



Guide to
Consensual
Financial
Restructuring
of Companies

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CONSENSUAL
FINANCIAL
RESTRUCTURING
of Companies*

September 2014

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List of Abbreviations

CC	Constitutional Court of the Republic of Serbia
CCIS	Chamber of Commerce and Industry of Serbia
CCY	Constitutional Court of Yugoslavia
Centre	Centre for Services and Mediation Chamber of Commerce and Industry of Serbia
CFR	Consensual Financial Restructuring
CM	Case Manager
Development Fund	Development Fund of the Republic of Serbia
EBRD	European Bank for Reconstruction and Development
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
LCFRC, Law on CFR	Law on Consensual Financial Restructuring of Companies
NBS – OPN	National Bank of Serbia Enforced Collection Department
NBS	National Bank of Serbia
Official Gazette RS	Official Gazette of the Republic of Serbia
RCC	Regional Chamber of Commerce
The Tax Law	Law on Tax Procedure and Tax Administration

Introduction

The Chamber of Commerce and Industry of Serbia, as the national association of businesses, recognises the need for companies that are in financial difficulties to redefine relationships with their creditors and in particular their relationships with banks. The Law on Consensual Financial Restructuring of Companies has therefore named the Chamber of Commerce and Industry of Serbia as institutional intermediary in the CFR process.

The Chamber of Commerce and Industry of Serbia acts as CFR institutional intermediary, at the request of the debtor or one or more creditors. It assists debtors and creditors to renegotiate their contractual relationship and provides support to debtors and creditors for the successful completion of negotiations, with a view to assisting the company in financial difficulties survive, recover and settle its creditors' claims.

In the event that a company has problems in fulfilling their commitments, or if they expect challenges in the period to come, we invite them to refer to the Serbian Chamber of Commerce and Industry to initiate the process of consensual financial restructuring, which would enable the company to redefine their financial obligations.

Centre for Services and Mediation
Chamber of Commerce
and Industry of Serbia

I Foreword

There is growing recognition internationally of the need for effective debt restructuring tools to improve the opportunities for business recovery. These tools also are one of the means of tackling the systemic issue of non-performing loans.

The European Bank for Reconstruction and Development (EBRD) considers initiatives such as the Consensual Financial Restructuring (CFR) Law to play an important role in debt restructuring and the development of a restructuring culture. The role of the mediator is at the heart of CFR. Mediation facilitates a common, consensual solution between the parties and can help to rebuild a relationship of mutual trust between the debtor and its creditors.

In August 2013 the EBRD launched a Project, in partnership with the Serbian Chamber of Commerce and Industry (CCIS) in support of effective implementation of CFR and greater use of CFR within the banking and business communities. With the assistance of consultants Partners for Democratic Change Serbia and Andric Law Office, the Project has achieved a number of key goals since its commencement.

Following an assessment of the CFR process, we have strengthened CFR-related mediation services offered by the CCIS through the training of CCIS staff and mediators. The CFR procedure has also been streamlined and an IT system has been introduced to improve the day-to-day administration of CFR cases. We have helped to raise the awareness of CFR among a wide group of potential participants, including banks, businesses and their financial and legal advisors. Greater networks and communications have been built between the CCIS and the regional chambers of commerce that provide a vital link with the local business communities. In addition, we have made a number of recommendations to the Government authorities regarding the further improvement of the existing legal and regulatory framework for CFR.

The purpose of this Guide is to make the CFR procedure accessible to all potential users and to highlight the principal features and benefits of CFR. We hope that you find the Guide to be a useful source of information on CFR and debt restructuring generally.

Catherine Bridge
Principal Counsel
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and Development

II The importance of restructuring for the Serbian economy

1. Liquidity problems and high level of problematic loans

The Serbian economy is characterised by debt-collection uncertainty and low financial discipline due to the fact that market participants do not fulfil their obligations. All of these contribute to lack of liquidity, existing or imminent inability to fulfil obligations, with a large number of businesses blocked in the enforced collection of debts. This further aggravates their financial situation and has created a growing number of non-performing or challenging loans.

In the event of low liquidity or complete lack of liquidity, there is an increased risk of debt enforcement, while the difficult liquidity situation influences many entrepreneurs, especially from small and medium-sized companies, to focus on their survival in the marketplace and possible recovery. Only later do they turn to possible investments, expanding of their business and entering new markets.

Liquidity and solvency of the company

Liquidity of the company is its ability to pay its due financial obligations on time using existing financial resources (ability to pay). Liquidity is determined by the harmonisation between the inflow and outflow of cash and adequate working capital. Liquidity, therefore, should be viewed through the inflow of funds from the collection of claims (resulting from the sale of goods or services, for example), as well as the liquid assets in the account of the company, inventories and liquidity reserves (reserves for liquidity).

Closely related to the liquidity of the company is **solvency**, which is the ability of the company to meet its total financial commitments

with its total assets, under the assumption that both fall due at the same time. This means that the value of the company's assets must be equal to or greater than the value of total sources of funds (i.e. expressed in another way, total assets of a solvent company are greater than its total liabilities, the difference being the capital of the company).

Illiquidity, therefore, represents the inability of the company to pay its financial obligations as they fall due, and it can be **imminent or permanent**, and is quite often (but not always) caused by insolvency.

According to the Law on Bankruptcy ("Official Gazette RS", no. 104/2009, 99/2011 – other Law 71/2012 – Decision of the Constitutional court 83/2014), imminent illiquidity exists if the debtor is unlikely to meet its existing financial obligations at maturity.

Permanent payment inability (or illiquidity) exists if the debtor cannot pay its liabilities within 45 days of the due date (or if it failed to pay a due and undisputed obligation to any creditor within that time) or completely suspended all payments during the continuous period of 30 days (which is, in practice, equal to the blocking of the company's bank accounts for such a period).

There is a significant need for the financial restructuring of companies primarily in relation to debts owed to the financial sector, in order to improve liquidity and reduce the threat of insolvency¹. Other ways of resolving problem loans by debt enforcement and bankruptcy may lead to a destruction of value for a significant part of a company's assets and to a decrease in the level of business operations of the company, particularly in the existing financial crisis. Debt enforcement and insolvency can create losses for both companies and banks as creditors, as creditors are unlikely to recover all amounts in full.

To this end, the previous period has been characterised by some measures that have been implemented, with various legal and regulatory instruments for efficient debt restructuring and for reducing the level of non-performing loans that have been proposed. One such instrument is the adoption of the law that regulates consensual financial restructuring of companies.

1 However, the success of the financial restructuring often directly depends on other measures of business reorganisation of a particular business entity, or on parallel or subsequent operational and business restructuring and changes in management practices.

2. Restructuring of Distressed Companies

The financial distress of companies (*distressed companies*) that creates the need for restructuring can differ according to intensity and the level of severity.

It is commonly accepted that a distressed company will need to be restructured in a situation where it is threatened with financial and business failure unless it immediately undertakes corrective actions and recovery measures, which usually include financial measures aimed at the restructuring of debt and relationships with its biggest (or even all) creditors.

For better results and a successful turnaround a company should react at an early stage as soon as it begins to show signs of business slow-down, failure to achieve business goals/targets and when its ability to service its debts becomes uncertain. This is when it is necessary to take measures to restructure the business and reverse the business trends of a company.

Definition of distressed company

The Law on Consensual Financial Restructuring of Companies ("Official Gazette RS", no. 36/2011) defines a distressed company as a debtor which is either in the stage of inability to pay (illiquidity), imminent inability to pay (imminent illiquidity) or over-indebtedness (insolvency).

Regardless of this definition, literature and financial practice also defines companies in difficulties based on certain performance indicators, such as increase of losses, reduction in overall income, increase of inventories, decrease of cash flow, increase of debt, increase of interest charges and decrease of (or zero) net asset value (equity). This is important to understand, given that banks, in practice, use these indicators as early warning signs and might consider a particular subject to be in difficulties, regardless of the fulfilment of the above-mentioned legal requirements.

The causes of financial distress of a company can be both internal and external.

In terms of **internal causes**, it is often a combination of several elements, which usually include inefficient management or poor corporate governance. This is especially noticeable in Serbia, in situations where a company (or a group of companies) expanded over a short period of time and developed to the extent where professionalisation of the management was needed to continue with the successful business. Often the owner(s) of the company (group) do not recognise this need to professionalise, or

even refuse to hand over control of the operational management of the company to professionals. The continuation of the same business model often leads to excessive pressure on owners which can no longer effectively and efficiently manage all business segments of the company (group), and in particular its financial affairs.

Additional internal causes include excessive risk-taking, poor planning or investing in non-profitable projects or over-investment, all of which are interdependent, or caused, and are certainly and to a significant extent a result of poor corporate governance and the lack of a clearly established decision-making process, as well as the absence of on various sectors and bodies of the company.

Inadequate cost structure, poor product marketing in the presence of strong competition, insufficient use of tangible and intangible assets (or investments) and failure to develop a company's potentials also represent typical internal causes of financial difficulties, especially if they are not recognised on time by the management.

Domestic companies often have weak technology infrastructure, poor innovation potential, lack of experience in areas where a strong domestic or foreign competition subsists, as well as the lack of analysis and poor business judgment.

External causes include growing competition, and poor protection from unfair competition (primarily due to the large number of business entities in the grey market), but also changes in the market structure (i.e. saturation of the market with a particular product or service, if not recognised on time).

The State authorities may also impose certain external factors that negatively affect a company's solvency, through changes in regulations which sometimes carry increased costs (additional administrative procedures, certificates, permits, licenses, etc.) or tax regulations with adverse effect on certain activities.

The general financial situation may impact on the company through frequent changes of the exchange rate (e.g. depreciation of the domestic currency) and inflation, as well as through high price of money (high interest²). Widespread illiquidity has a particularly negative effect, creating a vicious circle with the company's inability to service its debts due to non-collectability of its own claims towards third parties).

According to the degree of severity of the situation, the corresponding restructuring need of distressed companies may be:

2 In Serbia, non-banking financial instruments are not developed (i.e. financing sources that are not banks), the market for corporate bonds is under-developed, while the market share of leasing and factoring is relatively small.

1. **visible primarily to management of the company and not to employees, competitors, suppliers and external partners.** Symptoms include that the company performance begins to slow down and the company does not achieve its planned objectives or performance indicators etc.
2. **visible to management of the company and to a wider range of entities that are connected or and work regularly with the company.** Symptoms include delay by the company in paying its debts, or in meeting its payment obligations related to delivery of goods or provision of services, and its own working capital decreases, etc.;
3. **obvious and visible to everyone.** Symptoms include: increasing unpaid debts, blocking of the company's account(s), suppliers ceasing to supply goods to the company, loss of customers/clients, loss of access to credit, resignation and departure of key employees and managers, etc.

3. Forms and Methods of Distressed Companies Restructuring

Depending on the level of financial distress of the company, different steps to improve the situation and restructure the company can be taken. This overview, however, is limited to the possibilities and methods of financial restructuring. Other methods of restructuring, such as operational, organisational and strategic restructuring (sale of part of the business, focusing on core business lines and abandoning ancillary areas of business, downsizing or other cost reduction measures, etc.) are also important. Without these methods, financial restructuring is unlikely to be successful in the medium or long term.

As a **short-term measure to address the lack of liquidity**, a loan from a connected company – usually, the parent company or a liquidity loan, – is often used to overcome this situation. Other ways of improving cash flow of the company may include factoring³, although it should be noted that the use of such funds should be limited to meeting the working capital needs of a company (for financing daily operations of the company).

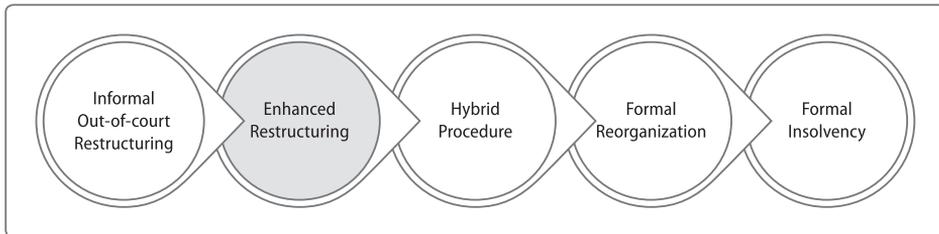
If the financial situation continues to be serious, the distressed company may start to conduct informal discussions with banks and other creditors to restructure its debts and alter its payment terms, in accordance with the

3 Factoring is a financial service for purchase and sale of overdue receivables or future monetary claims of companies (usually short term), which arise on the sale of goods or services by the company to its customers in the domestic market and abroad. Factoring is further regulated by the Law on Factoring ("Official Gazette of RS", No. 62/2013).

general rules of contract and based on the principle of voluntarism. If the company has a number of bank creditors and agreement is difficult, it may attempt to use the framework of **consensual financial restructuring** (a type of institutional restructuring, since it is conducted with the participation of the Chamber of Commerce and Industry of Serbia) to reach a voluntary agreement with its creditors.

If this fails and there are hold-out or dissenting creditors, more radical methods of court restructuring may be pursued. These more radical measures involve the reorganisation of the company under the bankruptcy law framework, assuming the necessary entry criteria are met i.e. illiquidity or insolvency. A pre-packaged reorganisation plan, a **judicial mechanism for debt restructuring** may be submitted by the company together with its petition for bankruptcy. Another court restructuring mechanism is a simple reorganisation in bankruptcy proceedings, which can be proposed and conducted following the opening of the bankruptcy of the company. However unlike CFR, bankruptcy is a public process and the company may risk further deterioration in its financial position. Bankruptcy may, nevertheless, be the only way to deal with dissenting minority creditors.

The chart below provides an overview of all available options for creditors and debtors within the legal framework of the Republic of Serbia, where on one side we have a completely informal consensual restructuring, and on the other the sale of assets in bankruptcy (liquidation), and in between all of the above mentioned methods of restructuring.



Source: Garido, J. M. „Out-of-Court Debt Restructuring“, World Bank, 2012.

The following table provides a comparative overview of the essential characteristics of consensual financial restructuring, pre-packed reorganisation plans and ordinary bankruptcy reorganisation:

	Consensual financial restructuring	Pre-packaged reorganisation plan	Bankruptcy reorganisation
Participants	Only creditors which voluntarily join (There is a minimum requirement of two commercial banks)	All creditors in proportion to the amount of their claims within the relevant class	All creditors in proportion to the amount of their claims within the relevant class
Debt standstill (moratorium)	Creditors which conclude debt standstill agreement	Potential moratorium (upon judge's approval) affecting all creditors	Legal ban on enforcement and settlement affecting all creditors
Role of Bankruptcy Administrator	No	Potential appointment of bankruptcy administration, scope of appointment limited to assessment of accuracy of data in plan	Bankruptcy administrator administers the operations of the debtor and acts as representative of the debtor
Participation of Court	No	Yes	Yes
Transfer of claims	Claims may be transferred without restriction unless otherwise specified in the contract	Claims may be transferred without restriction	Claims may be transferred without restriction
Administrative requirements/ direct costs	Low	Medium	High
Indirect costs (reputation, termination of business)	No	Potential	Significant
Incentives for creditors and debtors	Yes – tax and banking related	Yes – tax and banking related	Yes – tax related
Legal effect of failure to adopt plan/ conclude restructuring agreement	No	No	Bankruptcy

On successful implementation of a financial restructuring, the distressed company may improve its financial position and return to profitability. For this to be successful and sustainable on a long term basis, an accompanying operational restructuring of the company is often needed.

Notwithstanding the above, a distressed company (or its owners) may seek to find new investors during the restructuring attempt. Having in mind that financing through capital market (stock market) is underutilised in Serbia (especially in time of financial and liquidity crisis), such investors may be specialised private equity funds, or distressed assets funds⁴.

4. Plan and Measures for Restructuring of Distressed Companies

In principle, there are two basic documents that are usually used in every consensual restructuring, including the CFR. The first one is the financial restructuring plan with supporting documents and data needed to present a clear financial picture of the business of a distressed company. The other document is a restructuring agreement (contract) with underlying documents.

Regarding the preparation of the **restructuring concept** for a distressed company, one of the options for the company management is to apply various strategies to ensure the success of the process. In practice, it is necessary to implement broader and more serious considerations of all aspects of company operations in the case of medium and large enterprises. The potential for successful restructuring and a return to sustainability should be analysed, together with any associated risks. While analysing the potential of distressed companies for successful restructuring, the market value and profitability of the distressed company, including a history of its profitability and the potential for such company to survive in the short-term to long-term are explored. Consideration should be given to the broader economic picture and examination of the general situation in a particular industry or sector and the state of competitive businesses in that industry or sector. To create a balanced overview of the company's financial position, it is essential to perform a complete economic and financial, legal,

4 Private equity represents the equity invested by investment funds or other funds in the company (including companies in difficulties), either through the purchase of existing equity from the owners of the company or through a capital increase. Such investments are undertaken only if a fund that invests estimates that the company has a good prospects for success, business potential and business perspective to develop and grow, or to recover, to overcome the difficulties and to become competitive in the market and all that with the aim to bring a high return on invested capital to the fund (through increasing the value of its business).

tax and technical analysis and review of the company (*due diligence*), which includes office and field work, review and examination of records and interviews with those responsible in the company.

Micro and small business entities need to examine significantly fewer aspects. However, thorough financial analysis even by smaller companies is important. The absence of any such analysis usually leads to poor completion of restructuring and unsustainable solutions, or creates unnecessary extra costs for owners and creditors, as the perspectives of the company are not adequately perceived and attempts of restructuring do not have a good chance of success from the beginning.

The analysis of companies' potential to survive in the short run should contain:

- an assessment of real needs and ways of obtaining financial resources and working capital;
- a proposed plan for realisation of financial savings (e.g., sale of assets that are poorly used or create unnecessarily high costs);
- a proposal to reduce or suspend certain investments, with their possible sale at a discount;
- measures to be taken without delay to prevent further decline in the company's business.

An assessment of the potential of distressed companies for a mid or long-term sustainable business should include an analysis of:

- financial indicators of the company (different indicators and categories of turnover, profit and return, or dividend from the capital of the company),
- the causes of financial instability of the company and methods to eliminate them,
- the business plans of the company (which may include a sensitivity analysis – *stress test* – when plans in response to changes in the appropriate conditions or parameters are tested),
- internal barriers in the company that prevent growth and development,
- the acting and the results of management of the company,
- the state of the market,
- the activities that the company performs and their performance indicators,
- quality of risk management,
- quality management,
- marketing of products/services and brand development,
- relationships and communications with business partners, holders of public authorities and other stakeholders and their attitudes towards the company.

Normally, a company in difficulties is the party that prepares the restructuring plan (or concept) on the basis of the performed analysis and evaluation of the management, which then serves as a starting document for the participants in the CFR trying to reach a restructuring agreement. The plan should indicate all relevant business and financial information of a distressed company, historical and projected operating results and proposal of steps and actions (measures) to be taken to enable the company in difficulties to sustainably repay its debts. The restructuring plan, as mentioned, in addition to financial restructuring, may include measures of strategic, organisational and operational restructuring, and it would normally define deadlines, entities and bodies of the company responsible for the implementation of certain measures, and may also contain short, medium and long term performance indicators.

The scope of the disclosure of information about the business and the state of the company in this proposal varies from case to case depending on the number of stakeholders and the complexity of issues to be addressed in the restructuring.

In the context of discussing the restructuring plan with creditors, the company in difficulties should provide relevant business information, such as:

- an overview of all of the assets of the company together with a valuation of assets, if available;
- a list of outstanding debts to banks and other creditors participating in the CFR proceedings, together with all other debts owed to creditors;
- a list of security interests (mortgages and pledges) provided by the company;
- a short-term liquidity plan and projected cash flow.

The restructuring plan should, as a minimum, contain the following elements:

- an explanation of the causes of the business and financial difficulties of the company – internal and external;
- a description of the proposed restructuring measures and ways of removing the causes of business and financial difficulties, with an overview of the activities aimed at achieving this goal;
- a plan and identification of financial resources for financing of the company needs during the implementation of the restructuring plan;
- financial and economic projections (prepared for the period of duration of the plan, usually medium term, i.e. up to five years).

