit exists. After full repayment of the debt, relevant data are kept for 5 years.

Unpaid obligations exist (i.e. bad checks, unpaid bills of exchange, termination of credit card contracts and of loans, issued orders for payment, administrative sanctions against tax legislation violators etc.).

Application for in-court consolidation, applications of bankruptcies, termination of bankruptcies.

Once the debt is settled, different time limits (from 2 to 10 years) and rules for maintaining the data apply for different types of data and different settlement status. All data is deleted (paid or unpaid) from the databank after the lapse of 10 years with the exception of: prenotations of mortgages,

¹⁴ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

conversions of prenotations to mortgages and mortgages (which are kept as long as they exist). 10 years is also the period for the information regarding bankruptcies.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
19/3/2014	Dimitris Bimpas	Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen & Merchants (GSEVEE)	Researcher	+30-2108846852 (611), bimpas@imegsevee.gr
27/3/2014	Leonidas Kotsaftis	ICAP Group SA	Director Credit Risk Services	+30-2107200000, lkotsaftis@icap.gr
31/3/2014	Evagelia Solomou	Ministry of Development, General Secretariat for Industry	Head of International Industrial Relations - SBA	+30-2103893697 solomou_e@ggb.gr
2/4/2014	Zoe Mprouma	Ministry of Development, General Secretariat for Consumer Affairs	Legal Advisor to the General Secretary	+30- 210 3842930
3/4/2014	Eleni Dikonimaki	TIRESIAS	Marketing and Communication	+30 2106199347, edikonim@tiresias.gr
8/4/2014	Fragkiskos Vossos	Court of First Instance of Athens	Judge	+30 210 – 8841690, fragkiskosvs@yahoo.gr
10/4/2014	Ioana Stratsiani	Appeals Court of Athens	Judge	+30-2107480609

Documents consulted

Name of document, author/organisation, year of publication
Law 3898/2010: Mediation in civil and commercial matters
Law 3588/2007 Bankruptcy Code
Amendment of Chapter 6 of 3588/2007
Draft law 19/12/2013 on the Government Council of Private Debt Management - ΚΥΔΙΧ
Bank Code of Conduct for the management of private debt

Websites consulted

Name of website	Link to website
TIRESIAS	http://www.tiresias.gr/en/index.html
ICAP-Credit Risk Services	http://www.icap.gr/Default.aspx?id=7296&nt=19&lang=1
Athens Training Centre for Mediators	http://www.akked.gr/
Bank of Greece - Consultations	http://www.bankofgreece.gr/Pages/el/Supervision/Diavouleuseis/bank.aspx

13 Hungary

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	few days*
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	30
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0**

* Discharge is automatic for honest entrepreneurs after the decision of the Court on the debt settlement, and the Court immediately proceeds on the discharge.

** There is no public database, the answer is on private databases.

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0,5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0,5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	6
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other	1: declaring bankruptcy only has financial consequences;	1

Question/issue	Options	Answer
consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	0: declaring bankruptcy has more consequences than financial only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

The prevention of bankruptcy is not very pronounced, this issue does not get enough attention in Hungary. The legal background and the available out-of-court procedures are to be considered as direct or indirect measures.

- the mediation,
- several notarial non-litigious procedures, especially the order for payment procedure, standstill agreement,
- obligatory steps for creditors before insolvency procedures, e.g. the formal criteria of the demand for payment or the minimum of 60 days delay in payment deadline promote to prevent a bankruptcy proceeding,
- the legal consequences of delay, as the default interest rate also indirectly force the enterprises to enter into enforceable contracts,
- the debtors obligations for formal criteria in bankruptcy procedure, these also help the debtor to be well-prepared for negotiations with creditors
- trust asset management

4.2. Which institutions exist that take care of this issue?

By now there is no institutions directly dealing with the issue. The New Civil Code introduces the trust asset management, but we have no experiences regarding this. Please see point 4.

4.3. What are the costs involved?

Regarding the costs there is no data available yet.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The New Civil Code has been put into force on 15th March 2014, that brings modifications and expands the financial responsibilities of managers of companies especially for unpaid debts. Besides this and due to other reasons it has urgent need for the establishment of legal background of trust asset management. This New Civil Code created the legal concept of trust asset management, the Act XV. of 2014. on the trust managers and their activities entered into force in February 2014. Very important question is the reorganization plan, the support for companies for reorganization, the development of the business culture in this issue.

4.5. How many companies have gone through “prevention” measures, and how many survived?

Regarding the costs and number of enterprises have gone through this kind of measure there is no data available yet. We have only a data on mediation, about the 1% of the companies in insolvency use the possibility of mediation, 50% of those are successful.

According to interviews, more than 80% of the companies under bankruptcy procedure fail, and liquidation starts, about the 20-30% of the bankruptcy procedures are successful.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

There is no specific measures dealing with post-bankruptcy issues, there is no services available or organisation that directly dealing with this issue.

4.7. Which institutions exists that take care of this issue?

Non applicable.

4.8. What are the costs involved?

Non applicable.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

Non applicable.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Non applicable.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
OPTEN Ltd. (This is only one with Hungarian property)	1142 Budapest, Rákospatak u. 82.	<ul style="list-style-type: none"> given back to client who paid for it creditors use this for agreements on debt settlements Company information: company database relation network balance sheet database company analysis receivables management partner monitoring system marketing lists Legal information: EU module leading case module court cases commentaries module tax guide
Company Information Office	8200 Veszprém, Kossuth u. 7.	<ul style="list-style-type: none"> given back to client who paid for it company information disclosure statements
VOXINFO Ltd. operate the following webpage: www.cegbirosag.com	1034 Budapest, Bécsi út 100.	<ul style="list-style-type: none"> credit check report is to give back to client who paid for it company registration company information and analysis balance sheet database
BISNODE Group member in Hungary, D&B Bisnode Hungary Ltd.	Riverpark offices, 1093 Budapest, Közraktár u. 30-32. 5 th floor	<ul style="list-style-type: none"> given back to client who paid for it timely detect of potential cash-flow problems of partners in order to modify terms and conditions of contracts between the parties and to prevent more serious financial losses

Name of PCSB	Location/address	Main use of scores
		bankruptcy monitor to show immediately the changes in the business data and other factors influencing the riskiness of a business
Wolters Cluver L.t.d.		<ul style="list-style-type: none"> given back to client who paid for it value-added services on company information, relation network, balance sheet database, company analysis modular information system, financial module contains detailed analysis
Atradius A company of Catalana Occidente Insurance Group	1117 Budapest, Fehérvári út 50-52.	Service called Atradius Collections. In the frame of this service the company represents creditors in debt exaction and in insolvency proceeding. In the frame of insolvency proceeding they analyse companies, and give back information to client
Coface Hungary Credit Management Services Ltd.	1094 Budapest, Tűzoltó u. 57.	Credit management services, company information, monitoring services on business partners, financial analysis of partners if the client pays for it.
EULER HERMES	1037 Budapest, Kiscelli u. 104.	In the frame of this service the company represents creditors in debt exaction and in insolvency proceeding.

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria to be assessed for creditworthiness in the services of OPTEN, the service provider with Hungarian property: logistic regression models, the company's core and financial information, the income and profit before tax in the past 10 years, the past, company information changes, official negative obligations for the company, positive and negative events in the company 's life, positive events eg. the ISO qualification, a positive grant, certified tributary, negative events e.g. suspended tax number, accrued taxes, violation of labour law, geo-demographic values, affiliates, shareholders, the past of its managers.

An other analysing method, the D&B Credit Check Report, the international model:

This is a service for bankruptcy monitor to show immediately the changes in the business data and other factors influencing the riskiness of a business.

Criteria: D&B Rating: capital value and risk rating, D&B Failure Score: insolvency prognosis model (based on international know-how), D&B Paydex Score : the analysis of payment behaviour (based on DUN-Trade programme), negative information on official court procedures on bankruptcy or liquidation, other court procedures, e.g. enforcement proceedings, exclusion of a member, precautionary measure, criminal actions, tax number suspension or cancellation, setting out on list of companies with tax deficit by the national taxation authority, more than 90 days open debt, proposed commercial credit

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

The activities related to company information are regulated by several legislations, but there is no one law directly on company information services. The connected legislations that control company information services are the following: the Act LXIII. of 1992. on data protection, the Act IV of 2006 on Business Associations (after 15. 03. 2014 the New Civil Code), Act XLIX. of 1991. on bankruptcy and Liquidation, 47/2007.(X.20.) Decree of the Ministry of Justice on the free company information, the Act CXLV. of 1997. on company registration and company information, the Act V. of 2006. on company information, company registration and winding procedure, and the Civil Code.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Debtors get into the database in case the “cs.a.” (under bankruptcy) sign will be marked in the company registration or there is a previous liquidation procedure connected to the entrepreneur or managing director of a company or an owner of a company.. In case of successful agreement on debt settlement between the debtors and the creditors, the Court makes the order approving the settlement. In this case the Companies Registry immediately arrange deletion of “cs.a.” sign. Nevertheless the fact of a previous bankruptcy or liquidation procedure will be taken into account and will be pointed out up to 5 years when analysing a company. The risk rating of a company gives 4 categories, A, B, C, D. A and B means a temper operation, the risk for insolvency is under the average. C category means a risk, the company analysis is suggested in order to clear the open questions of the company’s financial data and proprietorship. The category D means a high risk as the company is in an insolvency situation or the risk of the insolvency is high above the average.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
26.03.2014.	Dr. Katalin TURCSÁN	Ministry of Public Administration and Justice Department of Economic Codification	Deputy Head of the Department	+36-1-7956220 katalin.turcsan@kim.gov.hu
25.03.2014.	Dr. Mária PINTÉR	Budapest Surroundings Regional Court	Head of Economic College	+36-1-3543301 pinterm@budapestkornyekit.birosag.hu
21.03.2014.	Mr. Ferenc SOMOGYI	Hungarian Association of Insolvency Practitioners and Asset Controllers	president	+36-1-2258640 titkarsag@foe.hu
18.03.2014.	Mrs. Margaréta PALOTÁS	OPTEN Informatics Ltd.,	Unit of company information	+36-1-2223130 palotas.margareta@opten.hu
26.03.2014.	Mrs. Ibolya BALOGH	Pecuniaagora Zrt.	liquidator	+36-30-9441533
11.03.2014.	Mr. Arnold KECSKÉS	ACCBIT Accounting Office	chartered accountant	+36-30-2502685 accbit@accbit.hu
12.03.2014.	Dr. András MOLNÁR, Dr. Márton TÖMPE	Law Office	lawyer	+36-30-6278395
18.03.2014.	Dr. Kornél PAPP	Papp and Tóth Law Office	lawyer	+36-30-9981541 pappestoth@vnet.hu

Date	Name of person interviewed	Organisation	Position	Contact details
18.03.2014.	Mrs. Katalin Kovács	Csongrad County Chamber of Commerce and Industry	rapporteur	+36-62-554250 kata@csmkik.hu

Documents consulted

Name of document, author/organisation, year of publication
Act XLIX. of 1991. on bankruptcy and Liquidation (the updated version on 10.02.2014.)
47/2007.(X.20.) Decree of the Ministry of Justice on the free company information
83/2012. (IV.21.) Government Decision on the electronic administration services and regulated services provided by the State
Act LXXI of 1994 on Arbitration
Act LV. of 2002 on Mediation
Act L. of 2009 on the order for Payment Procedure
Act XLV. on the Notarial Non- litigious Proceedings
Budapest Approach http://www.bankszovetseg.hu/wp-content/uploads/2012/10/Bp_elvek_1melleklet.pdf

Websites consulted

Name of website	Link to website
OPTEN Company and Legal information	http://www.opten.hu/index.php?lang=en
Ministry of Public administration and Justice, Company Information and Electronic Proceeds Service	http://ceginformacioszolgalat.kormany.hu/
	http://www.cegkivonat.hu/
Hungarian Association of Insolvency Practitioners and Asset Controllers	http://www.foe.hu/index.php?page=foe
Hungarian Chamber of Commerce and Industry	www.mkik.hu

14 Iceland

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	24
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	9
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

4.1. Which measures are taken in your country to address this issue?

Entrepreneurs in financial difficulties have several options to avoid bankruptcy but they depend to a significant degree on who the creditors are. When creditor or the owners of a company go to the courts asking for bankruptcy the case is handed over to a curator. Almost all cases end in bankruptcy but they can also with an agreement between the relevant parties before it comes to bankruptcy (there are no formal out of court settlement agencies).

Prevention comes in at several stages. The *Innovation Centre Iceland* offers support to entrepreneurs on how to set up and run a small company, including how to avoid and get out of financial troubles. Since 2009 there have been measures in place to assist individuals to avoid bankruptcy. This is a scheme, and an institution, set up following the financial crisis in 2008 and has by all accounts had some success. Its relevance for this exercise is very limited as almost all entrepreneurs set up private companies around their start-ups.

4.2. Which institutions exist that take care of this issue?

The *Innovation Centre* is the main institution assisting entrepreneurs in setting up and running companies. *NSA Ventures* invests in start-ups and seed companies and has a portfolio of 39 companies. It is one of the main investors for entrepreneurs in Iceland and is very directly involved in the running of the companies it has a holding in. It does not have any predefined measures to prevent bankruptcy but it avoids them at (almost) all costs. It assists in closing companies before they are bankrupt or possibly sells its share for a nominal 1 ISK.

4.3. What are the costs involved?

Costs are impossible to measure but some indications can help. *The Innovation Centre Iceland* has offered expert advice to companies in financial troubles with a small sum to improve processes (approx. 3.000 Euros). The assistance of the external expert can roughly be valued at 8.000 Euros pr. case and the whole process therefore at 11.000 Euros pr. company.

In periods leading to the financial crises in 2008 the banks had an active policy of assisting troubled companies. They sent in special advisors to assist in turning companies around or in closing them. It is unclear to what extent they are doing this today

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

Entrepreneurs often seek assistance too late in order to save a company. The interviewees agree that the culture among entrepreneurs has been improving and that they increasingly seek assistance before it is too late and that they increasingly take courses and get assistance in running companies before they get into any kind of problem.

It is too difficult to close companies without bankruptcy. A significant percentage of bankruptcy cases involves "dormant" companies that collect debt to the tax authorities, based on estimated by the tax authorities. In these cases the companies go into bankruptcy proceedings with unnecessary costs involved and an unnecessary bankruptcy as a consequence. There is some stigma associated with bankruptcy but this is limited and reseeding.

Bankruptcy in general is an easy option in Iceland. When a company is bankrupt all debt is abolished and the responsible persons do not suffer any formal consequences. In cases of private bankruptcy persons do get a full discharge after two years. Recent changes to the bankruptcy laws increase the responsibilities of the responsible individuals but this is limited to criminal conduct (it is the responsibility of the curator to report any suspicion of wrongdoing to prosecutors).

4.5. How many companies have gone through “prevention” measures, and how many survived?

It is impossible to measure the number of companies that have gone through some kind of a prevention measures.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Second chance is a very open option in Iceland. Institutions like *Innovation Centre Iceland* and *NSA Ventures* are eager to support entrepreneurs regardless if they have been bankrupt or not. Support depends on an evaluation based on previous history but a normal and honest bankruptcy does not interfere. It is unclear what kind of data the banks collect and use for their internal decision making.

4.7. Which institutions exist that take care of this issue?

No specific measures have been taken to encourage second chance and neither *Innovation Centre Iceland* nor *NSA Ventures* have or deem it important to set up any kind of specific measures. *The Icelandic Centre for Research (RANNIS)* (which also support entrepreneurs but based on projects) does not have any second chance measures.

4.8. What are the costs involved?

As there are no second chance measures this is not relevant.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

There is some stigma involved in bankruptcy but this is very limited and receding.

The processes leading to bankruptcy are too stringent. The conclusion is almost always bankruptcy even though in many cases it would be possible to avoid it and settle the case in other manners.

There is a need for a simpler way to close companies without bankruptcy.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

As there are no second chance measures in place it is impossible to say how many companies have profited from them or what the costs involved are.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ¹⁵
Credit Info	Höfðabakka 9, 110 Reykjavík	Given back to client.

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Credit Info uses standard European measures when evaluating the credit score of individuals, except that there is no information on payment behaviour (this may change in near future). The single most important criteria is whether an individual has been listed as a defaulting debtor in the last two years (if he is listed as a defaulting debtor no score is given). Credit score is also negatively affected if a debt collection company is checking on individuals in the defaulting debtors database. Age and residence have much less effect. As for entrepreneurs, i.e. individuals connected to companies, their score is affected if a company they are associated with is in the defaulting debtors database or if they are associated with a company that has gone bankrupt.

¹⁵ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

There are no specific laws for PCSBs but they operate according to law nr. 77/2000 (on data protection) and regulation nr. 246/2001. These are mainly concerned with registry in the defaulting debtors database and less with credit rating. Recent law on consumer credit (nr. 33/2013) addresses credit rating of individuals, followed by a regulation (nr. 920/2013) on how to evaluate how much an individual can pay off a loan (payment evaluation).

PCSBs operate by approval of the *Data Protection Agency*.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

According to law nr. 27/2000 (based on EU regulation 95/46/EB) a PCSB can register individuals in a defaulting debtors database if he has defaulted on a debt (usually a lower limit is set) or gone bankrupt. Information on bankruptcy is deleted two years after the liquidation is official (possibly earlier if the debt has been fully repaid or a settlement reached leading to a withdrawal of the claim). The information still exists in the database for few more years (information only given to the relevant parties) and when it is finally deleted it is by making it completely anonymous. Information on default is deleted after at most four years. Individuals associated with two or more bankrupt companies (i.e. founders, CEOs, board members) are listed in a special database. They are deleted four years after liquidation.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
21/03 2014	Hanna Dóra Másdóttir	Ministry of Industries and Innovation	Senior Advisor Budget and Benchmarking	hanna.dora.masdottir@anr.is
24/3 2014	Berglind Hallgrímsdóttir	Innovation Centre Iceland	Managing Director	berglindh@nmi.is
14/04 2014	Bryndís Helgadóttir	Ministry of the Interior	Director	bryndis.helgadottir@irr.is
14/04 2014	Helga Valfells	NSA Ventures	CEO	helga@nsa.is
11/4 2014	Sigurður Steingrímsson	Innovation Centre Iceland, Entrepreneurs and SME Services	Project Manager	sigurdurs@nmi.is
15/4 2014	Jón Finnbjörnsson	Reykjavík District Court	Judge	jon@domstolar.is
16/4 2014	Ása Ólafsdóttir	Faculty of Law, University of Iceland	Associate professor	asaolafs@hi.is
28/4 2014	Árni J. Magnús	CreditInfo	Lenders ombudsman	ajm@creditinfo.is

Documents consulted

Name of document, author/organisation, year of publication
Law nr. 21, 1991 (on bankruptcy proceedings), Parliament, 1991 (26 March).
Law nr. 77, 2000 (on data protection), Parliament, 2000 (23 May).
Law nr. 90, 1986 (on execution), Parliament, 1986 (1 June).
Regulation nr. 246, 2001 (on the collection and distribution of financial data and credit rating), Ministry of the Interior, 2001 (13 March).
Law nr. 33, 2013 (on consumer credit), Parliament, 2013 (27 March).
Regulation nr. 920, 2013 (on credit rating), Ministry of the Interior, 2013 (17 October).
“Framkvæmd gjaldþrotaskipta lögaðila á Íslandi árið 2012” (Execution of bankruptcy for legal entities in Iceland 2012), MA thesis at the University of Iceland, 2012.

Websites consulted

Name of website	Link to website
Doing Business	http://www.doingbusiness.org/data/exploreeconomies/iceland/getting-credit/
Credit Info	http://www.creditinfo.is/
Directorate of Customs	http://www.tollur.is/
Reykjavík District Court	http://www.domstolar.is/domstolarad/forsida/
Parliament	http://www.althingi.is
Directorate of Internal Revenue	http://www.rsk.is
Data Protection Authority	http://www.personuvernd.is

15 Ireland

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	***
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	**
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0 (see ***)

** Bankruptcy itself does not affect an individual's credit rating. Credit history does however. The Irish Credit Bureau is the main source of credit referencing information in Ireland, and the main source used by financial institutions. It holds credit information about individuals for up to five years following the closure of any loan.

*** Bankruptcy as a procedure applies to individuals not firms (whether SMEs or otherwise)

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral 0: courts are not neutral	1
2. Is a repayment plan part of the bankruptcy court procedures?	0: no 1: yes	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 24 months; 0: the length of time is longer than 24 months.	0*
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory.	0
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "bankruptcy procedure" includes the moment when bankruptcy is formally filed until liquidation is official. It does not include the discharge period.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	**
Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

* Under a "Debt Settlement Arrangement", unsecured debts covered by the arrangement are settled over 5 years. Under a Personal Insolvency Arrangement, debts covered by the arrangement are settled over a period of 6 years (extendable to 7 yrs in certain circumstances).

** Where the bankruptcy is not being contested, the legal procedure is extremely quick (e.g. a 15 minute court hearing). A contested case may take much longer but the new legal framework has not been in place long enough for examples to emerge that allow an average to be estimated.

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

Under a new set of legal and administrative arrangements established in Ireland intended to address the problems of very high numbers of people carrying unsustainable debt burdens, a number of debt solutions have been introduced, and a new “Insolvency Service of Ireland” established. Bankruptcy is one of a number of potential avenues for people with unsustainable debt levels, and may be the most appropriate solution for people in specific circumstances. Within the context of debt resolution therefore, there is not a policy of trying to prevent bankruptcy. Rather there is a policy of trying to offer debt resolution options most appropriate to individual circumstances, which balance the rights of debtors and creditors most fairly and equitably.

4.2. Which institutions exist that take care of this issue?

Outside the context of debt resolution, effort to prevent the accumulation of unsustainable debt within SMEs involve a range of normal business processes, advisory services, public institutions supporting business advice, and lending criteria of financial institutions, for example.

4.3. What are the costs involved?

No estimate can be made of the costs of a “prevention” case for these reasons.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most important issues to be tackled to prevent or avoid bankruptcy relate to having greater strengths on the full range of skills within SMEs for successful business, particularly as regards financial planning and management. Ensuring that individuals with high debt burdens adopt resolution mechanisms most appropriate to their circumstances which are now available will also act to prevent unnecessary bankruptcies.

4.5. How many companies have gone through “prevention” measures, and how many survived?

There is no single “prevention” mechanism in place that allows the counting of numbers of cases that have used it, nor ability to estimate survival rates. In addition, the reformed regime in Ireland is only in its infancy, and its success too early to gauge.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Under the new legislative framework in Ireland, bankrupt persons are relieved of their outstanding debt and fully discharged from bankruptcy after three years. This is a new development in Ireland and central in efforts to allow such persons a second chance.

4.7. Which institutions exist that take care of this issue?

The Credit Review Office is another measure, where unsuccessful applicants for lending from financial institutions can have their cases reviewed by this independent office, and have them re-referred to the institution where deemed unfairly declined. However this service is not limited or even focused on en-bankrupt applicants.

4.8. What are the costs involved?

There is no mechanisms for second chance that allow the numbers of cases to be counted, their costs estimated, nor survival rates gauged..

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

The new insolvency regime is only in its infancy and the caseload has not yet got to a point of being indicative.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

There is no mechanisms for second chance that allow the numbers of cases to be counted, their costs estimated, nor survival rates gauged.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCRA	Location/address
Irish Credit Bureau	ICB House, Newstead, Clonskeagh Road, Dublin 14
Experian Ireland	Newenham House, Northern Cross, Malahide Road, Dublin 17
Businesspro/Stubbs Gazette	5 Schoolhouse Lane East, Dublin 2

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Past credit history is the single criteria used in credit rating/referencing.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

In the past credit rating has not been the subject of specific regulation in Ireland. Agencies have however been obliged to comply with the provisions of data protection legislation and regulation, concerning the use, storage and sharing of personal information. A new Credit Risk Register is currently being planned, that will likely change the credit rating regime, however it has not yet been established.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The Irish Credit Bureau, the main credit referencing agency owned and used by financial institutions in Ireland, adopts the policy of deleting a person's past credit history at a point five years after the official closure of a loan (whether fully repaid, defaulted or otherwise written off by the institution).

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
13 th February 2014	Madeleine Reid	Department of Justice	Principal Officer	mh Reid@justice.ie T: +353 1 479 0217
13 th February 2014	Christopher Lehane	Insolvency Service of Ireland	Official Assignee in Bankruptcy	cdlehane@isi.gov.ie T: +353 76 1064620
19 th February	Patricia Callan	Small Firms Association	Director	patricia.callan@sfa.ie T: +353 1 605 1602

Date	Name of person interviewed	Organisation	Position	Contact details
2014				
19 th February 2014	Catherine Collins	Credit Review Office	Unknown	catherine.collins@creditreview.ie T: +33 1 727 2771
25 th February 2014	Lorcan O'Connor	Insolvency Service of Ireland	Director	isoconnor@isi.gov.ie T: +353 76 1064240
20 th February 2014	Gerard O'Neill	Irish Credit Bureau	Director	gerard.oneill@icb.ie T: +353 1 2600388
24 th February 2014	Bill Holohan	Holohan Solicitors	Senior Partner	bill@holohanlaw.ie T: +353 21 4300734

Documents consulted

Name of document, author/organisation, year of publication
Personal Insolvency Act 2012
The guide to a Debt Relief Notice – 2014, Insolvency Service of Ireland, 2014
The guide to a Debt Settlement Arrangement – 2013, Insolvency Service of Ireland, 2013
The guide to a Personal Insolvency Arrangement – 2013, Insolvency Service of Ireland, 2013
Debtors Guide to Bankruptcy, Insolvency Service of Ireland, 2014
Bankruptcy Scenarios, Insolvency Service of Ireland, 2014
Report of the Inter Agency Group on Credit Histories, Department of Finance, 2011

Websites consulted

Name of website	Link to website
The Insolvency Service of Ireland	www.isi.gov.ie
Irish Statute Book	www.irishstatutebook.ie
Credit Review Office	www.creditreview.ie
Irish Credit Bureau	www.icb.ie
Department of Justice	www.justice.ie
Department of Finance	www.finance.gov.ie
Microfinance Ireland	www.microfinanceireland.ie

16 Italy

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	0
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	84
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	1

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

In Italy, the issue of prevention is firstly addressed with the pre-bankruptcy agreement (*concordato preventivo*). The pre-bankruptcy agreement should be proposed by the entrepreneur bankrupt (the debtor) to the Court and cannot be proposed by third parties. In this case, the debtor is asked to report on the state of art of its assets, the list of creditors, a recovery plan showing timing and means for satisfying its creditors (Art 161 of the Bankruptcy Law). Before submitting the agreement to creditors, this has to be approved by the court. With the reform introduced by the Decree Law 83/2012 (Development Decree which has revised the Bankruptcy Law), the pre-bankruptcy agreement has become more flexible. Indeed, prior to reform a debtor could only propose a pre-bankruptcy agreement to its creditors by offering a series of guarantees satisfying at least 40% of its creditors' unsecured claims. This is no longer the case. The pre-bankruptcy agreement is now more flexible and a debtor may pay claims and debts in any form including the assignment of shares, securities or other financial instruments to creditors (Art 160 of the Bankruptcy Law). Also, thanks to the reform, the bankrupt entrepreneur may benefit from the protection measures of the pre-bankrupt agreement (e.g. continuity of its ordinary activity) by just presenting the request to the court for the admission of the agreement. All the documentation (e.g. list of creditors, assessment of assets, plan describing modalities and time for implementing the proposal) can be submitted at a later stage: the deadline is established by the judge and may range from 60-120 days and extended for further 60 days if needed.

