Greece

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SECURITY AND PRIORITIES

1. What are the most common forms of security taken in relation to immovable and movable property? Are any specific formalities required for the creation of security by companies?

Immovable property

The following types of security are available for immovable property:

- **Mortgage.** This is the basic form of security taken in relation to immovable property. It ensures the preferential satisfaction of the creditor on the forced sale of the immovable asset, following the commencement of execution proceedings by any of the debtor's creditors (*see Question 5*). By agreement, a mortgage established over an industrial or business building can be extended to equipment "embedded" within that building (*Article 1, Law 4112/1929*).

- **Prenotation of mortgage.** A prenotation of mortgage is the most common form of security taken in relation to immovable property. It can be viewed as a conditional mortgage, which can be converted to a full mortgage (*see above, Mortgage*), on the satisfaction of various formal requirements (*see below, Formalities*).

Movable property

The following types of security are available for movable property:

- **Pledge.** This is the most common form of security, and it ensures the preferential satisfaction of the creditor on the movable asset's forced sale, following the commencement of execution proceedings (*see Question 5*). A pledge is created by an agreement between the owner and the creditor.

- **Chattel mortgage (*Articles 1 and 3, Law 2844/2000*).** A chattel mortgage allows the debtor to retain possession and use of the movable 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 (*see Question 5*).

  The chattel mortgage has the following restrictions:

  - it can only be granted by businesses to other businesses;
  - it cannot be established over securities or negotiable instruments.

- **Floating charge (*Article 16, Law 2844/2000*).** 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 movable assets are available at that time.

  A floating charge has the same restrictions as a chattel mortgage (*see above*).

- **Retention or 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 can occur in two situations:

  - it is common in sales on credit for the seller to retain ownership until full payment of the consideration; and
  - a debtor can conditionally transfer, to the creditor, the ownership of movable assets to secure the performance of its obligations (*fiducia cum creditore*). Once the obligations are fulfilled, ownership reverts automatically to the debtor.

- **Third party structure.** This can include the delivery of a movable asset to a custodian. However, a structure does not provide the creditor with the right to enforce its claims against the asset (right *in rem*), but rather to enforce its rights against the third party (right *in personam*). Therefore, the degree of protection depends on:

  - the enforceability of the relevant contractual provisions; and
  - the credibility of the intermediary third party.

  Greek law does not recognise the concept of a trust, commonly used in other jurisdictions to secure claims or rights.

Formalities

The following formalities apply:

- **Mortgage.** The creditor must hold a title which arises from:

  - a specific legal provision;
  - a final court order; or
  - an agreement concluded with a public notary.

The creditor must register its title with the competent Land Registry. The date of registration of the mortgage with the Land Registry determines the creditor's priority, if more mortgages are established on the same immovable property.

- **Prenotation of mortgage.** A prenotation costs less to register than a full mortgage. The creditor must make a petition to the competent court, which then makes an interim order granting the creditor the right to register a mortgage over the immovable asset within 90 days after the creditor's claim has been awarded by a final (non-appealable) court judgment.

  When a prenotation has been converted into a full mortgage, the mortgage is deemed to have been registered as from the date of the prenotation's registration. This secures the priority of the mortgagee over:

  - subsequent securities established over the immovable property; and
  - the debtor's general creditors (*see Question 2*).

- **Pledge, chattel-mortgage or floating charge.** The law requires an agreement between the owner and the creditor which must:

  - be in writing (either by a notarial deed, or a written agreement (the signatories of which are authenticated by a public authority));
  - have a secure date (either the date of the deed or the date of authentication of signatures); and
  - adequately describe the secured claim and the charged asset.

  Additionally:

  - for a pledge, the possession of the asset must be delivered to a person other than the owner; and
  - for the establishment of a chattel mortgage or floating charge, the agreement must be registered on a special book kept by the Land Registry.

