GETTING THE DEAL THROUGH

Restructuring & Insolvency

in 45 jurisdictions worldwide

2014

Contributing editor: Bruce Leonard

Published by
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Restructuring & Insolvency 2014

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Restructuring & Insolvency 2014
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
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First published 2008
Seventh edition
Previously published as:
Insolvency & Restructuring (1999–2007)

ISSN 1468-3180

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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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 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. Greek law applies a 'cash-flow' insolvency test. 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 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 Laws No. 4021/2011, 4051/2012 and 4172/2013, 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 an initial stage of distribution of segregated client assets (confusingly named 'special liquidation') and, thereafter, to liquidation or bankruptcy.

Non-merchant individuals are excluded from general bankruptcy proceedings, but Law No. 3869/2010, as amended by Law No. 3996/2011, Law No. 4019/2011 and Law No. 4161/2013, 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 law may eventually develop into a fully fledged insolvency regime for non-merchants, in its current form it remains focused on softening the impact on individuals of the current economic crisis.

All assets of the debtor are included in bankruptcy proceedings in which all creditors are entitled to participate. 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 Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

Greek law recognises that certain credit institutions play a systemic role and that it is necessary to avoid their resolution or reorganisation. For that purpose, Law No. 3864/2010 set up the Hellenic Financial Stability Fund as an independent agency funded by the state. The purpose of the fund is to maintain the stability of the Greek banking system through capital contributions to systemically important banks that have difficulty maintaining their minimum capital requirements. The same institution also provides

funding to cover the funding gaps of credit institutions placed into special liquidation.

Nevertheless, Greek law addresses many issues dealing with the capital adequacy requirements for institutions, enhanced supervision and the establishment of improved special liquidation proceedings for banking and non-banking institutions in financial distress.

Insofar as banks are concerned, Law No. 3601/2007, as amended by Law Nos. 4021/2011, 4051/2012 and 4172/2013, imposes capital and liquidity requirements in order to ensure that credit institutions have sufficient funds to absorb large, unpredictable losses. The Bank of Greece exercises continuous supervision over the solvency, liquidity and capital adequacy of banks. Article 68 of the aforementioned law provides for a special winding up of a credit institution upon the revocation of its banking licence. In such cases, the Bank of Greece may apply the good bank/bad bank model, so that good banking assets and deposits may be transferred to an existing credit institution or a bridge bank, while the remaining assets and liabilities may be put into a special liquidation process under the continuous surveillance of the Bank of Greece.

Investment services companies must also meet capital requirements, as established by Law No. 3606/2007 as amended by Law No. 3756/2009 and Law No. 4141/2013. Should an investment services company fail to meet such standards, the Hellenic Capital Markets Committee may revoke its licence and place the company into special liquidation for the sole purpose of distributing client assets to their rightful owners. Thereafter, the entity will be placed into a normal liquidation process or be declared bankrupt.

Finally, insurance companies are subject to a special winding-up procedure introduced by Legislative Decree No. 400/1970 as amended and currently in force.

5 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 create 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 into a full mortgage upon the debtor's default with a retroactive effect 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.

6 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 of 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 that the creditor is preferentially satisfied through the asset's forced sale, following the commencement of execution proceedings.
- Floating charge (article 16 of 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.

7 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 of the 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.

8 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 on its payments, amounting to a cessation of payments, may also file a bankruptcy petition.

In principle, once a debtor is declared bankrupt, an insolvency administrator (liquidator) will be appointed to manage the debtor's 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 liquidator'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 event that the assets 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 proceedings 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 liquidator.

9 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 its debtor declared bankrupt. Insofar as the effects of an involuntary liquidation are concerned, the process follows the same steps as noted in question 8, 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 accepted,, 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.

10 Voluntary reorganisations

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

The 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-equity swap, or a change of the term of existing obligations, such as a write-down of the debt, extension of the repayment date, 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 an agreement reached by the debtor and the qualified majority of creditors as set out above. First, it must result in a viable business and lift the debtor out of cessation of payments (or prevent it from reaching 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 agreement binds 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, and within three months of such expiration.

