Restructuring & Insolvency 2021

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the 14th edition of *Restructuring & Insolvency*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ireland and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine Balmond and Katharina Crinson of Freshfields Bruckhaus Deringer, for their assistance with this volume.

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For further information please contact editorial@gettingthedealthrough.com

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Greece

Stathis Potamitis, Eleana Nounou and Konstantinos Rachianiotis
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GENERAL

Legislation

1 What main legislation is applicable to insolvencies and reorganisations?

The Bankruptcy Code (in its current state, Law 3588/2007 as amended by Law 3858/2010, Law 4013/2011, Law 4055/12, Law 4072/12, Law 4336/2015, Law 4446/2016, Law 4472/2017, Law 4491/2017, Law 4512/2018 and Law 4689/2020) 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, the EU Regulation on Insolvency Proceedings also applies.

Excluded entities and excluded assets

2 What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or 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 cannot be declared bankrupt.

Regulated entities are governed as follows:

- insurance companies can be declared bankrupt but not prior to the conclusion of a special winding-up process as provided by Law 4364/2016 that adopted the provisions of Directive 2009/138/EC;
- any credit institution whose licence is revoked by the Bank of Greece is placed into special liquidation. Greece adopted the provisions of the banking resolution directive; and
- investment services companies can be declared bankrupt, although any bankruptcy proceedings may be suspended by virtue of article 22 of Law 3606/2007, as amended by Law 4474/2017, if the Hellenic Capital Markets Committee revokes such a company's licence, thus leading to an initial stage of distribution of segregated client assets (named 'special liquidation') and, thereafter, to liquidation or bankruptcy.

Non-merchant individuals are excluded from general bankruptcy proceedings, but Law 3869/2010, as amended by Law 3996/2011, Law 4019/2011, Law 4161/2013, Law 4336/2015 and Law 4549/2018, has introduced certain protective measures for individuals facing financial distress; these 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.

Law 4605/2019 introduced a new procedure for the protection of the primary residence of any individual (ie, unemployed, employees, retired, self-employed, professional, farmers, merchant/entrepreneurs/general partners) provided that certain conditions are met and the relevant applications are filed until 31 July 2020.

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 this 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 proceedings have been initiated.

Public enterprises

3 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

All commercial undertakings regardless of public or private ownership are subject to the Bankruptcy Code. Specific regulated sectors are subject to special rules.

Protection for large financial institutions

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

There is no specific legislation for institutions that are too big to fail. Nevertheless, 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 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. In connection with this funding, Greece has adopted the banking resolution directive (Law 4335/2015), which includes, among other things, bail-in requirements and other burden-sharing provisions.

Courts and appeals

5 What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

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, 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.

As a general rule, the decisions issued by the bankruptcy court are subject to an appeal and appeal in cassation unless otherwise provided in the Greek Bankruptcy Code (GBC). However, the decisions of the bankruptcy court with regard to the appointment or replacement of the reporting judge and the bankruptcy administrator (syndikos) are excluded from the above-mentioned judicial review.

The court decision that declares the debtor bankrupt, the decision upon the challenge exercised by any creditor who failed to announce its claims within the statutorily established time period and which aims at the verification of the creditor's claims by the bankruptcy court as well as the decision upon a lawsuit exercised by the bankruptcy administrator or any creditor to set aside transactions that were made during the suspect period are subject to an appeal and appeal in cassation.

However, the decision that ratifies the recovery agreement may not be appealed. Solely the decision that rejects the application for the ratification of the recovery agreement may be appealed.

As far as the reorganisation plan is concerned, the decision that either ratifies or rejects the plan is subject to an appeal.

In case of realisation of the debtor's estate as a going concern, the reporting judge's decision by virtue of which the value of the business and the first bid price are determined is not subject to an appeal and appeal in cassation. The same applies when the reporting judge approves the transfer agreement, which is concluded with the highest bidder.

Each stage of the public auction procedure that is conducted for the sale of the debtor's estate either as a whole or for the piecemeal liquidation may be challenged by anyone who has a lawful interest with an opposition lodged before the bankruptcy court. The court order upon the opposition is not to judicial remedies. However, the decision upon an opposition against the distribution list is subject to an appeal and appeal in cassation.

Finally, the judgment on the discharge of the debtor is subject to judicial remedies.

In all aforementioned cases in which the exercise of an appeal is provided within the GBC, no special permission must be given to the appellant. However, the appellant must pay a fee of €150, otherwise the Court of Appeal will not examine the application.

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

6 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. Finally, another ground for the declaration of the debtor's bankruptcy is the mere possibility of insolvency provided that the debtor files a reorganisation plan along with the bankruptcy petition.

In principle, once a debtor is declared bankrupt, a bankruptcy administrator 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 – may permit the debtor to remain in possession and administration of its assets always along with the bankruptcy administrator's cooperation until the bankruptcy enters the stage of 'union of creditors'.

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' meeting 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 the decision that declares bankruptcy is published; accordingly, there will be no suspect period and no threat of transactions being set aside by the bankruptcy administrator.

Voluntary reorganisations

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

The Bankruptcy Code provides for two proceedings that are relevant to the restoration of a failed enterprise to financial health; the recovery procedure that precedes bankruptcy and the reorganisation plan, which is considered after the declaration of bankruptcy.

Pre-bankruptcy recovery procedure

A debtor either in cessation of payments or in a situation of imminent cessation of payments may file for the ratification of recovery agreement already reached with the qualified majority of creditors (60 per cent of the total claims, including 40 per cent of the secured claims). In addition, any debtor that is not in cessation of payments or in a situation of imminent cessation of payments can be subject to the recovery procedure, provided that the court considers it probable that the debtor will become insolvent, and insolvency can be lifted through implementation of the recovery procedure.

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 that may also include a convertibility feature.

From the submission of the recovery agreement to the Bankruptcy Court until its decision there is an automatic stay for a four-month

period on all individual and collective enforcement measures against the debtor. Such automatic moratorium is granted to the debtor only once. In case the court's decision is not published within the four-month period, the court may grant a suspension on all individual and collective enforcement measures against the debtor or any other preventive measure.

Before the submission of the recovery agreement, a moratorium may also be granted – at the request of the debtor or the creditors – if a creditors' declaration in writing of 20 per cent of the total claims is submitted provided that there is an imminent danger. Such stay can be granted by the court only once and for a maximum period of four months.

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.

The Bankruptcy Court will not examine the debtor's viability if the following conditions are met:

- contracting creditors agree with the content of the business plan;
- the recovery agreement contains listing of contracting and non-contracting creditors, the claims of which are expected to be effected from the materialisation of the recovery agreement; and
- the recovery agreement along with the business plan were served to all non-contracting creditors, the claims of which are effected from the recovery agreement.

A ratified agreement binds all non-consenting creditors (cram-down effect).

