1. Chapter 1: Introduction to JCOERE Report 1

1.1 Introduction

Globalisation has seen the rise of the multi-national corporation. Now business can be done between companies separated by vast distances, crossing many jurisdictions. This is accompanied by an inevitable complication of modern-day business laws, particularly when these complex, interwoven business connections are met by financial difficulties or the insolvency of one or more of the companies involved. As the European Union continues to integrate further while containing different jurisdictions, these issues are both more complex and more demanding in a European setting. It is therefore vital that there is an effective and efficient means of resolving cross-border insolvencies in Europe. Similarly it is important to include a legal framework which aims to facilitate the restructuring of viable companies in order to protect the European economy.[1] It is not surprising, then, that in the last two decades or so we have seen the emergence of considerable discussion around the methodology of co-operation and in turn the development of rules and guidelines aimed at facilitating the effective co-ordination of cross-border insolvency procedures. Similarly, more recently we have seen the emergence of a pan European debate on corporate rescue. The JCOERE project is concerned with cross-border co-operation between courts and practitioners in insolvency, with particular emphasis on rescue processes.

While elsewhere courts devise protocols for co-operation on a case by case basis, the EU undertook to create a harmonised framework within which court-to-court co-operation could occur. The European Insolvency Regulation (Recast)[2] sets out rules that streamline the management of cross-border insolvency law cases and contains a direct obligation for courts to co-operate with both insolvency practitioners and with other courts with a view to maximising the efficiency of insolvency procedures. In addition, there is an obligation on insolvency practitioners to co-operate with each other and with courts in other jurisdictions.[3] The new emphasis on rescue has introduced another complex dimension into this already challenging context.

Insolvency and corporate rescue (or recovery) has recently been the subject matter of focussed policy debate in the European Union, driven by a number of economic and related policy concerns that are described in Chapters 4 and 5 of this Report. There are two strands to the European approach examined by the JCOERE Project, the first concerning the growing demand for harmonisation of various legal principles surrounding corporate rescue and the second placing the new rescue imperative into the context of cross-border co-operation in insolvency law generally. Given the range of legal areas upon which insolvency law touches, and differences in the underlying principles and purposes of rescue, it will be difficult to achieve EU wide harmonisation. As will be seen in the debates described in Chapter 4, and in the subsequent Chapters 6-8 on substantive principles, various Member States are starting from very different points, both in terms of law and underlying theory. For example, some jurisdictions favour a more traditional creditor wealth maximisation model, whilst on the other hand, in other jurisdictions rescue is viewed as a valuable means of preserving jobs and protecting local communities. The new

[1] This sentiment was echoed in a presentation during the INSOL Europe Annual Congress held in Copenhagen in September 2019 by a representative from the International Monetary Fund, Natalia Stetsenko, who said that Preventive Restructuring Frameworks (PRF) are needed for real economic growth and financial sector health. Further, the IMF recommends/prefers early/timely debt restructuring with hybrid mechanisms having minimum court involvement.

[2] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) OJ L 141/19 (the "EIR Recast").

[3] *Ibid.* Articles 42-44 and 56.-57. See further *infra* n. 24

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Preventive Restructuring Directive[4] (the "PRD") is an attempt to harmonise approaches to preventive restructuring frameworks in EU jurisdictions and to introduce such measures in jurisdictions that do not yet have them. However, as will be discussed in this Report, and in particular in Chapter 5, which describes the evolution of the PRD, the scope of derogation and lack of obligatory provisions are unlikely to achieve close harmonisation. Yet the EU must continue with attempts to provide preventive solutions to complex business networks throughout Europe. The continued integration of the single market means that there must be some harmonisation at the end stages of a business entity.

This JCOERE Report 1 identifies substantive and procedural rules in preventive restructuring frameworks (either those which have already been introduced in some European jurisdictions at this point, or in the PRD) which may present challenges to a harmonised approach to implementation and consequently to cross border co-operation. The JCOERE Report 2 will continue to develop the enquiry regarding courts, judicial and administrative authorities, and procedural rules and consider how these factors may affect court-to-court co-operation generally, while also benchmarking the utilisation and awareness of best practice guidelines for court-to-court co-operation in preventive restructuring. As the research has continued, the importance of explaining some of these challenges by reference to legal culture has become clear. This will be addressed in our second Report.