In addition, the restructuring plan may contain a number of other elements depending on the specific situation of the company, demands or expectations of creditors, as well as the restructuring measures identified by the plan and the size and complexity of company's (or group of companies') structure, such as:

- a review of the business and financial history of the distressed company;
- an assessment of the strengths and weaknesses of the distressed company;
- a description of the state of the market in which the company operates, including competition, market segmentation, market share, market attractiveness and other indicators and categories;
- a plan of the strategic positioning at the market;
- measures to reduce costs and to obtain new revenues, including selling or abandoning activities that are not core business lines or are not profitable;
- a review of the new organisational structure and governance with defined roles, powers, duties and responsibilities of the authorities, bodies and persons;
- a plan for production, sales and marketing;
- a plan of communication with customers/clients (consumers), suppliers and other stakeholders; and
- a risk management plan.

Not every plan of restructuring entails each of the above elements, or contains all of these details. The content of the plan depends to a large extent on the circumstances of the case and the size of the entity that is being restructured.

Restructuring measures may include a wide range of changes in the business and in the assets of the company. Such measures result primarily from the market situation and potential of the company, but to some extent depend on creditors' influence (creditors sometimes set certain requirements in order to approve the plan, i.e. additional security, changes in the structure of the company, change in management, etc.). For example, such measures may include:

- changes in corporate organisation and legal form,
- changes in the internal organisation and business management,
- debt write-off (in practice this usually involves the write-off of default interest and sometimes regular interest, but rarely the principal debt);
- repayment deferral by payment in instalments, amendments of the maturity limits, interest rates, the order of payment or other terms of a loan,
- a sale of certain assets (if such assets are encumbered, such sale may be done with the encumbrance remaining attached to the asset, or without such encumbrance subject to the consent and release of the secured creditor)
- transfer of the property to creditors as settlement of claims (substitute fulfilment),
- closing down or changing activities, moving certain facilities or activities to locations with lower production costs,

- termination or amendment of contracts with business partners, suppliers or customers,
- enforcement, amendment or waiver of a creditor's lien,
- pledge of encumbered or unencumbered assets,
- debt-to-equity swaps,
- entering into new loan agreements, or the issuance of securities, all in order to obtain new financing,
- discharge of employees or hiring other persons, contracting outsourcing as a model for the use of external services and labour,
- amendments to company's by-laws,
- establishment of new legal entities with the transfer of the property to such entities, etc.

Measures for restructuring distressed companies may also include investment in research and development, improvement of production processes, entering into business partnerships or joint ventures, but also the redefinition of the company's marketing strategy.

Creditors will often expect that a proposed restructuring plan should lead to an improvement in the debtor's leverage i.e. the ratio between debt (borrowed money) and capital (own money) after a certain period of implementation of such plan, as this ratio is one of the key indicators of the solidity and sustainability of the company's financial position.

III Consensual Financial Restructuring of Companies

Serbia adopted a new legal framework for voluntary institutional financial restructuring in 2011 in order to promote the more efficient resolution of the growing number of non-performing loans and over-indebted or insolvent business entities. Using INSOL Global Principles for Multi-Creditor Workouts⁵ as the starting point for this procedure, the legal framework includes laws and by-laws entrusting the Chamber of Commerce and Industry of Serbia (CCIS) with institutional mediation in financial restructuring. The Serbian legal framework is in line with the international standards set forth in the World Bank Principles for effective debtor-creditor regime⁶, which highlight the role of voluntary negotiations or mediation in an effective informal (i.e. non-institutional) process of claims restructuring (debts). Although INSOL principles are primarily developed with a view to voluntary, non-institutional forms of negotiations between the debtors and multiple creditors, Serbia has specifically adopted a restructuring framework to facilitate this process, which relies on the participation of an institutional intermediary (the CCIS) to facilitate an agreement between creditors (mainly banks) and debtors⁷.

5 Principles of multi-creditor restructuring the International Association of Experts for restructuring, insolvency and bankruptcy (INSOL) on consensual financial restructuring, available at www.insol.org, are formulated as voluntary framework principles and guidelines for participants in financial restructuring, and designed to be applicable internationally where there are a number of creditors negotiating with the debtor.

6 Applicable standards are contained in the principle B4 (informal methods of settlement of claims) Principles for effective debtor-creditor regime (2011). Available at www.worldbank.org/gild

7 Other states had different approaches, including the adoption of INSOL principles solely in the form of recommendations by bank regulators or government

1. Legal framework for consensual financial restructuring in the Republic of Serbia

1.1. *Law on Consensual Financial Restructuring of Companies*

The Law on Consensual Financial Restructuring of Companies⁸ (LCFRC, The Law) was passed, with accompanying regulations and amendments to certain laws and regulations in other areas (tax and banking regulations) in order to support the consensual financial restructuring of companies in financial difficulties.

The Law regulates the conditions and manner of consensual financial restructuring of companies in the Republic of Serbia. It can be performed at any time during the operation of a company, except upon the initiation of formal bankruptcy proceedings.⁹ The law was passed by the Parliament of the Republic of Serbia on 25 May 2011 and entered into force on 4th June 2011, the eighth day of its publication in the “Official Gazette of the Republic of Serbia”, No. 36/2011, and the implementation started by the end of the ninetieth day after the date of entry into force, i.e. on 3rd September 2011.¹⁰

The law fills the gap between the market (voluntary, non-institutional) mechanisms and formal (court) reorganisation (through a pre-packaged reorganisation plan or reorganisation in bankruptcy proceedings). The first mechanism implies consensual restructuring (out of court, out of bankruptcy), i.e. enabling the creditors and debtors to solve their own financial problems by using the approach “on a case-by-case basis”, according to the general principles of contract law and the implementation of the Law on Obligations (Contracts and Torts), whereas formal reorganisation is regulated by judicial proceedings. The CFR Law creates the conditions for an intermediary approach – out-of-court mechanism with institutional mediation of the Chamber of Commerce and Industry of Serbia (CCIS) and certain public incentives. The law defines consensual (out-of-court) financial restructuring of companies as a redefinition of the debtor-creditor relationship between the distressed company and its creditors, primarily banks (and mostly major suppliers).

8 Annex no 1.

9 In Serbia, bankruptcy proceedings are formally initiated by the adoption and publication of the decision of the competent commercial court on the initiation of bankruptcy proceedings against the company.

10 During this period, all the necessary by-laws for implementation of the law should have been enacted, but this has not happened in practice so the law, *de facto*, began to be implemented much later, in 2012, after the adoption of these acts.

CFR can be implemented only if it involves at least two local or foreign banks as creditors.¹¹ Negotiations are conducted between a debtor and its creditors before the CCIS and incentives applied only for those creditors which agree to participate in the CFR proceedings. As CFR is voluntary, any of the creditors and the debtor may withdraw from further participation in the proceedings at any time, until the signing of the final agreement (contract) on financial restructuring.

The aim of CFR is the timely identification and resolution of the financial difficulties of the debtor and the creation of conditions for the continuation of normal business operations of the debtor. CFR is typically undertaken if relevant creditors assess that the survival and recovery of a distressed company is cost-effective and feasible, and that the company will be able to continue a sustainable business over the medium to long term, enabling creditors to achieve a more favourable settlement of their claims than in bankruptcy.

Key innovations in the Law

Other than the institutionalised and regulated consensual (out-of-court) financial restructuring of companies under the CCIS discussed above, the most important innovations the Law introduced into our legal, economic and financial system are:

- the concept of debt standstill, as a temporary suspension and prohibition on enforcement against the company, in respect to creditors which participate in financial restructuring;
- explicitly prescribed continuity of security interests during and after the procedure and maintenance of the security rights of creditors participating in financial restructuring had before starting the procedure;
- establishment of tax and regulatory incentives for consensual financial restructuring.

The debt standstill agreement envisaged by the law establishes a specific mechanism for the interim unblocking of the accounts by those creditors (participants in the CFR procedure) which agree to sign this agreement. Creditors sign this contract with the debtor if they agree to unblock the account of the debtor for a certain period¹² during which they will negotiate with the debtor on a possible financial restructuring (i.e. signing a consensual

11 This requirement was introduced, most of all, for the reasons of legal and economic certainty, as well as for avoiding the use of this framework for so called bilateral debt restructuring between a bank and its debtor.

12 Usually a period of 60 or 90 days, depending on the provisions of the debt standstill agreement, but it may vary as no limitations are set out by law.

financial restructuring contract). They may also sign this agreement if they agree to stop or postpone enforcement proceedings initiated against the debtor, before the start of the negotiation process, (and commit they shall not initiate such procedures during the standstill period).

The aim of the debt standstill agreement is to enable the continuation of the day-to-day operations of the debtor and to prevent bankruptcy or the favouring of certain creditors, for the time estimated as necessary to negotiate consensual financial restructuring.¹³

Negotiations are conducted through the mediation of Chamber of Commerce and Industry of Serbia, The procedure is, in addition to the Law, prescribed by a special Rulebook and guidelines enacted by the CCIS (The Guidelines).

The Law provides that the negotiations on financial restructuring (i.e. the CFR procedure) conclude with the signing of the restructuring contract, within which the relations of debtors and creditors – but only those which participated in the restructuring and signed the contract – are redefined, by applying one or more restructuring measures (debt rescheduling, debt write-off, debt to equity swap, and so forth).

According to the Law, relevant by-laws governing the institutional mediation in this process, as well as the contents of the contract on the debt standstill have been adopted. All the relevant by-laws are available on the CCIS web site.¹⁴

1.2. Rulebook on Conditions and Procedure of Institutional Mediation in Consensual Financial Restructuring of Companies

The Rulebook on the conditions and procedure of institutional mediation in consensual financial restructuring of companies¹⁵ (“Official Gazette of RS”, no. 65/2011 and 67/2011) regulates the conditions, manner and procedure for conducting institutional mediation in consensual corporate financial restructuring. The Rulebook sets forth the principles by which institutional mediation is carried out, gives a detailed review of the proceedings of consensual financial restructuring, and defines the concept and role of the mediator in the process.

13 Although provisions of LCFRC indicate that the Debt Standstill Agreement is one of the steps in the CFR procedure, so far (during over two years of implementation) the execution of this agreement was more an exception than a rule, so that, *de facto*, this agreement is not a mandatory step in the CFR procedure.

14 <http://www.pks.rs/Usluge.aspx?tipUslugeID=4> (documents in Serbian)

15 Annex no 2.

1.3. Rulebook on Standstill Agreement

The Rulebook on standstill agreement (“Official Gazette of RS”, no. 21/2012) regulates the content of the debt standstill agreement. The Rulebook sets forth the compulsory provisions that this agreement shall contain (mandatory provisions) and any optional provisions. In this way, the legislator has tried to facilitate and accelerate the negotiation process of the contract and its signing.

1.4. Guideline of the CCIS on institutional mediation in consensual financial restructuring

Guidelines for the implementation of the institutional mediation in consensual corporate financial restructuring, adopted by the Serbian Chamber of Commerce on 8th May 2012, provide answers to various technical and procedural issues relating to institutional mediation and financial restructuring. These guidelines are mostly intended for the employees of the Centre for Services and Mediation of the CCIS, which provide administrative support and conduct CFR proceedings, and the mediators of the CCIS involved in the CFR.

1.5. Decision of CCIS on Costs of Institutional Mediation in Consensual Financial Restructuring of Companies

The Decision was adopted on October 26, 2011 (amended on 6th July 2012) and provides that parties to a consensual financial restructuring bear the common expenses of institutional mediation, including: the fee for the work of the mediators and reimbursement for travel and accommodation of the mediators, as well as the cost of organizing institutional mediation. The Decision stipulates the rate for the determination of these costs, which essentially provides a relatively symbolic fee to be paid at the beginning of the procedure, while most of the fees and expenses are due for payment only if mediation (i.e. the CFR procedure) has been successfully completed.

1.6. Programme of basic and specialised/advanced training of mediators of the Serbian Chamber of Commerce

Shortly after the adoption of the CFR Law, the Serbian Chamber of Commerce and Industry adopted the Programme of training for mediators in consensual financial restructuring of companies. Based on the Decision of the CCIS President of 12 October 2011, the training programme consisted of two parts, namely 1) the basic training for mediators in the duration of 5 days (which is carried out in accordance with the Law on Mediation (“Official Gazette RS”, No. 18/2005) and the Rulebook for the

training of mediators in accordance with Law on Mediation (“Official Gazette RS “, No. 44/2005), and 2) the specialised training for consensual financial restructuring, of two days, aimed at providing mediators with special skills required for addressing the cases of consensual financial restructuring. Based on the CCIS President Decision of 7 May 2014, the training programme has been improved and further adjusted to the specifics of mediation in financial restructuring.

1.7. Decision on establishment of the list of mediators of the Serbian Chamber of Commerce

Based on the revised training Programme for Mediators, a new group of 24 mediators was trained in consensual financial restructuring, and, after a public call for applications, a Decision establishing a list of mediators in CFR procedure (initially adopted on 30 May 2012) was replaced by the new Decision of 12 June 2014. This Decision established the list of mediators of the CCIS in commercial disputes, as well as the list of mediators of the CCIS in consensual financial restructuring of companies, which includes 22 mediators, experts in restructuring, corporate law, banking and finance.

2. Conditions and features of consensual financial restructuring

The Law applies to companies as debtors¹⁶, but there is an exception to its universal application in regards banks, insurance companies, underwriters of securities, private equity funds, investment and pension funds management companies, broker-dealer companies, companies performing financial leasing, as well as other companies mainly engaged in providing financial services in accordance with the law. Entities operating predominantly or exclusively in the financial sector (specialised companies) are thus exempted from consensual financial restructuring, as they are subject to a special regime of regulation and institutional oversight and control of the National Bank of Serbia and the Commission for the Securities, as independent regulatory and control bodies, thus this Law applies only to real (corporate) sector in the strict sense of the word.

As mentioned above, the possibility of the participation of foreign banks (banks-non-residents) as creditors in consensual financial restructuring of companies in the Republic of Serbia is envisaged. This is essential to solving debt restructuring in terms of domestic companies abroad with respect to foreign credit transactions (*cross-border loans*).

16 Provided they are not under the bankruptcy procedure.

Prescribing the mandatory involvement of at least two (domestic or foreign) banks¹⁷ (which are financial institutions managed and supervised by the National Bank of Serbia, as the central bank), is aimed at preventing possible abuse and unwarranted use of incentives. Such abuse might occur in the practical implementation of this law, if the mandatory participation of only one bank was prescribed as the minimum. This also reflects that CFR is of greatest application to negotiations between several banks and their debtors. Typically any negotiations by a company with its suppliers would take place on a bilateral basis and would be restricted to avoid unnecessary destabilising of the business instead of long-term financial restructuring.

The LCFRC does not prescribe any other conditions for conducting CFR proceedings.

As noted above, to implement CFR successfully prior business and financial analysis is needed, as well as a reasonable prospect of the company continuing as a going concern.

The process of consensual financial restructuring includes the following steps:

1. the distressed company (the debtor) engages with its creditors (before the initiation of the CFR) on a bilateral (or even multilateral) basis, in a non-institutional way to agree on the terms of a restructuring (this step is optional and not prescribed by the Law, but is recommended);
2. if prior restructuring attempts are unsuccessful, the company and/or its creditors (at least two local or foreign banks) submit the request for institutional mediation in CFR to the CCIS;
3. CCIS forwards the request with an invitation to participate to other potential participants (identified by the applicant in its request), which can decide whether to participate in financial restructuring;
4. CFR participants meet at the joint (or separate, if needed) meetings to discuss redefining debtor-creditor relations, with the institutional support of the Chamber of Commerce and Industry of Serbia and CCIS mediators;
5. the parties may conclude an agreement on debt standstill to unblock the company's accounts and/ or agree to suspend any enforcement actions against the company for a limited period (note this is optional, but sometimes necessary for performing a successful restructuring);

¹⁷ The CFR Assessment proposed that, for practical reasons, this list should be expanded with the Development Fund of RS and Export Credit and Insurance Agency of RS, as well as that this requirement is met if one, or event both banks are in bankruptcy procedure.

6. the parties reach an agreement on consensual financial restructuring, such agreement being registered at the CCIS;
7. the contracting parties undertake measures of financial restructuring and benefit from the specified incentives (depending on specific circumstances of each case).

As a result of the above, the company continues to operate and meet its financial obligations towards its creditors.¹⁸

(Detailed description of CFR procedure is given in the Section III.4. – The steps in CFR procedure)

2.1. Principles of the CFR procedure

In line with the best international and foreign regulations and practices, primarily the “Principles of the International Association of professionals for restructuring, insolvency and bankruptcy” (INSOL) on corporate financial restructuring, the LCFRC defines the following principles of consensual financial restructuring:

- principle of suitability;
- principle of free will (volunteerism);
- principle of “going concern” for the debtor;
- principle of good faith conduct;
- principle of cooperation and coordination between creditors;
- principle of equality of creditors’ status and status proportionate to the amount of the claim;
- principle of institutional mediation;
- principle of access to data and data confidentiality.

The importance of principles is particularly reflected in the prevention of legislative and legal gaps in the implementation of the law, and in providing guidance to all participants (especially mediators) with regard to the way of acting and negotiations aimed at their consistent application in practice.

The **principle of suitability** stipulates that financial restructuring is carried out in order to re-arrange the debtor-creditor relations regarding the debt, or a claim that can be freely disposed of by the debtor and creditors.

18 It should be noted that the execution of the CFR agreement and successful implementation of this method of restructuring does not have any impact on the rights of other creditors which do not participate in the CFR procedure, so the company will continue to have all of its obligations towards these creditors under the terms and conditions that were in force prior to the CFR procedure.

It should be noted here that the Centre for Services and Mediation of CCIS verifies the eligibility of a debtor-creditor relationship for financial restructuring.¹⁹

Financial restructuring is performed on the basis of the **principle of free will**, based on written consent of the debtor and the creditor²⁰, with the participation of the institutional mediator (volunteerism). Therefore, there is no obligation by the creditors or debtors to participate in the consensual financial restructuring proceedings, and they can leave the procedure whenever they want prior the signing the CFR agreement, without consequences.

With regard to the **principle of “going concern”** for the debtor, financial restructuring is carried out if recovery and sustainable operations of the company are possible. Evaluation of recovery and sustainable operation is given to the creditor²¹. The principle of sustainable business should prevent vain financial restructuring of companies that formally exist, but they are in serious and practically impossible to solve (in a sustainable manner) financial difficulties, since they do not have a sustainable business (e.g. their operational income is not sufficient to cover operational expenditures, so there is no surplus for payment of the existing loans and the company spends more than it earns, while its substance (capital) is being reduced and eventually dissipates.

Pursuant to the principle of **good faith conduct**, financial restructuring is performed *bona fide*, applying the principle of good faith, honesty and a specific care requested in the legal traffic (care of a good businessman or a good professional), whereas the debtor and the creditor must not undertake actions that can cause damage to another participant. During debt standstill, the debtor is prohibited from undertaking any actions that could prevent or hinder the compensation of the creditors which concluded a debt standstill agreement.

The principle of equality of creditors’ status and status proportionate to the amount of the claim provides that within financial restructuring all creditors should be equally treated and enjoy equal status proportionate

19 Although this principle does not generally preclude the application of CFR on the debts owed to the State (treasury), in practice CFR does not include claims of the Tax Administration for reasons that will be explained later in this guide.

20 In principle, such consent may be deemed to exist conclusively as well, if participants appear at a scheduled meeting of CFR.

21 That is, the CCIS as an institutional mediator does not assess whether this condition is fulfilled.

with the amount of their claims²², unless the parties to the proceedings agree otherwise.

According to the **principle of cooperation and coordination between creditors**, all creditors which have agreed to participate in financial restructuring should work together in order to create the conditions for the debtor to collect and provide data and information about their assets, equity, liabilities, operations and business prospects, and to prepare proposals for restructuring measures. Where a large number of creditors are involved, such cooperation may include the appointment of one or more persons which will negotiate with the debtor or co-ordinate the participation of these creditors, establishment of a body for coordination, selection and appointment of professional advisers (which may serve as mediators if the creditors and debtors agree, together with the institutional mediator), as well as other activities.

With regard to the **principle of access to data and data confidentiality** the debtor should provide the creditors, or persons authorised by them, timely and unimpeded access to the data and documents of importance to the financial restructuring, which are related to his assets, equity, liabilities, operations and business prospects. The aim of this is to enable a proper assessment of the financial state of the debtor and assist with the preparation of the restructuring plan (i.e. to provide the necessary information to creditors to respond to the proposal of the measures usually submitted by the debtor at the beginning of the process). The data and information obtained for the purposes of financial restructuring relating to property, capital, liabilities, operations and business prospects of the debtor and the proposed financial restructuring measures should be available to all creditors which participate in financial restructuring, but must also be treated as confidential by all the participants in the CFR, both creditors and the institutional mediators (including the technical-administrative staff of the CCIS).