The reorganisation plan

Any debtor may propose a reorganisation plan either along with its bankruptcy petition or within three months of being declared bankrupt. The three-month period may be extended by the reporting judge only once and up to one additional month if it is proved that the extension is not detrimental to creditors' interests and the plan will be accepted by the creditors.

The main effects are as follows:

- This process 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 bankruptcy administrator'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).

Successful reorganisations

8 How are creditors classified for purposes of a reorganisation 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, including 40 per cent of the secured claims;
- it renders the debtor viable;
- non-signatory creditors receive at least as much as they would receive through 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.

The Bankruptcy Court will not examine the debtor's viability if the following conditions are met: contracting creditors agree with the content of the business plan; the recovery agreement contains listing of contracting and non-contracting creditors, the claims of which are expected to be affected from the materialisation of the recovery agreement; and the recovery agreement along with the business plan were served to all non-contracting creditors, the claims of which are affected by the recovery agreement, as for instance, when the recovery agreement provides for their write-off or for an extension of the repayment date.

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 one restriction: the proposed debt settlement must not prejudice creditors' classification.

The plan must mandatorily provide for 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 plan shall be approved by a majority of creditors representing 60 per cent of the total claims against the debtor, including at least 40 per cent of the secured claims.

With respect to a recovery agreement, pursuant to the provisions of the Greek Bankruptcy Code (GBC), a guarantor's or co-debtor's liability is limited to the value of the claim against the debtor, as such claim was reduced in accordance with the ratified agreement and provided that the relevant creditor consented to the reduction. There is a similar provision with respect to a reorganisation plan.

Involuntary liquidations

9 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

Any creditor can file a petition to have its debtor declared bankrupt when the latter is in cessation of payments. Insofar as the effects of

an involuntary liquidation are concerned, the process follows the same steps as a voluntary liquidation.

Special administration proceedings

Any natural or legal person that may be declared bankrupt and being in a general and permanent inability to meet its overdue financial obligations (cessation of payments) may be placed under special administration of article 68 et seq of Law 4307/2014. Alternatively, in case of joint-stock companies, they may be subject to the special administration procedure if they fulfil for two consecutive financial years the requirements of article 48 (1) of Law No. 2190/1920 (as of 1 January 2019, article 165 (1) of Law No. 4548/21018 is applicable) for dissolution (in particular, as of 1 January 2019, when the company does not have the minimum share capital required by law or the financial statements of at least two consecutive financial years have not been published and approved by the general meeting). The petition may be filed by a creditor or creditors whose claims represent at least 40 per cent of the total claims against the debtor. The calculation of the percentage of the applicant creditors, who must include at least one financial institution, shall be based on a list of creditors drawn up by an accountant, tax adviser or an auditor. A written declaration of the proposed special administrator that he or she accepts the position, if appointed, is filed along with the petition for the placement of the debtor under special administration.

The special administrator shall be an auditor or auditing company, a lawyer or law firm with financial-technical expertise or a certified accountant. The special administrator shall be independent from the debtor (ie, not a person affiliated with the debtor's management or having acted as the debtor's auditor during the last five years).

After the publication in the General Commercial Registry of the decision that places the debtor under special administration, the special administrator is assigned with all powers of the statutory bodies of administration and management of the company (ie, general assembly and board of directors). He or she is the representative of the company towards third parties and undertakes the day-to-day operation of the company. Also, the obligation of the general assembly of shareholders to approve the financial statements is suspended during the special administration.

The special administrator is appointed for a period of 24 months that can be extended for an additional six-month period following a court decision.

The law provides for an automatic stay suspending the rights of creditors (including the state, social security funds) to enforce claims against the debtor and its assets until the termination of the special administration procedure.

The procedure is a non-consensual one, designed to promptly transfer (through one or more public auctions with no reserve price conducted by the special administrator) the total assets of a debtor's business as a going concern or any branches of the business or any individual assets to the successful bidder and the creditors are satisfied from the auction proceeds. Upon termination of the auction process, the special administrator prepares an auction report announcing the successful bidder; such report is submitted to the court for approval. If only one offer is submitted, the assembly of creditors is convoked by the administrator to approve the offer. If the offer is not approved by the assembly of creditors, the special administrator files for the debtor's bankruptcy (unless the special administrator believes that a new public auction will be successful).

The court judgment approving the successful bidder is not subject to legal recourses. However, any person having a lawful interest and who was not summoned to attend the hearing may file a third-party objection. The court appoints a reporting judge for the purposes of the distribution of the auction proceeds in accordance with the ranking held by each creditor.

The process is terminated and the special administrator files for the debtor's bankruptcy in the event that either no bids are filed for the transfer of the business on a going concern basis (unless the special administrator believes that a new public auction will be successful) or the transfer of at least 90 per cent of the debtor's assets has not been achieved in 24 months (or in 36 months in case of an extension granted by court decision), which is the maximum duration of special administration proceedings (exceptions apply).

Involuntary reorganisations

10 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Pre-bankruptcy recovery process

Creditors representing 60 per cent of the total claims against the debtor, including 40 per cent of the secured claims, may file for ratification of a debtor's recovery agreement, as long as the debtor is in cessation of payments.

Reorganisation plan

Creditors representing 60 per cent of the total claims against the debtor, including 40 per cent of the secured claims, may file a reorganisation plan along with the bankruptcy petition against the debtor.

Once the proceedings are opened, there is no material difference to proceedings opened voluntarily.

Expedited reorganisations

11 Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

Yes. The GBC after its recent amendments provides only for an expedited pre-bankruptcy recovery process, in the sense that a recovery agreement may be filed for ratification without first petitioning for the commencement of the process.

Unsuccessful reorganisations

12 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 not ratify a 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 bankruptcy 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 an appeal.

In case the debtor fails to perform its duties under the recovery agreement, the agreement may be annulled following a petition filed by anyone having a lawful interest. As a result, the creditors' claims revert to their initial amount, as they were prior to the ratification of the recovery agreement, reduced by the amount that they have already received.

Reorganisation plan

The bankruptcy court may reject the plan if:

- the formalities with regard to the mandatory features of the reorganisation plan, the classification of creditors, the majority of creditors and the debtor's consent are not met;
- the acceptance of the plan is the consequence of a malicious act perpetrated by the debtor, any creditor, the bankruptcy administrator or any third party;
- rejection is dictated by public interest; or
- the plan prejudices the interests of dissenters, especially in case they will receive less than they would have in case of bankruptcy liquidation.

The court's decision is subject to an appeal.

The declaration of the debtor's bankruptcy entails the cancellation of implementation of the agreement or the plan. As a result, the creditors' claims revert to their initial amount, as they were prior to the ratification of the agreement or the plan. Any payment made from the debtor on the basis of the ratified agreement or plan and until the cancellation is not returned to the debtor, but it reduces the initial debt. In rem securities that according to the ratified recovery agreement were lifted do not revive, unless otherwise provided in the agreement. *In rem* securities that were created pursuant to the ratified recovery agreement are valid for the amount and the time agreed, unless otherwise provided therein.