1.2 The Preventive Restructuring Directive (PRD): Benchmarks from other jurisdictions.

The PRD introduces a number of concepts that are new to many Member States.[5] Anecdotal evidence points to the influence of Chapter 11[6] and the UK Scheme of Arrangement[7] in the drafting of the PRD, although neither process is mentioned in the negotiation or in any of the official documentation associated with the PRD. There is an additional European procedure that already closely aligns with the PRD, with the exception of the emphasis which we see in the PRD, on reduced court formality. The Irish Examinership procedure is a preventive restructuring (and insolvency) procedure that has existed since 1990. It was modelled on Chapter 11 of the US Bankruptcy Code, much like the PRD, but without the extensive compromises that accompanied the final version of the PRD.[8] The procedure contains most of the features included in the PRD and adopts a robust approach to rescue. It is also included in Annex A of the EIR Recast so the co-operation obligations apply.

The provisions in the PRD emulate the US Chapter 11 to some extent, but there are stark differences between the provisions of the PRD and the English Scheme of Arrangement, despite anecdotal evidence that the Scheme was an influence in the drafting process of the PRD. Notably, the Scheme does not provide for a cross-class cram-down.[9] The Scheme also does not provide for a moratorium on enforcement actions. In addition, the Scheme is not considered an insolvency procedure deriving as it does from UK Company Law and is therefore not included in Annex A of the EIR Recast. This fact also raises the question as to whether other new preventive restructuring procedures will actually find their way into Annex A, or if they will emulate the UK approach, keeping out of Annex A and avoiding the restrictive Centre of Main Interest (COMI) test attached to recognition under the EIR Recast.[10] If a procedure does not sit within Annex A, then the issue of judicial co-operation under the EIR Recast also

[4] Directive (EU) 2019/1023 of the European Parliament and of the Council of June 20 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and the amending of Directive (EU) 2017/1132 (Directive on restructuring and insolvency) [2019] OJ L 172/18 (the "PRD").
[5] A full discussion of the commentary and context of specific provisions of the PRD is contained in Chapter 4 while a detailed exposition of the PRD and its evolution is contained in Chapter 5 of this Report.
[6] United States Code, Chapter 11, Title 11 (the "Bankruptcy Code").
[7] UK Companies Act 2006, part 26. Irish legislation also includes a Scheme of Arrangement process which is very similar to the UK process. This is included in Part 9 of the Companies Act 2014. See further I Lynch Fannon and G N Murphy, *Corporate Insolvency and Rescue* (2nd edn, Bloomsbury Professional 2012) Chapter 14.
[8] Examinership was part of a series of measures aimed to update and modernise the entire landscape of company law in Ireland in the 1990s. This seems to have been part of an increasingly successful strategy to attract foreign direct investment instituted by successive Irish governments. Although Ireland is a committed member of the EU in terms of legal policy, particularly as regards financial and commercial law and practice, Ireland has always posed the question internally of itself as to whether it is closer to "Boston or Berlin" Jim Dunne, 'Boston or Berlin?' (The Irish Times Jun 23 2001) <https://www.irishtimes.com/news/boston-or-berlin-1.314552> accessed 4th October 2019.
[9] While the Scheme does not provide for a statutory cross-class cram-down, a similar outcome is achieved in practice as noted by Riz Mokal at the INSOL Europe Annual Congress in Copenhagen in September 2019, in the Scheme of Arrangement *the debtor chooses not to propose the inclusion of other creditors which accomplishes the same thing as a cross-class cram-down.*

[10] This idea was floated during a presentation by Walter Nijnens at the Inaugural YANIL Conference at 10 Years in Copenhagen on 24th. September 2019, noting that in order to sit in Annex A, procedures must satisfy a number of conditions, which the PRD does not necessarily require of any newly introduced preventive restructuring frameworks. See further Recital 16 of the EIR Recast 848/2015.

becomes a moot point, following instead the rules under Brussels I or private international laws of recognition and enforcement.[11]

The substantive and procedural issues envisaged as possible obstacles to co-operation in cross-border preventive restructuring may be complex and raise issues fundamental to insolvency law including principles of fairness and the justifications for collective action. However, there is already a wealth of case law emanating from globally significant jurisdictions such as some states in the US, the UK and Singapore that could help to identify solutions. In addition, in taking a critical position regarding preventive restructuring and the complexities inherent in such systems again, the US, and the UK are important jurisdictions.[12] Ireland should be added as a jurisdiction which might provide assistance regarding this latter issue being an EU and EUROZONE jurisdiction that has been doing preventive restructuring with its examinership procedure for 30 years. With three decades to work out the problems, engage in incremental reform, and decide cases that fill in the grey areas, Ireland presents a useful case study for other EU Member States engaging in the drafting of their own preventive restructuring frameworks subsequent to the passing of the PRD. It is from this benchmark that the JCOERE project examines the potential for preventive restructuring frameworks to create difficulties for court-to-court co-operation under the EIR Recast.

