

Handbook for MSME NPL Management and Workout

Appendix 3

Sample forms and templates

Preparing For the Workout - Checklist for MSME Borrowers

Standstill Agreement template

Restructuring Process Timetable

TEMPLATE 1: PREPARING FOR THE WORKOUT - CHECKLIST FOR SME BORROWERS

NOTE: This Checklist is intended to assist a MSME borrower in financial difficulties to prepare for restructuring discussions with creditors, with a view to achieving a restructuring of its business and finances so that its business can continue.

Although not all of the questions raised will be relevant in all circumstances, it is hoped that financially troubled borrowers of all types, including single corporates and merchants, will benefit from using it on a selective basis.

The aim is to help debtors of all types to be well-prepared for discussions, and to assist them in developing a credible plan which will win the support of creditors and, if need be, the court.

1. The Debtor

1.1 Place of incorporation.

1.2 Verify all shareholdings.

1.3 Establish identity of any controlling shareholders, or of identifiable groups of shareholders (e.g. family members)

1.6 Establish if there are any associated or related companies or individuals under local law and consider the consequences of this for any future restructuring process.

1.7 Obtain up to date search information from all public registers.

1.8 Obtain copy of constitution of debtor (if a company).

2. Business and Assets

2.1 Identify business activities of the debtor and draft a description of these.

2.2 Establish the recent trading history of the debtor, including major changes in the business, acquisitions or disposals.

2.3 List assets which are owned outright, and list separately all assets which are charged, leased, hired, licensed, held on trust or subject to retention of title or otherwise not subject to the claims of creditors.

2.4 Obtain copies of any property, plant or other asset registers of title.

2.5 Consider obtaining independent valuations of key assets likely to be essential to enable the business to continue or likely to need to be sold to raise finance.

3. Management

3.1 Identify current directors.

3.2 Identify key managers and employees who are not directors.

3.3 Identify connections, if any, between management and shareholders, including family connections.

3.4 If remuneration of management is linked to performance, set out the details of the arrangement.

4. Financial Information and Confidentiality

4.1 Obtain copies of latest management accounts.

4.2 Obtain copies of recent audited accounts.

4.3 Obtain/produce up to date cash-flow statements and forecasts.

4.4 Obtain/produce budgets, forecasts and other future financial planning information.

4.6 Consider need for confidentiality agreement for recipients of commercially sensitive information and form of any such agreement.

5. Cash flows

5.1 Identify all bank accounts including bank, location, currency, purpose and current balances.

5.2 Describe cash-flow patterns.

5.3 Identify key cash-flow dates, such as: paying wages, rent and other periodic mandatory payments.

6. Key Contracts Review

6.1 Locate all key contracts. If they are not in writing then draft a description of their terms.

6.2 Establish whether valuable contracts may be terminated by counterparty or might automatically be terminated on an “insolvency.” Determine whether “insolvency” includes “restructuring” and if so whether it might make a difference if the “restructuring” is completely informal or involves the court.

6.3 Establish the consequences of termination by the debtor of key contracts. Damages or contingent liabilities.

6.4 Examine contracts with customers and suppliers, service providers, IT and IP licences, property and other operating leases, and assess the consequences of a restructuring on these.

7. Financing

7.1 Identify all sources of financing.

7.2 Obtain copies of all bank loan documentation and identify, where applicable:

- The amount and type of facility;
- Current level of drawdown;
- Repayment profile;
- Interest rates and margins, both normal and default;
- Fees and expenses;
- Events of default and potential events of default;
- Termination rights, including acceleration;
- Financial and other covenants;
- Negative pledges;
- Governing law.

7.3 Establish if there are any existing defaults. Have any default notices been served or rights reserved? Are there any letters extending or varying facilities?

7.4 Obtain copies of documents relating to all other bank facilities, such as:

- Overdrafts;
- Letters of credit;
- Bonding;
- Acceptance credits;
- Bills of Exchange;
- Currency facilities;

7.5 Identify any foreign exchange contracts, swaps, options or other derivative contracts, and obtain copies of relevant ISDA Master Agreements and Schedules. Establish termination provisions, close-out exposures and current mark-to-market values.

7.6 Identify all bonds, notes and other debt instruments issues by the company, and obtain copies. Review these documents as loans.