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 there is a material breach of 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 (ie, repudiation, termination) and, if appropriate, may file for the debtor's involuntary bankruptcy.

Corporate procedures

13 | Are there corporate procedures for the 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 Market Commission 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 Law 4364/2016.

Conclusion of case

14 | How are liquidation and reorganisation cases formally concluded?

Recovery and reorganisation proceedings are concluded upon judicial ratification of the respective plan. Liquidation proceedings are concluded upon liquidation and distribution of all the debtor's assets. In addition, insolvency will be terminated if: the bankruptcy estate is inadequate to satisfy creditors' claims; or 10 years have elapsed since bankruptcy has entered the stage of 'union of creditors' (that is the commencement of the liquidation process); or 15 years have elapsed since the formal declaration of bankruptcy.

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

15 | What is the test to determine if a debtor is insolvent?

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. 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. The mere possibility of insolvency constitutes another ground for the declaration of the debtor's bankruptcy when the debtor files a reorganisation plan along with the bankruptcy petition.

Mandatory filing

16 | Must companies commence insolvency proceedings in particular circumstances?

Companies and merchants are required to file for bankruptcy within 30 days following cessation of payments.

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

17 | If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

Failure to file for bankruptcy in a timely manner will cause a company's 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. The aforementioned claims can be pursued only by the bankruptcy administrators and not by creditors who suffered the damage.

Directors' liability – other sources of liability

18 | Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? 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 bankruptcy administrators of a joint-stock company liable for payment of such tax. 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).

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.

Directors' liability – defences

19 What defences are available to directors and officers in the context of an insolvency or reorganisation?

The directors must file for bankruptcy within 30 days following cessation of payments, otherwise the members of the board of directors who are responsible for the delay are severally liable for the damages caused to corporate creditors.

Shift in directors' duties

20 Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

The Greek Company Law provides that the duty is owed to the company itself. However, the majority of jurists interpret the duty as being owed ultimately to the shareholders. The duty is to act exclusively in the interests of the company, and for the pursuit of the company's long-term economic well-being. The duties that directors owe to the corporation do not shift to the creditors when an insolvency or reorganisation proceeding is likely.

However, under article 98 of the Greek Bankruptcy Code, a company's management cannot ignore the interests of creditors when the company becomes insolvent, meaning that they must promptly file a petition for the declaration of bankruptcy, bringing the continuing operation of the company to an end (to the detriment of creditors). The members of the board of directors who are responsible for the delay are severally liable for the damages caused to corporate creditors.

Directors' powers after proceedings commence

21 What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Bankruptcy and reorganisation proceedings

The right to manage and transfer the debtor's assets passes to the syndikos after the commencement of the insolvency proceedings. Directors and officers, however, continue to exercise the rights that are irrelevant to the administration of the insolvency estate. For instance, the board of directors of a société anonyme and not the syndikos retains the authority to convene the general assembly of the shareholders of the company to approve the annual financial statements, while it is the board of directors that is solely competent to certify the payment of the share capital. 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 – may permit the debtor to remain in possession and administration of its assets, always with the syndikos' cooperation, and subject to being recalled if that is held to serve the creditors' interests.

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

Recovery procedure

In general, directors and officers remain in control of a corporation after the ratification of a recovery agreement. However, if it is provided within the terms of the recovery agreement, or following an application made by the debtor or any creditor, the bankruptcy court may appoint a special agent assigned with the following duties: to preserve the bankruptcy estate, perform special managerial tasks, or supervise the execution of the recovery agreement.

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

22 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 proceedings

In recovery proceedings, from the submission of the recovery agreement to the Bankruptcy Court until its decision there is an automatic stay for a four-month period on all individual and collective enforcement measures against the debtor. Such automatic moratorium is granted to the debtor only once. In principle, the interim measures may be imposed on creditors' claims that arose prior to the filing of the recovery agreement. Any moratorium regarding enforcement action automatically prevents transfer of the debtor's immovable property and equipment.

In case the court's decision is not published within the four-month period, the court may grant a suspension on all individual and collective enforcement measures against the debtor or any other preventive measure. However, in this case, unless the court decides otherwise, a provisional moratorium will not prevent the enforcement of employee claims. Also, 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. Unlike bankruptcy, the stay affects secured creditors as well. However, the declaration of bankruptcy does not suspend the individual enforcement of security rights, unless the debtor's business is sold as a going concern, or bankruptcy is said to enter the stage of 'union of creditors', in which case the list of creditors is finalised.

Before the submission of the recovery agreement, a moratorium may be granted – at the request of the debtor or the creditors – if a creditors' declaration in writing of 20 per cent of the total claims is submitted, provided that there is an imminent danger. This stay can be granted by the court only once and for a maximum period of four months.

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 bankruptcy administrator will continue the debtor's commercial activities for a certain period of time; lease the business; sell the company as a going concern through a public auction; or 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.

Special administration proceedings

Upon filing of the application, creditors may file a petition for preventive measures suspending any individual enforcement measures against the debtor.

After the placement of the debtor under special administration, there is an automatic stay on all enforcement measures (including the state, social security funds) against the debtor and its assets until the termination of the special administration procedure.

Doing business

23 When can the debtor carry on business during a liquidation or reorganisation? 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 creditors who supply goods or services. The court intervenes in key parts of the recovery process. The automatic moratorium regarding enforcement actions against the debtor automatically prevents transfer of the debtor's immovable property and equipment. Moreover, the court decides on the ratification of 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 goods and services to the debtor for the continuation of its business activities, are ranked as first-class general preferential creditors for the value of the goods and services provided, superseding all other creditors. Creditors that supplied goods and services during the negotiation period for the conclusion of a recovery agreement, regardless of its ratification and if it is provided within the terms of the recovery agreement, are also ranked as first-class general preferential creditors superseding all other creditors. In this case, the supply of goods or services must be provided within a time period of six months prior to the submission of the recovery agreement.

Finally, the recent amendments in the Greek Bankruptcy Code (GBC) provide for the satisfaction in full of the above super-seniority claims arising from supply of goods or services when general preferential claims coincide with secured and unsecured claims or in the case where general preferential claims coincide with unsecured claims.

The reorganisation plan

The right to manage and transfer the debtor's assets passes to the syndikos after the commencement of the insolvency proceedings. Directors and officers, however, continue to exercise the rights that are irrelevant to the administration of the insolvency estate. For instance, the board of directors of a société anonyme and not the syndikos retains the authority to convene the general assembly of the shareholders of the company to approve the annual financial statements, while it is the board of directors that is solely competent to certify the payment of the share capital. 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 – may permit the debtor to remain in possession and administration of its assets, always with the syndikos' cooperation, and subject to being recalled if that is held to serve the creditors' interests.

