GETTING THE DEAL THROUGH

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CONTENTS

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1 Legislation

What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

The Bankruptcy Code (in its current state, Law No. 3588/2007 as amended by Law No. 3858/2010, Law No. 4013/2011, Law No. 4055/12 and Law No. 4072/12) is applicable to bankruptcies and reorganisations in Greece. The newly introduced Greek Bankruptcy Code provides for reorganisation as an alternative to liquidation. Moreover, Greece, by virtue of Law No. 3858/2010, adopted the UNCITRAL Model Law on Cross-border Insolvency. Finally, because Greece is an EU member state, Regulation 1346/2000 also applies. A debtor is declared bankrupt in case of present or foreseeable general and permanent inability to meet its financial obligations as they fall due (cessation of payments). Inability is 'general' where it covers all or substantially all of the debtor's financial obligations and 'permanent' where it is not circumstantial and there are no substantial recovery expectations or any financial assistance available either in the form of debt or equity.

2 Courts

What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

The multi-member first instance court of the district in which the debtor has the centre of its main interests (COMI) has exclusive jurisdiction. The court follows the ex parte procedure (*ekousia dikaiodosia*, a non-adversarial proceeding), hence the court has the authority to review issues beyond what is formally submitted. The court that issues a decision by virtue of which a debtor is declared bankrupt exercises an ongoing surveillance over the bankruptcy proceedings and is authorised to resolve any disputes that arise during the bankruptcy proceedings. However, that court has no authority for any debtor claim against third parties.

3 Excluded entities and excluded assets

What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?

Bankruptcy proceedings by virtue of the Greek Bankruptcy Code may be initiated by or against any merchant (individual or legal entity) or any for-profit legal entity.

Public entities and local authorities are excluded from bankruptcy. Regulated entities are governed as follows:

- insurance companies can be declared bankrupt but not prior to the conclusion of a special winding-up process introduced by Legislative Decree 400/1970 as amended by Presidential Decree 332/2003;
- credit institutions can be declared bankrupt although, pursuant to article 62 et seq of Law No. 3601/2007 as amended by Law No. 4021/11 and Law No. 3458/2006, any pending bankruptcy proceeding may be suspended if the Bank of Greece orders the winding up of the credit institution; and
- investment services companies can be declared bankrupt, although any bankruptcy proceedings may be suspended by virtue of article 22 et seq of Law No. 3606/2007, as amended by Law No. 3756/2009, if the Hellenic Capital Markets Committee revokes such a company's licence, thus leading to its statutory winding up.

Non-merchant individuals are excluded from general bankruptcy proceedings, but the newly adopted Law No. 3869/2010, which came into force on 1 September 2010, has introduced certain protective measures for individuals facing financial distress; such measures are of a temporary nature and subject to various conditions that severely limit their application. While the new law may develop into a fully fledged insolvency regime for non-merchants, in its current form it seems focused on softening the impact on individuals of the current economic crisis.

All assets are included in bankruptcy proceedings and for all debts. Exceptions are provided for individuals such as certain household goods (clothing, food for up to three months, essential furniture, books, musical instruments, etc) and work tools.

Secured creditors can elect to exercise their security thus seeking satisfaction from the proceeds of the secured asset's sale irrespective of the bankruptcy proceedings, unless the assets are closely connected to the debtor's business or production unit or enterprise, in which case such option is suspended until a reorganisation plan is approved or until the creditors' meeting decides on the bankruptcy proceedings to be followed. In any case the aforementioned suspension cannot last more than 10 months commencing from the date the debtor was declared bankrupt. Secured creditors cannot exercise their security if liquidation has been initiated.

4 Secured lending and credit (immoveables)

What principal types of security are taken on immoveable (real) property?

The following types of security are available for immoveable property.

Mortgage

This is the basic form of security in relation to immoveable property. In order to write a mortgage, a creditor must hold a title provided by law, final court decision or a notarial deed. A mortgage is perfected by its registration in the Land Registry.

Prenotation of mortgage

This is the most common form of security on real property and is created by a court order in the nature of an injunction. It can be viewed as a conditional mortgage that can be converted to a full mortgage upon the debtor's default with effect retroactively as of the issuance

of the prenotation order. Prenotations are far more common than mortgages because court fees are significantly lower than the notarial fees that would be payable for the mortgage deed.

5 Secured lending and credit (moveables)

What principal types of security are taken on moveable (personal) property?

The following types of security are available for moveable assets:

- Pledge: this is the most common form of security. A pledge on a moveable asset ensures the preferential satisfaction of the creditor through a forced sale of that moveable asset in execution proceedings. A pledge requires physical delivery of the moveable asset to the pledgee.
- A chattel mortgage (articles 1 and 3, Law No. 2844/00) (also non-possessory pledge): a chattel mortgage allows the debtor to retain possession and use of the moveable asset, and to freely dispose of it, but it attaches to the asset and ensures the creditor is preferentially satisfied through the asset's forced sale, following the commencement of execution proceedings.
- Floating charge (article 16, Law No. 2844/00): a floating charge enables the debtor to deal with (and dispose of) the charged assets (as specified in the agreement) in the ordinary course of business until the occurrence of either a default or an agreed event that causes the floating charge to crystallise. Following crystallisation, a floating charge becomes a fixed charge (similar to a pledge) attaching to whatever moveable assets are available at that time.
- Retention or fiduciary transfer of ownership: this allows the creditor, until fully paid, to retain ownership of property or have ownership of property transferred to him, but not to dispose of that property. This occurs in two situations:
  - it is common in sales on credit for the seller to retain ownership until full payment of the agreed upon consideration; and
  - a debtor can conditionally transfer, to the creditor, the ownership of the moveable assets to secure performance of its obligations. Once the obligations are fulfilled, ownership reverts automatically to the debtor. However, if the debtor defaults the creditor must auction the moveable asset and satisfy his claim through the proceeds of the auction.
- Third-party structure: this can include the delivery of a moveable asset to a custodian. However, because Greek law does not recognise the trust concept, the third party that will take delivery of the asset may not also acquire title in trust for the debtor and creditor. Realisation of the asset must be done under the rules for realising a pledged asset, namely, through a public auction.

6 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Unsecured creditors can individually attempt to recover their debt through ordinary legal proceedings. The creditor can enforce its rights after obtaining an executory title against the debtor (article 904, Code of Civil Procedure). A creditor with an executory title can seize any of the debtor's assets, proceed to their forced sale (through an auction) and claim satisfaction from the sale proceeds. Assets sold through a forced sale are relieved from all encumbrances and creditors that have security on those specific assets along with creditors that enjoy a statutory priority are satisfied in priority to other creditors.

Unsecured creditors prior to and until obtaining an executory title can apply for an interim order, for a prenotation of mortgage over the debtor's immoveable assets or a conservative attachment over the debtor's other assets. Such proceedings will require at least three and may take as long as eight months and will require, among other things, proof of imminent danger.

No special procedures apply to foreign creditors.

7 Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Any debtor that has ceased payments in a general and permanent way must file a bankruptcy petition within 30 days following cessation of payments. Cessation of payments is defined by the statute as a general and permanent inability to meet monetary obligations as they become due and payable. Any debtor that is in imminent financial distress, in the sense that it foresees upcoming liquidity problems and potential default in its payments, amounting to a cessation of payments, may file a bankruptcy petition.

In principle, once a debtor is declared bankrupt, an insolvency administrator (*syndikos* or liquidator) will be appointed to manage the debtor' assets and affairs. In exceptional circumstances, a debtor may remain in control of its assets and affairs. The court – following a petition by the debtor and to the extent this is to the benefit of the creditors and the creditors' committee agrees – may permit the debtor to remain in possession and administration of its assets always along with the insolvency administrator's cooperation. To our knowledge, to date Greek courts have addressed an application to maintain the debtor in possession only once (Decision No. 747/2009 of the Multimember First Instance Court of Athens); in that case the application was rejected as not being in the creditors' interests.

After a debtor is declared bankrupt all enforcement actions and proceedings against the debtor are automatically suspended. Secured creditors' rights arising from existing security are not affected but, in practice, realisation of the assets is difficult as enforcement will be impeded in the case of assets that are closely connected to the debtor's business or production unit or enterprise, after a reorganisation plan is approved or when the creditors' meeting decides over the bankruptcy proceedings that will be followed, in which case article 26 of the Bankruptcy Code provides for an automatic suspension of all actions and enforcement procedures. Any enforcement procedures attempted during the suspension are null and void. If the creditors' committee decides to sell the debtor's assets as a whole, the moratorium lasts until the sale is concluded.

One of the important consequences of filing a petition on the basis of an imminent cessation of payments is that the court, if convinced, will set the date of cessation of payments as the date on which bankruptcy is declared; accordingly there will be no suspect period and no threat of transactions being set aside by the insolvency administrator.

8 Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

Any creditor can file a petition to have his debtor declared bankrupt. Insofar as the effects of an involuntary liquidation are concerned, the process follows the same steps as noted in question 7, the sole exception being that the court does not have the discretion to leave the debtor in possession.

A procedure similar to involuntary bankruptcy was recently introduced as part of the revamp of pre-insolvency proceedings. This new procedure, known as special liquidation, applies to debtors who, during the previous financial year, had assets exceeding €2.5 million in value, net turnover of €5 million or had an average of 50 employees (the satisfaction of two out of three of these criteria is required). Special liquidation can be decided at the application of any creditor who must also submit verification by a credit institution or a financial services company of the existence of a solvent investor interested

in acquiring the debtor's assets. If the application is granted, the court will appoint a liquidator to continue the business as a going concern and to conduct a public auction for its transfer to the highest bidder as a going concern.

9 Voluntary reorganisations

What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

The Greek Bankruptcy Code provides for two proceedings that are relevant to a reorganisation attempt.

Pre-bankruptcy recovery procedure

A debtor either in cessation of payments or in a situation of imminent cessation of payments can apply to the court for the opening of the recovery procedure to enable the debtor to negotiate an agreement with its creditors representing a majority of 60 per cent of the total claims, 40 per cent of which should be secured, or to ratify an agreement already reached with such qualified majority of creditors. The creditors can be approached ad hoc or through a committee to which all shall be invited to participate. The debtor may seek the appointment of a mediator to assist with the negotiations (and shall nominate a suitable candidate to the court) or even a special administrator to take over the management of the debtor and the control of its assets pending such negotiations. The agreement may consist of a prepack sale of all or part of the business, a disposition of assets, a debt-for-equity conversion, or a change of the term of existing obligations, such as a write-down of the debt, extension of the repayment term, alteration of the interest rate or replacement of the obligation to pay interest by the obligation to provide the creditor with a share of the profits; such changes to liabilities may also be accomplished through a refinancing of existing debt or through the issue of a bond loan which may also include a convertibility feature.