2.2. Institutional mediation

The Law stipulates that Chamber of Commerce and Industry of Serbia shall act as the institutional mediator during consensual financial restructuring, by helping to connect the debtor and creditor and enabling the parties to negotiate the successful redefinition of debtor-creditor relations.

²² Although this principle is not fully elaborated in the Law on CFR, all creditors in the CFR procedure are on an equal footing, so this principle should be interpreted in a way that no decision/solution can be imposed on any of the creditors without their explicit consent, notwithstanding the size of their claim(s). On the other hand, for example, the company will not be obliged to make the payments (on the basis of restructured terms and conditions) to each of the creditors that executed the CFR agreement in equal nominal amounts, but pro-rata to the amounts of their claims (percentage-wise).

The Law does not regulate the details of the procedure of institutional mediation, therefore under the authorisation referred to in Article 13, Para 2 of the Law, the Chamber of Commerce and Industry of Serbia has regulated the conditions, manner and procedure of institutional mediation in corporate consensual financial restructuring, in the Rulebook on the conditions and procedure of institutional mediation in consensual financial restructuring (“Official Gazette RS” no. 65/11 and 67/11).

The Rulebook sets forth the principles of institutional mediation, as follows:

- **the principle of timeliness** – the institutional mediation in financial restructuring is carried out in a manner that ensures timely identification and recognition of the financial difficulties of the company;
- **the principle of efficiency** – the CCIS, as an institutional mediator, provides a successful and efficient implementation and protection of rights and legal interests of the parties in the financial restructuring;
- **the principle of cost-effectiveness** – institutional mediation in financial restructuring is carried out without delay and with as little additional costs possible;
- **the principle of impartiality and independence** – the CCIS, as an institutional mediator, is impartial and independent of the parties and the subject of financial restructuring;
- **the principle of confidentiality** – data and information obtained for the purposes of financial restructuring relating to property, capital, liabilities, operations and business prospects of the debtor and the proposed financial restructuring measures shall be treated as confidential by the creditors and institutional mediator, to the extent they are not publicly available.

Mediation is conducted at meetings attended by the parties, the mediator, the responsible persons at the CCIS Centre for Services and Mediation, and if necessary, with the consent of the parties, and other persons as well²³. The opening and each subsequent meeting is scheduled by the mediator. Meetings are held according to the needs and the dynamics determined by the mediator in consultation with the parties.

If the parties reach an agreement, the contract on financial restructuring is signed. The contract is then certified by the Serbian Chamber of Commerce and Industry and recorded in a special book,

23 For example, a legal or financial advisor to some of the participants or possibly some creditors who do not participate in the proceedings, but their timely knowledge about the existence and the process is important for successful restructuring (such as the Tax Administration).

and this certified contract is submitted by the debtor to the Register of Companies, kept by the Agency for Business Registry, in order to register the existence of the contract.

Institutional mediation in financial restructuring is concluded by:

1. the conclusion of the contract on financial restructuring;
2. a written statement of withdrawal, submitted by one party to a mediator and the other side, or other participants, if after the withdrawal at least two banks as creditors do not participate in the proceedings;
3. a written statement of completion of institutional mediation, submitted by the debtor and the creditors to the mediator;
4. in other cases where there is no longer a condition for participation of at least two banks as creditors.

A detailed description of institutional mediation is provided in Section III 3.4 – Steps in the CFR procedure.

2.2.1. The Mediator

The mediator is a person which mediates between the parties in financial restructuring and assists with their conclusion of an agreement, without the power to impose a solution or agreement on the parties. Mediation can be performed by persons registered in the List of mediators of the CCIS in the process of consensual financial restructuring, established by decision of the President of the Chamber of Commerce and Industry of Serbia. Registration on the list may be achieved by persons who have completed basic training in mediation and specialised training for mediators in the CFR, in line with the Programme of basic and specialised training for mediators of the CCIS.

The mediator is required to act professionally, diligently and in accordance with the provisions of the law and ethics of mediators. However, unlike the previous Decision, a new Decision on the list of mediators does not prescribe the duty of the mediator to accept mediation in any case in which he/she was selected by the participants, or appointed by the Centre for services and mediation of the CCIS.

Administrative and technical support is provided to the mediator by a professional service of the Chamber of Commerce and Industry of Serbia, which is very important for the daily operation and efficiency of the process. For the efficient management of CFR cases, three employees of the CCIS, as well as representatives of nine regional chambers of commerce, have been trained in case management skills.²⁴ Case managers in the CCIS, apart from the Director of the Centre for Services and Mediation,

24 Vojvodina, Zaječar, Leskovac, Užice, Srem, Požarevac, Kruševac, Kraljevo, Valjevo.

are the only persons which will have full access to the electronic case management system of the CFR, in accordance with the principle of confidentiality of the proceedings. The electronic system contains a list of regulations and forms used in the CFR, the detailed presentation of the phases, the course, activities and relevant documents for each of the subjects of the CFR, as well as statistical analysis conducted and the current status of the case, on the basis of which general and special reports are generated.

The case manager and the mediator shall act as a team in the CFR. The case manager is responsible for the receipt of submissions, sending notices and correspondence with the parties, keeping records, and providing technical and logistical support to the mediator while the mediator is responsible for arranging and conducting mediation.

2.2.2. Costs/expenses

Participants bear their own costs of institutional mediation, including the cost of their attorneys (and, if necessary, expert advisors and interpreters²⁵), while common expenses are borne in equal shares, unless otherwise agreed.²⁶

Common expenses of institutional mediation include a fee for the work of mediators and reimbursement for their travel and accommodation if it takes place outside of their regular place of residence, as well as the cost of organizing institutional mediation. The Tariff for the CFR procedure is set by the CCIS Decision on the costs of institutional mediation in consensual financial restructuring of companies, and is presented in the following table:

25 <http://www.pks.rs/Usluge.aspx?tipUslugeID=4>

26 It should be noted that the practice has shown that almost always these costs are borne by the debtor, and not the commercial banks participating in the process, which is a widespread practice in the world in these negotiations.

1. Filing Fee	200 EUR
2. Institutional Mediation Fee, charged on the amount of claim subject to restructuring, in accordance with the following tariff:	
• for claims up to 500,000 EUR	1,000 EUR
• for claims from 500,000 EUR to 1,000,000 EUR	1,000 EUR + 0.1% for difference over 500,000 EUR
• for claims from 1,500,000 EUR to 2,000,000 EUR	2,000 EUR + 0.1% for difference over 1,500,000 EUR
• for claims from 2,000,000 EUR to 2,500,000 EUR	2,500 EUR + 0.1% for difference over 2,000,000 EUR
• for claims from 2,500,000 EUR to 3,000,000 EUR	3,000 EUR + 0.1% for difference over 2,500,000 EUR
• for claims from 3,000,000 EUR to 3,500,000 EUR	3,500 EUR + 0.1% for difference over 3,000,000 EUR
• for claims from 3,500,000 EUR to 4,000,000 EUR	4,000 EUR + 0.05% for difference over 3,500,000 EUR
• for claims from 4,000,000 EUR to 5,000,000 EUR	4,050 EUR + 0.05% for difference over 4,000,000 EUR
• for claims from 5,000,000 EUR to 10,000,000 EUR	4,550 EUR + 0.02% for difference over 5,000,000 EUR
• for claims over 10,000,000 EUR	5,550 EUR

For example, for claims of 1,250,000 EUR that are being restructured, the filing fee is 200 EUR, while the institutional mediation fee would be 1,750 EUR, therefore 1,950 EUR in total. The payment terms specify that the filing fee is paid at the start of the process, 30% of the institutional mediation fee is paid when (and if) the Debt Standstill agreement is signed, while the remaining 70% of the fee (or 100% in case the Debt Standstill Agreement has not been signed) is paid only and if the CFR agreement is signed.

2.3. Debt standstill (moratorium)

A debt standstill (moratorium) may be introduced during financial restructuring through signing the Debt Standstill Agreement, if the parties find it necessary and if they so agree.²⁷

²⁷ It should be noted that Law on CFR allows for some participating creditors only to execute this agreement with the debtor, even if other participating creditors do not express intent to do so. Of course, in such a case, the debt standstill agreement will bind only the creditor which is a party thereto.

The debt standstill (moratorium) is of great importance to the debtor's business practice and operations. It provides the distressed company with temporary relief, in order to create the conditions and prerequisites for the financial restructuring of the company, and influences the creditors to cooperate on negotiations on the financial restructuring of the company.

The debt standstill has legal effect as of the day of the conclusion of a debt standstill agreement. It is the basis for the suspension of debt enforcement from the accounts of the company in respect of the claims of creditors which concluded the contract, as well as a moratorium on new enforcement action by creditors which concluded that contract.

This solution is in accordance with the provisions of the Law on Enforcement and Security ("Official Gazette of RS", no. 31/2011 and 99/2011 – other Law). In accordance with the principle of urgency referred to in Article 6, Para 2 of the Law on Enforcement and Security, deferment is not permitted in enforcement proceedings, unless the law expressly provides otherwise. Therefore, the Law on Enforcement and Security enables the possibility to prescribe a delay of execution by other laws, which was done by the LCFRC.

During this limited time, creditors who decide to join the consensual financial restructuring and conclude an agreement on the debt standstill with the debtor, cannot seek enforcement of their claims from the account of the debtor, nor initiate the enforcement proceedings against it.

If the funds in the account of the company are already blocked, the debt standstill agreement represents the basis for unblocking the account²⁸.

The debt standstill agreement is concluded in writing, for reasons of legal certainty, and its contents are prescribed in the Rulebook Debt Standstill Agreement.

Mandatory provisions include identifying:

1. the debts subject of financial restructuring – presented per specific basis and amount of each claim, as well as per every creditor, that could also include (for clarity purposes) both due and outstanding debts (with the maturity date specified)²⁹;

²⁸ Unless warrants to enforce payment of other creditors which have not signed the debt standstill agreement are blocked and in which case the account remains blocked on these other grounds.

²⁹ This is important because of the further treatment of the National Bank of Serbia – Enforced Collection Department, which must have a clear view of all the grounds for enforced collection that need to be removed from the system based on such a contract.

2. the debt standstill period (beginning and expiry). The debt standstill is of limited duration, which is not determined by mandatory regulation, but by an agreement.³⁰ The purpose of the debt standstill is to create a stable platform for debtors and creditors to agree on a financial restructuring of the company, so the participants to the agreement will determine the standstill period based on the assessment of the time needed³¹;
3. temporary suspension of fulfilment of obligations and prohibition on initiation of enforcement action against the debtor³², including any form of court or out-of-court debt collection during the standstill period³³;
4. the obligation of the debtor to refrain from any actions that might prevent or hinder the enforcement of claims of creditors – this obligation of the debtor includes direct and indirect actions and influences, which include active or passive actions, i.e. commission (e.g. sale and other transfer of assets or of certain property rights to a third party at low cost or free of charge) and the omission or failure to act and refraining from actions (e.g. failure to settle due debt, failure to file legal remedies in proceedings against third parties, etc.);
5. access of the creditors to data and documentation of the company relevant for financial restructuring (data and documents related to debtor’s assets, equity, liabilities, operations and business plans) for a proper assessment of its financial position and drafting financial restructuring measures;
6. confidentiality of data and information made available to creditors in line with the above mentioned – specifically, this is the obligation of all the creditors, as well as the CCIS mediators;

30 Article 12, paragraph 10 of the LCFRC

31 For these reasons, the normal period of debt standstill is 60 or 90 days, provided that the contract may be extended, before the expiry of the deadline with the consent of all signatories, which can be repeated for a number of times.

32 That is, if the enforcement proceedings have already been initiated, it is the obligation of the enforcement creditor to file a request to the enforcement court for the stay of enforcement for the duration of the moratorium.

33 Apart from filing lawsuits related to debt collection so as to prevent the expiry of the limitation period for the claim.

7. equal treatment and equal position of creditors in proportion with the amount of their claims, unless they agree otherwise – this contractual clause represents implementation of the principle given in the Law, described above.³⁴
8. the position of claims upon expiry of debt standstill – these provisions can regulate relation between creditors in case that the debt standstill period expires and CFR agreement is not concluded.

Optional provisions, which may be included in a debt standstill agreement, are:

1. security or guarantees of the claims that are the subject of the moratorium;
2. measures for the protection of creditors' claims, which include in particular: limitation and monitoring of debtor's payments or its further borrowing, through prior or subsequent consent of creditors (or a specific entity/body of creditors that can be established, such as creditors' committee), or the appointment of a person authorised to countersign documents used by the debtor to perform cash transactions (with the deposition of his/her signature with the debtor's commercial bank). In this regard, the person authorised to countersign has a duty of care towards all creditors which have signed a standstill agreement. In addition, it is possible to introduce a limit on debtor's representation powers during the period of moratorium, by registering a new legal representative of the debtor with the authority to countersign of legal documents of the debtor with the Business Registers Agency (together with the debtor's general manager, thereby limiting his representation powers). Finally, other restrictive contractual clauses may be introduced, which may require the debtor, during the period of moratorium, to maintain certain financial ratios, such as liquidity, or prohibit the debtor to make any payments to its shareholders in terms of dividends, or prohibit any sale of debtor's assets etc.;
3. the selection and appointment of professional restructuring advisers that can be of importance in cases with greater number of creditors. These advisers can be involved in meditation activities

34 Possible exceptions to this rule which may be agreed to (with the consent of all the creditors that signed the Debt Standstill Agreement) include a preferential treatment of one of the creditors (related to payment of debt, obtaining additional collaterals, etc.) which may be necessary in order to conduct a successful restructuring and obtain further cooperation of the specific creditor within the procedure.

themselves (together with the CCIS mediator), if the creditors and debtor provide their consent. The creditors individually (or some creditors jointly, as well as the debtor) may hire financial, legal and business advisers which will advise them regarding the entire process of restructuring or in respect of certain matters of importance, in which respect these advisers can conduct the aforementioned legal, tax or financial testing of the operations and the state of the debtor;

4. limitation of disposal of claim towards a company. In the debt standstill period, the creditor may dispose of his claim, unless the agreement on debt standstill provides otherwise, depending on the free will of the parties³⁵;
5. liquidated damages for the creditor or debtor which fail to meet their obligations prescribed by the Standstill Agreement;
6. the method of notifying the creditors by the debtor on important events, actions taken, or other circumstances that may affect the financial restructuring;
7. dispute resolution method, where the contracting parties may provide that disputes arising from the implementation of this agreement are resolved by a third party or a specific body (the arbitrator), the Permanent Arbitration Court at the Chamber of Commerce and Industry of Serbia or the commercial court³⁶;
8. conditions for entry into force of the contract;
9. terms and conditions of the contract extension;
10. termination of contract;
11. other optional provisions.

35 The provision of the LCFRC should be taken into account, stipulating that in the case of disposal of claims, the buyer of claims as the new creditor takes the place of the seller of claims (as a prior creditor) in the debt standstill contract, which continues to be subject to any obligations arising under such contract.

36 In the absence of this provision, the court competent for dispute settlement is the court under the general regulations of the jurisdiction of the courts, which is the territorially competent Commercial Court in the case of a company and its creditors from the economic relations.

The example of Debt Standstill Agreement is presented in the Annex 3 to this Guide³⁷ and it contains certain provisions which may (but are not required to) be made part of the final agreement on standstill between creditors and the debtor (marked in square brackets). Of course, the creditors and the debtor are free to use any other template, taking into account that any such agreement should contain the mandatory provisions mentioned above.

Enabling Business Accounts – If the debtor’s assets in its accounts are frozen, the debtor or any creditor concluding the debt standstill agreement shall submit that contract to the enforcing entity³⁸ in order to suspend the execution of the forced payment from the debtor, on the basis of submitted bills of exchange and other means of payment regarding the claims of those creditors which concluded the contract.³⁹

Postponing the enforcement proceedings – in terms of enforcement proceedings initiated by certain creditors prior the conclusion of the Standstill Agreement, each of these creditors shall, without delay, submit to the court and other authorities before which the enforcement proceedings take place upon the request of the creditors, the request for delay of the enforcement proceedings or payment until the expiration of the debt standstill period (moratorium). The court or other authority before which the proceedings take place, shall immediately upon receipt of the request, and no later than two working days, make a decision on the delay of the enforcement proceedings, and request that immediately, and no later than the day following the decision, it is submitted to the NBS – OPN, or other appropriate agency or organisation, depending on the subject of the enforcement proceedings in the case (i.e. depending on whether the enforcement is conducted at the debtor account assets, sale of certain property, seizure of claims, or other actions).⁴⁰

Transfer of claims – as already mentioned, prior to and during debt standstill, the creditor may transfer his claims to a third party (usually,

37 Annex 3.

38 National Bank of Serbia – Receipt, Control and Entry of Execution Titles and Orders, based in Kragujevac (NBS – OPN)

39 This is, otherwise, a specific way “to unblock the account,” since according to the general rules for unblocking the accounts, an explicit written request of a creditor whose request for forced collection is blocked is necessary, or the decision of the competent court, while here the unblocking is achieved simultaneously for all creditors which have signed contract and at the request of the debtor, with the submission of the signed copies of the contract NBS – OPN.

40 This procedure is necessary for those request for forced collection carried out by the NBS at the discretion of the enforcement court, in which case only the court has the power to order the NBS that such request is unblocked.

these are legal entities interested in buying out claims towards the debtor, for example in order to participate in the restructuring, or specialised funds for restructuring of distressed companies, mentioned above).⁴¹ However, it should be noted that, in situations where there are only two banks on the creditors side, and due to disposal of an entire claim by a bank transfer of claims to a non-bank entity, only the second bank remains on the creditor side, the necessary condition for a negotiated financial restructuring of the company in the form of mandatory participation of two banks is lacking, which terminates this restructuring pursuant to this Law.⁴²

If for the duration of debt standstill the creditors and the company do not reach an agreement on the redefinition of debtor-creditor relations, with the expiry of the debt standstill period the creditors re-acquire the right to initiate enforcement of claims from accounts of the company, or a right to initiate or continue the procedure.

However, it is important to note that in terms of the sequence of blocked account, the restoration of pre-existing order does not take place, as LCFRC (or any other law) does not prescribe it.⁴³

2.4. *Consensual financial restructuring agreement*

Financial restructuring is finalised by a consensual financial restructuring agreement (CFR Agreement).

The ultimate goal of the CFR procedure is for the negotiating parties to sign an agreement on consensual financial restructuring that contains all of the relevant restructuring elements and which regulates the relationship, the rights and the obligations of the parties with respect to claims that

41 It should be noted that the amendments to the regulations of the NBS made in 2012 allowed for a relatively free assignment of banks' claims towards legal entities, in contrast to previous periods when such assignments could have been made only to another bank.

42 In this case, the CCIS would make a decision on termination of the procedure. This would also mean that the agreement on the debt standstill ceases to have its meaning and purpose, because the proceedings in which it was concluded no longer exist, and there is no goal for which it was concluded – allowing negotiations for the successful completion of CFR. In such a situation, a question may arise on the validity of this agreement, but we believe that in the absence of these specific provisions in the contract itself, the general rules of contract law saying that the contract continues to bind the parties until it expires apply.

43 The *ratio legis* of such approach could be the need to avoid wrongful motivation of the creditors – to block the debtor prior to initiation of such proceedings in order to secure the future blockade order in case the restructuring fails. Moreover, when creditors are aware that in the event of failure of the moratorium they will lose their order of priority, they approach negotiations more seriously during the moratorium in order to succeed.

are regulated thereby. To the extent it changes the terms of the debtor-creditor relations between companies in difficulties and their creditors, this agreement will replace the corresponding provisions of the previously existing contracts (while the remaining provisions of such contracts will continue to apply, unless the parties agree otherwise). Although the consensual financial restructuring agreement may be the only restructuring document, there are often bilateral agreements made between the parties, either through amendments to the previously existing contracts or by executing brand new finance documents (but it should be noted that all such bilateral agreements must be in accordance with the provisions of the CFR agreement). In some cases, the CFR agreement may provide for a change in the corporate structure or in the management of the company, for a creation of new legal entities and/or for the sale of assets.