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

In reorganisation, the treatment is not the same as in recovery procedure of creditors who supply goods and services to the debtor. As a result, their claims are not are ranked as first-class general preferential creditors.

Special administration proceedings

The special administrator may receive new financing (ie, money or supply of goods or services) to keep the business in operation, which is granted 'super-seniority' status and is satisfied in full ahead of all other creditors.

Post-filing credit

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

There are no specific provisions with regard to funding upon commencement of liquidation proceedings.

However, creditors that pursuant to the recovery agreement or the reorganisation plan, provide loans or credit to the debtor for the continuation of its business activities, are ranked as first-class general preferential creditors, superseding all other creditors. Creditors that provided loans or credit during the negotiation period for the conclusion of a recovery agreement, regardless of its ratification and if it is provided within the terms of the recovery agreement, are also ranked as first-class general preferential creditors superseding all other creditors. In this case, the loans or credit must be provided within a time period of six months prior to the submission of the recovery agreement.

The recent amendments in the GBC provide for the satisfaction in full of the above super-seniority claims arising from loans or credit provided to the debtor, when general preferential claims coincide with secured and unsecured claims or in the case where general preferential claims coincide with unsecured claims. The same applies in special administration proceedings.

Sale of assets

25 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?

Until the ratification of a reorganisation plan or a decision of a creditors' meeting 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.

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.

Negotiating sale of assets

26 Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

'Stalking horse' bids are not possible because all sales are conducted by means of a public auction in which all bidders participate on identical terms. Bilateral negotiations even prior or after are excluded.

Credit bidding is permitted under limited circumstances, such as when the debtor's movables are acquired by the debtor's creditor who commenced enforcement proceedings provided that no other creditor announced any claim against the debtor.

Rejection and disclaimer of contracts

27 Can a debtor undergoing a liquidation or 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? What happens if a debtor breaches the contract after the insolvency case is opened?

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

The GBC 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 specifically, the bankruptcy administrator has the right to opt for the performance of the aforementioned contract. If the bankruptcy administrator 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 bankruptcy administrator 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. In that case, provided that the breach of the contract constitutes an event of default, the contract may be terminated, regardless of the debtor's insolvency.

Intellectual property assets

28 May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

There are no special provisions regarding IP rights and the rules generally applicable to the performance of contracts apply. This law permits the operation of ipso facto contractual clauses: accordingly, insolvency may be agreed to constitute a contractual event of default. If a contract is not terminated, the bankruptcy administrator can elect to continue its performance. However, upon termination the estate is not entitled to the benefit of continuous use of the IP.

Personal data

29 Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

There are no special provisions regarding personal information or customer data in the GBC and the restrictions generally applicable to personal data apply. To the extent that any type of information or customer data is deemed to be personal data, any use thereof, including transfer to a purchaser, as, for instance, in case of transfer of any business as per the provisions of a ratified recovery agreement, is subject to the provisions of Regulation (EU) 2016/679 (the GDPR).

As a general rule, when collecting and processing personal data, data controllers bear the obligations laid down by the GDPR, including obligations towards the data subjects.

Personal information or customer data may be used during any insolvency and pre-insolvency procedure provided that this use is compatible with the purposes for which they were originally collected by the insolvent or pre-insolvent company. Any use of personal data must comply with the principles of the GDPR, including the principles of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, and integrity and confidentiality.

New consent is not required on the condition that personal data is used for the purposes for which it was originally collected. Any consent must meet the requirements of the law (ie, must be freely given, unambiguous, specific and informed).

Regarding the transfer of such information to a purchaser, such transfer shall be in principle compliant from a data protection law perspective provided that the data subjects have been originally informed that their personal data shall be passed on to other organisations and in principle consented thereto. This may be achieved through appropriate terms in the contractual arrangements entered into between the insolvent and pre-insolvent company and the data subjects.

Even if the data subjects have been appropriately informed about the transfer of their personal data, the transfer is still subject to the principles set by the GDPR. Having said that, personal data must be used by the purchaser for the purposes for which it was originally collected. Personal information should not be used in a way that would be outside of the reasonable expectations of the individuals concerned. If the purchaser intends to use personal data for any other purposes than the purposes for which it was originally collected, consent for the new purpose is required from each data subject.

Following the transfer of personal data, the purchaser shall be deemed to be a controller and shall bear the respective obligations under the GDPR. Therefore, the purchaser will have to inform the data subjects about the change of the controller and provide them information regarding the enforcement of their rights (right of access, right to object, etc).

With regard to the issue of consent, the processing may be carried out without the data subject's consent, where the processing is necessary for compliance with a legal obligation to which the controller is subject, or where processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject that require protection of personal data. Under the GDPR, data controllers are no longer required to notify or seek authorisation by the Data Protection Authority for the processing of personal data, including the transfer of personal data to a third party. They are required instead to put in place effective procedures and mechanisms to assure compliance with the GDPR, including carrying out data protection impact assessments, where a type of processing is likely to result in a high risk to the rights and freedoms of the data subjects. A controller shall consult the Data Protection Authority prior to processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

Arbitration processes

30 How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

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

CREDITOR REMEDIES

Creditors' enforcement

31 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?

Under Greek law, a seizure requires an executory title and a supervised public auction. However, tax authorities are entitled to impose a seizure on debts over €70,000 without obtaining an executory title first. This significant reform was introduced by Law 4336/2015.

Unsecured credit

32 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

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 immovable assets or a conservative attachment over the debtor's other assets. These 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.

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

33 During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they 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 the liquidator's reporting obligations?

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 bankruptcy administrator to announce their claims within a time period of one month after the publication of the decision that declared the debtor's bankruptcy in the Bulletin of Judicial Publications of the Jurists' Pension Fund. The same applies in special administration procedure mutatis mutandis.

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 piecemeal liquidation of the debtor's estate; and
- the creditors' meeting for voting on the reorganisation plan.

The bankruptcy administrator must submit to the creditors' meeting a report with regard to the debtor's current financial situation, the reasons that led to its bankruptcy, the prospects of continuing business activities and the possibility of adopting a reorganisation plan. The bankruptcy administrator oversees the performance of the ratified reorganisation plan and every six months submits a report to the creditors' representative.

Creditor representation

34 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?

Following the recent amendments to the Greek Bankruptcy Code (GBC), the creditors' committee has been abolished from the main bodies of the bankruptcy procedure. The creditors are represented in the creditors' meeting.

Enforcement of estate's rights

35 If the liquidator 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? Can they be assigned to a third party?

No, the GBC does not permit the estate creditor to pursue its claims if the bankruptcy administrator has no assets to pursue a claim. 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.