7.7 Identify all finance leases and obtain copies. Review as loans.

8. Security and Guarantees

8.1 Identify all guarantees given by or to the debtor and note the following in each case:

- Identity of guarantor;
- Beneficiary of guarantee;
- Persons/entities guaranteed;
- Liabilities guaranteed;
- Date of guarantee;
- Purpose/benefit to guarantor in providing the guarantee;
- Consider the enforceability of the guarantee under its governing law;

- Potential effects of the restructuring on the guarantee;
- Assess the risk that payment under the guarantee will be required.

8.2 Identify all security given, including the following:

- Mortgages on land;
- Debentures;
- Charges or Pledges over shares;
- Charges by deposit of title deeds;
- Charges on bank accounts;
- Charges over movable/personal property e.g. ships, aircraft;
- Cash held as collateral, and where;
- Other collateral, type and location.

8.3 Identify all creditors who may be able to assert liens, retention of title claims, trusts or other proprietary (*in rem*) or security rights.

8.4 Check that all security requiring to be registered has been registered and assess the consequences of failing to do so.

9. Litigation and Litigation Risk

9.1 Obtain details of all material litigation against the company, including:

- Parties;
- Nature and amount of claim;
- Lawyers acting;
- Stage reached in the proceedings;
- Advice received on likely outcome;
- Insurance cover;
- Settlement prospects.

9.2 Obtain details of any claims or threats of litigation.

9.3 Establish if any significant arrears owed to suppliers, tax or government creditors. Has any enforcement action been threatened or commenced?

10. Regulation

10.1 Are the activities of the debtor subject to regulation in any way? If so, by whom?

10.2 Does the debtor hold licences which permit its activities? Could these licences be affected by a restructuring or insolvency?

10.3 Are there obligations to disclose restructuring or insolvency events to regulators? Consider how this obligation is to be discharged, and when this must/should be done;

10.4 Are any public announcements required, e.g. through a stock exchange?

11. Advisers

11.1 Identify and list contact details for:

- Legal advisers;
- Auditors;
- Financial advisers;
- Valuations experts;
- Any relevant technical advisers.

11.2 Identify and list contact details for the legal, financial and other advisers to the financial creditors.

TEMPLATE 2. STANDSTILL AGREEMENT FOR MSME BORROWER

This Agreement is made between:

[●], as Debtor
("Debtor");

and

, [●],
("Creditor" or "Creditors")

Whereas:

- (1) the Contracting Parties wish to agree on a Moratorium on the repayment of Receivables as specified in the continuation;

The **Contracting Parties** have agreed to the following:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

"**Moratorium**" shall have the meaning as defined in Article 3.1 hereof.

"**Moratorium Period**" shall be the period from [●]to [●], INCLUSIVE.

"**Receivables**" are all receivables (due and outstanding) of a Creditor under the Contractual Documents.

"**Contractual Documents**" shall mean the list of documents in Attachment 1 hereto...

"**Collaterals**" are all collaterals in any form whatsoever (including, but not limited to liens, encumbrances, reservations, mortgages, bills of exchange, warranties, guarantees and similar) established by the Debtor for the benefit of any Creditor as collateral for Receivables.

"**Related person**" shall mean, in respect of any person, a person who directly or indirectly controls or is controlled or jointly controlled with such person on the day or at any time during the period for which a relationship is established; for the purpose of this definition, the term "control" relating to any person shall mean direct or indirect power to manage or direct the management and policies of such person, which originates from the ownership of shares or stakes with voting rights or agreed contractually or in any other way, or actually exercised. In avoidance of doubt and for the purpose of this paragraph, a related person also includes all associated companies of the Debtor.

"The Majority of Creditors" shall mean Creditors who hold.... of all monetary Receivables at the moment of adopting decisions at a time.

1.2 Amendments and supplements

Any reference in this Agreement to any other document or regulation shall be deemed as reference to this Agreement or any other document or regulation as supplemented, modified, replaced, renewed, amended or similar.