More specifically, this agreement may encompass the following measures:

1. providing for a repayment in instalments, change of maturity deadlines, interest rates, or other terms and conditions of the credit, loan, or another claim or security instruments;
2. liquidation of the debtor's property or transfer of the property in satisfaction of debts;
3. debt discharge (write-off);
4. execution, amendment, or waiver of a lien;
5. provision of additional security by debtor or third parties, including guarantees and liens;
6. debt to equity swap;
7. entering into a new loan agreement;
8. issuing of securities and commercial papers;
9. other relevant measures for the realisation of financial restructuring.

Debt to equity swap

This legal concept and financial mechanism represents the exchange of the creditor's claims against the company into its percentage share in the issued equity capital of the company. In economic terms, it involves the transformation of debt into share capital that enables the creditor to acquire ownership and management rights in the company and to take part in its future profit, along with the current owner (whose share is decreasing in proportion to the value of claim that is being converted), or provides the possibility for the creditor to "collect" its claims by selling these ownership shares in future. In legal terms, this amounts to satisfaction of the debt obligation with equity. Through debt to equity swap, the claim is terminated, because the obligation is fulfilled, while the company's share capital is increased.

However, it is important to note that the public joint stock company (whose shares are traded on the stock exchange and capital market in terms of the Law on Capital Market), the share capital increase cannot be implemented by debt to equity swap, in accordance to the Article 295 of the Company Law (“Official Gazette of the RS”, no 36/2011 and 99/2011).

A template CFR agreement⁴⁴ is attached as an Annex to this Guide, and it contains certain provisions which may (but are not required to) be made part of the debtor-creditors’ agreement (marked in square brackets). It should be noted that this template document represents only one of the possible forms of this contract and that its provisions may (and should) be adapted to each individual case.

The debtor shall be obligated to submit the concluded agreement to the Business Registers Agency, immediately upon conclusion of the agreement for the purposes of registration of the existence of such agreement.⁴⁵

2.5. *Security Interests*

For cases in which a creditor which participates in the CFR has security for his claim (which is the subject of restructuring) in the form of a mortgage on real property of the debtor or a lien on its equipment or supplies (collectively, “lien”), LCFRC explicitly establishes the stability (continuity) of such lien. This is achieved by the ability to modify the data on the registered mortgage or lien on movables and rights introduced by the LCFRC.

The claim which is under restructuring and is secured by mortgage (hereinafter: secured claim under restructuring), shall be replaced by the restructured secured claim, for the purpose of the lien, so that the lien (as secondary right attached to secured claim under restructuring, pursuant to general rules), continues to exist by way of security for the restructured claim, in accordance with the financial restructuring agreement. In this way, the so-called novation problem is excluded in the CFR procedure by explicit legal intervention⁴⁶. Thus the LCFRC implicitly supports the standpoint that

44 Annex 4.

45 Although for such an obligation prescribed by law, certain reasons of visibility, legal and economic security and certainty can be found, on the other hand, the basic aims of this (voluntary) procedure are in favour of confidentiality and lack of a need for transparency and publicity of the process and its outcomes. The signed contract on CFR binds only the signatories, so there is no reason for other subjects to know that it was signed or that it exists.

46 Contract novation occurs where there is a change in the underlying claim or the quality of that claim and has the effect of re-triggering the hardening period of any security granted in connection with the claim.

the restructuring of CFR claims does not amount to novation, but rather to a change in the specific conditions of the debts (maturity date, the amount of interest, etc.), when the lien properly continues to exist and provides security such restructured claim.⁴⁷

The Real Estate Register, or other registry of lien, shall amend the data of enrolled mortgage, or pledge over movables and rights, in compliance with the amount of the restructured secured claim.

The mortgage, or pledge over movables and rights, represents collateral (instrument of security) of the restructured secured claim up to the amount of secured claim under restructuring, (i.e. it is not possible that, as a result of restructuring, the maximum amount of mortgage registered at the Real Estate Register is increased).

The fee for amending the information on a prior registered mortgage is explicitly prescribed and significantly lowers the cost of establishing a new mortgage, since it is fixed amount regardless of the amount of the claim.

3. Tax and other incentives for financial restructuring

3.1. *Tax Incentives*

The Law on CFR establishes tax incentives for financial restructuring, in terms of tax exemptions for debtors following debt write-offs by creditors, as well as possibilities of rescheduling the public revenue debt, stipulated by the law regulating income tax for legal entities, and the law determining the tax procedure and tax administration.

Accordingly, Article 74b of the Law on Tax Procedure and Tax Administration⁴⁸ (“Official Gazette of RS”, No. 80/2002, 84/2002 – corr.70/2003, 55/2004, 61/2005, 85/2005 – other law, 62/2006 – other law, 63/2006 – corr. of other law, 61/2007, 20/2009 – other law, 53/2010, 101/2011, 2/2012 – corr. 93/2012, 47/2013, 108/2013 and 68/2014) prescribes that notwithstanding Article 73, Para 4 of the Law (which lays down the conditions for deferment of payment of the tax debt and limits the period of delay to 24 months), the relevant authority may, upon the

47 In the process of drafting the aforementioned analysis of the legal framework for the CFR certain banks that participated in the CFR proceedings in the previous period have emphasised that not all registers of the Republic of Serbia act in the same way when it comes to the application of the institute “amendment of the data of enrolled mortgages,” so that there are certain problems in practice, which should certainly be checked, if possible, with the relevant cadastre already during the CFR procedure, in order to avoid future problems for secured creditors.

48 Hereinafter referred to as the Tax Law

written request of a tax payer which has concluded an agreement on financial restructuring in accordance with Law regulating consensual financial restructuring of commercial companies, approve deferment of payment of the tax debt for up to 60 months in equal instalments, with the possibility of an initial 12 month grace period.

The Tax Law provides that the authorisation to defer the payment of tax debt shall interrupt statute of limitation for the collection of the tax debt, and the time for which the deferment of payment was granted is not affected by the statute of limitations.

The Tax Law also provides that the taxpayer is entitled to apply for a (special) deferment of the tax debt payment, even if a deferment of payment of tax debt has previously been granted (according to the standard rules), but with the restriction that such a request must be filed before expiry of the deadline of the first deferment and that such request may be approved if the total period of deferment of tax debt payment, along with the previous deferment, would not exceed 60 months.

As an incentive to consensual financial restructuring of companies, the Law on Corporate Profit Tax (“Official Gazette of RS”, No. 25/2001, 80/2002, 80/2002– other law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013 and 68/2014) stipulates in Article 16 Para 3, that exceptionally in consensual financial restructuring, the value of written-off individual claims shall be recognised as expenditure, provided that those claims have been included in the consensual financial restructuring in accordance with the CFR Law. This is therefore an exception to the general regime under which certain conditions are required for the recognition of expenses within the tax balance (which primarily refers to the fact that the creditor has tried all possible legal procedures for debt collection, which is generally difficult to be proved and time consuming). This allows creditors (mainly banks) not to pay tax on the write-off of debt accepted as part of the CFR proceedings (in practice, this usually refers to the interest), which is significant in terms of the admissibility of such write-offs for banks (which, under the general regime, would have to pay income taxes for all such written off amounts in addition to the write-off of their claims).

3.2. *Bank Incentives*

Item 23 of the Decision on the Classification of Bank Balance Sheet Assets and Off-balance Sheet Items (“Official Gazette of RS, No. 94/2011, 57/2012, 123/2012, 43/2013 and 113/2013 hereinafter: the Decision on the Classification of Assets), prescribes that delay in the collection of claims shall be calculated as of the original maturity date. Determining the date of claims’ maturity is important for banks, since in accordance with the maturity of claims and possible delays in debtors payment of the claims in relation to the maturity date, the bank has to perform the classification of the debtor in the appropriate categories and on the basis of this classification change the level

of reservations of its own equity as well as make certain changes in its own income statement. In other words, if the debtor is too late with payment in relation to the maturity date, the bank therefore suffers certain consequences and registers some losses. The extent of such consequences and the level of losses directly depend on the classification of the debtor, which may be of different categories, from excellent (A) to the worst (D).

If the bank, on the other hand, decides to reschedule loan obligations of a debtor which delays the payment, pursuant to this rule for the classification of the debtor, the bank has no right to take a new due date in accordance with the approved rescheduling, but the initial one.

Banking regulations recognise certain exceptions to this principle rule.

For instance, the bank has the right to calculate the delay in the claims collection according to subsequently agreed maturity date if the following conditions are met:

- That at the moment of applying for the extension of a repayment period the borrower is not overdue on its obligations for more than 90 days;
- That the borrower's financial position and/or creditworthiness assessed based on financial indicators shows that the borrower will be able to regularly settle its obligations according to the subsequently agreed repayment terms;
- That monthly calculation and collection of interest or interest and a part of the principal debt are agreed on the extension of the repayment period;
- That after the extension of the repayment period, the borrower settles its obligations to the bank on time and/or with a delay of no more than 90 days.

Since in many cases the bank is not able to rely on this exception, there is also an additional possibility that the bank uses the new maturity date for the classification of the debtor⁴⁹, provided that the debt is restructured only once (notwithstanding the implemented method of restructuring).

However, if the case involves a second restructuring of the same claim, the bank can utilise the new maturity date (set forth by the second re-programming) only if the restructuring was undertaken as part of CFR or through reorganisation in accordance with the provisions of the bankruptcy (pre-packaged reorganisation or reorganisation in bankruptcy proceedings).

In addition, it is important to note that in each of the cases described, in order for the bank to qualify for such a classification, it is necessary that the debtor settled its liabilities within a period not longer than 30 days for at least three months, and at least for three consecutive payments of the subsequently agreed repayment plan.

49 That is to retain the same (favourable) classification of the debtor.

4. Procedure of Consensual Financial Restructuring

4.1. Steps in the Consensual Financial Restructuring Procedure

As already noted, prior to the formal initiation of consensual financial restructuring proceedings (CFR), a company in financial difficulties (the borrower) is addressing its creditors to try to redefine the debtor-creditor relationship. If agreement is not reached through direct bilateral negotiations, parties can apply for institutional mediation before the Chamber of Commerce and Industry of Serbia, which includes the following steps:

1. First contact with the petitioner (providing for the first information)

The parties jointly, or one party solely (usually the debtor) contact the Chamber of Commerce and Industry of Serbia (CCIS) or Regional Chamber of Commerce (RCC) requesting detailed information about the procedure of consensual financial restructuring of companies.

The initial information is usually given by phone or e-mail by the employees of the Centre for Services and Mediation of the CCIS (the Centre) or RCC. During the first contact with one of the parties, the CCIS or RCC collect the necessary information and provide basic information on CFR procedure.⁵⁰

2. First informative meeting in the Centre or RCC

After the initial information provided, if the debtor or other party are interested in proceeding and if they participate in the proceedings for the first time, a meeting at the Centre for Services and Mediation Chamber of Commerce, or the regional Chamber of Commerce is organised, with the participation of the debtor (or other petitioner), Director of the Centre, case manager and the mediator, preliminary delegated by the CCIS from the list of mediators specialised in CFR procedure. At this meeting, the debtor is provided with all the necessary information and clarifications.

If the applicant is familiar with the CFR procedure or if it is possible to assess whether the case is eligible for the CFR procedure based on the initial contact by telephone, this step is optional.

50 The first contact is made in line with the CCIS standardised check-list.

3. Submitting the CFR request

After the debtor has received detailed information about the CFR procedure, they make the final decision whether to initiate the procedure, so they submit an official Request to the Centre for services and mediation of the CCIS to initiate CFR procedure. Contents of the Request are prescribed by the Rulebook on Conditions and Procedure of Institutional Mediation in Consensual Financial Restructuring of Companies. Upon reception, the Centre forms the case and assigns a number in the register.

4. Review of the Request – assessment of the eligibility of the case

Centre for services and mediation of the CCIS assesses whether the criteria for commencing the CFR procedure are met, (RP and director) as well as whether the request contains all the necessary details for starting the procedure. The basic condition required (i.e. identification of the application) is the participation of two banks in the procedure and that the debtor-creditor relationship is of a commercial nature, that is suitable for a consensual financial restructuring. If the criteria for the commencement of CFR procedure are met, it is verified and confirmed by telephone which is the contact person at the other side (other sides) specified in the request submitted by the applicant.

If the formal requirements for CFR proceedings are met, Director of the Centre, depending on the nature and complexity of the case preliminarily determines one or more mediators (co-mediators) from the list of CCIS, which cooperate with RP in further communication with the parties and preparation for institutional mediation in CFR procedure.

If the formal requirements for the CFR proceedings are not met (e.g. in the request submitted by the debtor only one bank is given as a creditor), the Centre shall notify the applicant (as a part of usual assessment whether the applicant is potentially interested in participating in the regular course of mediation in economy, which is also carried out by the Centre CCIS but under other rules).

5. Preparation of the Financial Consolidation Plan proposal (the Plan)

After the Request is submitted, simultaneously with other activities in the procedure, the debtor shall prepare a proposal for a Financial Consolidation Plan (unless it is already prepared). The Centre, or the mediator, at the request of the debtor (particularly in the case of debtors which do not have experience and knowledge in finance) may give some technical clarifications during the preparation of the financial consolidation plan, but without going into the merits of the

plan, and in strict compliance with the principles of confidentiality of the procedure, and the neutrality and impartiality of the employees in the Centre and the mediator.

6. Notifying the other party

After receipt of the application for mediation, the CCIS shall submit a letter – notice on initiation of the proceedings and a copy of the submitted application to the other side/sides, in the standard format of the Centre. A copy of the letter with a list of all parties to which it is addressed shall be submitted to the mediator.

7. First telephone call with the other party

After 3-5 days of receipt of the notice initiating the proceedings, the mediator shall contact all the parties by phone to whom the notification letter was sent (the creditors listed in the application for initiation of proceedings). The mediator checks if they have received and reviewed the aforementioned letter, whether they are ready to participate in the CFR procedure, but also motivates them to accept participation and, if necessary, provide further information on the process of CFR. If necessary, it is possible to arrange a meeting of a mediator with individual creditors to provide additional information and clarification regarding the CFR procedure, especially if creditors have not participated in the CFR so far. All these actions are undertaken in line with the principle of impartiality and independence, as well as the confidentiality of data.

8. Internal meeting/call of the CCIS Centre employees and the mediator

Once contacts with all potential stakeholders – creditors and the debtor (if the debtor was not the applicant) have been established and the first interviews conducted and information obtained about their willingness to participate in the proceedings, if necessary an interview or a meeting at the Centre with the participation of a mediator, case manager, and Director of the Centre can be organised, where on the basis of the outcome of interviews with potential participants a strategy for further steps in the proceedings is developed.

9. Delivering the Financial Consolidation Plan proposal to the creditors – scheduling the first meeting in the mediation procedure within the CCIS

After the interview with all creditors and developed strategies for acting, all creditors which have agreed to participate in the CFR shall receive the debtor's proposal for financial consolidation plan, together with an

invitation for the first joint meeting at the CFR. Date of the first joint meeting is usually scheduled 10-14 days after submission of the draft financial consolidation plan to creditors in order to leave enough time for analysis of the proposal and their internal preparation.⁵¹

10. Second telephone call with creditors – preparation for mediation

5-7 days following the delivery of the proposal of Financial Consolidation Plan (and prior to the first meeting), a mediator contacts all the creditors for the second time in order to check whether they had received the debtor’s Proposal; what is their standing regarding the Proposal, and which will represent the creditor at the first joint meeting in the mediation procedure at the CCIS. If necessary, the mediator further motivates the parties to participate in the meeting, checks whether the competent person is authorised to participate in the procedure; gives and collects all the additional information relevant for the organisation of the meeting (goal of the meeting, time, place and duration of the meeting, which represents the creditor, does he/she has the authority to negotiate, etc.).

11. Second call with the debtor – preparation for mediation

After the information on the participation at the first meeting was collected from all the creditors, the mediator contacts the debtor and gives him information relevant for organizing the first joint meeting in the CCIS (goal of the meeting, time, place and duration of the meeting, how many creditors accepted to participate in the meeting, whether the creditors will have advisors or proxies present at the meeting, etc.).⁵²

12. Preparation for the first meeting in the CCIS

Mediator and case-manager, as well as the Director of the Centre if necessary, prepare the first joint meeting of debtor and creditors.⁵³

51 It should be borne in mind that banks as creditors function as a relatively complex system of decision-making, where in order to take any action, including the decision to participate in the CFR, the approval of several levels of decision making and several different sectors within the bank is typically required.

52 The second contact with participants is made in line with the CCIS standardised check-list.

53 Preparation for the first meeting between the debtor and creditors with the CCIS as a mediator is conducted in line with the CCIS standardised check-list.

Prior to the first joint meeting, the Centre delivers the following documents in an appropriate manner (e-mail, fax, etc.) to all participants:

- The text of the Confidentiality Statement⁵⁴
- General conditions of the institutional mediation within the CFR⁵⁵.

4.2. *Mediation Process – mediation session between the mediator and the parties*

The process is lead by a CCIS mediator⁵⁶ and it generally encompasses the following stages:

1. Before starting the process, all persons present (including technical persons and assistants, mediators and representatives of the CCIS) sign a Statement of Confidentiality;
2. The process begins by introducing the participants and the opening statement of the mediator;
3. The debtor presents the financial consolidation plan;
4. After the debtor's exposition, the creditors consider the plan and present their questions, suggestions and comments;
5. The negotiations between debtors and creditors, as well as a group of creditors, or between the creditors on the individual solutions, are guided by the mediator. Negotiations can be conducted at a joint meeting (plenary), and if necessary, separate meetings (caucuses) can be organised. The decision to organise separate meetings is made by the mediator, with the consent of the parties. Conversations held at separate meetings are also confidential, and the mediator does not have the right to convey the details of the conversation to other participants, unless the parties which participated at separate meetings authorise him to do so;

Negotiations are conducted until the conclusion of the agreement on financial restructuring. As already mentioned, in practice it will often be possible for the parties to agree on the terms and the elements of the financial restructuring of the company, so

54 Annex no. 5.

55 Annex no. 6.

56 As mentioned earlier, the specially selected advisors of the creditors and debtors can assist, if so decided and agreed, but the participation of mediators of the CCIS is mandatory in this case in such a situation.

that they immediately conclude agreement on financial restructuring, without signing the debt standstill agreement;

6. The parties conclude the agreement on consensual financial restructuring, which includes measures to implement restructuring⁵⁷. After the entry into force of the agreement, the parties implement the measures of financial restructuring and, under the circumstances, use the prescribed incentives (which have previously been discussed in more detail);

If necessary, mediation in the CFR can be performed at one or more joint meetings, based on the mediator's assessment, and with the consent of parties;

7. Termination of proceedings:
 - The mediator is authorised to terminate the CFR proceedings if he/she reasonable believes that further conduct of the process is not appropriate⁵⁸;
 - Each of the parties is free to withdraw from further participation in the proceedings at any time if they deem the procedure is not in their interest, and that they are not able to reach an agreement (the principle of voluntariness);
 - If a party withdraws from participation in the proceedings, the mediator assesses whether there are still requirements for the conduct of the CFR proceedings (participation of two banks), and in consultation with the parties continues or terminates the proceedings;
 - If an agreement is reached in CFR, the mediator and the CCIS may at the request of the parties, assist in the preparation of a draft contract on financial restructuring;
 - In case of an agreement in the CFR, the Centre continues to support the parties in order to sign the contract;

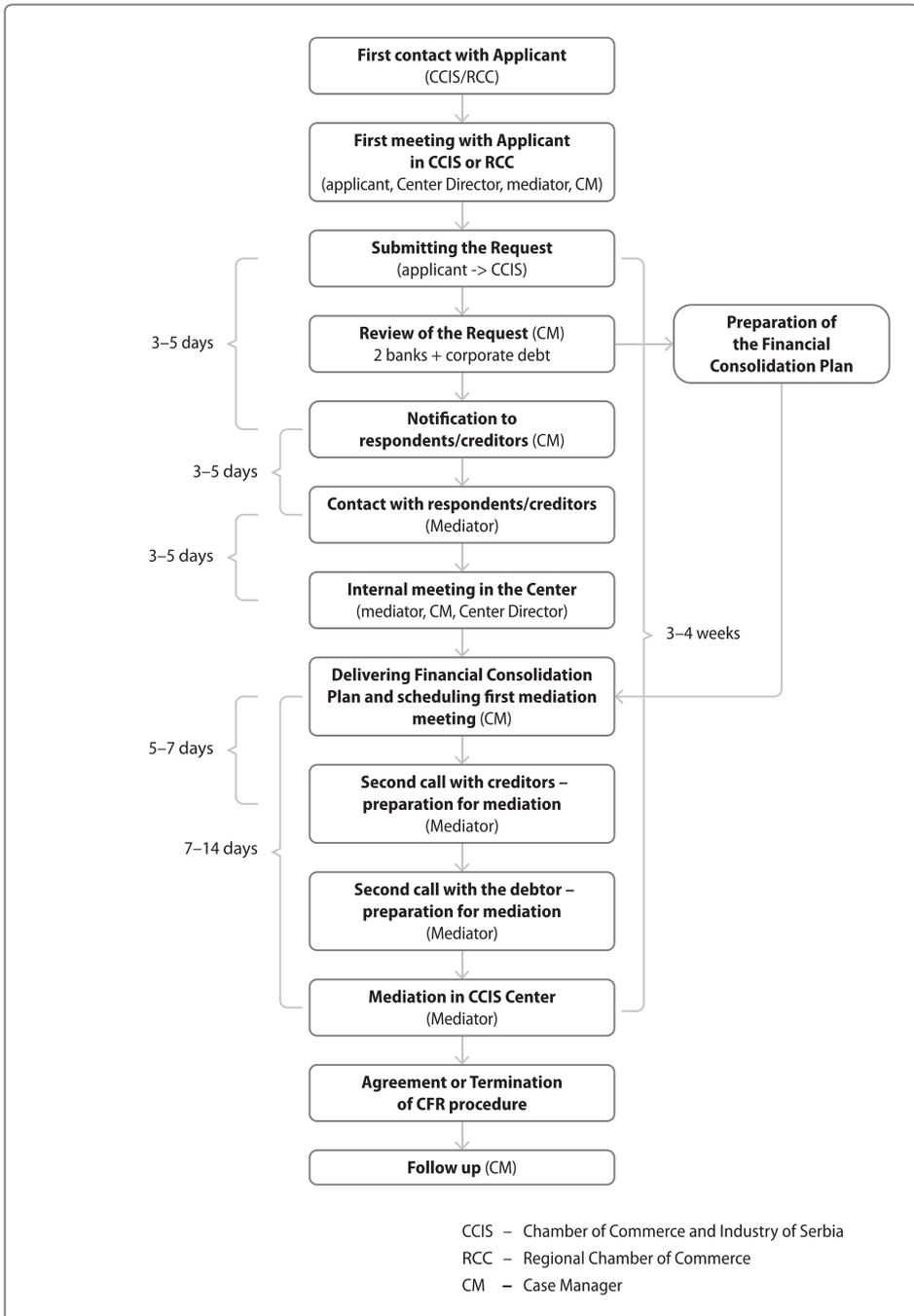
57 This contract may also have certain conditions regarding entry into force, as any other contract.