  Greece has implemented Parliament and Council Directive (EC) No. 47/2002 on Financial collateral arrangements (*Law 3301/2004*).

2. Where do creditors and shareholders rank on the bankruptcy of a company?

A bankrupt company's estate is distributed in the following order of priority:

- **Bankruptcy expenses.** These are obligations incurred by the receiver, including its remuneration.
- **Generally preferred creditors.** These are creditors with certain claims that enjoy priority in the following order:
  - employee claims incurred within two years before the bankruptcy, including termination compensation and lawyers' fees;
  - state claims (mostly taxes);
  - social security fund claims.
- **Secured creditors.** These are creditors with debts secured by:
  - a mortgage;
  - a chattel mortgage; or
  - a pledge over the debtor's assets.

  Secured creditors can elect to either:
  - exercise their "real right" (that is, seek satisfaction from the proceeds of the secured asset sale);
  - enforce their claim through the bankruptcy procedure and lose their security right.

  Where there is a conflict between the rights of generally preferred and secured creditors, the sale proceeds of an encumbered asset are divided into two parts (the system of the separation of the sale proceeds):
  - the generally preferred creditors receive one-third;
  - the secured creditors receive the remaining two-thirds.

  If the secured creditors are not totally satisfied, they rank as unsecured creditors for the remainder of their claim.
- **Unsecured creditors.** Debts owed to unsecured creditors are satisfied in accordance with the *pari passu* principle, which means that if the assets are insufficient to meet all the unsecured claims, the unsecured creditors receive payment in proportion to the size of their claims.
- **Shareholders.** Any surplus after all debts are discharged is returned to the shareholders.

3. Are there any mechanisms used by trade creditors to secure unpaid debts?

No specific mechanisms, other than retention or transfer of ownership of property, are used by trade creditors to secure unpaid debts (*see Question 1*).

RESCUE AND BANKRUPTCY PROCEDURES

4. Please briefly describe rescue and bankruptcy procedures that are available in your jurisdiction. In each case, please state:

- **The objective of the procedure and, where relevant, prospects for recovery.**
- **Companies to which it can potentially apply.**
- **How it is initiated, when and by whom.**
- **Substantive tests that apply (where relevant).**
- **How long it takes.**
- **The consents and approvals that are required.**
- **The effect on the company, shareholders and creditors.**

Company voluntary agreement (CVA)

- **Objective.** The objectives of a CVA are:
  - primarily, the rescue of a financially distressed enterprise; and
  - secondarily, the partial satisfaction of the creditors through the conclusion of a binding compromise.
- **Companies.** The legal provisions regulating CVAs apply to business enterprises, including legal entities, irrespective of their commercial character, but not to:
  - credit institutions; and
  - insurance companies.
- **How, when and by whom.** A company can begin, at any time, proceedings relating to the conclusion of a CVA over its debts. The company is represented by its competent corporate bodies, which are:
  - the board of directors where the company is still operating; or
  - the liquidator or receiver, if the company is in liquidation or bankruptcy.

  The other party to a CVA comprises some, but not necessarily all, of the company's creditors. A specified majority of the creditors binds the minority.

  If a company and its creditors successfully conclude a CVA, it must be confirmed by the court of appeal that has jurisdiction over the company's registered office, following a petition by either:
  - the company;
  - at least one of the contracted creditors.

  The petition must also be notified to:
  - the Greek government;
  - the social security funds; and
  - any creditor banks that are not parties to the arrangement.

  The decision confirming the CVA cannot be annulled by the supreme court.
- **Substantive tests.** A company must satisfy at least one of the following conditions for the court to confirm a CVA:
  - it has suspended or ceased its operation due to financial problems;
  - it has ceased payment of its due debts;
  - it has been declared bankrupt; or
  - it has, in aggregate, debts five times its capital and booked reserves (net equity).

