	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
Types of restructuring schemes (alternatives to full re-organisation)	Scheme of Arrangement, Restructuring Plan, and (for unsecured creditors) creditors' voluntary arrangement (CVA)	Chapter 11	Act on the Stabilisation- and Restructuring Framework for Companies (*Unternehmensstabilisierungs- und -restrukturierungsgesetz* – "**StaRUG**")	Acuerdo preventivo extrajudicial (APE)	Negotiated Composition Procedure (*Composizione negoziata*) Reorganisation Plan (*Piano attestato di risanamento*) Restructuring Agreement (*Accordo di ristrutturazione dei debiti*) Restructuring Plan subject to Validation ("**RPV**") (*Piano di ristrutturazione soggetto a omologazione*) Composition Proceedings (*Concordato preventivo*)	Homologated Restructuring Plan (*plan de restructuración homologado*) Composition plan (*convenio de acreedores*) Extrajudicial payment agreement (*Acuerdo extrajudicial de pagos*) Special proceedings for micro-enterprises (*procedimiento concursal especial para microempresas*)

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Restructurings						
• In case court involvement is required, is it necessary just to validate the scheme or is it necessary an involvement of the court also at an earlier stage?	A court is required to bind a dissenting minority into a plan if credit documentation does not allow majorities to bind minorities.	A court is required to bind a dissenting minority into a plan if credit documentation does not allow majorities to bind minorities.	It is not a requirement that the court is involved in order to agree on a restructuring plan. However, without court confirmation of the plan, a restructuring plan only takes effect between the consenting parties. Upon court approval, it can also be binding for dissenting creditors. In addition, court confirmation has further advantages: cure of procedural errors and limitation of the possibilities of avoidance. The debtor can also apply to the restructuring court	No requirement that the court be involved at earlier stage. The APE will only produce effects vis-à-vis signing parties. Upon court approval, it shall also bind dissenting creditors. Court will get involve only if the debtor requires court approval of the APE (in order to bind dissenting creditors).	It depends on the procedures. In certain cases (*e.g.*, Negotiated Composition Procedures), the Court intervenes not to validate the procedure, but only for the purpose of granting protective measures and authorizing going concern financing. In other cases (*e.g.*, Reorganisation Plans) the Court does not intervene at all, or is requested only to validate the plan *ex post* (eg. Restructuring Agreements). In case of Composition	In the Restructuring plan the involvement of the Court is at the end (could be at an early stage but only to confirm the formation of classes) In the composition Agreement the Court involvement is from the beginning, as it is an agreement executed within the bankruptcy proceedings

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			to issue a stabilisation order (*Stabilisierungsanordnung*) to achieve the intended reorganisation. This results in a special form of a moratorium: the order can lead to a stay on enforcement (*Vollstreckungssperre*) and/or a stay on realisation of the debtor's assets (*Verwertungssperre*). It may be directed against individual creditors, several creditors, or all creditors.		Proceedings, as well as in the RPV, on the contrary, the Court's intervention is requested not only to validate the procedure, but also to ascertain the existence of the requirements to activate such restructuring tools.	
• Actual use of restructuring schemes? (e.g. do legal issues or	Generally used often.	Generally used often.	To date, StaRUG proceedings have been used less than originally expected. However, the exact	APEs were extremely used during the 2002/2006 Argentine crisis	In general terms, the restructuring procedures are very much used in Italy, because they can	The restructuring plans are often used in Spain because it is a good way to avoid the value destruction of

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
practicalities render them of little use)?			number can only be estimated, as StaRUG proceedings do not necessarily have to be published. Reasons for the low use: relatively narrow access period (only 12 months) and therefore fear of liability to file for insolvency on the part of the managing directors, not all managing directors are familiar with StaRUG proceedings. no possibility for operational restructuring, as	for large companies with foreign denominated debt securities and bank debt. The institute works very well for large companies with financial problems.	grant protection to all the stakeholders involved in the process, both under a civil and criminal standpoint. The Composition Proceedings aimed at the mere liquidation of the debtor's assets will likely witness a decrease in its use, due to certain additional limit set by the Insolvency Code to access the procedure. On the contrary, the Restructuring Agreement is likely to witness an increase in its use, as a result of some amendments introduced by the Insolvency Code	bankruptcy proceedings (statistically 90% of the insolvency proceedings end-up in liquidation). Not many composition agreements are reached and the few that are approved are normally breached