1.3 JCOERE Project Summary

As stated, the JCOERE Project, funded by the European Commission's DG Justice Programme (2014-2020),[13] addresses two aspects of the EU's strategy regarding corporate rescue and market integration. The Commission's strategy is described in the Recommendation setting out A New Approach to Business Failure.[14] Subsequently, the Explanatory Memorandum accompanying the Proposal[15] for the PRD describes its key policy objective as reducing the "most significant barriers to the free flow of capital stemming from differences in Member States' restructuring and insolvency frameworks." [16] It aims to facilitate Member States putting in place key principles that underpin effective preventive restructuring. Further policy objectives leading to the preventive restructuring frameworks recommended by the Proposal were intended to:

> "help increase investment and job opportunities in the single market, reduce unnecessary liquidations of viable companies, avoid unnecessary job losses, prevent the build-up of non-performing loans, facilitate cross-border restructurings, and reduce costs and increase opportunities for honest entrepreneurs to be given a fresh start."[17]

While the PRD has been through several iterations and compromises to arrive at the final version passed in June 2019,[18] these policy objectives remained central to its drafting. The Commission repeated its explicit concern with regard to the impact on capital markets that inefficient, unharmonized restructuring might have, including the impact on the prevalence of non-performing loans:

> "Preventive restructuring frameworks should also prevent the build-up of non-performing loans. The availability of effective preventive restructuring frameworks would ensure that action is taken before enterprises default on their loans, thereby helping to reduce the risk of loans

[11] Or possibly not assisted by either legal framework in terms of enforcement. See the CJEU German Graphic case "it is conceivable that … there are some judgments which will not come within the scope of application" of either regime. Case C-292/09 *German Graphics Graphische Maschinen GmbH v Alice van der Schee* [2009] ECLI:EU:C:2010:7. See further English decisions considering the interplay between the EIR Recast 848/2015 and the EU Judgements Regulation Council Regulation 44/2001 *Re Van Gansewinkel Groep BV* [2015] EWHC 2151 (Ch) 44 and *Re Rodenstock GmbH* [2011] EWHC 1104 (Ch).

[12] There are a number of other significant differences between the widely used Scheme and the framework proposed in the PRD, which will be discussed in Chapter 7.

[13] Project No. 800807/JUST-JCOO-AG-2017. The content of this document represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

[14] Commission Recommendation C (2014) 1500 final of 12 March 2014 on a new approach to business failure and insolvency [2014] OJ L74/65 (the "Recommendation").

[15] Proposal for a Directive of the European Parliament and of the Council COM(2016) 723 final of 22 November 2016 on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU [2016] 2016/0359 (COD) (the "Proposal") including the Explanatory Memorandum.

[16] *idem*, Explanatory Memorandum 5-6.

[17] *ibid*.

[18] See further Chapters 4 and 5.

becoming non-performing in cyclical downturns and mitigating the adverse impact on the financial sector."[19]

Further, the Commission stated that:

> "The differences among Member States in procedures concerning restructuring, insolvency and discharge of debt lead to uneven conditions for access to credit and to uneven recovery rates in the Member States. A higher degree of harmonisation in the field of restructuring, insolvency, discharge of debt and disqualifications is thus indispensable for a well-functioning internal market in general and for a working Capital Markets Union in particular, as well as for the resilience of European economies, including for the preservation and creation of jobs."[20]

The interface between the co-operation obligations imposed on courts and judges in the Recast Regulation and the envisaged preventive restructuring procedures in the Directive highlight the challenges that an effective cross-border modern insolvency system will face.[21] There have been dramatic changes over the last few decades, more so than in many other fields of law, which is particularly significant given the centuries during which the only focus of insolvency reform had been on refining liquidation mechanisms. In recent decades, insolvency law has evolved from maximising liquidation outcomes to developing alternative solutions of rescuing the debtor.[22] Rescue frameworks as they have operated in Member States, such as Ireland and the UK, can, however, conflict with traditional insolvency law principles such as equality of treatment of creditors, transparency, and predictability.[23] The academic debate outlined in Chapter 4 illustrates the depth of theoretical differences regarding restructuring which exists in the European Union. This is undoubtedly reflected in legal systems.