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).

11 Involuntary reorganisations

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

Under the Bankruptcy Code, creditors cannot initiate an involuntary reorganisation plan. The only alternative to bankruptcy available to creditors is to file for a sale of the debtors' business as a going concern under the special liquidation proceeding.

12 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 merchants 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.

13 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 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 imposed, 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 for the continuation of its business activities, (in the event that 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, always with the liquidator's cooperation, and subject to being recalled if that is held to serve the 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 a ratified reorganisation plan in case such agreement or plan is terminated, become first- ranked general preferential creditors superseding all other creditors.

The liquidator oversees performance of the reorganisation plan and reports to the creditors' committee every six months.

14 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 for one additional month – 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. It is also worth noting that, unless the court decides otherwise, a provisional moratorium will not prevent the enforcement of employee claims.

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 for 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 liquidator will (i) continue the debtor's commercial activities for a certain period of time; (ii) lease the business; (iii) sell the company as a going concern through a public auction; or (iv) proceed to the piecemeal sale of the debtor's assets. 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.

15 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.

Loans or credit provided pursuant to a recovery agreement or a reorganisation plan are, however, ranked as first-class general preferential claims, superseding any other pre-existing claim, but that priority status is conditional on the ratification of the plan.

16 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 offset 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.

17 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 applies. 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-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.

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 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?

In general, any contract may provide for a termination right, in the event that the counterparty is declared bankrupt.

The Greek Bankruptcy Code provides for the maintenance of enforceability of any mutual contract not having being performed by either party in full at the time bankruptcy is declared, unless otherwise provided by the contact. More specficially, the liquidator has the right to opt for the performance of the aforementioned contract. If the liquidator fails to act, the counterparty can request that the liquidator decide within a reasonable deadline whether he or she opts for the performance of the contract. If the liquidator does not reply within the established deadline, or if he or she refuses to perform the contract, then the counterparty is entitled to repudiate the contract and claim for damages.

Contracts of a continuous nature may provide for a termination right in the event of a party's bankruptcy. In the absence of such a term, the Greek Bankruptcy Code establishes the maintenance of their enforceability.

20 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? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?

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 a liquidator should be considered competent to appoint arbitrators, continue arbitration or agree on an arbitration clause.

21 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 receive as least as much as 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.

22 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.

23 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, which in exceptional circumstances may be extended for an additional month, 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 21);
- 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 liquidator 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 liquidator 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.

24 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 liquidator to announce their claims within a time period of three months after the publication of the decision that declared the debtor's bankruptcy in the Bulletin of Judicial Publications of the Jurists' Pension Fund.

The most significant creditors' meetings are:

- the creditors' meeting that decides on the continuation of the business activities, or 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 liquidator 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 liquidator 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.

25 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 not order the opening of bankruptcy proceedings. Provided, though, that the merchant (individual or legal entity) is proved to be in cessation of payments or in imminent financial distress, the bankruptcy court will order the registration of the debtor's name or trade name, respectively, in the bankruptcy register. Such registration is then deleted after three years have elapsed.

Upon declaration of bankruptcy, if the liquidator 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.

26 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 are 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 liquidator 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 liquidator with regard to debtor claims against third parties and vice versa;
- filing an application for the removal and replacement of the liquidator;
- submitting a report to the bankruptcy court insofar as the liquidator's fees are concerned;
- objecting to the way business activities are continued; and
- intervening in challenges of creditors' claims.

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

27 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 does not provide for the 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, may appoint the same liquidator to conduct the bankruptcy proceedings of the parent company and its affiliate.

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? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

The liquidator invites all creditors that are included within the list provided by the debtor, to announce their claims within three months of 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 verification of their claims through filing a petition before the bankruptcy court.

Three days following the lapse of the time period that is established for the announcement of creditors' claims, the liquidator 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, the liquidator or other 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 date.

29 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.