58 However, the mediator should make such an assessment only after investing additional efforts and discussions with all stakeholders, as should in principle situations in which a mediator decides to stop (suspend) the process which the participants (majority, for example) want to continue should be avoided.

- In the case of termination of the CFR, the parties may agree to continue negotiations outside of the framework of consensual financial restructuring and proceed with commercial mediation with the help of a mediator⁵⁹;
- In the case of termination of the CFR without reaching an agreement, the mediator terminates (ceases) the institutional mediation and notifies the CCIS Centre for Services and Mediation.

59 It is particularly important that the CFR procedure may, in certain cases, lead to the signing of bilateral agreements of the debtor with the creditors on rescheduling debts (involving, for instance, the annexation of the loan agreement), and conducted analysis has shown that it often happens in practice. This outcome of the proceedings cannot be regarded as undesirable, because the mediator (and the CCIS itself) should strive to achieve a solution desirable for the participants in the process, regardless of the form in which this solution is achieved. In this sense, this outcome should also be considered as successful completion of the CFR procedure.

Consensual Financial Restructuring of Companies – Case Flow Chart



IV The conditions of the Fund for Development of the Republic of Serbia for accepting the agreement within CFR

Pursuant to the “Conditions for approval of the financial restructuring of companies”, previously adopted by the Management Board of the Development Fund of the Republic of Serbia (hereinafter: “Terms of the Development Fund”), the conditions (required to be stipulated in the CFR agreement in respect of the Fund’s claim, irrespective of the fact that other creditors which participate in the CFR proceedings may accept some other conditions regarding their own claims, i.e. longer payment terms or partial claim write-offs) for the approval of the financial restructuring by the Development Fund are as follows:

- debt standstill period is 24 months;
- ultimate repayment of debt is 5 years after the expiry of the standstill period;
- retention of the currency clause and the original contractual interest rate, the higher the interest rate prescribed for the investment loan of the programmes of the Fund for the development for the year in which the decision on the acceptance of financial restructuring is made. If the interest rate is lower than this, an interest rate which is scheduled for investment loans of the programmes of the Development Fund of the year in which the decision on the acceptance of financial restructuring is made shall be contracted;
- retention of originally anticipated collaterals – it is possible to predict additional collaterals, but not to reduce the collateral that is provided in loan agreements/guaranty which are the subject of financial restructuring; also, it is necessary to justify loans that are the subject of financial restructuring;
- equal treatment and equal position of all creditors, in proportion to the level of their claims.

Under these conditions, it is not possible to predict the following in the financial restructuring plan:

- debt release – whether the part of debt or the entire debt release;
- new investments;
- conversion (swap) of debt to equity.

Each financial restructuring plan submitted by the debtor shall be analysed separately and the specific terms acceptable to the Development Fund shall be determined. The final decision on acceptance of any financial restructuring plan is passed by the management board of the Development Fund. In addition to the submitted financial restructuring plans, the Development Fund may request additional documentation for a more detailed analysis.

V Questions and answers about consensual financial restructuring

1. **What is the relationship between financial restructuring under the Law on consensual financial restructuring and reorganisation under the Law on Bankruptcy?**

The comparative overview (See the Table on page 14) of the financial restructuring based on the Law on Consensual Financial Restructuring of Companies, and reorganisation as per Bankruptcy Law, demonstrates the flexibility of consensual financial restructuring. CFR has fewer direct costs, as well as relatively lower indirect costs since it mitigates or significantly reduces the risk of termination of business relationships with suppliers and customers that may arise upon public attempts of restructuring through the pre-packaged reorganisation plan. The CFR approach requires the consent of all the key creditors to the terms of restructuring. If some major creditors refuse to enter into CFR, it may be necessary to use the mechanism of the pre-packaged reorganisation plan that allows the cram down of creditors. The CFR procedure should generally be more efficient and shorter in duration than the pre-packaged reorganisation.

2. **Which types of entities are not subject to the Law on Consensual Financial Restructuring of Companies?**

Pursuant to the Law, the following entities are prohibited from being debtors in CFR: commercial entities that are not organised in a legal form of a company, i.e. entrepreneurs and public companies. In addition, the LCFRC does not recognise financial sector entities, such as banks, insurance companies, underwriters of securities, private equity funds, investment and pension funds management companies, broker-dealer companies, companies performing financial leasing, as well as other companies mainly engaged in providing financial services in accordance with the law as debtors in the CFR procedure.

However, all these entities may be potential creditors in the consensual financial restructuring.

3. What does the “two banks” requirement prescribed by the Law mean?

The law stipulates that CFR can be implemented if it involves at least two local or foreign banks as creditors. In practice, this requirement has been considered to be met even if one of the two banks is in bankruptcy. Nevertheless, the Development Fund, which has participated as a creditor in some CFR proceedings, does not qualify as a bank for the purpose of this requirement.

4. Can the company apply to the Chamber of Commerce and Industry of Serbia by itself or do the debtor and creditors have to apply together?

The debtor and the creditors are not obliged to jointly submit the proposal to initiate the procedure of consensual financial restructuring. The debtor may apply individually, and the CCIS shall invite the creditors (for that reason, they have to be identified in the debtor’s request) to provide feedback on this proposal in short order.⁶⁰ Finally, the procedure can be initiated by every creditor individually or jointly by a group of creditors.⁶¹

5. What documentation should be submitted with the proposal (request) to start the process of consensual financial restructuring?

The Law or by-laws do not specifically prescribe what should be submitted as an attachment to the proposal (request) to initiate the procedure of consensual financial restructuring, but the Rulebook on the conditions and procedure of institutional mediation contains a form as an integral part thereof. It should be noted that the proposal (request) must state that at least two local or foreign banks participate in financial restructuring as creditors (but for practical reasons all other creditors the debtor proposes to be invited to participate in the proceedings must be indicated, with contact details, so that the CCIS and the mediator can contact them – in this respect, it is possible to

60 In cases where the debtor has submitted the proposal, it is more efficient (although not required) for the debtor to have previously contacted the creditors proposed as participants in CFR, to determine the situation and willingness among creditors for a possible financial restructuring.

61 It is important to note that even where the request is submitted by a creditor, the two banks that should participate in the procedure should be also indicated in the request (if the two banks are not both initiating the procedure themselves).

subsequently submit certain missing data, before the start or after the commencement of the proceedings, as it is also possible subsequently, after the commencement of proceedings, to propose additional creditors to participate in the process).

In addition to the data about the creditors, and in order to conduct the procedure in an adequate manner, the amount of the debt, its basis (e.g. loan agreement), and other information that may be relevant to the specific relationship (such as debt maturity date, that can be useful to the CCIS or the mediator in preparation of negotiations and the CFR procedure, all in the best interest of the debtor) should be specified. The practice is that, prior the commencement or during the procedure, the debtor prepares and submits the restructuring plan that will be further discussed with the creditors.

Relevant information for submitting the request for initiating the procedure is also available at the CCIS web page: <http://www.pks.rs/usluge.aspx> (*web page is in Serbian*).

6. What happens if a bank fails to respond to the CCIS notification within the 15-day deadline?

It is important to bear in mind that banks have large internal systems, especially when they are members of an international banking group. They often (usually) require a long time for decision-making and responding, because it is necessary to carry out certain prescribed mandatory and internal procedures and obtain the approval of the responsible authorities and bodies, banks or banking groups. Therefore, it is possible that banks may be unable to comply with the deadline of 15 days for the declaration (response) upon the proposal (request) to start the CFR process, as prescribed by the Rulebook on the conditions and procedure of institutional mediation.

In such a case, if a bank would fail to respond to the CCIS notification within the 15-day deadline, the CCIS would contact the bank, usually by e-mail or phone, and in case of a positive response, the bank would be included in the respective CFR proceedings.

7. Is the business name of the company in financial restructuring added the label: “in financial restructuring”, and is the commencement of the CFR procedure registered at the business register?

The label “in financial restructuring” is not added to the business name of the company in consensual financial restructuring nor is this registered in the register of companies maintained by the Agency for Business Registers.

8. Is the agreement on financial restructuring published at the website of the Agency for Business Registers?

The law stipulates submission of the concluded agreement on financial restructuring to the register of business entities to register a note on the existence of that contract – that is, not for the publication of this contract. Concurrently, the Law provides for the principle of data confidentiality, stipulating that the creditor and the institutional mediator shall keep as confidential all data and information relating to the assets, equity, liabilities, operations and business plans and proposals for measures of financial restructuring of the debtor, and that this data and information can be available to the creditors which participate in financial restructuring. The principle of confidentiality is also provided in the Rulebook on the conditions and procedure of institutional mediation.

Pursuant to the above, the agreement on financial restructuring will not be published at the website of the Agency for Business Registers.

9. I am a company. What benefits can CFR offer me?

The CFR procedure is substantially cheaper than the PPRP with costs of an institutional mediator capped at EUR 5,500 for successfully completed cases.

The CFR procedure is somewhat shorter compared to PPRP. The entire procedure may in theory be concluded in 1 month. However, longer periods are required for more complex cases. On average, about 40 days lapse from initiation of the CFR case to the first meeting between the parties. *The CFR is confidential and therefore there are reduced indirect costs, such as the loss of reputation and public confidence, often associated with the PPRP.* The reason why many debtors do not immediately opt for the PPRP (beside the increased costs) is reputational, i.e. the risk of termination of business relations with the main suppliers if a formal court procedure is initiated. This risk is not present to the same degree in CFR. Thus, one of the procedure's most *significant* benefits is its confidential nature, which can reduce the negative impact of financial restructuring on the debtor's business, leading to the loss of important debtor's trade relations in many bankruptcy cases.

Even if out-of-court, the CFR procedure still constitutes an institutional and formal process, with a certain level of oversight by the CCIS. In addition, in the CFR procedure, the relevant bodies of the CCIS and the mediator play a more active role in the discussions between the debtor and the creditors, as compared to the rather passive role played by the court in the PPRP.

The CFR (as does the PPRP) allows the debtor's management to stay in place from the inception of the procedure to its conclusion.

CFR Law lays legal grounds for the rescheduling of the fiscal duties and taxes, where such incentives are stipulated by the law regulating income tax for legal entities and the law determining the tax procedure and tax administration.

10. I am a bank. What benefits can CFR offer me?

In situations where banks determine that the debtor has the prospect of continuing its business and repaying its debts out of its regular business operations or through sale of its assets, they may achieve a quicker, simpler and cheaper resolution of the restructuring issues through a CFR procedure, as compared to other methods of restructuring. The collection of debts through enforcement or bankruptcy may as a rule lead to a destruction of value in the debtor's assets and a reduction in the debtor's potential to repay all of its creditors. The CFR procedure makes it possible for all creditors to obtain the same level of information before making the decision on accepting the restructuring proposal, and the involvement of CCIS mediator provides guarantees that the basic principles prescribed by the Law on CFR (principle of equitable treatment etc.) will be respected.

The procedure itself is flexible and allows for each creditor to exit at any given time, does not require a formal decision of the bank's bodies to be made any time prior to execution of the final restructuring agreement, and the special provisions on moratorium of debts allow for a more efficient unblocking of the debtors accounts if this is needed for a successful restructuring. The Law on CFR provides for clear basis for the existing collaterals to remain in place (without a risk of losing such security rights and without the risk of avoidance actions), with the least possible costs for the debtor in terms of the changes to the existing mortgages in accordance with the restructuring agreement. Finally, by using this procedure the banks obtain the right to use the banking incentives prescribed by the NBS, above all the right to maintain the existing classification of the debtor even if the second restructuring is undertaken via CFR (which would not be possible otherwise).

11. How to spot financial difficulties on time?

There are a number of early warning signs that indicate that a debtor may experience financial distress. Being aware of these signs can help prevent losses and enable timely initiation consensual financial restructuring. Usually, warning signs are classified according to a company's operations, behavioural and management aspects, quality of reporting and investing and financing activities.⁶² While isolated

62 Annex contains the most common signs of potential financial distress.

warning signs may not indicate problems or they may be only temporary. However, two or more warning signs may validate the warning of potential distress.

While some symptoms are visible only to the management of the company, for most companies warning signs can be easily determined from their financial statements:

- **Negative cash flow** may indicate that the company will soon have liquidity issues;⁶³
- **High leverage** (debt-to-equity ratio) indicates that a company may eventually face substantial maturing debt, as well as high interest. Given that such companies also experience a high risk of default, they pay a risk premium in the form of higher interest rates. Generally, companies that have a ratio above 0.5 should be closely monitored;
- **Inadequate interest coverage ratio** (the ratio of EBIT and interest costs) below 1 indicates that the company is not able to service interest from its own income before **deducting interest and tax**.

12. In what circumstances is CFR appropriate?

The CFR is primarily designed for:

- **the companies that have a viable business but problematic balance sheet.** These companies generate positive cash flow from operations, but cannot service the due payments from the cash flow. If such situation prolongs, the company gradually reduces its own capital, decreases investment or extends the terms of payment to suppliers. This is reflected in the decline in productivity and competitiveness, and ultimately questions the survival of the company.
- **the companies in which banks are the predominant creditors.** There are no exact rules in practice, with regard to the number of creditors which need to be involved. However, the CFR is usually limited only to key creditors (banks and larger commercial creditors). If there is a growing number of creditors the extent of hold-out problem typically increases. Thus, in such case there is a growing need for imposing a solution to the dissenting creditors through court mechanisms, i.e. bankruptcy proceedings.

63 The fact that a company may simultaneously show net profit does not necessarily mean that there is no financial distress. Results are often influenced by the application of certain accounting rules and standards that the company must adhere to, by applying “creative” accounting or simply by falsely presenting certain items in financial statements.

13. What is the right moment for initiating the consensual financial restructuring procedure?

As already stated in the introduction, a key factor for the success of CFR is timely initiation of proceedings. In practice, debtors start the initiative very late, when they are overdue for several months and when it is already questionable whether their business is sustainable. Therefore, the timely initiation of the CFR procedure is crucial for preventing potential additional damage to occur for the business due to prolonged financial uncertainty, thus increasing the chance for successful long-term financial restructuring.

14. CFR is a voluntary procedure. What happens if the parties fail to agree?

In the event where CFR negotiations fail, the debtor may still use the agreements reached with consenting creditors and actions taken in terms of preparation of the restructuring plan to prepare and file a pre-packaged reorganisation plan. In that regard, we can view the PPRP as one logical response to failed CFR negotiations. The existence of PPRP can serve as a credible 'threat' during CFR negotiations to dissenting creditors to reach an agreement with the debtor and other majority creditors within the CFR framework, since failure to do so could lead to a more adverse outcome for them in the PPRP.

15. The CFR procedure is conducted in line with the principles of institutional mediation. What does that mean for the participants in the procedure?

It is already stated that consensual financial restructuring is a voluntary process and that each of the participants may decide to step out at any stage. However, in practice, this principle has influenced the parties to adjust their negotiating positions and, with the assistance of a mediator, show more understanding for the interests of the other sides, which in turn creates a positive environment for a constructive dialogue. Furthermore, the principle of confidentiality encourages parties to negotiate openly, which is another precondition for reaching a mutually acceptable solution. At the beginning of the mediation process, all participants will be made aware of the CFR General Terms and Conditions and will have signed the Confidentiality Statement (Annex 5 & 6).

The mediator is neutral and impartial, without authority to make or propose solutions. The mediator utilises advance negotiation, facilitation and mediation skills to assist the parties to reach a mutually acceptable agreement. The final decision is made by the participants in the CFR process, in accordance with their business and general interests,

and such mutually agreed solution represents the best guarantee of the sustainability of the agreement reached in the process of institutional mediation within the Chamber of Commerce and Industry of Serbia.

VI Annexes

L A W
**ON CONSENSUAL FINANCIAL
RESTRUCTURING OF COMPANIES**

I. BASIC PROVISIONS

Scope of Law

Article 1

This law shall regulate conditions and manner of consensual corporate financial restructuring (hereinafter: financial restructuring) in the Republic of Serbia, that shall be carried out at latest prior to commencement of the insolvency (bankruptcy) proceeding in accordance with the law governing insolvency (bankruptcy).

Exemption

Article 2

The provisions of this Law concerning a company in financial difficulties, as a financial restructuring debtor, shall not apply to a bank, insurance company, securities underwriter, private investment fund, investment fund and voluntary pension fund management company, broker-dealer company, financial leasing company, and any other company whose predominant activity is providing financial services in accordance with the law.

Meaning of Terms

Article 3

Certain terms as used in the Law shall have the following meanings:

- 1) *financial restructuring* shall mean redefining of debtor-creditor relations between a company in financial difficulties, as debtor, and creditors;
- 2) *financial difficulties* shall mean inability to pay debts (illiquidity), imminent inability to pay debts (imminent illiquidity) or over indebtedness;
- 3) *debt standstill* shall mean a temporary suspension of performance of obligations and the prohibition of initiating of enforcement, or postponement of enforcement against a company by creditors participating in financial restructuring.

Principle of Suitability

Article 4

Financial restructuring may be carried out for the purpose of redefining debtor-creditor relations with regard to a debt or claim that is freely disposed by the debtor and creditor.

Principle of Free Will (Volunteerism)

Article 5

Financial restructuring shall be carried out on a voluntary basis, on the basis of a written consent of creditors and debtor, with the participation of an institutional mediator.

Principle of "Going Concern" for the Debtor

Article 6

Financial restructuring shall be carried out if recovery and viable continuation of doing business of a company are possible.

Principle of Good Faith Conduct

Article 7

Financial restructuring shall be carried out in good faith, in accordance with the principle of conscientiousness and fairness, with due care required in legal transactions in a corresponding type of relationship.

The creditors and debtor shall restrain from actions that may cause damage to another.

