GETTING THE DEAL THROUGH

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Potamitisvekris

1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

The Bankruptcy Code (in its current state, Law 3588/2007 as amended by Law 3858/2010) 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 3858/2010, adopted the UNCITRAL Model Law on Cross-border Insolvency. Finally, because Greece is an EU member state, Regulation 1346/2000 also applies.

2 Excluded entities

What entities are excluded from general bankruptcy proceedings and what legislation applies to them?

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 seq of Law 3601/2007 and Law 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 3606/2007, as amended by Law 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 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 more 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.

3 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 given by law, final court order 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.

4 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 notional pledge (articles 1 and 3, Law 2844/00). A notional pledge 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 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.

5 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.

6 Courts

What courts are involved in the bankruptcy 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.

7 Voluntary liquidations

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

Any debtor that has ceased payments in a general and permanent way must file a bankruptcy petition within 15 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) is 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 Multi-member 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.

8 Involuntary liquidations

What are the requirements for creditors placing a debtor in 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 debtor cannot remain in possession and administration of its assets.

9 Voluntary reorganisations

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

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

The pre-bankruptcy conciliation process

A creditor that is not insolvent but finds itself in distress can apply to the court for the appointment of a mediator to promote a reorganisation agreement with the majority of its creditors. If such an agreement is reached and the court is persuaded that it renders the debtor viable, then the reorganisation plan receives ratification. The main effects are as follows.

- The debtor remains in possession of its assets and affairs.
- Upon filing for initiation of the conciliation procedure and until the ratification of the agreement a standstill on all enforcement actions (including the involuntary grant of security over assets) may be provided by the competent court as a preliminary measure. Because there is a perception that this option may lead to abuse, a two-month cap has recently been imposed on the duration of this measure. Unfortunately, under current conditions, an injunction will be heard by the court more than two months following the date of application, which creates a serious risk of exposing the debtor to enforcement actions pending the commencement of the conciliation process.
- The ratified agreement does not bind any third parties (eg, non-consenting creditors).
- For four years (to be reduced to two years after 2014) all enforcement actions against the debtor (including the involuntary grant of security over assets) are barred. The precise scope of this moratorium (as is also true of the equivalent preliminary measure) is a matter of some uncertainty but several recent decisions suggest that it covers all adverse legal action against the debtor and not merely the enforcement of security interests. It also appears that the moratorium does not interfere with the grant of a prenotation (a crucial issue for the reorganising debtor and its ability to obtain new financing).
- For one year (to be reduced to six months after 2014) the debtor cannot be declared bankrupt.

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 (including the dissenting and non-participating creditors). Unlike conciliation, the Greek legislator has extended the effects of the ratified plan to non-signatory creditors.

10 Involuntary reorganisations

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

Under Greek Bankruptcy Code, creditors cannot initiate an involuntary reorganisation plan. The insolvency administrator has no obligation to file a reorganisation plan.

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 15 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 of assets and 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?

Conciliation

No conditions or restrictions are set by law on the debtor's conduct of its business. No conditions apply to the use of assets and to creditors who supply goods or services. The creditors can contest initiation of the conciliation procedure. The court intervenes in key parts of the conciliation. 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. Moreover, the court decides on the opening or not of the conciliation procedure and finally ratifies the agreement. The court, upon petition by any creditor in case of any breach of the terms of the ratified agreement, can terminate the conciliation agreement.

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.

In both schemes creditors who supply new credits following and in connection with a ratified conciliation agreement or reorganisation plan in case such agreement is terminated, are ranked as general preferential creditors superseding all other.

There are no specific provisions regarding creditor or court oversight on the debtor's business and transactions.

13 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?

Conciliation

Conciliation is a pre-bankruptcy procedure. Neither the application for or the appointment of a conciliation mediator or the ratification of a voluntary plan have any impact on contractual relations 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.

14 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?

No particular rules regulate sales before bankruptcy, although due regard should be given to fraudulent conveyancing rules and provisions regarding the setting aside of transfers in the suspicious period.

Restrictions on the manner of asset disposal apply generally to bankrupt entities; as a rule such sales are conducted through a public auction according to rules set out in the Bankruptcy Code conducted under surveillance of a judge of the Bankruptcy Court. The Bankruptcy Code neither allows for 'stalking horse' bids in sale procedures nor permits credit bidding in sales.

15 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?

Conciliation process

Upon judicial ratification of the conciliation agreement all creditors, including the non-signatory ones, are prevented from enforcing claims that arose prior to the conclusion of the agreement against the debtor for a maximum period of four years. After 31 December 2014 the maximum period will be reduced to two years.

The Bankruptcy 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 conciliation proceedings and the judicial ratification of the debtor-creditors' agreement.

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. More specifically, the commencement or continuation of legal proceedings, and the institution or continuation of execution upon the debtor's estate is precluded.

Secured creditors can continue pursuing their claims against the secured assets unless the secured assets are closely connected to the debtor's business or production unit or enterprise and until either a reorganisation plan is approved or the creditors' committee decides over the bankruptcy proceedings that will be followed. 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 statute does not set a deadline.