Claims

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

The bankruptcy liquidator invites all creditors that are included within the list provided by the debtor to announce their claims within one month 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 bankruptcy administrator must verify each creditor's claim before the bankruptcy judge. At this stage, it is likely that a creditor's claim may be challenged by the debtor, the syndikos or other creditors whose claims have temporarily or finally been accepted. The judgment upon admission or rejection of one creditor's claim is subject to an appeal.

The GBC 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 GBC recognises claims for contingent or unliquidated amounts. 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.

Set-off and netting

37 To what extent may creditors 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.

Modifying creditors' rights

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

The GBC 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.

Priority claims

39 | 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 (in order of seniority):

- Super seniority claims (article 154a): loans or credit provided pursuant to a recovery agreement or a reorganisation plan. Goods or services provided on the basis of a recovery agreement. Loans or credit, goods or services provided during the negotiation period, if it is provided within the terms of the recovery agreement, regardless of its ratification. In this case, loans or credit, goods or services must be provided within a time period of six months prior to the submission of the recovery agreement.
- The following creditors' claims (other general preferential creditors), which are ranked as follows:
  - unpaid employee remuneration incurred in the two years prior to bankruptcy being declared and employment termination compensation, regardless of when it occurred;
  - lawyers' fees that date up to two years prior to the declaration of bankruptcy, and claims for compensation of salaried lawyers owing to termination of their contract for a salaried mandate, regardless of the time it arose;
  - claims of the state arising from value added tax (VAT) and its surcharges;
  - social security contributions that arose until the declaration of bankruptcy; and
  - other claims of the state or local authorities and their surcharges excluding VAT claims.

After deducting bankruptcy expenses and the bankruptcy administrator's remuneration, the super seniority claims are satisfied in full and ahead of any other creditors' claim. Then the secured creditors are paid out of 65 per cent of the sale proceeds. General preferential creditors are paid out of 25 per cent of the sale proceeds ranked as set out above. Unsecured creditors are satisfied by the remaining 10 per cent of the sale proceeds.

Law No. 4512/2018 introduced a parallel to the above ranking system for claims that arise after 17 January 2018 that are secured with a pledge or a mortgage over any movable or immovable property (that was not encumbered on 17 January 2018). If these conditions are cumulatively met, then (after deducting the legal expenses, bankruptcy expenses including the bankruptcy administrators' remuneration) the following ranking is applicable:

- First rank: employees' claims that arose within six months prior to the declaration of bankruptcy and up to an amount equal to six monthly wages per employee. For the purposes of such ranking, the monthly wage is equal to the minimum wage of an employee working over 25 years multiplied by 275 per cent.
- Second rank: super seniority claims of article 154a GBC (ie, loans or credit provided pursuant to a recovery agreement or a reorganisation plan. Goods or services provided on the basis of a recovery agreement. Loans or credit, goods or services provided during the negotiation period, if it is provided within the terms of the recovery agreement, regardless of its ratification. In this case, loans or credit, goods or services must be provided within a time period of six months prior to the submission of the recovery agreement).
- Third rank: secured claims
- Fourth rank: general privileged claims (mainly, employees (the balance of the above claims), Greek state, social security funds etc) and secured claims for expenses incurred for the production and harvesting of harvests in the last six months before the declaration of bankruptcy.
- Fifth rank: unsecured claims.

Each rank must be fully satisfied prior to the satisfaction of the following or next rank (ie, first rank fully satisfied prior second rank, etc).

Employment-related liabilities

40 | What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

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 bankruptcy administrator can terminate employment contracts lawfully without paying the statutory compensation at the time the termination occurs. The employee maintains a claim for his or her compensation.

A restructuring does not automatically exempt a debtor from complying with the collective redundancies restrictions (up to 5 per cent for larger employers; in any case it may not exceed 30 employees). However, where a business ceases operations as a result of the appointment of a bankruptcy administrator, 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.

Pension claims

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

Claims by the social security fund prior to the declaration of insolvency are treated as priority claims and are satisfied as a matter of general priority.

Employee claims that have arisen within two years of the declaration of insolvency are also given special priority under statute. The GBC 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.

Environmental problems and liabilities

42 | Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

If the environmental problems take place after the commencement of insolvency proceedings, and arise by action of the bankruptcy administrator, the person suffering the damage may file a lawsuit against the bankruptcy administrator, under his or her capacity as administrator of the insolvency estate, and upon acquisition of an enforceable title, he or she may be satisfied before the other creditors by the insolvency estate. If the debt cannot be satisfied by the insolvency estate, the bankruptcy administrator is obliged to compensate the creditor, if he or she failed by reason of gross negligence to diagnose that the estate is not likely to be able to satisfy such group debt or actually diagnosed it, but neglected it.

Of course, liability of the bankruptcy administrator under tort is not precluded. In any case, any claim against the bankruptcy administrator is time-barred after a period of three years from the time the person suffering the damage became aware of the damage and of the damaging act.

If the environmental problems take place after the commencement of insolvency proceedings by the action of the debtor, the person suffering the damage may file a lawsuit against the debtor and, upon acquisition of an enforceable title, he or she may be satisfied by the debtor's estate. The person suffering the damage may be satisfied by the debtor's property that was acquired after the opening of insolvency proceedings and that is not included within the insolvency estate.

If the environmental problems take place before the commencement of insolvency proceedings, the person suffering the damage must participate in the insolvency proceedings (by announcing its claim) to be satisfied by the insolvency estate.

Liabilities that survive insolvency or reorganisation proceedings

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

A recovery agreement may provide for liabilities that pass to the new acquirer or purchaser of debtor's assets and for the discharge or conversion of other liabilities. Otherwise, liabilities continue to lie with the debtor. The debtor, if a natural person, may be discharged either after the lapse of two years as of the declaration of bankruptcy, or if he or she has repaid all creditors in principal and interest. The debtor, if a legal entity, is discharged if it has repaid all creditors in principal and interest. The discharge of a debtor who was convicted for elimination or non-disclosure of assets belonging to the insolvency estate, for acting in a manner contrary to the rules of prudent financial management and for non-keeping or concealing of mandatory business books is prohibited, unless criminal discharge for these acts occurred.

Distributions

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

Following liquidation of the debtor's estate, the bankruptcy administrator draws up a list with regard to distributions that will be made to creditors. The bankruptcy administrator 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 or her 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.

SECURITY

Secured lending and credit (immovables)

45 | What principal types of security are taken on immovable (real) property?

The following types of security are available for immovable property:

- Mortgage – this is the basic form of security in relation to immovable 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 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.

Secured lending and credit (movables)

46 | What principal types of security are taken on movable (personal) property?