A further measure addressing the prevention of bankruptcy is the debt restructuring agreement (*accordo di ristrutturazione dei debiti*), which is contemplated by Art 182-bis of the Italian Bankruptcy Law. It takes place between the bankrupt entrepreneur and the creditors representing at least 60% of all claims against the debtor. Differently from the pre-bankruptcy agreement, a debt restructuring agreement is only effective between the participating parties. It is worth clarifying that the debt restructuring agreement is characterised by two phases. The first one is an-out-of court procedure and it consists of a negotiation between the debtor and creditors about the payment of debts. The second phase involves the Court. Indeed, in order to produce its effects, the debt restructuring agreement should be approved by the Court where the debtor has its current registered office. In particular, the debtor is asked to prepare the debt restructuring agreement with such court, along with documentation required under Art 161 of the Bankruptcy Law (it is the same of pre-bankruptcy agreement), including a report by an expert ascertaining the feasibility of the agreement, particularly with respect to the regular payment of debts held by creditors who have not entered into the debt restructuring agreement. In particular, the reforms introduced by the Decree Law 83/2012 establishes that creditors not involved in these agreements should be paid within 120 days from the registration of the agreement in the company's register (if credits were already expired at that time) and within 120 days from the expire date (if credits were not expired at the time of registration). The debt restructuring agreement enters into force the day after the debtor publishes it in the companies' registry.

An additional 'prevention' measure is the out-of-court debt restructuring plan (the Plan) contemplated by Article 67(3)(d) of the Italian Bankruptcy Law (*piano attestato di risanamento*). The

Plan is addressed to ensure repayment of the debts to creditors. Generally, it includes an industrial and financial plan, a moratorium, a debt refinancing or rescheduling plan, an analytical description of all transactions, payments and security interests that should be made or granted with respect to the assets of the debtor. With the reform introduced by the Decree Law 83/2012, it is asked that the Plan is drafted by an independent expert (displaying some requisites) designed by the debtor.

4.2 Which institutions exist that take care of this issue?

- Courts
- Advisors in charge of drafting the recovery plan
- Independent experts to assess the feasibility of the plan
- Lawyer in charge of supporting the debtor
- It is worth stressing that in Italy, banks are central players in debt restructuring proceedings since it is common for them to hold 60% or more of the total claims against a debtor.

4.3 What are the costs involved?

Overall, four people are involved in the procedure of the pre-bankruptcy agreement: an advisor which is in charge of drafting the plan, the independent expert that is the person in charge to assess the feasibility of the plan, a lawyer in charge of supporting the bankrupt entrepreneur in his proposal to the court and the judge. The procedure requires from 100 to 1,500 hours of working time.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

All these instruments are addressed to preserve the businesses continuity as well as to enhance the position of the entrepreneur-debtor in respect of his creditors. However, evidence show that entrepreneurs are not aware of the possibilities to adopt these measures to prevent bankruptcy. Also, it has been found that debt restructuring plan and debt restructuring agreement are not frequently used in the Italian practice because of the difficulties faced by the debtor in the negotiation with creditors.

4.5 How many companies have gone through “prevention” measures, and how many survived?

With regard to the pre-bankruptcy agreement, data collected from Italian Courts show that the number of entrepreneurs using this prevention measure has decreased in 2013 by 40% compared to 2012.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

The ‘discharge’ procedure (esdebitazione) is the main measure addressing the issue of second chance in Italy. It has been introduced with the 2007 reform (Decree Law n.5 of 2006) and it enables the entrepreneur bankrupt to get rid of all debts remained unpaid in respect of the bankruptcy creditors after the closing of the bankruptcy procedures. The discharge is contemplated by Art 142 of the Italian Bankruptcy Law. It is not automatic. Indeed, it up to the bankrupt entrepreneur to apply to the Court for its application. He can apply within one year from the closing of the bankruptcy procedure. In order to benefit from the discharge, the entrepreneur bankrupt should comply with a number of requirements, including:

- Having collaborated with the organs of bankruptcy procedure.
- Having not delayed or contributed to delay the procedure.
- Having not violated the obligation to deliver the relevant correspondence to the curator (Art 48 of the Bankruptcy Law).
- Having not received any other discharge in the ten years preceding the application.

- Having not depleted the assets or ha not exhibited non-existent debts, making the reconstruction of the assets difficult.
- Having not been convicted by final judgement for fraudulent bankruptcy or offences against the public economy, industry and commerce, and other crimes committed in connection with the operation of the business, except for those offenses for which he ha already been rehabilitated.

These requirements are a sort of guarantee to avoid that fraudulent entrepreneurs back out of their responsibilities towards the creditors. The discharge procedure is very short. It lasts less than one year.

To some extent, a further measure introduced with the reform could be considered as enabling the second chance of the entrepreneur bankrupt. It is the so called 'concordato fallimentare' (bankruptcy agreement) contemplated by Art 124 of the Bankruptcy Law. It can be required by creditors or third parties in any time during the bankruptcy procedure. Also, it can be required by the bankrupt entrepreneur (or by companies in which he is involved) but only after one year from the start of bankrupt procedure (and within two years from the declaration approving the losses). If requested by the creditors or third parties, the bankruptcy agreement can be asked also before the approval of losses but it is needed an assessment of the curator about the assets and the list of creditors which should be approved by the assigned judge. It can be considered as a measure enabling to some extent the 'second chance' since the entrepreneur bankrupt may benefit from a more convenient closure of the bankruptcy procedure through a plea bargaining with creditors.

Creditors may ask to a credit agency to perform a 'due diligence' of the assets of the entrepreneur bankrupt. This due diligence is an assessment of the activities of the bankrupt entrepreneur, its assets, and the risks for creditors. It is then submitted to the court along with request of the bankrupt agreement.

4.7 Which institutions exists that take care of this issue?

Court

4.8 What are the costs involved?

N.a.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

Currently, it occurs that creditors are not at all satisfied at the closure of the bankrupt procedure because the assets of the entrepreneur bankrupt does not allow to meet all the payments due. However, this does not prevent the entrepreneur bankrupt to apply for a discharge procedure. Indeed, one additional reform introduced in 2012 is that there is no longer the requirement of having at least partially paid all bankruptcy creditors. The risk of not applying for the discharge procedure is that when the entrepreneur bankrupt start a new activity, the creditors from previous activity may ask for being paid.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

N.a.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
CRIF Rating Agency	Bologna, Via M. Fantin 1-3 http://www.creditrating.crif.com	Investment decision Benchmarking

Name of PCSB	Location/address	Main use of scores
		Sectorial analysis Top performer analysis Assessment of financial trend of enterprises
GIB Italia Service s.r.l.	Como, Via I Maggio, 2 - 22020 Cavallasca (CO) http://www.gibitalia.it/	Recovery of credits Given back to client who paid for it Risk intelligence
Cerved Group Spa	Milano, Via S. Vigilio, 1 – 20142 http://www.cervedgroup.com/	Recovery of credits Investment decision Consulting a client

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

When assessing the creditworthiness of entrepreneurs, GIB Italia s.r.l. takes into account the following items: profits, turnover, years of activities, economic performance over the years, judicial precedents, joint sock, assets. CRIF bases its assessment on two main criteria: the extent to which the entrepreneur can satisfy all the debts and the risk rate expected in case of default.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

In Italy, there is no legislative framework for rating agencies. Evidence suggest that creditors ask bank institutions, such as UCMB from Unicredit group, to perform an assessment of credits for the purpose of the bankruptcy agreement. This activity is performed also by more specialised agencies such as the GIB Italia Service s.r.l. This agency has been established in 1990 and is specialized in the prevention of risks, management and recovery of credits. In the framework of bankruptcy procedure, GIB Italia Service s.r.l may be asked by court or creditors to support in the recovery of credits. Also, it may be asked by creditors to make an assessment of credits during a bankruptcy procedure as well as in order to verify the reliability of enterprise before making a supply.

Cerved Group Spa and CRIF Rating Agency are two further examples of rating agencies operating in Italy. In particular, CRIF Rating Agency is the first Italian agency providing rating recognised at European Level (in 2011).

The use of credit scores may vary. The rating may be asked by a specific creditor who pays for it. Also, it can be used for sector research or benchmarking analysis. It may be used in the phase of recovery of credits or to support investment decision (e.g. a client may ask to the agency to perform an assessment of credits in order to verify the reliability of the enterprise before starting collaboration).

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The public register of bankrupts has been abolished with the 2007 reform (abolishment of Art 50 of Bankruptcy Law) as a way to increase second chance for entrepreneurs.

Date	Name of person interviewed	Organisation	Position	Contact details
March 10th 2014	Astolfo Di Amato	Astolfo di Amato e Associati Lawyers	Lawyer	astolfodiamato@diamato.eu
March 26th 2014	Giovanni Agrusti	Astolfo di Amato e Associati Lawyers	Lawyer	+39 345 7149618
March 27 th 2014	Luciano Bifulco	Studio Associati & Bifulco	Accountant/Curator	+39 335 8145228
April 1th 2014	Antonio De Simone	De Simone Studio Legale	Lawyer	avv.antoniodesimone@tin.it
April 4 th 2014	Stanislao De Matteis	Bankruptcy section of the Court in Naples	Judge	stanislao.dematteis@giustizia.it
April 4 th 2014	Patrizia Feleppa	GIB Service S.r.l	Marketing Manager of GIB Service s.r.l	commercial@gibitalia.it http://www.gibitalia.it/it/

Documents consulted

Name of document, author/organisation, year of publication
Italian Bankruptcy Law 267/1942 as modified by the legislative decree n. 83/2012 and converting law 134/2012.
Decree Law N. 5/2006
Decree Law N. 169/2007
Decree Law N. 83/2012 (the so called Development Decree)
Greenberg Traurig LLP (2011) A view from Italy: Italian Bankruptcy Law reforms — opportunities for investments
Buffelli, G. (2012), Il Piano attestato e gli accordi di ristrutturazione dei debiti: novità aziendali e fiscali

Websites consulted

Name of website	Link to website
Procedura Fallimentare – PMI.it	http://www.pmi.it/tag/procedura-fallimentare

17 Latvia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1/0.5 ¹⁶
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	33 ¹⁷
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0 ¹⁸
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0 ¹⁹
7. Does an entrepreneur	1: the entrepreneur is deleted from the database within one year	0 ²⁰

¹⁶ For natural persons compulsory, but not compulsory for legal persons.

¹⁷ The data provided by interviewees includes statistics before 2010 which significantly increases the period of time of the discharge process. This explains why answers of respondents were so different. The Ministry of Economics in the Action Plan for business environment improvement for 2013–2014, adopted by the Decree No. 165 of the Cabinet of Ministers of the Republic of Latvia on April 24, 2013 (p.44) estimates that according to a new Insolvency Law (adopted in 2010) the average time for completing the whole insolvency process has become 13 months in 2013-2014.

¹⁸ The Court decision on concluding the bankruptcy procedure and approval of the Discharge plan is required to announce the discharge procedure. The discharge procedure is compulsory for a natural person.

¹⁹ There are no ratings issued for bankrupt entrepreneurs after discharge in Latvia.

Questions	Options	Answer
get deleted from public/private credit databases after discharge?	after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0,5 ²¹
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1 ²²
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	6

²⁰ The entrepreneur does not get deleted from public data bases after discharge. There is no information about private credit databases.

²¹ The length of debt plan repayment is 24 months with a possibility to extend it for another 24 months.

²² The bankruptcy process is not separated in Latvia, however, roles of Judges and Administrators for Insolvency Proceedings are separated.

Question/issue	Options	Answer
confirmed. It does not include the remaining period until discharge.		
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 ²³
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1 ²⁴

Output 4 Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

There are no early prevention measures, early warning systems, diagnostic tools or support mechanisms offered to entrepreneurs. Entrepreneurs facing problems leading to insolvency can negotiate with creditors according to the Out-of-Court Debt Restructuring Guidelines (adopted in 2009) which are not legally binding and do not have any legal consequences. This out-of-court settlement is possible only if involved parties can privately agree on it. Also, this process is voluntary and does not require an involvement of any institution.

In-court procedures: according to the Insolvency Law - Legal Protection Proceedings (LPP) and Extrajudicial Legal Protection Proceedings (ELPP) are offered as solutions within the legal framework to prevent bankruptcy.

4.2 Which institutions exist that take care of this issue?

In in-court procedures, main institutions involved in prevention are courts and Administrators of Insolvency Proceedings.

4.3 What are the costs involved?

Unfortunately, costs involved in the "prevention" case cannot be estimated.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to be tackled are the following:

- Fostering the implementation of a new Insolvency Law (adopted in 2010) in certain areas, such as improving work of the Administrator of Insolvency Proceedings. Adopting amendments of the Insolvency Law to improve the supervision system.
- Adopting the Law on Mediation and the Law on Out-of-Court Procedures.
- revising tax regulations for SMEs and adopting amendments to the Commercial Law (excluding dummy companies).
- amending the Insolvency Law to put the Administrator of Insolvency Proceedings in the same status as a public official, as well as define responsibility of board members.
- improving tax legislation, i.e. introducing "preventive" tax support measures.

²³ The only residential house or apartment is exempted from bankruptcy proceedings, but only in a case of bankruptcy of a natural person if the agreement with creditors is reached.

²⁴ There are few professions where a bankrupt person can have certain restrictions.

- releasing credit liabilities and increasing equity capital, as well as trying to ensure liquidity of enterprises, postponing credit and/or interest payments, applying tax support measures, cancelling penalties, helping to attract an investor, monitoring the development of an enterprise.

4.5 How many companies have gone through “prevention” measures, and how many survived?

Unfortunately, numbers of companies which have gone through prevention measures and which have survived can't be estimated.

Statistical information can only be provided about LPP and ELPP cases in the framework of the Insolvency Law. According to this information there were 166 LPP cases proposed in 2013 out of which 48 cases were announced; In 2012 there were 122 LPP cases proposed and 42 announced; In 2013 there were 49 ELPP cases proposed out of which 36 cases were announced; In 2013 there were 35 ELPP cases proposed and 26 announced.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There are no direct support measures provided for the "second chance". The LPP and ELPP provide a legal chance for reorganization and escape from the bankruptcy of an enterprise. In these cases, main institutions involved in prevention are courts and Administrators of Insolvency Proceedings. If the restructuring of an enterprise is successful then it can continue its business.

There is a possibility for an entrepreneur to go through the insolvency procedure as a legal person and afterwards as a natural person to regain his solvency.

If a new company is registered then the Enterprise Register is involved in this process. However, there are no any special support measures and/or any restrictions for previously bankrupt honest entrepreneurs to register a new company.

4.7 Which institutions exists that take care of this issue?

There are no direct support measures provided for the "second chance", so no institutions involved.

4.8 What are the costs involved?

Unfortunately, this is not possible to answer what are the costs involved to ensure a "second chance".

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to be tackled are the following:

- amending the Law on Court of Arbitration (currently undergoing the 2nd reading in the Parliament) which will provide new regulations for out-of-court settlements and court solutions;
- adoption of the Law on Mediation and the Law on Credit Bureaus;
- restarting entrepreneurs need to have an access to financing to start a new business, therefore, solutions should be found to provide support measures for those entrepreneurs which have been honest and successfully completed all insolvency proceedings;
- there are no problems to register a new company for a bankrupt entrepreneur. However, this is much more difficult to get financing from a commercial bank on good conditions. Commercial banks consider previously bankrupt entrepreneurs as more risky clients. Recommendations or guarantees of other entrepreneurs are usually required. Policies of commercial banks are quite strict and they were even more tightened after the economic crisis.

A record about bankruptcy of a company is entered in the Enterprise Register and remains there. However, there is not a problem for an entrepreneur to register a new company if he has successfully completed all bankruptcy proceedings. In this case, he has to start the registration

process from the beginning again. Therefore, this is not possible to estimate if an entrepreneur is starting a brand new company or registering a new company to continue previous business.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

There are statistics on how many companies are participating in LPP and ELLP which are described above (see 4.5). However, there are no data about how many of these companies were successfully reorganized, avoided liquidation and were able to continue their businesses afterwards.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ²⁵
<u>Balt Risk Ltd.</u> Mainly works in the sphere of credit management services, including debt collection and credit information.	34 Lokomotives Street, LV-1057, Riga, Latvia, http://www.balt-risk.lv/eng/about	The most important implemented projects: 1. Information portal RiskNet – the most significant investments in Balt Risk development history. At this stage the portal is the widest on-line credit information source in the Baltic area. 2. RiskList debt register – the first on-line debtor register in Latvia, where the debts are registered before third parties become involved in the collection process. RiskList is a special debt register where creditors can register the debtors late with their payments or do not fulfilling their financial obligations, without transferring these debtors to collection companies. 3. IKSANO ICC-DC Debtors Database – international data base where air navigation structures from 11 states enter information about their debtors. 4. Payment administration service - provides timely payment of the bills, improves payment discipline as well as cash flow amount and quality
<u>CREDITREFORM Latvija Ltd.</u> Creditreform Latvija is a professional company that stands up for creditor's interests, helps to minimise risk and solves problems in work with debtors – companies and individuals.	52 Skanstes Street, LV-1013, Riga Latvia, http://www.creditreform.lv	The Creditreform Latvija offers a scoring model - CREFO Score - for Latvian Commercial Registry companies. CREFO Score includes information regarding all Commercial Registry companies, their basic registration data, marketing information: actual address, contact information, description of economic activity, industry, number of employees, servicing banks, as well as information about changes in Commercial Registry records, insolvency, liquidation processes and credit history. The main part of this product - CrefoScore - is an index, that corresponds to an estimate of expected

²⁵ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Name of PCSB	Location/address	Main use of scores ²⁵
		<p>probability of default over time horizon of 12 months.</p> <p>CrefoScore allows to reach credit decisions about smaller deals fast, and without necessity to analyse customers financial data. CrefoScore index shows the probability of customer failing to make payment for delivered goods or services. CREFO Score is available to registered users of the portal www.crediweb.lv</p> <p>Services of the Creditreform Latvija Ltd. are mainly used by commercial banks of Latvia.</p>
<p><u>Creditinfo Latvija Ltd.</u></p> <p>It is credit burau which is a part of an international credit information services providers' group.</p>	<p>31 Cesu Street, 5k3; LV-1012, Riga, Latvia, http://www.manscreditinfo.lv/</p>	<p>Creditinfo Latvija Ltd. has established an unique system for private persons providing a possibility for everyone living in Latvia to find out and monitor data of own credit history. Access to this system is free of charge.</p>
<p><u>JSC ARCIS</u></p> <p>It offers a wide range of services in the field of information and analytical support and business security that are aimed at minimizing and preventing risk factors related to various aspects of commercial activity, guaranteeing their confidentiality.</p>	<p>4a Celinieku Street, LV-1005, Riga, Latvia</p>	<p>Data bases established by S/C ARCIS are widely used by</p> <p>state and private structures, foreign embassies and representations, banking and credit institutions, as well as other financial institutions, nsurance and leasing companies, resident and non-resident companies, natural persons.</p>
<p><u>Atradius Latvija</u></p>	<p>Atradius Credit Insurance N.V. Rådmanngatan 69 P.O. Box 6800 113 86 Stockholm, Sweden, http://global.atradius.com/contact/offices-worldwide/atradius-latvia.html</p>	<p>Atradius provides insurance for commercial credits which can cover the complete range of risks of non-payment inherent in trade credit sales.</p>
<p><u>Prudentia</u></p> <p>Prudentia is the leading independent investment banking and financial advisory company in Latvia.</p>	<p>2A Republikas square, 6th floor, 4-th module, Riga, Latvia, http://prudentia.lv</p>	<p>Prudentia services include mergers and acquisitions, private placements, management buy-outs and buy-ins, debt and structured financing, initial public offerings, business due-diligence and valuation, and business restructuring.</p>

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

The only credit score in Latvia - Crefo Score is based on results of the Creditreform Latvija Ltd. research.

Calculating this score the following data characterising solvency of enterprises are taken into account:

- financial indicators;

- Creditreform data base on credit histories;
- structural data (number of employees, legal form of enterprise, etc.);
- risk indicators of entrepreneurship;
- information of the VAT payers register;
- information on insolvency, liquidation, reorganization, legal protections and bankruptcy processes.

According to the interview with a representative of a commercial bank in Latvia the information provided by the Creditreform Latvija Ltd. is one of sources for assessing the creditworthiness of a client. In addition, commercial banks have their own data bases and criteria which differ in various banks and usually are kept confidential.

If a Latvian company is working in the international market then it can also be rated by international credit rating companies, such as Fitch and others.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

The PCSBs are not regulated in Latvia. A new Law on Credit Bureaus currently initiated at the Parliament of Latvia should provide such regulations.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Public data bases related to the entrepreneurship are administered by the Enterprise Register of Latvia according to the Law on Enterprise Register of the Republic of Latvia. It also contains the Insolvency Register. The Enterprise Register of Latvia is responsible for including and deleting information in/from public data bases and registers. The record in a data base or a register is entered or deleted after the decision taken by a Notary of the Enterprise Register enters into effect. The Insolvency Register was started in 2008. Since then all records about insolvency processes of legal and natural persons can be found in the Insolvency Register. During the bankruptcy process new records about status of a debtors are added to the data base and this information is publicly available.

There is no information available on entering and deleting information in private data bases which are usually kept confidential.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
12.03.2014	Mr. Kazimirs Slakota	Association of Latvian Commercial Banks	Consultant	9/11 Perses street, LV-1011, Riga, Latvia Phone: +371 67284528 Fax: +371 67828170 E-mail: asoc@bankasoc.lv
14.03.2014	Ms. Olga Zeile and Mr. Nauris Grinbergs	Sectoral Policy Department, Ministry of Justice of the Republic of Latvia	Director; Senior Desk Officer of the Policy Development and Religious Affairs Unit	36 Brivibas Boulevard, LV-1536, Riga, Latvia Phone: +371 67036739 E-mail: olga.zeile@tm.gov.lv nauris.grinbergs@tm.gov.lv
13.03.2014	Ms. Ilze Lore	Ministry of Economics of the Republic of Latvia	Head of the Unit for Improving the Business	55 Brivibas Street, LV-1519, Riga, Latvia

Date	Name of person interviewed	Organisation	Position	Contact details
			Environment of the Entrepreneurship Competitiveness Department	Phone: +371 67013099 E-mail: Ilze.Lore@em.gov.lv
13.03.2014	Ms. Ieva Ligere	Insolvency Administration	Director of the Legal Department	19 Marstalu Street, LV-1050, Riga, Latvia Phone: +371 67099125 E-mail: ieva.ligere@mna.gov.lv
14.03.2014	Mr. Janis Balodis	"Vides Dizains", LLC	Chairman of the Board	<u>Elizabetes Street 75</u> , LV-1050, Riga, Latvia Phone: +371 29207842
22.03.2014	Ms. Natalja Asaca	The Court of Rezekne City	Assistant of the Judge	24 Darza Street, LV-4600, Rezekne, Latvia Phone: +371 64623041 E-mail: rezekne@tiesas.lv angela_1@inbox.lv
23.03.2014	Ms. Rita Skrinda	Private practice of Insolvency Administrator	Certified Insolvency Administrator	23 Gimnazijas Street, LV-5401, Daugavpils, Latvia Phone: +371 65424187 E-mail: rita.skrinda@mna.gov.lv
25.03.2014	Ms. Inara Lemesevska	ABLV Bank	Manager of the Branch	23 Elizabetes Street, Riga, LV-1010, Riga, Latvia E-mail: inara.lemesevska@inbox.lv

Documents consulted

Name of document, author/organisation, year of publication
Insolvency Law, adopted by the Parliament of the Republic of Latvia, 26.07.2010 (effective since 01.11.2010)
Out-of-Court Debt Restructuring Guidelines, adopted by the Consultative Council on Insolvency Issues, 06.08.2009
The Action Plan for business environment improvement for 2013–2014, adopted by the Decree No. 165 of the Cabinet of Ministers of the Republic of Latvia on April 24, 2013
Commission Recommendation of 12.3.2014 on a new approach to business failure and insolvency, European Commission, 12.03.2014
Report of the Expert Group. A Second Chance for Entrepreneurs: prevention of bankruptcy, simplification of bankruptcy procedures and support for a Fresh Start, European Commission, January, 2011
SBA Fact Sheet 2012 - Latvia, European Commission

Websites consulted

Name of website	Link to website
Insolvency Administration	http://www.mna.gov.lv
Enterprise Register, Insolvency Register	http://www.ur.gov.lv
Ministry of Economics of the Republic of Latvia	http://www.em.gov.lv
Ministry of Justice of the Republic of Latvia	http://www.tm.gov.lv
Association of Latvian Commercial Banks	http://www.bankasoc.lv
Data base of the Legal Acts of the Republic of Latvia	http://likumi.lv/doc.php?id=214590
State Revenue Service	http://www.vid.gov.lv
European Commission, Enterprise and Industry	http://ec.europa.eu/enterprise/policies/sme
Lursoft - Data Bases and Registers of Enterprises	http://www.lursoft.lv
Balt Risk Ltd	http://www.balt-risk.lv
Creditreform Latvija Ltd.	http://www.creditreform.lv
Creditinfo Latvija Ltd.	http://www.manscreditinfo.lv/
JSC ARCIS	http://www.arcis.lv
Prudentia	http://prudentia.lv
Atradius Latvija	http://global.atradius.com/contact/offices-worldwide/atradius-latvia.html

18 Lithuania

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	18 months
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	120 months or 10 years
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Ad 1) The legal procedures are only slightly different. However, there are different consequences for the honest and fraudulent entrepreneurs. In case of deliberate bankruptcy, the persons found guilty carry civil responsibility. Also, they may be barred from taking Director position for 3-5 years

- Ad 2) In general, there are fast-track and less expensive bankruptcy procedures, but they are not specific for SMEs, but are applied to all companies.
- Ad 3) According to the Law on Natural Persons Bankruptcy, an individual (natural person) can be fully discharged after the bankruptcy procedure is over. However, there are exceptions, when the person cannot be fully discharged:
- Restitution for debtor's caused by damage, injury or death
 - Alimony for children support
 - Fines the debtor has to pay to the state for the administrative law violations.

In terms of limited liability legal bodies, the companies are fully discharged after the bankruptcy procedures are over (except if there are criminal charges).

In terms of unlimited liability legal bodies (individual companies), owners or subsidiaries and are not automatically discharged from the unfulfilled obligations. The business owner as a natural person is not discharged from the creditors' claims and is entitled to fulfil creditors' obligations after the company is removed from the national registry.

- Ad 4) For legal bodies, the maximum term is 24 months and average – 18 months.
- Ad 5) It is automatic in a sense that once all bankruptcy procedures are fully completed, the enterprise is discharged of its debts. There is no need to re-apply to the court.
- Ad 6) Credit databases of private credit scoring bureaus (PCSBs) hold data about natural persons for 10 years after successful repayment of all debts. This is specified in the Law on Natural Persons Bankruptcy.

If the bankruptcy was honest, there is no negative rating for the company or entrepreneur in the public database. In case of dishonest bankruptcy, the negative rating for natural persons remains 3-5 years in the public database.

- Ad 7) Private databases hold information for 10 years after successful repayment of all debts. Public databases hold information only about fraudulent entrepreneurs, who are barred from taking Director position in new companies. They get deleted from the database after 3-5 years.

Output 3 *Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries*

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory)	1: creditor's committees exist and are compulsory;	0.5

Question/issue	Options	Answer
creditors' committee?	0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	20.8
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

Ad 3) According to the Law on Natural Persons Bankruptcy, the length of repayment plan cannot be longer than 5 years (60months).