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			unilateral termination of contracts is not possible - the procedure has only been suitable for financial restructuring so far.		aimed at: (i) reducing the threshold of creditors whose consent is needed to reach the agreement; and (ii) increasing the chances to extend the effects of the agreement upon non-adhering creditors	
Initiation of the restructuring procedure	Schemes of arrangement (just binding the dissenting minority) can be initiated without insolvency. CVAs and restructuring plans are insolvency procedures but can be initiated before actual insolvency	Chapter 11 can be initiated without insolvency	StaRUG procedure can be initiated before actual insolvency.	APEs can be initiate upon an "*insolvency situation*" or a "*situation of general economic or financial difficulties*". Courts are flexible.		
• How stringent is the			StaRUG proceedings can be	APE can be initiated alleging a	The new Insolvency Code provides for	A debtor is insolvent when it is unable to

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
insolvency test?			used in the event of imminent illiquidity. Imminent illiquidity occurs when the debtor is not expected to be able to meet the existing payment obligations at the time they are due based on a forecast of 24 months. The extent to which the court examines whether there is actually imminent illiquidity as a requirement for initiating the procedure is somewhat unclear, and therefore controversial. The obligation to file for insolvency	"*situation of general economic or financial difficulties*". Courts are flexible.	three different and progressive stages: (i) "pre-crisis" (if crisis is likely and restructuring is reasonably pursuable); (ii) "crisis" (if insolvency is likely and perspective cash flows are not adequate to satisfy obligations in the following twelve months); and (iii) "insolvency" (in case of non-performance or other circumstances which demonstrate that the debtor is no longer able to satisfy its obligations on a regular basis). In particular, in case of "pre-crisis",	regularly pay its debts as they fall due. This situation is known as "actual insolvency" and triggers, except in the case of a pre-insolvency filing (preconcurso), the company's obligation to request a declaration of insolvency from the court within two months of the moment the directors knew, or should have known, that the company was insolvent. In contrast to other jurisdictions, the Insolvency Law exclusively sets out a cash-flow test to determine whether or not a debtor is insolvent.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			is suspended during the pendency of the restructuring proceedings. The debtor is nonetheless obliged to notify the restructuring court of the occurrence of compelling reasons to file for insolvency – illiquidity (*Zahlungsunfähigkeit*) or overindebtedness (*Überschuldung*). The restructuring court will then generally set aside the restructuring proceedings. In addition to imminent illiquidity as a reason for insolvency,		"crisis" or "insolvency", the Negotiated Composition Procedure is available, provided that restructuring is reasonably pursuable. In case of "crisis" or "insolvency", all the restructuring tools can be used.	

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			overindebtedness is often present at the same time. Overindebtedness is when the debtor's assets no longer cover the liabilities, unless the continuation of the company in the next twelve months is highly probable. However, this does not mean that the reorganisation of the company fails completely – the debtor still has the option of carrying out the restructuring within the framework of insolvency proceedings – for example by means of an insolvency			