16 Arbitration processes in bankruptcy

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.

17 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 debtors' 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.

18 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.

19 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 conciliation agreement or upon commencement of liquidation proceedings.

However, loans or credit provided after and for the furtherance of a conciliation agreement or a reorganisation plan are classified as general preferential claims first in rank, superseding any other pre-existing claim.

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?

Conciliation process

The debtor's application for the commencement of conciliation proceedings shall mandatorily describe:

- the company's financial situation;
- the size and the importance of the business relating to the preservation of employment; and
- the measures undertaken to overcome financial hardship.

No classification is provided for creditors. The conciliation agreement is subject to the approval of creditors who represent at least a majority of the debtor's total debts. Upon approval, the agreement is subject to judicial ratification.

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 conciliation agreement or a reorganisation plan. With respect to a conciliation 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?

There are no particular provisions for expedited or prepackaged reorganisations.

22 Unsuccessful reorganisations

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

Conciliation process

The Bankruptcy Court will appoint a conciliation mediator only if the applicant debtor satisfies certain prerequisites. Hence, if the debtor has ceased its payments or the Court determines that either an agreement will not be reached or the debtor will not become viable, the Court will not reject the debtor's application. The Court's decision is not subject to an appeal.

At a subsequent stage, the Bankruptcy Court will not ratify a voluntary reorganisation (conciliation) agreement if:

- the debtor has ceased its payments;
- the business activities are not likely to be continued;
- the interests of non-signatory creditors are prejudiced; or
- the duration of the conciliation agreement exceeds four years (to be reduced to two years after December 2014).

The Bankruptcy Court may order the termination of a ratified conciliation agreement following the filing of a petition:

- by a non signatory creditor, if the business activities of the debtor are not likely to be continued; or
- by a signatory creditor, if the debtor has defaulted on its obligations under the ratified plan.

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 an 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, a debtor's default in performing an undertaken obligation does not affect the continuing force and effect of the plan, unless it evidences that the debtor has become incapable of complying with its obligations under the plan. 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 Bankruptcy processes

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

24 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 ones.

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.

25 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?

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.

26 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 competence of the Bankruptcy Court to alter 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.

27 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.

28 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?

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 judgement 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.

29 Priority claims

What are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

The claims that have priority over secured creditors' claims are the following:

- the claims that arose from new loans and credit that ensure the continuation of the business activities, by virtue of a reorganisation plan or a conciliation agreement;
- the claims of unpaid wages that arose two years before the declaration of bankruptcy;
- taxes;
- social security contributions that date back 24 months prior to the declaration of bankruptcy.

30 Liabilities that survive insolvency proceedings

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

As stated above, a ratified conciliation agreement only binds the parties to the agreement and not the non-signatory creditors. Thus, the non-signatory creditors retain their claims. On the contrary, liabilities do not survive after ratification of a reorganisation plan or after liquidation.

31 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.

32 Transactions that may be annulled

What transactions can be annulled or set aside in bankruptcies 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.

Update and trends

Greece has just implemented Law 3858/2010 adopting the UNCITRAL Model Law. While Greek courts have the legal basis for cross-border coordination, there is no joint hearing that implements Law 3858/2010, so far. The perceived finding may be justified by the reluctance that is demonstrated by domestic judges to surrender any degree of control over bankruptcy proceedings, the lack of experience of the members of the Greek bar associations to provide their legal services to any emerging cross- border insolvency, as well as the inadequate infrastructure that prevents domestic judges from participating in teleconferences.

The Greek Bankruptcy Code introduced the procedure of conciliation, a pre-bankruptcy process that provides ex ante solutions to liquidity problems that a company may face, before it is too late and bankruptcy is declared. While the legislative intent was to use conciliation to promote restructuring, the relevant provisions may be considered timid and not adequate to that task, especially in the context of the current intense liquidity crunch. In practice, the majority of applications for conciliation, and there is already a large and growing number of such applications, are employed by distressed debtors primarily for the purpose of securing a moratorium, as a delaying tactic and an attempt to obtain leverage in discussions with creditors. As a result, applications for conciliation are generally not well received by creditors, and especially banks, and an applicant may encounter significant difficulties in obtaining new financing from domestic credit institutions. The perceived need to provide a pre-bankruptcy reorganisation plan with some binding effects on non-consenting creditors (other than simply the suspension of their individual actions during the term of the moratorium) has also generated much debate.

The recently introduced provisions regarding the protection of assets of individual creditors who are not merchants (just revised in accordance with certain recommendations of the ECB) should also be closely watched, both because of the potential for abuse but also as a potential first step towards a full-blown bankruptcy law for non-merchants.

Overall, the current adverse economic climate has given the perceived need for revision or clarification of the bankruptcy and reorganisation provisions unusual urgency and prominence.

A perceived emerging trend is the necessity to institute formal procedures for the regulation of prepackaged reorganisations.

33 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 32.

34 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 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 corporate 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.

35 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.

36 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.

37 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;
- 15 years after the formal declaration of bankruptcy have elapsed.

38 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 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.

39 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 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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