

# Directors' Duty to Promote the Negotiation Within the Scope of Pre-Insolvency Restructuring Frameworks

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## **Abstract**

The pre-insolvency *status* of companies represents a great opportunity to avoid insolvency and therefore seems to be, from a common-sense perspective, a good *chance* to prevent and limit the unnecessary liquidation of viable enterprises, the build-up of nonperforming loans, the loss of jobs, know-how and skills, and the deterioration of the economy and society as a whole. Having regard to these interests and concerns, the Directive 2019/1023/UE compiles all Member States to implement pre-insolvency restructuring frameworks as an important way-out or safe harbour for pre-insolvent companies, their creditors, workers, equity holders and other stakeholders, so that opportunity or chance shall be effectively saved at an early stage.

For this purpose, it is important to ensure that Directors (of debtor and creditor companies) are clearly obliged to take all steps to promote the negotiation of a preinsolvency restructuring plan, which should happen whenever the restructuring plan is necessary, adequate, reasonable and fair: it is necessary when the debtor company is preinsolvent and viable; it is appropriate if it contributes effectively to maximise the total value of affected parties (or classes) in comparison to what they would receive in the event of the liquidation of the debtor's assets or in the event of the next-best-alternative scenario in the absence of a plan; the restructuring plan is reasonable and fair if the affected and dissenting parties (or classes) are treated at least as favourably as any other party (or class) of the same rank and more favourably than any more junior party (or class) or, alternatively, by ensuring that such dissenting party (or class) is paid in full if a more junior class receives any distribution or keeps any interest under the restructuring plan.

**Keywords:** Directors, Negotiation, Pre-insolvency, Restructuring Plan