Upon filing for initiation of the recovery procedure and until the termination of the procedure (meaning the ratification of the agreement, or the rejection of the relative application, or the expiry of the period set for such agreement to be concluded) a moratorium on all enforcement actions may be provided by the bankruptcy court as a preliminary measure. Any moratorium on all enforcement actions awarded will automatically prevent any transfer of the debtor's immoveable property and equipment.

There are three main criteria for the ratification of a restructuring plan reached by the debtor and the qualified majority of creditors as set out above. First, it must result in a viable business and shall lift the debtor out of cessation of payments (or prevent its getting to this state). Second, it must not leave any non-consenting creditors in a less favourable position than they would be in bankruptcy liquidation. Third, each non-consenting creditor may not be treated less favourably than any other creditor of the same rank or priority.

A ratified plan shall bind all non-consenting creditors (cram-down effect).

The reorganisation plan

Any debtor, within four months of being declared bankrupt, or any debtor who is filing a voluntary bankruptcy petition, can propose a reorganisation plan. In exceptional cases the four-month period may be extended by up to three months. The liquidator is also entitled to submit a reorganisation plan immediately after the four-month period has elapsed.

The main effects are as follows:

- This is a novel proceeding for Greek law and has hardly been tested in practice. The statute seems to permit the development of a debtor-in-possession insolvency proceeding, as the court, upon receiving a voluntary insolvency application and a plan that provides for the continuation of the debtor's business, may decide to allow the debtor to maintain control of the business along with the liquidator's cooperation.
- Upon filing for declaration of bankruptcy and until the grant of the relative order, a moratorium against all enforcement actions (including the involuntary grant of security over assets) may be provided by the competent court as a preliminary measure.
- The declaration of bankruptcy puts into immediate effect a moratorium on all enforcement actions by unsecured creditors. Secured creditors cannot continue pursuing their claims against the secured assets that are closely connected to the debtor's business or production unit or enterprise until the reorganisation plan is approved. Any enforcement procedures attempted during the suspension are null and void.
- The ratified reorganisation plan is binding erga omnes (such cram down includes the dissenting and non-participating creditors).

10 Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

Under the Greek Bankruptcy Code, creditors cannot initiate an involuntary reorganisation plan. The insolvency administrator has no obligation to file a reorganisation plan. The newly introduced special liquidation proceedings may be considered as sharing certain basic features with a reorganisation plan, and in that sense are the only option available to a creditor of a distressed debtor (who otherwise satisfies the quantitative criteria noted in question 8) other than filing a petition for bankruptcy against the debtor.

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result?

Companies and individuals are obligated to file for bankruptcy within 30 days following cessation of payments. Failure to file for bankruptcy in a timely manner will cause company representatives to be held personally liable for damages caused to creditors by trading while insolvent. Accordingly, the creditors' compensation is restricted to unpaid debts created during the period between the date the bankruptcy petition should have been filed and the date the company was actually declared bankrupt.

12 Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Recovery procedure

No conditions or restrictions are set by law on the debtor's conduct of its business. No conditions apply to the use or sale of assets and to creditors who supply goods or services. The creditors can contest initiation of the recovery procedure. The court intervenes in key parts of the recovery process. Initially the court determines whether a moratorium will be granted as well as the form of the moratorium or the conditions that will run with it. Any moratorium regarding enforcement actions against the debtor automatically prevents transfer of the debtor's immoveable property and equipment. Moreover, the court decides on the opening or not of the recovery procedure and finally ratifies the agreement. The court may appoint a special administrator to control the debtor's assets or to perform specific actions or to oversee performance of the recovery agreement. Creditors that, pursuant to the recovery agreement, supply credit, goods and services to the debtor to continue its activities and payments in case the recovery agreement is terminated, are ranked as first-class general preferential creditors for the value of the credit, goods and services provided, superseding all other creditors. Furthermore, creditors that supplied

goods and services during the period after initiation of the recovery procedure and until ratification of the recovery agreement, in case the recovery agreement is terminated, are also ranked as first-class general preferential creditors superseding all other creditors.

The reorganisation plan

The right to manage and transfer the debtor's assets passes to the liquidator after the commencement of the insolvency proceedings. In exceptional circumstances, a debtor may remain in control of its assets and affairs. The court – following a petition by the debtor and to the extent this is to the benefit of the creditors and the creditors' committee agrees – may permit the debtor to remain in possession and administration of its assets alongside the liquidator, and subject to being recalled if that is held to serve creditors' interests. Sale of assets or equipment is possible after ratification of the reorganisation plan and subject to its provisions.

In both schemes creditors who supply new credits following and in connection with a ratified recovery agreement or reorganisation plan in case such agreement is terminated, are ranked as general preferential creditors superseding all other. There are no provisions regarding creditors supplying goods and services.

The insolvency administrator (*syndikos*) oversees performance of the reorganisation plan and every six months reports to the creditors' committee.