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			plan, which is similar in its basic features to the restructuring plan.			
• How motivated are directors to initiate a scheme / preventive restructuring plan (e.g. liability, impact on governance post-filing)?	In England: Directors' duties to shareholders shift to duties to creditors when insolvency is probable. Directors also have liability for wrongful trading if they do not take every step to minimize losses to creditors at a time when there is no reasonable prospect of avoiding an insolvent liquidation.	In the U.S., varies by state, but in Delaware directors' duties to shareholder only shift upon insolvency	From practical experience, we often hear that the restructuring plan is not used because the "access window" (only 12 months) is too short and there is not enough time for restructuring. Managing directors therefore fear that they will be liable for negligently delaying filing for insolvency if the restructuring subsequently fails after all.	Only directors of large companies with debt securities under CNV´s supervision. Risk of liability and fines for breach of CNV´s and transparency obligations	Directors are generally very much motivated to initiate a restructuring procedure, since the Civil Code enshrines specific and stringent duties in this respect, also for the benefit of the business continuity of the company. Liability for violation of such provisions is a powerful and dissuasive tool.	Directors are motivated to act diligently and to request the pre-insolvency filing or bankruptcy proceedings **on time** because if the company is not restructured and ends-up in liquidation and its assets are insufficient to pay all claims, the court may hold the directors liable for the payment of all or part of creditors' claims.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Can directors initiate independently from shareholders?	Yes as far as the court is concerned (they would need to review any contractual prohibitions).	Yes as far as the court is concerned (they would need to review any contractual prohibitions)..	Yes, an application by the managing directors is effective even without the consent of the shareholders. However, it is disputed whether the managing directors are liable for damages if they initiate the proceedings without the consent of the shareholders.	Yes, but normally shareholders support the decision. In the case of "*concurso preventivo*", shareholders' ratification of the filing is required within a term after filing.	Access to restructuring tools is decided exclusively by directors. However, directors are obliged to inform shareholders of their decision and to periodically inform them on the outcome of the procedure.	Yes, directors can initiate proceedings without the consent of shareholders.
• Is a particular kind of creditor required or entitled to initiate (e.g. trade creditor, financial creditor, secured	Creditors can technically initiate but it is unusual. Creditors can initiate more traditional insolvency procedures.	Creditors can technically initiate but it is very unusual because of possible liability. Creditors can initiate more traditional insolvency procedures.	No, StaRUG proceedings can only be initiated by the debtor. Only insolvency proceedings can be initiated by creditors.	Not in the case of APE or "*concurso preventivo*" (only liquidation proceedings – "*quiebra*" - may be initiated upon the request of a creditor)	In general terms, the power to access any of the restructuring tools belongs to the debtor. However, as far as Judicial Liquidation (*i.e.*, bankruptcy) is concerned, such legitimacy is granted to the debtor, the	Yes, creditors can: (ii) propose a restructuring plan (ii) request the initiation of insolvency proceedings, if the company is currently insolvent and (iii) propose a composition plan

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
creditor, etc.)?					board of statutory auditors, one or more creditors (of any kind) and the public prosecutor's office. Furthermore, in the context of the Negotiated Composition Procedure, the legislator envisaged certain report/informative duties to the board of directors upon the statutory auditors, certain qualified public creditors (like pension/insurance funds and tax Authorities and banks/financial institutions).	
Shareholders' protection						

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Can a creditors' plan be imposed and cram down shareholders?	Yes for UK shareholders.	Yes for US shareholders.	No, in accordance with the StaRUG creditors are not allowed to file their own restructuring plan. This option is only possible in insolvency plan proceedings under the German Insolvency Act (*InsO*).	No. Only in certain "*concursos preventivos*" (not APE), and very rare application in practice.	Both in the Composition Proceedings and in the RPV, creditors representing at least 10% of the unsecured claims are allowed to file their own restructuring proposal/plan, which, just like the debtor's proposal, is subject to the creditors' vote (and can never be imposed).	Yes, in the context of a Restructuring Plan shareholders could be crammed down if certain requirements are met Homologated Restructuring Plans could involve debt capitalisations or equivalent equity-like solutions
• How are shareholders' rights protected?	Shareholders must vote as a class unless they have no economic interest.	It would be unusual for companies to file for Chapter 11 if the existing equity had value and the companies were seeking to compromise other creditors against their will.	The protection of shareholders is rather weak in the StaRUG. In particular, minority shareholders without access to the management will usually not have sufficient information to	General Companies Law and, in practice, the board follows controlling shareholders´ orders.	If the debtor opts for a Composition Proceedings or an RPV and its restructuring plan directly affects the shareholders' participation rights, shareholders must form a class and that class must have the	Shareholders who have voted against the Plan's approval will be entitled to challenge the Plan on any of the following grounds: (a) breach of the Plan's content and formality requirements