  The court examines the existence of these conditions.
- **How long.** There is no specified time limit for the conclusion of a CVA. However, following the hearing of the case, the court must issue its decision within 20 days.
- **Consents and approvals.** The CVA can only be confirmed by the court if it has verification that:
  - it is accepted by creditors representing at least 60% of the total amount of debts, including at least 40% of secured debts;
  - the partners or shareholders representing the majority of the paid capital consent in writing; and
  - the company, through the CVA, has assured the payment of contributions that are due to the social security funds.
- **Effect.** Any CVA validly reached is also binding on the dissenting creditors including:
  - the Greek state;
  - social security funds;
  - banks.

  Any existing guarantees, mortgages, pledges or other real rights attached to the properties of the company remain valid security for their debts. However, these claims are restricted through the conclusion and confirmation of the CVA and, if the parties to the CVA agree to reduce all of the creditors' claims (for example, by 40%), the amount of the debt secured is reduced accordingly. If the company violates the CVA, it goes into special liquidation (*see below, Special liquidation*).

Company supervision

- **Objective.** The objective of this procedure is to facilitate any possible CVA through the support of a court appointed person (commissioner).
- **Companies.** See above, *Companies*.
- **How, when and by whom.** A company is placed under the commissioner's supervision by means of an order issued by the court of appeal with jurisdiction over the company's registered office, following a petition to the court by the company itself or any of its creditors, representing at least 51% of the aggregate amount of its debts. If made by the creditors, the court must appoint as commissioner the person they designate in their petition. If made by the company, the creditors must consent to the appointment of the commissioner. An order cannot be annulled by the supreme court and is subject to the publication formalities applicable to the type of company (for example, joint stock company).
- **Substantive tests.** A company must meet the substantive tests for a CVA (*see above, Substantive tests*) and creditors representing at least 51% of the aggregate amount of the company's debts must request, or consent to, the appointment of a commissioner.
- **How long.** A hearing is scheduled after a petition has been filed. The court must issue its decision within ten days after the hearing. The commissioner has six months (the commissioner can ask the court for a three-month extension) to achieve a debt rehabilitation arrangement between the company and its creditors.
- **Consents and approvals.** There are no particular consent and approval requirements other than those relating to the appointment of the commissioner.
- **Effect.** Between the publication of the court decision appointing the commissioner, and the conclusion of the agreement over the company's debts, any legal proceedings against the company, as well as any provisional measures against it, are automatically suspended. Interest accruals are also suspended.

  The commissioner does not replace the corporate bodies of the company. However, the following are subject to the commissioner's previous consent:

  - any disposal of the company's assets;
  - any amendment of its articles of association.

  During the performance of his duties, the commissioner is allowed full access to the books, accounts and correspondence of the company.

  If the company and its creditors fail to reach a debt rehabilitation arrangement within the time limit, or the arrangement terms are not fulfilled, the company goes into special liquidation (*see below, Special liquidation*).

Bankruptcy

- **Objective.** The main objective of bankruptcy proceedings is to make debt repayments to the creditors in proportion to the size of their claims.
- **Companies.** Bankruptcy proceedings apply to natural persons and legal entities that engage in commercial activities. The commercial character of the entity must be proved to the court, except if the entity is:

  - a joint stock company;
  - a limited liability company; or
  - a general or limited liability partnership.

- **How, when and by whom.** The bankruptcy procedure can be begun at any time by either a creditor or a debtor filing a relevant petition before the first instance courts of the area where the registered office of the debtor is situated. If made by a creditor, notice of the bankruptcy petition must be given to the debtor at least 24 hours before the hearing. At the hearing, the petitioner must prove that the debtor is a commercial enterprise (*see above, Companies*) that meets the substantive tests (*see below, Substantive tests*). Bankruptcy is pronounced by a court order which must:

  - appoint a judge-rapporteur, to supervise the bankruptcy proceedings;
  - appoint a temporary receiver; and
  - convene a creditors' statutory meeting, which recommends a permanent receiver to the court.