13 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

Recovery procedure

The court can, and frequently does, order an interim moratorium on all enforcement actions against the debtor for the interval between the filing of the petition with regard to the opening of the recovery procedure and the judicial ratification of the debtor-creditors' agreement, or the rejection of the relative application for ratification, or the expiry of the up to two-month period – which can be extended – following the publication of the decision ordering the commencement of the procedure. In principle, the interim measures may be imposed on creditors' claims that arose prior to the opening of the recovery procedure. Exceptionally the court may extend the suspension on creditors' claims that arose ex post facto to the commencement of the recovery procedure as well. Any moratorium regarding enforcement action automatically prevents transfer of the debtor's immoveable property and equipment.

The creditors' enforcement rights arising from any financial collateral arrangement, or from any close-out netting provision, or any creditor's right to terminate the lease agreement if the debtor is in arrears on at least six monthly payments, are excluded from the suspension.

The same applies to the pre-bankruptcy special liquidation procedure.

Reorganisation plan and liquidation proceedings

Once the debtor is declared bankrupt, all unsecured and general preferential creditors are barred from enforcing their rights and remedies against the debtor.

Secured creditors can continue to pursue their claims against the secured assets unless the secured assets are closely connected to the debtor's business or production unit or enterprise, until either a reorganisation plan is approved or the creditors' committee decides whether the insolvency administrator will (i) continue the debtor's commercial activities for a certain period of time; (ii) lease the business; (iii) sell the entire business through a public auction; or (iv) sell each asset independently through a public auction. In any case, the suspension cannot last more than 10 months from the day the debtor was declared bankrupt. If the creditors approve the sale of the debtor's assets as a whole, the suspension lasts until the sale is concluded, for which the law does not set a deadline.

14 Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

There are no specific provisions with regard to funding either obtained prior to judicial ratification of a reorganisation plan or a recovery agreement or upon commencement of liquidation proceedings.

However, loans or credit provided pursuant to a recovery agreement or a reorganisation plan are ranked as first-class general preferential claims, superseding any other pre-existing claim.

15 Set-off and netting

To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

The creditors have the right to set off their claims against debtor's claims provided that their claims became due and payable prior to the debtor's bankruptcy. The bankruptcy court may order the temporary suspension of creditors' right to set-off.

16 Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Until the ratification of a reorganisation plan or a decision of a creditors' committee deciding for debtor's liquidation any sale of assets is forbidden without prior permission by the reporting judge granted under exceptional circumstances. Any sale of the debtor's assets in case of a reorganisation plan can be contemplated after ratification of the reorganisation plan, pursuant to its provisions. Liquidation pursuant to a creditors' committee decision is performed through a public auction by submission of sealed offers. The purchaser acquires the assets 'free and clear' of claims. 'Stalking horse' bids and credit bidding are not possible.

With respect to sale of assets during pre-bankruptcy procedures the following apply:

- Transfer of specific assets or the sale of the debtor's entire business may be the object of the recovery agreement. The purchaser in such cases acquires all or part of the debtor's assets, and if provided by the recovery agreement, all or part of the debtor's liabilities. Liabilities are:
  - satisfied by the sale price;
  - written off;
  - converted into equity (debt-for-equity swaps); or
  - remain as part of the debtor's obligations.

  Until ratification of the recovery agreement, assets can be transferred in case there is no moratorium in place and subject to rules regarding fraudulent conveyances and provisions regarding transfers during the suspect period.
- In the case of sale of all assets pursuant to a pre-bankruptcy special liquidation, the purchaser acquires all assets free and clear of all claims.

17 Intellectual property assets in insolvencies

May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

There are no special provisions regarding IP rights and the rules generally applicable to the performance of contracts apply.

18 Rejection and disclaimer of contracts in reorganisations

Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

Recovery process

Recovery is a pre-bankruptcy procedure. Neither the application for nor the potential appointment of a mediator or the ratification of a voluntary plan have any impact on contractual relations (except under the terms of any applicable contract) other than as may be set out in the plan.

The reorganisation plan

The reorganisation plan is filed either simultaneously with a bankruptcy petition or after the debtor is declared bankrupt.

As a general rule, the declaration of bankruptcy (except as otherwise provided by contract) causes the termination only of contracts entered into intuitu personae. By contrast, contracts of which the performance is of a continuing nature and as yet incomplete, are not affected by the declaration of bankruptcy. The liquidator may allow the performance (and require performance by the counterparty) of all other contracts, in which case the creditors as a group become liable for the liabilities arising thereunder, or opt to reject and disclaim any such contract.

19 Arbitration processes in insolvency cases

How frequently is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? Will the court allow arbitration proceedings to continue after an insolvency case is opened?

Arbitration cannot be used in bankruptcy proceedings in Greece. Case law has set that an arbitration clause lapses after a debtor is declared bankrupt. However, theorists have recently proposed that an insolvency administrator should be considered competent to appoint arbitrators, continue arbitration or agree on an arbitration clause.