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			refute the allegation of imminent illiquidity. Especially in the context of a majority decision across groups (see below), the rights of shareholders with their subordinated shareholder claims may be restricted - even against their will. However, there is already protection to the extent that the managing director may not file an application to initiate StaRUG proceedings without the consent of the shareholders (in the		right to vote upon the plan. As a consequence: (i) any dissenting member of the shareholders' class can challenge the validation of the plan; and (ii) members of the shareholders' class can benefit from the distribution of the business continuity surplus (*i.e.,* the proceeds of the going concern) according to the Relative Priority Rule. In addition, shareholders representing at least 10% of the equity are allowed to file their own restructuring proposal, which, just	(b) lack of approval by the required class or classes; (c) the debtor not being in a state of imminent or actual insolvency; (d) the Plan not offering a reasonable prospect of avoiding a declaration of insolvency and guaranteeing the debtor's viability in the short and medium term; or (e) one of the classes would be receiving rights or shares for a value higher than the amount of the claims within that class.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			internal relationship).		like the debtor's proposal, is subject to the creditors' vote.	
Stays on enforcement						
• Is it applicable in restructuring schemes? If yes, is it automatic upon the initiation of the procedure, or is a debtor's express request needed?	No automatic stay in a scheme or restructuring plan, but in practice companies who have initiated proceedings may seek specific court orders for a specific stay.	Worldwide automatic stay applies immediately upon filing for Chapter 11. This does not mean that everyone worldwide will comply with the stay.	A stay is not automatically granted simply by initiating the procedure. If the debtor requires protection that goes beyond maintaining the current status, it must apply to the restructuring court for a stabilisation order (*Stabilisierungsanordnung*). The restructuring court may then order a stay of enforcement	No stay is granted by the initiation of an APE. Stay is only granted (i) the debtor seeks court approval; and (ii) once the court orders publication of notices informing that an APE has been filed (which require that the court verifies that the numerosity and 2/3 majorities of unsecured	Protective measures are not automatic, but can be activated only upon a specific debtor's request. Their overall duration cannot be longer than 12 months (including any possible renewals/extensions).	Yes. It is possible for the debtor to obtain a stay of certain enforcements in the context of a restructuring plan process, but the debtor needs to file a pre-insolvency filing (preconcurso) and the stay will, in principle, only affect enforcement over assets which are necessary for the continuation of the activity.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			(*Vollstreckungssperre*) as protection against enforcement measures and/or a stay of realisation (*Verwertungssperre*) of assets relevant to the continuation of operations. The requirements for a stabilisation order are generally met if the debtor's application shows that it is facing imminent illiquidity, restructuring is not hopeless, and the requested order is necessary in order to achieve the restructuring objective.	creditors have been obtained).		
Content of plan						

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Formation of classes: is it mandatory?	Yes.	Yes.	It is mandatory to form groups if the plan affects parties with a different legal status. The plan creator has no discretionary power in the formation of the group. In addition, it is possible to form further groups, provided that the different interests of the parties involved can be properly distinguished from each other.	No	It is mandatory for both the Composition Proceedings aimed at the business' continuity and the RPV.	Yes, it is mandatory to group creditors into classes. In a Homologated restructuring Plan classes will be formed on the basis of "sufficient commonality of interest" i.e. claims that would have the same payment ranking in an insolvency scenario are deemed to have a "commonality of interest";). In the Composition Plan claims are grouped according to the classification of the claims in the insolvency proceedings (i.e. special privileged claims, generally privileged claims, ordinary claims and subordinated claims).