Ad 4) None of the respondents understood this question. Therefore we assume there is no separation.

Ad 5) Creditors have a right to elect a committee, but they can decide themselves whether they need it or not.

Ad 6) Yes. The Law on Company Bankruptcy sets an order, in which the creditors' requirements must be satisfied. In this way certain creditors can expect greater recovery rate. Also, the government has established funds (Employee Guarantee Fund, to aid in the satisfaction of claims arising from employment relations and compensation for the unpaid supply of agricultural production.

Ad 9) The entrepreneur might be barred from taking a Director position in a company for a limited period (3-5 years). The same person is allowed to file for the bankruptcy again earlier than 10 years after the end of the previous bankruptcy procedure.

Output 4 Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

There are several measures helping debtors facing financial difficulties in Lithuania. State Tax Inspectorate provides extended tax payment deadlines and new debt repayment plans. If a debtor is experiencing financial difficulties and is late with its tax payments to the State Tax Inspectorate, the government agency sends out a warning suggesting to extend the timeline and create a new plan for repayment. The businesses can also apply for extended timeline and special payment plans on their own initiative.

While the Ministry of Economy and Department of Enterprise Bankruptcy Management do not implement any direct bankruptcy prevention measures, their responsibilities include the development of insolvency/bankruptcy processes and legal system (related to bankruptcy), which could have impact on prevention. For example, in 2010 the Department initiated amendment to the Law on Company Restructuring, which made it easier to restructure companies.

The Centre of Registers collects Financial Accountability Reports from all companies operating in Lithuania on an annual basis. These reports are made available to the public, which in turn, could be used to determine the company’s financial situation. If the company fails to submit the report, one can assume that it faces financial difficulties.

4.2 Which institutions exist that take care of this issue?

1. State Tax Inspectorate. It provides extended tax payment deadlines and new tax repayment plans.
2. State Social Insurance Fund Board. It can also provide extended tax payment deadlines and issue new tax repayment plans.
3. Centre of Registers. While it does not implement prevention measures itself, it collects important information (Company financial accountability reports), which can be used in prevention. State Centre of Registers has a right of liquidating inactive companies. However, this function is underfunded, which means that there are a lot of registered, but inactive companies in the country.

4.3 What are the costs involved?

Since bankruptcy prevention is highly horizontal activity related to a number of different government agencies, some of which deal with prevention indirectly, it is virtually impossible to determine the resources or time spent on it.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

In order to improve the effectiveness of bankruptcy prevention system in Lithuania, firstly and most importantly, it is necessary to educate young entrepreneurs about potential risks related to business management and encourage responsible decision-making, especially when dealing with financial matters. It is important to acknowledge that entrepreneurs themselves carry the ultimate responsibility for their business decisions. Secondly, the Centre of Registers could take a more proactive role analysing Financial Accountability Reports. These reports should include information about *outstanding financial responsibilities and missed payments*. A large number of companies fail to submit these mandatory reports and virtually face no sanctions or fines. As a result, more active and stringent implementation of this measure is necessary. Lastly, it is crucial to ensure that all companies meet liquidity requirements. At the moment, a large part of the Lithuanian companies do not meet these requirements, although such obligation is set in the law.

4.5 How many companies have gone through “prevention” measures, and how many survived?
Lithuania has no coordinated approach to bankruptcy prevention in the country and therefore, the interviewees were unable to provide statistics about the survival rate of the companies, which had undergone prevention procedures.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

Until now, there have been very few activities aimed at supporting “post-bankruptcy/second chance” in Lithuania. The only measures mentioned by interviewees were several seminars organised by national business promotion agency Enterprise Lithuania, which included presentations of success stories from entrepreneurs, who underwent bankruptcy and were able to successfully restart business. Other than this, there are no services specifically aimed at “second chance”. However, these entrepreneurs can use all the support services that are available to new entrepreneurs.

4.7 Which institutions exist that take care of this issue?

The national business promotion agency Enterprise Lithuania.

4.8 What are the costs involved?

N.a.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

At the moment the attitude towards business failure is often related with criminal and fraudulent activities. Seeing it more as a normal practice would help entrepreneurs restart their business faster.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

N.a.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name	Location/address	Main use of scores
1. CREDITINFO	A. Gostauto st. 40a, Vilnius, Lithuania	1) Helping businesses choose partners, suppliers, clients etc.
2. Creditreform	A. Jakšto st. 9 - 225, Vilnius	2) Providing credit score ratings for private persons.
3. Coface		1) Helping businesses choose partners, suppliers, clients etc. (used for investment decision).
4. Atradius	Vilniaus st. 31, Vilnius	2) Debt management services.
5. Gelvora	A. Juozapavičiaus st. 7, Vilnius	1) Helping businesses choose partners, suppliers, clients etc. (used for investment decision)

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria PCSBs follow when assessing the creditworthiness of entrepreneurs could be summarised under these categories:

- Credit history: this includes all company's credit commitments and all the information about their payment.
- Financial accountability: this includes 12 various financial indicators (such as revenue, outstanding debts etc.)
- Economic activity data: this includes industry, sector, general economic situation etc.

- Connections with other subjects: this includes company's connections with other companies and persons having financial difficulties.

In general, according to Creditinfo experience, if an entrepreneur has undergone bankruptcy once, the probability of him/her facing bankruptcy again is much higher compared to those entrepreneurs who starting their business for the first time. As a result, these persons have a much lower credit rating.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

PCRBs are regulated by the following laws:

- Law on Legal Protection of Personal Data;
- Law on Financial Institutions;
- Law on Consumer Credit;
- Law on State Information Resources Management
- Legal provisions regulating the use of various state registries.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Rules with regard to deleting debtors from databases:

- The inclusion of legal bodies in to the debtors' database is usually initiated by the creditors. Debtors receive a 30-day notice prior to their inclusion in it. They are deleted from the database 10 years after complete repayment of their debt. However, the information about the company's bankruptcy stays in the database permanently.
- The inclusion of natural persons into the debtors' database takes place once an individual signs a credit agreement with the financial institution. The individual is deleted from this database 10 years after complete repayment of the credit. The information about natural persons' bankruptcy is deleted from the database also 10 years after complete repayment of all debts.

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
March 19 2014	1. Žydrūnas Paškauskas (replacing Asta Misiukiene)	Ministry of Economy of the Republic of Lithuania	Head of Insolvency Policy division, Department of Company Law	Tel: +37070664662 E-mail: Zydrunas.Paskauskas@ukmin.lt
March 19 2014	2. Giedrius Galentas and Lijana Milkutė	Enterprise Bankruptcy Management Department under the Ministry	Senior Juris-consultant and Head of Company Activity Analysis Division	Tel: +37052499321 E-mail: giedrius.galentas@bankrotodep.lt E-mail: lijana.milkute@bankrotodep.lt
March 21 2014	3. Henrichas Jaglinskis	Vilnius District Court	Head of Civil Cases Division	Tel: +370 (5) 268 8033 E-mail: h.jaglinskis@vat.lt
March 17 2014	4. Ramūnas Džiugas	Lithuanian Central Credit Union	Advocate	Tel: +370 687 46034 E-mail: ramunas.dziugas@lku.lt
March 31 2014	5. Jonas Beganskas	JSC "Skalos Statyba" (bankrupt)	Owner and Director	Tel. +37065607140
March 12 2014	6. Kestutis Samulionis	JSC "Sbs Legale"	Managing director; Bankruptcy administrator	Tel. +37068242992 E-mail: kestutissamulionis@gmail.com
March 14, 2014 (14:00), Žirmūnų 70, 615 kab.	7. Jonas Čebelis	State Tax Inspectorate	Head of Bankruptcy and Restructuring division	Tel. +37052687982 E-mail: j.cebelis@vmi.lt
March 20, 2014 9:30	8. Anatolijus Kisielis and Aleksas Rozentalis	Credit Info (PCSB)	Lawyer and Head of Communication	Tel. +370 615 29 097 E-mail: anatolijus.kisielis@creditinfo.lt and aleksas.rozentalis@creditinfo.lt

Documents consulted

Name of document, author/organisation, year of publication
Key Insolvency Laws in Lithuania - An Overveiw, Ieva Baranauskaite, 2013. Available at: http://www.insol.org/emailer/Oct_2013_downloads/Key%20insolvency%20Laws_Lithuania.pdf
Personal bankruptcy finally possible in Lithuania, Giedre Uleviciute, 2013. Available at: http://ebn.lt/news-and-events/news/personal-bankruptcy-finally-possible-in-lithuania/
The Review of Enterprise Bankruptcy and Restructuring Processes and Bankruptcy of Natural Persons on January-June 2013, The Department of Enterprise Bankruptcy Management under the Ministry of Economy, 2013. Available at: http://www.bankrotodep.lt/Doc/2013_00_en.pdf

Websites consulted

Name of website	Link to website
Lithuanian Parliament, legal database, Law on Bankruptcy of Natural Persons	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=445605
Lithuanian Parliament, legal database, Enterprise Bankruptcy Law	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=447985
Lithuanian Parliament, legal database, Civil Code	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465506

19 Luxembourg

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Minimum 2 months
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Practically for ever
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Between 12 and 24
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 (It depends if it's a trader or a private person)
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1 (with the exception of fraudulent bankruptcy)

4.1. Which measures are taken in your country to address this issue?

- Scheme of composition with creditors (concordat préventif de faillite)
- Controlled management (Gestion contrôlée)
- Suspension of payments (sursis)
- Anti-Crisis Vaccine
- "Company administration" trainings such as "LSC-Entrepreneurship" have been introduced by the Chamber of Commerce at their Luxembourg School for Commerce

4.2. Which institutions exist that take care of this issue?

- Professional Chambers (Chamber of Trades, Chamber of Commerce) with the Ministry of Economy and SMEs

4.3. What are the costs involved?

There are no statistics on the costs involved. For example, the Chamber of Commerce was in charge in 2011 and 2012 of the "VaccinAntiCrisse" measure through its "Espace Entreprises" department; therefore the costs related to prevention of bankruptcies were drawn in the general administration and employees costs of the Espace Entreprises. For Controlled management, there might be 1-2 people working on the file, and the rate of the experts involved (such as lawyers) is not regulated by law. It is for sure minimum 1.000 EUR, but no maximum can be estimated because it depends on the size of the company and on the number of creditors.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

Most critical issues to be tackled for this issue to be successfully handled:

- An entrepreneur in difficulty (even more who went bankrupt) has in Luxembourg a very negative image, therefore entrepreneurs generally deny in public having financial problems nor do they feel "safe" to apply for bankruptcy prevention measures to avoid that people find out about their distress and their problems are publicised.
- Heavy, long and costly procedures to benefit of a prevention measure, which discourage entrepreneurs from applying to request for it.
- There is no communication between the different administrations which could help identify quicker companies in difficulty to pay.
- Usually when a company is proposed a bankruptcy prevention measure, the problems are already quite important and the success of a prevention measure is limited.
- The existing measure are not effective and discourage entrepreneurs from applying for them, even if needed.
- The government does not truly support companies and entrepreneurs having difficulties in Luxembourg: most of the entrepreneurs who went bankrupt that I have interviewed mentioned the complete lack of communication with the administrations, absolute refusal to find arrangements to pay the debts, especially the VAT and Social security administrations. In this context, taxation can be an essential tool to prevent bankruptcies. The government should be able to take extraordinary measures in a structured way: tax deferrals, multiple payments, reduction of guarantees required to postpone payments, tax agreements for companies on a one to one basis or renegotiating outstanding taxes over a longer time frame for repayment.

4.5. How many companies have gone through "prevention" measures, and how many survived?

The only data available to estimate the number of companies that have gone through "prevention" measures, and the number of companies that survived are from Espace Entreprises of the Chamber of Commerce related to the "VaccinAntiCrisse" initiative for 2009 and 2010. In 2009, there were 29 requests (a total of 277 employees) out of which 3 went bankrupt (situation on

31/12/2009). In 2010, there were 12 requests (a total of 269 employees) out of which 2 went bankrupt (situation on 31/12/2010).

However, it is not sure that if the companies that requested access to the measure in 2009 but went bankrupt in 2010 were included, because each year the calculations only included the year of the request of the measure.

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Not much is being currently done in Luxembourg to address this issue.

- When an entrepreneur wishes to start again a company in Luxembourg after a bankruptcy, he has to ask for an authorisation from the Ministry of Economy and SMEs, which is sending a questionnaire to the General Prosecution (Parquet Général) as well as to CCSS (Caisse Commune de la Sécurité Sociale), AED (l'Administration de l'Enregistrement et des domaines), ACD (Administration des Contributions Directes) to ask them their position and the level of debts. If the entrepreneur can ever start again a company is at the discretion of the Ministry which will have to decide whether or not the entrepreneur still responds to the mandatory criteria of "honorability" after a bankruptcy (the declaration of honorability which is part of the request for a new authorisation of commerce requests the mention that the entrepreneur has never went bankrupt!). If the Ministry considers that the entrepreneur should be given a second chance, they might request the entrepreneur to follow a "Company administration" training at the Chamber of Commerce.
- On the 8th January 2013 a new piece of legislation has been introduced which might be useful for providing entrepreneurs with a second chance: La loi sur le surendettement. However this law only applies to entrepreneurs who stopped their commercial activity at least 6 months previously or to bankrupt entrepreneurs if the bankruptcy has been closed. The article 536 of Code de commerce has been modified by Article 51 («Dans ce cas, les créanciers rentreront dans l'exercice de leurs actions individuelles contre la personne et les biens du failli déclaré banqueroutier simple ou frauduleux.» «Le failli qui n'a pas été déclaré banqueroutier simple ou frauduleux ne peut plus être poursuivi par ses créanciers, sauf retour du failli à meilleure fortune dans les sept années qui suivent le jugement de clôture pour insuffisance d'actif.»

4.7. Which institutions exists that take care of this issue?

Institutions that take care of this issue are The Court, the Ministry of Economy and SMEs.

4.8. What are the costs involved?

The costs can be estimated at max. 1000 EUR. For a "post bankruptcy/second chance" action: you have one person at the Ministry of Economy and SMEs who will receive and treat the request for a new authorisation, 4 persons at Parquet, CCSS, AED and ACD with make a research on the bankrupt entrepreneur and produce an evaluation document; then there is the cost of the training, which is however being paid directly by the entrepreneur so can not be counted.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

There are two types of critical issues that need to be handled:

- Obtaining a new authorisation of commerce: The reputation / stigmatization: measures to reduce the negative image of a failed entrepreneur or in distress are essential. - Discharge is in Luxembourg not clearly regulated, even though key for second chance.
- The financing of the new company: Even after obtaining a discharge, bankrupt entrepreneurs are stigmatised and have difficulties to finance a new company, especially from banks who finance less and less, even honest entrepreneurs who didn't go bankrupt. Insolvency regimes should differentiate between debtors who have acted honestly and those who acted dishonestly.

Support and advisory services at less expensive rates should be proposed to bankrupt entrepreneurs, including mentoring, training and business networking.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

No data could be obtained about the number of companies involved in this.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
Creditreform SA	Niederanven, Luxembourg	Given to clients who paid for it

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Creditreform evaluates the creditworthiness of companies (not entrepreneurs) with numbers between 100 (solvent) and 600/700 (close to bankruptcy or bankrupt). Much of the evaluation relies on analyzing the company's balance sheet, cash flow statements, inventory turnover rates, debt structure, management performance and market conditions.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

PCSBs are not regulated the Grand Duchy of Luxembourg. They are very secretive and do not accept to give details in this respect.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

PCSBs are not regulated in Luxembourg. When an entrepreneur is part of such a database, he is likely to stay for ever.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
16.01 / 17.03	Bernadette Friederici	Ministry of Economy and SMEs	Conseiller de direction 1 ^{ère} classe	(+352) bernadette.friederici@cmt.etat.lu
27.03/ 31.03	Daniel Ruppert	Ministry of Justice	Conseiller de direction 1 ^{ère} classe	(+352) 247-84518, daniel.ruppert@mj.etat.lu
18.03	Sonia Pinternagel	Assist Relocation	Managing director	+33) 7 87 26 38 33, pinternagel.sonia@hotmail.com
19.03 / 28.03	Maria Muzs	De Wolf & Partners Lawyers Office	Attorney at Law	maria.muzs13@gmail.com
19.03	Francoise Thoma	BCEE	Member of the Executive Committee, Director	f.thoma@bcee.lu
19.03	Gérard Eischen	Luxembourg Chamber of	Member of the Board, Director	Gerard.Eischen @cc.lu

Date	Name of person interviewed	Organisation	Position	Contact details
		Commerce	of Luxembourg School for Commerce	
26.03	Emilie Pirlot	Luxembourg Chamber of Commerce	Officer	(+352) 42 39 39 - 361, Emilie.PIRLOT@cc.lu
27.03	Anne-Sophie Theissen	Luxembourg Chamber of Commerce	Officer	(+352) 42 39 39 - 361, Anne-Sophie.THEISSEN@cc.lu
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Documents consulted

Name of document, author/organisation, year of publication
"Business Dynamics: Start-ups, Business Transfers and Bankruptcy", European Commission, January 2011
"Loi sur le surendettement" - http://www.legilux.public.lu/leg/a/archives/2013/0026/a026.pdf
"A second chance for entrepreneurs: PREVENTION OF BANKRUPTCY, SIMPLIFICATION OF BANKRUPTCY PROCEDURES AND SUPPORT FOR A FRESH START Final Report of the Expert Group", European Commission, January 2011
"ENTREPRENEURSHIP 2020 ACTION PLAN", European Commission, 09.01.2013
Avis de la Chambre de Commerce sur le Projet de loi relative à la préservation des entreprises et portant modernisation du droit de la faillite, Luxembourg Chamber of Commerce, 2 December 2013

Websites consulted

Name of website	Link to website
European Commission	http://ec.europa.eu/enterprise/policies/sme/business-environment/failure-new-beginning/index_en.htm
Ministry of Justice	http://www.mj.public.lu/actualites/2013/01/PL_faillite/index.html
Projet de loi relative à la préservation des entreprises et portant modernisation du droit de la faillite	http://www.mj.public.lu/actualites/2013/01/PL_faillite/PL_faillite.pdf
Avis de la Chambre de Commerce sur le Projet de loi relative à la préservation des entreprises et portant modernisation du droit de la faillite	http://www.cc.lu/uploads/tx_userccavis/4095TAN_PEM_EGE_Faillites.pdf
Gouvernement du Grand Duché de Luxembourg	http://www.guichet.public.lu/entreprises/fr/sauvegarde-cessation-activite/sauvegarde-activite/index.html
Legilux Code du Commerce	http://www.legilux.public.lu/leg/textescoordonnes/codes/code_commerce/index.html#code_commerce
Vaccin Anti Crise	www.vaccinanticrise.lu

Name of website	Link to website
Legilux - Loi sur le surendettement	http://www.legilux.public.lu/leg/a/archives/2013/0026/a026.pdf
European Commission: "Business Dynamics: Start- ups, Business Transfers and Bankruptcy"	http://ec.europa.eu/enterprise/policies/sme/business-environment/files/business_dynamics_final_report_en.pdf

20 Malta

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0 ²⁶
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1 ²⁷
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	No maximum limit is established by law and the discharge time depends on the complexity of each case.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1 ²⁸
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Ratings are not carried out in Malta but entrepreneurs who obtain a negative review by a CAR ²⁹ retain this review for 18 months if dues are ultimately paid and 6 years if they are not.

²⁶ No distinction is made in bankruptcy procedures. Malta applies the principle of presumption of honesty to bankrupt entrepreneurs, individual or corporate. Treatment varies once judgement is then made. From a company law perspective, directors and officers of a company found to have acted fraudulently or in bad faith may be subject to disqualification orders and liable to a fine up to €232,937.34, a maximum of 5 years imprisonment or both. On the other hand, where no wrongdoing is found to have occurred, such persons are in the same position as persons who have never owned a company. Same applies for individuals.

²⁷ Applicable only for honest bankrupt entrepreneurs.

²⁸ As part of bankruptcy proceedings, when the ranking of creditors is settled, the registrar calls upon the creditors to appear for examination of the accounts of the curators and to establish whether the trader should be rehabilitated to trade. The rehabilitation is granted by decree of a judge provided there is no proof of deceit or fraud on the part of the bankrupt.

²⁹ Credit Referencing Agency

Questions	Options	Answer
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0 ³⁰

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1 ³¹
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5 ³²
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5 ³³
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12-36 months ³⁴

³⁰ As mentioned in question 6, debtors get deleted from the database depending on payment of dues rather than court discharge.

³¹ In any voluntary bankruptcy declaration, the court appoints a curator whose duty "is to preserve the debtor's rights, register any unregistered hypothecs, and he can even sue on behalf of the bankrupt in order to collect any sums due to him." In the case of insolvency or bankruptcy, the creditors' take over bankruptcy proceedings who can appoint the liquidator themselves.

³² This is taken as the average of common practice though no timeframes are stipulated by law.

³³ In the case of Companies, regulated by the Companies Act, Creditors Committees exist but are not compulsory, whereas these are inexistent in the case of sole traders under the Commercial Code.

³⁴ It depends on the complexity of the case. However the value referred to above refers to an average value by a stakeholder.

Question/issue	Options	Answer
include the remaining period until discharge.		
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 ³⁵
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0 ³⁶

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Measures taken to prevent bankruptcy include advisory services and legal provisions.

The Business First Unit within Malta Enterprise provides advisory services in various fields including financial aspects. Since financial difficulties are generally the main reason for winding down a business, ME offers support in this area also to advise companies on how to re-direct their business activity in a more sustainable manner.

A number of legal provisions, within the Maltese Company law, exist to prevent entities from becoming insolvent. In fact, courts are requested to endeavour to save a company moving towards insolvency so as to try to save jobs. This strategy, which is active in providing entrepreneurs with warning tools and assistance in identifying situations that could lead to insolvency, is more beneficial than focusing solely on the liquidation aspect. Examples of these provisions include:

- Article 329B of the Companies Act 1995 which states that where a company is unable to pay its debts or is imminently likely to be unable to pay its debts, it may opt to make a “company recovery” application to the Court. The Court would then appoint a special controller to take over, manage and administer the business of the company in an attempt to rescue it, rather than let it fail.
- According to the Code of Organisation and Civil Procedure (Act XIV of 2006), a precautionary warrant of seizure of a commercial going concern exists. This is done to secure the debt or claims which could be obtained from the sale, in part or in whole of a commercial going concern. The objective, which is that of avoiding the break-up of undertakings which are capable of reconstruction, is achieved by ordering that the whole business is not sold but is to be kept in business. An administrator is appointed by the court to administer the going concern, selling what needs to be sold to pay dues owed to creditors. Therefore, creditors are better secured their claim and debtors are safeguarded from going into bankruptcy.

³⁵ This depends on two aspects: (i) the type of entity filing for bankruptcy – in the case of limited liability companies only assets in the Company’s possession may be sold to repay creditors whereas for sole traders unlimited liability applies which means that entrepreneurs’ personal belongings may be seized; (ii) honest vs. fraudulent bankruptcy – in the case of the latter, directors become personally liable and, therefore, personal assets may be seized to repay debts due.

³⁶ In the case of honest entrepreneurs, only financial implications apply. However, fraudulent entrepreneurs may also become ineligible to hold certain positions – an undischarged bankrupt does not qualify for appointment or to hold office as director of a company or company secretary. In matters involving regulated entities, the involvement of a bankrupt may have repercussions of a regulatory dimension.

Malta Enterprise, through its Business First unit, is mainly responsible for consultancy services of various forms including financial advice. The Business First website also includes information on winding up a business and bankruptcy.

4.2 Which institutions exist that take care of this issue?

A formal institution set up to allow for out-of-court settlement is the Mediation Centre³⁷. However, this set-up does not seem to be utilised extensively. A report prepared by the justice reform commission headed by former European Court of Human Rights judge Giovanni Bonello revealed that just 24 cases were referred to the mediation centre between its launch in late 2004 and the end of 2012 – an average of just three cases every year³⁸. The main reason behind the low referrals to the Mediation Centre is likely the fact that mediation is typically carried out in an informal manner. The vast majority of lawyers will try to reach a solution out of court. Not all cases end up in court: if anything, only a minority do.

With respect to the legal provisions in place, the Courts are mainly responsible to assist firms that are solvent, but facing financial difficulties, to get on their feet before liquidation is resorted to.

4.3 What are the costs involved?

In the first nine months of 2013, Malta Enterprise (ME) allocated 46 advisory services for a value of €22,000, though the majority of the time spent was on services **not** related to financial advice. This form of assistance is not, in fact, amongst the most popular advisory services available by industry though it is a service that Malta Enterprise offers. It is also reflective of the fact that the incidence of bankruptcy in Malta is low. As a result, few firms request advice on the matter. ME estimates the number of requests to be very minimal – approximately 2 per annum – and, therefore, do not have a unit in place to deal with merely this area. The incidence was greater in moments of “crisis” where ME stepped in to a larger extent. An example of the latter was during the civil unrest in Libya when a number of local entrepreneurs that trade with Libya asked for assistance. Business advice, is offered free of charge for the first 5-10 hours. After that, a cost is charged to the entity with the price being dependent on the aid intensities permissible under EU law for the particular type of entity.

Costs legal provisions

Company recovery measure – Costs and time vary on a case-by-case basis. There are fees related to court procedures but professional fees must also be taken into consideration by the Court. Cost is in fact one of the factors taken into consideration by the Court in deciding whether to accept a company recovery application or not.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The incidence of bankruptcy is minimal so measures taken specifically on preventing bankruptcy are not widespread. The Ministry for Economy, Investment and Small Business (MEIB) indicated that the number of companies that went into insolvency dissolution in 2008 was 18 and the number of bankruptcy cases for individuals in the Courts was 12 between 1979 and 2008. Although there are no specific measures which deal solely with the prevention of bankruptcy there are a number of measures which provide operational advisory assistance to firms, including financial advice, to ensure the sustainability of their operations.

4.5 How many companies have gone through “prevention” measures, and how many survived?

N.a.

³⁷ Mediation proceedings may be resorted to either voluntarily, by a court order, or by law.

³⁸ <http://www.independent.com.mt/articles/2013-12-05/news/mediation-centre-handling-just-three-cases-a-year-3385065473/>

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

Measures in this respect are mostly of a legal nature. These include:

- A director or company official of an insolvent company does not need to wait for a final judgement to be passed on the fate of such company and instead can start a new company straight away. This is because the proceedings are taken against the company and not against the individual³⁹. This is advantageous because insolvency proceedings can be lengthy, depending on the volume of creditors and their claims, as well as the size of the company and the complexity of the proceedings. This measure, therefore, allows trade to carry on with a new company, without the necessity to wait for insolvency proceedings to be complete.
- Unless disqualified under articles 142 (fraud/interdiction) or 320 (determined by the Attorney General or Registrar of Companies for a period of time) of the Companies Act, directors may start up a new company without restrictions.

In addition, as explained further below, once an honest entrepreneur is bankrupt, there is immediate discharge allowing for second chance to be immediately taken up. Indeed such individuals can, upon discharge, immediately bid for government tenders without discrimination.

In addition, among its many remits, Malta Enterprise also provides financial assistance to firms in order to incentivise business investment. In this respect, firms are assessed mainly in terms of the financial performance of the business entity applying for such assistance. Entrepreneurs which may have gone through bankruptcy procedures and who have been discharged are not discriminated against and financial assistance possibilities are also offered to entrepreneurs who start a new entity after winding up a previous activity. It can thus be argued that the second chance measures in Malta are not direct but rather may be considered as indirect measures which do not discriminate against entrepreneurs who may have gone through bankruptcy procedures and been discharged.