20 Successful reorganisations

What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

A pre-bankruptcy recovery agreement will be judicially ratified if:

- it is signed by creditors representing a majority of 60 per cent of the total claims, 40 per cent of which should be secured. The required consent of the creditors' majority may arise from a decision of a creditors' assembly that requires at least a 50 per cent quorum and a majority of 60 per cent of the total claims represented, 40 per cent of which should be secured;
- it renders the debtor viable;
- non-signatory creditors do not receive less than they would receive through enforcement proceedings or bankruptcy liquidation;
- it does not violate any mandatory legislation, such as competition law, or is the result of fraud conducted by the debtor or any creditor or any third party;
- creditors of the same class are treated equally and any exceptions are justifiable by important business or social reasons; and
- it lifts the debtor out of cessation of payments.

Reorganisation plan

The proposed reorganisation plan must include:

- information relating to the current financial situation of the debtor;
- at least one proposed form of reorganisation; and
- information relating to payments to creditors. The latter is subject to two restrictions:
  - the proposed debt settlement must not prejudice creditors' classification; and
  - the proposed debt reduction may not fall below 10 per cent (20 per cent after 31 December 2014) of the initial debt.

The plan must mandatorily provide for classes of secured creditors, general preferential creditors, unsecured creditors and subordinated creditors. Employee claims constitute a particular class. Claims of unsecured creditors that are of diminished value may be classified separately. Within a particular class, more than one group of creditors may be provided. The plan must provide equal treatment among creditors of the same class, or among creditors of the same group.

The court initially examines and pre-approves the plan. Following judicial approval of the plan, the creditors get to vote on the plan and, finally, if a majority of creditors representing 60 per cent of the debtor's debt, at least 40 per cent of which represent secured debt, approves, the plan is filed for judicial ratification.

There is no provision forbidding release of non-debtor parties from liability either in a recovery agreement or a reorganisation plan. With respect to a recovery agreement, the court might not ratify the agreement if such term is considered as affecting the interests of non-signatory creditors.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

Yes. A recovery agreement can be executed and filed for ratification prior to any petition to initiate the recovery procedure.

22 Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

Recovery procedure

The bankruptcy court will order the opening of the recovery procedure for a period of up to two months only if the applicant debtor satisfies certain prerequisites. Hence, if the court determines that either an agreement will not be reached, or the debtor will not become viable, or the non-consenting creditors will receive less than they would have in case of an enforcement procedure or liquidation, the court will reject the debtor's application.

The court's decision is subject to appeal.

At a subsequent stage, the bankruptcy court will not ratify a voluntary reorganisation (recovery) agreement if:

- the debtor is not likely to become viable;
- the non-signatory creditors will receive less than they would have in case of an enforcement procedure or liquidation;
- the recovery agreement violates mandatory legislation, such as competition law, or is the result of fraud conducted by the debtor or any creditor or any third party;
- creditors of the same class are not treated equally; and

- through the proposed recovery, the cessation of payments is not lifted. In that case, provided that there is a pending application for the declaration of bankruptcy, the court declares the debtor bankrupt.

The court's decision is subject to appeal.

Provided that a recovery agreement is not concluded within the attributed period, the recovery process is ipso jure terminated.

Reorganisation plan

A proposed reorganisation plan prior to its approval by creditors is subject to examination by the bankruptcy court. The bankruptcy court may reject the plan if:

- the formalities with regard to the mandatory features of the reorganisation plan and the classification of creditors are not met (see question 20);
- it is unlikely that the plan will be accepted by creditors or ratified by the court; or
- creditors' claims and any third party's claims to which the plan is referred, may obviously not be able to be satisfied.

The decision that rejects the plan is not subject to appeal. However, the debtor and the insolvency administrator are entitled to file an amended or a totally new reorganisation plan within the statutorily established time periods.

Following judicial pre-approval, the creditors' meeting will vote on the plan. A reorganisation plan will be accepted if a majority of creditors representing 60 per cent of the value of the total debts, no less than 40 per cent of which are secured, vote in favour of it. The debtor has the right to withdraw prior to creditors' voting. In that case, the reorganisation proceedings are cancelled.

Once the plan is accepted, it requires judicial ratification. The bankruptcy court will not ratify the plan if:

- the formalities with regard to the voting and creditors' majority are not met;
- the acceptance of the plan is the consequence of a malicious act perpetrated by the debtor, any creditor, the insolvency administrator or any third party;
- rejection is dictated by public interest; or
- the plan prejudices the interests of dissenters.

In principle, and regarding both aforementioned procedures, a debtor's default in performing an undertaken obligation does not affect the continuing force and effect of the plan or agreement, unless it evidences that the debtor has become incapable of complying with its obligations under the plan or the agreement. In all other cases, if the debtor defaults as to a specific obligation, the non-defaulting counterparty may exercise its individual rights under the law and the contract and, if appropriate, may file for the debtor's involuntary bankruptcy.

23 Insolvency processes

During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

All decisions with regard to bankruptcy proceedings are published in the Bulletin of Judicial Publications of the Jurists' Pension Fund. All creditors are invited in writing by the insolvency administrator to announce their claims within statutorily established time periods.

The most significant creditors' meetings are:

- the creditors' meeting that decides on the continuation of the business activities, the sale of all or substantially all of the debtor's assets or the partial liquidation of the debtor's assets; and
- the creditors' meeting for voting on the reorganisation plan.

The insolvency administrator must submit to the creditors' meeting a report with regard to the debtor's current financial situation, the reasons that led to its bankruptcy, the prospects of continuing business activities and the possibility of adopting a reorganisation plan. The insolvency administrator oversees the performance of the ratified reorganisation plan and every six months submits a report to the creditors' committee, for a three-year period unless the plan provides differently.