1.3 Interpretation

- (a) Any reference to the Debtor or Creditors shall be interpreted so as to comprise their legal successors, permitted assigns and permitted acquirers.
- (b) The titles of sections and provisions are included for reference only and shall not be considered in the interpretation of this Agreement.
- (c) Unless unreasonable, the following shall apply:
 - references made to articles shall be construed as being made to the articles of this Agreement;
 - the use of singular includes the plural and vice versa;
 - the terms "**inclusive**" and similar shall not be interpreted as meaning exclusive or limiting;
 - reference to "**Annex**" shall mean Annexes hereto, which are a constituent part hereof.

2. SUBJECT MATTER OF THE AGREEMENT

The Subject Matter of this Agreement is the regulation of mutual rights and obligations of the Creditors in relation to Receivables and the agreement between the Creditors and the Debtor on the Moratorium and the Moratorium Period.

3. MORATORIUM

3.1 Agreement between the Creditors and the Debtor

The Creditors and the debtor agree that, from the date of this Agreement, the repayment of all Debtor's obligations arising from the Receivables shall be postponed until the end of the Moratorium Period ("**Moratorium**"). The Debtor undertakes to pay contractual interest under the Receivables during the Moratorium Period in the amount and within the deadlines specified in the Contractual Documents. No default interest shall be charged on the Receivables during the Moratorium Period, or any other costs, fees or contractual penalties, [with the exception of the approval fee for granting this Agreement which accounts for [●] % of Receivables under the principals of individual Creditors]. The Creditors and the Debtor shall not enter into any Annexes to Contractual Documents. It shall be deemed that the provisions hereof replace the content as if it were otherwise stipulated in the annexes and Contractual Documents from the previous paragraph.

3.2 Deferred enforcement

Creditors agree that, unless specified otherwise herein, they shall not do any of the following from the date hereof until the end date of the Moratorium Period:

- a. collect Receivables through court, out-of-court, by offset, netting or in any other way, or accept any recovery of Receivables from any person;
- b. liquidate or enforce Collaterals or accept the subjects of such Collaterals or demand the establishment of new collateral for Receivables;
- c. initiate the bankruptcy proceedings or compulsory settlement proceedings, liquidation, deletion or any other form of winding up against the Debtor;
- d. perform any acts that would affect the mutual position of Creditors in relation to the Debtor;
- e. in any other way try to collect the Receivables or exercise their rights under the Contractual Documents or any other documents related with them or with the Collaterals, including but not limited to accelerated maturity of Receivables, assignment or cancellation of Contractual Documents or other documents related with them or with the Collaterals.

3.3 Ongoing procedures

Creditors who have initiated but not fully completed the procedure of forced execution of the claim either out-of-court or through court prior to the introduction of the Moratorium Period undertake to carry out all the necessary activities in such procedure, needed to achieve a standstill of such procedure until the expiry of the Moratorium.

If any right arising from Receivable is at risk of time-barring or foreclosure and an activity needs to be carried out which is contrary to the conditions of deferred implementation, as stipulated in Item 3.2. above, the Creditor shall be entitled to carry out such activity in the scope required for the preservation of the right, and after that take all the necessary steps in accordance with the previous paragraph hereunder.

4. REPRESENTATIONS AND WARRANTIES OF THE DEBTOR

4.1 Representations and warranties of the Debtor.

The Debtor undertakes and warrants to each Creditor on the date this Agreement is signed by the Debtor:

- a. that it is authorised to enter into this Agreement and that it has obtained all the authorisations and approvals which are, subject to the regulations of the Republic of Slovenia, subject to its constituent acts and/or subject to the obliging agreements, required for effective execution and performance of this Agreement,
- b. that this Agreement constitutes its legally valid and enforceable obligation,
- c. that it has informed the Creditors about all relevant circumstances, facts and data known to the Debtor, including those which were requested by the Creditors, and that

all the data relating to this Agreement transmitted by the Debtor to the Creditor is true, complete and unchanged even at the time of signing the Agreement,

- d. that this Agreement and other documents relating to this Agreement were signed either by persons who are the legal representatives of the Debtor and/or by persons who were authorised by its representatives especially for this purpose,
- e. that it is not subject to compulsory settlement, bankruptcy, liquidation or similar proceedings, and that no acts have been, as far as it is aware, performed to initiate the said proceedings,
- f. that it has obtained all authorisations, approvals, licences, concessions etc. which are required for performing its registered business activity,

4.2 Representations and warranties of the Debtor

The representations, warranties and obligations under this Agreement shall be deemed as repeated upon each maturity of Receivables from the day of signature hereof until the end of the Moratorium Period.