4.7 Which institutions exist that take care of this issue?

The institutions involved are the same as referred to in (1) above, the Courts of Malta and Malta Enterprise.

4.8 What are the costs involved?

The incidence of bankruptcy is very low so costs involved are minimal. Also, measures mentioned in (1) above are mainly legal in nature and do not involve additional costs.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

Financial institutions may be the biggest challenge to being offered a second chance since discharge is offered by the Court and the Registry of Companies to start a new business, unless for dishonest entrepreneurs/directors. However, entrepreneurs whose firm was liquidated may face difficulties in accessing financing opportunities through financial institutions.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

All bankrupt entrepreneurs that were not fraudulent are given the opportunity to re-start a business venture. The provision of second chance measures must be considered within the context of low incidence of bankruptcy in Malta. Indeed it is to be reiterated that since the coming into force of the Companies Act in 1996, circa 40 companies were dissolved by the Court. In 2008 the number of insolvent (company) dissolutions amounted to 18. In addition the number of bankruptcy cases for individuals in the Courts was 12 between 1979 and 2008.

³⁹ This does not apply in the case of sole traders.

It has been roughly estimated that half of those that were insolvent/bankrupt re-opened a business. However, respondents could not specify how many of these were successful.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores
<i>None exist in Malta</i>		

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Based on our discussions it appears that no PCSBs exist in Malta but merely “Credit Referencing Agencies (CRAs)” that provide credit information but no credit scoring. This mainly concerns information on the financial status of the subject, its credit worthiness and the reliability and timeliness of payment. It includes, among others, financial information available at the Malta Financial Services Authority (MFSA) as well as personal data which is made publicly available by the Court Registrar in relation to Civil Court sentences or decisions specifically relating to the financial obligations or status of data subjects and in particular where such individuals are ordered to settle a defaulting debt.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

In the absence of a specific legal framework regulating the area of credit referencing, the Information and Data Protection Commissioner in Malta felt the need to develop guidelines on a common interpretation of data protection rules in October 2012. Any organisation intending to operate as a CRA shall, before carrying out any data processing, subject its operations to a prior-checking evaluation of the Commissioner. These are referred to as “Data Protection Guidelines for the promotion of good practice: Processing of personal data by credit referencing institutions”.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Debtors get into the system if a “participant”, i.e. a client of a CRA, informs the CRA that payment by the subject has not been made. Written notices are sent to data subjects by CRAs to encourage the settlement of dues. If the data subjects fail to honour their payment obligations, information on defaulting debts will be disclosed to one or more CRAs in order to be recorded on their system(s) and made available to participants.

For data subjects having defaulting debts, the following credit information may be recorded in the credit information system:

- a) Identification details which shall include name, surname, address, I.D. card or travel document number;
- b) The type of defaulting debt (i.e. failing to honour credit applications /relationships, dishonoured cheques, and/or bills of exchange), and the amount due;
- c) Court orders for settlement and executive warrants;
- d) Other information made publicly available by the Courts.

This information will get deleted from the database after 18 months in case of settlement and after 6 years from the date of registration into the system in case of defaulting debts.

Data subjects are, however, entitled to exercise their rights with respect to personal data recorded in the credit information system as stipulated under the Data Protection Act. Such rights, namely the right of access, rectification, blocking or erasure, may be exercised both in respect of the CRAs and also in respect of participants responsible for communicating the data to the CRA. In the event

of any difficulty or disputes between CRAs and participants when dealing with a request for access of data from the data subject, such issues shall be primarily referred to the Personal Data Representative if such person has been appointed, and subsequently to the Commissioner for Information and Data Protection for the necessary guidance. In any case, the data subject shall be entitled to seek further remedy directly from the Commissioner in line with the procedure established under the Data Protection Act.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
14 th March 2014	Jeffrey Bugeja and Salvatore Morgan	Ministry for Economy, Investment and Small Business	J. Bugeja: Director; S. Morgan: Research Analyst	jeffrey.bugeja@gov.mt; salvatore.morgan@gov.mt
24 th March 2014	Brian Camilleri and Cain Grech	Malta Enterprise	B. Camilleri: Manager Economic & Market Research; C. Grech: Senior Executive	brian.camilleri@maltaenterprise.com; cain.grech@maltaenterprise.com
26 th March 2014	Josef Busuttill	Malta Association of Credit Management	Director General	jbusuttill@macm.org.mt
26 th March 2014	Joseph Caruana	Registry of Companies, Malta Financial Services Authority	Registrar	jcaruana@mfsa.com.mt
28 th March 2014	Joseph Farrugia	Malta Employers Association (MEA)	Director General	jfarr@maltanet.net
28 th March 2014	Dr Malcolm Falzon	Camilleri Preziosi Advocates	Partner	malcolm.falzon@camilleripreziosi.com
28 th March 2014	Emanuel Schriha	Civil Courts and Tribunals Directorate	Director	emanuel.schriha@gov.mt
1 st April 2014	Mr Justice Zammit McKeon	First Hall of the Civil Court	Judge	n/a
Others contacted for interviews but failed to respond include:		<ol style="list-style-type: none"> 1. Malta Chamber of Commerce, Enterprise and Industry (MCCEI); 2. General Retailers and Traders Union (GRTU); 3. Ganado Advocates; 4. Fenech & Fenech Advocates. 		

Documents consulted

Name of document, author/organisation, year of publication
Companies Act 1995, Chapter 386 of the Laws of Malta
Commercial Code, Chapter 13 of the Laws of Malta
Ministry documents including: <ul style="list-style-type: none"> • Bankruptcy and Second Chance: Description of Good Practices • Insolvency Framework Malta • The Maltese Insolvency Publication Requirements under Article 21 and 22 of the European Insolvency

Name of document, author/organisation, year of publication
Regulation
Information and Data Protection Commissioner (2012), Data Protection Guidelines for the Promotion of Good Practice: Processing of Personal Data by Credit Referencing Institutions.

Websites consulted

Name of website	Link to website
Malta Enterprise	http://www.maltaenterprise.com/en
Business First	http://www.businessfirst.com.mt/en
Malta Association of Credit Management	http://www.macm.org.mt/
Graydon International	https://www.graydon.co.uk/
Mediation Centre	https://opm.gov.mt/en/justice/Pages/Malta-Mediation-Centre.aspx
	http://www.independent.com.mt/articles/2013-12-05/news/mediation-centre-handling-just-three-cases-a-year-3385065473/

21 Montenegro

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	1
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	6
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	3 (when there is no bankruptcy estate); 60 (when there is bankruptcy estate)
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

Output 4

Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

- Negotiations of debtors with creditors;
- Mediation process;
- Postponed payment of taxes, import duties and other charges;
- Payments of taxes, import duties and other charges in instalments;
- Publication of the list of big debtors.

4.2 Which institutions exist that take care of this issue?

Institutions dealing with this issue are Debtors, employees, creditors, banks, The Centre for Mediation of Montenegro, The Central Bank of Montenegro, Tax Administration, The Customs Administration of Montenegro, business associations (Chamber of Commerce, Montenegro Business Alliance and Montenegrin Employers Federation).

4.3 What are the costs involved?

The number of people that work on preventing a bankruptcy and the amount in time spent per person in total:

- Debtors: 1 or 2 persons - 100% time;
- Creditors: all creditors - 30% time;
- Banks: maximum 2 persons - 20% time;
- The Centre for Mediation of Montenegro: 1 person - 20% time.
- Tax Administration: 1 person - 20% time;
- The Customs Administration of Montenegro: 1 person - 20% time;
- The Central Bank of Montenegro ; 1 person - 30% time;
- Business associations: 1 person - 30% time.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

As the most delicate issues for successful prevention of bankruptcy, the respondents have stated the following: responsible acting of bankruptcy debtors and entrepreneurs on their way to eliminate business barriers immediately after their establishment, bad assessment of creditors towards entrepreneur; the relationship between employees and employer.

4.5 How many companies have gone through "prevention" measures, and how many survived?

About 3% of the companies have withdrawn the bankruptcy petition due to jointly settlement of debts.

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There are no special measures in Montenegro undertaken as a promotion tools for 'the second chance' for bankruptcy entrepreneurs. After the initiation of bankruptcy process, entrepreneur could propose the reorganization plan that shall be adopted at the Court. The Law does not stipulate the supervisory body, in charge of monitoring whether the company reorganization is being implemented, unless reorganization plan proposes otherwise.

4.7 Which institutions exists that take care of this issue?

The Commercial Court shall make the decision on adoption of the reorganization plan that includes the debtor and the creditor. There are no other institutions involved in the renewal of entrepreneur business activity.

4.8 What are the costs involved?

The number of people that work on the renewal of entrepreneur business activity and the time per person spent in the bankruptcy process:

- Bankruptcy judge: 1 person - 30% time
- Debtors: 1 or 2 persons - 100% time
- Creditors: all creditors - 30% time.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

As the most delicate issue for the 'second chance', the respondents have mentioned the following: misunderstanding and disbelief of bankruptcy creditors.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

There is about 35% of successful completed reorganizations in bankruptcy processes.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁴⁰
Credit Regulatory Register	Bulevar Svetog Petra Cetinjskog br. 6 81000 Podgorica	The control of indebtedness of commercial and physical entities

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria:

- Identified data about the person who is indebted;
- Data on individual indebtedness (type of debt, account indebtedness, date of the agreement conclusion, agreed amount, currency, date of realisation, amount realised, purpose, outstanding debt, mode of payment, date of maturity of the first instalment, date of maturity of the final instalment, nominal interest rate, effective interest rate, type of interest rate, interest index, consent of the client, note);
- Data on orderly debt payment (status, data on the arising of the argument, days of delay, matured unpaid principle, matured unpaid interest rate, paid principle, paid interest rate, amount of provisions, debt qualification);
- Data on means of insurance of indebtedness (cash deposit, securities deposit, goods deposit, fiduciary, mortgage, bond, administrative injunction, endorser etc.)

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

Credit Regulatory Register was established within the Central Bank of Montenegro. It is the unique and standardized electronic database upon credits and other indebtedness of individuals. Banks, financial institutions, and Investment Development Fund of Montenegro are obliged to submit the data to the Central Bank of Montenegro and information on indebtedness of individuals in accordance the provisions. The data from Credit Regulatory Register shall be used by the following:

- Credit guarantee institutions, under the conditions to provide the written agreement of the client, so that they access to data from Credit Regulatory Register referred to the client;
- persons on whose debts the Credit Regulatory Register keeps the record;
- persons who are endorsers in line with the debts.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Data and information about defined indebtedness shall be submitted by the credit guarantee institutions to the Central bank up to the cessation moment of debts of credit guarantee institutions upon it. There is no rule regarding deleting of the debtor from database. The database contains all so far received reports what should be searched by selection of the reporting date.

⁴⁰ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Date	Name of person interviewed	Organisation	Position	Contact details
April 4 th , 2014	Dragan Rakočević	Commercial Court in Podgorica	President of the Commercial Court	+382 (20) 231 219
April 7 th , 2014	Faruk Mušović	Commercial Court in Bijelo Polje	Judge at the Commercial Court	+382 (50) 431 212
April 7 th , 2014	Ksenija Franović	Law office Đukanović	Lawyer	+382 (20) 510 072
April 4 th , 2014	Milan Božović	"Vektra Jakić" LLC – in bankruptcy process	Bankruptcy debtor/Chief Executive Officer	+382 (52) 323 152
April 4 th , 2014	Miodrag Radifković	Commercial Court	Bankruptcy trustee	+ 382 (20) 248 917
April 7 th , 2014	Miroslav Knežević	Centre for Mediation of Montenegro	Director	+382 (20) 265 349
April 7 th , 2014	Kosa Golubović	Chamber of Commerce of Montenegro	Secretary	+ 382 (20) 230 710
April 7 th , 2014	Nada Jovanović	Credit Regulatory Register	Head of department for Credit Regulatory Register	+382 (20) 403 261

Documents consulted

Name of document, author/organisation, year of publication
Law on bankruptcy, Official Gazette of Montenegro, No. 01/11 from January, 11, 2011.
Law on enforced settlement, bankruptcy and liquidation, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 84/89, 37/93 and 28/96
Law on companies, Official Gazette of the Republic of Montenegro, No. 06/02 and Official Gazette of Montenegro, No. 17/07, 80/08, 40/10, 73/10, 36/11, 40/11
Law on Business Organization Insolvency, Official Gazette of the Republic of Montenegro, No. 06/02,01/06, 02/07 and Official Gazette of Montenegro, No. 62/08
Law on Civil Procedure, Official Gazette of Montenegro, No. 22/04, 28/05 and 76/06
Velimirović, Mihailo (2004), Bankruptcy law, Symbol, Novi Sad

Websites consulted

Name of website	Link to website
Ministry of Justice	http://www.pravda.gov.me/
Ministry of Economy	http://www.mek.gov.me/
Central Registry of Business Entities	http://www.crps.me/
Central Bank of Montenegro	http://www.cb-mn.org/
Commercial Court in Podgorica	http://en.sudovi.me/pspg/
Commercial Court in Bijelo Polje	http://en.sudovi.me/psbp/
The Bar Association of Montenegro	http://www.advokatskakomora.me/
Centre for Mediation of Montenegro	http://www.posredovanje.me/
Directorate for Development of Small and Medium Enterprise	http://nasme.me/
Chamber of Commerce	http://www.privrednakomora.me/

22 Netherlands

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0*
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?		3 years**
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	5 years max***
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0****

* Fraudulent and honest bankrupt entrepreneurs are in principal treated the same, procedural. However, for fraudulent entrepreneurs, much more measures can be taken beyond normal limitations after bankruptcy, e.g. criminal litigation.

** This refers to entrepreneurs who are severally liable, and who can enter into a debt release programme with a duration of three years. This programme does not exist for companies. Their debts in theory can remain forever (as long as creditors request payment at least once per five years).

*** A bankruptcy does not create an automatic negative rating, it is just one of several elements that together lead to a score for a company. The particular element of 'previous bankruptcy of company owners' remains for 5 years.

**** There is no list or database as such. See also comment made at question 6.

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures?	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	1.5 years *
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1**
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

* This is the average of the responses given. However, the bankrupt entrepreneur interviewed indicated his bankruptcy procedure already lasted 7 years, but this seems like an individual exception.

** Exempted are: 90 percent of the minimum income (welfare assistance), and things considered elementary for living, such as bed, fridge. The definition of what is elementary is outdated and now subject to changes.

Output 4

Overview of how “prevention” is addressed in the country

4.1 Which measures are taken in your country to address this issue?

- Dutch government attempts to put more focus on coaching, e.g. through Qredits, a Foundation supported by banks, helping (re-)starting entrepreneurs become and remain financially stable.
- *Ondernemersklankbord* (Entrepreneurs Sparring) is a large NGO where 300 volunteers advise 3,000 entrepreneurs annually on a variety of daily business problems. Most of these entrepreneurs are in huge financial problems, but 50 percent eventually make it. The costs of *Ondernemersklankbord* for the government are 0.5 mln annually.
- Recently, MKB Doorstart (SME re-start) was introduced. This portal bundles expertise from government, large banks and Start Foundation by responding proactively to early warning signals that are picked up by banks, creditors or entrepreneurs. The aim is to intervene and offer support as soon as possible by offering the entrepreneur a clear route to a solution.
- *Geldboek voor ondernemers* (Moneybook for entrepreneurs). A publication by the Ministry of Economic Affairs, helping entrepreneurs dealing with financial matters. Freely downloadable, and revised annually.

4.2 Which institutions exist that take care of this issue?

Qredits, *Ondernemersklankbord*, MKB Doorstart, Ministry of Economic Affairs, Nibud.

4.3 What are the costs involved?

The costs of *Ondernemersklankbord* for the government are 0.5 mln annually.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

- The most critical issue is the stigma on bankruptcy that still exists. As a result, information and awareness on bankruptcy is missing in education, exit strategies are not discussed with banks and Chambers of Commerce and so on. It is largely ignored, and lacking in the mindset of people. Entrepreneurs themselves also ignore early warning signals because of the shame, as well as tunnel vision. If fraudulent bankruptcies would be more visibly separated from honest ones, this would contribute to reducing the stigma.
- Often, bankruptcy is not caused by insolvency, but illiquidity. This can often be fixed, as long as action is taken at an early stage. This, however, is mostly not the case.
- Labour legislation is part of the problem. It is now too difficult to let employees go when needed, there is flexibility to hire and let go staff along with business developments. Sometimes, because the company cannot fire 5 staff members, eventually the full 30 staff become unemployed after bankruptcy.

4.5 How many companies have gone through “prevention” measures, and how many survived?

- *Ondernemersklankbord* helps 3,000 entrepreneurs in need each year, of which most are in huge financial problems. 50% of these companies eventually make it.
- Zuidweg & partners assist some 2,000 companies annually (prevention). Of these, some 60% make it because of the support they receive.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There are actually no concrete policy measures or private initiatives related to second chance. Most suppliers of restarters are able to separate business from emotion: they are willing to do business

again with former bankrupt entrepreneurs. So, in this respect there is no obstacle to re-start business.

4.7 Which institutions exist that take care of this issue?

n.a.

4.8 What are the costs involved?

n.a.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

Interviewees see a role for Chambers of Commerce in second chance, as they should inform entrepreneurs about the possibilities of restarting, and contribute to reducing the taboo that exists in this area.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

10 to 25% of all bankrupt entrepreneurs start a new business at some point.

Output 5

Private Credit Rating Agencies in the country and national procedures related

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria to assess the creditworthiness of entrepreneurs are payment behaviour, location of the company, sector, history, financial data. A statistical model is used to calculate the final score. Previous bankruptcies are taken into account as one of the criteria, up to five years after the bankruptcy procedure ended.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

Credit rating agencies registered at the Dutch Data Protection Authority, which supervises the fair and lawful use of personal data. Almost all of them are also registered at the Netherlands society of business information agencies, but this registration is not compulsory.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

There exists no database of debtors or bankrupt entrepreneurs. This is just information that is available and that counts as one of the elements that eventually constitute the rating.

The table below presents those PCRAs that are member of the Netherlands society of business information agencies. This membership is not obligatory, but most of the agencies are member. Creditsafe is the only (large) rating agency that is not member of the Netherlands society of business information agencies.

From the list below, DNB and Graydon are the major credit rating agencies involved in B2B rating. The other agencies are either agencies providing background checks on the credibility of persons (e.g. Experian, Focum), or rather small players on the market of B2B/persons credit information.

Name of PCSB	Location/address	Main use of scores ⁴¹
BIS Consumerdata	Postbus 98 6400 AB Heerlen 045 - 571 60 20 www.bisconsumerdata.nl	
Cardec B.V.	Langstraat 58b 2242 KN Wassenaar 070 - 517 66 07 www.cardec.nl	
CompanyInfo	Prins Bernhardplein 173 1097 BL Amsterdam 020 - 240 04 00 www.companyinfo.nl	
Dun & Bradstreet B.V.	Postbus 278 3000 AG Rotterdam 010 - 400 94 00 www.dnb.com/nl	
EDR Credit Services B.V.	Postbus 97 2260 AB Leidschendam 070 - 452 52 52 www.edrcreditservices.nl	
Experian Nederland B.V.	Verheeskade 25 2521 BE Den Haag 070 - 440 4000 www.experian.nl	
Focum	Rodetorenplein 9 Postbus 768 8000 AT Zwolle 038 - 467 24 00 www.focum.nl	
Graydon Nederland B.V.	Postbus 12525 1100 AM Amsterdam Z.O. 020 - 567 99 99 www.graydon.nl	
ISN Informatie en Incasso B.V.	Postbus 1368 3000 BJ Rotterdam 010 - 414 55 11 www.isnl.nl	
Informatiebureau "Nobel"	Postbus 5904 3273 ZG Westmaas 0186 - 61 83 77 www.nobelinf.nl	
Informatieteam B.V.	Postbus 9575 9703 AL Groningen 050 - 542 62 22 www.informatieteam.nl	
Modint B.V.	Utrechtseweg 95 Postbus 428	

⁴¹ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Name of PCSB	Location/address	Main use of scores ⁴¹
	3700 AK Zeist 030 - 232 09 00 www.modint.nl	
Creditsafe	Waldorpstraat 17 2521 CA Den Haag 070 - 384 46 00 http://www1.creditsafe.nl/	

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
10-3-2014	Ms Jeannine de la Bursi	Ministry of Economic Affairs	Policy Adviser	j.s.h.delabursi-franssen@minez.nl 0031 70 379 78 28
10-3-2014	Ms Jacqueline Zuidweg	Zuidweg & partners	CEO	jzuidweg@zuidweg-partners.nl 0031 35-5385356
10-3-2014	Mr Bruno Tideman	Wessel Tideman Sassen	Curator	B.Tideman@wtsadvocaten.nl 0031 70 338 06 42
10-3-2014	Ms Ingrid Wakkee	Centre for Entrepreneurship at Vrije Universiteit Amsterdam	Researcher	i.a.m.wakkee@vu.nl 0031 6 14332245
10-3-2014	Mr Henk de Rijke	Feniksgroup	Entrepreneur and adviser to entrepreneurs in trouble	henk@feniksgroep.com 0031 6 20135357
26-3-2014	Sabine Besselink	Dun & Bradstreet	Product marketing leader Europe	BesselinkS@DNB.com 0031 10 7109506

Documents consulted

Name of document, author/organisation, year of publication
Bankruptcy and a fresh start: Stigma on failure and legal consequences of bankruptcy, AKD Prinsen Van Wijmen, 2002.
Betekenis stakeholders bij herstart (ex-)failliete ondernemers, Panteia, 2012
Business Dynamics: Start-ups, business transfers and bankruptcy, European Commission, 2011.
Geldboek voor ondernemers, Ministerie van Economische Zaken, 2013
MKB Doorstart brochure, Ondernemersplein Almere, 2014
MKB Doorstart van start voor ondernemers in zwaar weer, Press Release, 2014
Pilot vroegsignalering en dienstverlening bij financiële problemen in het MKB, Zuidweg & Partners en Start Foundation, 2013

Websites consulted

Name of website	Link to website
Faillissementen.com	www.faillissementen.com
Feniksgroep	www.feniksgroep.com
A Second Chance to entrepreneurs	http://ec.europa.eu/enterprise/policies/sme/business-environment/failure-new-beginning/index_en.htm
Dun & Bradstreet	www.dnb.com
Qredits	www.qredits.nl/
Ondernemersklankbord	www.ondernemersklankbord.nl/
Nederlandse Vereniging van Handelsinformatiebureaus	www.nvhinfo.nl/
MKB Doorstart	www.mkbdoorstart.nl/

23 Norway

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1 (for companies) 0.5 (for private, but it is possible once in a life to apply for discharge of all debt, however, it is considered difficult to obtain)
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	If an entrepreneur is qualified for a discharge, then it takes five years. However, it is very difficult to qualify for a discharge period. For instance, the entrepreneur must prove that he/she has done everything to repay the debt him/herself, and

Questions	Options	Answer
		that the debt is insurmountable.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	If an entrepreneur gets through a discharge process (which is very difficult in Norway) the negative rating does not stay with the entrepreneur
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0 (When the debt is repaid or after four years, even if the debt is not repaid)

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	0
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	0
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0 (five years for personal bankruptcy)
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are	0.5 (can be created if the values are large or if it is a complicated case)

Question/issue	Options	Answer
	not compulsory. 0: creditor's committees do not exist	
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	App. 9 months
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1 (clothes, basic furniture and certain personal belongings - when the bankruptcy is personal, which is the case for many entrepreneurs)
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

Output 4

Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

In Norway, there are no prevention measures supported by the government. There are some private companies providing online assistance to companies in trouble. Lawyers and business consultants are connected to the company, and can provide online-based assistance with questions regarding (impending) bankruptcies.

The Norwegian Altinn (part of Brønnoysundsregistrene, which register everything related to doing business in Norway, has a webpage on starting up and running a business in Norway, where tips on how to run a company in a healthy way are presented. Moreover, a call centre function (Business Information Services) exists to provide information on the relevant rules and regulation.

4.2 Which institutions exist that take care of this issue?

Norwegian Altinn

4.3 What are the costs involved?

n.a.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

n.a.

4.5 How many companies have gone through “prevention” measures, and how many survived?

n.a.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There are not specific measures in Norway to support a second chance for entrepreneurs.

4.7 Which institutions exists that take care of this issue?

n.a.

4.8 What are the costs involved?

n.a.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

The fact that the debt stays with an entrepreneur and it is very difficult to qualify for a discharge period, is not conducive for a new start. Moreover, an entrepreneur who was personally liable in the case of a bankruptcy can only get a discharge once in a lifetime and only if he/she has done everything to repay the debt him/herself, and if the debt is insurmountable.

However, if the liability is not personal, no legal decisions prevents an entrepreneur from starting a new company. A problem can be to obtain funding, as Norway is a small country and bankrupt entrepreneurs are registered. This means that the banks have a good overview of the people previously involved in bankruptcies, and it can be difficult for these people to obtain financing.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

With this being said, the view of the interviewees is that perhaps half of the honest bankrupt entrepreneurs start a company again, so the above challenges are not always insurmountable.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁴²
Experian	Oslo	Debt recovery purposes
Bisnode Credit AS (tidl AAA Soliditet AS)	Oslo	Used for investment decisions
EVRY AS	Offices all over Norway	Used for sector research
Eniro Norge (markedsføres under navnet Proff Forvalt),	Oslo	Used for investment decisions Used for sector research
Kredinor	Oslo	Credit insurance
Atradius Buyer Ratings	Lysaker	Used for investment decisions
Kredittopplysningen AS	Oslo	Given back to paying clients
KO International AS	-	Debt recovery purposes
Kredittfakta AS	Oslo	Used for investment decisions

⁴² How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

The criteria that the PCSBs use include the following:

- Size of previous debt
- History of possible previous bankruptcy
- When the debt was registered
- When the debt was deleted

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

In Norway, the credit rating agencies must obtain permission from the Norwegian Data Inspection Board (Datatilsynet) to operate in Norway. These credit rating agencies are the ones presented above. The credit rating agencies are regulated by the Norwegian personal data act (Personopplysningsloven)

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

A creditor notifies the credit rating agency if a client cannot pay his/her bill. The private person or entrepreneur is then registered. When the debt is paid the entrepreneur is deleted from the register. If the debt is not paid, the entrepreneur is deleted from the register after 4 years.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
19 March	Karl Erik Rørmark	Brønnøysundregistrene	Deputy Director, bankruptcy section	7500 7989

Documents consulted

Name of document, author/organisation, year of publication
Lov om gjeldsforhandling og konkurs (konkursloven), LOV-1984-06-08-58
PLANET S.A. (Greece), Paris Chamber of Commerce and Industry (France), Danish Technological Institute (Denmark), GFA Consulting (Germany) (2011): "Business Dynamics: Start-ups, Business Transfers and Bankruptcy". <i>The economic impact of legal and administrative transfers and bankruptcy on entrepreneurship in Europe.</i>

Websites consulted

Name of website	Link to website
Gjeldsordning.org	http://www.gjeldsordning.org/index.php/om-gjeldsordning/3-om-gjeldsordning
Namsmannen.com	http://www.namsmannen.com/gjeldsordning.html
Konkursrådet (The Norwegian Advisory Council on Bankruptcy)	http://www.konkursradet.no/
	http://www.konkursradet.no/innoering-i-konkurs.305266.no.html
	http://www.konkursradet.no/personlig-konkurs.304773.no.html
	http://www.konkursradet.no/pengekravs-stilling-i-konkurs.304777.no.html#7.
Konkurs og Økonomisk hjelp (Bankruptcy Assistance)	http://konkurs-okonomi-hjelp.no/om_oss.html
Altinn (Start and run a business)	https://www.altinn.no/en/Start-and-Run-a-Business/?epslanguage=en
Datatilsynet	https://www.datatilsynet.no/Global/05_regelverk/Konsesjoner/Konsesjon_kredittopp

Name of website	Link to website
	ysning_2012.pdf https://www.datatilsynet.no/Regelverk/Konsesjoner/Konsesjoner/Konsesjon-for-kredittopplysningsvirksomhet/

24 Poland

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	There is no time limit to obtain full discharge. Discharge might be obtained only when a bankrupt is following the obligatory court procedures. But at the end, it is decision of a court, based on special application.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	60
7. Does an entrepreneur	1: the entrepreneur is deleted from the database within one year	1

Questions	Options	Answer
get deleted from public/private credit databases after discharge?	after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	0
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	13
8. Are there certain	1: there are certain assets exempted from bankruptcy	0

Question/issue	Options	Answer
categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0

Output 4

Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

The prevention measures include

- The Second Chance Policy – in preparation by the Ministry of Economy.
- The bankruptcy and reorganization law – in preparation by the Ministry of Justice.
- *Instrument of Quick Response* (2009-2014) designed to provide training and advisory support for enterprises and employees coping with the negative results of economic downturn – prevention tool designed and implemented by The Polish Agency for Enterprise Development (PARP).
- Act of 13 July, 2006, *on the protection of employee claims in case employer insolvency* – (PL OJ No. 158, item 1121) - Minister for Labour and Social Policy
- Act of 1 July, 2009, *on mitigating the effects of economic crisis for workers and companies* - (PL OJ of 2009, No.125, item 1035) - Ministry of Labour and Social Policy.
- Act of 30 August, 2011, *on State aid for rescuing and restructuring firms in difficulty*
- *The Third deregulation act*, came into effect on on 1 January , 2013.