  The court order is registered with the special registry of bankrupt companies and is subject to review by the court of appeal following a petition by the company or a creditor.

  The bankruptcy must be published in the *Lawyers' Pension Fund* bulletin and several newspapers. All creditors are required to notify their claims to the receiver within 20 days after the last publication. The receiver and the judge-rapporteur need to verify and approve the existence and amounts of the claims announced. Creditors whose claims have been approved by the receiver and the judge-rapporteur must take an oath before the judge-rapporteur that their claim, as approved, is true.

- **Substantive tests.** A debtor is decreed bankrupt if it has ceased or suspended payment of its due debts. The suspension of payments must be due to a permanent and general inability of the debtor to meet its obligations and not due to temporary reasons, or the debtor's refusal to pay certain of its debts for other (sometimes justifiable) business reasons.
- **How long.** The period between the bankruptcy petition and the issue of the bankruptcy order depends on the workload of the first instance court. Usually, and provided the hearing

is not postponed, the order can be issued within six months following the petition.

However, the bankruptcy procedure can last for years, depending on the complexity and size of the bankrupt's estate. If the bankrupt's estate lacks the required assets to finance the continuation of the bankruptcy proceedings, the court, based on a report by the judge-rapporteur and the opinion of the receiver, can declare the bankruptcy proceedings closed.

In any other case, the bankruptcy proceedings are concluded by:

- a bankruptcy composition (an agreement between the bankrupt and at least certain of its creditors) (*see below, Consents and approvals*); or
- the formation of a creditors' meeting. The creditors act jointly and decide all basic matters concerning the bankrupt's estate in general meetings convened by the judge-rapporteur. The receiver must proceed to the liquidation of the bankrupt's estate and satisfy the creditors.

- **Consents and approvals.** Following a bankruptcy order, the creditors who have announced their claims are invited to a meeting in order to deliberate on a possible bankruptcy composition where the claims of the creditors are reduced. The agreement is validly reached if accepted:
  - by a majority of creditors representing at least 75% of all announced claims, if the claims are to be reduced by less than 40%;
  - by a majority of creditors representing at least 80% of the claims, if the claims are to be reduced by more than 40% but less than 75%;
  - by two-thirds of creditors representing at least 80% of the claims, if the claims are to be reduced by more than 75%; or
  - by a majority of creditors representing at least 75% of the claims, if the bankruptcy estate is to be delivered to the creditors (that is, the whole of the bankruptcy estate is liquidated by administrators elected by the creditors and the proceeds are distributed to the creditors).

- **Effect.** Joint stock companies and limited liability companies are dissolved through the bankruptcy procedure. A partnership is not dissolved, although its general partners become bankrupt.

  After appointment, the receiver's principal duties are to:
  - initiate all bankruptcy actions;
  - substantiate all the creditors' claims (by reviewing their validity and amounts);
  - liquidate the assets; and
  - distribute the proceeds to the creditors in accordance with the order of priority set out in *Question 2*.

  On issue of the bankruptcy order, the bankrupt remains the owner of the bankruptcy estate but is deprived of the authority to administer it, which vests with the receiver. The receiver is authorised to sell any merchandise (goods or other movable assets) that is time sensitive, such as perishable goods. In relation to other merchandise, the receiver must obtain the judge-rapporteur's consent to sell, provided that the bankrupt has been heard. Before the sale of any real property, the receiver must obtain:
  - the judge-rapporteur's permission; and
  - a court approval.

  From the date of the bankruptcy order:
  - interest (other than for secured claims) ceases to accrue;
  - all enforcement proceedings are suspended; and
  - every lawsuit or claim must be addressed to the receiver.

Special liquidation

- **Objective.** This is a procedure where the assets of the company are liquidated as a whole, or in substantial parts. The aim of this procedure is to achieve the maximum consideration possible for the company's assets and to satisfy the creditors.