5. DEBTORS' OBLIGATIONS

5.1 Debtor

From the date of validity hereof until the expiry of the Moratorium Period, the Debtor undertakes to:

- a. obtain and maintain in full validity and with full effect all the authorisations and approvals which are, subject to the laws of the Republic of Slovenia, subject to its constituent acts and subject to the agreements obliging it, required for effective conclusion and implementation of this Agreement,
- b. obtain or maintain in effect all the authorisations and approvals which are, subject to the laws of the Republic of Slovenia, required for performing its business activity,
- c. when implementing its obligations under this Agreement and the Contractual Documents, ensure each Creditor equal position and omit acts that would result in an uneven repayment of the Receivables or a more favourable position of individual Creditors, considering the Creditors' mutual positions,
- d. immediately notify all Creditors in case any Creditor or any other creditor started liquidating collaterals;
- e. regularly inform the Creditors of any change of registered office and authorised representatives and any change that has to be entered in the Court Register under the applicable provisions, of which evidence has to be submitted,
- f. regularly submit to the Creditors the data on related persons obtained on the basis of the Companies Act and the Takeover Act and other similar regulations,

- g. inform the Creditors about any events and circumstances which might affect the meeting of obligations and/or exercising of the rights by the Creditors under this Agreement, as well as about any events and circumstances which affect or might affect the meeting of its obligations under this Agreement or Contractual Documents,
- h. do everything necessary to maintain and to extend the collateral of creditors, whose collateral under the Contractual acts expire during the term of this contract,
- i. do everything necessary to compensate for collateral to Creditors, if that is required by the Contract acts, up to the value of collateral as agreed in Contractual acts

5.2 Approval by Creditors

Of the date of validity hereof until the expiry of the Moratorium Period, the Debtor undertakes not to do any of the following:

- a) open new accounts at home or abroad,
- b) grant loans to Related Persons or third persons,
- c) incur new debt outside the scope of their regular operations;
- d) assume any guarantees/warranties for third party liabilities,
- e) pay out dividends and other profit shares,
- f) cancel any agreement made with third persons, if that would have a negative impact on the Debtor's ability to meet its obligations under the Receivables or Contractual Documents,
- g) introduce any status changes or make any equity investments in other entities,
- h) purchase shares, bonds and other securities,
- i) undertake any significant changes in the type and area of business,
- j) sell or in any other way transfer ownership of the Related Persons,
- k) amend accounting or other policies affecting presentation of the company's financial statements unless prescribed by law or secondary legislation,
- l) make any payments to its Related Persons,
- m) sell their property outside the scope of their regular operations, or dispose of it otherwise than for a full counter-value,

6. INFORMATION

6.1 Amount of Receivables

Each Creditor shall, on request of a Creditor, provide to other Creditors data on the amount and terms and conditions of the Receivables, to which the Debtor explicitly agrees.

6.2 Other Information

The Debtor authorises each Creditor, and the Debtor authorises each bank, to provide the Creditors information on the Debtor and other information in relation to this Agreement, the Contractual Documents and the Receivables.

7. CONFIDENTIALITY OF THE CONTRACT

- a) The parties agree not to inform third parties (persons from the Creditor's banking group are not considered third persons) about the contents of this Agreement or the data obtained by virtue of this Agreement, and shall not permit third parties to access this Agreement and such data or their publication, unless this is stipulated by applicable rules and regulations or otherwise expressly agreed by way of this Agreement.
- b) The Debtor agrees that the Creditors may store, process and forward (provided that the persons who obtain such data have previously signed the appropriate statement on information protection) to persons that must be informed of the content of this Agreement due to the nature of services they provide to them, any data and information about this Agreement, related to this Agreement and about the Debtor, which the Creditor obtains through the implementation of this Agreement or in the framework of the business relationship with the Debtor, as well as that which the Creditors may request and obtain from their associated companies which had acquired such data. The Creditors shall be obliged to forward the data specified hereunder to potential buyers of receivables under Contractual Documents.