The following types of security are available for movable assets:

- Pledge: this is the most common form of security. A pledge on a movable asset ensures the preferential satisfaction of the creditor through a forced sale of that movable asset in execution proceedings. A pledge requires physical delivery of the movable asset to the pledgee.
- A chattel mortgage (articles 1 and 3 of Law 2844/00) (also non-possessory pledge): 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 that the creditor is preferentially satisfied through the asset's forced sale, following the commencement of execution proceedings.
- Floating charge (article 16 of Law 2844/00): a floating charge enables the debtor to deal with (and dispose of) the charged assets (as specified in the agreement) in the ordinary course of business until the occurrence of either a default or an agreed event that causes the floating charge to crystallise. Following crystallisation, a floating charge becomes a fixed charge (similar to a pledge) attaching to whatever movable 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 or her, 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 movable 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 movable asset and satisfy his or her claim through the proceeds of the auction.

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

47 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

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 recovery agreement or a reorganisation plan can be annulled.

Apart from the Bankruptcy Code, there are additional provisions stipulating acts that are exempted from bankruptcy revocation, including:

- any mortgage or pledge granted under the Legislative Decrees 17.07/13.08.1923 and 4001/1959 to secure a loan;
- any pledge or mortgage granted to secure claims from bond loans issued according to Law 3156/2003;
- the transfer of claims pursuant to Law No. 3156/2003 regarding the securitisation of claims;
- financial collateral agreements as well as the provision of financial collateral under such agreement persuant to Law 3301/2004; and
- within the framework of Law 3389/2005 regulating PPPs, any securities granted by a special purpose vehicle (SPV) or any third party in favour of a credit or financial institution or any third party to secure claims towards the SPV.

Equitable subordination

48 Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

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 bankruptcy administrator before the reporting judge against the debtor's books and records. The debtor, the bankruptcy administrator 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 the creditor.

GROUPS OF COMPANIES

Groups of companies

49 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 bankruptcy administrator.

The Greek Bankruptcy Code does not provide for substantive consolidation in case of bankrupt company members of an enterprise group. Hence, the Bankruptcy Court cannot order a distribution of group company assets pro rata without regard to the assets of the individual corporate entities involved.

Combining parent and subsidiary proceedings

50 In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

The Greek Bankruptcy Code 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. However, the provisions of EU Regulation 848/2015 regarding group coordination proceedings and the appointment of a group coordinator may be applicable.

INTERNATIONAL CASES

Recognition of foreign judgments

51 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?

The recast EU Regulation 848/2015 on insolvency proceedings (replacing Regulation 1346/2000), which came into force on 26 June 2015 regarding insolvency proceedings initiating from 26 June 2017, applies because Greece is an EU member state. Moreover, Law No. 3858/2010, which came into force on 28 June 2010, substantially repeats the text of the UNCITRAL Model Law on Cross-Border Insolvency; caution is required with the definitions, especially that of 'foreign proceedings', as the law seems to apply only to foreign proceedings that involve the appointment of a liquidator.

UNCITRAL Model Law

52 Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

Law 3858/2010, which came into force on 28 June 2010, substantially repeats the text of the UNCITRAL Model Law on Cross-Border Insolvency; caution is required with the definitions, especially that of 'foreign proceedings', as the law seems to apply only to foreign proceedings that involve the appointment of a liquidator. However, the Model Law also applies in proceedings in which the debtor remains in control of its assets and affairs (debtor-in-possession proceedings). In addition, the Greek court will refuse recognition if it identifies a violation of public order; in that it departs from the text of the Model Law that provides for non-recognition only where the foreign procedure is 'manifestly' contrary to the public order. The difference may be slight but may still provide an opening to litigants to successfully resist recognition.

Foreign creditors

53 How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors that seek to commence or participate in bankruptcy proceedings in Greece have the same rights as domestic creditors.

Cross-border transfers of assets under administration

54 May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

EU Regulation 848/2015 applies. If it is possible to satisfy all announced claims that have been verified (at the stage of liquidation of assets in secondary insolvency proceedings) the insolvency practitioner appointed in secondary proceedings shall immediately transfer any assets remaining to the insolvency practitioner of the main insolvency proceedings.

COMI

55 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

The Greek Bankruptcy Code (GBC) uses the same criterion as the European Insolvency Regulation to determine the COMI. The COMI corresponds to the place where the debtor conducts the administration of its interests on a regular basis in a manner that is ascertainable by third parties. The GBC establishes a rebuttable presumption in case of a debtor's legal entity. A legal entity's place of registered office is presumed to be the COMI, in the absence of evidence to the contrary.

The Greek Bankruptcy Court does not provide for a COMI of a corporate group. Nevertheless, it is not precluded for a subsidiary's COMI to coincide with a parent's COMI. In that case, the bankruptcy proceedings will be centralised before the same court. To the best of our knowledge, to date Greek courts have neither addressed any such case.

Cross-border cooperation

56 Does your country's system provide for recognition of foreign insolvency proceedings and for 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 and, if so, on what grounds?

Law 3858/2010, which implemented most of the UNCITRAL Model Law, introduces the prospect of recognition of foreign insolvency proceedings as well as the cooperation among Greek courts, foreign courts and liquidators of different jurisdictions. To our knowledge, 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.

Cross-border insolvency protocols and joint court hearings

57 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. That provision has not yet been tested in practice.

Winding-up of foreign companies

58 What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

Greek courts have no power to order the winding-up of a foreign company doing business in Greece. However, the GBC uses the same criterion as the European Insolvency Regulation to determine the COMI. The COMI corresponds to the place where the debtor conducts the administration of its interests on a regular basis in a manner that is ascertainable by third parties. The GBC establishes a rebuttable presumption in case of a debtor's legal entity. A legal entity's place of registered office is presumed to be the COMI, in the absence of evidence to the contrary. So, if it is proved that the COMI of a foreign company is in Greece, then it can declare such company bankrupt.

UPDATE AND TRENDS

Trends and reforms

59 Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Since January 2020, the Ministry of Finance has engaged external counsel to draft a new holistic Insolvency Code that will harmonise the local proceedings with Directive 1023/2019 and overhaul both the out-of-court workout framework, establish insolvency proceedings for consumers and streamline the bankruptcy process. The draft has already gone through the process of public deliberation and is expected, if it achieves parliamentary approval, to come into effect at the beginning of 2021. The new Code takes the place of the existing Bankruptcy Code, while all parallel insolvency or illiquidity proceedings (such as the Katselis law for over-indebted individuals, the out-of-court workout (OCW), the special administration proceeding and laws for the protection of a primary residence) will no longer be available for new applicants (and pending applications will be run off).

The changes brought to the Greek insolvency landscape are very extensive and profound. They introduce a unified code for the restructuring and bankruptcy of individual and corporate debt for the first time in the country's history. It implements directly the recent EU Directive on restructuring and insolvency (1023/2019) ahead of all other member states. As such, the new Code should also help Greece better participate in the EU banking and markets union.

The new Code's philosophy is straightforward: prevention should be available at an early stage and should be streamlined, transparent and efficient. Failure (bankruptcy) should be followed by a second chance. Assets should be disposed of without delay, at market rates and in a manner protective of creditor rights.