30 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 post-filing financing or credits (but excluding any equity contributions) provided on the basis of a ratified recovery or reorganisation plan;
- due claims of the state arising from value added tax (VAT) as well as its surcharges;
- unpaid employee remuneration incurred in the two years prior to bankruptcy being declared, including employment termination compensation and lawyers' fees, regardless of when they occurred;
- taxes excluding due claims arising from VAT and its surcharges; and
- social security contributions that date up to 24 months prior to the declaration of bankruptcy.

Where general (statutory) privileged claims and secured creditors' claims coincide, proceeds are divided in two parts (the system of separation of proceeds). Prior to separation bankruptcy expenses are paid, afterwards due claims of the state arising from VAT and its surcharges are paid, then unpaid employee remuneration incurred within two years before bankruptcy was declared, including termination compensation and lawyers' fees and social security contributions that date up to 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.

31 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 liquidator can terminate employment contracts lawfully without paying the statutory compensation at the time the termination occurs. 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.

32 Pension claims

What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

Claims by the Social Security Fund dating from 24 months prior to the declaration of insolvency are treated as priority claims and are satisfied as a matter of general priority (set out in greater detail in question 30).

Employee claims that have arisen within two years of the declaration of insolvency are also given special priority under statute. The Bankruptcy Code does not distinguish between claims for unpaid wages and salaries and claims for unpaid voluntary benefits such as unpaid pension contributions, which are also given the same priority.

33 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 the event that the bankruptcy proceedings are terminated because of insufficient funds or lack of assets to be liquidated, the debtor will resume management of its assets and affairs and creditors may reassume their individual enforcement actions against the debtor.

34 Distributions

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

Following liquidation of the debtor's estate, the liquidator draws up a list with regard to distributions that will be made to creditors. The liquidator may proceed in provisional distributions after having obtained the reporting 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.

35 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
- creation of 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 avoided 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.

36 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 debtor's 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 liquidator. Nevertheless, creditors are not deprived of their right to claim the annulment of a transaction provided that the liquidator, 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 35.

37 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?

Failure to withhold or pay income tax, or to collect or pay VAT by a corporate entity makes the directors, administrators, executive managers, executive directors and liquidators of a joint-stock company liable for payment of such tax (Law No. 2238/1994, as in effect). Similarly, management members are also liable for payment of income tax owed by the company or withheld by a company that was wound up. Moreover, failure to pay certified tax debts is a criminal offence for which liability attaches to the company management. The management is also criminally liable for the non-payment of salaries and other employment dues (including social security contributions).

If management fails to file promptly a petition for the declaration of bankruptcy, its members may be held personally liable for the satisfaction of additional debts incurred by the debtor from the date the petition should have been filed until the actual declaration of bankruptcy. Furthermore, if bankruptcy is the result of a fraudulent act or gross negligence attributable to any members of management, the responsible persons are liable to compensate creditors.

In addition, criminal sanctions may be imposed on officers and directors in cases of, for example, hiding assets, onerous transactions, disposal of merchandise at an undervalue, false statements and dissipation of debtor assets.

38 Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

As a general rule, the parent company is not liable for the corporate debts incurred by any of its affiliates or vice versa. This is in accordance with the principle of separate corporate personality of each company member of a group. Nevertheless, a parent company or an affiliated corporation may be responsible for the liabilities of a subsidiary or an affiliated company if, under the terms of any concluded agreement, the former is co-debtor or guarantor of the latter.

In a case of joint and several liability, if any of the co-debtors (including the principal debtor) is declared insolvent, the creditor has the right to claim full satisfaction of its claim from each co-debtor if, at the time any co-debtor became insolvent, its claim was actually due and payable. If a creditor enforces its claim against one or more co-debtors and receives an amount exceeding the amount of its claim, then, the creditor must reimburse any co-debtor that has a right of recourse against the principal debtor or any co-debtor.

Similarly, in the case of a company that is a guarantor of another company member of the group, the creditor may exercise its rights against the principal debtor that is declared insolvent as well as against the guarantor. In the case of excess payment of its claim, the creditor reimburses the guarantor with the excess amount provided that the latter has the right of recourse against the principal debtor. Alternatively, the creditor may reimburse the excess amount to the liquidator.

