









SELECCIÓN CUADRO COMPARATIVA ACUERDOS REFINANCIACIÓN DISTINTOS PAÍSES (DOCUMENTO DE INSOL INTERNATIONAL diciembre 2018)

“European High Yield Bond Restructurings – A User’s Guide”: <https://www.insol.org/library/opendownload/800>



Process	Chapter 11	Scheme of Arrangement	CVA	“Sauvegarde”	“Insolvenzplan”	“Homologacion”	“Dwangakkoord buiten faillissement” “Dutch Scheme” (Proposed)	“Lex Agrokor”	Process
Debtor in possession?	Yes	Yes - unless combined with Administration	Yes - unless combined with Administration	Yes – under the supervision of a court-appointed judicial Administrator	Can be, but in either case it is a formal insolvency process.	Yes – court-sanctioned debt restructuring process outside of formal insolvency.	Yes	No - Extraordinary Commissioner appointed with executive powers	Debtor in possession?
Moratorium preventing creditor action	Yes	No – unless combined with Administration	No – unless combined with Administration	Yes	Yes	Yes – only affected creditors	Yes – at the request of the debtor and tailored to what is required. Can be a general stay or limited to only one or more specific creditors.	Yes	Moratorium preventing creditor action
Voting threshold (claim quantum)	Two-thirds by value of those who vote.	75% by value of those who vote.	75% by value of those unsecured creditors who vote (and 50% of un-connected, unsecured creditors who vote).	There are thresholds for the formation of Creditors Committees. Debtors with > 150 employees or turnover > €20m must form committees. If committees are formed, two-thirds in value of those voting, in each committee, must approve.	Majority in each class, and majority of classes, of those who vote.	Unsecured financial debt (including deficiency claims): 60% / 75%. Secured financial debt: 65% / 80% by value of security Lower thresholds: allow extension up to 5 years, conversion of debt into Profit Participating Loan (PPL) with a term up to 5 years. Higher thresholds: allow discounts, extension from 5 to 10 years, conversion of debt into PPL with a term from 5 to 10 years, debt for equity/ asset swap, convertible obligations, financial instrument conversion, payments in kind.	Acceptance of only one class required. A class is deemed to have accepted the plan if a majority has voted in favor representing 2/3 in value of those who have participated in the vote.	Simple majority of voting creditors in each class or 66.7% in total	Voting threshold (claim quantum)
Voting threshold (number)	Majority in number of those who vote (as well as claim quantum threshold above – i.e. must pass both thresholds).	Majority in number of those who vote (as well as claim quantum threshold above – i.e. must pass both thresholds).	Majority in number of those who vote (as well as claim quantum threshold above – i.e. must pass both thresholds).	N/A	Majority in number of those who vote (as well as claim quantum threshold above – i.e. must pass both thresholds).	N/A	N/A	Simple majority by class of voting creditors (as well as by value as above – i.e. must pass both thresholds). But no numerosity test if 66.67% by value is achieved.	Voting threshold (number)
Classes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Classes

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Cross-class cramdown	Yes – classes which receive no distribution under the plan are normally deemed to reject it, but nonetheless are bound if the partially impaired class senior to them approves the plan. Unimpaired classes are deemed to accept the plan.	No – each affected class must approve the Scheme. It is not possible to cram down a junior class or equity just because a senior class votes in favour.	N/A – there is just one class – that of all unsecured creditors. Creditors can be treated differently in the proposal, but vote as one class.	No – each class must approve the plan – the commercial court has a final say on the plan. If equity is to be compromised, approval of 2/3 of equity attending or represented at the general shareholders meeting is generally required. There is an option for shareholders’ eviction under Court control, if the change in capital is assumed to be the only solution.	Yes – a majority of consenting classes can cram down a minority of dissenting classes. The Court can overrule the vote of an “out of the money” class.	No – secured creditors must approve the homologacion to be affected as a class. The cramdown of the equity always requires the approval of shareholders, even when they have no economic interest.	Yes The plan needs to be accepted by only a single class. All dissenting classes (including shareholders) can be “crammed down”. The main requirement for cramdown is that the applicable priority rules are observed in respect of the dissenting classes.	Yes – if plan approval is obtained it is binding for all classes.	Cross-class cramdown
Guidance for constitution of classes	Claims and equity interests are grouped into one or more classes. Claims in each class must be “substantially similar” and the treatment for each creditor within a class must be the same. Generally each secured creditor will be in its own class, unsecured creditors will form one class (or more if financial interests are sufficiently different), and shareholders will form a class (or more, if e.g. there are ordinary and preference shares with different rights).	Creditors with “rights not so dissimilar that they cannot sensibly consult together with a view to their common interest” should be placed in the same class. The constitution of classes is often a major point of debate in the initial “fairness hearing”, i.e. before voting, thus preventing a dispute on classes after the vote has been passed.	A CVA cannot bind secured creditors; only unsecured creditors.	Up to three committees are formed: <ul style="list-style-type: none">• Committee for banks and financial creditors;• Committee for providers of goods and services; and• Committee for Bondholders.	A distinction is made between secured creditors, higher and lower ranking creditors, and shareholders where their share rights are included in the plan. Employees form a separate group if they are claiming major amounts as insolvency creditors. However, it does not automatically follow that these will all be separate classes. In some cases it has been possible to have a single class.	Unsecured financial debt (including deficiency claims) / secured financial debt.	Parties with different existing rights or who are afforded a different treatment under the plan must be placed into different classes.	Classes to be based on different legal positions of creditors, with further differentiation allowed for those whose legal position is the same but economic position differs.	Guidance for constitution of classes
Other	If the debtor is unable to raise new unsecured debt, the court can give permission for the debtor to raise secured debt. In some cases this can be given senior ranking to the existing secured lender, if it can be shown that otherwise it is not possible to raise sufficient new funds, and subject to offering “adequate protection” to the existing lien-holder. Contractual counterparties can be forced to continue to fulfil contracts. The debtor can terminate onerous contracts.	There is no mechanism for new money to be given priority status over existing secured creditors, other than by their consent.	There is no mechanism for new money to be given priority status over existing secured creditors, other than by their consent.	There is no mechanism for new money to be given priority status over existing secured creditors, other than by their consent. The Court can impose creditors repayment terms of up to 10 years, even if creditors’ committees vote against the proposal.	There is no mechanism for new money to be given priority status over existing secured creditors, other than by their consent.	The homologacion gives insolvency privilege to new money.	There is no mechanism for new money to be given priority status over existing secured creditors, other than by their consent. The Dutch scheme will include provisions to preserve valuable contracts (e.g. invalidation of automatic termination due to insolvency and change of control clauses) and reject onerous contracts.	New money was effectively given super priority status on Agrokor. This is specific legislation applying to corporate groups of systemic importance to Croatia. Groups must contain more than 5,000 employees, with balance sheet obligations exceeding HRK 75 bn (c. EUR 1bn), to qualify to use the legislation.	Other