It is reasonable to expect that the new Code will enhance the value of debt collateral (and thus improve bank capital positions), by improving the simplicity, efficiency and speed of procedures, while also helping address Greece's legacy private debt problem. However, the bill's most important legacy is likely to be to improve the country's entrepreneurial attractiveness. A clear framework for restructuring and bankruptcy is a critical ingredient of a modern capitalist economy and necessary for risk taking.

The proposed Code:

- offers a set of complementary procedures and tools either to prevent insolvency, including at an early stage, or to address its occurrence;
- offers tools for all cases, regardless of whether the debtor is a business or a consumer;
- provides debtors with a second chance, but also permits creditors to challenge the debt release for debtors who abuse the process; and
- puts great emphasis on the speedy conclusion of all procedures, maximising the quick satisfaction of creditors and restoring productive means to productive uses as soon as possible.

Towards that end, it has adopted the following techniques.

Limited recourse to courts

Some procedures, such as the OCW, are purely out-of-court and not subject to any kind of judicial review or intervention, while in other cases, proceedings are only by written submissions to avoid the delay in conducting hearings. Courts are involved only for substantial and not for purely procedural actions, and some orders are entrusted to the judge rapporteur, who can issue orders without a formal hearing. In addition, applications to court have been excluded in cases where they have been abused; for example, the setting of a reserve price cannot be reviewed by a court.

Streamlining of processes

- Liquidation begins immediately after the taking of an inventory (in the current system, it follows the verification of claims and related disputes);
- there is an automatic adjustment of the reserve price within 20 days if an auction fails to raise a bid; after three unsuccessful efforts, there is a three-month period for a bilateral sale, and if that fails then a sale to the highest bidder without a minimum bid level;
- the decision for the declaration of bankruptcy determines whether the liquidation will be on a piecemeal basis or on a going-concern basis; currently, both are available at the option of the administrator after the commencement of the process leading to significant delays; and
- overlapping processes (special administration as a separate insolvency proceeding) or procedures little used in practice (such as the reorganisation process) have been abolished and their useful elements have been incorporated in the new procedures.

Simplification of procedures

- Procedures with a similar objective have been combined; for example, objections to verification of claims can be raised together with all other relevant objections at the time of distributions of proceeds of liquidation (as opposed to the two stages currently applicable);
- employment of an electronic platform for applications means that supporting documents need not be filed in most cases but can be drawn from public databases with the applicant's permission; and
- quantitative tests are provided as rebuttable presumptions to facilitate court decisions and to provide greater visibility to all parties; for example, a consumer will be presumed in cessation of payments if he or she is in arrears on bank loans representing more than 60 per cent of his or her debt to that bank for a period of at least six months.

Reliance on electronic platforms and automated solutions

There will be an increased reliance on electronic platforms and automated solutions, in order to:

- ensure faster and broader publicity of all procedural events;
- facilitate the filing of applications, announcements and the conduct of creditor votes where provided;
- facilitate cross-border access; and
- provide greater publicity to auctions (all of which are e-auctions).

The new Code addresses the need to prevent insolvency at an early stage by permitting both businesses and consumers to resort to the OCW. The OCW is a confidential process based on an electronic platform that permits debtors to ask the creditor banks (and servicers) for a haircut or rescheduling of debt repayments. The banks decide on an offer by majority of claims held; if the solution is based on an automated tool (prescribed by law), then tax authorities and social security funds are required to apply the debt reduction or rescheduling provided by the automated solution. Creditors may decline to make an offer and the process terminates automatically if an offer is not made and accepted by the debtor within a two-month period.

Businesses may also make use of the recovery proceeding, which is fully aligned with the recent EU Directive 1023/2019. There are two classes of creditors – secured and all other creditors – and an agreement requires approval by at least 50 per cent of both categories.

However, an agreement approved by 50 per cent of secured creditors may be ratified if it also receives the approval of 60 per cent of all creditors. Dissenting creditors are bound by the agreement if it satisfies the principle of no creditor worse off and of equal treatment of creditors in the same position (however, difference in treatment may be countenanced for important commercial or social reasons). Employees' rights are unaffected by a recovery agreement and their claims are not subject to a stay.

Both businesses and consumers may be declared bankrupt. In the former case, the court will designate the means of liquidation, either on a piecemeal or a going-concern basis (for all or parts of the business). If the going-concern sale (which does not have a minimum price) does not produce a sale within 18 months, it converts into a piecemeal sale. Liquidation for consumers is always piecemeal.

Consumers who are declared bankrupt must contribute their income in excess of the basic income provided by law to the estate until their discharge.

Natural persons, whether involved in a business activity or not, are discharged of their debts after three years. Creditors can prevent discharge if they show abusive conduct, failure to cooperate or deception. Certain debts (family maintenance or penalties for crime) are exempted from discharge.

Creditors are given a bigger say on critical decisions, such as:

- the selection of the administrator and their remuneration;
- decisions on going-concern sales;
- conversion of a liquidation into a recovery process; and
- the ability of creditors to avoid holding-out by shareholders that would prevent a recovery agreement restoring the business to viability is strengthened; management has the sole competence to agree a recovery agreement, decisions by the general assembly are limited to matters expressly required by company law. The court can also appoint an agent to vote instead of shareholders in cases of holding-out.

Minimum impact on the exercise of the rights of secured creditors

There are only four cases in which stays affect the exercise of secured creditors' rights:

- under the OCW rules, a secured creditor must abstain from the actual conduct of an auction or set off its claims during the pendency of an application; however, all other preparatory actions (attachment of an asset, delivery of auction programme) are unimpeded. The maximum duration of the OCW process is two months (in certain exceptional cases could be two-and-a-half months) and an application is automatically rejected if made within three months of the scheduled date of an auction against the applicant's assets;
- if a recovery agreement is filed for ratification (but this does not affect rights under financial collateral or netting agreements);
- if a bankruptcy petition involves an application for a going-concern sale; and
- if a secured creditor fails to commence the individual performance nine months after the declaration of bankruptcy.

Maximum use of electronic tools and automated solutions

- The OCW automated tool facilitates the quick generation of solutions for suitable applicants;
- all procedural steps are published on the electronic insolvency register;
- the electronic register is also used for filings, announcements and communications with and among the creditors; for example, the announcement of claims and creditor votes are platform-based; and
- the electronic register provides maximum publicity, advance warning and transparency to all Code proceedings.

Regulation of the insolvency profession is improved

- Insolvency professionals may be both natural persons as well as professional firms;
- publicity of credentials is enhanced to facilitate creditors and debtors in selecting administrators; and
- greater emphasis is placed on practical training and best insolvency practices.