The activity of non-governmental and research institutions:

- Allerhanda Institute – support through analysis and studies provided to primary legislation bodies in Poland and European Union: The Commission of the Civil Law's Codification (Ministry of Justice), Government Legislation Centre, Sejm's Office of Analyses, European Commission, OECD.
- Warsaw School of Economics (SGH) – support through research, analysis, conferences, publications and the establishment of think-tank dedicated to issues related to prevention, bankruptcy and the second chance in Poland.

4.2 Which institutions exist that take care of this issue?

Institutions: Ministry of Economy, Ministry of Justice, The Polish Agency for Enterprise Development, Allerhanda Institute, Warsaw School of Economics (SGH)

4.3 What are the costs involved?

In prevention programme (started in 2009), which is a part of *Instrument of Quick Response* created by Polish Agency for Enterprise Development's (PARP), the estimated total cost per company, during four years of prevention activity, was:

- small company – minimum 100 thousand PLN,
- middle company – minimum 150 thousand PLN,
- big company – minimum 250 thousand PLN,

Amount of time spent per person in total on prevention case can not be estimated.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

Critical issues

- quick response to bankruptcy risks,
- the financial resources of company at risk,
- the quality of law and effectiveness of procedures.

4.5 How many companies have gone through “prevention” measures, and how many survived?

The only measure used for prevention in Poland is PARP’s Instrument of Quick Response. The part of this tool was focused on helping the companies at risk of bankruptcy. The prevention programme started in 2009 and 970 companies voluntarily applied for the participation. 210 of them - in the worst financial condition - were offered support. All of those companies survived.

In addition to above mentioned programme the Instrument of Quick Response offers quarterly published forecasts reports on financial situation in all economy sectors in Poland.

No other prevention tool except this is present in Poland.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There are no existing measures of support in the area of post-bankruptcy and second chance in Poland. However, the law The Second Chance Policy, regarding this issues, is in preparation by the following institutions: Ministry of Economy, Ministry of Justice, The Polish Agency for Enterprise Development (PARP). Allerhanda Institute and Warsaw School of Economics (SGH) are involved in developing the new measures – working as think-tanks and offering research support to above mentioned bodies. All mentioned institutions take steps to change negative perception of bankruptcy and re-starters.

4.7 Which institutions exists that take care of this issue?

Institutions: Ministry of Economy, Ministry of Justice, The Polish Agency for Enterprise Development (PARP)

4.8 What are the costs involved?

There are no measures in place.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to tackle are:

- Level of adaptation of law procedures to existing socio-economic reality,
- businesses environment awareness in regard to second bankruptcy and second chance issues,
- public perception on restructuring, bankruptcy and re-starters.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

No second-chance activities had been addressed in Poland.

Name of PCSB	Location/address	Main use of scores ⁴³
Biuro Informacji Gospodarczej InfoMonitor S.A.	ul. Z. Modzelewskiego 77 02-679 Warszawa	given back to client who paid for it
Krajowy Rejestr Długów Biuro Informacji Gospodarczej SA	Armii Ludowej 21 51-214 Wrocław	given back to client who paid for it
Krajowe Biuro Informacji Gospodarczej (KBIG)	ul. Lublańska 38 31-476 Kraków	given back to client who paid for it
Rejestr Dłużników ERIF Biuro Informacji Gospodarczej S.A	Plac Bankowy 2, 00-095 Warszawa	given back to client who paid for it
EuroRating Sp. z o.o.	ul. Cynamonowa 19 lok. 548, 02-777 Warszawa	given back to client who paid for it, used for investment decision, used for consulting a client
Euler Hermes Services Polska Sp. z o.o.	ul. Domaniewska 50 B 02-672 Warszawa	given back to client who paid for it, used for investment decision, used for consulting a client
Fitch Polska, S.A. Poland	ul. Królewska 16 00-103 Warszawa	given back to client who paid for it, used for investment decision, used for consulting a client
Agencja Ratingu Społecznego Sp. z o.o.	ul. Piękna 11/2, 00-549, Warszawa	given back to client who paid for it
Dun & Bradstreet Poland	Jana Olbrachta 94, Warszawa	given back to client who paid for it, used for consulting a client used for investment decision

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

When assessing the credit risks of each enterprise- including the level of subordination and collateralisation, and applied risk-adjusted interest rates – rating agencies use wide range of data. The important factor during assessment is long term-perspective (up to three years). Main two research areas of assessment include financial data (quantitative analysis) and expert's opinion (qualitative analysis).

Quantitative analysis involves mostly the analysis of financial statements of the company (minimum five previous years, taking into account the latest quarterly reports and the long-term financial forecasts) performed mostly by scoring models of credit risk evaluation, adjusted to particular characteristics of each sector. The quantitative analysis involves also the assessment of sustainability of financial indicators, as well as the dynamics and the direction for changes, on the basis of the qualities that characterized the company's condition. The particular attention is paid to cash-flow analysis, which is especially important for the solvency of a company.

The assessment of the financial condition of an enterprise includes also the comparative analysis that is based on the risk evaluation in relation to other companies providing a basis for comparison.

Qualitative analysis covers the whole range of indicators that cannot be easily quantified and require an expert's opinion every time including: the industry risk and business environment, the

⁴³ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

exposure to fluctuations of foreign exchange rates, dependency on suppliers and buyers, the company's market and competitive position, the business model, the quality and products innovation, the experience and qualifications of managing staff, accounting policies that are applied, market value of the assets, and ownership structure.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

Till 2009 the activity of rating agencies had not been officially regulated by the Polish law (apart from using ratings for regulation purposes by financial institutions).

From September 2009, rating agencies are regulated by Regulation (EU) No 1060/2009 of the European Parliament and of the Council on credit rating agencies that implies an obligation of registration in EU made by ESMA (Paris).

The institution that manages debtors database in Poland is National Debts Register BIG J. S. C. (Krajowy Rejestr Długów BIG S.A.). The procedures of National Debts Register are regulated by the National Court Register Act (20 August 1997).

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

A person or an entity is entered in the register by an order of court and it can be removed from the register in the following cases: paying off the debts, the creditor sale out its claim, remove from the register after regulated period of time,

[the Act of 9th April 2010, on giving access to business information and business data exchange] application for removal from National Debts Register, person or entity whose name appears wrongly in National Debts Register [article 109 of the Banking Law of 29 August 1997 (Journal of Laws of 2002 No. 72 Item 665, as amended)]

Debtor can also be entered - by an order of court – to the Register of Insolvent Debtors (Rejestr Dłużników Niewypłacalnych), based on the same above mentioned Law. The decision of removal from this Register can only be made by court when the requirements had been met by debtor.

Output 6

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
18 th of March 2014	Anna Żebrowska / member state expert	Ministry of Economy / Innovation and Industry Department (Ministerstwo Gospodarki)	Expert on prevention and second chance	Phone: 22-693-59-98, email: anna.zebrowska@mg.gov.pl
20 th of March 2014	Emil Szczepanik / regulator/ government body	Ministry of Justice (Ministerstwo Sprawiedliwości)	-Second Chance policy expert, -District court judge in Warsaw	Phone: 22-52-12-818, email: emil.szczepanik@ms.gov.pl
25 th of March 2014	Piotr Zimmerman / court or out-of-court resolution body	District Court in Warsaw (Sąd rejonowy m.st. Warszawy)	-District court judge in Warsaw, -President of Division of Law on bankruptcy and rehabilitation in	Phone: 22 46 81 211 email: piotr.zimmerman@zimmerman.com.pl

Date	Name of person interviewed	Organisation	Position	Contact details
			District court in Warsaw	
21 th of March 2014	Mirosław Bajda / credit rating agency	EuroRating Sp. z o.o.	CEO of EuroRating	Phone: 22 349 24 89 email : mirosław.bajda@eurorating.pl
26 th of March 2014	Michał Krzysztof Kowalewski / curator (or equivalent)		Certified curator (syndyk licencjonowany)	Phone: 504 125 252, email: mr.kowalewski@gmail.com
24 th of March 2014	<i>Michał Bonin</i> / institution dealing with "prevention"	The Polish Agency for Enterprise Development	Head expert on prevention and second chance	<i>Phone: 432-83-44, email:</i> <i>michal_bonin@parp.gov.pl</i>
19 th of March 2014	Bartosz Groele / institution dealing with "second chance"	Instytut Allerhanda	President of Institute Allerhanda	Phone: 600-888-018 email: groele@allerhand.pl
27 th of March 2014	Mark Preston / business stakeholder	NETBUD Sp. z o.o.	Chairman of NETBUD Sp. z o.o.	Phone: 609 129 721, email: mark.preston@vp.pl

Documents consulted

Name of document, author/organisation, year of publication
Second Chance policy, Ministry of Economy, 2014, http://bjp.mg.gov.pl/files/upload/20367/PNS_wer_5_31012014.pdf
Act of 28 February 2003, <i>on the bankruptcy and composition law</i> (Dz.U. 2003 Nr 60 poz. 535) – Ministry of Justice. www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCwQFIAA&url=http%3A%2F%2Fisap.sejm.gov.pl%2FDownload%3Fid%3DWDU20030600535%26type%3D3&ei=AC81U8btC6P14ASWqIDYCA&usq=AFQjCNERtMELL7GZ6i8nd0X1j7-t_4u4Lg&sig2=r6OvSA_4hwt1wG5i3DzIVg&bvm=bv.63808443.d.bGE
Act of 13 July 2006, <i>on the protection of employee claims in case of insolvency of their employer</i> (PL OJ No. 158, item 1121) – Ministry of Employment.
Act of August 30, 2011, <i>on State aid for rescuing and restructuring firms in difficulty</i> ((Dz. Urz. UE C 244 z 1.10.2004 r.) - Ministry of Treasury.
Act of 1 July 2009, <i>on mitigating the effects of economic crisis for workers and companies</i> (PL OJ of 2009, No.125, item 1035) - Ministry of Labour and Social Policy.
Act of 12 June 2003, <i>on the payment term in commercial transactions</i> (Dz.U. of 2003 year, No 139, poz. 1323) – Ministry of Economy.
Act of 16 November 2012, <i>on the reduction of some of the administrative burden in the economy</i> (called The Third Deregulation Act) (Dz.U. poz.1342) – Ministry of Economy.
Act of 3 October 2012, <i>on repayment of selected unsatisfied claims of entrepreneurs arising from awarded public procurement orders</i> (The General Directorate for Roads) – Ministry of Infrastructure and Development

Websites consulted

Name of website	Link to website
Ministerstwo Gospodarki	http://www.mg.gov.pl
Ministerstwo Sprawiedliwości	http://ms.gov.pl/
Ministerstwo Pracy i Polityki Społecznej	http://www.mpips.gov.pl/
Ministerstwo Pracy	http://www.mpips.gov.pl/

Name of website	Link to website
Ministerstwo Skarbu Państwa	http://www.msp.gov.pl/
Ministerstwo Infrastruktury i Rozwoju	http://www.mir.gov.pl/english/Strony/main_mrr_eng.aspx
Generalna Dyrekcja Dróg Krajowych i Autostrad	http://www.gddkia.gov.pl/
Sąd Rejonowy Miasta Stołecznego Warszawy	http://www.warszawa.so.gov.pl/sad-rejonowy-dla-m-st-warszawy.html
Polska Agencja Rozwoju Przedsiębiorczości	http://www.parp.gov.pl/index/main/
Lista osób posiadających licencję syndyka (the list of certified curators).	http://ms.gov.pl/pl/lista-osob-posiadajacych-licencje-syndyka/list,199,3.html
EuroRating	http://www.eurorating.pl/
Instytut Allerhanda	http://www.allerhand.pl/index.php/pl/
Euler Hermes	http://www.eulerhermes.pl/Pages/default.aspx
Zimmerman i Wspólnicy Sp. K.	http://www.zimmerman.com.pl/
Sejm Rzeczypospolitej Polskiej	www.sejm.gov.pl
Dzienniki Ustaw (Poland Journal of Laws)	http://dziennikustaw.gov.pl/
Polityka Nowej Szansy	http://bip.mg.gov.pl/files/upload/20367/PNS_wer_5_31012014.pdf
Netbud sp. z.o.o.	http://www.netbud.pl/

25 Portugal

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	9
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	23
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	1

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Unless general information and technical assistance for enterprises, there are no specific measure in Portugal for prevention of bankruptcy.

4.2 Which institutions exist that take care of this issue?

Institutions: IAPMEI (SME Support Institute) and Entrepreneurial Associations (v.g. AIP).

4.3 What are the costs involved?

Due to the general approach of the prevention activities it is not possible to estimate the cost.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to be tackled is the lack of capacity of public bodies to identify in time the enterprises with potential problems and late contact from these due to cultural barriers or lack of appropriate information.

4.5 How many companies have gone through “prevention” measures, and how many survived?

No available data on how many companies have gone through “prevention” measures, and how many survived.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There no specific measures to support "second chance". There are general information and financing instruments to usual start-up processes that can be used by honest bankrupted entrepreneurs.

4.7 Which institutions exists that take care of this issue?

Institutions: IAPMEI and professional or entrepreneurial organizations.

4.8 What are the costs involved?

Information on costs involve is not available.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

To succesfully handle this issue the general cultural stigma towards "second chance must be tackled. Banks run registries of financial incidents.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

No information available on how many companies that were liquidated/bankrupted have profited from “second chance” measures.

Name of PCSB	Location/address	Main use of scores ⁴⁴
Informa DB	Lisbon / Rua Barata Salgueiro, 28, 3º 1250-044 Lisboa, www.informadb.pt	Non-financial company: scoring about clients, suppliers (existing ones and potential commercial partners).
IGNIOS (ex- COFACE)	Lisbon / Av. Columbano Bordalo Pinheiro, 75, 7º 1070-061 Lisboa, www.ignios.pt	Non-financial company: scoring about clients, suppliers (existing ones and potential commercial partners).
Credinformação (EQUIFAX)	Lisbon / Av. Praia da Vitória, 71, 4º A 1050- 183 Lisboa, www.credinformacao.pt	Banks, assurance companies and other financial institutions: raw information for internal rating systems, inputs as a scoring of an External Credit Assessment Institution (ECAI) and testing purposes for their internal scoring.
IIC - Informador Comercial	Oeiras / Rua António Nobre, 5, R/C Dtº, 2710-311 Queijas, www.iic.pt	Banks, assurance companies and other financial institutions: raw information for internal rating systems, inputs as a scoring of an External Credit Assessment Institution (ECAI) and testing purposes for their internal scoring
Racius (Nexexperience)	Porto / Rua Barata Feyo, 140 4250-076 Porto, www.racius.pt	Banks, assurance companies and other financial institutions: raw information for internal rating systems, inputs as a scoring of an External Credit Assessment Institution (ECAI) and testing purposes for their internal scoring

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria used are: Demographic information: age, sector, region, dimension, juridical status, etc., negative public information: court and legal incidents, bankruptcy process, financial information: solvability, profitability, etc. and payments information: payments incidents.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

The PCSB are not subject to any regulation in Portugal.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Only the public information can be registered in databases due to legal framework. The information regarding bankruptcy remains in the database till the closure of the process.

⁴⁴ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Output 6

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
11-Mar	Manuel Arsénio	IAPMEI	Director (national expert)	manuel.arsenio@iapmei.pt
13-Mar	Renato Gonçalves	DGPJ -Ministry of Justice	Deputy Director General	renato.j.goncalves@dgpj.mj.pt
17-Mar	Rodrigo Bernardo	DB Informa	Product Manager	rodrigo.bernardo@informadb.pt
17-Mar	Filipe Martins	Associação Industrial Portuguesa	Director (financing SME area)	filipe.martins@aip.pt
19-Mar	Luís Gomes	Judicial Curator		gomes98@netcabo.pt
19-Mar	Alípio Magalhães	Pinto & Bentes. Lda	President (entrepreneur)	alipio.magalhaes@pintoebentes.pt
24-Mar	Clementina Neves	IAPMEI (SIREVE)	Coordinator	clementina.neves@iapmei.pt
24-Mar	José Maria Duarte	ISCTE	Professor (Economics)	jose.duarte@iscte.pt

Documents consulted

Name of document, author/organisation, year of publication
"European Financial Stability Report, Chapter V", European Commission, 2013
"A second chance for entrepreneurs - Final Report of the Expert Group" - DG Enterprise and Industry, 2011
"Business Dynamics - 4.4 Second Chance", European Commission, 2011
"Best project on restructuring, bankruptcy and a fresh start", European Commission, 2003
"Regime Jurídico da Insolvência e Recuperação de Empresas", DGPJ, 2010
"Destaque Estatístico Trimestral", DGPJ, 2014
"Comunicação da Comissão ao Conselho - Superar o estigma do insucesso empresarial", European Commission, 2007
"Central de Responsabilidades de Crédito", Banco de Portugal, 2011
"Guia para Processos de Recuperação de Empresas - SIREVE", IAPMEI, 2012
"Processo Especial de Revitalização", IAPMEI, 2012
"Corporate Credit Ratings: a quick guide", Krista Santos, 2011
"As novas tendências do direito português de insolvência", Catarina Serra, 2003
"O incidente de qualificação de insolvência e seus efeitos", Rosa Gomes Pereira, 2011

Websites consulted

Name of website	Link to website
IAPMEI	www.iapmei.pt/
DG Política da Justiça	www.dgpj.mj.pt/
DG Enterprise and Industry	http://ec.europa.eu/dgs/internal_market/contact/index_en.htm
DG Market	http://ec.europa.eu/enterprise/index_en.htm
Banco de Portugal	https://www.bportugal.pt/

Name of website	Link to website
ESMA	www.esma.europa.eu
BCE	www.ecb.europa.eu/ecb/html/index.pt.htm
Associação Administradores Judiciais	www.apaj.pt/
Insolvência	www.insolvencia.pt/links.html
DB Informa	www.informadb.pt/
Ignios	www.ignios.pt/
EACRA	www.eacra.fr/
BIIA	www.biia.com/

26 Romania

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	For honest entrepreneurs no discharge is necessary as they are not charged To specify details: the period of discharge for honest entrepreneurs is 0. the period of discharge for dishonest entrepreneurs is the moment they have fulfilled the period of conviction in Court.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1

Questions	Options	Answer
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0 None if non fraudulent
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	1

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	30

Question/issue	Options	Answer
the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.		
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

Output 4 Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Prevention is not very well dealt with in Romania. There is no early warning system for prevention of insolvency. However, according to Law 381 / 2009 there is a pre-insolvency procedure which is a partially juridical procedure, but is strictly confidential and uses two instruments: the prevention consensus and the ad-hoc mandate, in which the judge names a special administrator to save the company in difficulty. Prevention should be dealt with by other institution that the Court of Law, especially by banks and other creditor that should be more careful and give an early warning to companies with high debt exposure.

4.2 Which institutions exist that take care of this issue?

The institution dealing with prevention is the Court of Law through the pre - bankruptcy procedures of the prevention consensus and the ad-hoc mandate.

4.3 What are the costs involved?

There is no indication on the cost of prevention.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issue to be tackled for success is the creation of an "out of court" early warning system for enterprises in difficulty.

4.5 How many companies have gone through "prevention" measures, and how many survived?

There is no statistics on prevention and "saved companies"

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6 Which measures are taken in your country to address this issue?

In Romania, the concept of second chance is not relevant for honest, non fraudulent entrepreneurs, as they face NO consequence and can start business the other day without any problems.

4.7 Which institutions exist that take care of this issue?

There are no institutions dealing specifically with the post bankruptcy / second chance

4.8 What are the costs involved?

N.a. (There are no institutions dealing specifically with the post bankruptcy / second chance)

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

An issue to be tackled is a creation of specially tailored support program for honest entrepreneurs who have gone through the bankruptcy experience.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

No statistical data is available in order to answer this question as there is no formal program for this and no institutions to deal specifically with this type of companies.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁴⁵
There is no credit bureau for companies		
The Romanian Credit Bureau (only for persons who have a bank loan)	16 Sfanta Vineri Street, Bucharest 3, Romania	loans for physical persons, NOT companies

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

In Romania there is Credit Bureau but only for persons, not for companies, therefore it is only relevant in this context for individual entrepreneurs who get bank loans as individuals in order to start or develop business.

As individuals you are recorded as a bad debtor until you pay back your loan.

The discharge is not automatic

The Romanian Credit Bureau is NOT working with entrepreneurs (as described above), thus it is not relevant for the present study.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

The PCSBs are private institutions regulated by their own statute and work under the supervision of member banking institutions.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

When the debtor has paid back all debt is deleted from the database. Again, this is the case for persons taking a bank loan, NOT enterprises / entrepreneur, thus it is not relevant for the present study.

⁴⁵ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
14.03.2014	Cezar Iliu	Ministry of Economy	Director - SME and Cooperatives sector	Cezar.iliiu@aippmm.ro
18.03.2014	Agapia Stefan	Independent Mediator	Independent Mediator	agapiastefan@gmail.com
21.03.2014	Marcela Comsa	Ministry of Justice	Delegated Judge	Marcela.comsa@just.ro
21.03.2014	Claudia Rosianu	Ministry of Justice	Counsellor - Directorate for Law Drafting	Claudia.rosianu@just.ro
21.03.2014	Honoria Dumitrescu	Ministry of Justice	Legal Expert Directorate for Law Drafting	Honoria.dumitrescu@just.ro
20.03.2014	Gabriela Stanus	Romex Bankrupt Entrepreneur	Bankrupt Entrepreneur	gabistanus@xnet.ro
17.03.2014	Serban Epure	Romanian Credit Bureau	Director	Serban.epure@birouldecredit.ro
26.03.2014	Simona Milos	The National Institute for the Training of Insolvency Practitioners	Director	Simona.milos@smda.ro

Documents consulted

Name of document, author/organisation, year of publication
For my research I have consulted the following documents:
Law no 85 / 2006 - The Law of Insolvency
Law no 381 / 2009 - The Law for the Preventive Consensus
OUG 91/2013 - The ad-hoc Mandate for prevention of insolvency
Draft of new law of insolvency (proposed version)
The guide for the out of court settlement of companies' debt - issued by World Bank

Websites consulted

Name of website	Link to website
www.inppi.ro	- The National Institute for the training of Insolvency Practitioners
www.unpir.ro	- The National union of Insolvency Practitioners
www.just.ro	- The Ministry of Justice
www.aippmm.ro	- The Ministry of Economy, General Directorate for SME-s and Cooperatives
www.birouldecredit.ro	- The Romanian Credit Bureau
www.bnro.ro	- The National Bank of Romania
www.onrc.ro	- The National Commerce Registry
www.mediator-apmr.ro	- The Professional Association of Mediators of Romania
www.ccib.ro	- The Romanian Chamber of Commerce
www.cnipmmr.ro	- The National Council of Private Small and Medium Enterprises

27 Serbia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	n.a. no bankruptcy procedure for entrepreneurs
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	n.a. no bankruptcy procedure for entrepreneurs
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	n.a. no bankruptcy procedure for entrepreneurs
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	n.a. no bankruptcy procedure for entrepreneurs
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	n.a. no bankruptcy procedure for entrepreneurs

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1 ⁴⁶
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1 ⁴⁷
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	20 ⁴⁸
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	n.a. no bankruptcy procedure for entrepreneurs

⁴⁶ Companies only, not applicable for entrepreneurs⁴⁷ Companies only, not applicable for entrepreneurs⁴⁸ For ordinary bankruptcy, 4 for fast track

Question/issue	Options	Answer
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	n.a. no bankruptcy procedure for entrepreneurs

Output 4 *Overview of how “prevention” is addressed in the country.*

4.1 Which measures are taken in your country to address this issue?

The current framework does not allow entrepreneurs to file for bankruptcy. The new Bankruptcy Law has abolished this section from the previous Law since within 2004-2009 period only one entrepreneur filed for bankruptcy. Furthermore, according to the current Companies Act, the strike-off of entrepreneurs from the Business Register is only possible due to voluntary or compulsory termination of activity.

Key measures to prevent and enable second chance are adoption of two fast track procedures in 2010 and 2011 and providing information about debtors by establishing the registry of debtors with accounts blocked and more recently the registry of issued bills of exchange.

Two fast track procedures aimed to solve insolvency and liquidity problems of SMEs and other companies in Serbia

- pre-packaged reorganization plans (PPRP) and
- voluntary financial restructuring (out-of court restructuring)

The PPRP was introduced by amendments to the Bankruptcy Law in 2009 and 2010, as a court-supervised procedure in which the reorganization plan is negotiated, and presumptively accepted by creditors prior to the filing of a bankruptcy procedure. In 2011, Serbia adopted a new legal framework for institutional voluntary financial restructuring – the CFR Procedure. The CFR procedure is a fully voluntary, out-of-court restructuring solution modelled on international best practice, and is designed to facilitate mediation driven negotiations (supported by the Chamber of commerce) between companies, banks and other major creditors. Parties using the procedure are also entitled to various tax and other incentives not otherwise available

4.2 Which institutions exist that take care of this issue?

Commercial Courts deal with prepackaged reorganization plans. Chamber of Commerce is institutional mediator for CFR procedure. Central bank (National Bank of Serbia) is hosting abovementioned registries of bills of exchange and blocked accounts.