As described in the Introductory section, the Project will produce two Reports, JCOERE 1 and JCOERE 2. This Report is the first of these (reflecting the goals of Workpackage 2 of the Project) and will accordingly concentrate on the nature of substantive and procedural obstacles to co-operation[24] that may be raised by rules applicable to complex preventive restructuring or rescue regimes as envisaged by the PRD. The enquiry includes an interrogation of pre-existing systems such as the Irish Examinership[25] process, the French *sauvegarde*, and the Spanish and Austrian reorganisation and restructuring procedures, as well as the approaches of other jurisdictions included in the Project Consortium, which include Italy and Romania. The UK is also considered as a benchmarking exercise given its popularity as a restructuring destination and the anecdotal evidence of its influence on the drafting of the PRD. Other jurisdictions were included as it became apparent that they were important, either because the jurisdiction quickly introduced a process in response to the discussions surrounding the PRD (for example the Netherlands) or at the other end of the spectrum seem reluctant to depart from traditional insolvency principles and approaches (for example Germany). The Project was in a position to include

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[19] PRD, extract from recital 2.
[20] PRD, recital 8.
[21] Jan Adriannse, 'The Uneasy Case for Bankruptcy Legislation and Business Rescue' in Michael Veder and Paul Omar (eds), *Teaching and Research in International Insolvency Law: Challenges and Opportunities* (INSOL 2015); Vanessa Finch, 'The Recasting of Insolvency Law' (2005) 68 MLR 713.
[22] Christoph Paulus, Stathis Potamitis, Alexandros Rokas, and Ignacio Tirado, 'Insolvency Law as a Main Pillar of the Market Economy – A Critical Assessment of the Greek Insolvency Law' (2015) 24(1) IIR 1.
[23] Irene Lynch Fannon and Gerard N Murphy, *Corporate Insolvency and Rescue* (Bloomsbury 2012) Chapter 1.
[24] Relevant obligations included in Articles 42-44 and 56 and 57 of the Regulation. Note the language is mandatory. Article 42 states that the court "shall co-operate" … "to the extent that such co-operation is not incompatible with the rules applicable to each of the proceedings." It also details the form of co-operation:

> "For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.
>
> 2. In implementing the co-operation set out in paragraph 1, the courts, *or any appointed person or body acting on their behalf*, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
>
> 3. The co-operation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern: (a) coordination in the appointment of the insolvency practitioners; (b) communication of information by any means considered appropriate by the court; (c) coordination of the administration and supervision of the debtor's assets and affairs; (d) coordination of the conduct of hearings; (e) coordination in the approval of protocols, where necessary."

Article 43 applies the same obligation to insolvency practitioners to co-operate with courts "to the extent that such co-operation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest". Similarly, Article 56 applies the same set of obligations in a group context to insolvency practitioners and Article 57 applies a similar obligation to courts in a group context.
[25] Irish Companies Act 2014, part 10 "Examinerships".

additional countries from Eastern Europe in particular Poland and from Scandinavia (Denmark). These are all considered in Chapters 6-8.

Obstacles to co-operation in this context are derived from the potential effects of the envisaged approval processes within the PRD. These include the introduction of the 'cram-down' provisions described in the PRD, whereby creditors dissenting to a restructuring plan can be forced to comply with it have become a focus of dissenting views. Financing rules are also problematic[26] as are approval processes generally. The PRD also introduces two tests of fairness; the best interests of creditors test and the concept of "unfair prejudice." Again, these are a focus of debate at present. Many insolvency codes require the courts to consider principles of equality between creditors and it is difficult to see how co-operation could continue when there are differences in cross-border creditor treatment, particularly when all creditors regardless of jurisdiction are included in a single proceeding under a foreign preventive restructuring framework. In the absence of a secondary proceeding convened to protect domestic interests, creditors subject to a foreign proceeding may find their rights treated less favourably then they might have been in a domestic proceeding. This is mitigated to some extent in some jurisdictions where a more robust application of the unfair prejudice test allows for the exclusion of creditors who are considered to be "out-of-the-money" in any event.[27]

