

# Contents

---

<i>List of contributors</i>	ix
<i>Preface</i>	xiv
<i>List of abbreviations</i>	xvi
<b>Introduction and background</b>	1
The project	1
Background: Juncker plan, Capital Markets Union and Single Market Strategy	3
Methodology	6
Case studies and statistical comparators	11
World Bank <i>Doing Business</i> project	13
Some conclusions from the <i>Doing Business</i> project data	17
<b>1. Directors' liability and disqualification</b>	24
1.1 Introduction	24
1.2 Work undertaken by UNCITRAL	26
1.3 Duties of directors	27
1.4 Duties of directors in insolvency proceedings	42
1.5 Sanctions for breaches	43
1.6 Obstacles to enforcement	45
1.7 Disqualifications	51
1.8 Conclusion and divergence issues	61
<b>2. Insolvency practitioners (administrators, liquidators, supervisors, mediators, etc.)</b>	65
2.1 Terminology	65
2.2 Work done in this area by the European Parliament	66
2.3 International consensus	67
2.4 Courts	69
2.5 Insolvency practitioners as a specialist and regulated profession	70
2.6 Disciplinary action against insolvency practitioners	76
2.7 Insurance	78
2.8 Conflicts of interest	78

2.9	Appointment of insolvency practitioners	80
2.10	Insolvency practitioners from other Member States	82
2.11	Insolvency practitioner remuneration	83
2.12	Conclusions on insolvency practitioners	86
	Appendix: data table	88
<b>3.</b>	<b>Ranking of claims and order of priorities</b>	<b>102</b>
3.1	Introduction	102
3.2	International background on priority rights and ranking of claims	105
3.3	Basic rules: secured versus unsecured claims	110
3.4	Financial claimants versus commercial claimants	111
3.5	Why secured claims are given priority	112
3.6	Employee claims	115
3.7	Unpaid taxes and social security contributions	121
3.8	Shareholder claims	122
3.9	Super-priority new financing	125
3.10	Conclusions on ranking of claims and order of priorities	127
<b>4.</b>	<b>Avoidance and adjustment actions</b>	<b>130</b>
4.1	Introduction	130
4.2	Position under European Insolvency Regulation	133
4.3	Presumptions	135
4.4	Time	135
4.5	What circumstances must exist for avoidance?	136
4.6	Connected/related persons	137
4.7	Kinds of transactions	138
4.8	Subjective and objective elements	163
4.9	Who can take action?	165
4.10	Institution of proceedings	166
4.11	Orders	167
4.12	New financing	168
4.13	Divergence problems	169
4.14	Conclusion	177
<b>5.</b>	<b>Procedural issues relating to formal insolvency proceedings</b>	<b>185</b>
5.1	Introduction	185
5.2	Opening of insolvency proceedings	185
5.3	Creditor involvement in proceedings	190
5.4	Liquidation of the insolvent estate	202
5.5	Insolvency proceedings for SMEs	214
5.6	Costs of formal insolvency proceedings	222

5.7	Conclusions on procedural issues relating to insolvency proceedings	223
<b>6.</b>	<b>Commission Recommendation on a new approach to business failure and insolvency</b>	<b>225</b>
6.1	Introduction	225
6.2	Early stage restructuring proceedings: initiation stage	232
6.3	Ease of access to procedures, including court involvement	234
6.4	Debtor in possession	237
6.5	Stays on enforcement actions	239
6.6	Restructuring plans	245
6.7	Separate classes	246
6.8	Conditions for acceptance of the plan: voting and court approval	249
6.9	No creditors worse off	250
6.10	'Absolute priority' rule: respecting pre-insolvency entitlements	251
6.11	Necessary majorities	253
6.12	Role of the court, including consideration of financial viability of restructuring plan	255
6.13	Creditor cram-down	257
6.14	Dissenting creditors (remedies)	259
6.15	Encouraging new finance	259
6.16	Conclusions on a new approach to business failure and insolvency	260
	Appendix: data tables	263
<b>7.</b>	<b>Second chance for entrepreneurs</b>	<b>303</b>
7.1	Introduction	303
7.2	Available procedures for the entrepreneur	306
7.3	Discharge of debt	313
7.4	Discouragement of dishonesty, bad faith, non-compliance with obligations or behaviour detrimental to creditors	318
7.5	Safeguarding the livelihood of the entrepreneur	322
7.6	Further observations: divergence and best practice	324
<b>8.</b>	<b>Consumer over-indebtedness</b>	<b>331</b>
8.1	Introduction	331
8.2	General aspects of consumer over-indebtedness	338
8.3	Insolvency practitioners for consumers	351
8.4	Procedural aspects	362
8.5	Guarantors	382

8.6	Legal and practical consequences of over-indebtedness procedures	390
8.7	Debt discharge	394
8.8	Balance between competing objectives	402
8.9	Remaining aspects of over-indebtedness: internal market, collection of debt and remaining matters	425
	Appendix: data table	431
	<i>Appendix 1: First questionnaire</i>	435
	<i>Appendix 2: Second questionnaire</i>	443
	<i>Glossary</i>	448
	<i>Bibliography</i>	452
	<i>Index</i>	461