During the debt standstill, a debtor shall be obligated to refrain from any action which could prevent or impede the collection of claims by the creditors that have entered into the debt standstill agreement.

Principle of Cooperation and Coordination between Creditors

Article 8

In financial restructuring, all creditors which have accepted to participate shall cooperate with one another to create conditions for the debtor to collect and provide information about its assets, capital, liabilities, operations and business plans, and to prepare the proposal on restructuring measures.

In the case of a large number of the creditors, the cooperation referred to in Paragraph 1 of this Article particularly involves:

- 1) appointing one or more persons to carry out negotiations with the debtor or coordinate the actions (efforts) of the creditors in negotiations;
- 2) forming a coordination body;
- 3) selection and appointment of expert advisors, which may also perform mediation services if creditors and the debtor agree so, together with the institutional mediator;
- 4) other activities aimed to realise cooperation between creditors.

Until otherwise agreed between the creditors participating in financial restructuring, the person carrying out negotiations with the debtor shall be the creditor, or authorised representative thereof, with the highest total claim against the debtor on the day of submission of the request for institutional mediation in financial restructuring.

The person carrying out negotiations with the debtor or coordinating creditors' efforts within the meaning of paragraphs 2 and 3 of this Article shall regularly and timely report to other creditors participating in the financial restructuring on the course and content of negotiations.

***Principle of Equality of Creditors' Positions and Position
Commensurate with Amount of Claim***

Article 9

In financial restructuring, the creditors shall be equal and receive equal treatment commensurate with the amount of their respective claims, unless they agree otherwise.

Principle of Access to Information and Confidentiality of Data

Article 10

Debtor is obliged to provide to the creditors or their authorised persons, timely and free access to data information of importance for financial restructuring relating to its assets, capital, liabilities, operations and business plans, to allow for proper estimate of the debtor's financial state and preparation of proposals for financial restructuring measures.

Creditor and institutional mediator shall treat as confidential all information and reports relating to the debtor's assets, capital, liabilities, operations and business plans, and proposal of financial restructuring measures should be accessible to all creditors participating in financial restructuring and treated as confidential by the creditors and institutional mediator, to the extent they are not publicly available.

Information and reports referred to in Paragraph 1 of this Article are allowed to be accessible only to the creditors participating in financial restructuring.

II. FINANCIAL RESTRUCTURING

Conditions for Financial Restructuring

Article 11

Financial restructuring may be carried out if at least two local or foreign banks participate in it as creditors.

In addition to banks referred to in Paragraph 1 of this Article, all other creditors may also participate in financial restructuring.

Debt Standstill

Article 12

In the course of financial restructuring, debt standstill shall be introduced, which shall produce legal effect as from the date of conclusion of a debt standstill agreement.

The Debt standstill agreement shall constitute the basis for the suspension of collection from the company's account in relation to the claims of creditors which enter into such agreement, as well as prohibition of initiation of enforcement, or postponement of enforcement commenced upon the application of the enforcement creditor which has entered into such agreement.

The Agreement referred to in Paragraph 2 of this Article shall be concluded in writing.

If the debtor's funds in its accounts are blocked (frozen), the debtor or any creditor concluding the Agreement referred to in Paragraph 2 of this Article, shall provide the organisation conducting the collection from the debtor's account with that Agreement in order to stop the enforcement collection on the basis of submitted bills of exchange or other means of payment in relation to the claims of creditors which have concluded such Agreement.

In the course of the debt standstill, the creditors which have concluded the debt standstill agreement shall not undertake any actions aimed at collection of claims, except submitting actions for collection of claims to prevent the expiry of the prescription period for their claims.

Creditor that has concluded the debt standstill agreement shall be obligated to submit without delay to judicial and other bodies before which the enforcement proceeding or collection proceedings referred to in Paragraph 2 of this Article are pending upon the application of the creditors, the application for deferment of such enforcement or collection until the end of debt standstill period.

The court or another body before which the proceedings referred to in paragraph 6 of this Article are pending, shall be obligated to render a decision on postponement of proceedings immediately but not later than after two working days from the day of receipt of request, and to send it immediately but not later than the following working day upon rendering to the organisation performing enforced collection from the account of the debtor, or to another competent body or organisation.

During the debt standstill period, the creditor may dispose of its claim, except if otherwise regulated by the Agreement referred to in Paragraph 2 of this Article.

In case referred to in Paragraph 8 of this Article, the transferee of the claim shall receive all rights and obligations of the transferor of the claim from such agreement.

The debt standstill period shall be regulated by the debt standstill agreement.

If the creditors and a company do not come to an agreement on the redefining of the debtor-creditor relations during the debt standstill period, upon the expiration thereof the creditors shall again have the right to initiate proceedings of claims collection from the accounts of such company, or the right to initiate or resume the enforcement proceeding.

The minimum contents of the debt standstill agreement shall be specified by the Minister in charge for economic affairs.

Institutional Mediation

Article 13

Upon the request of the debtor of one or more creditors, the Chamber of Commerce and Industry of Serbia shall provide:

- 1) assistance in establishment of collaboration between debtor and creditors so that the parties can negotiate the redefining of debtor-creditor relations;
- 2) support to debtors and creditors during negotiations for the purposes of their successful completion.

The Chamber of Commerce and Industry of Serbia, with prior approval of the Minister in charge for economic affairs, shall specify the conditions and manner of institutional mediation referred to in Paragraph 1 of this Article, and the amount of the fees for institutional mediation in financial restructuring.

Financial Restructuring Agreement

Article 14

Financial restructuring shall be realised by a financial restructuring agreement.

The agreement referred to in Paragraph 1 of this Article particularly encompasses:

- 1) providing for a repayment in instalments, change of maturity deadlines, interest rates, or other terms and conditions of the credit, loan, or another claim or additional security ;
- 2) liquidation of the debtor's property or transfer of the property in satisfaction of debts;
- 3) debt discharge (write-off);
- 4) execution, amendment, or waiver of a lien;
- 5) provision of additional collaterals by debtor or third parties, including guarantees and liens;
- 6) debt to equity swap;
- 7) entering into a new loan agreement;
- 8) issuing of securities and commercial papers;
- 9) other relevant measures for the realisation of financial restructuring.

Debtor shall be obligated to submit the concluded agreement referred to in Paragraph 1 of this Article to the Serbian Business Registers Agency within two working days, at latest, upon conclusion of the agreement for the purposes of registration of the existence of such agreement.

Lien**Article 15**

The claim which is under restructuring and is secured by mortgage, or pledge over movables and rights (hereinafter: secured claim under restructuring), shall be replaced by restructured secured claim, so mortgage or pledge over movables and rights, as secondary right attached to secured claim under restructuring, continues to exist as collateral (instrument of security) of restructured claim,, in accordance with the financial restructuring agreement.

The Real Estate Cadastre, or other registry of lien, shall amend the data of enrolled mortgage, or pledge over movables and rights, in compliance with the amount of restructured secured claim, and other conditions of restructured secured claim.

Mortgage, or pledge over movables and rights, represents collateral (instrument of security) of restructured secured claim up to the amount of secured claim under restructuring, and in case that the amount of restructured secured claim has decreased comparing to the amount of secured claim under restructuring, the Real Estate Cadastre, or other registry of lien, shall amend the data of enrolled mortgage, or pledge over movables and rights, in terms of Paragraph 2 of this Article.

Incentives for Financial Restructuring**Article 16**

The tax incentives for financial restructuring, in terms of tax exemptions for debt write-off for creditors, and possibility of rescheduling the public revenue debt, shall be specified in the law regulating the gain tax for legal entities, as well as in the law regulating tax procedure and tax administration.

The National Bank of Serbia shall specify incentives for financial restructuring within the regulations in the area of its institutional responsibility.

III. TRANSITIONAL AND FINAL PROVISIONS***Deadline for Adoption of Secondary Legislation*****Article 17**

The regulations needed for the implementation of this Law shall be adopted within three months of the date this law enters into force.

Entering into Force**Article 18**

This Law shall enter into force on the eighth day of publication in the “Official Gazette of the Republic of Serbia”, and shall be implemented upon expiry of ninety days of effective date.

R U L E B O O K

ON CONDITIONS AND PROCEDURE OF INSTITUTIONAL MEDIATION IN CONSENSUAL FINANCIAL RESTRUCTURING OF COMPANIES

(“Official Gazette of the RS”, no. 65/2011 and 67/2011 – corr.)

I GENERAL PROVISIONS

Article 1

This Rulebook determines conditions, manner and procedure of the implementation of institutional mediation in consensual financial restructuring of companies (hereinafter: financial restructuring).

Chamber of Commerce and Industry of Serbia provides assistance and establishes cooperation between the debtor and creditors to negotiate the re-arranging of debtor-creditor relations and support debtors and creditors in the negotiations for their successful completion.

Article 2

1) The principle of timeliness – institutional mediation in financial restructuring is performed in a way that provides for the timely notification and recognition of the financial difficulties of a company;

2) The principle of efficacy – of Chamber of Commerce and Industry of Serbia, as the institutional mediator, provides for a successful and high-quality realisation and protection of rights and legal interests of parties in financial restructuring;

3) The principle of economy – institutional mediation in financial restructuring is implemented without delay and with minimum costs for the parties;

4) The principle of impartiality and independence – of Chamber of Commerce and Industry of Serbia, as the institutional mediator, is impartial and independent in relation to the parties and the subject matter of financial restructuring;

5) The principle of confidentiality – data and information obtained for the purpose of financial restructuring relating to assets, capital, obligations, business operation and operational perspectives of the debtor, as well as the proposed measures for financial restructuring, are treated as confidential by the creditors and institutional mediator, to the extent that they are not publicly available

II IMPLEMENTATION OF INSTITUTIONAL MEDIATION

Initiation of proceedings

Article 3

The process of institutional mediation in financial restructuring is initiated by the request of the debtor or one or more creditors.

The consent of both parties – creditors and debtors, is required to conduct institutional mediation in financial restructuring.

In the request referred to in paragraph 1 of this Article, at least two domestic or foreign banks that would participate in financial restructuring as creditors shall be listed.

The request referred to in paragraph 1 of this Article shall be filed to Centre for Mediation of the Chamber of Commerce and Industry of Serbia (hereinafter: the Centre) in writing, which shall forward the request to the other side, with an invitation to respond within 15 days from the receipt of the request.

The application shall be submitted on a special form, which is an integral part of this Rulebook.

Article 4

If the other side does not reply to the request within 15 days from receipt, the request shall be deemed to be rejected.

Article 5

The Centre verifies whether the conditions for institutional mediation are met and the suitability of debtor-creditor relationship for financial restructuring.

If the suitability requirement of the debtor – creditor relationship is not fulfilled, the Centre shall notify the applicant.

The debtor or the creditor shall declare in writing on the request referred to in Article 3, by acceptance or rejection of institutional mediation, in the form which is an integral part of this Rulebook.

If the other party accepts mediation, the procedure of institutional mediation commences.

Mediation

Article 6

The process of financial restructuring is carried out without delay.

Institutional mediation is conducted at a meeting, or meetings attended by the parties to financial restructuring either in person or through an authorised representative, mediator, and a professional service of the Centre. The meeting may also be attended by other persons with the consent of both parties.

Parties to financial restructuring are invited to a meeting by e-mail, phone, and fax or by mail.

The place and time of the meeting shall be determined by agreement of the parties, taking into account the principle of urgency and efficiency of the procedure.

The minutes of the meeting will be kept.

Article 7

The mediator shall, prior to the start of the institutional mediation, inform the parties to financial restructuring about the aim of mediation, the rules of mediation and the role of the mediator.

Article 8

If it is deemed appropriate, the institutional mediator shall organise a forum.

A forum is a general meeting of creditors and debtor, as parties to financial restructuring or possible parties to this restructuring, in which the creditor and debtor are associated, their opinions and suggestions are presented, and their interests and all other elements in terms of financial restructuring are reviewed and discussed.

Forum may be held before or during institutional mediation.

Article 9

Creditors cooperate in the process of financial restructuring.

In the case of participation of a large number of creditors, the mediator shall arrange a meeting to reach an agreement on the method of cooperation among creditors, pursuant to Article 8 of the Law, and minutes of this meeting will be kept.

Until reaching an agreement referred to in paragraph 2 of this Article, the negotiations with the debtor are coordinated by the creditor, which on the day of application, has the largest claim against the debtor, and which shall promptly notify the other creditors and mediator on the course and content of the negotiations.

Article 10

Mediator shall mediate in negotiations for the introduction of debt standstill, which shall produce legal effect as from the date of conclusion of a debt standstill agreement.

Debt Standstill Agreement signed by the parties is the basis for the suspension of the enforcement in the enforced collection.

Debt Standstill Agreement shall be validated at the Chamber of Commerce and Industry of Serbia and recorded in a special book.

Article 11

Institutional mediation in financial restructuring can be concluded by:

- 1) concluding the financial restructuring agreement;
- 2) a written declaration of withdrawal, delivered by one party to the mediator and the other party, and other participants, except where, following the withdrawal of one creditor in institutional mediation, at least two banks continue participating, as they have interest that the institutional mediation continues;

- 3) a written declaration on termination of institutional mediation, which shall be sent by both parties to the mediator;
- 4) when the condition of the participation of at least two banks as creditors ceases to exist.

Article 12

If the parties reach an agreement in the process of mediation, an Agreement on financial restructuring is signed, in accordance with Article 14 of this Law.

Agreement on financial restructuring is verified at the Chamber of Commerce and Industry of Serbia and recorded in a special book.

The debtor shall submit the notarised contract to the register of companies.

III MEDIATOR

Article 13

The mediator is a person which, pursuant to an agreement of the parties, mediates between the parties, without a power to impose a solution.

Mediation may be conducted by persons employed by Chamber of Commerce and Industry of Serbia and other persons eligible to conduct mediation, which have completed the training in line with the by Chamber of Commerce and Industry of Serbia special training programme.

The list of mediators shall be determined by the decision of the President of the Serbian Chamber of Commerce.

A mediator in a particular case shall be appointed by the Centre.

The parties may also agree to choose a mediator from the list.

IV COSTS

Article 14

Participants shall bear their own costs, including costs of their representatives, while common costs and expenses shall be equally divided unless otherwise agreed.

Common costs of institutional mediation comprise of the mediator's fee, travel and accommodation expenses, if outside the place of mediation, as well as organisational costs of institutional mediation.

The amount of costs of the institutional mediation shall be determined by a special decision passed by the competent body of the Chamber of Commerce and Industry of Serbia, in accordance with the Law.

Administrative and technical support

Article 15

Administrative and technical support to the mediator shall be provided by the respective service departments of Chamber of Commerce and Industry of Serbia.

IV TRANSITIONAL AND FINAL PROVISIONS

Article 16

This Rulebook shall enter into force on the eight day following its publication in the "Official Gazette of the Republic of Serbia".

The minister in charge of the economy has given consent to this Rulebook, under no. 011-00-251/2011-02 from 25 July 2011.

FORM PROPOSAL TO INITIATE PROCEEDINGS	
APPLICANT	
NAME	
SURNAME	
Phone	
Fax	
Email	
Address	
REPRESENTATIVE OF THE APPLICANT	
NAME	
SURNAME	
Phone	
Fax	
Email	
Address	
OTHER PARTY	
NAME	
SURNAME	
Phone	
Fax	
Email	
Address	
REPRESENTATIVE OF THE OTHER PARTY	
NAME	
SURNAME	
Phone	
Fax	
Email	
Address	

SUBJECT MATTER OF THE PROCEEDINGS:

I hereby authorise the Serbian Chamber of Commerce to forward this request for initiation of the financial restructuring to the other party, contact the other party and undertake all necessary actions for initiating and conducting the process of financial restructuring.

SIGNATURE
OF THE APPLICANT

In Belgrade _____

The applicant _____

The other party _____

The case _____

R E S P O N S E

to the request to initiate the process of financial restructuring

I declare that I

Agree _____

Disagree _____

With the initiation of the process of financial restructuring among the aforementioned parties pursuant to the Law on consensual financial restructuring of companies ("Official Gazette of the RS" 36/2011) and the Rulebook on conditions and procedure of institutional mediation in consensual financial restructuring of companies.

Place and date

SIGNATURE
OF THE OTHER PARTY

This draft agreement and all provisions contained therein are given for example only and are not binding to the participants in consensual financial restructuring, which may choose to regulate their relations in a different way. The aim of this draft agreement is to provide parties to the proceedings a common starting point for negotiations on the content of the agreement and proposal of the form in which that agreement may be executed and it is on the parties depending on the specific situation and need, to select which provisions of those offered will choose in given circumstances, or to maybe agree on some additional provisions and rules. This draft does not contain all possible terms that might be found in such an agreement, but contains a certain number of discretionary provisions or options that are marked with straight brackets in the text, where the parties are to decide whether and which of these provisions will be used in particular case. For the sake of clarity, the provisions that are not in these brackets are in general common i.e. standard in such agreements, but even some of them may be reworded or omitted in particular situation. Parties involved in the negotiations always have the responsibility for the provisions of the agreement they are entering into to be in accordance with the regulations and their interests, and therefore this draft does not give any legal advice in this regard.

STANDSTILL AGREEMENT

Entered into on [●] in [●] between:

1. [●] from [●], IDN [●], represented by [●], function [●] (hereinafter: Debtor) and
2. [●] from [●], IDN [●], represented by [●], function [●] (hereinafter: Creditor 1),
3. [●] from [●], IDN [●], represented by [●], function [●] (hereinafter: Creditor 2),
4. [●] from [●], IDN [●], represented by [●], function [●] (hereinafter: Creditor 3),
5. [●] from [●], IDN [●], represented by [●], function [●] (hereinafter: Creditor 4).

Each of the mentioned parties is referred to in the subsequent text as „Party“, and jointly as „Parties“. Creditors, parties to this Agreement, are referred to as „Creditors“.

WHEREAS

- Debtor is a company engaged in [●],
- Creditors on the day of signing of this Agreement have certain claims towards Debtor based on disbursement of funds to Debtor through [credit lines, loans, discounting of bills of exchange, provided personal guaranties, bank guaranties issued at Debtor’s request, permitted overdrafts, letters of credit], or on the basis of [sales of goods or services] to Debtor, which are specified in detail in the Appendix 1 to this Agreement,
- Debtor and Creditors are participating in the process of consensual financial restructuring conducted before the Chamber of Commerce and Industry of Serbia as an institutional mediator, in accordance with the regulations governing consensual financial restructuring of companies, because Debtor is having or is expecting to have problems with the settlement of its undisputed, due or still immature liabilities on mentioned grounds,

[– Business accounts of Debtor are blocked starting from [●] year, which has significantly threatened its business and its ability to pay due and immature liabilities;]

- By signing this Agreement, the Parties wish to provide certain time period within which the Debtor's obligations in respect of payment to Creditors will be at a standstill in order to allow regular business of Debtor and to prevent further deterioration of its financial position, [as well as to unblock business accounts of Debtor with respect to payment orders that certain Creditors filed or enforceable court decisions rendered upon request of some of Creditors,]
- During the standstill period Parties intend to participate in the negotiations in order to reach agreement on a consensual financial restructuring agreement, which would restructure the Debtor's obligations towards Creditors which agree to sign the agreement, without any obligation of any Party to reach agreement in that regard or to invest any effort to reach such agreement within the said period;

The Contracting Parties have agreed as follows:

OBJECTIVE OF THE AGREEMENT

Article 1

The Parties are entering into this Agreement in order to enable Debtor to continue undisturbed business activities during the negotiations about a possible restructuring of debts of Debtor and execution of the consensual financial restructuring agreement, which would regulate debtor-creditor relations between Debtor and Creditors in a lasting and sustainable manner, and all in order to allow Debtor to continue to operate in the future in accordance with regulations and to fulfil its obligations towards Creditors and third parties which are creditors of the Debtor.

CREDITORS' CLAIMS

Article 2

All Creditors – signatories to this Agreement hereby confirm that the Agreement includes all of the obligations which Debtor has towards each of them individually (either as a principal or as a joint debtor or guarantor, due or undue, conditional or unconditional) [on [●] which shall be considered the cut-off date for the purposes of this contract / on the date of this Agreement], which are individually listed in the Appendix 1 of this Agreement, with each Creditor confirming that only in respect to its claims, and Creditors are mutually not acknowledging the existence or validity of any obligation towards other Creditors that are listed in Appendix 1 of this Agreement.