JCOERE Report II is due under Workpackage 3 of the Project. This will be more focussed on the courts, and judicial and administrative authorities, charged with approving and implementing restructuring plans. The second Report will also consider the application of best practices for co-operation cross-border insolvency cases; judicial awareness of existing obligations and guidelines and judicial practise in this area. Workpackage 4 of the JCOERE Project will proactively engage with the judiciary across Europe through INSOL Europe as well as additional networks to raise awareness and inform experience of best practice in this area.

1.4 Methodology of the JCOERE Project

The JCOERE Project relies heavily on the comparative law method, focussing on the functional equivalencies between the provisions of the PRD as compared to similar provisions among the Member States. A detailed discussion of the methodology employed for the analysis of the project's findings will be set out in Chapter 6 while a brief overview of the approach for the research associated with Report 1 will be set out here.

As adumbrated above, the chosen jurisdictions include Ireland (as an apparent leader in the European field in terms of restructuring frameworks), the UK (due to its success as a jurisdiction in relation to restructuring practise) as common law countries and a range of civil law jurisdictions. It is likely that the common law experience contrasted with the differences in civil law countries will be more significant as we move on to Report 2 (Workpackage 3). Denmark was added as a Scandinavian counterpart with the interesting characteristic of not being bound by the EIR Recast. Poland was added as a significant Eastern European economy (with a continued focus also on judicial practise). Finally, Austria was included because it has become apparent that the frequency of cross-border issues arising in that jurisdiction seems to be high (unsurprising perhaps given its central European location).

In terms of practical methodology JCOERE has benefitted enormously from its inclusion of INSOL Europe as a member of the Consortium. INSOL Europe has provided a platform through which the project has collaborated with contributors and engaged with turnaround professionals, practising lawyers, and members of the judiciary.

The research employs multiple methodologies common to the discipline of legal doctrine, in addition to the comparative law method. The discussion, comparison, and interpretation of academic and legal texts are the main research objects for the contextual chapters of this Report, which provide underpinning commentary and criticism around the topic of preventive restructuring. This approach also underpins the later qualitative research undertaken, which provides the material for the comparative analysis. The various interpretations of texts and concepts will be considered and analysed with a view

[26] Re Atlantic Magnetics Ltd [1993] 2 IR 561; Re Holidair [1994] 1 IR 416.
[27] Irene Lynch Fannon, 'Examinership: Approval of Schemes — Re SIAC Construction Ltd and in the Matter of the Companies (Amendment) Act 1990 (as Amended)' (2015) 1 Commercial Law Practitioner; see also Irene Lynch Fannon and Thomas B Courtney (eds), *Bloomsbury Professional's Guide to the Companies Act 2014* (Bloomsbury 2015).

to identifying functional equivalencies by questioning perceived similarities and differences of specific provisions within preventive restructuring frameworks.[28]

The JCOERE project has also undertaken qualitative research for Report 1 through questionnaires answered by practitioners and academics specialising in insolvency and restructuring among the 11 aforementioned different EU jurisdictions. These questionnaires investigated each of the contributing jurisdictions' current preventive restructuring frameworks, practices, and underlying principles in light of the PRD. Due to the nature of this it was found that multiple interactions with the jurisdictional contributors were necessary. Both the interpretations of the questionnaire questions and different approaches to responding to those questions made it difficult to create a report that fully aligned the content of each jurisdiction so that the level of detail and depth were commensurate. In addition to providing their initial responses to the questionnaire, jurisdictional contributors were also asked to engage in a reflective comparative process. This included requests to respond to additional queries to add clarity or depth in light of other responses and a request to review the team's interpretation of the answers when written into the Chapters of the Report. The contributors were also asked for a final review of content accuracy of Chapters 6-8 that pertained to the questionnaire along with any final queries.