39 Insider claims

Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

The Bankruptcy Code provides a set of rules for the annulment of transactions contemplated during the period from cessation of payments to bankruptcy declaration, and also damage to creditors. The Code presumes that insiders (founders, managers and directors) are aware of the debtor's suspension of payments, and ordinary arm's-length transactions within the debtor's professional or business activities may not be annulled. Claims against the debtor may be verified by the liquidator before the reporting judge against the debtor's books and records. The debtor, the liquidator and creditors whose claims have been verified may contest claims asserted against the debtor, in which case the Bankruptcy Court will have the final decision. Finally, the Code provides for criminal sanctions in the event of onerous transactions, disposal of merchandise at an undervalue, false statements, dissipation of debtor assets, false acceptance of debts and favourable treatment of creditor.

40 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, but in principle secured creditors are not barred from enforcing their rights and remedies against the debtor's property.

Update and trends

Given the constraints of a distressed market, overburdened courts and lack of an insolvency profession (insolvency matters are usually handled by generalists, both lawyers and accountants, while there are no specialised insolvency laws), there have been very few successful restructurings even though the proceeding is resorted to with frequency. The relevant legislation has already been revised several times since its introduction in 2007, and it seems necessary to undertake a new overhaul effort. Main points to be addressed should reducing involvement of courts and clarification of ratification standards.

In terms of individuals, non-merchant debtors who seek release from their debts must rely on the law for the Arrangement of Debts of Over-indebted Individuals' (Law No. 3869/2010 as amended), as the Greek Bankruptcy Code has always applied to merchants, whether individuals or legal entities, and any for-profit entities. This law is the first piece of Greek legislation to deal with non-merchant insolvent individuals, providing them with a method of achieving a judicial settlement with creditors by a scheme of arrangement and subsequently being discharged from all the remaining debts provided that they honour their obligations pursuant to the scheme.

Law No. 4161/2013, published on 14 June 2013, introduced significant amendments to the aforementioned Law No. 3869/2010. The reasons for such a legislative reform are various and of the essence. This law, before the recent reform, provided that an individual first attempt an out-of-court settlement with its creditors. The pursuit of such a settlement imposed an unjustified financial burden on the debtor as well as a further delay to the procedure and, thus, the abolition of such obligation on the debtor was imperative. In addition, the focus of the legislator was placed on eliminating the perceived submissions of abusive applications for judicial arrangement of debts. To that effect, Law No. 4161/2013 provides for the applicant debtor to proceed with monthly payments to its creditors from the submission of the application for judicial arrangement of its debts until the issue of a definitive judgment. Finally, Law No. 4161/2013 provides for the facilitation of the procedure before a competent judge (a justice of the peace), who may either order the settlement of the claims corresponding to creditors that are not included within the debt arrangement plan or defer the case to be dealt with at a later hearing date upon ordering the summoning of such creditors,

Last, the need to fill the public purse has lead to an increase of statutory priorities in favour of the state and pension funds, which are currently in a position to obtain satisfaction of their claims (albeit with long delays) in priority to virtually all other creditors, including secured creditors. This has created significant problems in reaching creditor consensus in restructuring plans (the state as well as employees, who also have first priority rank, see little economic incentive in accepting a reduction of their claims), while the long-term effects on the cost of credit and general availability of financing are likely to be significant and adverse.

41 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 an initial stage of distribution of segregated client assets (confusingly named 'special liquidation') and, thereafter, to liquidation or bankruptcy. 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.

42 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 the 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 have elapsed since the formal declaration of bankruptcy.

43 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.

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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.

44 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 45. 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 European Insolvency Regulation.

45 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?

The 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 most of the UNCITRAL Model Law, introduces the prospect of cooperation among the Greek courts, foreign courts and liquidators in different jurisdictions. Because of its relative novelty, that provision has not yet been tested in practice.

RESTRUCTURING & INSOLVENCY 2014 ISSN 1468-3180