4.3 What are the costs involved?

Costs vary with the size of debtor. Prepacks costs range from 0.1% to 2.6% of total claims and somewhat less measured in total assets. PPRP provides strong "incentives" to act in time as it represents the only opportunity for debtor-in-possession to maintain control over business. The CFR procedure has a limit of maximum 5,500 euros per case for large debtors (and only in case that case was successfully resolved. For smaller companies sum is around 1,000 or 2,000 euros. It is hard to estimate per “prevention” case the total number of people that work on preventing a bankruptcy and the amount of time spent per person in total. In case of prepack it is 5 to 6 persons. Besides commercial court judge and financial consultants and auditors in larger cases in smaller cases (SMEs) often debtor himself prepares all necessary documents with help of one or two

consultants. Judge may appoint bankruptcy administrator or auditor to check whether data and information presented in the documents are correct.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The key problems and impediments lie in the application of other laws and not in the efficiency of bankruptcy or out-of-court procedure. For example, commercial banks, as mortgage creditors, cannot actually collect their claim in an out-of-court proceeding because lower-ranked mortgages remain registered on the mortgaged real estate that is offered for sale, which greatly reduces (or effectively excludes) the interest of prospective buyers for such property. Since distribution of proceeds from the mortgaged property in court proceedings is effected according to a pre-determined order, followed by deletion of all mortgages (including the lower-ranked mortgages), banks as creditors have no interest in initiating out-of-court proceedings, but opt for the court enforcement, which undermines out-of-court proceedings.

Central bank initiated a number of measures that improve prevention. Central bank provides search of debtors in enforced collection, issued bills of exchange, that significantly increased the quality of information and enabled informed decision making.

The National Bank has enabled the transfer of bank claims against legal entities removing numerous conditions limiting opportunities to transfer claims.

The most critical issues to be tackled for successful prevention of bankruptcy is timely signalling that entrepreneur or company has financial difficulties. In Serbia debt restructuring or bankruptcy procedure is initiated extremely late. Yet, there are numerous problems that prevent e.g. banks are generally reluctant to engage restructurings that result in write-offs or debt to equity conversions, debtor are not able to obtain new finance for working capital, etc.

There is no separate bankruptcy liquidation proceeding for entrepreneurs, there is neither alternative fast-track procedure nor consequently no discharge. The Law on Bankruptcy should be carefully amended to allow entrepreneurs to file for bankruptcy.

The out-of-court procedure is limited only to companies that have two or more banks as creditors and entrepreneurs are not allowed to use this procedure. Amending the Law to allow sole traders (entrepreneurs) to use out-of-court restructuring could be the first regulatory step.

4.5 How many companies have gone through "prevention" measures, and how many survived?

In the 4 past three years, approximately 130 pre-packaged reorganization plans have been filed, involving claims exceeding one billion Euros. Nearly 75% of PPRPs have been accepted, with mixed results that reveal shortcomings in the design, feasibility and debt sustainability assumptions and the implementation of plans. Yet, as the procedure is rather new it is too early to state success ratio. Again, creditors prefer debt rescheduling solutions over the deeper forms of financial restructuring often needed, such as debt write-offs and debt-to-equity conversions. Nevertheless, the PPRP process is reasonably swift, averaging approximately 4.7 months, and binding on all creditors. Costs range from 0.1% to 2.6% of total claims. PPRP provides strong "incentives" to act in time as it represents the only opportunity for debtor-in-possession to maintain control over business.

The CFR procedure has not been widely used since becoming effective in September 2011. Within the first two years, only 18 cases had been initiated,. Eight of the total cases were successfully concluded by CFR restructuring agreement (3 cases) and bilateral agreements (5 cases). A greater

efforts must be made to communicate the existence and benefits of out of court settlements amongst entrepreneurs.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

In Serbia entrepreneur is liable for all obligations incurred in connection with the pursuit of his business activity with his entire assets, including any assets he acquires in connection with the pursuit of his business activity. Furthermore, liability for the obligations does not cease upon deletion of an entrepreneur from a register (there is no possibility to have a discharge).

The Criminal Law differentiates between honest and fraudulent bankruptcy (but due limited scope of Law on Bankruptcy this applies only to companies that filed for bankruptcy and not to entrepreneurs that are out of scope of the Law on Bankruptcy). Criminal liability may be due to causing bankruptcy because of irrational spending or disposal of funds, excessive, borrowing and taking disproportionate obligations, irresponsible contracting, and failure to timely exercise claims, destroying or concealing property, or negligence, or causing “fraudulent” bankruptcy due to apparent or actual impairment of company’s assets. However, there is no criminal liability for failing to timely file for bankruptcy. The law prescribes other sanctions e.g. prohibition to perform duties performed at the time of the offense or all duties related to the disposition, use, management or handling of the trusted property.

4.7 Which institutions exists that take care of this issue?

In Serbia there are app. 80 commercial court judges engaged in bankruptcies, more than 320 active bankruptcy administrators, and approximately the same number of other professionals (accountants, auditors, consultants, etc.) that are engaged one way or another in bankruptcy procedure.

4.8 What are the costs involved?

Not applicable for the second chance – there is no bankruptcy procedure for entrepreneurs, no possibility of discharge.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

The Government should take more decisive actions for a greater differentiation of honest and dishonest bankruptcies. Most often the dishonest bankruptcies are rarely prosecuted/penalised. Other possible solution would be to set up a special registry of all bans on operating imposed on managers and owners of enterprises that face criminal or other proceedings.

To reduce incentives for fraudulent behaviour and eliminate incentives to create ‘phoenix companies’ a greater consistency in applying the existing legal framework is necessary with minor changes of the Criminal Law.

Besides reintroducing bankruptcy procedure for entrepreneurs, one should examine possibility to introduce a discharge as a key for second chance. Current framework represents a huge problem for honest entrepreneurs, as they cannot be discharged. Whether a 3 year discharge and debt settlement period should be a reasonable in Serbian circumstances or set as upper limit for an honest entrepreneur remains to be examined.

While insolvency proceedings are adjudicated by commercial and in some cases judges that deal exclusively with insolvency there is a need to provide specialised training to judges adjudicating in such (e.g. pre-packaged reorganization) proceedings. At the moment such training is non existing.

On average pre-packaged reorganization is more than two times cheaper compared to ordinary bankruptcy procedure, while for out-of-court restructuring there is a limit of 5,500 euros. This represents significant incentive for timely recognizing problems and initiating restructuring.

4.10 How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

Data on number of companies that were liquidated/bankrupted have profited from “second chance” measures (prepacks, etc.) are provided in the previous box. This is the best possible estimate, as some of these companies obtained debt write off and similar second chance related incentives.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁴⁹
1. COFACE SRBIJA d.o.o.	Bulevar Oslobođenja 111 11000 Beograd office-rs@coface.com http://www.coface.rs/ http://www.coface.rs/en/content/download/76691/902485/version/2/file/COFACE+SRBIJA_e.pdf	Main use Assessment of creditworthiness of business partner or competitor Secondary use Score given to the client to be used as a web seal (Excellent SME Serbia)
2. Rating DOO	Krunska 31/3, 11000 Beograd office@rating.rs http://www.rating.rs	Assessment of creditworthiness of business partner or competitor Secondary use Score given to the client to be used as a web seal (Excellent SME Serbia)
3. Solvent point DOO	Milutina Milankovica 7v 11000 Beograd direkcija@solventpoint.rs http://www.solventpoint.rs/	Assessment of creditworthiness of business partner or competitor
4. Bisnode d.o.o. (samel services as company under 3.)	Milutina Milankovića 7v 11070 Novi Beograd info@boniteti.rs www.boniteti.rs http://www.boniteti.rs/BoniteteCE/Files/Metodologija_RS_RS.pdf http://www.boniteti.rs/BoniteteHomepageFiles/Mode/BonitetnoPorocilo_RS_EN.pdf	Assessment of creditworthiness of business partner or competitor
5. Poslovni Plan doo	Milovana Jankovića 8 11010 Beograd info@scoring.rs www.scoring.rs	Assessment of creditworthiness of business partner or competitor

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

To assess the creditworthiness PCSB use standard financial ratios including Current Ratio, Solvency Ratio, Quick Ratio, Return on Equity, Return on Operating Revenues, Return on Assets, Profit margin, Assets/Sales, Shareholders return, Sales / Net Working Capital , Earnings per employee, Profit per employee, Fixed Assets/NetWorth, Asset turnover, etc. The scope of ratios

⁴⁹ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

used depends on the methodology used by individual PCSB. Current Ratio & soft information – payment practices, disputes, etc.

Certain information are available on the daily basis – whether company's account is blocked, is company involved in the new dispute and litigation, etc. These data some PCSBs use to obtain dynamic estimate of creditworthiness.

In addition to financial ratios used to assess the financial strength most PCSBs also assess risk in more details. PCSBs are usually registered as consulting firms providing financial services. PCSBs usually use methodology developed by companies that sell risk management products and sell commercial information. However, the assessment scale differ (e.g. ranges from 0 (company in default) to 10 (the best evaluation possible, or use more complex scales).

PCBS rely on data purchased from the Business Registration Agency, data obtained via Central Bank portal on accounts blocked and issued bills of exchange and Commercial Courts web portal.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

PCSB are not regulated in Serbia and the market is the only indicator of the quality of their work. Representatives of the BRA, and other state agencies stated that there is a need to regulate this area. The BRA and interviewed company complained that there is unfair competition and that some of PCSB do not obtain data using regular ways (purchasing data) from the BRA.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

As PCSBs purchase individual data from the BRA, they do not have own database nor they delete entrepreneurs from the database independently from the BRA. Data on entrepreneurs are limited as only app. 10% of entrepreneurs submit financial statements. Furthermore these statements do not contain enough data to establish credit worthiness.

Banks perform their own credit worthiness assessment, in accordance with applicable regulations of the National Bank of Serbia and the internal procedures and methodologies. The main parameters that banks use are the financial statements, together with the auditor's report, information on the organization and the business model of the company, its management, branch of industry, current and expected market position, etc.

Output 6

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
25.3.2014.	Miladin Maglov	Business Register Agency	Registrar of the Register of Business Entities	register@apr.gov.rs , mmaglov@apr.gov.rs
28.3.2014.	Ružica Stamenković	Business Register Agency	Registrar of Financial Statements and Solvency	bonitet@apr.gov.rs
19.3.2014.	Danica Dajovic	Lawyer	Lawyer	ddajovic@gmail.com
28.3.2014.	Mirko Borovčanin	Bankruptcy administrator	Bankruptcy administrator	borovcanin@eunet.rs
14.3.2014.	Nermina Ljubović	Serbian Chamber of Commerce	Director, Center for mediation and services	posredovanje@pks.rs , nermina.ljubovic@pks.rs
25.3.2014.	Predrag Ćatić	Association of Serbian	Head of Legal	predrag.catic@ubs-asb.com

Date	Name of person interviewed	Organisation	Position	Contact details
		Banks / Credit Bureau (ASB CB)	Department	
28.3.2014.	Đorđe Živanović -	Coface DOO	Owner and director	office-rs@coface.com
20.3.2014.	Dragana Smiljević	Bankruptcy Supervision Agency	Former Deputy General Manger – (until February 2014)	dragana.smiljevic@gov.rs

Documents consulted

Name of document, author/organisation, year of publication
• The Law of Bankruptcy (Official Gazette of the Republic of Serbia", No. 104/2009, 99/2011)
• Decision of the Constitutional Court („Official Gazette of the Republic of Serbia", No 71/12)
• The Law of Bankruptcy proceeding (Official Gazette of the Republic of Serbia" No 84/2004 i 85/2005)
• Companies Act ("Official Gazette of the Republic of Serbia" Nos. 36/2011 and 99/2011)
• Law on Enforcement and Security („Official Gazette of RS" No. 31/2011)
• Law on Consensual Financial Restructuring („Official Gazette of RS" No. 31/2011)
• Decision on Monitoring the Liquidity of Economic Entities („ Official Gazette of the Republic of Serbia", No 48/2010)
• Slijepčević, D. S. Spasić, Komentar Zakona o stečajnom postupku, CES MECON, Beograd 2006
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• Radulović, B. „Unapred pripremljeni planovi reorganizacije u Republici Srbiji - uporedno pravna ili empirijska analiza“, Usklađivanje poslovnog prava Srbije sa pravom Evropske unije, Vuk Radović (ured.), Pravni fakultet Univerziteta u Beogradu, Beograd, 2013, ss. 56-106
• Radulović, B. „Vrapci i golubovi – Empirijska analiza odluka o bankrotstvu ili reorganizaciji u Republici Srbiji“, Evropska unija i srbija - Od tranzicije do pridruživanja, Ivan Vujačić (ured.), Ekonomski fakultet Univerziteta u Beogradu, Beograd, 2012, ss.79-94
• Radulović, B. „Empirijska analiza bankrotstva u Republici Srbiji“, Usklađivanje poslovnog prava Srbije sa pravom Evropske unije, Vuk Radović (ured.), Pravni fakultet Univerziteta u Beogradu, Beograd, 2011, ss.146-183
• Radulović, B. „Novi Zakon o stečaju - logika odsustva kolektivne akcije“, Fokus - Kvartalni izveštaj o institucionalnim reformama, godina II, br. 4, ss. 33-38, januar 2010.
• Radulović, B. „Analiza sistema nagrade i naknade troškova stečajnih upravnika“, Razvoj pravnog sistema Srbije i harmonizacija sa pravom EU - Prilozi projektu 2008., S.Tabaroši (ured.), Pravni fakultet, Univerziteta u Beogradu, Beograd, 2009, ss. 72-89

Websites consulted

Name of website	Link to website
Serbian Chamber of Commerce	http://www.pks.rs
Business Register Agency	http://www.apr.gov.rs
Association of Serbian Banks Credit Bureau(ASB CB)	http://www.ubs-asb.com
Bankruptcy Supervision Agency	http://www.alsu.gov.rs
National Bank of Serbia	http://www.nbs.rs/
Web portal Commercial Courts	http://www.portal.sud.rs/
Rating DOO	http://www.rating.rs
Coface DOO	http://www.coface.rs/
Solvent Point DOO	http://www.solventpoint.rs/
Bisnode DOO	http://www.boniteti.rs/

Name of website	Link to website
Poslovni plan DOO	http://www.scoring.rs/

28 Slovakia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	The precise length of time cannot be stated; the whole process depends on various factors, the liquidation proceeding can have various forms (from easy to complex ones). For example, liquidation of a company by sale lasts 2 months, merger (company B takes the financial agenda and accounts over from bankrupt company A) lasts 2 months as well but a proposal for dissolution of a company by ex offa in a court proceeding can last 2 to 3 years and it is the longest form of liquidation.
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	The length of time during which negative rating of an enterprise remains depends mainly on the enterprise itself, i.e. on the amount of time during which it is able to settle his debts. For example, if debts are paid back within 6 months, he gets deleted from the register of debtors. If he pays his debts back within 3 years, he remains in the register for 3 years. The maximum usual time is 5 years.
7. Does an entrepreneur get deleted from public/private	1: the entrepreneur is deleted from the database within one	0

Questions	Options	Answer
credit databases after discharge?	year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0,5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0,5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Within 36 months on average
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	1

Question/issue	Options	Answer
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

Output 4

Overview of how “prevention” is addressed in the country.

4.1. Which measures are taken in your country to address this issue?

Measures taken to address this issue are all just about the possibility of a restructuring of a company that is accompanied by a plan to pay off the creditors. Prevention can take place only when companies detect their difficulties early. When they are viable but entered insolvency, they undergo the so-called restructuring. This process is under the protection of the court according to Act No. 7/2005 on bankruptcy and restructuring. Moreover, the law in Slovakia defines that natural and legal persons that keep accounts must follow the development of their financial situation and assets in order to be able to detect the risk of going bankrupt early and take appropriate measures to prevent it.

4.2. Which institutions exist that take care of this issue?

Special institutions that deal with prevention do not exist in Slovakia. However, there are institutions that provide legal counselling, business counselling, crisis management in businesses, such as

- LIEB reštrukturalizacie, s.r.o, (www.reštrukturalizaciapodniku.sk)
- DRS (Debt Reduction Solutions) (www.drs.sk),
- Slovak Chamber of Tradesmen (www.szk.sk),
- Slovak Federation of Tradesmen (www.szz-sk),
- Slovak Trade and Industry Chamber (www.sopk.sk),
- Alliance of Slovak Entrepreneurs (www.alianciapas.sk),
- Slovak Business Agency (www.sbagency.sk).

All these institutions provide initial consultations gratis, other services are paid and the sums depend on the situation. The website www.podnikam.webnoviny.sk is very useful for business people who want find information on bankruptcies.

4.3. What are the costs involved?

The costs involved vary considerably from case to case and cannot really be estimated.

4.4. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to be tackled for successful prevention of bankruptcy is from the perspective of an entrepreneur the following: improvement of financial management skills, complying with the invoice due dates, and checking the creditworthiness of clients and suppliers through websites such as www.dlznik.sk. From the national point of view, non-transparent behaviour of some entrepreneurs (false records of economic results, results in accounts do not comply with actual results which leads to distorted assessment of the creditworthiness of suppliers and clients), continually increasing compulsory wage-related deductions for social contributions, instability of business environment, continually changing legislation, etc. are the most critical issues to be tackled. And creating favourable credit conditions, better dissemination of information on prevention of insolvency through education and counselling in critical situations are the most suitable measures to be yet taken.

4.5. How many companies have gone through “prevention” measures, and how many survived?

It is not possible to say how many firms underwent prevention measures but in 2013, there were 113 restructurings approved, 108 of which were legal persons, 1 was an association and 4 were natural persons – self-employed persons. Most of the restructurings were allowed in industry, trade and building sector. The advantage of restructuring is that the enterprise is saved, the facility is maintained in operation, employees remain employed, the property is not sold out, creditors are satisfied to a greater extent than in case of bankruptcy, debt settlement is faster compared to bankruptcy, suppliers keep sales for their products and the average length of the process is about 5 to 7 months.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6. Which measures are taken in your country to address this issue?

Measures taken to address this issue are covered by the Act No. 7/2005 on bankruptcy and restructuring. A debtor can either declare bankruptcy or undergo a restructuring. After bankruptcy, the entrepreneurs can get a second chance but they must settle their debts first.

4.7. Which institutions exist that take care of this issue?

Special institutions for “post-bankruptcy /second chance” do not exist but there are institutions that provide for legal or professional counselling (mentioned above).

4.8. What are the costs involved?

The costs connected with “post-bankruptcy /second chance” vary considerably from case to case and cannot really be estimated. The costs linked to the bankruptcy and liquidation cannot be stated precisely either. The amount depends on the assets that are available to the debtor. Fixed fees are listed in the list of court fees. For example, an advance for the payment of the remuneration and costs of the temporary administrator of the proceeding is 1,659.70 EUR for legal persons and 663.68 EUR for natural persons. Other fees linked to the insolvency proceedings fall into several categories and the highest one can amount to 3,319 EUR. The fees for individual steps in the insolvency proceeding are listed in the Annex to the Act No. 71/1992 Coll. on Fees in the Court, item 5. The remuneration for the liquidator amounts to 5,000 EUR and services during the process can amount to 15,000 EUR.

4.9. Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issues to be tackled are the same as mentioned above.

4.10. How many companies that were liquidated/ bankrupted have profited from “second chance” measures?

The number of companies that were liquidated / bankrupted and have profited from “second chance” measures cannot be estimated but there will be very few. Most of them are not interested to start all over again due to the experience they made during the bankruptcy proceeding.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁵⁰
Insolvency register, www.insolvencnyregister.sk	Slovakia, Bratislava	Publicly accessible portal for checking the creditworthiness of enterprises
The Slovak Banking Credit Bureau,	Slovakia, Bratislava	Information on clients remains in

⁵⁰ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Name of PCSB	Location/address	Main use of scores ⁵⁰
s.r.o. www.sbcbsk		the register during the time the contract (credit contract) is valid and the subsequent 5 years
CERD – Central register of debtors www.registerdlznikov.sk	Slovakia, Bratislava	The biggest national and international bank and non-bank information system on debtors
Non-bank register of client information (NRKI) www.nrki.sk	Slovakia, Bratislava	A subsystem of the Central register of debtors and of the international system CERD which collects positive and negative information on enterprises
CRIBIS – Universal register www.cribis.sk	Slovakia, Bratislava	Complex information on enterprises, rating of companies
SOLUS – interest group of legal persons www.solus.sk	Slovakia, Bratislava	Complex information on enterprises, rating of companies
CRIF – Slovak Credit Bureau, a.s. (www.crif.sk)	Slovakia, Bratislava	Rating of companies with points

5.1. What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

In order to assess the creditworthiness of enterprises, mainly their economic results are taken into consideration. On this basis, their solvency and position on the market are ranked.

CRIF – Slovak Credit Bureau has a unique tool for calculating rating of various types of subjects (SMEs, municipalities). The tool is accessible for contracted partners mainly in the form of outsourcing through a web application that calculates the rating within several seconds.

Besides outsourcing, it sales the methodology of calculating the rating of individual types of segments and provides for applications. iRating (www.irating.sk) is a reliable application that enables fast and high-quality assessment of various types of subjects. The assessment of the financial and non-financial creditworthiness that calculates a seven-grades rating expresses the risk rate for creditors. The output is complemented by a brief comment on the overall health of subjects and comments on benchmark values of the main indicators.

The calculation of the rating of enterprises is based on the assessment of basic data on companies used in a number of financial and non-financial criteria. The output is then an illustrative table consisting of the own rating grade and further useful information for the assessed company. The rating is set on the basis of the financial and non-financial assessment (creditworthiness) of the firm. The financial creditworthiness is characterised by one of five grades and results mainly from the assessment of financial indicators that show short-term liquidity, long-term solvency, and profitability. Each indicator has its values and weight depending on the business field. The non-financial creditworthiness is characterised by one of three grades and assesses mainly non-financial criteria concerning the company, the field of business and the respective region. Each criterion has its own weight. The combination of the grades of the financial and non-financial creditworthiness determines the resulting rating grade.

The Ministry of Finance of the Slovak Republic provides for cooperation with the following rating agencies: Standard & Poor's, Moody's, FitchRatings, Japan Credit Rating Agency, Rating and Investment Information Agency. Each subject is assigned a rating by the agency according to a

scale, which is similar across the agencies and usually uses capital letters: A (good investment position), B (speculative position) and C (default). The ratings usually influence the interest rate of a loan. The current rating of the Slovak Republic is accessible under <http://www.nbs.sk/sk/o-narodnej-banke/rating>.

5.2. Are PCSBs regulated in your country, and how? What is the regulatory framework?

The National Bank of Slovakia (NBS) accepted three requests on a collective level (they apply for the subsidiaries of the rating agencies). Following the elaboration of evaluation reports and own assessment of the fulfilment of criteria outlined in the Measure NBS No. 4/2007, NBS decided to recognise the following agencies: Moody's Investors Service Ltd, UK, Fitch Ratings, UK a McGraw-Hill International (U.K.) Limited – Standard&Poor's Ratings Services.

The rules of bank regulation are outlined in the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, the Act on banks No. 483/2001 and Measure NBS No. 4/2007. The rules allow for the use of ratings of recognised rating agencies in order to calculate the requirements for own bank resources and for traders with securities.

5.3. What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The main rule for the deletion of debtors from existing databases and registers is complete debt settlement. Therefore the existence of a subject in a database is individual. For example, Insolvency register keeps the evidence 5 years after bankruptcy, the Central Register under the NBS keeps the evidence 10 years after debt settlement, SOLUS keeps the evidence 3 years after the settlement, BRCl (Client Information Bank Register) and Slovak Banking Credit Bureau makes the information available for banks for 4 years. The Central register of debtors in Slovakia (CERD) keeps the information for 10 years.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
19.03.2014	Ms Katarina Morsztynova	CRIF – Slovak Credit Bureau, s.r.o.	Marketing specialist	www.crif.sk +421 911 460 995, +421 2 5920 75 92
19.03.2014	Anonymous bankrupt entrepreneur with furniture			
24.03.2014	Ms Maria Dobova	District court Trencin	Supervisor bureaucrat	+421(32)6561152, maria.dobova@justice.sk
24.03.2014	Mr Jan Vaclav	Slovak Chamber for Industry and Trade	Director	jan.vaclav@email.sopk.sk +421 905 503298
25.03.2014	Mr Miroslav Purdes	Self-employed lawyer	Lawyer, legal counsellor, business counsellor in bankruptcy proceedings	+421 903 177 017, +421 517 722 871 zkp-dp@jantar.sk
	Other attempted but			

Date	Name of person interviewed	Organisation	Position	Contact details
	unsuccessful interviews			
19.03.2014	E-mail sent, no response, phoned several times several days, no response	Slovak Federation of Tradesmen		sekretariat@szz.sk +421 249 246 234
24.03.2014	Mr Frano Kocan (listed as key interviewer; however he is in another department now and not responsible for the relevant agenda; he provided some information but not a complete interview)	Ministry of Economy, Dep. for Entrepreneurship	Principal State Counsellor	Kocan@economy.gov.sk +421 248 541 522
24.03.2014	Mr Vladimir Tanistrak (recommended by Frano Kocan, however he does not deal with the relevant agenda, he provided some information but not a complete interview)	Ministry of Economy, Dep. for Industry and Innovation		tanistrak@mhsr.sk +421 243 33 35 95
24.03.2014	Mr Daniel Pitonak (recommended by Vladimir Tanistrak; however he did not respond)	Slovak Business Agency	Head of Business Environment Analysis Department	pitonak@nadsme.sk

Documents consulted

Name of document, author/organisation, year of publication
Act No. 7/2005 Coll. on Bankruptcy and Restructuring
The Guide to Bankruptcy Law, Ministry of Justice of the Slovak republic
Act No. 71/1992 Coll. on Court Charges
Act No. 665/2005 Coll. – Amendment of Act on Bankruptcy and Restructuring
The Guide to the Rating SMEs project – Slovak Republic, Slovak Trade and Industry Chamber Slovakia, http://comm1.sopksk/webdb/ratingmsp.nsf

Websites consulted

Name of website	Link to website
Alliance of Slovak Entrepreneurs	www.alianciapas.sk
CERD – Central register of debtors	www.registerdlznikov.sk
CRIBIS – Universal register	www.cribis.sk
CRIF – Slovak Credit Bureau, s.r.o.	www.crif.sk
Debtor.sk	www.dlznik.sk
DRS (Debt Reduction Solutions)	www.drs.sk

Name of website	Link to website
I do business.sk	www.podnikam.webnoviny.sk
Insolvency register	www.insolvencnyregister.sk
LIEB restrukturalizacie, s.r.o.	www.restrukturalizaciapodniku.sk
Ministry of Economy	www.economy.gov.sk
Non-bank register of client information (NRKI)	www.nrki.sk
Slovak Business Agency	www.sbagency.sk
Slovak Chamber of Tradesmen	www.szki.sk
Slovak Federation of Tradesmen	www.szz.sk
Slovak Trade and Industry Chamber	www.sopk.sk
SOLUS – interest group of legal persons	www.solus.sk
The Slovak Banking Credit Bureau, s.r.o.	www.sbcbsk.sk

29 Slovenia

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	36-48 months
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	24
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	1

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Compulsory settlement proceedings and preventive restructuring proceedings can be seen as a measure to prevent bankruptcy. One of the measures that have an indirect effect on the probability of insolvency proceedings is the Act on prevention of late payments. It introduced an obligatory multilateral set-off (set-off of liabilities and receivables between business entities), with the intention of reducing the indebtedness of companies. The process is run by AJ PES and also includes a possibility of voluntary set-off. Both legal entities and sole proprietors may enter into a multilateral set-off procedure.

4.2 Which institutions exist that take care of this issue?

There are no institutions that would be addressing the prevention issue specifically.