The questionnaires were divided into three parts, the analysis of which are set out in three later Chapters of this Report (6, 7, and 8). The first part of the questionnaire gives a general background to preventive restructuring in the jurisdictions. The second, and most technical part of the questionnaire, focussed on substantive rules, in particular those that could be perceived as controversial in some way, for example, those which create conflicts or undermine legal rights. Contributors were asked to explain what was already present in their national laws in terms of each specified provision and what, if any, changes their jurisdiction would need to make to comply with the PRD. These provisions are described with reference to the corresponding articles in the following section on the structure of the Report and the description of the content of Chapters 6, and 7. The third part of the questionnaire then focussed on procedural matters, such as the emphasis on the debtor in possession model and the relative involvement and control of insolvency practitioners; the conflict between the guarantee of the protection of rights in rem under the EIR Recast and possible interference in preventive restructuring frameworks. These matters will be discussed in Chapter 8 of this Report along with the response to an additional question concerning thresholds of insolvency. This third part of the questionnaire also interrogated the role of judicial or administrative authorities; constitutional limits on judicial co-operation; examples of judicial co-operation; and training and competency requirements, but these responses will form a part of JCOERE Report 2 as they deal with procedural obstacles that could interfere with court-to-court co-operation.

The responses to the questionnaires provide the material for a comparative analysis, which will help to establish issues of failed or successful harmonisation under the PRD as well as identifying discrepancies in definition and perception of similar concepts by establishing functional equivalencies.[29] The divergence in understanding and application among the Member States may provide a field of issues upon which the obligation to co-operate can be lost or impeded.

1.5 Structure of the Report

This first Report of the JCOERE Project examines the aforementioned substantive and procedural issues through a narrative that includes academic commentary to contextualise the substantive discussions. As described it includes a synthesis of answers to a questionnaire and an exposition of the PRD itself. This Report is comprised of 9 Chapters.

This first Chapter has offered a brief introduction to the JCOERE Project highlighting the principle questions and concepts. The second Chapter will give a presentation of certain terms relating to preventive restructuring frameworks encountered by the project, which carry different meanings in different jurisdictions. Given the difficulty of aligning difficult concepts across cultural and language lines, it is hoped that this Chapter on Terminology will add to the insights generated by the Report. The third Chapter will then give an introduction to the European Insolvency Regulation and its Recast,

[28] Mark van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011) 4.
[29] See for example Konrad Zweigert and Hein Kotz, *An Introduction to Comparative Law* (trans Tony Weir, 3rd edn, OUP 1998).

focusing on how it will work in relation to preventive restructuring frameworks as well as introducing and describing the court-to-court co-operation obligations.

Chapter 4 focuses on the development of preventive restructuring globally and will introduce key concepts along with criticism and commentary rooted in the robust theoretical debate surrounding them. The fifth Chapter then offers an exposition of the evolution of the PRD from the first attempt at EU legislation in this area in a Communication of 2011.

The sixth, seventh and eighth Chapters focus on an analysis of the questionnaire responses from the contributor jurisdictions, focussing on the key provisions identified in the PRD and described above with a view to identifying true functional equivalence in the similarities and differences exposed by the analysis.

Chapter 6 will discuss the responses given to part 1 of the questionnaire with an analysis of the general context of preventive restructuring in the contributing jurisdictions. Chapter 7 will then examine the responses discussing substantive preventive restructuring provisions in the context of those specified provisions set out in the PRD:

- Article 6 – Stay of Individual Enforcement Actions;
- Article 9 – Adoption of Restructuring Plans;
- Article 10 – Confirmation of Restructuring Plans;
- Article 11 – Cross-class Cram-down;
- Article 13 – Workers; and
- Article 17 – Protection of New Financing and Interim Financing.

Chapter 8 will then examine the responses to the first half part three of the questionnaire, which deals with specific procedural aspects of preventive restructuring in domestic process and in the PRD. The topics covered here include:

- Thresholds of insolvency;
- The involvement of insolvency practitioners in restructurings (Article 5 – Debtor in Possession); and
- Rights *in rem*.

The final Chapter will reflect on the findings of the normative, doctrinal, and comparative research along with findings through discussions and workshops with professionals and judges at various events.

1.5 Chapter 2: Terminology

Chapter 2 of this Report will set out commonly used terms (in English) but will also explore some of the discrepancies in the meaning of some terms that are used by several jurisdictions, but at times have slightly (or in some cases) significantly different meanings. The starting point for most of the terms in the next Chapter will be how they are defined in European law, mainly under the PRD and the EIR Recast. The purpose of this Chapter is to try to dispel some of the confusion about commonly used, but sometimes differently understood, insolvency, rescue, and (preventive) restructuring terms.