The Greek Bankruptcy Code does not provide for the right of creditors to pursue the estate's remedies against third parties.

24 Enforcement of estate's rights

If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

Before declaration of bankruptcy, if the debtor's estate does not suffice to cover the procedural expenses, the bankruptcy court will declare the debtor bankrupt but it will not order the opening of bankruptcy proceedings.

Upon declaration of bankruptcy, if the insolvency administrator has no assets to pursue the creditors' claims, the bankruptcy court may order the termination of bankruptcy proceedings. After a month has elapsed from the publication of the judgment that orders the termination of bankruptcy, the debtor undertakes the administration of corporate affairs and creditors may enforce their individual rights and remedies against the debtor's estate.

25 Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

The creditors' meeting may pass a resolution upon the appointment of a creditors' committee. The committee consists of three ordinary and three substitute members. One each of the ordinary and substitute members is selected from the class of secured creditors, general preferential and unsecured creditors.

The creditors' committee is assigned with the general duty of supervising the progress of bankruptcy proceedings and assisting the insolvency administrator during the performance of his duties. The committee may be assigned particular duties, such as:

- filing a petition for the alteration of the time period during which the payments were suspended;
- appointing a proxy to whom the notices will be served;
- filing an application for the preservation of employment until the judicial ratification or rejection of the reorganisation plan;
- objecting to the settlement concluded by the insolvency administrator with regard to debtor claims against third parties and vice versa;
- filing an application for the removal and replacement of the insolvency administrator;
- submitting a report to the bankruptcy court insofar as the insolvency administrator's fees are concerned;
- objecting to the way business activities are continued; and
- intervening in challenges of creditors' claims.

The Bankruptcy Code does not impede the creditors' committee from retaining external advisers at its own expense.

26 Insolvency of corporate groups

In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

The Greek Bankruptcy Code offers no rule with regard to bankruptcy of groups of companies. More specifically, it does not provide for any procedural or substantive (pooling of assets and liabilities) consolidation in case of a bankrupt enterprise group. However, each company-member of the group is subject to distinct bankruptcy proceedings. This is in accordance with the fundamental principle of separate corporate personality of each company-member of a group. The parent company is not held liable for the corporate debts incurred by any of its affiliates. Nevertheless, the COMI concept that is used as a criterion for the determination of the competent bankruptcy court may centralise the bankruptcy proceedings of a corporate group before the same court. This is the case when the subsidiary's COMI coincides with the parent's COMI. In this case, the bankruptcy court, at its absolute discretion, appoints the same insolvency administrator to conduct the bankruptcy proceedings of the parent company and its affiliate.

27 Claims and appeals

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

The insolvency administrator invites all creditors that are included within the list provided by the debtor, to announce and verify (prove) their claims within three months following the public notification of the decision that declared bankruptcy. Creditors that fail to announce their claims within the statutorily established time frame may seek judicial announcement and verification of their claim through filing a petition before the bankruptcy court.

Three days following the lapse of the term that is established for the announcement of creditors' claims, the insolvency administrator must verify each creditor's claim before the bankruptcy judge. At this stage, it is likely that a creditor's claim may be challenged by the debtor, insolvency administrator or creditors whose claims have temporarily or finally been accepted. The judgment upon admission or rejection of one's creditor claim is subject to an appeal.

The Greek Bankruptcy Code contains no specific provisions for the transfer of creditors' claims. Any transfer of claim can take place according to provisions of the Civil Code on assignment.

The Greek Bankruptcy Code recognises claims for contingent or unliquidated amounts. Conditional claims are announced (submitted) for verification as if they were not conditional. In case of a condition subsequent, the creditor must return any distribution upon fulfilment of the condition. In case of a condition precedent, the creditor will be ranked but receive payment either by placing a guarantee or upon fulfilment of the condition. Finally, at the time bankruptcy is declared, the non-due and payable creditors' claims, excluding the secured creditors' claims, are deemed to be due and payable. The secured creditors' claims are payable at their actual expiry.

28 Modifying creditors' rights

May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The Bankruptcy Code does not provide for any change to the classification of creditors' claims. Any involuntary change of priority would probably be deemed unconstitutional as a violation of article 17 of the Greek Constitution.

29 Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

The major privileged claims are the following:

- claims arising from debtor-in-possession financing (but excluding any equity contributions);
- unpaid employee remuneration incurred within two years before bankruptcy was declared, including termination compensation and lawyers' fees;
- taxes; and
- social security contributions that date back 24 months prior to the declaration of bankruptcy.

Where general (statutory) privileged claims and secured creditors coincide, proceeds are divided in two parts (the system of separation of proceeds). Prior to separation bankruptcy expenses are paid, afterwards unpaid employee remuneration incurred within two years before bankruptcy was declared, including termination compensation and lawyers' fees and social security contributions that date back 24 months prior to bankruptcy declaration are paid.

After the above are paid in full other general (statutory) privileged creditors receive one-third and secured creditors receive the remaining two-thirds.