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Cram down of security creditors?	Yes, in a restructuring plan.	Yes, so long as the rules of cramdown are satisfied.	It is generally possible to include secured creditors in a restructuring plan, but they can only be included against their will if the requirements for the cross-class cram-down are met. This requires that (i) they are not left worse off than they would have been without the restructuring plan, (ii) they participate appropriately in the plan value, and (iii) the majority of the groups have voted in favour of the plan.	No	In the validation of both the Composition Proceedings' proposal and the Restructuring Agreement, the Court can cram-down the claims owned by tax and social security Authorities (which are considered "privileged" in comparison with the unsecured creditors), if: (i) their agreement is necessary for the approval threshold to be reached; and (ii) an independent expert has certified that the proposal is more convenient to them compared to the bankruptcy scenario.	Yes, it is possible if the relevant majorities are met.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Cross-class cram down?	Yes.	Yes.	If the plan provides for more than one group and the restructuring plan is confirmed by the court, a cross-class cram-down can take place. This means that the consent of a group that does not reach the required majority (3/4) can be deemed to have been granted. Requirements: group not in favour cannot be in a worse position compared to the scenario without the restructuring plan, group not in favour must share appropriately in the added value of the plan from an economic view	As normally there are no classes (no mandatory), there is no cross-class cram down. Majorities (to bind dissenting creditors) are calculated taking into account all unsecured creditors (2/3 of unsecured creditors and majority in person).	It is allowed in the Composition Proceedings with business' continuity only, if the following conditions are met: - the value of the liquidated assets is distributed according to the Absolute Priority Rule, while the business continuity surplus is distributed according to the Relative Priority Rule; - none of the creditors must receive more than the face value of their claims; - the proposal has been approved by the majority of classes, out of which one	It is possible in the Homologated Restructuring Plans, in one of these scenarios: a) the plan has been supported by a simple majority of the classes, provided at least one of those classes is composed of claims that would benefit from a general or special privilege b) it must be supported by at least one of the classes that is "in the money".

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			majority of the voting groups have approved the plan.		must be made by secured creditors or, alternatively, the proposal has been approved at least by a class whose members would have been at least partially satisfied following the Absolute Priority Rule also in the distribution of the business continuity surplus.	
Are shareholders considered as a "class" and are entitled to vote the plan?	Only if they have a non-zero economic interest.		A separate group shall be formed for holders of share rights and membership rights if their rights are affected or structured by the plan.	No	In the context of a Composition Proceedings or an RPV, the debtor can form one or more shareholders' classes. Said class is mandatory if: (i) the restructuring plan directly affects the shareholders' participation rights;	Yes, in the context of a Homologated restructuring Plan

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
					and/or (ii) the debtor is a listed company.	
Challenges to the restructuring plan						
• "Best interest" of creditors: is it a mandatory requirement?	Not in a scheme: the concept is "overall fairness". In a restructuring plan it is a concept of no worse off than the relevant alternative.	Yes – both best interests of creditors and "feasibility".	The aim of the StaRUG is the sustainable elimination of the threat of insolvency, whereas the aim of insolvency proceedings is the best possible satisfaction of creditors. However, the debtor and its managing director must safeguard the interests of the general body of creditors. This does not mean it has to achieve the best	No	It is a mandatory requirement: (i) to bind non-adhering creditors to the effects of the Restructuring Agreement with Extended Effectiveness; (ii) both in the Composition Proceedings and the RPV.	Yes. In Spain the Best Interest of Creditors is breached when the affected claims receive a lower amount than that which they could be reasonably receive in the context of a fictional liquidation taking place two years of the Plan's approval

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			possible satisfaction of the creditors. The only requirement is that the creditors are not put in a worse position than they would be in an alternative scenario (i.e. continuation of the company without a restructuring plan or insolvency proceedings).			
• Equal treatment within classes (TBC)	Yes.	Yes.	Yes, the parties affected by the plan which are grouped together must be treated equally.	No	No	In the Homologated Restructuring Plan and in the Composition plan claims within the same class should be treated equally. Although, in the Composition Plan if specific claims or groups of claims in accordance to their characteristics are treated

