



**Law, Justice and Development week 2014  
Financing and implementing  
The post-2015 development agenda**

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# What can we learn from the various insolvency law reform processes throughout Western Europe?

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# New context, new challenges

- The severity of the crisis has made it necessary to adopt measures in order to facilitate the conversion of debt into equity; before, the alternative option was either to reschedule debts or to liquidate the debtor
- Financial innovation has made it much more complex restructuring the capital structure of companies > new markets players, different bargaining powers

# New context, new challenges

- a more intense competition in a globalized world,
- a declining average productivity rate
- the increasing digitization of the economy

> increase the need for companies to quickly -  
restructure in an efficient manner

# New challenges.... but lack of overarching vision

- Many reforms during the last few years, difficulties to offer an overhaul of their insolvency law > complexity, lack of transparency, side effects
- no reform of the judiciary system in most of the countries (Germany, France, Spain) > difficulties for judges to deal with the new issues

# New challenges.... but lack of overarching vision

- Lack of data is an issue if you want to tackle lobbies and promote an ambitious reform
- Lack of Law & Economics approach; a strong political and cultural sensitivity remains

# Encouraging out-of-court proceedings yes of course, but...

- Common observation that too much value is destroyed during bankruptcy proceedings
- Tendency to encourage out-of-court restructuring by relaxing the unanimity rules which are provided for in the various contractual agreements

# Encouraging out-of-court proceedings yes of course, but...

- Parties negotiate in the shadow of the bankruptcy proceedings > if the bankruptcy proceedings result in an unefficient result, the negotiations are likely to produce an unefficient result
- Insufficient deleveraging of the companies
- Risk of wrong wealth transfer between creditors and shareholders



# Focus on France

- 4 reforms in less than 10 years, a 5th one is about to be approved
- Very complex legal framework; eight different proceedings can be open...
- Predictability is key for investors but difficulties to understand the legal framework

# Focus on France

- the Ministry of the Economy has failed to introduce a "cram down" like in the U.S. > risk of infringement of shareholders' property rights?! Really?
- Difficulty to consider that creditors' property rights deserve the same level of protection as shareholders

# What can other countries draw from this experience ?

- Changing the law is nice, improving the quality of the judiciary system is key for predictability
- Civil law jurisdiction versus Common law jurisdiction will no longer be a meaningful distinction > French law will be more and more creditor friendly in the future

# What can other countries can draw from this experience ?

- Harmonizing insolvency law among various countries is key in order to develop debt capital markets
- the European Union will probably make some progress in the near future but it will be harder than for OHADA due to political sensitivity

# Contact

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