30 Employment-related liabilities in restructurings

What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Under Greek law an employer can terminate an employment contract of indefinite duration by notifying the employee in writing and paying the statutory compensation. Failure to pay the statutory compensation or notify the employee in writing renders the termination null and void. When a debtor is declared bankrupt contracts are not automatically terminated. The insolvency administrator can terminate employment contracts lawfully without paying the statutory compensation. The employee maintains a claim for his compensation.

A restructuring does not automatically exempt a debtor from complying with the collective redundancies restrictions (up to 5 per cent for larger employees) and there is no case law on this point. However, where a business ceases operations as a result of the appointment of a liquidator, or when there is a downsizing as a result of a judicially ratified recovery or reorganisation plan, it is arguable that those employee terminations do not count towards the statutory threshold (in the sense that they are the result of closures pursuant to a judicial decision).

Claims for unpaid wages and salaries as well as claims for termination compensation are treated as priority claims in liquidation and are usually satisfied to a substantial extent. The state-run social security fund is also a privileged priority creditor but there is no similar provision for other employee pension funds or schemes.

31 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

As stated above, a recovery agreement may provide for liabilities that pass to the new acquirer or purchaser. On the contrary, liabilities do not survive after ratification of a reorganisation plan or after liquidation. In case of bankruptcy proceedings terminated because of insufficient funds or lack of assets to be liquidated, bankruptcy proceedings will be terminated, the debtor will resume management of its assets and affairs and creditors may reassume their individual enforcement actions against the debtor.

Update and trends

The Bankruptcy Code, implemented by virtue of Law 3588/2007, has gone through various sets of amendments. Most notably, Law 4013 of 2011 abolished the conciliation procedure (inspired by the French '*procedure de conciliation*'), putting in place two entirely different pre-bankruptcy proceedings that resembled two older procedures set in articles 44 and 46a of Law 1892/90 that had been in force up until the introduction of the Bankruptcy Code. As a general comment, the frequency of revisions demonstrates that Greek insolvency law is still far from settled. Halfway through 2012, there have been two further amendments to the Bankruptcy Code, both concerning the pre-bankruptcy recovery procedure (which replaces the conciliation procedure) while further amendments may not be excluded during the remainder of the current calendar year.

The fact that Greek legislators continue to tinker with the statute is closely tied to the persistence and intensity of the current economic crisis. Banks have substantially stopped lending, as they themselves are hard pressed to find access to credit lines. In turn, borrowers gradually become unable to service their debts, thereby adding to the banks' burden. Inevitably, an increasingly large number of listed as well as small and medium-sized enterprises seek relief through pre-bankruptcy proceedings especially through the old article 99 'conciliation procedure' and lately the 'recovery procedure'.

The recovery procedure added two significant elements to pre-bankruptcy restructuring: (i) that the agreement between the debtor and its creditors has a 'cram-down' effect on all creditors (signatories or not); and (ii) the option of executing a prepack agreement that will be immediately submitted for judicial ratification. On the other hand the prerequisites for filing an application to initiate a recovery procedure and obtain a judicial stay of proceedings against the debtor are far more demanding and detailed as to the financial information required to be submitted aiming at discouraging debtors that primarily seek to avoid or delay payments rather than restructure their business.

That means that the efficiency of the current system has not yet been tested, namely as to its ability to restore enterprises back to financial health. To date, enterprises resort to recovery principally so as to be able to 'kick the can down the road'. The real test will come when the banking system regains a modicum of liquidity and is in a position to restart providing credit to the economy. Among other things, one may expect that the lack of expertise among practitioners, accountants and judges, and the inefficiencies of the judicial process will cause difficulties in the recovery process.

Another area where more work is likely to be required concerns the relief provided by law to heavily indebted individuals (non-merchants). When the initial law was first implemented in 2010 there were many reservations raised by the European Central Bank regarding the impact of such relief on the troubled Greek banking system. Striking the right balance between relief to households (which have suffered a precipitous diminution of income during the past two to three years) and additional demands from the banking system (banks have suffered severe losses from the haircut of Greek state bonds, additional provisions imposed by the regulators and the depressed Greek market) is likely to continue to challenge both legislators and regulators.

Finally, there are no cases reported regarding implementation of the European Insolvency Regulation (EIR) or the law adopting the UNCITRAL Model Law, although there are older cases in which Greek courts recognised foreign main proceedings and initiated secondary proceedings in Greece. Moreover, there are no reported cases that involved cross-border insolvency protocols or similar arrangements to coordinate proceedings with courts in other countries. The same applies to joint hearings with courts in other countries.

32 Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

Following liquidation of the debtor's estate, the insolvency administrator draws up a list with regard to distributions that will be made to creditors. The insolvency administrator may proceed in provisional distributions after having obtained the bankruptcy judge's prior consent. The list of distributions is submitted to the latter and it is posted at his office. Public notification at the Bulletin of Judicial Publications of the Jurists' Pension Fund is required as well. Under certain circumstances, the publication of the list of distributions in Greek political and economic daily gazettes or economic gazettes of international circulation may be required.

33 Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

The debtor's transactions that took place during the interval between cessation of payments and declaration of bankruptcy (suspect period) are annulled or may be annulled.

The following transactions that are restrictively enumerated within the Bankruptcy Code are presumed to prejudice creditors' interests and are automatically null and void:

- donations and gratuitous acts;
- payments of debts that did not fall due and payable;
- payments of due debts that were not made in cash; and
- security over the debtor's estate for pre-existing debts.