Social measures, such as the primary residence preservation mechanism, neither interfere with individual or collective enforcement nor burden the degree or speed of creditor recovery. The mechanism involves a private entity selected by the state pursuant to a public tender to buy the primary residence of an applicant who is characterised as vulnerable and is either declared bankrupt or their primary residence is being auctioned off; the purchaser acquires the residence at a market-based price without imposing any delays in the proceedings, thereby also providing them with a reasonable recovery and liquidit. The availability to vulnerable debtors of a mortgage payment subsidy in OCW may further facilitate debtor–creditor deals.

Coronavirus

60 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns?

The Greek government introduced a series of relief measures against the effects of the covid-19 pandemic on businesses and on the Greek economy in general. The supportive measures are related to tax liabilities, labour issues and social security contributions, as well as to emergency financing of those businesses that have been affected by the pandemic. An indicative list of the said measures is:

- Extension until April 2021 (in some cases) of deadlines for the payment of tax and VAT liabilities and suspension of payment of certified tax and VAT liabilities and instalments that expired between 11 March (or 1 April in some cases) to June 2020, free of interest or surcharges.
- Corporate income tax for the financial year 2019 may be paid in eight equal monthly instalments (ie, until February 2021).
- Businesses showing a loss of VAT turnover in the first semester of 2020 compared to the corresponding period of 2019 are eligible for a reduction in the advance tax payment for the financial year 2021, which is required to be paid in 2020.
- The ownership tax of real estate property for 2020 may be paid in six equal monthly instalments until February 2021.
- A VAT reduction from 24 to 13 per cent for passenger transport, coffee and non-alcoholic drinks, as well as a VAT reduction to 6 per cent for cinema tickets from 1 June until 31 October 2020.
- A VAT reduction from 24 to 6 per cent for products needed to protect against covid-19 and to prevent its transmission (eg, masks, gloves, antiseptics, etc) until 31 December 2020.
- Accelerated refunds of up to €30.000 for income tax and VAT for all open tax audit cases, as of 20 March 2020.
- A 25 per cent discount on certified tax liabilities with payment date within March, April, May or June 2020, if the remaining 75 per cent is paid in due time, with the exemption of VAT and withholding taxes.
- Suspension of payment of any instalments due pertaining to the Out-of-Court Workout (Law 4469/2017) and the protection of primary residence protection regime (Law 4605/2019) for a period of three months. This measure concerns businesses that have been financially affected as per their activity code numbers, or their operation has been suspended under a state decision. This

also applies to individuals severely affected. This suspension of payments concerns only individual beneficiaries of the financial assistance of €800, as well as companies that are included in the activity code number that are affected by covid-19.

- Provision of a cash advance to companies and individual enterprises financed by the Greek state amounting to approximately €1 billion in total. It will be provided via the 'taxis' information system as a tax-free amount, which will not be able to be offset or confiscated.
- Furthermore, the Covid-19 Guarantee Fund has been established as an independent financial unit to support the economy in order to meet the increased liquidity needs of undertakings. Through the Covid-19 Guarantee Fund, banks grant new working capital loans guaranteed up to 80 per cent of the amount of each loan with a subsidised guarantee premium for the loan, for 40 per cent of the volume of business loans granted by each bank to SMEs or 30 per cent for loans of big undertakings, while the state subsidises the guarantee premium for the loan. The expression of interest shall be submitted in an electronic platform.
- For a period of time, which does not exceed nine months from the date of approval of the relevant application, the Greek state contributes to the payment of instalments for the repayment of mortgage loans having as collateral the debtor's primary residence.
- Ability to suspend employment contracts of part or all of the staff for a certain period, while prohibiting employees' dismissal. Those employees will receive the emergency financial support of €800 from the Greek state.
- Possibility for employers to pay the Easter bonus at a later time, until 30 June 2020.
- Emergency financial support of €400 for long-term unemployed individuals, €600 for economists, accountants, engineers, lawyers, doctors, teachers and researchers, and €800 for freelancers, self-employed and individual business owners who employee up to 20 employees.
- Suspension of payment of social security contributions for a certain period of time.
- Subsidy of the interest cost for performing as at 31 December 2019 loans.

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Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Greece	
Applicable insolvency law, reorganisations: liquidations	Law No. 3588/2007, as amended. Law No. 3858/2010. The EU Regulation on insolvency proceedings.
Customary kinds of security devices on immovables	Prenotation of mortgage. Mortgage.
Customary kinds of security devices on movables	Pledge. Notional pledge. Floating charge. Retention or fiduciary transfer of ownership.
Stays of proceedings in reorganisations/liquidations	Automatic stay upon commencement of bankruptcy proceedings. Automatic stay upon application of pre-packaged recovery process. Stay at the request of the debtor or the creditors prior to the submission of the recovery agreement. Automatic stay upon commencement of special administration proceedings.
Duties of the insolvency administrator	Management of the insolvency estate and distribution of the bankruptcy proceeds to creditors.
Set-off and post-filing credit	Yes, provided that the claim fell due prior to the declaration of bankruptcy. The claims that arise from post-filing financing provided on the basis of a recovery agreement or reorganisation plan are ranked ahead of any other pre-existing claim.
Creditor claims and appeals	Announcement of creditors' claims. Appeal against the judgment that accepts or rejects a creditor's claim.
Priority claims	New and interim financing provided on the basis of a recovery agreement (super-priority ranking), satisfied in full and ahead of all other creditors' claims, regardless of ratification by the Bankruptcy Court. Unpaid employee remuneration incurred in the two years prior to bankruptcy being declared and employment termination compensation; lawyers' fees that date up to six months prior to the declaration of bankruptcy, and claims for compensation of salaried lawyers because of termination of their contract for a salaried mandate; social security contributions that arose until the declaration of bankruptcy; claims of the state arising from value added tax (VAT) and its surcharges. Other claims of the state excluding claims arising from VAT.
Major kinds of voidable transactions	• Donations and gratuitous acts; • payments of debts that did not fall due; • payments of due debts that were not made in cash; and • security over the debtor's estate for pre-existing debts.
Operating and financing during reorganisations	In recovery procedure, no conditions or restrictions are set by law on the debtor's conduct of business. Upon declaration of bankruptcy, the bankruptcy administrator manages the debtor's assets and affairs. Upon application, the court may permit the debtor to remain in administration of its assets always along with the bankruptcy administrator's cooperation.
International cooperation and communication	Law No. 3858/2010 (UNCITRAL Model Law on Cross-Border Insolvency). The EU Regulation on insolvency proceedings.
Liabilities of directors and officers	The general partner of a limited partnership: personally liable for corporate debts. Directors and officers of a private company, limited liability company and a société anonyme: in principle, no liability. Exceptions are: • personal liability in the event of delay with regard to the filing of the bankruptcy petition; or fraudulent act or gross negligence; and • personal and joint liability with regard to the payment of corporate taxes.
Pending legislation	N/A.

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