4.3 What are the costs involved?

The procedures involve courts, a curator, and other that are involved informally (legal consultants, finance professionals, auditors, certified business valuers). Costs involved: 30-40.000 EUR for a medium-sized firm going through a compulsory settlement proceedings. Around 10-15.000 EUR for a simplified compulsory settlement proceeding.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

The procedures should start earlier and the companies themselves should make sure of this and face it early on (in practice it became evident that the insolvency proceedings started too late). The agreement made with the creditors is crucial (the majority of them needs to vote for the settlement proceedings to start, otherwise a bankruptcy follows). Another interviewee lists business restructuring. But for this you need new management (or management teams) since it is the old management (and owners) that have led the company to the brink of bankruptcy.

4.5 How many companies have gone through “prevention” measures, and how many survived?

It is only since Dec 2013 (when the sixth amendment of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act was introduced) that the preventive restructuring proceedings and simplified compulsory settlement proceedings are possible; no proceedings are closed yet.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

In the case of micro and small firms a simplified compulsory settlement proceeding can be used which should speed up the process and make it less expensive. The sole trader, being in a position of a debtor after going through a process of civil bankruptcy, can start up a company or a sole proprietorship after the start of the civil bankruptcy procedures - if the court allows him or her to. The debtor in bankruptcy can ask the court for the machinery, equipment, stock of materials etc. that are needed to start the business to be exempted from the bankruptcy estate (with the exception of real estate). The court will allow the debtor in bankruptcy to start the business if the discharge proceedings have started and if the probability that the debtor did not intentionally cause

its own insolvency and that it will not operate with a loss can be estimated to be higher than 50 percent.

4.7 Which institutions exist that take care of this issue?

There are no institutions that would be specifically addressing the second chance issue.

4.8 What are the costs involved?

In the case of legal entities, the compulsory settlement proceedings involve 5-7 external experts (finance expert, lawyer, auditor, certified business valuator, curator, and other support staff). Preventive restructuring proceedings involve around 10 people.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

Creditors' committees are the most crucial to tackle. Another interviewee pointed out the management teams that would come into the company, make a turnaround, pay off the creditors and sell the company (in eg. 18 months' time). In Slovenia, this process has not started yet.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

It is only since Dec 2013 that the preventive restructuring proceedings and simplified compulsory settlement proceedings are possible; no proceedings are closed yet. Judging by the number of proceedings that have started, the simplified compulsory settlement proceedings seems to be successful since from the time they became possible until now around 40 of them have been started (compared with 55 of the cases of regular compulsory settlement proceedings in the whole of year 2012).

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁵¹
Bisnode	Likozarjeva ulica 3, 1000 Ljubljana	Interested parties pay for the access to credit scores/access to database
AJPES	Tržaška cesta 16, 1000 Ljubljana	Interested parties pay for the access to credit scores/access to database
TS Media	CIGALETOVA ULICA 15, 1000 LJUBLJANA	
Creditreform	Emonska cesta 8 1000 Ljubljana	
Bonitetna hiša i	ULICA JANEZA PAVLA II. 8 (Zrinjskega 4), 1000 Ljubljana	

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

- Financial data (based on annual reports the companies and sole traders turn in once a year).
- Register data.
- Payment behaviour.
- "Negative data" (on lawsuits, non-payments of taxes, current account blocks, start of insolvency proceedings...)

⁵¹ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

- Industry level data: the relative position of the company within its industry, and the relative position of this industry compared to other industries in the sector (the historical data shows that the probability of insolvency depends on the industry).

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

Regulation of PCSBs: There is no specific regulation to be followed by the credit rating agencies in Slovenia. None of the agencies is yet registered (and thus under the rules of EU regulation of credit agencies), although AJPES is planning to register.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

- Daily, all procedural acts in insolvency proceedings are being published on the AJPES website. Data on the start of proceedings are daily incorporated into the credit rating score of the company. If the company is deleted from the register of companies it also gets deleted from the credit score database.
- In the case of a sole trader, he gets deleted from the Business Register at the beginning of the civil bankruptcy proceedings. However, since he still has outstanding liabilities AJPES still prepares credit rating information about him.
- The fact that an entrepreneur once went bankrupt does not affect the credit rating information of his new business entities (according to privacy law the credit rating agencies cannot link the data based on the names of individuals).

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
18 March 2014	Miodrag Đorđević, PhD	Supreme Court - Republic of Slovenia	Supreme Court Senior Judge	Tavčarjeva 9, 1102 Ljubljana, Slovenia Tel.: + 386 1 366 42 29 E-mail: miodrag.dordevic@sodisce.si
19 March 2014	Jan Sibinčič	Odvetniška družba Sibinčič o.p. d.o.o. (a law firm)	Curator	Dalmatinova 2, 1000 Ljubljana Tel.: + 386 41 834736 E-mail: jan.sibincic@ods.si
19 March 2014	Alenka Marovt	Ministry of Economic Development and Technology	Secretary, The Directorate for Entrepreneurship, Competitiveness and Technology	Trubarjeva 11, SI – 2000 Maribor, Slovenija T: +386 (0)1 400 31 29 alenka.marovt@gov.si
12 March 2014	Vanda Zlatarev	AJPES (a credit scoring bureau)	Head of the Sector of Credit Ratings and Other Commercial Services	Tržaška cesta 16, 1000 Ljubljana T: +386 1 477-41-00 vanda.zlatarev@ajpes.si
31 March 2014	Robert Petrič	Bisnode (a private credit scoring bureau)	Executive Director	Mailing address: Bisnode d.o.o., p.p. 201, 1001 Ljubljana T: +386 1 620 2 710
20 March 2014	Andrej Koprivec	Currently a financial consultant	Owner of a firm, working on	KOPRICO d.o.o., Zelena pot 22, 1000 Ljubljana

Date	Name of person interviewed	Organisation	Position	Contact details
		(previously working at Deloitte and as an auditor; ACCA and CFA)	restructuring of companies	T: +386 40 564 024
21 March 2014	Aljaž Perme	Ministry of Justice	Secretary, THE DIRECTORATE FOR LEGISLATION ON THE JUSTICE SYSTEM	Župančičeva 3 SI-1000 Ljubljana T: +386 1 369 5342 aljaz.perme@gov.si

Documents consulted

Name of document, author/organisation, year of publication
Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (official consolidated text), Ur. I. RS, No. 13/2014
Opinion of the European Central Bank – of 5 November 2013 – on financial restructuring of companies (CON/2013/75)

Websites consulted

Name of website	Link to website
Pravno-informacijski sistem Republike Slovenije (a website allowing access to legislative and other publicly available documents published by public authorities)	http://www.pisrs.si/Pis.web/# , where the link to the relevant Act can be found here: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6946

30 Spain

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0 (a difference is made only in case of gross misconduct and responsibility)
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	1
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5*
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	0**
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	Legal person: 0 (if no conviction exists) or 2-15 years if there is conviction (fraudulent behaviour). Natural person: all her life, until last modification of the Insolvency Act (end 2013): the new framework foresees forms of discharge also for natural persons
7. Does an entrepreneur get deleted from public/private credit databases after	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge;	0

Questions	Options	Answer
discharge?	0: otherwise.	

* before allowed only for legal persons, and now introduced also for natural persons

** (moment of liquidation) with possible extension until 2 years (the Act establishes a two-year period in case the debtor's financial situation improves)

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral 0: courts are not neutral	1
2. Is a repayment plan part of the bankruptcy court procedures?	0: no 1: yes	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 24 months; 0: the length of time is longer than 24 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory.	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery of creditors exist; 0: tax legislation increasing the recovery of creditors does not exist.	1*
7. What is the average time of bankruptcy procedures? "bankruptcy procedure" includes the moment when bankruptcy is formally filed until liquidation is official. It does not include the discharge period.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	20 months
Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0**
Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1***

* the only possibility is VAT recovery: When the insolvency proceedings start, during the first month a creditor may claim a refund of VAT on unpaid amounts, which are in the bankrupt assets.

** When the employer is a natural person, he is responsible for the insolvency with all his present and future assets. Nevertheless, Law 14/2013 introduced the possibility of debt relief also for natural persons, under certain conditions.

*** Except cases of bad faith/negligency.

Output 4

Overview of how "prevention" is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Legal measures:

Since 2009, art. 5bis of the Insolvency Law: opportunity to submit a request in court that paralyses any declaration of creditor arrangements for a "waiting period" of three months (in practice five to six months), which serves to negotiate a refinancing agreement or an "anticipated proposals of agreement". The court must announce that the debtor is negotiating to refinance.

Currently, this is complemented in two ways:

1. According to art. 71.6 of the new Insolvency law, the refinancing agreement may be presented to the judge to get the effect expanded also to a number of dissenting creditors. Important use of this form in 2009, but it decreased over time. In 2013, only 60 refinancing agreements were made on this basis. This is an expensive solution and mainly used by big companies
2. The new "Entrepreneurs Law" (Law 14/2013), entered into force on 18.12.2013, established an out-of-court settlement solution which tries to support the development of agreements between the entrepreneur and the creditors. This solution also applies to natural persons or SMEs, while previous solutions were designed only for legal persons, and especially large companies.

Nevertheless, the requirements to access it are not flexible and do not represent an incentive for entrepreneurs due to the following limitations:

- No more than 25% debt reduction, with restrictions related to the typologies of debts (eg. debts to the tax Office and to Social Security can only be postponed, not cancelled).
- No more than three additional years as adjustment in the company's repayment timetable
- When this agreement cannot be fulfilled, the only solution is insolvency proceedings/liquidation.

This agreement process is managed by a specific insolvency mediator and can be formalised before a notary. So far there are no examples (very recent) and no approved lists of insolvency mediators exist.

Early warning systems:

- A few early warning systems exist. Relevant information is linked to the irregular payment of taxes and social security, but no information was found in the interviews on how this information is used or communicated.
- Principle of "functioning company": Auditors performing the audit are required to check that the financial situation of the company is fulfilling the principle of "functioning company". If they are uncertain about that, they have to obtain information from the company administrators on actions to resolve the situation. No obligation to give publicity to this information out of the audit report exists.
- Points of attention to entrepreneurs (PAE): initially envisaged to support a "quick company set up", now they also give support to firms during their first three years of life
- Support services which are provided by the legal, financial and labour advisors of the company (paid by the company as part of its normal functioning).

Programmes:

See the "Relanza" programme, launched by the Superior Council of Chambers of Commerce to prevent insolvency and promote second chance. Each participating Chamber of Commerce offers a number of companies (20-25) the possibility of a general review of their financial status and other characteristics, and issues recommendations.

If the company is in a bad situation and measures of recovery cannot be applied, support is provided to the company in order to deal with the closure procedure and to ensure that the process is as short as possible as well as that the highest number of business assets is saved.

Launched in 2013, the programme operates with the participation of three Chambers and around 80 companies (selected through open call). It has been renewed for 2014 with a higher number of Chambers of Commerce (six). Funded by the ERDF, an expansion of this Programme is also depending on the availability of national cofinancing.

4.2 Which institutions exist that take care of this issue?

The main actors involved are the professionals that negotiate debt restructuring, the so-called "insolvency mediators" (that is the insolvency administrators: lawyers, economists and auditors-trained in mediation) and, to a lesser extent, notaries and companies' registrars.

4.3 What are the costs involved?

In Spain reliable statistics are lacking and it is difficult to give an estimate of the costs, which also depends on the relevance of the debtor (SME, large enterprise ...), the number of creditors and other aspects that influence their complexity.

Staff involved: in general terms, the judge must devote a minimum of 30 hours to individual processes. Insolvency administrators must also spend a minimum of 40 hours: although the issues are not complex from a legal viewpoint, they require special attention from a human point of view.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

Critical issues:

- Until October 2013 Spain did not count with a system of debts discharge and this made bankruptcy proceedings unattractive.
- Moreover the main creditors - banks and public bodies – did not have a real intention to negotiate. There is no encouragement for those entities which have the information (finance, social security, banking system) to use it as an alert for cases of bankruptcy.
- The reform of October 2013 is being tested, but relevant figures are still lacking and many problems are being encountered in this launching phase. Mediation and arbitration do not seem to work well in insolvency proceedings.
- Out-of-court agreement as envisaged by Law 14/2013: If this agreement fails and is cancelled by the judge, the only possibility is a creditor arrangement for liquidation, excluding any possibility of agreement between the debtor and the creditors. This is one of the biggest weaknesses of this framework.
- Lack of awareness among SMEs and entrepreneurs.

4.5 How many companies have gone through "prevention" measures, and how many survived?

Overall, around 95% of procedures end with the liquidation of the company.

In Spain last year over 10,000 creditor arrangements were declared, of which 20% previously attempted a settlement agreement, but in almost all cases the whole settlement failed and they were forced into court proceedings.

Less than 5% of companies that go through creditor arrangements reach an agreement, and half of them do not manage to fulfil it. In fact, the success rate of out-of-court settlement agreements is extremely low; they usually work only for a few large companies (especially whether these companies are particularly relevant in the national economy).

Overview of how "post bankruptcy/second chance" is addressed in the country

4.6 Which measures are taken in your country to address this issue?

Very limited second chance measures are available:

- Between 2009 and 2011, actions were taken to ensure access to public procurement to those employers having been subject to an insolvency declaration by a creditor (before the declaration of liquidation), provided that an agreement was signed. The contract only ends when liquidation starts, not before. The same happened with access to grants (much used in Spain).
- The reform of the end of 2013 set the possibility to "forgive" part of the debt if public credit, collaterals and 25% of the remaining debt are paid - plus the cost of the procedure (in order to obtain this benefit of reduction, it is necessary to be an entrepreneur, a freelancer or an employer registered in the social security system).
- PAE: the "entrepreneurs" law foresees info points for entrepreneurs to set up a new business. Now these info points have also the new function of helping the entrepreneurs to close their business.

4.7 Which institutions exist that take care of this issue?

Judges and, after the reform, notaries and companies registrars are institutions involved in this stage. Professional associations are also involved in the extent to which they appoint the insolvency mediators.

4.8 What are the costs involved?

No information about the costs involved is available.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

Critical issues:

- The second chance is very limited in Spain. Bankruptcy proceedings can be seen as a "tunnel", they are very expensive and the probabilities for a company to survive are extremely limited: more than 90% of the companies which take part in insolvency proceeding at the end are liquidated.
- The requirements that must be met to qualify for the second chance, regarding the payment of part of the credits, are limiting the real possibilities to get a second chance.
- The success of the agreements is being very limited. When an agreement is not fulfilled, there is no alternative to liquidation.
- There is no room for honest and unfortunate debtors. Also, good conduct tests are not as rigorous as in other states. The category of the "honest and unfortunate debtor" is disadvantaged in the Spanish system. Furthermore, post-bankruptcy control systems are not in place
- The judicial proceedings used to be quite long, also due to the overload of courts.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

Around 95% of procedures end with the liquidation of the company.

Name of PCRA/public and private databases	Location/address
<p>EQUIFAX SERVICIOS SOBRE SOLVENCIA Y CREDITO S.L.. It manages a database called ASNEF (Asociación Nacional de Establecimientos Financieros).</p> <p>Access to ASNEF provides a picture of the situation of the individual's payment behavior, allowing partners of Equifax to have a tool to decide whether or not to grant a credit, a phone line, or any financial product.</p>	<p>http://www.asnef.net/secciones_view.php?id=4639</p>
<p>Experian</p> <p>Experian: this group helps businesses to manage credit risk and prevent fraud. Experian also helps individuals to check their credit report and credit score, and protect against identity theft.</p> <p>Experian manages millions of records databases for customers via outsourcing. They also manage Badexcug, which is a common sectoral file containing information on the non-compliance of financial obligations, both by individuals and corporations.</p> <p>The companies belonging to the group in Spain are:</p> <ul style="list-style-type: none"> • Experian Cheetahmail • Experian FootFall • Future Foundation • QAS 	<p>http://www.experian.es/index.html http://www.experian.es/gestion-de-clientes/gestion-de-cartera-credit-bureau.html</p>
<p>The Central Credit Register (CIR or CIRBE) is a public service which manages a database consisting in almost all loans, credits, guarantees, and overall risks assets that financial institutions have with their customers. For each of these risk asset, the state entities provide the most relevant information, including customer identification.</p> <p>It is managed by the Bank of Spain.</p>	<p>www.bde.es/clientebanca/cirbe/cirbe.htm</p>
<p>The Registro de Aceptaciones Impagadas – RAI (Unpaid Loans Registry) is formed by information on unpaid bills, exclusively for legal entities, for amounts of 300,51 euros or above. The registration is made automatically when the payment of a bill is not made. The information reported in the RAI is provided by financial institutions and the information is kept there for a maximum period of 30 months.</p>	<p>https://www.ficherorai.com</p>

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Qualitative company profile, where these main aspects are taken into account :

- The most important is the diversification of the company, both geographically and in its business lines and products
- The relative competitive position
- Operational Efficiency
- Quality management (shareholder structure, management team, company structure)
- Competitive strategy of the company and future business plans
- In addition , the following aspects are analysed :
- Sector in which the company operates
- Macroeconomics and assessment of macroeconomic developments in the country and how this affects the relevant market. This covers not only macroeconomic, but also regulatory, legal and general and specific sector characteristics.

Quantitative company profile:

- Finance and financial statements of the company
- Profitability, liquidity, indebtedness, financial structure and financial flexibility
- RATIOS :
- Performance: economic or assets
- Acid-test ratio
- Ratio of net financial debt
- Ratio of net financial debt over EBITDA
- Indebtedness : leverage
- The importance and weight of each ration depends on the sector, but the most relevant one would be the ratio of net debt over EBITDA.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

- The Regulation is established at EU level, EU reg 462/2013 adopted in May 2013 which provides the framework for action in all the EU.
- There is a supranational body ESMA (EU), to which rating agency must register

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

No precise information has been provided at this respect. As a general comment, it has been stressed that only negative, and not positive, information is circulated. The access to this information is limited (for instance, courts cannot access this information).

According to Axesor:

- No rating agency rates the entrepreneur as an individual, but the path of the entrepreneur is taken into account to assess the company. This path is considered as positive, unless the entrepreneur has been through legal issues (previous company): if the employer has acted honestly, the previous insolvency does not penalize the new rating of the new company
- If after the insolvency proceedings the company returns to act normally: once closed the insolvency proceedings, the analysis starts from scratch, with the new conditions of the new activity. For instance, whether the debt re-structuring is considered as viable, the rating is made on the company as it after this new agreement. Similarly, if the agreement is consistent (reduction of debt, restructuring of long-term debt...), what is taken into account are the present and future projections, not the past path of the company.

Output 6

Sources

Interviews

Nr	Date	Name of person interviewed	Organisation	Position	Contact details
1	14/02/2014	Luis Gonzaga Serrano De Toledo	Spanish ministry of justice	Member State expert on bankruptcy and second chance suggested by the EC and Head of the State Legal Service in Burgos	l.serrano@dse.mju.es 0034 947479418 0034 947477466
2	14/02/2014	Matilde Cuena Casas	Universidad Complutense de Madrid	University professor	m.cuena@telefonica.net 0034 607668079
3	18/02/2014	Antonio Fernández	Ministry of Industry, Energy	Deputy Director General of SME support	afernandez@minetur.es

Nr	Date	Name of person interviewed	Organisation	Position	Contact details
		Ecker	and Tourism – DG of Industry and SME		0034 913492231
4	09/02/2014	Jose María Fernández Seijoo	Commercial Court nr. 3 of Barcelona	Magistrate	anatoliseijo@telefonica.net 0034 935549692 0034 606971911
5	14/02/2014	Santiago Senent Martínez	Commercial Court of Madrid	Magistrate	santiago.senent@madrid.org 0034 620890479
6	12/02/2014	Julián Villalba	Axesor	Rating Analysts Director	0034 958750500 0034 958750321
7	13/02/2014	Antonia María Choclán Gamez	SME “Choclan servicios inmobiliarios”	Entrepreneur/SME	choclan99@hotmail.com 0034 616923501
8	13/02/2014	Carlos Alonso del Linaje Garcia	Register of Economists	Member of the register	calonsol@laquesis.es 0034 947 262 590
9	21/02/2014	Julio Fuentes	Ministry of Justice	-	julio.fuentes@mjusticia.es 0034 913904425
10	13/02/2014	Alfredo González-Panizo Tamargo	Ministry of Economy and Competitiveness	Technical General Secretary	alfredo.gonzalez@mineco.es 0034 915837564/

Documents consulted

Name of document, author/organisation, year of publication
Matilde Cuenca Casas, Ley de emprendedores y exoneración de deudas o fresh start, Anuario de Derecho Concursal num.31/2014, Editorial Civitas, SA
Matilde Cuenca Casas, Préstamo responsable, información crediticia y protección de datos personales http://www.elnotario.es/index.php/especial-50-numeros-de-ensxxi/83-2r-la-revista-cientifica-de-el-notario-del-siglo-xxi
For other relevant documents: please see list of websites consulted

Websites consulted

Name of website	Link to website
Abogacia Espanola – Consejo General	http://www.abogacia.es/2013/11/13/el-acuerdo-extrajudicial-de-pagos-y-la-mediacion-concursal-en-la-ley-de-emprendedores/
Garrigues	http://www.garrigues.com/es/Publicaciones/Novidades/Documents/Novidades-RI-5-2013.pdf
Uria y Menendez	http://www.uria.com/en/publicaciones/articulos-juridicos.html?id=3927&pub=Publicacion&tipo
Spanish Official gazette	www.boe.es
European Commission	http://europa.eu/youreurope/business/funding-grants/access-to-finance/index_en.htm#spain_en_handling-financial-difficulties
Cuatrecasas	http://www.cuatrecasas-startups.com/startups/es/actualidad-legal/novedades-mercantiles-y-concursales-contenidas-en-la-ley-242013-de-apoyo-los

31 Sweden

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	0
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	0.5
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	48
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	1

Output 4 *Overview of how “prevention” is addressed in the country.*

4.1 Which measures are taken in your country to address this issue?

In Sweden, the only practical prevention measure (Företagsakuten) is a free-of-charge consultancy service to SME's in financial distress. Business Region Göteborg introduced this regional initiative in 1997 and similar services are now in place in 6 regions in total. Tillväxtverket are currently supporting the expansion of the initiative.

4.2 Which institutions exist that take care of this issue?

These services are mainly functioning under the auspices of local authorities.

4.3 What are the costs involved?

Each prevention case at Företagsakuten gets 1 consultant attached and requires 10 hours of consultancy work (5 hours personal consulting and 5 hours for preparation).

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

All the sources consulted on prevention measures point towards “awareness” of the company as the most critical issue to be tackled. In most cases, it simply takes the entrepreneur too long to realize that they need help, and for many it has become too late.

4.5 How many companies have gone through “prevention” measures, and how many survived?

The only reliable figures are from the original Företagsakuten by Business Region Göteborg. The concrete numbers are: 2013 – 130 cases (80 survivors so far and 216 jobs saved), 2012 – 153 cases, 2011 – 119 cases, 2010 – 132 cases. A survey from 2011 indicates that 60% of companies that asked Företagsakuten for help between 2005 and 2009 are still in business.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

Sweden does not have special measures to promote second chance for honest bankrupt entrepreneurs. However, the question has political attention as a white paper is currently under preparation on this topic, as part of committee work. It has not been possible to retrieve this white paper or even the working title. There are a number of support measures supporting start-ups in general, which do not “discriminate” against entrepreneurs with previous bankruptcies.

4.7 Which institutions exist that take care of this issue?

Sweden does not have special measures to promote second chance.

4.8 What are the costs involved?

Sweden does not have special measures to promote second chance.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

The most critical issue in terms of second chance is to rebuild trustworthiness, which in many cases can be difficult, as a bankruptcy is a “stigmatizing” event. It is important as an entrepreneur that a previous bankruptcy was due to circumstances that one could not prevent or predict.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

Sweden does not have special measures to promote second chance.

Name of PCSB	Location/address	Main use of scores ⁵²
The following credit scoring bureaus are authorized to keep all Swedish citizens over the age of 15 in their register, whether you have credit remarks or not.		
Bisnode Kredit AB	Stockholm	Information for paying clients
Business Check I Sverige AB	Göteborg	Information for paying clients
CreditSafe I Sverige AB	Göteborg	Information for paying clients
Decidas Info AB	Göteborg	Information for paying clients
DoubleCheck AB	Danderyd	Information for paying clients
Dun & Bradstreet Sverige AB	Sundbyberg	Information for paying clients
Intrum Justitia Sverige AB	Stockholm	Information for paying clients / Debt recovery purposes
Sergel Kredittjänster AB	Stockholm	Debt recovery purposes
Syne AB	Malmö	Information for paying clients
UC AB	Stockholm	Information for paying clients
The following credit scoring bureaus are also authorized to operate in Sweden		
Atradius filial Sverige	Stockholm	Credit insurance
Eko Företagsupplysningar AB	Stockholm	N/A
Euler Hermes Sverige filial	Stockholm	Debt recovery purposes
Likviditetskontroll-Kreditfakta KB	Norköping	N/A
Neufeld's Creditinformation	Hägersten	Information for paying clients
PayEx Finance AB	Visby	Debt recovery purposes
Svefo Sverige AB	Göteborg	Information for paying clients / Debt recovery purposes
Transcom Credit Management Services AB	Karlskoga	Information for paying clients / Debt recovery purposes
Trejo information AB	Stockholm	N/A
Yellow-Belly Decision Systems AB	Stockholm	N/A

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Relevant for newly registered companies/entrepreneurs is:

- History regarding previous bankruptcies as owner or board member.
- declared income.
- ownership of real estate.
- remarks regarding non-payment.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

The operation of PCSB in Sweden requires a permit from the Data Inspection Board, which is the regulatory and supervisory for PCSBs in Sweden. The Data Inspection Board exercises supervision over compliance with respect to the applicable framework, including the Credit Information Act. The Data Inspection Board publish a list of authorized credit rating companies. The list can be found here (In Swedish): <http://www.datainspektionen.se/lagar-och-regler/kreditupplysningslagen/gallande-tillstand/>

⁵² How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

The rules with regard to deleting debtors from databases vary depending on the corporate category:

- For sole traders / individuals: 3 years after bankruptcy.
- For trading partnership or limited partnership: 5 years after bankruptcy.
- For limited company: 5 years after bankruptcy for the relevant board members and CEOs.

Output 6

Sources

Interviews

Date	Name of person interviewed	Organisation	Position	Contact details
26/03/14	Christian Bergqvist	Wistrands Lawyers	Partner	Christian.bergqvist@wistrand.se +46 850720081
26/03/14	Lars Jagrén	Företagarna (Federation of Swedish Industry)	Chief Economist	Lars.jagren@foretagarna.se +46 704971760
25/03/14	Roland Sigbladh	UC AB	Marketing Director	Roland.sigbladh@uc.se +46 86709139
14/03/14	Sonja Kollberg	Företagsakuten, Business Region Göteborg	Project Manager	Sonja.kollberg@businessregion.se +46 313676203
18/03/14	Wilhelm Von Seth	Tillväxtverket (Swedish Agency for Economic and Regional Growth)	Head of Unit, Development and Regional Growth	Wilhelm.vonseth@tillvaxtverket.se +46 86819489
31/03/14	Kerstin Ekstedt	Göteborg District Court	Judge in Bankruptcy and Debt	Kerstin.ekstedt@dom.se +46 317011103

Documents consulted

Name of document, author/organisation, year of publication
Swedish Bankruptcy Act (1987:672)
Swedish Debt Rescheduling Act (2006:548)
Swedish Company Reconstruction Act (1996:764)
Swedish Credit Information Act (1973:1173)

Websites consulted

Name of website	Link to website
Sweden's Riksdag website	http://www.riksdagen.se/en/Documents-and-laws/
Swedish Data Inspection Board website	http://www.datainspektionen.se/
Swedish Agency for Economic and Regional Growth website	http://www.tillvaxtverket.se/
Federation of Swedish Industry website	http://www.foretagarna.se/
Företagsakuten website	http://www.foretagsakuten.se/

32 Turkey

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are not compulsory.	1
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	5
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	0
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	120
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part of the bankruptcy court procedures?	1: yes; 0: no.	1
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	0.5
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	0
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	1
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	0
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	60
8. Are there certain categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	1: there are certain assets exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	0
9. Are there other consequences of	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial	1

Question/issue	Options	Answer
declaring bankruptcy other than financial (e.g. losing certain rights)?	only.	