Any debtor's mutual transaction may be annulled if the debtor's counterparty did not act in good faith, that is, it knew that the debtor has suspended its payments and that the transaction was detrimental to creditors' interests.

Another ground upon which the debtor's transactions can be annulled, is the fraudulent prejudice of creditors' interests. More specifically, fraudulent acts committed by the debtor during the last five years prior to the declaration of bankruptcy to the detriment of its creditors' interests or to establish a preference of some creditors over the others, can be voided and the assets are recovered by the debtor, provided that the third party knew of the debtor's intent.

No transaction contemplated pursuant to a ratified reorganisation plan or a recovery agreement can be annulled.

Apart from the Bankruptcy Code, there are additional provisions stipulating acts that are exempted from bankruptcy revocation, including (i) any mortgage or loan granted by a company under the Law of 17.07/13.08.1923 and Law 4001/1959 to secure a loan; (ii) any pledge or mortgage granted to secure claims from bond loans issued according to Law 3156/2003; (iii) the transfer of claims pursuant to Law 3156/2003 regarding the securitisation of claims; (iv) within the framework of Law 3389/2005 regulating PPPs, any securities granted by an SPV or any third party in favour of a credit or financial institution or any third party in order to secure claims towards the SPV.

34 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

Yes, Greece has the concept of a suspect period. It is defined as the period between the date on which the debtor actually ceased payments and the date on which it was declared bankrupt. The decision that declares the bankruptcy will also set the date on which payments are deemed to have ceased. This period may not be longer than two years.

In principle, the annulment of a transaction that occurred during the suspect period is made by the insolvency administrator. Nevertheless, creditors are not deprived of their right to claim the annulment of a transaction provided that the insolvency administrator, after being informed in writing, failed to act. Proceedings to annul transactions can be initiated right after a debtor is declared bankrupt irrespective of the bankruptcy proceedings that will follow, leading to reorganisation or liquidation. See also question 33.

35 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

By virtue of Law No. 2238/1994 article 115, administrators, managing directors or liquidators are personally and jointly liable for the payment of corporate taxes. This aforementioned law also applies to debts owed to social security organisations regarding contributions.

In principle, the administrator or the board of directors of a limited liability company or a *société anonyme*, respectively, are not liable for the debts of the company. However:

- if they fail to file promptly a petition for the declaration of bankruptcy they may be held personally liable for the restitution of debts that arose from the date the petition should have been filed until the actual declaration of bankruptcy; and
- if bankruptcy is the follow-up of a fraudulent act or gross negligence made by any member of the board of directors, the responsible directors shall compensate creditors.

Criminal sanctions may be imposed on officers and directors in cases of, for example, hiding assets, damaging transactions, disposal of merchandise at a diminished value, false statements and diminishing the debtor's estate.

36 Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Upon declaration of bankruptcy all unsecured and general preferential creditors are precluded from enforcing their claims against the debtor's estate. However, in principle secured creditors are not barred from enforcing their rights and remedies against the debtor's property.

37 Corporate procedures

Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Greek laws provide procedures for liquidation or dissolution of all forms of corporations. The general rule is that liquidation or dissolution of a corporation does not affect its ability to be declared bankrupt. Special purpose legal entities such as credit institutions and companies providing investment services can be declared bankrupt, although any bankruptcy proceedings may be suspended if the Bank of Greece orders the winding up of the credit institution or the Hellenic Capital Markets Committee revokes its licence, leading to the investment services company's statutory winding up. Insurance companies can be declared bankrupt but not prior to the conclusion of a special winding-up process introduced by Legislative Decree 400/1970, as amended by Presidential Decree 332/2003.

38 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Reorganisation proceedings are concluded upon judicial ratification of the reorganisation plan.

Liquidation proceedings are concluded upon liquidation of all debtor's assets (article 164).

In either case, the conclusion of bankruptcy proceedings is the logical follow-up if:

- the corporate assets are inadequate to satisfy creditors' claims; or
- 15 years after the formal declaration of bankruptcy have elapsed.

39 International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

EU Regulation 1346/2000, which came into force on 31 May 2002, applies, since Greece is an EU member state. Moreover, Law No. 3858/2010, which came into force on 28 June 2010, substantially repeats the text of the UNCITRAL Model Law on Cross-border Insolvency; caution is required with the definitions, especially that of 'foreign proceedings', as the law seems to apply only to foreign proceedings that involve the appointment of a liquidator. Foreign creditors that seek to commence or participate in bankruptcy proceedings in Greece have the same rights as domestic creditors.

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40 Cross-border cooperation

Does your country's system allow cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts?

See question 41. There are no reported cases in which the court refused to recognise foreign proceedings. On the other hand there are judgments reported in which Greek courts recognised foreign main proceedings and initiated secondary bankruptcy proceedings in Greece according to the provisions of the EIR.

41 Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Greek courts have not concluded any cross-border insolvency protocol or other arrangement that regulates coordination if concurrent insolvency proceedings are opened within different jurisdictions. However, Law No. 3858/2010, which implemented to a large extent the UNCITRAL Model Law, introduces the prospect of cooperation between the Greek courts, foreign courts and insolvency administrators among different jurisdictions. Because of its novelty, that provision has not been tested in practice in our jurisdiction.

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