The Appendix 1 also contains an overview of all collaterals, and Appendix 2 contains an overview of all promissory notes issued by Debtor based on Creditors' claims that are covered by this agreement.

[UNBLOCKING OF BUSINESS ACCOUNTS AND COLLATERALS

Article 3

Creditors agree that based on this Agreement, and in accordance with the provisions of the legislation on consensual financial restructuring of companies, unblocking of business accounts of Debtor is to be effected in respect to orders for enforced collection submitted by Creditors to the National Bank of Serbia – Enforced

Collection Department (hereinafter NBS – OPN) in the preceding period, as well in respect to enforceable court decisions that were filed to NBS – OPN with the aim of collection of Creditors' claims.

Creditors agree that Debtor, immediately after the signing of this Agreement, submits this Agreement to NBS – OPN with a request to unblock the business accounts of Debtor in respect of the abovementioned orders for enforced collection and enforceable court decisions.

In addition, by this Agreement Creditors undertake the obligation to return within [•] Business Days from the date of this Agreement the funds collected through blockade of accounts from [•] until the day of unblocking of the business accounts of the Debtor in the sense of this Article. Debtor will in this regard within [•] Business Days notify all Creditors and mediator from CCIS about individual amounts of funds that each Creditor has collected through blockade of accounts pursuant to this paragraph, as well as about the amount that each such Creditor has returned to Debtor to its business accounts.

By this Agreement each of the Creditors undertakes the obligation that in the event of breach of obligations from this Article it will fully compensate all other Creditors which incur damages, which will in particular refer to those Creditors which had lower priority in blockade of the accounts compared to other Creditors, or to those which on the date of signing of this Agreement did not have at all orders for enforced collection in the blockade of business accounts of Debtor but have settled part of their claims through breach of provisions of this Article.

Creditors have agreed to honour the order of priority in the structure of the blockade which existed on the date of signing of this Agreement with regards to other Creditors (but not in relation to third parties) in the event of termination of this Agreement and in the absence of its extension or conclusion of a consensual financial restructuring agreement, in which sense they will take all actions necessary to restore that order in the structure of the blockade of business accounts of the Debtor, and if that is not possible they will take all necessary actions to achieve the objectives of this provision with respect to the ranking of collection among Creditors.

The Contracting Parties confirm that means of collateral, including bills of exchange, delivered by the Debtor to Creditors based on the claims listed in the Appendix 1 of this Agreement shall remain in force, regardless of unblocking of the business accounts of the Debtor and of other provisions of this Agreement, and Debtor undertakes the obligation to submit new bills of exchange to Creditors, if necessary in the event of termination of this Agreement for the purpose of re-establishing the blockade of the accounts.]

STANDSTILL – PERIOD AND OBLIGATIONS OF THE PARTIES

Article 4

Standstill period stipulated in this contract is [•] (say: [•]) days from the moment of execution of this Agreement.

During the standstill period, Creditors will refrain from compulsory or voluntary collection of their claims towards Debtor, and in particular shall not exercise or attempt to exercise compulsory enforcement against Debtor, i.e. its property, in

order to settle their claims, and in particular (a) by initiating any proceedings, judicial or extrajudicial, aimed at collection of claims, (b) by activating any collateral available to Creditors or (c) by filing for bankruptcy of Debtor. [This obligation will not apply to collection from the pledged claims of Debtor against third parties, that become due during the standstill period and that are paid in that period by third parties.]

In particular, during the standstill period no Creditor shall exercise any right or power that it is entitled to due to existence, occurrence or duration of any event of default, i.e. breach of contractual obligations by Debtor (including especially declaring all obligations due or terminating agreement [or cancelling available funds under the existing agreements] or change of any agreement or other document that refers to Debtor in relation to the claims from the Appendix 1 to this Agreement), which were created either before or after the execution of this Agreement.

[In addition, on dates of maturity of any claim of Creditors representing principal each such loan or other arrangement shall be extended, renewed or re-established in accordance with the original terms, under the condition that no date of maturity or date of renewal has to be postponed for the date that is beyond the expiry of the standstill period i.e. beyond the date after the termination of this Agreement, and under additional condition that such extension, renewal or reestablishment shall not result in any changes in the level of outstanding principal per existing financial obligations of Debtor.]

[Obligations from this Article of the Agreement do not apply to any collection of Creditors during the standstill period from the property or assets of third parties that are jointly and severally liable or are guarantees per claims from the Appendix 1 to this Agreement, or are pledgors for such claims, under the condition that such collection shall not result, during the standstill period, activation of any collateral provided by Debtor including also the collaterals that it may have given to third parties.]

[During the standstill period Debtor undertakes to regularly, that is duly pay the costs of all interests [with the default interest being calculated per contractual interest rates], remunerations per issued guaranties as well as other costs agreed in principal transactions from which claims originate, and Creditors will exclusively from the other provisions of this Article be entitled to collect claims on those grounds in a compulsory or voluntary manner.]

CONTOROL OF DEBTOR'S CASH FLOW

Article 5

During the standstill period, [all cash revenues / cash proceeds from the potential sale of property] will be upon settlement of potential secured creditors with pledge on such property, directed to the account of Debtor at the Creditor [1] as the largest creditor, which will have the right and obligation to report regularly [on a daily / weekly basis] about the transfers on that account to other Creditors and mediator from CCIS.]

During the standstill period Debtor shall use all cash revenues solely as follows:

[in accordance with the written orders of [•] as a person authorised by Creditors]

[for each use of funds from the business account Debtor shall obtain a prior written consent of [•] as a person authorised by the Creditors to control the expenditure of money]

in a way to settle primarily and upon maturity [ongoing obligations towards the state, employees, lessors and suppliers for new procurements], [followed by liabilities on the basis of interest and other costs from Article [•] of this Agreement].

Debtor shall every [•] days provide a detailed report on expenditures of funds to Creditors, in the following form:

[short report with shown state and structure of due/undue liabilities, as well as of payments made in that period, with projected inflow with scenarios – assets sale or other possible plans for liquidity enhancing].

[PRIOR ACTIONS OR CONDITIONS

Article 6

Parties agree that prior to the signing of this Agreement certain conditions have been met, as essential elements thereof, all as follows:

- [•] accepted [to sign agreement with Debtor with essentially the same content] [to unblock the account of Debtor and to accept debt standstill under the same conditions as the Creditors] of which Creditors received an official letter of intent, which represents Appendix [•] of this Agreement.
- Due to the necessary deadline of [•] for [•] to provide formal consents and implement procedure for the signing of this Agreement, as acceptable exception, [•] provided to the Parties the letter of intent, which represents Appendix [•] of this Agreement, that it accepts all elements thereof and that only the signing shall be postponed for the specified period due to objective reasons]

DEBTOR'S OBLIGATIONS

Article 7

During the period of standstill Debtor agrees to, without the consent of all Creditors [which shall not be withheld without a valid reason]:

- [– undertake all necessary measures aimed at implementing the adequate changes in the management of Debtor, i.e. to within [•] appoint new management as follows [•],]
- [– overall cooperate in an open and direct way with the independent financial consultants which will be hired by [Creditors / Debtor by choice of Creditors][at the expense of Debtor] within [•] in order to monitor business of Debtor during the period of standstill, prepare a restructuring plan and Debtor's business plan for the future period, as well as for the regular reporting to Creditors in accordance with this Agreement, and according to request of Creditors, and Debtor undertakes to deliver the required documents and information necessary for making required reports for Creditors and for other activities of such consultants at the first request of such consultants and with no delay]

[– shall not create additional obligations without the consent of the Creditors, with refinancing of existing obligations by the same Creditor not being considered creation of additional obligations]

[– shall not provide new collaterals for Creditors or third parties, or give guaranties or assume liability for third parties]

[– shall not make any statutory changes i.e. merging, division or separation during this period]

[– shall not dispose of property [value exceeding [●]] by means of sale, lease, encumbering or the like, [except in the course of regular business]]

– shall not make any payments of any kind to members of the company or persons associated with them, nor shall change its ownership structure or seat,

[– shall not make any kind of investment in fixed assets,]

[– shall ensure that all Creditors are treated equally in terms of information about Debtor, its business and assets, as well as regarding the preparation of the restructuring and business plan for the future period, and in respect of the payment of any obligations towards Creditors by Debtor [and by entities related to Debtor]]

[– shall deliver to [Creditors / hired consultant] regularly, on [daily / weekly] basis, reports on business and [reports on key performance indicators / cash flow / preparation of the restructuring plan / sale of assets / other negotiations or agreements on restructuring debts with other creditors,]

[– shall start advertising sale and selling of certain assets, according to the list in the Appendix [●] of this Agreement, and in accordance with the procedure prescribed there for the sale of assets]

During the term of this Agreement Debtor must not take any action that would in any way compromise the business and the possibility of further payment of obligations based on its indebtedness with Creditors.

LITIGATIONS AND TRANSFER OF CLAIMS

Article 8

Creditors have the right to file lawsuits for debt collection, as well as to continue all initiated litigations during the standstill period.

If any of the contracting parties transfers, sells or in any way ceases to be Creditor in respect of claims referred to in Appendix 1 of this Agreement by transfer to a third party, it will be obliged to inform the acquirer of claim in appropriate way that it stepped into the place of Creditor in this Agreement on the basis of the law itself.

EXPENSES

Article 9

Contracting parties agree that each party shall bear its own expenses related to the preparation and signing of this Agreement, including attorneys and other advisors' fees, unless otherwise stipulated by the provisions of this agreement.

NOTIFICATIONS

Article 10

All notices that should be delivered and other communications of the Parties in relation to this Agreement (including the notice of change of address) will be in writing and shall be made by an authorised representative of the relevant Party, in Serbian language and shall be deemed duly delivered (i) upon handover, if delivered by hand, or (ii) upon delivery, if sent by courier or registered mail, or (iii) upon receipt of an electronic message, if sent by electronic mail, with confirmation receipt. Delivery will be made to the addresses specified in Appendix [•] of this Agreement.

[For the purposes of all consents for which this Agreement stipulates that they will be given by Creditors, it shall be deemed that such consent is given if Creditor 1, as the largest Creditor, informs the Debtor of that.]

[All consents given under this Agreement by Creditors shall be given, in the name and on behalf of all creditors, by Creditors Committee, which shall consist of [•], [•] and [•].]

DURATION OF THE AGREEMENT AND EXTENSION OF THE STANDSTILL PERIOD

Article 11

[This Agreement shall automatically cease to apply, or to have legal effect, in case any of the following situations occur:]

[Each of Creditors acquires the right to terminate this Agreement by sending a written notice on termination with immediate effect to all other Parties, in which case this Agreement ceases to be binding for all other Parties as well, in following cases:]

[Each of Creditors acquires the right to withdraw from this Agreement by sending a written notice with immediate effect to all other Parties, in which case this Agreement remain binding for all other Parties, in following cases:]

- Initiating of bankruptcy or liquidation of Debtor, [as well as in case of a third party filing for bankruptcy of Debtor]

- Inability to completely remove blockade of the business accounts of Debtor within [•] days from the date of signing of this Agreement,

- occurrence of blockade of business accounts of Debtor lasting at least [•] working days,

- Any action by [any Creditor/ Creditors representing at least [•]% of the total claims listed in Appendix 1 of this Agreement] which constitutes a violation of this agreement, [provided that it relates to the property or assets with a value of at least [•]],

- any action or omission of Debtor which violates one of the following provisions of this Agreement: Article [•], paragraph [•]; Article [•], paragraph [•]; Article [•], paragraph [•], line [•].

[In case that none of the Parties not later than [●] days before the expiry of the standstill period referred to in Article 4 of this Agreement does not inform the other Parties that it does not want to prolong the validity of this Agreement and the duration of the standstill period, this Agreement and the standstill period will be after the expiry of the initial period from Article 4 of this Agreement extended once for additional [●] days.]

BANK SECRET

Article 12

Each of the Parties hereby acknowledge that this Agreement and all information exchanged on the basis of it, represent bank and business secret in accordance with the regulations governing banks and business secrets in general, and undertakes to keep such information as confidential, in the manner in which it keeps its own confidential information.

GOVERNING LAW AND DISPUTE RESOLUTION

Article 13

This Agreement shall be governed by laws and regulations of the Republic of Serbia and in an event of a dispute the jurisdiction of the Commercial Court in Belgrade is determined.

FINAL PROVISIONS

Article 14

In the event that any provision of this Agreement becomes invalid, illegal or unenforceable, such provision shall be modified to become valid, legal and enforceable, and in the event that such modification is not possible, it shall be deemed that the foregoing provision is not existent if the Agreement can remain at force without it, and all other provisions shall remain in force.

Article 15

This agreement was signed in [●] (in words: [●]) identical copies in Serbian language, each Party shall keep 2 (say: Two) copies.

[Contracting Parties agree that this Agreement will be signed in a way that it will be signed first by Debtor, then Creditor which first blocked the account of Debtor, then the Creditor which was second in blocking the account, and the same all the way to the Creditor which blocked the account of Debtor last, and thereafter it will be signed by the remaining Creditors which have not filed orders for enforced collection against Debtor.]

Article 16

This Agreement shall enter into force on [date of signature by the last Parties / on [•], provided that it is signed by all Contracting Parties by that date]

This Agreement is signed and certified with the seal of CCIS by a CCIS mediator as confirmation that it is concluded within the framework of consensual financial restructuring procedure in accordance with the Law on Consensual Financial Restructuring of Companies.]

DEBTOR:

CREDITORS:

This draft agreement and all provisions therein referred to are given for example only and are not binding to the participants in consensual financial restructuring, which may choose to regulate their relations in a different way. The aim of this draft agreement is to provide parties to the proceedings a common starting point for negotiations on the content of the agreement and proposal of the form in which that agreement may be executed and it is on the parties depending on the specific situation and need, to select which provisions of those offered will choose in given circumstances, or to maybe agree on some additional provisions and rules. This draft does not contain all possible terms that might be found in such an agreement, but contains a certain number of discretionary provisions or options that are marked with straight brackets in the text, where the parties are to decide whether and which of these provisions will be used in particular case. For the sake of clarity, the provisions that are not in these brackets are in general common i.e. standard in such agreements, but even some of them may be reworded or omitted in particular situation. Parties involved in the negotiations always have the responsibility for the provisions of the agreement they are entering into to be in accordance with the regulations and their interests, and therefore this draft does not give any legal advice in this regard.

AGREEMENT ON CONSENSUAL FINANCIAL RESTRUCTURING

Entered in [●] on [●] between:

1. [●] from [●], reg.No. [●], represented by [●], function [●] (hereinafter: Debtor) and
2. [●] from [●], reg.No. [●], represented by [●], function [●] (hereinafter: Creditor 1),
3. [●] from [●], reg.No. [●], represented by [●], function [●] (hereinafter: Creditor 2),
4. [●] from [●], reg.No. [●], represented by [●], function [●] (hereinafter: Creditor 3),
5. [●] from [●], reg.No. [●], represented by [●], function [●] (hereinafter: Creditor 4).

Each of the mentioned parties is referred to in the subsequent text as "Party", and jointly as "Parties". Creditors, parties to this Agreement, are referred to as "Creditors".

WHEREAS

- Debtor is a company that is engaged in [●],
- Creditors on the day of signing of this Agreement have certain claims towards Debtor based on disbursement of funds to Debtor through [credit lines, loans, discounting of bills of exchange, provided personal guaranties, bank guaranties issued at Debtor's request, permitted overdrafts, letters of credit], or on the basis of [sales of goods or services] to Debtor, which are specified in detail in the Appendix 1 to this Agreement,
- Debtor and Creditors are participating in the process of consensual financial restructuring conducted before the Chamber of Commerce and Industry of Serbia as institutional mediator, in accordance with the regulations governing consensual financial restructuring of companies, because Debtor is having or is expecting to have problems with the settlement of its undisputed, due or still immature liabilities on mentioned grounds,

– By signing this Agreement, the Parties wish to redefine the debtor-creditor relations in order to enable the restructuring of Debtor's obligations towards Creditors, regular business operations of Debtor and prevention of further deterioration of its financial position,

[– Given that the business accounts of Debtor are blocked starting from [•], which prevents regular business of Debtor and payment of due and undue obligations, Creditors hereby wish to, with regards to orders for enforced collection which Creditors filed i.e. enforceable court decisions rendered upon the Creditors' request, perform unblocking of the business accounts of Debtor]

The Parties have agreed as follows:

AIM AND SUBJECT OF THE AGREEMENT

Article 1

The Parties are entering into this Agreement in order to enable Debtor to restructure its obligations towards Creditors, which would in a lasting and sustainable manner regulate debtor-creditor relations between Debtor and Creditors, all in order to enable Debtor to continue its business operations in accordance with the regulations and to settle its obligations towards Creditors and third parties which are creditors of Debtor.

Subject of this Agreement is regulating the relationship between Debtor and each of the Creditors with respect to claims of Creditors from Article 2 of this Agreement (hereinafter referred to as: "Claims"), through the restructuring measures that are determined in detail by this Agreement.

CREDITORS' CLAIMS AND CUT-OFF DATE

Article 2

All Creditors which entered into this Agreement confirm that it includes all obligations that Debtor has towards each of them individually (either as main debtor or jointly and severally liable debtor or guarantee, due or undue, conditional or unconditional) [on [•] / on the date of this Agreement] which will be considered as cut-off date for the state of Debtor's obligations under this Agreement, which are listed in Appendix 1 of this Agreement, with each Creditor confirming that only with regards to its claims, and Creditors do not mutually acknowledge existence or validity of any obligations of other Creditors listed in Appendix 1 of this Agreement.

Calculation of the state of obligations in Appendix 1 in terms of principal, contractual and default interest and other remuneration payable to Creditors was made on the cut-off date.

The Appendix 1 also includes overview of grounds for each claim (title, date and number of agreement i.e. other document, with all amendments, and in case of a loan with reference to the loan sub-account) and all collaterals (including guarantees given by third parties for Debtor, as well as pledges and mortgages given by third parties), including the issued promissory notes of Debtor.

[UNBLOCKING OF BUSINESS ACCOUNTS AND COLLATERALS**Article 3**

Creditors have agreed that unblocking of business accounts of Debtor is to be performed in accordance with the restructuring of obligations carried out under this Agreement in respect of orders for enforced collection which the creditors filed to the National Bank of Serbia – Enforced Collection Department (hereinafter referred to as: “NBS – ECD”) in the previous period, as well as in respect of the enforceable court decisions that were filed to NBS – ECD for the purpose of settlement of creditors’ claims (hereinafter referred to as: “Claims in enforced collection”).

Creditors which have Claims in enforced collection agree that each of them should [immediately upon the signing of this Agreement / immediately upon the signing of bilateral agreements with Debtor based on this Agreement], file to NBS – ECD a request for unblocking of business accounts of Debtor in respect of its Claims in enforced collection.

In addition, by this Agreement Creditors undertake to within [•] working days from the date of unblocking of the business accounts of Debtor repay the funds that were collected through blockade starting from the cut-off date up to the day of unblocking. Debtor will in that regard within a further period of [•] working days notify all Creditors [and mediator of CCIS] about individual amounts of funds that each Creditor collected through blockade of accounts in accordance with this paragraph, as well as about the amounts that each such Creditor returned to Debtor to his business accounts.

In case of non-compliance with the obligations under this Article each of the Creditors hereby undertakes the obligation to compensate in full all other Creditors, which incur damages as a consequence of that, which will refer in particular to those Creditors that had lower rank in blockade on the day of conclusion of this Agreement, compared to other Creditors, or had no orders for enforced collection at all in blockade of business accounts of Debtor but have settled part of their claims (or the entire claim) by means of disregarding provisions of this Article.

The Parties confirm that the collaterals, including promissory notes, provided by Debtor to Creditors on the basis of claims listed in Appendix 1 of this Agreement shall remain in force, regardless of unblocking of business accounts of Debtor and other provisions of this Agreement, and Debtor is undertaking the obligation that if a need arises provide new promissory notes to Creditors if required according to regulations.]