8. NOTIFICATIONS

8.1 Notices

Any notices and other messages foreseen hereunder shall be made in writing and as a rule sent by using the electronic means of communication to the agreed e-mail addresses or by fax or mail or transferred or delivered to the addresses of individual parties hereto as specified in the case of Debtor or Creditors next to their signatures, or to each contracting party's address as defined by such contracting party in a written notice sent to other contracting parties pursuant to the provisions of this Article concerning the sending of notices.

The Debtor and the Creditors shall send all notices and other messages hereunder to all Creditors.

8.2 Sending notifications

It shall be deemed that any reminders, accounts and other correspondence related hereto are received on the date of sending of fax or, in case of registered mail sent to the addresses specified in Article 9.1, after the third day following the sending date has passed.

9. CHANGES OF PARTIES

9.1 Legal successors

This Agreement shall be binding on the contracting parties and their respective legal successors.

9.2 Assignment of rights

The Debtor shall not be allowed to transfer or assign any of its rights hereunder without the approval of all Creditors. Any Creditor may transfer or assign its rights hereunder, but only together with the rights and receivables under the Contractual Documents and other documents related with them or with the Collaterals. Each Creditor can transfer or assign its rights and receivables under the Contractual Documents and other documents related with them or with the Collaterals, provided that the assignee of such rights also assumes the rights and obligations of such Creditor hereunder.

10. LAW AND JURISDICTION OF COURTS

10.1 Law

Anything not stipulated herein or by interpretation hereof and all questions and issues related hereto, including non-contractual relationships shall be subject to the laws of the Republic of Slovenia, to the exclusion of any conflict of laws rules.

10.2 Competent courts

Any disputes or procedures arising from or in relation to this Agreement shall be resolved by the competent court of jurisdiction in Ljubljana.

11. FINAL PROVISIONS

11.1 Invalidity of individual provisions

Should one or several provisions hereof at any time be deemed or become invalid, illegal or unenforceable under any laws of any jurisdiction, such provisions shall be considered as ineffective in relation to such jurisdiction to the extent necessary; their invalidity, however, shall not affect or jeopardise the validity, legality or enforceability of the remaining provisions hereunder or such provisions under any other jurisdiction. Any invalid or unenforceable provision shall be deemed to have been replaced with a valid, legal and enforceable provision that best meets the purpose that the contracting parties wanted to achieve with the original provision and the invalid, illegal or unenforceable provision.

11.2 Validity

This Contract shall enter into force on the day it is signed by all contracting parties. The Debtor and each Creditor shall not be entitled to terminate this Agreement prior to its expiry, unless stipulated otherwise herein.

The Majority of Creditors may terminate this Agreement in the following cases:

- any Creditor has acted contrary to Article 3.2 of this Agreement, in which case the Receivables of such Creditor shall not be taken into account in the calculation of the required majority for the termination of the Agreement by the Majority of Creditors;
- any certificate or assurance of the Debtor from Article 4 hereof turns out to be untrue or incomplete, or is misleading;
- The debtor fails to meet or timely meet any of their obligations hereunder.

This Agreement shall be deemed cancelled if so decided by the Majority of Creditors under the previous paragraph. The Moratorium and the Moratorium Period shall be terminated on the day of early termination of the Agreement.

11.3 Inconsistency

In the event of any inconsistency between the Contractual Documents or any documents related to them or to the Collaterals and this Agreement, the provisions of this Agreement shall prevail.

11.4 Exclusions

For the avoidance of doubt, the purpose of the contracting parties is not novation and the contracting parties do not aim to achieve or cause novation of any relationship of any contracting party. The contracting parties explicitly reject novation. No provision hereof or action, transaction or consequence anticipated hereby may be deemed or interpreted as intent to novate (*animus novandi*).

Nor is the intent of the contracting parties to establish any joint and several creditor liability, a community of Creditors, assignment, indemnity, assumption of debt, accession to debt, shareholder agreement, agreement on behalf of a third party, change parties to Contractual Documents or any other documents, identity of Receivables or in any way intervene in the existence of Collaterals or other collaterals of the Creditors.

11.5 Change of Agreement

TEMPLATE: RESTRUCTURING PROCESS TIMETABLE

NOTE: The table below is indicative only. One of the advantages of out-of-court workouts is that no statutory timetable needs to be adhered to. There are no procedural formalities to follow. The key is for the borrower to identify the most important interested parties (“Key Stakeholders”). Key Stakeholders will almost always include bank lenders, the largest non-financial creditors, and essential suppliers.