- **Companies.** These procedures apply to business enterprises, including legal entities, regardless of their commercial character, with the exception of:
  - credit institutions; and
  - insurance companies.

- **How, when and by whom.** Creditors representing at least 20% of the aggregate amount of the company's due debts can file a petition to the court of appeal with jurisdiction over the company's registered office. A company that has initially been placed under a commissioner's supervision, but has subsequently failed to reach a CVA with its creditors, or failed to fulfil its terms, is also subject to special liquidation.

  Once a court order is made, the company is placed into special liquidation and a liquidator is appointed. The court must appoint as liquidator the person designated by the creditors representing at least 51% of the aggregate amount of the company's debts.

- **Substantive tests.** For a company to be placed into special liquidation, it must satisfy one of the following conditions:
  - it has suspended or ceased its operation due to financial problems;

- it has ceased its payments (that is, it has not paid, for at least six months, due debts amounting to 20% or more of the total amount of the company's due debts, or it has debts greater than about EUR880,000 (about US$1.15 million));
- it has been pronounced bankrupt;
- it has been placed into liquidation of any kind;
- it demonstrates proven inability to pay its matured debts due to one of the following:
  - a decrease in turn-over and the number of employees, because of lack of cash flow;
  - a decrease in the cash coming into the company;
  - the deterioration of the cash flow indexes (the cash flow from operating activities).

The company's inability to pay its due debts can be proved by a statement of one or more of the banks who mainly finance the company that they will cease to provide their financial support.

The court examines the existence of these requirements.

- **How long.** The court must fix a hearing date no later than five days from the filing of the petition and issue an order within 15 days after the hearing. The liquidator has six months (which can be extended to 12 months) to liquidate the company's assets. The liquidator's task is deemed fulfilled after the setting of the date of the first auction of any of the company's substantial (in value) assets.
- **Consents and approvals.** There are no particular consent and approval requirements other than those relating to the appointment of the liquidator.
- **Effect.** After the filing of a petition, and while the liquidation procedure is in progress, any enforcement proceedings against the company, as well as any provisional measures against it, are not allowed or, if already in progress, are automatically suspended.

  The placement of the company into special liquidation does not necessarily entail its winding up. After the publication of the court order, the corporate bodies of the company, although still in existence, are deprived of their powers, and the liquidator undertakes to administer and represent the company. The liquidator is solely entitled to take any legal action regarding the disposal or administration of the company's assets.

  Once the company is placed into special liquidation, all of its employment contracts are automatically terminated.

  Following a petition of the company's creditors, representing 51% of the aggregate amount of its due debts, the court can place the company into a special liquidation of a different nature than the one described above. A bank is appointed as liquidator, which drafts an inventory and an evaluation of the company's assets with the purpose of selling the enterprise in whole (not in parts), through a public auction, to the highest bidder. In this case, the bidder acquires the enterprise free from any debts or encumbrances and the employment contracts are not terminated.

5. Are there any procedures (other than formal rescue or bankruptcy procedures) that can be invoked by creditors to recover their debt?

Creditors can individually attempt to recover their debt through ordinary legal proceedings. The creditor can enforce its rights after the acquisition of an executory title against the debtor, which can be (*Article 904, Code of Civil Procedure*):

- A payment order given by a judge (*see below*).
- A final judgment of a court, as well as a judgment that is subject to appellate review but which has been declared as provisionally enforceable.
- An arbitral award (an award from an official dispute resolution/arbitration body).
- A compromise agreement entered into before any court.
- A notarial deed evidencing the debt.
- A foreign executory title declared enforceable by the courts (*see Question 8*).

Several other laws provide for executory titles, which are mostly issued in favour of the state.

The most common procedure for obtaining an executory title is to file a petition for the issue of a payment order, through summary *ex parte* proceedings. The order is issued for an unconditional debt, evidenced by a public or a private document (if the claim can be deduced from the document in a clear and undisputed way).