RESTRUCTURING MEASURES**Article 4**

Parties determine the following measures for restructuring of Debtor, which are specified in subsequent text:

1. [rescheduling of debt – prescribing repayment in instalments, modification of maturity dates, changes in interest rates or other terms of the claim]
2. [write-off (release) of a part of the principal and / or write-off of interest]
3. [sale (liquidation) of assets]

4. [change of means of fulfilment of obligation – transfer of property instead of payment of debt]
5. [settlement of claims through activation of collaterals, change of collaterals or waiver of collaterals by the Creditors]
6. [providing additional collateral by the Debtor or third parties, giving warranties or guarantees]
7. [settlement of a claim or a part of a claim by conversion into the basic capital of Debtor]
8. [securing financing of Debtor’s business (working capital) or the payment of debts by obtaining fresh financing (loans) from third parties by conclusion of a new loan agreement]
9. [providing funding to Debtor by issuing securities]
10. [•]

DEBT RESCHEDULING

Article 5

Parties determine conditions of Claim rescheduling as follows:

- deadline for repayment [•] months [starting from [•] / starting from date of conclusion of this Agreement]
- [– grace period of [•] months is included in the deadline for repayment]
- [– Debtor shall pay contractual interest during the grace period]
- payment of all amounts of principal and interests shall be in dinar equivalent at median exchange rate of NBS for respective currency (which is not RSD) on date of payment
- payment of principal of Claim in [•] identical [monthly / quarterly / semi-annual] instalments
- the interest rate is [•] on the amounts in [EUR] and [•] on the amounts in [RSD], per annum

Repayment plan is given in the Appendix 2 of this Agreement and makes its integral part. If the day on which the obligation is due by the repayment plan is not a working day in the Republic of Serbia, Debtor is obliged to make a payment on the first following working day.

Calculation and payment of interest is made [monthly / quarterly] for the past calculation period, using the [proportional / conformal] method of calculation, on the amount of debt in respective currency. [During the grace period, interest is calculated and paid monthly, while during the period of repayment of principal it shall be calculated on the due date of each instalment of principal and paid together with the instalment of the principal.]

[In respect of interest which is defined as the sum of the reference rate and margin, Creditors shall inform Debtor about the reference rate and the total amount of interest payable within two working days before the end of each calculation

period, and reference rate shall be determined according to the data obtained from relevant publicly accessible list.]

DEFAULT AND DEFAULT INTEREST

Article 6

In the event that Debtor does not settle its due obligations in accordance with the repayment plan and this Agreement, Creditors will be entitled to calculate default interest on all due and unpaid amounts in accordance with the regulations on default interest rate.

However, in the event that the contractual interest rate under this Agreement is higher than the default interest at the relevant time for the respective currency of obligation, Creditors shall have the right to charge the interest to the Debtor at the contractual interest rate for the relevant currency of obligation.

PREMATURE REPAYMENT

Article 7

Debtor shall have the right to settle any obligation under this Agreement prior to its due date, but only if respecting the principle of equal treatment of all Creditors in terms of proportional payments to all Creditors and with prior notification of [•] days to each Creditor [as well with paying remuneration in the amount of [•] that is calculated on the amount paid before maturity].

INTEREST WRITE-OFF

Article 8

By entering into this Agreement the Creditors agree to write off [default interest / contractual interest] to the Debtor for the period [starting from the cut-off date / as of [•]] until the date of conclusion of this Agreement]

[SALE OF ASSETS

Article 9

Within [•] of the date of signing of this Agreement, Debtor is obliged to initiate and conduct sale of assets listed in Appendix [3] of this Agreement, which would provide funds for [working capital / procurement [•] / early settlement of obligations towards Creditors] in the amount not less than [•] [annually]. The procedure of advertising and sale of assets is described in detail in the Appendix [4] of this Agreement.

The Debtor shall regularly, on a [weekly / monthly] basis or more frequently upon request of any Creditor, report to Creditors about the fulfilment of this obligation.]

[OTHER RESTRUCTURING MEASURES

Article 10

The Parties hereby agree that [•].]

COLLECTION FROM THIRD PARTIES

Article 11

Measures for restructuring obligations under this Agreement [do not refer to / also refer to] settlement of the Creditors in the period after the conclusion of this Agreement from the assets and funds of third parties which are jointly and severally liable or guarantors for claims listed in Appendix 1 of this Agreement, but only under the condition that such settlement should not result in creation of a right to reimbursement from the Debtor or, if such right to reimbursement is created, only under the condition that such party in respect to that right to reimbursement from the Debtor accepts to enter in the place of Creditor from this Agreement with regards to the part of claim that is settled out of its assets.]

[PRIOR ACTIONS I.E. CONDITIONS

Article 12

The Parties hereby agree that prior to the signing of this Agreement certain conditions have been met, as the essential elements thereof, all as follows:

- considering the required deadline of [●] for [●] to obtain formal consents and perform the procedure for signing of this Agreement, as acceptable exception, [●] delivered letter of intent to the Parties, which represents Appendix [5] of this Agreement, stating that it accepts all elements thereof and that only the signing shall be postponed for the specified period due to objective reasons.]
- [●]

OBLIGATIONS OF THE DEBTOR

Article 13

During the entire period until the settlement of all obligations under this Agreement, the Debtor undertakes to, without different consent of all Creditors [which shall not be denied without a valid reason]:

- [- take all measures necessary to implement the adequate changes in the management of the Debtor, i.e. to within [●] appoint new management as follows [●].]
- [- cooperate in an open and direct manner with independent financial consultants which [Creditors / Debtor at Creditors' choice] hired [at the expense of Debtor] as follows [●] in order to monitor Debtor's operations during the period of settlement of obligations towards Creditors, as well as for the regular reporting of Creditors in accordance with this Agreement and/or according to request of Creditors, while Debtor shall without any delay upon first such request from consultants provide necessary documentation and data required for preparation of required reports for Creditors and for other activities of such consultants,]
- [- not create new debt without the consent of Creditors, with the refinancing of existing obligations by the same Creditor not being considered creation of new debt,]

[– not establish new collaterals for Creditors or any third party, or give guarantees or assume obligations for third parties,]

[– not make any status changes i.e. merging, division or separation during the specified period,]

[– not dispose of the property [value exceeding [•]] in terms of sale, lease, encumbrance and the like [except in the course of regular business] wherein he will require consent of the secured Creditor on the particular property for lease for a period of more than one year, or for establishing additional encumbrances on already encumbered assets]

[– not make any payments on any grounds to members of the company or related persons, nor give any loans or undertake obligations for third parties,]

[– not change its ownership structure or registered seat,]

[– not make any kind of investment in capital assets, except in amounts and for the purposes specified in the restructuring plan which were approved by independent financial consultants and Creditors during the procedure of Consensual Financial Restructuring and that makes the Appendix [6] of this Agreement]

[– ensure that all Creditors are treated equally in terms of information about the Debtor, its business and assets, as well as regarding the implementation of the restructuring plan and the business for the future period, and also in respect of the repayment of any obligations towards Creditors by Debtor [and by entities related to Debtor on any grounds]]

[– to deliver to [Creditors / engaged independent financial consultants] regularly, on a [monthly] basis business reports and [reports on key performance indicators / cash flow / implementation of restructuring plan / sale of assets / other negotiations or agreements on restructuring of debts with other creditors,]

[– during the period of settlement of obligations at any time meet certain financial ratios of its operations as follows: [•]]

[– in the event of potential surplus of available funds, about which independent financial consultants will give their opinion, make an early repayment of debts to Creditors under this Agreement,]

During the term of this Agreement Debtor may not take any action that would in any way jeopardise its business and the possibility of further payment of obligations to Creditors.

VALIDITY OF PLEDGES AND BASIC AGREEMENTS

Article 14

Novation with regards to the existing basis of Creditors' claims is not being performed by this Agreement and the Parties hereby confirm the continuity of all collaterals that Creditors have for their claims from the Appendix 1 of this Agreement according to the basic agreements concluded with Debtor (including all mortgages, pledges, provided guarantees, promissory notes and other), therefore such mortgages and pledges as accessory rights that secure claims of each Creditor that are being restructured continue to exist as collaterals for restructured claims, in accordance with the regulations on Consensual Financial Restructuring.

All contractual provisions of the individual basic agreements (with the possible annexes) which are listed in the Appendix 1 of this Agreement between each individual Creditor and Debtor shall remain in force, unless otherwise stipulated by this Agreement on Consensual Financial Restructuring.

[Creditors will based on this Agreement proceed with amending the basic agreements from the paragraph 2 of this Article, within 30 days after the conclusion of this Agreement, but the omission of any Creditor and Debtor to execute such amendments in any particular case shall not affect validity and binding nature of this Agreement to all Creditors and Debtor.]

TRANSFER OF CLAIMS

Article 15

If any of the Creditors transfers, sells or in any way by transferring to a third party ceases to be a creditor in respect of claims referred to in Appendix 1 of this Agreement, it will be obliged to inform the acquirer of the existence of this Agreement and to inform other Creditors about the transfer without delay in written form.

Except in the previously described case, the Parties may not dispose of the rights and obligations under this Agreement without prior consent of all the Parties.

FEEES AND EXPENSES

Article 16

Creditors [will / will not] charge one-time fee to Debtor based on redefining of the debtor-creditor relations pursuant to this Agreement [and this is as follows: [•]]

The Parties agree that each party shall bear its own expenses related to preparation and signing of this Agreement, including attorneys' and other advisers' fees [except if otherwise prescribed by the provisions of this Agreement].

Notwithstanding paragraph 2 of this Article, Debtor is obliged to bear all the costs of the proceedings of consensual financial restructuring before the CCIS in terms of CCIS and mediators fees.

NOTIFICATIONS

Article 17

All notifications required and other communication of the Parties in relation to this Agreement (including notifications about the change of address) will be in writing and made by the authorised representative of the relevant Party, in Serbian and will be deemed duly delivered (i) upon filing, if hand-delivered or (ii) upon delivery, if sent by courier or registered mail, or (iii) upon receipt of an electronic message, if sent by electronic mail, with return receipt. Delivery will be made to the address specified in Appendix [7] of this Agreement.

CONSENT OF CREDITORS

Article 18

[For the purpose of all consents that are prescribed to be granted by Creditors under this Agreement, it shall be deemed that such consent is granted if each Creditor informs Debtor about it in written form.]

[All consents given by Creditors under this Agreement shall be given by, in the name and on behalf of all Creditors, the Creditors' Committee.]

[CREDITORS' COMMITTEE

Article 19

The Creditors hereby form the Creditors' Committee consisting of [•], [•] and [•].

The Creditors' Committee will hold its first session within 30 days after the conclusion of this Agreement, when the rules of procedure will be adopted and the President of the Creditors' Committee elected.

The Creditors' Committee will make all decisions [by majority of votes / unanimously] with each member of the Creditors' Committee having one vote.

The Creditors' Committee shall give consents envisaged by this Agreement on behalf of Creditors, and shall also be authorised to: [•].

The following decisions of the Creditors' Committee shall be adopted unanimously [•].]

EVENT OF DEFAULT AND TERMINATION OF THE AGREEMENT

Article 20

[This Agreement will terminate automatically, that is, it will cease to produce legal effect if any of the following situations should occur:]

[Each of the Creditors acquires the right to terminate this Agreement by sending written notice to Debtor, with a copy to all other Creditors, with the additional deadline of [•] days to remedy the breach, and upon expiration of the mentioned deadline the Agreement ceases to be binding to all other Parties, in the following cases:]

[Each of the Creditors acquires the right to withdraw from this Agreement by sending written notice to Debtor, with a copy to all other Creditors, with the additional deadline of [•] days to remedy the breach, and upon expiration of the mentioned deadline the Agreement ceases to be binding for that Creditor, but continues to bind other Parties (with all other Creditors acquiring the right in this case to withdraw from the Agreement without leaving the additional deadline to Debtor), in the following cases:]

[Each of the Creditors is entitled to declare all remaining unsettled obligations towards that Creditor immediately due and payable by sending written notice to the Debtor, with a copy to all other Creditors, with the additional deadline of [•] days

to remedy the breach, in the following cases:¹

- Initiation of bankruptcy or liquidation procedure of the Debtor, [also in the event of a third party filing for bankruptcy of the Debtor with the motion not being withdrawn or rejected within the period of [•] days],

[– Inability to completely unblock business accounts of the Debtor within the period of [•] days following the conclusion of this Agreement,]

- If the Debtor’s business accounts become blocked for a period of at least [•] working days and for the amount greater than [•],

- Any action or omission of the Debtor which represents a breach of one of the following provisions of this Agreement Article [•], paragraph [•]; Article [•], paragraph [•]; Article [•], paragraph [•], line [•],

- Non-payment of any [two consecutive] interest based obligation, or any principal debt based obligation if the delay is longer than [•] days.

[If a case described in paragraph [•], line [•] or the case described in paragraph [•], line [•] occurs, Debtor shall be entitled to remedy such breach of the Agreement within [•] days, in which case the Creditors may not exercise their right to termination or withdrawal from this Agreement set forth in this Article.]

BANK SECRET

Article 21

Each of the Parties hereby acknowledges that this Agreement and all information exchanged on the basis of it, represent bank and business secret in accordance with the regulations governing banks and business secrets in general, and undertakes to keep such information as confidential, in the manner in which it keeps its own confidential information.

GOVERNING LAW AND DISPUTES RESOLUTION

Article 22

This Agreement shall be governed by laws and regulations of the Republic of Serbia and in an event of dispute the jurisdiction of the Commercial Court in Belgrade is determined.

[In case of dispute the Parties undertake to attempt peaceful resolution, with the mediation of the Chamber of Commerce and Industry of Serbia, within the period of [30] days.]

1 The four paragraphs in straight brackets represent four different modes of resolving the breach of contract by Debtor, and the parties usually opt for one of these modes.

FINAL PROVISIONS

Article 23

In the event that any provision of this Agreement becomes invalid, illegal or unenforceable, such provision shall be modified to become valid, legal and enforceable, and in the event that such modification is not possible, it shall be deemed that the foregoing provision does not exist if the Agreement can remain in force without it, and all other provisions shall remain in force.

Article 24

Amendments to this Agreement may be executed only in writing, with the consent of all the Parties.

[For the purpose of clarity, the written form would also be valid if a Party puts its signature on a separate document which contains all such amendments and delivers it to all other Parties by registered mail, fax or e-mail, with the receipt confirmation.]

Article 25

This Agreement is executed in [•] (say: [•]) identical copies in Serbian language, each of Parties keeps 2 (say: two) copies, and one copy is kept by the Chamber of Commerce and Industry of Serbia for its archive.

[The Parties agree to execute this Agreement in a following manner: first it will be signed by the Debtor, then by the Creditor which blocked the Debtor's account first, the following would be the second Creditor which blocked the account and all the way to the Creditor which blocked the Debtor's account last, and subsequently it will be signed by the rest of the Creditors which have not filed orders for enforced collection against the Debtor.]

Article 26

This Agreement comes into force [on the day of signing by the last Party /on the day [•], provided that it is signed by all Parties by that day].

This Agreement will be filed in the case registry of the Chamber of Commerce and Industry of Serbia, immediately upon signing by the last Party.

DEBTOR:

CREDITORS:

No:

Date:

C O N F I D E N T I A L I T Y S T A T E M E N T

I hereby state that I shall respect the confidentiality of the procedure and all data that I learn during the consensual financial restructuring in between:

DEBTOR, _____ with headquarters in _____, and

CREDITORS:

_____, mediator CCIS

_____, clerk

CFR MEDIATION GENERAL TERMS AND CONDITIONS

Parties share mutual interest in participating in the mediation process conducted within the consensual financial restructuring procedure (CFR mediation) in accordance with provisions of the Law on Consensual Financial Restructuring of Companies and applicable regulations, and to that end the parties understand, accept and agree with the following general terms and conditions:

- 1) CFR procedure is aimed at redefining the contractual relationship between companies and their creditors, primarily banks.
- 2) The Chamber of Commerce and Industry of Serbia (CCIS), as an institutional mediator authorised by Law, provides assistance to the parties in establishing cooperation and facilitating negotiations aimed at redefining the debtor-creditor relationship.
- 3) The Mediator's role is to assist the parties in the CFR mediation process in reaching agreement in a collaborative, consensual and informed manner, by facilitating positive dialogue and proactive atmosphere during the negotiations.
- 4) The Mediator does not have the role of a judge or arbiter. Mediator has no power to decide the issues for the parties, or give them legal or business advice. Responsibility for making a decision and reaching the agreement is solely on the parties. Parties cannot be forced to accept any solution unsuitable for them. Parties are free to hire attorneys, advisors and representatives, and consult with them throughout the process and before signing any agreement.
- 5) The parties are familiar with provisions of the Law and principles of the CFR and enter the CFR mediation process voluntarily, in good faith, and willing to fully contribute to reaching an agreement.
- 6) The CFR mediation process is private and strictly confidential. The mediator shall keep all information disclosed during the process as a secret, except when required to be disclosed in public interest (e.g. information of a committed criminal act, or threat of violence). The mediator cannot serve as a witness before a court, arbitration or in any other proceedings concerning the information disclosed within the CFR procedure. The parties, their attorneys, advisors, and representatives shall not disclose any information revealed with intention of reaching the agreement during the CFR procedure to individuals not involved in the process, nor use them as evidence in court, arbitration or any other proceedings.

- 7) Minutes shall be taken during the CFR mediation, and used for internal record-keeping purposes of the CCIS Centre, without compromising the confidentiality of the procedure by any means. The records shall be kept in accordance with the CCIS Rulebook on Preserving Archives.
- 8) The mediator may suspend or terminate the CFR mediation process if they believe it is no longer useful or they can no longer perform their facilitative role. It is however understood that any party may withdraw from the CFR mediation process at any time, if they believe that reaching the agreement is not possible.
- 9) The mediator and CCIS may assist the parties in drafting the agreement, upon the parties' request. The agreement reached in the process has legal effect as stipulated by the Law and is a legally binding contract after the parties sign it.
- 10) The parties agree to bear the costs of the CFR procedure in accordance with the Decision on Costs of Institutional Mediation adopted by the CCIS.

WARNING SIGNS	
OPERATIONS	REPORTING
<ol style="list-style-type: none"> 1. Steady decline or rapid increase in sales 2. Frequent cash shortages 3. Significant changes in net working capital 4. Unexpected changes in strategy or business 5. Shrinking cash margins and unexpected losses 6. Unrealistic pricing/discount policy 7. Frequent revenue/earnings shortfalls 8. Increasing dependence on fewer customers 9. Negative operational cash flow with net profits 10. Deteriorating accounts receivable 11. Increased credit to affiliated companies 12. Lengthening terms of settlement for payables 13. Repeated changes in suppliers 14. Insufficient cash to take trade discounts 15. Inventory build-up with turnover slowing 16. Outmoded production or distribution system 17. Inadequate spending on critical activities 18. Failure to pay taxes 19. Non-renewal or cancellation of insurance 20. Billing practices are deficient 	<ol style="list-style-type: none"> 1. Worsening delays in financial reporting 2. Poor quality of, or inconsistencies in, reports 3. Qualified audit opinions and/or audit disclaimers 4. Unexpected and/or untimely changes in auditors 5. Many unusual items in financial statements 6. Revaluation of assets without convincing explanations 7. Padding of financial statements (mainly on the Balance Sheet) 8. Increasingly changing interim financials with surprises 9. Major unexplained planned vs. reported results gaps 10. A deterioration in ratings by external analysts 11. Regular breaches of financial covenants 12. Increasing incidence of waiver requests
MANAGEMENT AND BEHAVIOUR	INVESTING
<ol style="list-style-type: none"> 1. Poor or deteriorating sponsor reputation 2. A lack of management/sponsor vision 3. Increasingly authoritarian management/board style 4. Senior executives not providing financial information 5. Incompetent finance director or CFO 6. Management experience/skill deficiencies 7. Management and shareholder contentiousness 8. Frequent changes in ownership and key positions 9. Sponsors'/managers' unexplained new wealth 10. Quarrels between company and its auditors 11. Notable shabbiness/loss of pride in company 12. Personal issues constraining management team 	<ol style="list-style-type: none"> 1. Non-current assets increase faster than revenue/profit 2. Major procurement without proper rationale/financing 3. Working capital needs funded by asset sales 4. Inventory build-up without sound inventory controls 5. Seemingly speculative inventory purchases 6. Inadequate maintenance of plant and equipment
	FINANCING
	<ol style="list-style-type: none"> 1. High or increasing levels of financial leverage 2. Increased short-term funding for long-term liabilities 3. Difficulties in accessing financing 4. Excessive lending to related individuals/affiliates 5. Obligations to creditors not fully met each cycle 6. Increasing customer/creditor complaints/legal action 7. Funding secured on less favourable terms

Source: IFC "Corporate and SME Workouts – A Manual of Best Practice" (2011)



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Guide to Consensual Financial Restructuring of Companies