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
						differently, the support of the majority of the claims not affected by such special treatment is also required.
• Absolute priority rule	No – for a restructuring plan the test is a concept of no worse off than the relevant alternative.	Yes.	Yes, the German version of the absolute priority rule (*Vorrangregel*) states that (i) no other creditor affected by the plan may receive more than the full amount of its claim, (ii) the rank under insolvency law has to be maintained and (iii) groups of the same rank must be treated equally. There are limited exceptions under which it is possible to depart from the	No	The Absolute Priority Rule is mandatory in the Composition Proceedings only, but limited to the distribution of the liquidated assets' value. To the distribution of the business continuity surplus the Relative Priority Rule can apply. On the contrary, in the RPV the debtor is free to derogate from both. In both Composition and RPV procedures, the debtor's	As a general rule, a dissenting class subject to a haircut in an Homologated Restructuring Plan will be allowed to challenge the Plan based on a more junior class (or the equity holders) receiving any payment from – or maintaining any interest in – the debtor under the Plan.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			absolute priority rule.		employees must always be paid according to the Absolute Priority Rule.	
DIP financing						
• Priority status (including over secured creditors)	Yes, but rarely used in practice as there is rarely unencumbered collateral.	Yes – so long as there is available unencumbered collateral.	The restructuring plan can include provisions for the commitment of loans or other lines of credit necessary to finance the restructuring based on the plan (*new financing*). The StaRUG provides extensive protection against avoidance for new financing (DIP financing). However, the StaRUG does not provide for priority of the DIP	No	Yes. In particular, DIP financing is typical of Restructuring Agreements and Composition Proceedings.	The Insolvency Law specifically protects interim financing and new money granted in the context of an Homologated Restructuring Plan. Both types of financing may benefit from: (a) protection against claw-back, and (b) a preferential repayment treatment in bankruptcy proceedings.

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			financing over other creditors. Such priority is only possible within the framework of an insolvency plan. In addition, the restructuring plan can include incentives for a financier, such as - in agreement with the other creditors - a contractual priority of repayment or attractive securities.			
• Is there a market for DIP financing?	No.	Yes – an active market.	Yes, but it is quite limited.	No	Yes, but it is quite limited.	No. The incentives for providing this type of financing are still poor
Sales of going concerns						

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
• Is it possible as part of a plan, or even before the approval of the plan?	Yes, but little experience in practice because boards have control.	Yes, but difficult to achieve without company direction.	Sales of going concerns are theoretically possible both as part of the plan or before the approval of the plan.	In theory, yes. Very rare in practice.	Yes, even before the validation of the plan, but, in this case, always under the control of the Court.	Yes, it is possible sell assets or businesses as part of a Homologated Restructuring Plan
Forum shopping						
• Legitimate vs. abusive. Safeguards	English-law governed documents are the principal way to forum shop into the UK.	Only modest jurisdictional connection is required.	The relevant factor is the COMI of the debtor, i.e. where it has the centre of its economic activity. A COMI shift would therefore be necessary to establish the jurisdiction of a German restructuring court. There is no specific time period during which forum	Not regarding Argentine companies, but some Latin American companies (Chile, Colombia, Mexico) has started to use Chapter 11 as its preferred forum to restructure their obligations. Uncertainties as the recognition of	Forum shopping is considered abusive if performed (through the transfer of the COMI) in the one year period before the filing of a restructuring or liquidation proceeding.	Forum shopping is not allowed. The COMI is the key criteria to determine jurisdiction of Spanish Courts. However, the Insolvency Law also confers Spanish courts with jurisdiction over companies with their COMI located outside of Spain, exclusively in the context of group restructurings,

	England	United States	Germany	Argentina	Italy	Spain
Restructurings						
			shopping is considered to be abusive. However, it is assumed that there is an abuse of rights if only a short period of time has passed between the notification of the restructuring procedure and moving the COMI.	those procedures in other countries.		but only in certain conditions are met
Open question: what does the choice depend on: duration of proceeding, costs, predictability, secured creditors' rights, shareholders' rights, court expertise, substantial rules (cram-down rules, avoidance actions), others?	Cost, time, predictability, availability of alternatives.	Cost, time, predictability, availability of alternatives.	Cost and time. It also depends on the debtor's decision on whether it also wishes to carry out operational restructuring in addition to financial restructuring. The StaRUG is not suitable for this.	Predictability Court´s expertise Forum that incentive negotiation Costs	It mainly depends on the ratio between assets and liabilities, amount of secured or privileged debts, capacity of the company to generate cash flow during the restructuring process, etc.	