Documents supporting such debts are usually:

- Invoices (accepted by the debtor).
- Cheques and other promissory notes.
- Banking loan agreements with supporting documentation.

A creditor with an executory title can confiscate any of the debtor's assets, proceed to their forced sale (usually through an auction) and claim satisfaction from the sale proceeds. Assets sold through a forced sale are relieved from all encumbrances, and secured creditors of the debtor are satisfied in priority to other creditors.

LIABILITY AND TRANSACTIONS

6. Are there any circumstances in which a director, parent company (domestic or foreign) or other party could be held liable for the debts of a bankrupt company?

Creditors are not usually entitled to sue the directors of a joint stock company or the administrators of a limited liability company directly, and can be satisfied only through the company's bankruptcy estate.

However, in the case of a fraudulent bankruptcy, the creditors can seek compensation from the persons responsible in tort.

The state and social security funds can pursue their claims (and file associated criminal charges) for unpaid and outstanding taxes against the executive directors or administrators of:

- Joint stock companies.
- Limited liability companies.

The corporate veil has only been pierced once (by a supreme court decision). Therefore (provided no guarantees or letters of comfort are issued) it is highly unlikely that a shareholder will be held liable for the debts of its subsidiary.

7. Can transactions that are effected by a company that subsequently becomes bankrupt be set aside?

The court can provide the specific date from which the bankrupt's payments must be suspended in the bankruptcy order. This cannot be more than two years before the date of issue of the bankruptcy order. If the date is not set in the order, it is deemed to be the date of the order, or the date on which the debtor declared suspension of payments.

The period between the bankruptcy order and the actual date that payments are suspended (if not set out in the bankruptcy order) is called the "dubious period". All property transactions made without adequate consideration, or payments of debts which are not yet due, during the dubious period are automatically null and void.

During the dubious period, the following transactions are also null and void if the bankruptcy creditors raise objections to them:

- Any security awarded after the creation of a debt and without consideration.
- Any payment of due debts by means other than in cash.

If the creditors can show that the third party who transacted with the bankrupt entity was aware of the suspension of payments, they can ask the court to void the transaction.

INTERNATIONAL CASES

8. Please state whether:

- **Courts in your jurisdiction recognise bankruptcy and rescue procedures in other jurisdictions.**
- **Courts co-operate where there are concurrent proceedings in other jurisdictions.**
- **There are any international treaties relating to bankruptcy to which your jurisdiction is a signatory.**

- **Recognition.** A foreign bankruptcy order can be recognised in accordance with the provisions of the Code of Civil Procedure regulating recognition of all foreign judgments. For recognition, the following provisions must be met (*Article 780, Code of Civil Procedure*):
  - the foreign court must have applied the same law that would be applicable under Greek private international law;
  - the foreign court must have had jurisdiction over the case under the private international laws of the jurisdiction of the applicable law; and
  - the bankruptcy order is not opposed to Greek public order.
- **Concurrent proceedings.** Greek courts must perform certain procedural acts that fall within their jurisdiction on a request from a foreign authority, provided that these acts are not opposed to Greek public order.
- **International treaties.** Under Council Regulation (EC) No. 1346/2000 on Insolvency proceedings (applicable from 31 May 2002), any judgment beginning insolvency proceedings, issued by a court of a member state which has jurisdiction over the case, must be recognised by all other member states from the date when it becomes effective in that member state.

  The courts of a member state have jurisdiction when the registered offices of the debtor company are situated within the state's territory. Another member state has jurisdiction to begin insolvency proceedings against that company only when it possesses an establishment within their territory; those proceedings are restricted to company assets situated in that territory.

  Greece has not adopted the UNCITRAL Model Law on Cross-border Insolvency 1997 and it is not party to any bilateral treaties that are specific to bankruptcy proceedings.

PROPOSED REFORMS

9. Are there any proposals for reform to bankruptcy law in your jurisdiction?

There are no current proposals to reform bankruptcy law.