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Date: 20 September 2023

Re: CERIL Report 2023-1

Reporters: Prof. em. Bob Wessels  
and Prof. Ignacio Tirado<sup>1</sup>

**CERIL Statement 2023-1 on**

**Confidentiality, Secrecy and  
Privilege – The Position of  
the Insolvency Practitioner**

*Information plays a key role in the corporate insolvency process and preventive restructurings. With the EU Restructuring Directive (2019/1023) being silent on confidentiality, secrecy and privilege of information, the Conference on European Restructuring and Insolvency Law (CERIL) has studied the preferred position of insolvent debtors, insolvency practitioners and courts and other insolvency authorities. Taking the IP's*

<sup>1</sup> This Report is prepared by CERIL Working Party (WP) 13 on Confidentiality, Secrecy and Privilege. The WP that discussed and contributed to this Report consisted, in addition to Reporters, of the conferees participating in this [WP](#).

The reporters would like to express their gratitude for their extensive contributions to Prof. Oleksandr Biryukov (Ukraine), Pavel Boulatov (Kazakhstan), Bartosz Groele (Poland), Frank Heemann (Lithuania), Prof. Stephan Madaus (Germany), Grégory Minne (Luxembourg), Prof. Elina Moustaira (Greece), Lord Justice David Richards (United Kingdom), Siv Sandvik (Norway), the Hon Lady Wolffe (Scotland), as well as two observers, American College of Bankruptcy Fellows from the USA, Victor Vilaplana (Practus LLP) and Prof. Jack Williams (Georgia State University).

We would also like to express our sincere gratitude to Research Associate Dr. Shuai Guo, China University of Political Science and Law, for the preparation of a preliminary study and the assistance with drafting the text of this report, and Ms Defne Tasman, University of Antwerp.

*viewpoint, CERIL recognises the significance for an IP and the interests it has to take into account to have access to and availability of relevant information as a vital requirement for an efficient corporate restructuring process.*

In this report on ‘Confidentiality, Secrecy and Privilege – The position of the insolvency practitioner’, CERIL continues its research on this topic. In its first report on ‘Confidentiality, Secrecy and Privilege – The position of the debtor’ of 2022, CERIL has provided seven recommendations regarding disclosure of information of the insolvent debtor and its business, while also enabling the debtor to keep certain information confidential. In the report at hand CERIL firmly recognises the necessity to have the IP involved provided with all relevant business related information. This should allow those who are involved in a restructuring process (especially creditors and shareholders) to act or decide on the basis of adequate information having been made available to them as freely and rapidly as is reasonably practicable.

Based on this central premise, in this report CERIL has adopted seven recommendations that EU Member States may want to take into consideration when formulating or amending their preventive restructuring laws. In its core, the insolvent debtor or its directors and shareholders and supervisory directors (and those employed by the debtor) have the obligation of full and frank disclosure. An IP should be provided with all information required by it, however the IP will not share the information obtained with third parties (recommendations 1 and 2).

Under certain circumstances in confidential or private restructurings an IP will bear a duty to provide information to unaffected parties (recommendation 3). An IP may share information in the context of the application of the provisions of the national insolvency or restructuring proceeding in which it is appointed. A duty of confidentiality of the IP will be laid down in primary legislation or primary legislation will empower other bodies to further regulate matters which can be included in a Code of Conduct (recommendation 4).

In matters regarding attorney-client privilege, courts may be guided by the rules that conflicting values should be balanced between the need of an IP to exercise its functions, i.e. the general principle of law of maintaining professional privilege versus the necessity to obtain information with the goal of efficient administration of the estate. Restructuring experts (accountants/financial advisors) acting under national laws should also enjoy privileges similar to those of attorneys appointed by debtors (recommendation 5).

Rome I may apply in preventive restructuring proceedings, provided restructuring plans are considered as contracts. It is recommended

that legislators formulate more explicit rules on this matter. Confidentiality arrangements should be in place to protect sensitive and non-public information when cooperation and coordination happen in cross-border preventive restructuring proceedings (recommendations 6 and 7).

### **Concluding Note**

This full Report is available as Report 2023-1 on CERIL's website [www.ceril.eu](http://www.ceril.eu). This site also informs about the organisation of CERIL and its activities.

In the meantime, co-reporter Prof. Ignacio Tirado ([ignacio.tirado@uam.es](mailto:ignacio.tirado@uam.es)) welcomes the opportunity to further inform about this Statement and Report.

For further information regarding CERIL, please contact Prof. Reinout Vriesendorp (Secretary; [info@ceril.eu](mailto:info@ceril.eu)).

On behalf of the CERIL Executive,

Bob Wessels  
*Chair*