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

There are only in-court measures regarding with prevention. There are 3 types of “in-court actions”, which are suspension of bankruptcy, arrangement of bankruptcy and debt restructuring.

4.2 Which institutions exist that take care of this issue?

Therefore, only courts are involved in this issue.

4.3 What are the costs involved?

For each prevention case, 3 to 10 persons are assigned and the length is around 5 months.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

Assessing and analysing financial tables are crucial. Organization and workflow schemes must be determined correctly. In addition, equity of the firm should be assessed so that banks give credits more efficiently.

4.5 How many companies have gone through “prevention” measures, and how many survived?

The percentage of surviving companies dramatically low in Turkey, namely 1% of companies can survive.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

There is no legislation or measure taken to address second chance.

4.7 Which institutions exists that take care of this issue?

Therefore, there is no institution to take care of this issue.

4.8 What are the costs involved?

There is no legislation or measure taken to address second chance.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

There is no legislation or measure taken to address second chance.

4.10 How many companies that were liquidated/bankrupted have profited from “second chance” measures?

There is no legislation or measure taken to address second chance.

Name of PCSB /BANKS	Location/address	Main use of scores ⁵³
AKBANK T.A.Ş.	SABANCI CENTER 34330 4 LEVENT/ İSTANBUL	To assess financial health
TÜRKİYE İŞ BANKASI A.Ş..	İŞ KULELERİ 34330 LEVENT/İSTANBUL	To assess financial health
TÜRKİYE GARANTİ BANKASI A.Ş.	LEVENT, NİSPETİYE MAH. AYTAR CAD. NO:2 34340 BEŞİKTAŞ/ İSTANBUL	To assess financial health
T.C. ZIRAAT BANKASI A.Ş.	DOĞANBEY MAH. ATATÜRK BULVARI NO:8 ULUS/ANKARA	To assess financial health
FINANSBANK A.Ş.	BÜYÜKDERE CADDESİ NO:123 80300 MECİDİYEKÖY/ İSTANBUL	To assess financial health
ŞEKERBANK T.A.Ş.	BÜYÜKDERE CADDESİ NO:171 A BLOK ESENTEPE-MECİDİYEKÖY-İSTANBUL	To assess financial health
DENİZBANK A.Ş.	BÜYÜKDERE CAD.NO:106 34394 ESENTEPE/ İSTANBUL	To assess financial health
TÜRK EKONOMİ BANKASI A.Ş.	TEB KAMPÜS C VE D BLOK, SARAY MAHALLESİ, SOKULLU CADDESİ, NO:7A-7B ÜMRANIYE İSTANBUL 34768	To assess financial health
YAPI VE KREDİ BANKASI A.Ş.	YAPI KREDİ PLAZA D BLOK BÜYÜKDERE CADDESİ 80620 LEVENT/ İSTANBUL	To assess financial health
TÜRKİYE HALK BANKASI A.Ş.	BARBAROS MAHALLESİ, ŞEBBOY SOKAK NO:4 34746 ATAŞEHİR- İSTANBUL	To assess financial health

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Criteria when assessing the creditworthiness of entrepreneurs are market intelligence, database for financial history and debit / credit health.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

The banks in Turkey are inspected by the Banking Regulation and Supervision Agency. The inspectors from this agency go to the banks regularly and check the banking activities. On the other hand the Turkish Competition Authority sets the interest rates. However these Public Agencies do not interfere and regulate the Banks on the credit procedures and to whom they give credit. The regulatory standard Basel III used in Europe on Banking Supervision will take effect in Turkish banking system however the start date is not determined.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

With the order of Bankruptcy and Enforcement Law, the Central Bank has to keep the records of debtors in the database to which the banks have an online access. Depending on payment conditions of the debtors, the data stays in the system as long as 10 years or can be deleted with the order of the court before that period. If the bankrupted entrepreneur agrees to pay the debt within a payment plan, the court may agree to grant an insolvency certificate and orders the Central

⁵³ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

Bank to delete the data. Even though the banks use the database of Central Bank to get information, they may or may not update their own database correspondingly.

Output 6

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
24.03.2014	Ozlem Yesilyurt	Yesilyurt Law & Consultancy	Lawyer	ozlem_yes@hotmail.com
25.03.2014	Erhan Unal	Türkiye İş Bankası	Regional Director (Central Anatolia)	erhan.unal@isbank.com.tr
27.03.2014	Sadan Tutumlu	ERA Law & Consultancy	Lawyer	sadantutumlu@gmail.com
31.03.2014	Dursun Coskuncelebi	The Ministry of Customs and Trade	DG for Domestic Trade	neclasa@gtb.gov.tr
31.03.2014	Senol Sancak	The Ministry of Customs and Trade	Customs and Domestic Trade Specialist	s.sancak@gtb.gov.tr

Documents consulted

Name of document, author/organisation, year of publication

Websites consulted

Name of website	Link to website
Banking Regulation and Supervision Agency	https://www.bddk.org.tr/WebSitesi/turkce/Kuruluslar/Bankalar/Bankalar.aspx
SME Strategy and Action Plan	http://www.sanayi.gov.tr/Files/Documents/KOSGEB_Katalog.pdf
A new European approach to business failure and insolvency	http://ec.europa.eu/justice/civil/files/insolvency-comm_en.pdf

33 United Kingdom

Output 1 *Interview notes*
Available upon request.

Output 2 *Update of 2012 interim report, four questions about second chance for honest bankrupt entrepreneurs*

Questions	Options	Answer
1. Is a differentiation made in the treatment of honest and fraudulent entrepreneurs in the bankruptcy process?	1: yes; 0: no.	1 ⁵⁴
2. Are there specific fast-track or less expensive bankruptcy procedures for SMEs?	1: yes; 0: no.	0 UK policy is geared towards ensuring efficiency in procedures regardless of the size of the firm. However, sole traders and self employed persons with assets of less than £300 and debts less than £15,000 can through an authorised debt advisor apply for a Debt Relief Order from an officer of the bankruptcy court (the application costs £90). If successful, creditors can't recover their money without the court's permission and individuals are discharged from their debts after a period of 12 months
3. Is there a possibility of full discharge after bankruptcy?	1: special discharge proceedings exist and are compulsory; 0.5: discharge proceedings are	1 ⁵⁵

⁵⁴ Directors of companies are presumed to operate 'honestly' unless found guilty of fraudulent or criminal activity under the Company Directors Disqualifications Act 1986. Directors that are found guilty may be disqualified for a period of 2 to 15 years from (1) acting as a director of a company (2) taking part, directly or indirectly, in the promotion, formation or management of a company (3) being a liquidator or an administrator of a company (4) being a receiver or manager of a company's property. In addition, if fraudulent or criminal activity is identified, the Directors may be made personally liable for the debts the company has incurred. Disqualified directors are registered in a database hosted by Companies House. Where the entrepreneur is not a director, ie. trading on their own account or in partnership, and becomes bankrupt a similar enforcement regime exists where there is evidence of wrongdoing. A Bankruptcy Restrictions Order (BRO) of between 2 and 15 years can be made against an individual which primarily (1) requires them to disclose their status as a person subject to bankruptcy restrictions to a credit provider if they wish to get credit of £500 or more. (2) requires them to disclose to those they wish to do business with the name (or trading style) under which they were made bankrupt. (3) and prohibits them from acting as the director of a company or taking part in its promotion, formation or management unless the court gives its permission.

⁵⁵ The concept of discharge only applies to individuals with a view to relieving them of their debts. In relation to individual entrepreneurs such as sole traders and self employed, the Enterprise Act 2002 provides for automatic full discharge after bankruptcy at the end of a period of one year beginning with the date on which the bankruptcy commences unless the courts are notified that certain conditions have not been met or illegal activity identified. The notion of discharge does not apply to companies as repayment of debt is linked to the legal and financial arrangements around the corporate structure and not to individuals. However, when a company is subject to an Individual Voluntary Arrangement (IVA) or a Company Voluntary Agreement (CVA), the company is 'discharged' when the conditions of a IVA / CVA have been met although in this case the aim is to rescue the firm rather than liquidate it (see below). During administration proceedings, a company is 'discharged' from its financial obligations to repay its creditors when it has fulfilled its obligations to its creditors in line with the course taken by the administrator / trustee. In this case, the initial aim is to rescue the company with the option of liquidation taken only as a last resort. In both of these cases, if a director has *not* been found guilty of fraudulent or criminal behaviour, s/he is free to set-up another company as a director. This is the case even during the period of implementation of a CVA or when a firm is subject to administration or liquidation proceedings.

Questions	Options	Answer
	not compulsory.	
4. What is the period of time to obtain full discharge? (This period starts when liquidation is official.) Are there exceptions and if so in what circumstances (e.g. distinction between honest and dishonest bankrupts)?	The average time of discharge is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12 ⁵⁶
5. Is discharge automatic in the sense that there is no need to re-apply to a court?	1: yes; 0: no.	1 Where discharge applies to individual entrepreneurs, discharge is automatic after 12 months. The concept of discharges does not apply to companies
6. How long does a negative rating remain with a bankrupt entrepreneur after discharge?	The average time companies remain with a negative rating is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	There is no legislation on how long a negative credit rating remains with companies. However, practice dictates that credit reference agencies provide data on individuals that have been made bankrupt and companies that have been subject to insolvency proceedings for up to six years after bankruptcy / insolvency has been filed (72 months).
7. Does an entrepreneur get deleted from public/private credit databases after discharge?	1: the entrepreneur is deleted from the database within one year after discharge; 0.5: the entrepreneur is deleted from the database between 1-2 years after discharge; 0: otherwise.	0

Output 3

Update on the situation regarding bankruptcy and second chance in the 28 Member States and the five partner countries

Question/issue	Options	Answer
1. Are courts perceived to be neutral, i.e. not in favour of debtors or creditors?	1: courts are neutral; 0: courts are not neutral.	1
2. Is a repayment plan part	1: yes;	1 ⁵⁷

⁵⁶ For individual entrepreneurs, the legally designated period prior to discharge is 12 months (unless there is the court is presented with evidence to extend or shorten this period). Where a natural person is subject to bankruptcy, an Income Payment Order may be obtained prior to discharge which requires the individual to make a contribution from any surplus they have to the bankruptcy creditors for a period of 36 months. The concept of discharge does not apply to companies. However, companies that are subject to a IVA / CVA are 'discharged' when the conditions of the IVA / CVA have been met. This may be between a few months up to five years (with the time frame normally being between 3 months to 3 years). If a company goes into administration, the proceedings last for a legally designated period of up to 12 months unless the administrator has taken steps to request an extension (after this period further action is taken e.g. liquidation).

Question/issue	Options	Answer
of the bankruptcy court procedures?	0: no.	
3. What is the length of time for debt plan repayment?	1: the time for debt plan repayment is less than 12 months; 0.5: the length of time is between 12 and 36 months; 0: the length of time is longer than 36 months.	3-60 (score 0)
4. Is there separation of judicial and administrative roles in the bankruptcy procedure?	1: judicial and administrative roles are separated; 0: judicial and administrative roles are not separated.	1 ⁵⁸
5. Is there a (compulsory) creditors' committee?	1: creditor's committees exist and are compulsory; 0.5: creditor's committees are not compulsory. 0: creditor's committees do not exist	0.5
6. Is there tax legislation increasing the recovery rate of the creditors?	1: tax legislation increasing the recovery increasing the recovery of creditors exist; 0: tax legislation increasing the recovery increasing the recovery of creditors does not exist.	1
7. What is the average time of bankruptcy procedures? "Bankruptcy procedure" runs from the moment when bankruptcy proceedings are formally opened by the court until a decision is taken on either to liquidate the assets of the debtor and/or a repayment plan is confirmed. It does not include the remaining period until discharge.	The average time of bankruptcy procedures is calculated as the average of length mentioned by the interviewees. Please type the average number of months in the answer column.	12 Administration procedures last for a legally designated period of up to 12 months and can only be extended if the administrator has taken the necessary steps to request an extension from the courts. During this time, the administrator is initially tasked to rescue the firm and engage with creditors to establish an appropriate repayment plan. If this cannot be realised, the company is sold or liquidated.
8. Are there certain	1: there are certain assets	1 ⁵⁹

⁵⁷ If an IVA or CVA has been put in place a repayment schedule will be a central feature of this. If a firm goes into administration, the administrator will take steps to see if the firm can be rescued (in which case a repayment schedule may be established) or if this is not possible the firm is sold or liquidated and final repayments are made based on money obtained or sale of assets. In addition, an Income Payment Order which relates to natural persons is also support by a repayment schedule).

⁵⁸ Judicial and administrative roles are separated. UK insolvency proceedings while overseen by the courts tend not to involve the judiciary at all unless cases are subject to legal disputes. 'On the job' management of IVAs, CVAs and administration and liquidation proceedings are managed outside of court by licensed insolvency practitioners (this group of professionals are normally trained accountants)

Question/issue	Options	Answer
categories of assets which are exempted from bankruptcy proceedings (e.g. a residential house)?	exempted from bankruptcy proceedings; 0: there are no categories of assets exempted from bankruptcy proceedings.	
9. Are there other consequences of declaring bankruptcy other than financial (e.g. losing certain rights)?	1: declaring bankruptcy only has financial consequences; 0: declaring bankruptcy has more consequences than financial only.	0 ⁶⁰

Output 4

Overview of how “prevention” is addressed in the country.

4.1 Which measures are taken in your country to address this issue?

Informally (with or without the assistance of a licensed insolvency practitioner / accountant / bank advisor / business association) seeking support from creditors such as banks or identifying viable financing alternatives. Normally, this option is made available to companies through interventions made by banks as a result of data collected through their own early warning monitoring systems. At this stage, there are relatively strong possibilities to rescue companies in distress if directors wish to cooperate with their creditors. Compared to other measures, this measure is the most successful in rescuing companies and while data are not available UK authorities have estimated that up to 50% of companies are rescued through informal bank interventions. If companies do not cooperate with their creditors, formal intervention may be required.

Formally, with the legally required involvement of a licensed insolvency practitioner, submitting to a court an application for an Individual Voluntary Arrangements (IVA – this relates to sole traders or self employments persons) or a Company Voluntary Arrangement (CVA – this relates to companies) and then through out of court processes agreeing and administering its repayment schedule. The main aim of these tools is to avoid personal bankruptcy or business insolvency. The Insolvency Service considered these tools as potentially effective but unfortunately only a small number are opted for.

Before the IVA / CVA repayment schedule is submitted to a court, an out of court meeting of creditors takes place to agree the remit of the IVA/ CVA and its repayment schedule. The creditors are required to vote (in person or by proxy) to reach agreement on the IVA/ CVA and 75% of votes are required to approve the proposal. The proportion of votes each creditor holds relates to the amount of money owed to them. Before this option is pursued, it needs to be determined by the insolvency practitioner what will change in the performance of the company in its ability to pay its creditors. If an IVA / CVA is a viable option, it should (in theory) create a win-win situation for both creditors and debtors in that the firm’s ability to pay its debts is enhanced, creditors have a better chance of securing repayment of their loans and bankruptcy / insolvency is avoided. The IVA / CVA repayment schedule is overseen by the insolvency practitioner. The director remains in control of

⁵⁹ In relation to individuals, property that fulfils basic household needs and items that are required to remain in work such as tools of trade (and this may include vehicles) are exempt. Within three years, an insolvency practitioner (trustee) may seek to realise the interest in a marital home). In relation to companies, there are no categories of property that are exempt. However, directors do not have personal liability unless fraud or criminal activity is identified

⁶⁰ In relation to individuals (not companies), the consequences in addition to financial consequences mainly relate to permanent or for a period of time disqualification from positions of public office or a role that requires financial oversight. For example, an individual after declaring bankruptcy may not become a Member of Parliament or Member of the House of Lords or hold a position in office in local government. Individuals may be disqualified from certain positions involving financial management activities such as a trustee of a charity or fund. Individuals are disqualified from practising as an insolvency practitioner or from becoming a director of a company.

the company and must comply with the repayment schedule. The effect of a IVA / CVA is creditors cannot commence (legal) action against the firm to recover money owing, unless the company fails to fulfil the terms of the IVA / CVA. Creditors can not apply to the courts to have the firm wound-up unless the firm does not comply with the IVA /CVA.

With the legally required involvement of a licensed insolvency practitioner, submission of an administrative order to a court. Normally, the selection of this option recognises that the best solution for a company is for it to be taken over by an administrator. However, for a 10 day period the administrative order permits the directors to remain in control of the company and the firm is legally protected from its creditors. During this 10 day period, an insolvency practitioner may assess if an alternative solution can be found e.g. part of the company could be rescued and a repayment schedule put in place (while some of its assets sold off). After a 10 day period, if a solution is not found, the administrator (an insolvency practitioner) takes control of the firm. The administrator is initially tasked to seek company rescue (as a going concern). If this first objective is not possible, and if a better result for the creditors could be obtained than through an immediate winding-up of the company, the administrator may pursue an alternative route possibly trading on for a while and selling the business/businesses as a going concern. If these two objectives are not possible, the administrator can realise property (sell assets) to make a distribution to creditors.

4.2 Which institutions exist that take care of this issue?

In relation to procedure number one above, the institutions involved in early informal prevention include banks and other creditors that may support restructuring. During recent years, the banks have taken a robust stance in engaging with companies in distress. However, companies may choose to seek advice from professionals such as accountants or insolvency practitioners or business associations. Individual entrepreneurs may seek advice from the citizen advice bureau or the debt advice sector.

In relation to procedures number two and three above, licensed insolvency practitioners are legally required to oversee these procedures. In addition, banks and other creditors are involved in the process although mainly through out of court procedures. The courts are also a stakeholder although they tend to take a neutral and hands-off approach unless legal disputes feature in cases (depending on the size of the working capital a county court or a high court). In addition, HM Revenue and Customs is a stakeholder in the proceedings as taxes are often detected as unpaid. However, HRMC often takes a neutral position in bankruptcy proceedings.

4.3 What are the costs involved?

An IVA / CVA can take two to four weeks to design and reach agreement between creditors and debtors. An individual insolvency practitioner may charge £10,000 to £15,000. However, as a result of the firm's ability to pay, a discounted rate may be offered. Small subsequent charges will be made for overseeing the administration of the IVA / CVA and this depends on the duration of the repayment schedule.

An insolvency practitioner may charge £2000 for the submission of an administrative order with some initial advice. (Additional advice after submission of the order could be charged in the region of £5000 to £10,000 and going beyond prevention procedures this may lead to appointment as the firm's administrator and potentially this may offer greater rewards).

There is no legal requirement to request the services of an insolvency solicitor. However, if a solicitor is engaged a fee of £3000 to £5000 may be charged to review the work of an insolvency practitioner prior to the submission of a CVA to court. Similarly, a fee of £3000 to £5000 may be charged to review steps taken by the insolvency practitioner to commence and oversee

administration procedures. However, if there is a legal dispute, an insolvency solicitor is likely to be engaged, however, the costs for legal representation services vary tremendously depending on the complexity of cases which can last from a few months to a few years.

4.4 Which are the most critical issues to be tackled for this issue to be successfully handled?

Education of directors is seen as the most critical issue. This is in terms of gaining understanding of responsible lending, financial planning, budget design and management, and management of cash flow. In addition, encouraging directors to engage with banks during the period when they are initially invited to discuss their financial problems is seen as a key issue.

Moreover, in the UK, it is considered that there is relatively low stigma of bankruptcy / business insolvency and incompetent, careless or irresponsible behaviour of directors with regard to financial management have been noted. In addition, entrepreneurs tend to seek professional advice from insolvency practitioners at a late stage and often it is too late to restructure the firm to produce a sustainable outcome e.g. with the assistance of a CVA.

4.5 How many companies have gone through “prevention” measures, and how many survived?

In terms of informal procedures, although concrete data are not available, the Insolvency Service has received some evidence to suggest that up to 50% of companies are rescued through initial support offered by banks. As interventions occur during the initial stages of distress and in recent banks have taken a proactive stance, the timing and form of this type of intervention is seen as effective and efficient.

CVAs are infrequently used although these are considered by the Insolvency Service to be a potentially effective tool when they are selected and satisfactorily completed. A piece of research undertaken by A. Walters and S. Frisby for the Insolvency Service confirms this finding as a result of analysis of a sample of 547 CVAs in 2006. The research concluded that that the ‘CVA procedure is certainly effective in terms of rescuing companies and delivering superior returns where the arrangement is not prematurely terminated’. It was found that 27% of CVAs fell into this category whereas the remaining CVAs were terminated for a wide variety of different reasons.

Data has not been identified that indicates the proportion of companies that are rescued as a result of entering administration proceedings. However, interviews with insolvency practitioners indicate that majority of firms that enter administration proceedings are not rescued. It is more likely that the valuable aspects of the firm are sold off or liquidated.

Overview of how “post bankruptcy/second chance” is addressed in the country

4.6 Which measures are taken in your country to address this issue?

In the UK, there are robust legal measures in place to encourage second chance for entrepreneurs. For example, the Enterprise Act 2002 has reduced the automatic discharge period to 12 months for individual entrepreneurs such as sole traders (as long as the courts do not receive information to suggest that the individual has not met the conditions expected of him/her). Individuals are automatically discharged from their debts after 12 months. However, during the discharge period, individual entrepreneurs are free to continue in business although not as a director of a company (given that this would offer limited liability).

Moreover, the concept of discharge does not apply to companies. This means that even if a company is subject to a CVA or administration proceedings, its directors are free to set-up other companies. However, this only applies if a director has not been identified in participating in criminal or fraudulent behaviour.

However, there are no bodies that specifically provide business support services for directors of previously insolvent companies. However, a wide range of government services, chambers of commerce and business associations are available to businesses at all stages of development.

4.7 Which institutions exist that take care of this issue?

There are no specific institutions that engage in second chance.

4.8 What are the costs involved?

There are no specific business support services provided in the area of second chance, so no costs can be estimated.

4.9 Which are the most critical issues to be tackled for this issue to be successfully handled?

See the above section on prevention with regard to education of directors.

4.10 How many companies that were liquidated/bankrupted have profited from "second chance" measures?

There are no data available on how many bankrupt companies have profited from "second chance" measures.

Output 5

Private Credit Rating Agencies in the country and national procedures related

Name of PCSB	Location/address	Main use of scores ⁶¹
Equifax Ltd Credit File Advice Centre	PO Box 1140 Bradford BD1 5US 0844 335 0550 www.equifax.co.uk	The role of credit reference agencies (CRA) is to make it possible for lenders to make fair, consistent, responsible and profitable lending decisions. Credit referencing also helps lenders guard against fraud. Users of credit reference reports can make judgements on whether they may be exposed to bad debt, establish credit limits, monitor payment delays, take action in advance, minimise risks etc. Most banks and other credit-granting organisations subscribe to one or more of these organisations to ensure the quality of their lending. This includes companies who sell goods or services on credit such as utility companies. Subscribing organisations are expected to provide relevant data to maintain the common data pool. Moreover, the government ran a consultation in February 2014 with a view to assessing feedback on a proposal to gauge whether banks should be obliged to share detailed data on SMEs with Credit Reference Agencies. This is to ensure that there is a level playing field for creditors in terms of access to information on potential business clients.
Callcredit Plc	PO Box 491 Leeds LS3 1WZ 0870 060 1414 www.callcredit.co.uk	
Experian Ltd	Customer Support Centre PO Box 8000 Nottingham NG80 7WF 0844 481 8000 www.experian.co.uk	

5.1 What criteria do the respective PCSBs follow when assessing the creditworthiness of entrepreneurs?

Credit Reference Agencies present business credit reference scores in reports to mainly allow creditors to determine the credit worthiness of potential and current business clients. The report

⁶¹ How is the credit score used once it is produced e.g., given back to client who paid for it, used for investment decision, used for other sector research, used for consulting a client etc.

indicates the directors and company structure. The reports contain a credit reference score and a corresponding risk assessment based on financial management performance. A score history is provided. Data is collected from sales ledgers to indicate the payment performance history of invoices. Profit and loss and similar information are collected from company accounts submitted to Companies House. Any mortgages are indicated. Any county or high court judgements are indicated if for example a creditor has previously taken legal action on financial matters.

5.2 Are PCSBs regulated in your country, and how? What is the regulatory framework?

Credit Reference Agencies are indicated as one of the listed type of organisations that need to comply with the Data Protection Act. The principles of the Act are: Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless (a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

5.3 What rules with regard to deleting debtors from databases exist? How do they get in/get out of the database?

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed. Personal data shall be accurate and, where necessary, kept up to date. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes. Personal data shall be processed in accordance with the rights of data subjects under this Act. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data The Information Commissioner's Office <http://ico.org.uk/> ensures that the CRAs comply with the Data Protection Act and usually deals with data protection complaints about CRAs in the UK. Business may write to Credit Reference Agencies to have access to their information. If errors in the information are identified, they may request to have the information updated. Certain complaints about CRAs can also be sent to the Financial Ombudsman Service <http://www.financial-ombudsman.org.uk/>. In addition, Credit Reference Agencies follow codes of conduct overseen by the associations they belong to e.g. Institute of Credit Management.

Output 6

Sources

Date	Name of person interviewed	Organisation	Position	Contact details
21/03/2014	Dean Beale	Insolvency Service	Head of Policy	Dean.Beale@insolvency.gsi.gov.uk
20/03/2014	John Francis	Association of Business Recovery Professionals	Technical Director	John.Francis@r3.org.uk
19/20/2014	Simeon Gilchrist	Edwin Coe LLP	Insolvency Solicitor	simeon.gilchrist@edwincoe.com
19/20/2014	Tyrone Courtman	PKF Cooper Parry	Licenced Insolvency Practitioner	tyronec@pkfcooperparry.com

Documents consulted

Name of document, author/organisation, year of publication
Insolvency Act 1986
Enterprise Act 2002
Company Directors Disqualifications Act 1986
Insolvency Service (2003) Administration (A Guide) www.insolvency.gsi.gov.uk
Walters & S, Frisby (2010) Preliminary Report to the Insolvency Service into Outcomes in Company Voluntary Arrangements

Websites consulted

Name of website	Link to website
Alternative Corporate Insolvency Proceedings – National Archives	http://webarchive.nationalarchives.gov.uk/http://www.insolvency.gov.uk/free-domofinformation/technical/alternativecorporateinsolvency.htm
Information Commissioners Office	http://ico.org.uk/for_the_public/topic_specific_guides/credit
Competition in Banking. Improving Access to SME Credit Data. Gov.UK	https://www.gov.uk/government/consultations/competition-in-banking-improving-access-to-sme-credit-data
The Credit Reference Agency Explained (Experian)	http://www.experian.co.uk/downloads/consumer/creditRefAgencyExplained.pdf
How to reclaim the VAT. HM Revenue and Customs	http://www.hmrc.gov.uk/vat/managing/reclaiming/bad-debts.htm
Disqualified Director's Register – Companies House	http://wck2.companieshouse.gov.uk/dirsec
Credit Agreements – Data Sharing – Information Commissioners Office	http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Practical_application/CREDIT_%20AGREEMENTS%20-%20DATA_%20SHARING.ashx



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