The borrower should approach the negotiation of a restructuring agreement with the same flexibility and commitment that is needed in contractual negotiations between parties who are participating voluntarily in negotiations. The objective is to agree a contract with Key Stakeholders which will permit the Debtor’s business to continue on a viable basis.

#	Phase	Deadline
0.	<p>The Debtor recognises that there are financial and/or operational problems which are serious, and which will, if not resolved, result in the failure of the Debtor’s business.</p> <p>The Debtor concludes that the business of the Debtor does have a future, if restructured, and that there is no present need for an insolvency procedure to be commenced.</p> <p>It may be that the Debtor should obtain legal or other advice at this stage. If so, the letters of engagement should be signed and monies earmarked to pay for these services.</p> <p>The Debtor prepares for the negotiations to follow (see attached “Preparing for a Restructuring Checklist for SME Debtor” for useful guidance on how to prepare for the negotiations).</p> <p>It is essential that reliable information for those who are to be asked to agree to the restructuring be available at the outset of negotiations in sufficient detail to enable those parties to make informed decisions. This information needs to be available at the very first meeting with any of the Key Stakeholders.</p> <p>The Debtor should contact Key Stakeholders and arrange to meet. It is for decision in each case whether these meetings should be with groups of creditors or individual creditors.</p> <p>The Debtor must at all times commit the necessary human</p>	

	resources to the process.	
1.	<p>The Debtor has one or more initial meetings with Key Stakeholders. It is good practice for a note to be prepared of each meeting, so that the focus can remain of achieving a set of restructuring proposals which will be acceptable to all Key Stakeholders.</p> <p>The Creditors may decide to form a Creditors' Committee to represent their interests collectively, and to minimise the time which each individual creditor needs to spend in taking the restructuring discussions forward. If a financial creditor is a Key Stakeholder then their continuing participation in the negotiations will be important. However, in the SME context the formation of a Creditor' Committee will usually not be necessary.</p>	At the appropriate moment (to be convened by the debtor or a creditor) (T)
2.	The Debtor's representative authorised to adopt decisions, must participate in all meetings and answer all questions.	Continuously
3.	If a Standstill Agreement is needed by the Debtor, a draft of the Standstill Agreement should be prepared and put to the Key Stakeholders for discussion and agreement. This should be done as a matter of urgency, in order to minimise the risk that any Key Stakeholder might take independent actions to collect what it is owed rather than to participate in the restructuring process.	T + 10
4.	The Debtor should agree with Key Stakeholders the liabilities which are owed to them. The Debtor must be ready to share with Key Stakeholders all relevant information concerning: a) assets, sources of assets and liabilities owed by the Debtor to third parties; b) the property pledged by the Debtor to its Creditors as collateral and the date of collateral; c) the property of other persons in the Debtor's possession; d) shares held by the Debtor in the capital of other companies or legal entities; e) names, registered offices and addresses of all Creditors; f) names, registered offices and addresses of the Debtor's Debtors; g) property; h) all written approvals of the Creditors, issued to other Creditors, to disclose all information on the Debtor's assets and liabilities; i) audited financial statement and up to date financial information including management accounts and other companies which have performed in the last five years any	T + 15

	regular or special audit or consulting ("requested information").	
5.	Reports of selected nominated consultants and drafting of a restructuring agreement starts. The drafting can be done by the Debtor or leading creditor (and its advisers, if any) with input from Key Stakeholders.	T + 45
6.	The meeting of Key Stakeholders and the Debtor is held to consider the restructuring agreement. It can be agreed at that stage or agreed following amendments on the same occasion or at a later date (flexibility is important).	T + 55
7.	<p>If a decision is taken to undergo financial restructuring, the draft master restructuring agreement ("MRA") will be signed.</p> <p>If a restructuring agreement is not agreed, then in most cases it may be appropriate to propose procedures under the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP). See discussion in the Handbook for guidance on which legal solution might be most appropriate in each particular case, and also Appendix 2 for a detailed breakdown of the costs associated with the most common solutions.</p>	T + 90